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THE FALSE PROMISE OF THE MIXED-INCOME HOUSING PROJECT

Robert C. Ellickson*

Since 1970, mixed-income (inclusionary) housing projects have proliferated in the United States. In a community of this sort, only some of the dwelling units, perhaps as few as 10 to 25 percent, are targeted for delivery of housing assistance. Eligible households that successively occupy these particular units pay below-market rents, while the occupants of the other units do not. This Article situates this innovation within the broader history of U.S. housing policy and evaluates its merits. I contend that the mixed-income project approach, while superior to the traditional public housing model, is in almost all contexts distinctly inferior to the provision of portable housing vouchers to needy tenants. Although prior commentators also have touted the voucher approach, I enrich their analyses by addressing more fully the social consequences of various housing policies that might be used to economically integrate neighborhoods and buildings. It has traditionally been thought that enhancing socioeconomic diversity within a neighborhood has unalloyed social benefits. Many recent social-scientific studies present a more complex picture and weaken the case for government support of mixed-income projects.

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INTRODUCTION

In the first half of the twentieth century, the United States, like most other developed nations, began to subsidize rents in housing projects entirely set aside for working-class (or even less prosperous) households. By the 1980s, a broad consensus had emerged that the construction of these projects, traditionally referred to as "public housing," had been a policy blunder in many settings. Since that time, two primary alternative approaches have been competing for legislative blessing. The first perpetuates the tradition of tying government aid to specific buildings, but reduces the percentage of aided units in a project from 100 percent to a lower figure, perhaps as little as 10 to 25 percent. Proponents of this "mixed-income," or "inclusionary," approach hope that it will mitigate the social pathologies that too often arise when children grow up amid the concentrated poverty prevalent in traditional public housing. The second alternative approach calls for the provision of portable vouchers to targeted households to better enable them to rent dwellings from private landlords.

The voucher approach, the alternative typically advocated by housing economists, was ascendant in the United States in the mid-1990s. Since then, however, more and more housing advocates and policymakers have endorsed the mixed-income approach. As a result, mixed-income projects have sprouted across the country—most notably in metropolitan areas such as Boston, Chicago, and San Francisco—and already house hundreds of thousands of households.

There are mammoth technical literatures on the particulars of both mixed-income housing programs and housing voucher programs. Virtually all commentators who contributed to these literatures understandably regard both of these strategies to be far superior to continuing to erect 100-percent-subsidized housing projects for poor families. But which of the alternative paths of reform—mixed-income projects or housing vouchers—is the route better taken? Or should both be pursued? On those fundamental questions, commentators have offered little guidance. The balance to be struck between housing vouchers and mixed-income projects is a central question of urban policy. The choices made will profoundly influence the future prosperity and social vibrancy of American cities.

In this Article, I contend that housing vouchers, in general, are far superior to mixed-income projects. The heart of the Article is devoted to demonstrating that mixed-income developments share the inherent shortcomings characteristic of other forms of project-based housing assistance. A number of distinguished housing economists have previously identified many of these disadvantages. My principal original contribution is to address more fully the social dimensions of alternative housing policies. Many supporters of mixed-income projects implicitly assume that enhancing socioeconomic diversity within a neighborhood or building gives rise to large and unalloyed social benefits. I contend that recent studies suggest that the benefits of social integration are seldom as great as advocates of mixed-income projects suppose. The high costs of producing these projects thus can rarely be justified on this basis. Moreover, in many contexts, studies suggest that vouchers actually are the superior tool for promoting social integration. These conclusions have many implications for housing policy. In particular, they cast doubt on the merits of numerous programs to which many housing specialists currently devote their energies.

I. SETTING THE STAGE

To help readers who are not housing wonks comprehend the current debate between advocates of vouchers and of mixed-income projects, this Part briefly defines the basic policy choices and offers some pertinent history.

A. The Basic Distinction Between Project-Based and Tenant-Based Assistance

The initial federal housing subsidy programs, such as public housing, were all *project-based*. This method involves government financial aid to a public (or limited-profit) landlord to enable that landlord to lease dwelling units in specific buildings at below-market rents to eligible households.[1] A recipient tenant's benefits typically are conditioned on continued residence in the dwelling assigned. A tenant who moves out usually forfeits the subsidy benefits previously conferred, and those benefits are then transferred to a replacement tenant admitted from the landlord's waiting list. The benefit or subsidy is anchored to the unit, not the recipient tenant.

In the United States, most housing subsidies continue to be project-based. About 1 percent of U.S. households currently reside in government-managed assisted projects (public housing), and another 2 percent in assisted projects that are privately owned.[2] These percentages are much lower than those of many European nations. Subsidized rental projects account for 17 percent of the total number of housing units in France (where these projects typically are referred to as *habitation à loyer modéré* or simply HLM), 22 percent in the United Kingdom ("council housing"), and 34 percent in the Netherlands ("sociale huurwoningen").[3]

The other basic government choice is *tenant-based* assistance, which operates on the demand side of the market for shelter. Demand-side aid most commonly takes the form of government provision of housing vouchers to eligible householders.[4] If and when a voucher recipient finds a private landlord willing to participate in the program, the tenant pays a set percentage of the household's monthly cash income toward the monthly rent, and the government pays the remaining balance directly to the landlord. Section 8, the principal voucher program in the United States, fixes the recipient's share of the rent at 30 percent of monthly income.[5] Housing vouchers typically are portable in the sense that the benefit travels with the recipient. A tenant who moves elsewhere can, if the tenant's new landlord is willing, apply the voucher

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1. To simplify, my analysis assumes that all aided units are rentals. In fact, some mixed-income and inclusionary programs entail the sale of dwellings at below-market prices, subject to resale controls. *See infra* text accompanying notes 109–119 (describing the program of Montgomery County, Maryland).

2. *See infra* note 23 and text accompanying notes 26 and 43. In 2007, there were approximately 116 million households in the United States. *See* U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2009 tbl.58 (2008), *available at* http://www.census.gov/prod/2008pubs/09statab/pop.pdf.

3. U.N. Econ. Comm'n for Eur., *Guidelines on Social Housing* 15, fig. 1, U.N. Doc. ECE/HBP/137 (2006) (providing estimates for c.2000), *available at* http://www.unece.org/hlm/prgm/hmm/social%20housing/ECE_HBP_137%20Social%20Housing%20final.pdf.

4. A government may prefer to distribute housing vouchers instead of unrestricted cash for a variety of reasons, including concerns about the welfare of children. *See* Edgar O. Olsen, *Housing Programs for Low-Income Households*, *in* MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 365, 368–70 (Robert A. Moffitt ed., 2003). For present purposes, I assume that the provision of in-kind housing benefits is justified and that it does not excessively foster dependency.

5. 42 U.S.C. § 1437(f) (2006).

to reduce the tenant's rent burden at the new dwelling. Currently, about 2 percent of U.S. households benefit from housing vouchers, a far smaller percentage than in, for example, France, where less generous vouchers are distributed as entitlements.[6]

A nation's decisions on the mixing of project-based and tenant-based housing aids affect the form of its metropolitan areas, the mobility of its households, and the welfare of its renters. Vouchers are designed to give recipients more choices among the dwellings in the mammoth stock of existing housing. Project subsidies, by contrast, attempt to influence the design and distribution of dwelling units in the relatively tiny flow of newly constructed and substantially rehabilitated buildings.[7]

The quality of U.S. housing stock has improved markedly since the beginning of the twentieth century.[8] Despite the relative stinginess of U.S. housing aid, U.S. housing compares favorably in quality, even at the low end, to that found abroad. Members of American households in the bottom quintile of the national income distribution have 855 square feet of living area per capita.[9] This is roughly double the per capita living area available to members of *average-income* households in France, Germany, and the United Kingdom.[10] To the surprise of American tourists, many older seven-story apartment buildings in fashionable Paris neighborhoods lack elevators. Dwellings are far more likely to be air conditioned in the U.S. than in France, where a 2003 heat wave killed almost 15,000 persons.[11] The average quality of American dwellings has risen over time because new housing tends to be higher in quality than existing housing and because Americans invest large sums to

6. For the U.S. figure, see *infra* note 32 and accompanying text. On France, see Anne Laferrére & David Le Blanc, *Housing Policy: Low-Income Households in France*, *in* A COMPANION TO URBAN ECONOMICS 159, 165 (Richard J. Arnott & Daniel P. McMillen eds., 2006). Perhaps half of HLM tenants in France also receive housing allowances. *Id.*

7. In a given year, the number of newly built dwellings in the U.S. rarely exceeds 2 percent of the existing residential stock.

