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Sara Zeimer

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Exclusionary Zoning, School Segregation, and Housing Segregation: An Investigation into a Modern Desegregation Case and Solutions to Housing Segregation

by SARA ZEIMER

Introduction

The Constitution of the United States makes broad claims about equality, yet this nation is far from achieving its idealistic goals. This country was founded as a segregated society; it treated anyone who was not white as an outsider, not entitled to the same privileges as white men. Even after the Civil War concluded and slavery was outlawed, communities across the nation continued to be the product of self-segregation and further government-sponsored segregation. These practices have affected every aspect of life in the United States. Moreover, these tactics were deliberately used to prevent minorities from gaining equality in housing and, subsequently, in educational opportunities. While these private—and government-sponsored tactics—were not explicitly labeled as *de jure* segregation or Jim Crow laws, they were used throughout the nation as a method to further the idea that whites were superior to others.

Although California was founded as a free state and did not engage in *de jure* segregation following the Civil War, efforts to separate communities on the basis of race persisted. The results of those segregationist efforts endure to this day and are particularly pronounced in the intersection between housing and schools. Historically, minorities were unable to buy homes in the same neighborhoods as whites, limiting the schools minority children could attend. As a result, this impacted children for the rest of their lives, determining which jobs they could hold, where they could live, and, importantly, the opportunities available to future generations. Even today, isolated communities are still part of American society and segregated schools are not just a feature of the past.

This note will explore the history of housing segregation, including exclusionary zoning ordinances, private real estate tactics, and federal programs that created modern segregated neighborhoods and communities.

This note will then examine California's history of school segregation, including analyzing the connection between the passage of Proposition 13 and greater disparity within California school districts. Next, it will investigate a recent desegregation case, *People ex rel. Becerra v. Sausalito Marin City School District*, where the California Attorney General ordered the Sausalito Marin City School District to desegregate. The note then delves into the history of Marin City and how the zoning ordinances, federal programs, and private real estate tactics purposely separated Marin City from the rest of the county and culminated in the Attorney General's desegregation order. Lastly, this note will explore solutions to resolve housing segregation in communities like Marin City.

I. The Beginning of Exclusionary Zoning and Landmark Zoning Decisions

Toward the end of the 19th century, many municipalities in the United States enacted zoning ordinances to separate white residents from nonwhite residents.¹ The earliest zoning ordinances were relatively benign height regulations, but after a short period of time, cities began enacting zoning ordinances for other purposes.² For example, Los Angeles adopted the nation's first zoning ordinance to protect residential areas from industrial nuisances.³ Many state legislatures upheld zoning ordinances, citing the need to plan for the general welfare of a community under local control.⁴

As zoning ordinances gained popularity, municipalities began using ordinances to further racial segregation. As early as 1916, the Supreme Court struck down a local ordinance prohibiting the sale of property to a Black person in *Buchanan v. Warley*.⁵ In *Buchanan*, the zoning ordinance in question "made it unlawful for any colored person to move into and occupy" a residence on the same block where a majority of the residences were occupied by white people.⁶ The state attempted to justify its action as a valid use of state police power, but the Court held that the ordinance was in direct violation of the Fourteenth Amendment.⁷

1. Eli Moore et al, *Race Roots and Place: A History of Racially Exclusionary Housing in the San Francisco Bay Area*, HAAS INST. FOR A FAIR AND INCLUSIVE SOC'Y 29 (Oct. 1, 2019), https://escholarship.org/content/qt2j08r197/qt2j08r197_noSplash_eecbec55456f21df8cb302a7b292855a.pdf?t=qc30qt.

2. CHRISTOPHER SILVER, *The Racial Origins of Zoning in American Cities* from URBAN PLANNING AND THE AFRICAN-AMERICAN COMMUNITY: IN THE SHADOWS 23 (June Manning Thomas et al. eds., 1997).

3. *Id.*

4. Paul E. King, *Exclusionary Zoning and Open Housing: A Brief Judicial History*, 68 GEOGRAPHICAL REV. 4, 460 (1978).

5. *Buchanan v. Warley*, 245 U.S. 60, 82 (1916).

6. *Buchanan*, 245 U.S. at 70–71.

7. SILVER, *supra* note 2, at 25.

Despite the Supreme Court's holding in *Buchanan*, local municipalities continued to draft ordinances segregating on the basis of race.⁸ Racially restrictive zoning began in the South as a "social control mechanism for Blacks and other 'undesirables.'"⁹ Racial zoning practices in Northern and Western cities functioned as a response to the Great Migration, where southern Blacks arrived in Northern and Western cities in great numbers in search of job opportunities and to escape legally enforced Jim Crow discrimination and persecution in the South.¹⁰ After *Buchanan*, cities fashioned legally defensible racial zoning systems by using "professional planners to prepare racial zoning plans and to marshal the entire planning process to create the completely separate Black community."¹¹

The Supreme Court's decision in *Village of Euclid v. Ambler Realty Corporation* in 1926 upheld municipal zoning as a valid form of state police power.¹² Following this decision, zoning ordinances were institutionalized by municipalities throughout the nation, thereby giving municipalities carte blanche to use zoning in an exclusionary manner under the guise of "local control."¹³ This led to an increased use of exclusionary zoning measures throughout the nation as a way to segregate individuals on the basis of race.¹⁴

Following World War II, "the number of conflicts and legal battles" surrounding zoning in suburban areas increased, but these ordinances were generally upheld by state courts.¹⁵ Federal courts in the second part of the 20th century largely avoided local zoning cases but when they did accept cases where "blatant racial discrimination" was present, the housing advocates typically prevailed.¹⁶ However, in cases where plaintiffs did not cite racial discrimination, the courts were not always sympathetic to the issue.¹⁷ This meant that courts did not always strike down zoning regulations where the plaintiffs did not cite explicit racial discrimination. Federal courts were careful not to disrupt the balance struck by federalism by allowing states to enact zoning regulations to provide for the well-being of their citizens, and only took an affirmative step when there was a case of clear racial discrimination.

8. *Id.*

9. *Id.*

10. *See id.*; *see also* Moore, *supra* note 1, at 25.

11. *See* SILVER, *supra* note 2, at 29.

12. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926).

13. *See* King, *supra* note 4, at 461–62.

14. *See id.* at 460–62; *see* SILVER, *supra* note 2 at 23.

15. King, *supra* note 4, at 462.

16. *Id.* at 465; *see* Dailey v. City of Lawton, 296 F. Supp. 266 (W.D. Okla. 1969); *see also* S. Alameda Spanish Speaking Org. v. City of Union City, 424 F.2d 291 (9th Cir. 1970); *see also* Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970).

17. *See* King, *supra* note 4, at 465; *see* James v. Valtierra, 402 U.S. 137 (1971) (holding that a California referendum for low-income housing did not violate California Constitution because income-based programs did not present blatant racism as other cases).

