

An Evolving Fair Housing Movement: Forging New Partnerships and Agendas Across Policy Areas

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The fiftieth anniversary of the federal Fair Housing Act (FHA) this year presents an opportunity for celebration and reflection during a tumultuous political time. The civil rights community has occasion to take stock of our progress as a nation over the past fifty years; our continuing need for action to achieve the FHA's aims; and how evolving demographics, political and community dynamics, and jurisprudence may demand new strategies and narratives. Since the anniversary occurs during a conservative administration, it also marks a time of dual focus for national housing policy advocates. We are currently resting a great deal of hope on a model of progressive federalism, in which new partnerships and policy templates will be forged on state and local stages. At the same time, at the federal level, we face the important need to defend past gains and to keep alive our ability for future advancement.

The nation's affordable housing crisis is also growing more acute, and federal budget cuts will deepen the insecurity and lack of opportunity this presents to vulnerable Americans, and disproportionately to people of color. Facing this time of greater scarcity and immediate need, how can civil rights advocates continue to advance the "long game" of overcoming structural discrimination? And in a time of federal retrenchment on civil rights, what are the prospects for the national role?

Addressing those questions—how to keep pushing on segregation and structural discrimination and how (eventually) still to use federal power to that end—demands renewed self-examination and strategizing over the opportunities that the current era presents, especially for forging new partnerships and agendas. Fair housing has long faced a collective action challenge. Open housing choice and integration were core demands achieved by the Civil Rights Movement, but the mechanics of their implementation have been difficult to make politically salient. Organizing groups often focus on neighborhood improvements and place-based advocacy, while most exclusionary communities lack a dynamic base to mobilize in support of integration (despite the benefits that increased diversity could bring).

At the same time, fair housing groups often draw upon elements of a community lawyering model (in which legal practice is driven by community concerns and in synergy with community voice and empowerment)

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and advocate for housing choice in tandem with other goals, such as tenant protections, equitable disaster recovery, or fair infrastructure spending. Fair housing advocates are believers in place-based improvements, as well as in desegregation and open housing choice. And support for fair housing advocacy platforms can often be advanced by doing this work in tandem. Yet capacity limitations, resource scarcity, and specialization in response to policy silos have all tended to raise practical impediments to the scope of such efforts to engage in broader, issue-crossing work.

In 2018, the pressures and challenges posed by the Trump administration have opened and energized the lines of collaboration among progressive advocates. This means that fair housing, affordable housing, community development, and civil rights groups working on related issues (such as environmental justice and education policy) have new opportunities to break out of our separate tracks and do more to advance joint agendas. This work can build on the momentum that was seeded during the Obama administration on interagency coordination: bridging the artificial boundaries between housing and school policy,¹ land use, infrastructure, and other policies that intertwine with residential segregation. Just as they have long reflected other aspects of structural discrimination, these related systems are shaped by segregation, and also reinforce it, in ways that current program administration and design have failed to respond to.² Present-day civil rights movement-building encompasses and is mutually strengthened by attention to the detail work of these policy structures, as well as how they connect to the larger problem of segregation.

Even under a reactionary federal administration, there is hope for progress in addressing segregation and inequality. The “blue laboratories” of progressive localities and states are testing grounds for new policies in a range of fields, including housing. These explorations, important in their own right, also provide models for other jurisdictions and potentially will be a foundation for eventual federal action. The improved alignment of housing policy with related fields is one area ripe for pioneering. Such coordination can advance both fair housing and community development goals, especially if policymakers commit to concerted, in-depth policy redesigns on a scope commensurate with the causes and consequences of residential segregation.

The potential for such alignment has been largely untapped. For instance, despite the pragmatic reality that residential and educational segregation are mutually reinforcing, and one cannot effectively be addressed without the other, the potential for such connections remains widely un-

1. See, e.g., Philip Tegeler & Michael Hilton, *Disrupting the Reciprocal Relationship between Housing and School Segregation* (Joint Center for Housing Studies, Nov. 2017), available at http://jchs.harvard.edu/sites/jchs.harvard.edu/files/a_shared_future_disrupting_reciprocal_relationship.pdf (last visited Jan. 24, 2018).

2. *Id.*

developed.³ This is attributable, in part, to deeply rooted mechanisms such as funding structures, state and local agency administration, and federal and state choice architectures and incentives,⁴ as well as the limitations of legal liability theories and remedies. Similarly, the advocacy worlds of environmental justice, fair housing policy, and infrastructure policy tend to operate in separate spheres that reflect separate policy silos, funding frameworks, and available causes of action.⁵ In a given locality, the government agency that sites affordable housing may be different from, and unaccustomed to collaborating with, the governmental departments that administer other critical development and land use policies, such as commercial redevelopment and zoning.

This local administrative insularity is reinforced by federal funding streams and oversight structures. The structures of federalism (both formal and informal) operate differently for different fields,⁶ which can make it practically difficult to create meaningful points of alignment without strong new regulation or incentives. Policy alignment is made challenging, moreover, by federal incentive structures and program designs that continue to reinforce segregation and largely operate in separate regulatory spheres. Federal housing programs, for instance, only minimally account for access to educational and other opportunities, despite the compelling intergenerational benefits that would accrue from closer coordination. HUD and EPA lack a system for taking appropriate responsive action when affordable housing residents are exposed to environmental hazards.⁷

Yet increased recognition of the benefits of interagency coordination, at every level of government, has created the political will to make changes

3. *Id.*

4. See, e.g., Jill Khadduri, *Creating Balance in the Location of LIHTC Programs: The Role of State Qualified Allocation Plans* (PRRAC & Abt Assoc., Feb. 2013), available at http://prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf.