8. EDWARD L. GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 24–32 (2008); ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES: AN INTRODUCTION 16–23 (2006).

9. GLAESER & GYOURKO, *supra* note 8, at 28.

10. *Id.* In France, 8 percent of two-person households live in less than fifty square meters of floor space. U.N. Econ. Comm'n for Eur., *Bulletin of Housing Statistics for Europe and North America* tbl.A4 (2006), http://www.unece.org/hlm/prgm/hsstat/Bulletin_06.htm. The comparable figure in the United States is 2 percent. *Id.*

11. John Tagliabue, *Lack of Air-Conditioning Cited in France's Death Toll*, N.Y. TIMES, Aug. 22, 2003, at A3; *France Heat Wave Death Toll Set at 14,802*, USA TODAY, Sept. 25, 2003, *available at* http://www.usatoday.com/weather/news/2003-09-25-france-heat_x.htm. In the U.S., 67 percent of year-round occupied housing units have central air-conditioning, and 23 percent have one or more room units. *See* U.S. CENSUS BUREAU, *supra* note 2, tbl.946.

improve existing dwellings. The chief challenge for housing policymakers today is not how to improve the quality of American dwellings, but how to make existing dwellings more affordable to lower-income households.[12]

B. A Brief History of the Evolution of U.S. Housing Assistance Policy

Government housing policies have increasingly shaped the evolution of the housing stock. A century ago, the poor immigrants who flooded into cities such as New York and Chicago commonly leased apartments in privately owned tenements. Because these tenements often were crowded and unhealthy, many municipalities enacted building and housing codes to regulate conditions within them. In that era, however, governments rarely appropriated funds for the provision of housing assistance. The meager forms of aid provided typically were municipally financed. A city, for example, might do no more than open shelters for vagrants in police stations and work with local charitable organizations to establish almshouses and asylums for a few of its neediest residents.

Prior to 1937 the federal government seldom provided housing assistance in any form, though the events of World War I prompted one notable exception. The federal government then created and funded corporations to help house the workforces of shipbuilders involved in the war effort.[13] The most renowned of these corporations' projects was Yorkship Village in Camden, New Jersey, a community of about 1500 rental houses.[14] However, this precedent was effectively repudiated in the early 1920s when the federal corporations auctioned off their developments.[15]

By contrast, during the 1920s many European nations, with Denmark, the Netherlands, and Great Britain in the vanguard, built subsidized projects in numbers large enough to supplant much of the private supply of new rental housing. Leading American housing reformers of the period, such as Edith Wood and Catherine Bauer, visited these developments, wrote glowingly about them, and chastised U.S. policymakers for continuing to rely so extensively on private enterprise to provide shelter for the masses.[16] Because Wood and Bauer

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12. *See* JANET M. CURRIE, THE INVISIBLE SAFETY NET: PROTECTING THE NATION'S POOR CHILDREN AND FAMILIES 97 (2006).

13. *See* Daniel Brook, *Unnecessary Excellence: What Public-Housing Design Can Learn From Its Past*, HARPER'S MAGAZINE, Mar. 2005, at 76.

14. *Id.*

15. *Id.*

16. *See* CATHERINE BAUER, MODERN HOUSING (1934); EDITH ELMER WOOD, HOUSING PROGRESS IN WESTERN EUROPE (1923); EDITH ELMER WOOD, RECENT TRENDS IN AMERICAN HOUSING (1931) [hereinafter WOOD, RECENT TRENDS].

both lacked confidence in market forces, they gave no thought to government provision of demand-side assistance to enable the same households to shop more successfully for existing dwellings.

1. The Rise and Fall of Traditional Public Housing

The shock of the Great Depression transformed American politics and eventually prompted lawmakers to emulate the European approach. By the mid-1930s both the state of New York and various New Deal agencies had begun to dabble in the development of subsidized housing estates.[17] Persistent massive unemployment in the construction industry fueled political support for a far more ambitious effort. In 1937 Congress passed the Wagner-Steagall Housing Act, launching a national program of public housing still in existence today.[18] Under the program, initially designed to primarily benefit working-class families, the federal government provides substantial subsidies to special local-government agencies called housing authorities. This aid enables these authorities to develop and manage housing projects in which most rents are greatly reduced.[19]

Nationwide, local housing authorities had constructed 420,000 public housing units by 1959.[20] Even at this early stage, however, urban commentators such as Jane Jacobs had begun to assail the program.[21] Critics especially targeted the largest high-rise projects, for example the 4500-unit Robert Taylor Homes in Chicago, which concentrated poor families in a socially destructive environment.[22] As public housing for family households fell into disrepute, policymakers began searching for alternative ways to provide housing assistance to low-income renters.[23] One eventual reform launched in 1992, the HOPE VI program, was

17. *See* N.Y. City Hous. Auth. v. Muller, 1 N.E.2d 153 (N.Y. 1936); K.C. Parsons, *Clarence Stein and the Greenbelt Towns Settling for Less*, 56 J. AM. PLAN. ASS'N 161 (1990).

18. Wagner-Steagall Housing Act, Pub. L. No. 75-412, 50 Stat. 888 (1937) (codified as amended at 42 U.S.C. § 1437 (2006)). *See generally* H. PETER OBERLANDER & EVA NEWBRUN, HOUSER: THE LIFE AND WORK OF CATHERINE BAUER 130–56 (1999).

19. On the structure and evolution of the program, see Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 894–99 (1990).

20. SCHWARTZ, *supra* note 8, at 102 tbl.6.1.

21. *See* JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 321–37, 392–402 (1961).

22. For an overview, see Michael H. Schill, *Distressed Public Housing: Where Do We Go From Here?*, 60 U. CHI. L. REV. 497 (1993). Many commentators have lauded the New York City Housing Authority's efforts to prevent these sorts of concentrations.

23. Production of public housing continued, but with an increasing portion of units designed for the elderly. The national stock of public housing peaked in 1993 at 1.4 million units, and by 2004 it had declined to 1.2 million units as a result of the razing of some of the most troubled projects. SCHWARTZ, *supra* note 8, at 102.

itself designed to help housing authorities raze and redevelop distressed projects such as the Robert Taylor Homes.[24]

2. The Profusion of Privately Developed Subsidized Projects

As the dream of public housing began to fade in the late 1950s, federal housing-assistance policy splintered into an ever-changing panoply of programs (soon supplemented by state and local initiatives) whose specifics are obscure to all but an intrepid band of specialists.[25] In contrast to the public housing model, most of these programs attempt to place assisted tenants in buildings owned and managed by private landlords, some of them nonprofit organizations. While the details of the programs vary, all are designed to funnel subsidy benefits to targeted low- and moderate-income households and to prevent project developers and owners from reaping undue profits.

These diverse programs, and not public housing, are now the major source of new project-based housing aid. By 1999, 1.5 million units of housing had been produced under the various private-owner, project-based subsidy programs that the federal government enacted between 1959 and 1984.[26] Yet these programs generally were plagued by troublesome levels of inefficiency and corruption. When stung with embarrassing news about a program, Congress typically would repeal it and enact a new variation. Beginning in the 1980s, Congress gradually shifted authority to approve developers' applications for the funding of private subsidized projects from the federal department of Housing and Urban Development (HUD) to state housing finance agencies. Today these state entities are largely responsible for meting out low-interest mortgage loans and low-income housing tax credits, both of which are made possible, but also capped, by federal income tax statutes.[27]

3. The Rise, and Fleeting Triumph, of Housing Vouchers

Disillusionment with traditional public housing also helped spur support for a far more radical policy innovation—demand-side subsidies provided to lower-

24. *See infra* note 44 and accompanying text.

25. Housing experts signal mastery of their field by dropping the names of these programs (for example 221(d)(3), Mitchell-Lama) into their conversations. For a detailed overview of the various programs, see SCHWARTZ, *supra* note 8. For brief and accessible introductions, see JOHN C. WEICHER, PRIVATIZING SUBSIDIZED HOUSING 3–8 (1997) and Olsen, *supra* note 4, at 370–86.

26. *See* BIPARTISAN MILLENNIAL HOUS. COMM'N, MEETING OUR NATION'S HOUSING CHALLENGES 95, tbl.3 (2002), *available at* http://govinfo.library.unt.edu/mhc/MHCReport.pdf. The quoted figure excludes rural housing assistance.