II. California's Exclusionary Zoning Efforts

The roots of modern zoning can be traced to Berkeley, California.¹⁸ Real estate developers pushed local governments to create zoning laws to “institutionalize the restrictions” that had been enforced through restrictive deeds and covenants.¹⁹ San Francisco was one of the first municipalities in the United States to pass racial zoning provisions.²⁰ In 1890, San Francisco “became the first city to attempt to segregate explicitly on the basis of race by passing an ordinance that sought to completely exclude Chinese residents from certain areas of the city.”²¹ The federal district court of the Northern District of California invalidated the ordinance “as being in direct conflict with the constitution, treaties, and statutes of the United States.”²²

As mentioned in section I, *supra*, the adoption of zoning in the western United States coincided with an increase in immigration and the Great Migration to escape racial violence in the South.²³ Exclusionary zoning legitimized the idea that upper- and middle-class white children should not come in contact with “poor, immigrant, or [B]lack culture.”²⁴ Real estate developers, who advocated for the use of zoning regulations, feared that allowing people of color into single-family neighborhoods would lower the market value of homes.²⁵ Aside from just limiting who could live in certain neighborhoods, “[i]ncorporated municipalities also turned to exclusionary land use policies like large minimum lot sizes, growth boundaries, and caps on new units.”²⁶

Shortly before the United States Supreme Court's decision in *Village of Euclid*, the California Supreme Court upheld zoning as a legitimate exercise of police power in the 1925 case of *Miller v. Board of Public Works*.²⁷ California encouraged the use of zoning, and the courts did not second-guess the municipality's decision so long as there was a reasonable rationale for why the ordinance was passed.²⁸ Zoning ordinances attempted to keep minorities and immigrants out of white neighborhoods by making it difficult for those individuals to purchase homes in increasingly expensive

18. See Moore, *supra* note 1, at 31.

19. *Id.*

20. *Id.* at 29.

21. Moore, *supra* note 1, at 29.

22. *Id.*; *In re Lee Sing*, 43 F.359, 362 (N.D. Cal. 1890).

23. See Moore, *supra* note 1, at 25.

24. *Id.* at 32.

25. *Id.* at 31.

26. *Id.* at 34.

27. *Miller v. Board of Pub. Works*, 195 Cal. 477, 497 (1925).

28. Edward G. Weil et al., *Exclusionary Zoning in California: A Statutory Mechanism for Judicial Nondeference*, 67 URB. PLAN. & LAND DEV. CONTROL LAW 1154, 1157 (1971).

neighborhoods, while protecting white neighborhoods from “deterioration by ensuring that few industrial or environmentally unsafe businesses could locate in them.”²⁹

Exclusionary zoning ordinances legitimized barriers to keep racial minorities out of white neighborhoods, as they were legally valid under both the California and the Federal constitutions. Unlike southern Jim Crow laws, zoning ordinances were grounded in the idea of local authority and planning purposes, and thus less likely to be viewed as blatantly racist. Nonetheless, these ordinances accomplished the same goals as Jim Crow laws: to separate individuals on the basis of race and to send a clear message to non-white communities that they were not entitled to the same privileges as whites.

III. Other Methods to Enforce Housing Segregation

Exclusionary zoning methods, while widespread, were not the only tool used to enforce housing and school segregation. Racial covenants were used to legally prevent the sale of homes to members of certain racial groups. The federal government also played a role in promoting segregation through the use of neighborhood risk-assessment, redlining, and the creation of the interstate highway system. Real estate agents also wielded great power in steering individuals away from buying homes in certain neighborhoods. In addition to exclusionary zoning, these private, federal and state-sanctioned forms of discrimination ensured that neighborhoods remained racially and ethnically divided well after the Supreme Court declared segregation unconstitutional in *Brown v. Board of Education* in 1954.

A. Racial Covenants to Further Segregate Neighborhoods

Individuals and homeowners’ associations used racial covenants to segregate neighborhoods throughout the nation as whites became more hostile to the idea of Black homeownership.³⁰ Even though the United States Supreme Court held in the landmark case of *Shelley v. Kraemer* that racially restrictive covenants violated the Constitution, discrimination through the use of these covenants continued.³¹ Despite the Supreme Court’s holding, neighborhoods around the nation “continued to bar . . . racial minorities from purchasing property in their neighborhoods by creating community associations in which potential buyers would have to become members before purchasing property in the area.”³² Such associations, along with both federal and state governments’ refusal to enforce the Supreme Court’s

29. RICHARD ROTHSTEIN, *THE COLOR OF LAW* 56–57 (2017).

30. ROTHSTEIN, *supra* note 29, at 56–57.

31. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948); Moore, *supra* note 1, at 27.

32. Moore, *supra* note 1, at 36.

decision in *Shelley*, kept many neighborhoods around the country, including in the Bay Area, racially segregated well into the 20th century.³³

Prior to 1919, California courts ruled that racially restrictive covenants were illegal, but this view changed in 1948 when the California Supreme Court in *Cumings v. Hokr* declared that deed restrictions were legal.³⁴ In the period where courts did not enforce deed restrictions, homeowners' associations did.³⁵ The California Supreme Court in 1948 held in *Cumings v. Hokr* that racially restrictive covenants against non-white occupation were unconstitutional, even if the covenant itself is valid under contract law.³⁶ However, just four years after *Cumings*, *Barrows v. Jackson* sustained the use of a restrictive covenant forbidding the sale of a home to a non-white person.³⁷ Following the inconsistent holdings in *Cumings* and *Barrows*, the California Supreme Court finally struck down a provision of the California constitution in 1966 which allowed individuals to discriminate to whom they sold, leased, or rented their property in *Mulkey v. Reitman*.³⁸

B. Federal Segregation Tactics

The federal government also devised methods to keep neighborhoods segregated, primarily through the creation of the Federal Housing Authority ("FHA"). Even before the FHA "sponsored whites-only suburbanization, many urban neighborhoods were already racially exclusive."³⁹ The FHA further excluded people of color from white neighborhoods by promoting the use of exclusionary zoning laws and making it nearly impossible to obtain home loans in white communities.⁴⁰ The combination of local zoning laws and the FHA's policies propagated restricted neighborhoods throughout the nation.

Congress created the FHA in 1934 as a method to increase homeownership and boost the economy after the Great Depression.⁴¹ The FHA insured private mortgages to make homeownership more accessible.⁴²

33. *Id.* at 37.

34. Ryan Reft, *How Prop 14 Shaped California's Racial Covenants*, PUB. MEDIA GROUP OF S. CAL. (last visited Jan. 11, 2020), <https://www.kcet.org/shows/city-rising/how-prop-14-shaped-californias-racial-covenants>.

35. *Id.*

36. *Cumings v. Hokr*, 31 Cal. 2d 844, 845–46 (1948).

37. *Barrows v. Jackson*, 112 Cal. App. 2d 534, 555 (1952).

38. *Mulkey v. Reitman*, 64 Cal. 2d 529, 533 (1966).

39. ROTHSTEIN, *supra* note 29, at 77.

40. See John Kimble, *Insuring Inequality: The Role of Federal Housing Administration in the Urban Ghettoization of African Americans*, 37 LAW & SOC. INQUIRY 2, 409 (2007).