5. See, e.g., Peter Kye, *Equity Considerations in Climate Adaptation Plans: A Call for Advocacy* (PRRAC, Oct. 2017) (noting that federal, state, and local climate change planning often “fail(s) to adequately consider connections to related areas, such as affordable and subsidized housing policy”), available at <http://prrac.org/pdf/PolicyBriefClimateAdaptations2017.pdf>.

6. See generally, e.g., Eloise Pasachoff, *Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut Off*, 124 *YALE L.J.* 248 (2014); Heather K. Gerken, *Our Federalism(s)*, 53 *WM. & MARY L. REV.* 1549 (2012).

7. Although HUD and EPA have agreed in a recent Memorandum of Understanding to share information about subsidized housing near Superfund sites, this MOU does not create binding obligations. See Memorandum of Understanding between the U.S. Dep’t of Hous. & Urban Dev. and the U.S. Env’tl. Prot. Agency regarding Improving Communication About Certain Public and HUD-Assisted Multifamily Housing Near Superfund Sites (Jan. 11, 2017), available at <https://www.hudexchange.info/resources/documents/Memorandum-of-Understanding-between-HUD-and-EPA-Regarding-Improving-Communication-About-Certain-Public-and-HUD-Assisted-Multifamily-Housing-Near-Superfund-Sites.pdf>.

and has led to positive steps and models. For example, Seattle's Office of Civil Rights leads a citywide Race and Social Justice Initiative, which works across municipal offices to identify concrete steps to address institutional racism.⁸ Within the federal government, the Obama administration formulated a number of promising inter-agency programs and collaborative guidance. These included, notably, the Affirmative Furthering Fair Housing regulation, requiring HUD program participants to assess how segregation impacts "access to opportunity" (that is, schools, environmental health, and other factors), to identify underlying causes, and to set goals to address them. The Obama administration also issued a joint letter from HUD, the Department of Education, and the Department of Transportation urging local agencies to take joint action to affirmatively further fair housing:

Our agencies are calling on local education, transportation, and housing leaders to work together on issues at the intersection of our respective missions in helping to guarantee full access of opportunity across the country. Our goals are to identify impediments to accessing opportunity; to coordinate efforts to address these issues and to provide broad-reaching benefits; and to ensure that every child and family is provided with transportation, housing, and education tools that promote economic mobility. The new process in which communities are engaging under the Affirmatively Furthering Fair Housing rule (AFFH rule) from HUD provides an opportunity for cross-agency collaboration and strong community involvement. We urge you to take full advantage of the community participation process of the AFFH rule, so that regional planning promotes economic mobility and equal access to the many benefits provided by affordable housing, great schools, and reliable transportation.⁹

Creative policymakers and advocates have continuing opportunities to build upon this momentum.

In addition to interagency initiatives that help to dismantle segregation, fair housing advocates and policymakers can promote collaborations that *sustain and support* integration. As one set of recommendations (for federal policy, but applicable elsewhere) noted:

Especially as we become an increasingly diverse society, it is important that HUD help integrated neighborhoods to flourish. Multifaceted approaches to sustaining integration should be an important consideration in furthering fair housing. An examination of cities in various regions of the United States found that stable, diverse communities typically exhibit common features, including the co-existence of multiple ethnic groups, attractive infrastructure (such as high-quality housing stock), the availability of affordable

8. See Julie Nelson et al., *How Seattle and King County Are Tackling Institutional Inequities*, 18:5 POVERTY & RACE 5 (Sept.-Oct. 2009), <http://www.prrac.org/newsletters/sepoct2009.pdf>.

9. Joint Dear Colleagues Letter, *available at* www2.ed.gov/documents/press-releases/06032016-dear-colleagues-letter.pdf (last visited Jan. 24, 2018).

housing, and relationships with banks and real estate agents. Governmental forces can help nurture such communities, by ensuring access to financial support (such as loans for housing maintenance and business incubation), fostering diversity through antidiscrimination laws, public education measures, and other means.

Additionally, efforts to integrate individuals should be sensitive to their needs. In terms of countering prejudice, integration has the strongest impact when it results in “meaningful contact,” that is, when “members of different groups have equal status, common goals, are in a cooperative or interdependent setting, and have support from authorities.” To the extent possible, HUD and its grantees should coordinate their work with that of other agencies to facilitate integration, for example, with language instruction programs; inclusive [educational] tracks; and by providing funding to inter-ethnic community organizations.¹⁰

Housing discrimination, program designs that entrench segregative patterns, and exclusionary zoning are significant problems that create lasting harm across generations. These issues require direct and specialized interventions. However, as the fair housing movement continues to grapple with segregation, we can benefit from efforts to broaden our advocacy work to encompass related fields. Other policies have a reciprocal effect on segregation.¹¹ In addition, by working in partnership with advocates who focus on environmental justice, education, infrastructure equity, and other issues, many fair housing advocates are laying an important foundation for mutual support and for joint agendas that promote housing choice as well as other aspects of social equity.

10. The Opportunity Agenda, *Memorandum: The Relationship Between Racial Integration and the Duty to Further Fair Housing* (2010) (internal cites omitted), available at <https://opportunityagenda.org/explore/resources-publications/memorandum-relationship-between-racial-integration-and-duty-further> (last visited Jan. 24, 2018); see also NAT'L COMM'N ON FAIR HOUS. AND EQUAL OPPORTUNITY, *THE FUTURE OF FAIR HOUSING* 52 (Dec. 2008), available at http://www.prrac.org/projects/fair_housing_commission/The_Future_of_Fair_Housing.pdf (proposing that a revived “President’s Fair Housing Council should select two to three pilot projects to develop a track record and demonstrate the viability of cross-agency collaboration in support of fair housing”).

11. See, e.g., Tegeler & Hilton, *supra* note 1.