27. *See* I.R.C. § 42 (2006) (low-income housing credit); *id.* § 142 (housing project bonds).

income households in the form of portable housing vouchers. During the New Deal debates, skeptics of public housing commended vouchers as an alternative.[28] The idea resurfaced in 1968 when the Kaiser Committee urged Congress to fund a voucher experiment, in part to investigate the extent to which the introduction of vouchers would inflate rents.[29] Congress acquiesced, and the experiment was launched.[30] In 1974 the auspicious early findings helped prompt Congress to enact Section 8, the federal housing voucher program. With minor amendment, the program has been in place ever since.[31] The federal government delegated responsibility for administering the vouchers largely to local housing authorities, the agencies initially established to build public housing projects. The number of households receiving Section 8 vouchers grew rapidly over the life of the program. The total climbed to 600,000 by 1980 and to 2 million by 2005, making it by then the largest single branch of federal housing aid.[32]

For a brief period, proponents of vouchers envisioned a more thoroughgoing triumph, namely the vouchering-out of existing subsidized projects and the shifting of all prospective housing aid to vouchers. Between December 1994 (just after the Republicans unexpectedly won control of both houses of Congress) and 1996, both the Clinton Administration and presidential candidate Robert Dole explored these possibilities.[33] Writing during this period, Louis Winnick, one of the deans of American housing policy, stated:

> It is beyond doubt, and has been for some years, that the battle has gone substantially and seemingly permanently in favor of a household-targeted strategy. A paradigmatic shift has occurred. Supply-siders, who reigned supreme during the life of government-assisted housing, are now relegated to the sidelines.[34]

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28. *See* Louis Winnick, *The Triumph of Housing Allowance Programs: How a Fundamental Policy Conflict Was Resolved*, CITYSCAPE: J. POL'Y DEV. & RES., 1995 No. 3, at 95, 101–02.

29. PRESIDENT'S COMM. ON URBAN HOUS., A DECENT HOME 71–72 (1968).

30. *See* Olsen, *supra* note 4, at 424–27 (summarizing the many studies that emanated from this Experimental Housing Allowance Program).

31. After enactment of the Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 545, 112 Stat. 2461, 2596–2604 (1998), Section 8 benefits were formally named "Housing Choice Vouchers."

32. SCHWARTZ, *supra* note 8, at 153; Casey J. Dawkins, *Income Targeting of Housing Vouchers: What Happened After the Quality Housing and Work Responsibility Act?*, CITYSCAPE: J. POL'Y DEV. & RES., 2007 No. 3, at 69, 74 ex.1.

33. U.S. DEP'T OF HOUS. & URBAN DEV., HUD REINVENTION: FROM BLUEPRINT TO ACTION 7, 11 (1995); WEICHER, *supra* note 25, at 1.

34. Winnick, *supra* note 28, at 95.

But Winnick's vision proved too optimistic, and the tide of support for vouchering-out soon ebbed.[35] Since 1990, largely because of the influence of the Low-Income Housing Tax Credit (described below), the main increments in federal housing aid have thus been project-based.[36]

4. The Emergence of Mixed-Income Projects

This Article focuses on the shortcomings of one of the most popular project-based approaches—the subsidization of mixed-income affordable housing developments. For present purposes, a housing project can be defined as "mixed-income" when: (1) a government subsidizes rents (or sales prices) in only a fraction of the project's dwelling units; and (2) the aid is project-based—that is, an aided household forfeits the benefit of the rent (or ownership) subsidy upon moving out. My thesis, to reiterate, is that mixed-income projects share most of the shortcomings of other forms of project-based aid, and that portable housing aid is a superior policy approach in almost all settings.

As a prelude to the presentation of these various shortcomings, I describe the genesis of the mixed-income project in the United States. The seed was planted in the 1960s when the search for alternatives to conventional public housing was underway. Since then, mixed-income projects have appeared in a wide variety of forms. In rough chronological order, some seminal manifestations include:

- The 1965 enactment of a short-lived federal leased housing program (Section 23) that authorized local housing authorities to lease specific units in private rental buildings.[37]
- In the 1970s, adoption by a handful of wealthy suburbs of the first inclusionary zoning ordinances. These typically required a housing developer to sell or rent, at below-market prices, 10 to 20 percent of a project's units to targeted households.[38]

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35. WEICHER, *supra* note 25, at 32–35.

36. Olsen, *supra* note 4, at 375.

37. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, § 103, 79 Stat. 451, 455–57 (1965) (adding Section 23 to the U.S. Housing Act of 1937); *see also* Lawrence M. Friedman & James E. Krier, *A New Lease on Life: Section 23 Housing and the Poor*, 116 U. PA. L. REV. 611 (1968).

38. *See* Robert C. Ellickson, *The Irony of "Inclusionary Zoning,"* 54 S. CAL. L. REV. 1167 (1981) (describing the early evolution of this approach). Valuable overviews of inclusionary programs include Douglas R. Porter, *The Promise and Practice of Inclusionary Zoning*, *in* GROWTH MANAGEMENT AND AFFORDABLE HOUSING: DO THEY CONFLICT? 212 (Anthony Downs ed., 2004), and Jenny Schuetz et al., *31 Flavors of Inclusionary Zoning: Comparing Policies From San Francisco, Washington, DC, and Suburban Boston*, 75 J. AM. PLAN. ASS'N 441 (2009). Although a developer who sets aside inclusionary units nominally provides the subsidy, it is analytically appropriate to treat that outlay as both a choice and expenditure of the exacting government. The exacting government could have

- The 1983 New Jersey Supreme Court holding, in the nationally conspicuous *Mount Laurel II*[39] litigation, that a developer's inclusion of 20 percent affordable units in a development would help satisfy a municipality's state constitutional obligations to poor New Jerseyans.[40]
- Congressional authorization of the Low-Income Housing Tax Credit (LIHTC) program in 1986.[41] To receive the hefty tax credits that the program provides, a developer is required to set aside, currently for thirty years or more, at least 20 percent of project units as low-rent dwellings for qualifying households. Although the rules that govern LIHTCs allow for developments that are genuinely mixed-income, in practice more than 80 percent of LIHTC projects are entirely low-income.[42] As this program has matured, it has become private developers' chief source of project-based subsidies. By 2006 the LIHTC is estimated to have generated 1.6 million subsidized units, a total greater than the stock of public housing.[43]
- In 1992, congressional enactment of HOPE VI, a program aimed (as mentioned) at inducing local housing authorities to replace failed public housing projects with mixed-income developments.[44]
- A 1998 federal statute, aimed at deconcentrating poverty, that required local housing authorities to rent more public housing units to households whose incomes were not extremely low.[45]

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conditioned its grant of development approval on the developer's provision of some other kind of contribution. *But see infra* note 62.

39. S. Burlington County NAACP v. Twp. of Mount Laurel (*Mount Laurel II)*, 456 A.2d 390 (N.J. 1983).

40. *Id.* at 445–50.

41. Tax Reform Act of 1986, Pub. L. No. 99-514, § 252, 100 Stat. 2085, 2189–2208 (codified as amended at I.R.C. § 42 (2006)).

42. SCHWARTZ, *supra* note 8, at 92.

43. Michael D. Eriksen, *The Market Price of Low-Income Housing Tax Credits*, 66 J. URB. ECON. 141, 143 (2009); *see also* SCHWARTZ, *supra* note 8, at 83 (placing the LIHTC total at 1.2 million in 2003). On the LIHTC generally, see SCHWARTZ, *supra* note 8, at 83–100, and David A. Weisbach, *Tax Expenditures, Principal-Agent Problems, and Redundancy*, 84 WASH. U. L.R. 1823, 1850–60 (2006).

44. Congress authorized the launch of HOPE VI in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, Pub. L. No. 102-389, tit. II, 106 Stat. 1571, 1579 (1992). For discussion of the program's evolution, see SCHWARTZ, *supra* note 8, at 117–23; Matthew H. Greene, *The HOPE VI Paradox: Why Do HUD's Most Successful Housing Developments Fail to Benefit the Poorest of the Poor*, 17 J.L. & POL'Y 191 (2008).

45. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 513, 112 Stat. 2461, 2544–45 (1998) (codified at 42 U.S.C. § 1437n(a)(3) (2006)).