41. ROTHSTEIN, *supra* note 29, at 44; Kimble, *supra* note 40, at 403; Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (Jun. 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

42. Coates, *supra* note 41.

Author John Kimble explains that “[t]he FHA viewed metropolitan growth with [a] ‘black and white’ vision in which race trumped all other factors in predicting the trajectory of a city and its neighborhoods.”⁴³ As the agency now responsible for “both insuring the market’s operation and ensuring its growth, the FHA sought to eliminate all elements of risk that could potentially destabilize real estate development.”⁴⁴ The FHA equated race with risk, resulting in “a lending drought” in urban neighborhoods with more diverse populations and “directed the rain of capital to fall exclusively over homogenous, white suburbs.”⁴⁵

In accordance with the risk-assessment program, “the FHA had adopted a system of maps that rated neighborhoods according to their perceived stability.”⁴⁶ This system, known as “redlining,” allowed the private mortgage industry to exclude Black people from obtaining a mortgage, bank loans, or insurance.⁴⁷ “Redlining” allowed banks to refuse to give loans or devised unusually severe loan terms for Black Americans.⁴⁸ While there were some subsidies available for minority buyers, they still resulted in Black buyers only being able to afford homes in “ghettos or racially changing areas.”⁴⁹ But the subsidies available for minority buyers were not the same as those available for white buyers, a disparity that reinforced residential and school segregation.⁵⁰ Later in the 20th century, the FHA developed insured amortized mortgages as a way to increase homeownership throughout the nation, but this rendered Black Americans essentially ineligible for homeownership because the FHA and banks both considered “the existence of nearby rooming houses, commercial development, or industry to create risk to the property value of single-family areas.”⁵¹ The FHA financed suburban developments such as Levittown, Pennsylvania and Rollingwood, California on the condition that they would be white-only with no foreseeable racial change.⁵²

Gerald Rosenberg explains that the government’s financial agencies responsible for supervising and regulating home-mortgage lending continued to endorse overt racial discrimination until the passage of the Fair

43. Kimble, *supra* note 40, at 403.

44. *Id.*

45. *Id.*

46. See Kimble, *supra* note 40, at 405; Coates, *supra* note 41.

47. Coates, *supra* note 41; Kevin M. Kruse, *What Does a Traffic Jam in Atlanta Have to Do with Segregation? Quite a Lot*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/traffic-atlanta-segregation.html?searchResultPosition=1>.

48. ROTHSTEIN, *supra* note 29, at vii.

49. GARY ORFIELD & SUSAN E. EATON, *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* 306 (1996).

50. GARY ORFIELD & SUSAN E. EATON, *DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION* 306 (1996).

51. ROTHSTEIN, *supra* note 29, at 50.

52. *Id.* at 67.

Housing Act in 1968.⁵³ Rosenberg and historian Richard Rothstein both explain that since federal funds permeated the housing market, federal government policies actively contributed to housing segregation in the United States.⁵⁴ Due to government policies, racial segregation became more pervasive by the 1970s as more whites fled to the suburbs where racial minorities were unable to afford houses.⁵⁵

The federal government's development of the interstate highway system created physical barriers between different neighborhoods, and thus forced the creation of isolated minority communities.⁵⁶ The federal government assumed "nine-tenths of the cost" of the interstate highway system, "but local officials often had a say in selecting the path."⁵⁷ City planners used federal funds to "get rid of the slums" and the new highways in most American cities "were steered along routes that bulldozed 'blighted' neighborhoods that housed its poorest residents, almost always racial minorities."⁵⁸ Even today, "major roads and highways serve as stark dividing lines between black and white sections" of many American cities.⁵⁹ The creation of the interstate highway system, along with the explicit racial bias of other federal government programs, demonstrated the federal government's desire to keep neighborhoods segregated. These programs furthered the government's goal of keeping "whiteness" separate from "Blackness" and consequently, furthered the goal of white supremacy.

C. Other Segregation Tactics

In addition to local zoning regulations and racially conscious transfer policies, real estate agents also played a role in "steering Black families away from white neighborhoods," fearing that the presence of people of color would be "detrimental to property values in the neighborhood."⁶⁰ Real estate agents engaged in a variety of techniques to achieve the goal of segregated neighborhoods. They engaged in "blockbusting," where agents would pressure white families into selling their homes after warning them that "a Negro invasion" was coming, resulting in decreased property values in white

53. GERALD ROSENBERG, *THE HOLLOW HOPE* 68 (1991).

54. *Id.*; ROTHSTEIN, *supra* note 29, at 88.

55. ROSENBERG, *supra* note 53, at 70.

56. Kruse, *supra* note 47; *see also* ORFIELD & EATON, *supra* note 49, at 306.

57. Kruse, *supra* note 47; *see also* Alana Semuels, *The Role of Highways in American Poverty*, *THE ATLANTIC* (Mar. 18, 2016), <https://www.theatlantic.com/business/archive/2016/03/role-of-highways-in-american-poverty/474282/>.

58. *See* Kruse, *supra* note 47; *see also* Semuels, *supra* note 57.

59. Kruse, *supra* note 47.

60. DAVISON M. DOUGLAS, *JIM CROW MOVES NORTH: THE BATTLE OVER NORTHERN SCHOOL SEGREGATION, 1865–1954* 136 (2001).

neighborhoods.⁶¹ Richard Rothstein explains that blockbusting was effective because “the FHA made certain that Black Americans had few alternative neighborhoods where they could purchase homes at fair market values.”⁶² Growing numbers of white homeowners “succumbed to this scaremongering and sold at discounted prices.”⁶³ Following the sales from white homeowners, real estate agents would then attempt to sell those homes to people of color through targeted newspaper advertisements.⁶⁴ This private process by real estate agents culminated in racially homogenous neighborhoods.

Rothstein explains that to keep neighborhoods white, people of color throughout the nation experienced state-sanctioned violence.⁶⁵ He also notes that Black Americans received lower wages, guaranteeing their inability to afford homes in white neighborhoods.⁶⁶ Furthermore, Black neighborhoods were disproportionately taxed more than white neighborhoods, which left those communities with less disposable income.⁶⁷

The above forms of discrimination, along with exclusionary zoning, resulted in isolated neighborhoods. Well after the Supreme Court declared school segregation unconstitutional,⁶⁸ school segregation persisted because the schools that children attend are largely dictated by the neighborhoods in which they live.⁶⁹ Although schools were mandated to desegregate following *Brown v. Board of Education*, the courts did not take into account the reasons why these schools were separated on the basis of race and did not develop effective methods to undo the damage of de facto segregation.

IV. School Segregation in California

While most northern states did not pass laws that legally sequestered people by race, California passed laws early in its statehood to create segregated schools. Shortly after California gained statehood in 1850, the California legislature provided that the state school fund for counties should be apportioned on the basis of white children in the county.⁷⁰ In 1860, the

61. ROTHSTEIN, *supra* note 29, at 12.

62. *Id.* at 99.

63. *Id.*

64. *Id.*

65. ROTHSTEIN, *supra* note 29, at 172.

66. *Id.*

67. *Id.* at 154.

68. *Brown v. Board of Education*, 347 U.S. 483 (1954).

69. See Charles Wollenberg, *Mendez v. Westminster: Race, Nationality and Segregation in California Schools*, 53 CAL. HIST. Q. 317 (1974).