The concept of the mixed-income project has attracted support from many quarters. Many urban policy specialists, aware of the social pathologies associated with the early public housing projects, warm to the prospect of developments in which lower-class households mingle with middle-class role models. Developers of assisted projects understandably anticipate that a local government is more likely to grant approval when a proposed project is mixed-income rather than completely subsidized, partly because neighbors are less likely to object.

By the turn of the twenty-first century, it was clear that political momentum had shifted away from an all-voucher approach and toward a mixed-income project model. In 1999, Congress established the Bipartisan Millennial Housing Commission.[46] Ranking Republican and Democratic members of key congressional subcommittees were authorized to appoint all twenty-two commissioners. They selected mostly individuals who had been significantly involved, from either the private or public side, in the production of subsidized projects.[47] The commission's final report, issued in 2002, generally supported the preservation of all types of existing subsidized projects and the construction of many more.[48] The commission repeatedly endorsed the mixing of income groups in both projects and neighborhoods.[49] While the report also backed the expansion of voucher programs, it stressed the limitations of this approach.[50] In a section entitled "The Shrinking Rental Supply," the commission estimated that during the next two decades, the production of five million additional "affordable units" (250,000 annually) would be necessary to "close the gap" between the number of extremely low-income households and the number of rental dwellings they would be able to afford.[51] The commission proposed a new program of 100 percent capital subsidies to generate new projects in which extremely low-income households would compose roughly 20 percent of the tenants.[52]

The Bipartisan Millennial Housing Commission's proposal helped inspire the introduction of bills to establish a National Housing Trust Fund. In October 2007 the *New York Times* editorialized in favor of a pending bill that would have financed the construction, rehabilitation, and preservation of 1.5 million units of affordable housing over the next ten years, all of it mixed-income.[53] Less than

46. Pub. L. No. 106-74, § 206, 113 Stat. 1070–72 (1999).
47. BIPARTISAN MILLENNIAL HOUS. COMM'N, *supra* note 26, at iii–iv.
48. *Id.* at 27–70.
49. *Id.* at 3, 33, 39.
50. *Id.* at 18.
51. *Id.* at 17–18.
52. *Id.* at 37–39.
53. Editorial, *A New Approach to Housing*, N.Y. TIMES, Oct. 15, 2007, at A20.

a year later, Congress took a small step in this direction. The Housing and Economic Recovery Act of 2008, enacted largely in response to the sharp jump in the rate of home foreclosures, authorized the creation of a National Housing Trust Fund, albeit one much smaller and more targeted toward aiding the very poor than the version that the *New York Times* had supported.[54]

Mayor Michael Bloomberg's ten-year plan for the production of affordable housing in New York City between 2004 and 2013 further demonstrates the revival of political support for project-based assistance.[55] Mayor Bloomberg's plan contemplates both the production of 92,000 new affordable housing units in the city and preservation efforts targeted at 73,000 of the city's 250,000 currently subsidized private-project units. Mayor Bloomberg calls this "the largest municipal affordable housing effort in the nation's history."[56] Parts of the Bloomberg plan explicitly encourage mixed-income developments, as do other long-standing New York City programs.[57]

II. THE SUPERIORITY OF HOUSING VOUCHERS

Like Mayor Bloomberg and the members of the Millennial Commission, most law review commentators have regarded project-based subsidies to be a defensible branch of housing assistance.[58] By contrast, most housing economists who have addressed the issue assert that, as a general matter, portable tenant-based subsidies are markedly more efficient and fairer than project-based subsidies.[59] Some of these scholars, notably Edgar Olsen and John Weicher, have urged governments to refrain from authorizing the construction of more

54. *See* Pub. L. No. 110-289, § 1338, 122 Stat. 2654, 2712–23 (2008); *see also* Peter W. Salsich, *National Affordable Housing Trust Fund Legislation: The Subprime Mortgage Crisis Also Hits Renters*, 16 GEO. J. ON POVERTY L. & POL'Y 11 (2009) (praising creation of the Fund).

55. *See* N.Y. CITY, DEP'T OF HOUS. PRES. AND DEV., THE NEW HOUSING MARKETPLACE: CREATING HOUSING FOR THE NEXT GENERATION (2005), http://www.nyc.gov/html/hpd/downloads/pdf/10yearHMplan.pdf. The State and City of New York have long had a distinctive and unusually ambitious array of housing assistance programs. *See* PETER SALINS & GERARD C.S. MILDNER, SCARCITY BY DESIGN: THE LEGACY OF NEW YORK CITY'S HOUSING POLICIES (1992); Ingrid Gould Ellen & Brendan O'Flaherty, How New York Housing Policies Are Different—and Maybe Why (Nov. 20, 2003) (unpublished manuscript, on file with the author).

56. N.Y. CITY, DEP'T OF HOUS. PRES. AND DEV., *supra* note 55, at 3.

57. *See id.* at 12. The New York legislature has authorized the City, for example, to confer 421-a property tax abatements on builders of Manhattan high-rises who are willing to provide funding for mixed-income housing projects. *See* Seth B. Cohen, Note, *Teaching an Old Policy New Tricks: The 421-a Tax Program and the Flaws of Trickle-Down Housing*, 16 J.L. & POL'Y 757 (2008).

58. *See, e.g.*, Salsich, *supra* note 54. Some dissenters are identified *infra* note 60.

59. Despite the general superiority of vouchers, project subsidies may be advisable in a narrow set of circumstances, such as to provide supportive-care facilities for the homeless, *see* CURRIE, *supra* note 12, at 108–09, and to house workers at remote bases where national security considerations warrant secrecy in housing supply.

subsidized projects and to voucher out existing ones.[60] Compared to vouchers, project-based subsidies have a variety of shortcomings, some well-ventilated in the literature, others not.

A. The Inefficiencies of Project-Based Aid

Consider a hypothetical mixed-income project, Evergreen Woods, that a developer proposes to build at a suburban site. The development will consist of several multifamily structures comprising a total of fifty uniformly sized and equipped two-bedroom units.[61] The developer anticipates being able to rent the market-rate units at $1500 per month. As a condition for obtaining the suburban government's approval, the developer has agreed to rent ten specific units (out of the total of fifty) to tenants with incomes below a certain ceiling. These tenants will pay 30 percent of their income toward rent. The average monthly income of these subsidized tenants is expected to be $2000 (well below the incomes of most actual beneficiaries of inclusionary units in practice). The developer thus will collect, per inclusionary unit, an average of $600 (30 percent of $2000) of rent per month.

To the developer, this subsidy is the rough equivalent of a tax of $900 per month per affordable unit. The municipality essentially sacrifices revenue of that amount to pursue its inclusionary program (assuming that it could instead exact from the developer general revenue in an amount equivalent to the developer's loss).[62] The various benefits of the program, however, are likely to be far less than $900 per month.

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60. *See* WEICHER, *supra* note 25, at 12–31; Edgar O. Olsen, *Achieving Fundamental Housing Policy Reform*, *in* PROMOTING THE GENERAL WELFARE: NEW PERSPECTIVES ON GOVERNMENT PERFORMANCE 100 (Alan S. Gerber & Eric M. Patashnik eds., 2006); Olsen, *supra* note 4, at 427–37; John Weicher, *The Voucher/Production Debate*, *in* BUILDING FOUNDATIONS: HOUSING AND FEDERAL POLICY (Denise DiPasquale & Langley C. Keyes eds., 1990).

Other pro-voucher economists include, in rough chronological order of their contributions, Ira Lowry, Louis Winnick, Stephen Mayo, Stephen Malpezzi, Janet Currie, *see* CURRIE, *supra* note 12, at 90–112, and Edward Glaeser and Joseph Gyourko, *see* GLAESER & GYOURKO, *supra* note 8, at 115–18, 132–36. In the legal literature, works touting the superiority of vouchers include Stephen B. Kinnaird, *Public Housing: Abandon HOPE, But Not Privatization*, 103 YALE L.J. 961 (1994); Schill, *supra* note 22; and Weisbach, *supra* note 43.

61. Many governments with inclusionary programs authorize developers to downgrade, perhaps even drastically, the interior amenities of inclusionary units. To simplify the exposition, the developer of Evergreen Woods is assumed to not have this option.

62. On the contested plausibility of this assumption, see sources cited in ROBERT C. ELLICKSON & VICKI L. BEEN, LAND USE CONTROLS: CASES AND MATERIALS 650–51 (3d ed. 2005).

1. Higher Production Costs

Most studies of supply costs have focused on projects in which all units are subsidized, not just some as in Evergreen Woods. Housing economists have consistently found that, all else equal, the development of housing units in subsidized projects, whether publicly or privately sponsored, costs significantly more than the development of unsubsidized units. Developers and funding governments typically spend an average of about $1.60 (although perhaps as little as $1.20) to produce $1.00 of rental value[63] (which, as we shall soon see, is itself likely to exceed the value to the occupying tenant). By contrast, a government may need to spend as little as $1.10 to transfer $1.00 in voucher aid to a tenant.[64]

A subsidized project inherently requires extra time and effort from both the developer and public officials. In most cases, the developer seeks government subsidies and must apply to one or more government agencies to get them. Especially since the advent of the LIHTC in 1986, developers commonly stack different project-based subsidies on top of one another, adding more complexity to application processes. The LIHTC, currently the core project-subsidy financing mechanism, is especially fraught with transaction costs. A developer who is awarded LIHTCs typically sells them to a syndicator, who, on account of the complexities of the program, will only buy them at a discount. The syndicator then sells interests in a pool of credits to third-party investors. Syndicators typically charge fees of between 6 and 15 percent for the services they provide.[65] It has been estimated that the developer receives, in the end, only $0.73 per $1.00 of tax credit sold.[66]

In addition, news that a developer is proposing a subsidized project, even a partial one, is likely to spark an unusual amount of concern on the part of homeowners located near the proposed site. As a result, a developer typically

63. For summaries of the various studies, see Stephen K. Mayo, *Sources of Inefficiency in Subsidized Housing Programs*, 20 J. URB. ECON. 229 (1986), and Olsen, *supra* note 4, at 394–99. *See also* U.S. GEN. ACCOUNTING OFFICE, GAO-02-76, FEDERAL HOUSING ASSISTANCE: COMPARING THE CHARACTERISTICS AND COSTS OF HOUSING PROGRAMS 43–45, 17–23 (2002); *infra* note 167. A number of professional housers and planners have challenged the economists' consensus. For a review of the works of these dissenters, see Lan Deng, *The Cost-Effectiveness of the Low-Income Housing Tax Credit Relative to Vouchers: Evidence From Six Metropolitan Areas*, 16 HOUSING POL'Y DEBATE 469, 472–77 (2005). Applying her own methodology, Deng concludes that vouchers indeed are cheaper than LIHTC projects in most metropolitan areas, but perhaps not in all. Her methodology, like most others', does not take into account the lock-in effects of project-based housing subsidies, one of the basic sources of their inefficiency.

64. Mayo, *supra* note 63, at 242–47.

65. SCHWARTZ, *supra* note 8, at 85–87 (between 6 and 10 percent); Eriksen, *supra* note 43, at 148 (in excess of 15 percent).

66. Eriksen, *supra* note 43, at 148.

must spend extra time and effort to obtain land use permits from the local government. It is plausible that these various pursuits for permits are associated with efficiencies of scale.[67] If so, when a subsidized project resembles Evergreen Woods, where only 20 percent of the dwellings are to be set aside as affordable, the incremental private and public processing costs per subsidized unit can be expected to be unusually high. If government housing aid were provided solely through vouchers, most of these extra costs of securing permits and tax credits would be avoided.

Waste from rent seeking also tends to be greater under project-based subsidy programs. For example, state housing finance agencies receive about three times more applications for LIHTCs than they can grant.[68] To improve their prospects for obtaining approvals, developers may invest in political connections, a practice that dissipates some of the rents being sought and also corrupts the electoral process.

2. Slack Arising From the Absence of Market Discipline

The developer's incentive to efficiently produce and maintain the ten subsidized units at Evergreen Woods plummets as soon as those units are earmarked as aided dwellings. Because of the generosity of the rent discounts, the developer knows that the queue will be long and that finding tenants for the inclusionary units will be a snap. During construction, the developer's executives therefore may be tempted to cut corners. For example, they might tell their superintendents to only casually supervise the work of the subcontractor hired to paint the interiors of the subsidized units. Similarly, once tenants have moved into the subsidized dwellings, the developer/owner has less incentive to attend to their complaints, say about the crankiness of the heating system. Given the bargain rent, a subsidized tenant cannot credibly threaten to vacate to protest the owner's failure to make cost-justified repairs. Even if the tenant did decide to forfeit the subsidy and vacate the unit, the developer could readily find a replacement from the queue. As John Weicher elegantly puts it, the principal party that the developer of a subsidized project must please is not the tenant but the government agency that supervises the program.[69]

When housing aid takes the form of vouchers, these perverse incentives are much reduced, if not eliminated altogether. Suppose a tenant with a portable \$900 per month housing voucher had rented an ordinary \$1500 per month

67. There appear to have been no empirical studies on this issue.
68. Olsen, *supra* note 4, at 397.
69. WEICHER, *supra* note 25, at 6.

unit at Evergreen Woods. This tenant possesses the same power as a market-paying renter to credibly threaten to leave, and might be similarly hard to replace. The developer/owner would then have reason to worry about the quality of the initial interior paint job and about the tenant's complaints about the heating system. Vouchers, unlike project-based subsidies, thus impose a market discipline that helps pressure building owners to implement maintenance measures that are cost-justified.

3. Mismatches Between Assisted Households and the Housing Units They Occupy

A project-based subsidy program is likely to be far inferior to a voucher program in placing assisted tenants in dwellings whose locations and designs suit their preferences.[70] Recall the initial assumption that each of the households that applies for one of the ten subsidized two-bedroom units in Evergreen Woods earns a fixed income of $2000 per month and thus would pay rent of $600 per month if selected by lottery or queue. Further, assume that half of the applicants are high-valuing tenants who value occupancy of one of these dwellings at $1400 per month, while the other half are low-valuing tenants who regard them as worth only $700 per month. (Given their budget constraints, it is unlikely that any of the applicants would bid $1500 to live at Evergreen Woods.[71]) A tenant might be low-valuing because of reservations, for example, about the location of Evergreen Woods, the layout of its units, or the suitability of a two-bedroom unit for the tenant's household as the tenant expects it to evolve. If selected, a high-valuing tenant who moved into the development would garner $800 per month in consumer surplus, whereas a low-valuing tenant would garner $100 per month. If tenants were empowered to transfer occupancy rights in a subsidized unit to another eligible household, one would expect a low-valuing tenant who had been awarded a unit to transfer it to a high-valuing tenant, with the two parties somehow divvying up the $700 per month in increased surplus. The regulations that govern project-subsidy programs, however, almost invariably forbid a tenant from transferring occupancy rights. This is necessary to prevent a recipient household from converting the discounted value of the housing subsidy to a lump sum of cash, an act that

70. The housing economists who criticize project-based subsidies seldom stress this shortcoming. *But cf*. Edward L. Glaeser & Erzo F.P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 AM. ECON. REV. 1027 (2003) (identifying the mismatch problem as an additional and underacknowledged inefficiency of rent controls).

71. These valuations of alternative locations are those that tenants would hypothetically assign *after* they had been designated beneficiaries of $600 per month rents at Evergreen Woods.

would frustrate the program designers' paternalistic aim of inducing program beneficiaries to consume more housing rather than other goods and services.

This stylized example points to the mismatches between tenants and housing units that are likely to occur under any sort of project-subsidy program. Given the assumptions, if the households selected to live in inclusionary units at Evergreen Woods were randomly chosen, as many as half of them might be low-valuing tenants. Although low-valuing tenants might be less likely to move in if accepted, they still would have an incentive to do so, especially if there were many names on the application lists for projects. Whenever a low-valuing rather than a high-valuing tenant moves into Evergreen Woods, there is a deadweight loss of $700 per month in consumer surplus.[72]

In addition, as the years pass, aggregate deadweight losses are likely to increase. Although some households increasingly value a dwelling as they put down roots in it, the passage of time more typically has the opposite effect.[73] In a given year, about one-third of U.S. tenant households move to new quarters, primarily to accommodate changes in either their employment situation or the composition of their household.[74] Suppose that one of the long-term subsidized tenants at Evergreen Woods is a divorcee who originally moved in when her child was an infant. Recently, she has taken a new job that requires a lengthy commute. She also would like to invite her infirm and lonely father to move in with her, but she doesn't think a two-bedroom unit is big enough to accommodate that arrangement. Once a high-valuing tenant at Evergreen Woods, she has become a low-valuing one. If she were to have had the benefit of a $900 per month housing voucher, she would have moved long ago to another dwelling more suited to her altered life circumstances.