70. *Id.*

California legislature allowed districts to operate separate schools for children of color and withheld state educational funds from schools that allowed minority students to attend white schools.⁷¹ In 1864, the state mandated the establishment of separate schools for children of color so long as there was a petition by ten or more parents.⁷² The Government Code provided that school districts could establish distinct schools for children of a variety of different backgrounds, but did not mention children of Mexican descent.⁷³ However, children of Mexican descent were often placed in separate schools throughout California even though the Government Code did not provide a mechanism for establishing such facilities.⁷⁴

The city of San Francisco ended school segregation in 1875 because it could not justify the cost of maintaining a separate Black school for its few Black children.⁷⁵ Similarly to San Francisco, Oakland had already integrated its schools in 1872 because the dearth of Black children in the city—only eight—rendered the continued operation of a separate school not economically feasible.⁷⁶ Even though San Francisco and Oakland may have desegregated their schools, the make-up of public schools was still based on who lived in surrounding neighborhoods. Due to exclusionary zoning and other segregationist practices, many schools in the urban Bay Area, as well as around California, continued to be segregated well after California outlawed school segregation in 1880.⁷⁷

However, a California court decided one of the first successful school desegregation cases, *Alvarez v. The Board of Trustees of the Lemon Grove School District*, in 1931.⁷⁸ Despite the growing Mexican-American community in the Lemon Grove neighborhood, the elementary school prevented Mexican-American students from enrolling.⁷⁹ Instead, the school's principal ordered the Mexican-American children to "attend [classes in] a [separate two-room] building."⁸⁰ While the school board supported the principal's decision, the San Diego Superior Court ruled in favor of the Mexican students.⁸¹ The court found that the "school board had

71. *See id.* at 318.

72. *Id.*

73. *Id.*

74. *See* Dave Roos, *The Mendez Family Fought School Segregation 8 Years Before Brown v. Board of Ed*, HIST. (Sept. 8, 2019), <https://www.history.com/news/mendez-school-segregation-mexican-american>.

75. DOUGLAS, *supra* note 60, at 97.

76. *Id.*

77. *Id.*

78. Robert R. Alvarez, Jr., *The Lemon Grove Incident*, 32 SAN DIEGO HIST. SOC'Y. Q. (1986).

79. *Id.*

80. *Id.*

81. *Id.*

no legal basis . . . to segregate the children” because California law did not allow separate schools for children of Mexican descent.⁸²

The *Alvarez* case did not make great strides in desegregating schools elsewhere, as the decision only applied to the one San Diego school district.⁸³ Thus, children throughout California continued to attend racially separated schools. While the *Alvarez* decision is thought of as one of the first school desegregation cases, it was not the only case where families of Mexican descent sought equal education for their children. In 1947, the Mendez family attempted to enroll their children in a Westminster, California school, but were turned away due to their Mexican heritage.⁸⁴ Mendez insisted that his children be entitled to an equal education to that of their white neighbors, and brought suit against the Westminster School District.⁸⁵ The Ninth Circuit affirmed the district court’s decision, finding that segregation of Mexican Americans not only violated California law, but also violated the Equal Protection Clause of the Fourteenth Amendment.⁸⁶

Despite these early court victories and a later California Supreme Court⁸⁷ decision holding that all public-school districts are obligated under the California constitution to alleviate school segregation, individual schools and school districts continue to be segregated as a result of pervasive neighborhood and housing segregation tactics. In addition to the segregationist practices, California’s school funding method accentuates the disparities between wealthy and poor schools and between largely white and non-white schools.

A. California School Funding and Inequity Under Proposition 13

On June 6, 1978, California voters passed Proposition 13, reducing “property taxes on homes, businesses, and farms.”⁸⁸ Additionally, Proposition 13 froze the tax rate at 1976 values and tax increases were limited to no more than two percent per year so long as the property was not sold.⁸⁹ Although the passage and adoption of Proposition 13 was

82. *Alvarez*, *supra* note 78.

83. *Roos*, *supra* note 74, at 32.

84. *Id.*

85. *Id.*

86. *Roos*, *supra* note 74, at 32.; *Westminster School Dist. of Orange County v. Mendez*, 161 F.2d 774, 781 (9th Cir. 1947).

87. *See Crawford v. Board of Education*, 17 Cal. 3d 280, 284 (1976).

88. California Tax Data, *What is Proposition 13?*, <https://www.californiataxdata.com/pdf/Prop13.pdf>.

89. *Id.*

controversial, both the California Supreme Court and the United States Supreme Court upheld its constitutionality.⁹⁰

Proposition 13 has deeply affected the California education system. Prior to Proposition 13, local preferences determined how much funding a school received.⁹¹ The California Supreme Court held in *Serrano v. Priest* that funding schools by local property taxes “violated the state constitution because differences in taxable wealth from one school community to another generated gross inequalities in funding per student.”⁹² Following the *Serrano* decision and the enactment of Proposition 13, decisions over how to fund schools and “educate and evaluate students,” shifted to state policymakers in Sacramento.⁹³ As a result of the decimated tax rate, state property tax revenue dropped drastically, annihilating “the amount of money available to schools at the local level.”⁹⁴

California has recently made changes to the way K-12 education is financed. In 2013, California passed the Local Controlled Funding Formula (“LCFF”) that provided “more per-pupil funding for low-income and English learning students, directing more revenue to districts with higher shares of low-income students and English Learners than it will to wealthier students.”⁹⁵ The Public Policy Institute of California argued that LCFF will not be as effective as intended because it is received on the district level rather than the individual school level, prompting concerns about “intra-district resource equity.”⁹⁶

Proposition 13 results in schools not being adequately funded since the schools are no longer locally controlled and instead are controlled by Sacramento. Some argue that Proposition 13 makes it increasingly difficult to raise money for schools on the local level.⁹⁷ The Public Policy Institute of California reported that “in 2018-19, the California public schools

90. *See* *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 221 (1978) (holding that Proposition 13 is an amendment to the state constitution rather than a drastic revision); *Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992) (holding that Proposition 13 did not violate the Equal Protection Clause because a state has a “legitimate interest in local neighborhood preservation, continuity, and stability” and a state can decide to structure its tax system to discourage rapid turnover in ownership of homes and businesses”).

91. Vanessa Ranaño, *How Proposition 13 Transformed Neighborhood Public Schools Throughout California*, KQED (Oct. 25, 2018), <https://www.kqed.org/news/11701044/how-proposition-13-transformed-neighborhood-public-schools-throughout-california>.

92. *Prop 13 and Prop 98: Then and Now*, ED 100 (updated Feb. 2020), <https://ed100.org/lessons/prop13>; *Serrano v. Priest*, 5 Cal. 3d 584, 589 (1971).

93. Ranaño, *supra* note 90.

94. *Id.*

95. Margaret Weston, et al., *Voluntary Contributions to California’s Public Schools*, PUB. POLICY INST. OF CAL. 4 (Oct. 2015), https://www.ppic.org/content/pubs/report/R_1015MWR.pdf.