In sum, project-based housing subsidies tend to have lock-in effects that are likely to worsen as a project ages. These hamper tenants' abilities to better match themselves with, among other things, a job, a dwelling, and a set of

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72. Between 1965 and 1979, the headiest era of empirical research on housing assistance policy, a number of economists published studies, mostly of public housing, that attempted to measure the equivalent variation. This is the ratio between the assisted tenants' actual mean benefits (in the example used in the text, $800 per month for a high-valuing tenant and $100 per month for a low-valuing one), and the mean nominal subsidy ($900/month in the example). The reported ratios ranged from 0.61 to 0.92. *See* Olsen, *supra* note 4, at 417 tbl.6.17.

73. *See* Glaeser & Luttmer, *supra* note 70, at 1042–43 (finding that the apartments of long-term rent-controlled tenants are especially misallocated).

74. JASON SCHACHTER, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS P23-204, WHY PEOPLE MOVE: EXPLORING THE MARCH 2000 CURRENT POPULATION SURVEY 2 tbl.1 (2001); U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 1999, at 210–13 tbl.4-11 (2003).

housemates.[75] Most tenants understandably prefer greater freedom of movement. In a survey of New Orleans public housing tenants displaced by Hurricane Katrina, respondents were almost twice as likely to state that they would prefer to receive a housing voucher than to return to their former project.[76] Americans move at almost twice the annual rate of, say, the British and French.[77] The much lower incidence of project-based housing assistance in the U.S. is a major cause of this difference.[78]

4. Do Subsidized Projects Generate Positive Externalities?

Viewed from a broader social perspective, however, a program that creates detrimental housing lock-ins may nevertheless be justified by the offsetting beneficial social externalities that the program generates.[79] According to some studies, the construction of a subsidized housing project may raise the value of surrounding properties.[80] For several reasons, however, the possibility of these positive effects is unlikely, by itself, to justify government subsidies to housing projects. In most housing markets, the construction of subsidized projects tends to lessen production of unsubsidized projects that are likely to have similar positive spillover effects.[81] In addition, a city that wants to renew a particular neighborhood has many more direct means of doing so. These include concentrated code enforcement, improvements to streetscapes, grants for facade improvements, and the erection of schools, libraries, and other public edifices.

75. *See* Robert C. Ellickson, *Legal Constraints on Household Moves: Should Footloose Americans Envy the Rooted French?* (Yale Law & Econ. Research Paper No. 390, 2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1445603.

76. *Most New Orleans Residents Want to Return, But Not to Public Housing Units, According to HANO Survey*, 36 HOUSING & DEV. REP. 201 (2008).

77. Larry Long, *Residential Mobility Differences Among Developed Countries*, 14 INT'L REGIONAL SCI. REV. 133, 136 tbl.1 (1991).

78. *See, e.g.*, Ellickson, *supra* note 75, at 20–23; Gordon Hughes & Barry McCormick, *Do Council Housing Policies Reduce Migration Between Regions?*, 91 ECON. J. 919 (1981). In 2004, 52 percent of American public housing tenants had been in their present units for five years or more, compared to 36 percent of Section 8 tenants. SCHWARTZ, *supra* note 8, at 107 tbl.6.4, 159 tbl.8.5. Because the rents of 70 percent of New York City tenants are regulated either by some form of rent control or project-subsidy rule, tenants there are relatively immobile. From 1990 to 2000, 35 percent of the city's tenants remained in the same dwellings, compared to 17 percent of Chicago's. *See* Ellen & O'Flaherty, *supra* note 55, tbls.7.1, 7.11.

79. Ellen and O'Flaherty speculate that the New York City policies that lock in tenants might be motivated by a desire to augment social capital and generate positive production externalities. Ellen & O'Flaherty, *supra* note 55, at 34–43.

80. *See* Ingrid Gould Ellen et al., *Does Federally Subsidized Rental Housing Depress Neighborhood Property Values?*, 26 J. POL'Y ANALYSIS & MGMT. 257 (2007); Amy Ellen Schwartz et al., *The External Effects of Place-Based Subsidized Housing*, 36 REGIONAL SCI. & URB. ECON. 679 (2006).

81. *See infra* note 173 and accompanying text.

Nevertheless, project-based subsidies may indeed have some beneficial social effects. A locked-in tenant has valuable property rights in a particular dwelling and therefore a greater incentive to be active in local politics. This can be presumed to be a socially desirable result.[82] A locked-in tenant also can more credibly represent to an employer that she is not a fly-by-night worker. This may induce the employer, for example, to invest more in training her.[83] Some adolescents suffer from repeated changes of residence,[84] an effect that some caretakers may inadequately weigh. More generally, when the residents of a neighborhood move less often, they possibly amass more neighborhood social capital and thereby become more trustworthy in their dealings with one another.[85]

Housing lock-ins, however, also can generate negative social externalities that might more than completely offset these positive ones.[86] The freezing of households in place may prevent a person from migrating to a more dynamic employment environment, and from creating valuable bridging social ties with the members of other population groups.[87] In particular, housing lock-ins tend to worsen landlord-tenant relations.[88] When the threat of unilateral termination by either party hangs over a residential landlord-tenant relationship, both sides have a strong incentive to cooperate with one another. Under these circumstances, even arms-length landlord-tenant relations tend to be comfortable, at least during the midgame of the lease. However, when a tenant and landlord are locked in because of either project-based aid or rent controls, the dynamic changes. The landlord then tends to be relatively unresponsive to the tenant's complaints, and the tenant has less reason to act civilly toward the landlord. In New York City, where both project subsidies and rent controls have led to an extraordinary level of lock-ins, there is a special housing court that averages 300,000 new cases per year, and the media periodically describe

82. Ellen & O'Flaherty, *supra* note 55, at 40.

83. *Cf.* Jakob Roland Munch et al., *Home Ownership, Job Duration, and Wages*, 63 J. URB. ECON. 130 (2008).

84. Emma K. Adam & P. Lindsay Chase-Lansdale, *Home Sweet Home(s): Parental Separations, Residential Moves, and Adjustment Problems in Low-Income Adolescent Girls*, 38 DEVELOPMENTAL PSYCHOL. 792 (2002). *But cf.* Shana Pribesh & Douglas B. Downey, *Why Are Residential and School Moves Associated With Poor School Performance?*, 36 DEMOGRAPHY 521 (1999) (attributing these negative effects mostly to the attributes of the children's caretakers).

85. *See* Ellickson, *supra* note 75, at 30–31; *cf.* Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350 (1986) (defending rent control as a means of protecting social ties within a community).

86. At present, little is known about the magnitude of either the positive or negative externalities.

87. *See, e.g.*, Holger Bonin et al., *Geographic Mobility in the European Union: Optimising Its Economic and Social Benefits* 51–52 (IZA Research Report No. 19, July 2008) (urging European nations to encourage migration).

88. *See* ROBERT C. ELLICKSON, THE HOUSEHOLD: INFORMAL ORDER AROUND THE HEARTH 126–27 (2008).

multiyear wars between particular landlords and tenants.[89] And the state of New York, a center of project-based subsidized housing, has one of the lowest levels of social capital outside the South.[90] These facts suggest that housing lock-ins may actually lower, not raise, trust and trustworthiness among members of the affected population.

B. The Relative Unfairness of Project-Based Aid

Those who favor jettisoning project-based aid in favor of portable vouchers also marshal a potent array of fairness arguments. They assert that tenant-based aid can be more easily structured to treat like households alike (the goal of horizontal equity) and to funnel benefits to the most impoverished households (the goal of vertical equity).

1. Horizontal Equity

In the United States, a housing subsidy is the only major form of means-tested aid that is not made available as an entitlement to every household that satisfies the stated criteria for eligibility. Only about 30 percent of qualified renters with incomes below the federal poverty threshold benefit from any sort of federal housing aid.[91] The high cost of housing subsidies compared to most other forms of means-tested aid is a primary reason that housing subsidies are not entitlements. The federal government incurs costs of roughly $500 per month for each tenant household that it assists.[92] By contrast, a person who is eligible, for example, for food stamps or disability benefits, is never denied aid on the ground that Congress has not appropriated sufficient funds.

The households that benefit from housing assistance tend to be headed by individuals who have been either adroit or lucky in navigating the queues and lotteries that housing agencies and developers employ to mete out aid. The Section 8 voucher program generates some of the longest queues. The Los Angeles Housing Authority, which provides portable vouchers to around 45,000

89. N.Y. State Unified Court System, N.Y. City Civil Court Housing Part, http://www.nycourts.gov/courts/nyc/housing/index.shtml (last visited Apr. 3, 2010); *see also, e.g.*, Ron Stodghill, *A House Divided: Uncivil War on E. 73rd.*, N.Y. TIMES, Dec. 10, 2006, § 3 at 1.

90. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 298 fig.81 (2000).

91. Olsen, *supra* note 4, at 394.

92. Computed from U.S. GEN. ACCOUNTING OFFICE, GAO-01-901R, FEDERAL HOUSING PROGRAMS: WHAT THEY COST AND WHAT THEY PROVIDE 1 (2001).

households, in 1999 had 342,000 households on its waiting list.[93] Many project-subsidy programs also attract far more applicants than can be served. When news spreads that a private project in a prime location will include some affordable units, applicants may exceed the number of available units by a multiple of one hundred.[94] And little wonder: a *New York Times* article reported that a thirty-two-year-old aspiring novelist won a lottery that enabled him to buy, for $14,000 in cash and a monthly maintenance fee of $295, a studio co-op apartment in a fashionable neighborhood of Manhattan.[95] In that instance, the market price of a comparable unit would have been perhaps twenty times greater.[96] The fact that all other major welfare programs are designed to avoid these sorts of haphazard outcomes highlights the gravity of the horizontal inequity of all current methods of housing assistance.

Janet Currie pinpoints the lottery aspect of housing assistance as its principal defect.[97] To address this problem, and that of vertical equity as well, Edgar Olsen has recommended that all current federal spending on project assistance be converted to additional funding for housing vouchers, to which every eligible needy household would be entitled without having to wait in a queue.[98] In the absence of an increase in total federal appropriations, this reform would require a substantial reduction in the amount of housing aid per recipient from the current level of about $500 per month.

2. Vertical Equity

Most analysts urge that means-tested transfers be directed primarily to the poorest households—those most likely to be living in substandard housing and to be overburdened by rent obligations. Many means-tested benefits are so targeted. To qualify for food stamps, for example, a household's income typically must be less than 130 percent of the applicable federal poverty threshold.[99]

Much federal housing assistance, however, is conferred on households with considerably higher incomes.[100] Judged by the criterion of vertical equity, vouchers are far superior to project-based housing aids, partly because vouchers

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93. Olsen, *supra* note 4, at 394 n.28, Housing Authority of the City of Los Angeles, Section 8 Housing, http://www.hacla.org/section8 (last visited Apr. 3, 2010).
94. Vivian S. Toy, *Winning That One in a Million*, N.Y. TIMES, Mar. 2, 2008, at RE1.
95. Susan Dominus, *A Co-op for $14,000? It's No Fiction*, N.Y. TIMES, Feb. 15, 2008, at B1.
96. The co-op in question was located in a building on 88th Street near Third Avenue. *Id. See generally* Toy, *supra* note 94 (describing the depth of purchasers' subsidies).
97. CURRIE, *supra* note 12, at 94.
98. Olsen, *supra* note 60, at 109–12; Olsen, *supra* note 4, at 437.
99. *See* 7 U.S.C. § 2014(c)(2) (2006).
100. Olsen, *supra* note 4, at 393.

are easier to target. In 1998, Congress required local housing authorities to award at least 75 percent of vouchers to households whose incomes were below 30 percent of the median income in their metropolitan area (a ceiling roughly equal to the official poverty threshold).[101] By 2005, 78 percent of housing voucher holders indeed had incomes below 30 percent of the area median.[102] In contrast, partly to avoid concentrations of poverty in public housing projects, the same 1998 statute required that only 40 percent of the units in federally subsidized projects be allocated to households below 30 percent of the area median.[103]

When measured by the vertical equity yardstick, most mixed-income affordable housing programs fall especially short. The developer of an LIHTC project, for example, can legally rent a low-income unit to any household with an income less than 50 percent of the area median. This income ceiling is two-thirds higher than the one applicable to the households favored under the federal voucher program. The developers of many LIHTC projects in fact aim for an even more prosperous tenantry.[104]

Additionally, scholars who have evaluated inclusionary efforts in New Jersey, which were prompted in large part by the *Mount Laurel* decisions and the state's Fair Housing Act, have found less social integration than proponents of these efforts had hoped for. Most of the beneficiaries of the suburban New Jersey projects were themselves suburbanites, principally elderly white women.[105] Relatively few were African American.[106]

The distributive effects of inclusionary zoning programs in other jurisdictions are similarly suspect. Roughly half of the local governments in the Boston and San Francisco metropolitan areas have adopted some sort of inclusionary program, as have the great majority of the counties and cities in the Washington, D.C. area.[107] Most agencies that administer these programs release little or no information about the characteristics of the households that occupy

101. Quality Housing and Work Responsibility Act of 1998, Pub. L. 105-276, § 513(a), 112 Stat. 2461, 2545 (codified at 42 U.S.C. § 1437n(b)(1) (2006)).

102. Dawkins, *supra* note 32, at 76.

103. 42 U.S.C. § 1437n(a) (2006).

104. Shilesh Muralidhara, *Deficiencies of the Low-Income Housing Tax Credit in Targeting the Lowest-Income Households and in Promoting Concentrated Poverty and Segregation*, 24 LAW & INEQ. 353, 358–64 (2006). In addition, the rent that a subsidized LIHTC tenant pays does not vary with the tenant's income. As a result, the poorest applicants for subsidized LIHTC units may face prospective rent burdens far in excess of 30 percent of income. *Id.* at 359. By stacking other subsidies on top of the tax credits, however, some developers of LIHTC projects are able to accommodate households whose incomes are near the poverty threshold.

105. Naomi Bailin Wish & Stephen Eisdorfer, *The Impact of* Mount Laurel *Initiatives: An Analysis of the Characteristics of Applicants and Occupants*, 27 SETON HALL L. REV. 1268, 1305 (1997).

106. *Id.* at 1302–05; *see also* Porter, *supra* note 38, at 244–45 (stating that inclusionary programs do little to relocate poor and minority households from inner cities to suburbs).

107. Schuetz et al., *supra* note 38, at 444–46.

their inclusionary units. It is nonetheless plain that the vast majority of the beneficiaries are solidly middle class. Many of these suburbs make at least some inclusionary units available to households with incomes up to 120 percent of the area median, and most make them available to those with incomes up to 80 percent of the median.[108] Again, for comparison, the incomes of most holders of Section 8 vouchers fall below 30 percent of the area median.

Montgomery County, Maryland administers one of the largest and most transparent inclusionary programs in the United States.[109] Montgomery County's program is structured to deliver inclusionary units to households whose incomes are 70 percent or less of the area median when they move in, a ceiling well above the poverty threshold. The county establishes a fixed rent (or sale price) for each inclusionary unit rather than calculating rent as a percentage of income.[110] The formulas used by the county to determine the reduced rents and sale prices assure that subsidies are not deep enough to make the units affordable by the truly needy. For example, in 2008, the developer of an inclusionary two-bedroom unit in a low-rise apartment building might be entitled to charge a household of three a rent of $1200 per month (not including utilities).[111] A Montgomery County report issued in 2007 confirms that the county's inclusionary program primarily serves households whose incomes at time of entry are between 60 and 70 percent of the area median—that is, just below ceiling for eligibility.[112] New beneficiaries in 2008 thus would mostly have had annual incomes in the $60,000 to $70,000 range.[113]

Moreover, Montgomery County does not ask a benefited household to report changes in income after it has moved into an inclusionary unit.[114] The

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108. *Id.* at 448. Administrators of housing programs typically refer to households in these respective groups as "moderate-income" and "low-income." The programs of the Washington, D.C. suburbs generally are targeted at households with somewhat lower incomes, typically those below 70 percent of the area median. *Id.*

109. For information about the program, see Montgomery County, Dep't of Hous. & Cmty. Affairs, Moderately Priced Dwelling Unit (MPDU) Program, http://www.montgomerycountymd.gov/dhctmpl.asp?url=/Content/DHCA/housing/housing_P/mpdu.asp (last visited Apr. 3, 2010). For an overview, see LESLIE RUBIN & ARON TROMBKA, OFFICE OF LEGISLATIVE OVERSIGHT, MONTGOMERY COUNTY, A STUDY OF MODERATELY PRICED DWELLING UNIT PROGRAM IMPLEMENTATION, NO. 2007-9 (2007).