96. *Id.*

97. *Who Pays: Where California’s Public School Funds Come From*, ED 100 (updated Nov. 2019), <https://ed100.org/lessons/whopays>.

received a total of \$97.2 billion in funding from three sources: the state (58%), property taxes and other local sources (32%), and the federal government (9%).”⁹⁸ The Public Policy Institute of California also estimates that in 2011, private fundraising and voluntary contributions to school districts accounted for \$547 million.⁹⁹ Unsurprisingly, wealthier school districts generate more money than poorer districts in 2011.¹⁰⁰ Those school districts that can generate more private donations also receive and generate more property taxes and are therefore able to fund their school districts beyond the minimum level without state assistance.¹⁰¹ This creates funding disparities between districts. However, resources can also be distributed unequally within a school district. For example, a school located in a wealthier neighborhood has the capacity to fundraise more than a school within the same district in a poorer neighborhood. This leads to intra-district funding disparities, meaning that a wealthier school within one district will have more resources than a poorer school in the same district.

Schools located in the poorer neighborhoods that receive less funding as a result of Proposition 13 are also a direct outcome of exclusionary zoning measures and other state-sanctioned discriminatory measures discussed in sections I–III, *supra*. In contrast, schools that are able to generate funds beyond the state’s limits are located in wealthier and largely whiter neighborhoods. California’s centralized school funding along with purposeful housing segregation has resulted in school districts like the Sausalito Marin City School District where the district as a whole is wealthy, yet not all schools within the district are provided with equal resources.

V. A Case Study of 21st Century School Segregation - *People ex rel. Becerra v. Sausalito Marin City School District*

Marin City is a product of various segregation techniques and as a result, this unincorporated community has little in common with its wealthy neighbors. Marin City was one of the nation’s first integrated communities during World War II, but shortly thereafter, it became predominately Black with a significantly lower average income than its neighbors.¹⁰² The lack of wealthy residents and the consequences of Proposition 13 has left Marin City’s schools with considerably fewer resources than the other schools in the same district. The dearth of resources at the Bayside-Martin Luther King

98. Patrick Murphy & Jennifer Paluch, *Financing California’s Public Schools*, PUBLIC POLICY INST. OF CALIFORNIA (Nov. 2018), <https://www.ppic.org/publication/financing-californias-public-schools/>.

99. Weston, *supra* note 95, at 4.

100. *Id.*

101. *Who Pays: Where California’s Public School Funds Come From*, *supra* note 97.

102. See ROTHSTEIN, *supra* note 29 at 29.

Jr. Academy, a school located in Marin City, came under the California Attorney General's investigation and culminated in a desegregation settlement agreement between the state and school district in August 2019.¹⁰³

A. Marin City's History

Prior to World War II, the land where Marin City now sits was a dairy farm.¹⁰⁴ Following Pearl Harbor and the declaration of war, the Marin City community was built to house 6,000 to 20,000 workers from all over the country to build ships and tankers at the Marinship in nearby Sausalito.¹⁰⁵ Black Americans moved to Marin City as part of the Great Migration to escape racial violence and sought shipbuilding work, which had "gained a reputation as steady work that paid generous wages and included family housing."¹⁰⁶ The shipyard promoted "unprecedented workplace equality," where all workers—men, women, whites, minorities—all "received equal pay for equal work."¹⁰⁷ During World War II, Marin City was home to the first integrated federal housing project where workers in nearby shipyards and their families lived.¹⁰⁸ This was not a purposeful integration project, but rather a byproduct of the rapid expansion of the shipyard during the war that left no time to build separate dormitories for different races.¹⁰⁹ Following World War II, white residents who had access to government subsidies bought homes outside of Marin City, while Black residents remained in Marin City because they were prohibited from obtaining the same government assistance available to the white residents.¹¹⁰

Following World War II, banks and real estate agents enforced housing segregation in the Bay Area, leaving Marin City as one of the few communities available to Black people.¹¹¹ Racially restrictive covenants were used to exclude people of color from developments throughout the Bay

103. Keri Brenner, *Sausalito-Marín City District Agrees to Desegregate School*, MARIN INDEP. J. (Aug. 9, 2019), <https://www.marinij.com/2019/08/09/sausalito-marín-city-schools-reach-settlement-with-state-in-segregation-case/>.

104. *Marín City History*, MARIN CITY COMMUNITY DEV. CORP., <https://www.marincitycdc.org/marin-city-history/> (last visited May 4, 2020).

105. *Id.*

106. April Harper, *Marínship to Marín City: How a Shipyard Built a City*, FOUNDSE, https://www.foundsf.org/index.php?title=Marínship_to_Marín_City:_How_a_Shipyard_Built_a_City (last visited Sept. 14, 2020).

107. Eve Goldberg, *Making Art/Making History: The Negro History Quilt Club of Marín City and Sausalito*, THE AM. POPULAR CULTURE MAG. (Jan. 2015), <http://www.americanpopularculture.com/archive/politics/quiltclub.htm>.

108. ROTHSTEIN, *supra* note 29, at 29.

109. *See id.*

110. Liam Dillon, *Marín County Has Long Resisted Growth in the Name of Environmentalism. But High Housing Costs and Segregation Persist*, L.A. TIMES (Jan. 7, 2018), <https://www.latimes.com/politics/la-pol-ca-marín-county-affordable-housing-20170107-story.html>.

111. Goldberg, *supra* note 107; *see also* Moore, *supra* note 1, at 36.

Area.¹¹² Despite their illegality, the Marin County Committee on Racial Discrimination recorded the use of racially restrictive covenants in the county in 1960.¹¹³ Similarly, real estate agents did not sell to Black buyers elsewhere in the county, so Black residents remained in Marin City after the war.¹¹⁴ Other forms of racial discrimination left Black residents with less disposable income to buy homes, including lower wages, higher tax rates, and the denial of government loan assistance.¹¹⁵

Although Marin City was an integrated community during the war, soon after, the white residents quickly fled. During the war, Marin City's population was approximately 6,500, with a racial breakdown of eighty-five percent white, ten percent Black, and five percent Chinese.¹¹⁶ Marin City had approximately one thousand school-aged children and one local school during World War II, thereby resulting in an integrated school.¹¹⁷ By 1962, the community was approximately ninety percent African American and the formerly integrated community of the war days was gone.¹¹⁸

Marin City is also the result of local and federal zoning measures, as U.S. Highway 101 separates it from wealthy Sausalito just a mile away.¹¹⁹ The community also adopted zoning changes after World War II to change the city's plan from a wartime development to a more permanent community. In 1958, Marin City adopted the Urban Renewal Plan which called for the building of "public housing, single family homes, cooperative apartments, commercial facilities, and a high school."¹²⁰ The construction of new market-rate apartments, townhomes, and condominiums increased Marin City's diversity again in the late 1970s.¹²¹ Zoning changes also emerged in the 1980s and 1990s with new residential and commercial projects including housing developments, apartment complexes, condominium complexes, and the development of the Gateway Shopping Center.¹²² This mix of commercial and residential zoning still limits the residents of Marin City to lower income, predominately nonwhite groups.

Despite the development of market-rate housing and commercial developments, Marin City remains distinct from the rest of the county. Marin has the largest disparity of homeownership rates and housing costs

112. See Moore, *supra* note 1, at 36;

113. Moore, *supra* note 1, at 36.

114. Goldberg, *supra* note 107.

115. ROTHSTEIN, *supra* note 29, at 154, 172.

116. *Marin City History*, *supra* note 104.

117. *Id.*

118. *Id.*

119. Dillon, *supra* note 110; see ORFIELD & EATON, *supra* note 49, at 306.

120. *Marin City History*, *supra* note 104.

121. *Id.*

122. *Id.*

between whites, Blacks, and Latinx of any county in California.¹²³ Affordable housing projects in Marin are often killed due to environmental concerns and the desire to preserve affluent neighborhoods, which in turn reinforce “decades-old patterns of neighborhood segregation.”¹²⁴ Although zoning, federal subsidies, and tax policies have segregated Marin City, it is now a diverse community. The household income in Marin City is less than half of the rest of the county and the Black population in Marin City is substantially higher than elsewhere in Marin County.¹²⁵ Today, Marin City’s demographics are approximately thirty-nine percent white, thirty eight percent Black, fourteen percent Latinx, eleven percent Asian, and four percent other.¹²⁶

B. San Francisco Superior Court’s Order

Despite its racial diversity, Marin City schools still do not receive the same resources as the wealthy neighboring schools in Sausalito due to the lack of income diversity. Marin City residents do not have the same income as wealthy and largely white Sausalito, meaning that the Marin City parents cannot donate to the schools the same way as Sausalito parents. This creates intra-district resource inequity within the Sausalito Marin City School District discussed in Section IV, *supra*, as an indirect result of both Proposition 13 and as a direct result of local zoning ordinances and other segregation tactics. Thus, the Bayside-Martin Luther King Jr. Academy which serves Marin City residents, does not receive the same resources as the public schools serving Sausalito residents.

On August 9, 2019, the California Attorney General Becerra and Sausalito Marin City School District reached a settlement agreement to desegregate its schools.¹²⁷ The Attorney General’s office accused the school district of intentionally creating a segregated school at “Bayside-Martin Luther King Jr. Academy in Marin City and violating state anti-discrimination laws.”¹²⁸ The Attorney General accused the Board of Trustees of deliberately diverting staff and resources away from Bayside-Martin Luther King Jr. Academy to Willow Creek Academy, a charter school in mainly white Sausalito.¹²⁹

123. Dillon, *supra* note 110.

124. *Id.*

125. *Id.* (Marin County has about a four percent black population overall while Marin City has a black population of about 40 percent).

126. *Marin City History*, *supra* note 104.

127. *People ex rel. Becerra v. Sausalito Marin City School Dist.*, 2019 Cal. Super. LEXIS 1770 (2019).

128. Brenner, *supra* note 103.

129. *Id.*

The Attorney General found that the school district intentionally moved Black and Latinx students into an underperforming public school and ordered the school district to desegregate.¹³⁰ Willow Creek prided itself on its diversity, but had a significantly higher white student make up than Bayside-Martin Luther King Jr., which had a significantly higher Black student population.¹³¹ The Attorney General argued that the district “starved” Bayside-Martin Luther King Jr. of resources that Willow Creek had.¹³² For example, the Bayside-Martin Luther King Jr. did not have a qualified math teacher while Willow Creek did.¹³³ Bayside only had a part-time counselor while Willow Creek had a full-time counselor.¹³⁴ There were also reports that the school district as a whole punished Black and Latinx children more harshly than white students compared to any other public school in California.¹³⁵

In order to give “teeth” to the settlement agreement, the Attorney General ordered the District Superintendent to form a Desegregation Advisory Group made up of students, parents, teachers, administrators, community organizations, and county organizations.¹³⁶ The San Francisco Superior Court, responsible for overseeing the settlement agreement, ordered the Advisory Group to meet twice a year for the next five years to ensure that the desegregation goals are met.¹³⁷ The court also ordered a community assessment of the implementation of a comprehensive education program.¹³⁸ The settlement agreement specified the percentages of children in the district to be enrolled in each school throughout the district, regardless of the student’s background to further meet the desegregation goals.¹³⁹ Finally, the agreement required the establishment of a career and academic counseling program, a scholarship program, and summer support programs for students throughout the district.¹⁴⁰

The *Sausalito Marin City School District* case demonstrates that school segregation is not a distant memory, but one that school districts still fight today.¹⁴¹ This case not only emphasizes that school districts are still segregated, but also demonstrates the effect of zoning on school districts.

130. Erin Allday & Bob Egelko, *School District in Marin County Agrees to Desegregate in Settlement with State*, S.F. CHRON. (Aug. 9, 2019), <https://www.sfchronicle.com/bayarea/article/School-district-in-Marin-County-agrees-to-14293740.php>.

131. Brenner, *supra* note 103.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Sausalito Marin City Sch. Dist.*, 2019 Cal. Super. LEXIS 1770 at 2–3.

137. *Id.*

138. *Id.* at 5.

139. *Id.* at 10–11.

140. *Id.* at 15–20.

141. *See generally id.*

Marin City is a clear outcome of segregation efforts dating back over seventy years, culminating in a community that is geographically, racially, and economically separated from the rest of Marin County.¹⁴² Isolated communities such as Marin City are bound to experience harm to their schools, even when shared with a school district that receives substantial funding from the otherwise wealthy surrounding community.

VI. Solutions to Housing Segregation

Housing segregation resulting in segregated schools is still an issue throughout California and the nation. This section examines potential solutions to affordable housing and exclusionary zoning that have been introduced on the state and federal levels and explores the possibility that courts could step in to resolve school segregation based on the result in the *Sausalito Marin City School District* case decided this past year. This section further explores the idea that courts could use their power to strike down exclusionary zoning to resolve both housing segregation and subsequent school segregation.

A. California Solutions

1. Senate Bill 50

State Senator Scott Weiner introduced Senate Bill 50 (“SB 50”) to alter the zoning of areas previously designated for single-family housing to allow for the construction of apartment complexes near transit centers, as well as greater density housing in single-family communities.¹⁴³ SB 50 also allowed for increases in the height of buildings throughout the state to create greater density housing developments, such as five-story housing developments in San Francisco.¹⁴⁴ Critics claimed that the bill did not provide sufficient affordable housing, although it allowed different municipalities flexibility in executing the plan to meet density requirements.¹⁴⁵ SB 50 repeatedly failed on the senate floor and went through multiple iterations before ultimately failing to garner enough votes on January 30, 2020.¹⁴⁶

Even if a version of SB 50 is re-enacted by a legislative body, it is not entirely clear that it would resolve issues similar to Marin City. A critique

142. Dillon, *supra* note 110.

143. S.B. 50, 2019–2020 Reg. Sess. (Cal. 2020.); *see also* Zoie Matthew, *Controversial California Housing Bill SB 50 Is Back—with Some Big Changes*, L.A. MAG (Jan. 21, 2020), <https://www.lamag.com/citythinkblog/sb-50-new-version/>.

144. S.B. 50, 2019–2020 Reg. Sess. (Cal. 2020.); *see also* Joe Kukura, *Wiener’s Controversial SB-50 Housing Bill Dies for Third Consecutive Year*, SFIST (Jan. 30, 2020), <https://sfist.com/2020/01/30/wieners-controversial-sb-50-housing-bill-dies-for-third-consecutive-year/>.

145. Matthew, *supra* note 143.

146. S.B. 50, 2019–2020 Reg. Sess. (Ca. 2020.); *See also* Kukura, *supra* note 144.

of transit-oriented developments is that they can increase gentrification because these developments can increase property values and attract more wealthy individuals rather than helping low-income families to live closer to transit centers without the need for a vehicle.¹⁴⁷ Another con of transit-oriented communities is that they further reinforce segregation in lower-income communities. For example, Marin City has several bus lines that connect it to other parts of the county as well as to San Francisco, which makes it an attractive candidate for more affordable housing. Affordable housing in Marin City would allow more residents to live in Marin County, but it may not change the make-up of residents if the affordable housing is truly affordable. However, if the affordable housing is not truly affordable, then new residents in communities like Marin City would simply increase gentrification and would push current residents out of their current community.

2. Assembly Bill 1279

Assembly Bill 1279 (“AB 1279”) seeks to remove land use barriers to allow for the development of affordable housing throughout the state.¹⁴⁸ AB 1279 identifies high-resource areas with a history of exclusionary zoning practices and alters the zoning of the areas to allow for small-scale market rate housing and larger-scale mixed income affordable housing projects.¹⁴⁹ While AB 1279 has the potential to expand the amount of affordable housing projects and alter exclusionary zoning practices, critics are concerned that it will not be used adequately. The bill requires the Department of Housing and Community Development (“HCD”) to designate areas for by-right housing developments, but it also allows cities and counties to appeal the designation.¹⁵⁰ This means that municipalities can effectively veto the designation; therefore, zoning will not change and affordable housing will not be built.

147. Marcus Artusio, *Pros and Cons of Transit Oriented Development* (Mar. 1, 2015), <https://martusio.wordpress.com/2015/03/01/pros-and-cons-of-transit-oriented-development/>; Samuel Staley, *Transit-Oriented Development Leads to “Undesirable” Neighborhood Change*, REASON FOUNDATION, (Oct. 21, 2010), <https://reason.org/commentary/transit-oriented-development-leads/>.

148. A.B. 1279, 2019-2020 Reg. Sess. (Ca. 2020.); see also *Promoting Housing Production in High-Resource Areas*, TRANSFORM CAL., (Mar. 14, 2020), <https://www.transformca.org/state-legislation/ab-1279>.

149. *Promoting Housing Production in High-Resource Areas*, *supra* note 148.

150. *Id.*; A.B. 1279, 2019-2020 Reg. Sess. (Ca. 2020.); CAL. GOV’T. CODE § 65913.6 (2002) (defines “use by right” as “local government’s review of the development project under this section may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a ‘project’”).

States have the power to enact policies to provide for the social welfare of the population. These bills that target localities have the power to be quite effective so long as localities are also acting to provide social welfare to *all* of its citizens. However, because zoning ordinances have long upheld and have therefore been utilized for exclusionary purposes, it is not foreseeable that localities will use them differently if AB 1279 is passed. Therefore, AB 1279 may be successful if the state uses its power to check the zoning and affordable housing needs without allowing municipalities to abuse their zoning capacities.

3. California Low-Income Housing Programs

California, like other states and the federal government, has a statewide low-income housing tax credit program called the California Tax Credit Allocation Committee (“TCAC”).¹⁵¹ The TCAC “facilitates the investment of private capital into the development of affordable rental housing for low-income” individuals.¹⁵² The TCAC allocates both federal and state tax credits to developers and corporations to provide equity to build the projects in return for the tax credits.¹⁵³ The TCAC provides preferences to low-income housing projects in certain areas, including proximity to highway entrances, bus routes, and social services.¹⁵⁴ The TCAC has been critiqued because its work leads to developments being disproportionately located in low-income communities and, as a result, further segregating and separating those communities from wealthier areas.¹⁵⁵

The TCAC is not the only program available to create low-income housing. The Section 811 Project Rental Assistance Demonstration Project (“Section 811”) provides housing to low-income individuals who require specialized care.¹⁵⁶ State agencies such as the California Housing Finance Agency (“CalHFA”) and the HCD also finance affordable housing projects. CalHFA acts as a lender, providing both rental assistance and “first mortgage loans and down payment assistance to first-time homebuyers.”¹⁵⁷ The HCD administers loans and grants to both “public and private housing developers, nonprofit agencies, cities, counties, state and federal partners.”¹⁵⁸ The loans

151. CAL. STATE TREASURER, LOW-INCOME HOUSING TAX CREDIT PROGRAMS, <https://www.treasurer.ca.gov/ctcac/tax.asp> (last visited Aug. 29, 2020).

152. *Id.*

153. *Id.*

154. CAL. CODE REGS. tit. 4, § 10325(c) (2020).

155. *Id.*

156. CAL. HOUS. FIN. AGENCY, SECTION 811 FACTSHEET, <https://www.calhfa.ca.gov/multifamily/section811/factsheet/index.htm> (last visited Aug. 29, 2020).

157. *Id.*

158. CAL. DEP’T. OF HOUS. & COMTY. DEV., STRATEGIC PLAN FISCAL YEAR 2018–2019 (2018), <https://www.hcd.ca.gov/about/docs/StrategicPlanBooklet.pdf>.

and grants support “construction, acquisition, rehabilitation, and preservation of affordable rental and ownership homes” and also assists to provide housing to people experiencing homelessness.¹⁵⁹ In addition to the TCAC and the Section 811 programs, local housing authorities throughout the state manage the federal programs such as the Housing Choice Voucher program, Community Development Block Grant, and HOME Investment Partnerships Program funding (“HOME”).¹⁶⁰

B. Federal Solutions

While zoning and land use falls under the state’s authority, the federal government has several programs in place that assist states and individuals with their housing needs. The Department of Housing and Urban Development (“HUD”) operates programs that encourage the development of affordable housing, as well as provide subsidies to low- and very low-income families and individuals. Even though zoning and the development of affordable housing can be exercised by the state, the federal government plays a role in encouraging tax breaks and providing individuals with money to pay rent in areas they otherwise would be unable to afford.

1. Low-Income Housing Tax Credit

The Low-Income Housing Tax Credit (“LIHTC”), authorized by the Tax Reform Act of 1986, is a complex tool used for the production and the preservation of affordable housing by giving private investors a federal tax income credit as an incentive to make investments in affordable rental housing.¹⁶¹ Investors provide equity to projects in return for tax credits for investing in low-income affordable housing. Under the program, the eligibility criteria for renters are based on household income as a percentage of an area’s median income.¹⁶² Properties are then required to comply with regulations to ensure that properties remain affordable.¹⁶³ Through the program, there are two types of tax credits, the “nine percent” and the “four percent,” which differ in who gains the credit and in financing structures.¹⁶⁴ However, both programs produce the same result of “newly constructed,

159. *Id.*

160. *Home and CDBG Guidebook*, DEP’T OF HOUSING AND URB. DEV., <https://files.hudexchange.info/resources/documents/HOME-CDBGGuidebook.pdf> (last visited Aug. 29, 2020).

161. Corianne Scally et al., *The Low-Income Housing Tax Credit: How It Works and Who It Serves*, THE URB. INST. 1 (July 2018).

162. Scally, *supra* note 161, at 2.

163. *Id.*

164. *Id.* at 3.

rehabbed, or refinanced rental properties” and both follow the same income and affordability standards.¹⁶⁵

According to an analysis of all tax credits used nationwide through 2005, about three-fourths were in neighborhoods where the poverty rates were at least twenty percent.¹⁶⁶ Between its introduction in 1986 and 2015, the LIHTC has placed 45,905 properties and 2.97 million housing units throughout the nation.¹⁶⁷ It is one of the only national programs to produce and preserve affordable rental housing units.¹⁶⁸ There are gaps in the knowledge of how effective the program is, as HUD does not have consistent data on which tenants occupy the affordable housing units constructed through the LIHTC program.¹⁶⁹

2. Housing Choice Voucher Program

The Housing Choice Voucher Program, also known as Section 8 vouchers, provides a subsidy to very low-income families, the elderly, and the disabled so that they can afford safe housing in the private market.¹⁷⁰ The vouchers are administered locally by public housing agencies who receive federal funds from HUD to administer the program.¹⁷¹ The vouchers subsidize rental payments so families can lease housing that may otherwise be unattainable.¹⁷² Generally, recipients of the vouchers only put about thirty percent of their income toward rent and the federal government makes up the difference so the full market rate is paid.¹⁷³ Richard Rothstein notes that the voucher amount is commonly too small for rentals in middle-class areas and few families have used Section 8 vouchers in low-poverty neighborhoods but over half have rented in areas where the poverty rate was twenty percent or higher.¹⁷⁴

3. HOME Program

The HOME program provides grants to state and local governments to construct, purchase, or rehabilitate affordable housing for low- and very low-

165. *Id.*

166. *See* ROTHSTEIN, *supra* note 29, at 190.

167. Scally, *supra* note 161, at 15.

168. *Id.*

169. *Id.*

170. *Housing Choice Vouchers Fact Sheet*, DEP'T OF HOUSING AND URB. DEV. https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Dec. 17, 2019).

171. *Id.*, *supra* note 170.

172. ROTHSTEIN, *supra* note 29, at 190.

173. *Housing Choice Vouchers Fact Sheet*, *supra* note 170.

174. ROTHSTEIN, *supra* note 29, at 191.

income people.¹⁷⁵ The funding may be used as grants, direct loans, loan guarantees or other forms of credit enhancements, or rental assistance or security deposits.¹⁷⁶ The amount of money the tenant contributes varies, but it is not based upon the tenant's income.¹⁷⁷ The difference between this and the Housing Choice Voucher Program is that the money does not flow directly to the individual, rather individuals who participate in the program need to contact their state or local government as the program may operate very differently in various locations.¹⁷⁸

All of these programs produce a great amount of funding to be funneled through the federal government to the states and to individuals. However, there are drawbacks to each program. Due to the LIHTC program's complexity, limited benefit to non-investors, and the lack of ability for investors and developers to work with local zoning laws, not many LIHTC projects are completed. The Housing Choice Voucher Program is beneficial because it allows renters to transfer their vouchers to different homes, but it also reinforces exclusionary zoning and other discriminatory and segregationist practices. Since low-income families generally cannot afford to live in middle-class neighborhoods, families relying on these vouchers still live in low- and very low-income minority neighborhoods. This also affects where the children of these families attend school, relegating them to schools made up of primarily minority students who do not receive the same resources as the students living in white middle-class neighborhoods. The schools that serve these neighborhoods are likely to resemble Bayside-Martin Luther King Jr. Academy in Marin City and are likely to be under-resourced. Lastly, because the HOME program is locally run, not all localities have the ability to provide the same amount of assistance to needy individuals.

C. Courts and Community Action

Gerald Rosenberg thoroughly explained in his book, *The Hollow Hope*, that courts "had virtually no direct effect on ending discrimination in the key fields of education, voting, transportation, accommodations and public places, and housing."¹⁷⁹ On the federal level, Rosenberg noted that there was no substantial change in ending school segregation after the decision of

175. *Home Investment Partnerships Program*, DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/comm_planning/affordablehousing/programs/home/ (Dec. 17, 2019).

176. *Id.*

177. *Id.*

178. *Id.*

179. ROSENBERG, *supra* note 53, at 70–71.

Brown v. Board of Education.¹⁸⁰ Although the Supreme Court announced that schools must integrate “with all deliberate speed,” efforts which increased the rate of desegregation were taken almost ten years later with the passage of the Civil Rights Act of 1964.¹⁸¹

While Rosenberg’s argument may hold some weight with federal courts given the Supreme Court’s more recent position of judicial restraint, it appears that municipal courts may be the proper body to enforce desegregation settlements. Contrary to Rosenberg’s position, authors Gary Orfield and Susan E. Eaton believe that courts are the best institutions for restructuring racial opportunity in schools because they have sufficient authority to enforce orders.¹⁸² Courts also have resources to help enforce the orders they make, such as appointing experts or setting compliance goals to oversee enforcement.¹⁸³

Sausalito Marin City School District demonstrates the ability of courts to guarantee that school districts are in compliance with a desegregation settlement agreement.¹⁸⁴ The court relied on the community, the local school board, and county officials to guarantee that the school district will comply with the settlement agreement. Courts, especially at the municipal level, have the resources to oversee that districts are desegregating their schools and are in compliance with the settlement agreement or court order. Taking this logic beyond school segregation, courts also have the power to declare zoning ordinances unconstitutional. While localities have broad police powers, courts could use the same resources as they did in *Sausalito Marin City School District* to guarantee that municipalities are not engaging in exclusionary zoning practices.

Conclusion

The United States has consciously segregated its population since its founding to guarantee white superiority. These efforts deeply affected American society by deliberately isolating neighborhoods and inadvertently creating segregated schools. The settlement agreement reached in *Sausalito Marin City School District* demonstrates hope for future school segregation and neighborhood segregation cases.¹⁸⁵ It shows that neighborhoods and school districts can work together to maintain that schools are complying

180. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955). See also, ROSENBERG, *supra* note 53, at 46.

181. *Brown*, 349 U.S. at 301. See also, ROSENBERG, *supra* note 53, at 43, 51.

182. ORFIELD & EATON, *supra* note 49, at 349.

183. *Id.* at 350.

184. *Sausalito Marin City Sch. Dist.*, Cal. Super. LEXIS 1770.

185. *Id.*

with a legally binding settlement to produce a more equitable distribution of school district resources.

While there are federal and state programs providing for the construction of affordable housing, this does not resolve the crux of the issue resulting in modern school segregation: zoning ordinances. Based on the state and federal solutions to housing segregation, there is no guarantee that California will build affordable housing that integrates white and non-white neighborhoods. There is no current legislation mandating that affordable housing be built in particular neighborhoods, as that decision rests with localities. The best way to ensure that municipalities are not engaging in exclusionary zoning practices that ultimately harm its residents is through the courts. Community agreements, with court supervision, contain resources to guarantee that school districts carry out desegregation orders. Furthermore, courts and communities can design how to best accomplish the means to guarantee a more equal and equitable society.