110. RUBIN & TROMBKA, *supra* note 109, at 39–41, 45–46.

111. Calculated according to formulas set out in MONTGOMERY COUNTY, MD., CODE REGS. §§ 25A.00.02.02, .05 (2003).

112. RUBIN & TROMBKA, *supra* note 109, at 5.

113. In 2009 HUD's official estimate of the median annual income of a family in the Washington, D.C., PMSA was $102,700. Hud.gov, FY 2009 Median Family Income Documentation System, http://www.huduser.org/portal/datasets/il/il2009/st_mfi.odb (last visited Mar. 25, 2010) (select "District of Columbia-DC" from dropdown menu).

114. During the first three decades of its program, Montgomery County controlled the prices of its inclusionary units for only a short period, sometimes as little as five or ten years. By 2002, at

rents that the developer/owner is permitted to charge in subsequent years are set according to a formula that is entirely based on other variables.[115] Some long-term occupants of the county's inclusionary units are therefore virtually certain to have annual incomes in excess of $100,000. Indeed, between 2005 and 2007, because of quirks in the design of the county's program, a handful of developers were entitled to sell inclusionary units at the controlled price to purchasers of any income.[116]

Montgomery County has periodically released additional information about program beneficiaries that is pertinent to equity issues. According to one report, 95 percent of the recipients of the county's inclusionary units already lived in the county, and all but one of the remaining recipients worked there.[117] Furthermore, a majority of the initial occupants of the inclusionary units have been members of racial minority groups.[118] In the years for which data are available, Asian Americans, who make up 11 percent of the county's population, have comprised 40 percent of the initial occupants.[119]

Many of the relevant interest groups prefer that an inclusionary zoning ordinance have the middle-class tilt that characterizes the Montgomery County program. Developers tend to favor inclusionary tenants who are likely to be both steady in their rent payments and socially acceptable to the households that occupy the unsubsidized units in the same development. Middle-income people who own homes near a proposed inclusionary project also are likely to prefer that it be relatively upscale. In a prosperous suburb such as Montgomery County, taxpayers and members of municipal labor unions may warm to a developer-financed program that confers inclusionary units on some of the

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least one-third of the exacted units had already been freed from price controls and were no longer providing subsidized accommodations. ARON TROMBKA ET AL., STRENGTHENING THE MODERATELY PRICED DWELLING UNIT PROGRAM: A 30-YEAR REVIEW, REPORT TO THE MONTGOMERY COUNTY COUNCIL 6-1, 7-1 (2004), *available at* http://www.montgomerycountymd.gov/council. A majority of the county's for-sale inclusionary units nevertheless remain in its affordable stock. Porter, *supra* note 38, at 238. Since 1989, even after the expiration of the control period, the county has exacted half of an owner's excess proceeds from a sale, a policy that has discouraged sales. In addition, the county has a right of first refusal at the time of sale. The county's housing agency (HOC) has purchased 1600 of the for-sale units over the years and has then rented them to households with incomes below 50 percent of area median income. Because the county could empower its housing agency to purchase scattered-site units in non-inclusionary developments, I credit this tilt toward greater vertical equity to the housing agency's purchasing efforts, not to the county's inclusionary zoning program as such.

115. RUBIN & TROMBKA, *supra* note 109, at 41–43.

116. *Id.* at 48–49.

117. Porter, *supra* note 38, at 243.

118. Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65, 79 n.81 (2001).

119. Porter, *supra* note 38, at 243.

suburb's employees, including college-educated professionals such as school teachers and librarians. Although a politically popular result, this is hardly a triumph of Rawlsian justice.

III. METHODS OF PROMOTING THE ECONOMIC INTEGRATION OF NEIGHBORHOODS

By definition, mixed-income housing programs are designed to enhance the residential integration of households with disparate incomes. Given the relative poverty of many African Americans and Hispanic Americans, efforts to promote economic integration can also be expected to contribute to greater racial integration.[120] Because the United States is a highly diverse nation, Americans unquestionably have reason to encourage bridging across social groups that might otherwise tend to be isolated from one another. The analysis in this Part rests on the premise that the successful economic integration of neighborhoods is a goal of transcendent importance; it concludes, however, that, from what we now know, the mixed-income project model is a mediocre instrument for pursing that goal. The next Part turns to the more fundamental question of whether, in the design of housing assistance policies, the greater economic integration of neighborhoods should be regarded as the *summum bonum*.

A. Are Projects Promising Microcosms for Economic Integration?

A mixed-income affordable project, such as our hypothetical Evergreen Woods, is designed to promote greater economic (and perhaps racial) integration at the level of the residential block. But it is not evident that a geographic space this small is a promising venue for the pursuit of this goal. In *Bowling Alone*, Robert Putnam famously distinguishes between two types of valuable social capital.[121] Bonding social capital promotes trust and cooperation among the members of a social subgroup, while bridging social capital strengthens ties between members of different subgroups. Over the course of a day, most individuals rotate through a variety of different (but commonly overlapping) social milieus in which both bonding and bridging may be achievable. For a child, the residential block is likely to be a less important social microcosm than the household and the school. For an adult, workmates, family, and friends are likely

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120. U.S. CENSUS BUREAU, *supra* note 2, tbl.674. Partly because of statutory and constitutional constraints, virtually all housing assistance programs are officially race-blind. My analysis assumes that they indeed are administered in race-blind fashion.

121. PUTNAM, *supra* note 90, at 22–24.

to be more important than neighbors. Nonetheless, blocks unquestionably can be sites for the nurturing of both bonding and bridging social ties.

There is substantial evidence that in some social contexts the enhancement of opportunities for bridging among members of different social groups simultaneously diminishes internal bonding among members of an individual group.[122] If so, those who want to strengthen social capital in the aggregate face a dilemma. Bonding social capital unquestionably is valuable at the block level because it helps enable neighbors to, for example, provide mutual aid and informally police against nuisance behavior. Enhanced integration of socioeconomic groups within a given block or blockfront, although it might enhance bridging social capital, possibly might impair this sort of cooperation among neighbors.[123]

The choice of the optimal social milieu for the pursuit of economic integration therefore is a difficult one. The New Jersey Supreme Court, in its two famous *Mount Laurel* decisions, flip-flopped on this exact question. The author of *Mount Laurel I*[124] was Justice Frederick Hall, an archfoe of exclusionary zoning. Justice Hall's opinion, however, only required municipalities to allow for an appropriate variety of housing at selected locations within their boundaries and explicitly blessed the use of zoning to set aside some neighborhoods as exclusive.[125] To oversimplify, Justice Hall's opinion sought to promote economic integration at the geographic scale of the local public high school, not that of the block. Eight years later, in *Mount Laurel II*,[126] a revamped New Jersey Supreme Court reversed course and prodded municipalities to promote the provision of inclusionary housing units within each new housing development.[127]

Much remains to be learned about the trade-offs between bonding and bridging social capital in different social milieus. From what is now known, there are grounds for skepticism about the capacity of a mixed-income housing

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122. Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-First Century*, 30 SCANDINAVIAN POL. STUD. 137 (2007).

123. In theory, positive and negative social consequences should be at least partially capitalized into housing prices. To my knowledge, there have been no published studies of whether inclusionary units in a mixed-income development affect the market values of the same development's unsubsidized units. Numerous researchers, however, have striven to measure the effects of the construction of a subsidized housing project or the entry of Section 8 tenants on property values in a neighborhood. *See* George C. Galster, *The Effects of Affordable and Multifamily Housing on Market Values of Nearby Homes*, *in* GROWTH MANAGEMENT AND AFFORDABLE HOUSING: DO THEY CONFLICT? 176 (Anthony Downs ed., 2004) (reviewing various studies), and sources cited *supra* note 80.

124. S. Burlington County NAACP v. Twp of Mount Laurel (*Mount Laurel I*), 336 A.2d 713 (N.J. 1975).

125. *Id.* at 731–34.

126. S. Burlington County NAACP v. Twp. of Mount Laurel (*Mount Laurel II*), 456 A.2d 390 (N.J. 1983).

127. *Id.* at 445–50.

project to enhance the aggregate stock of social capital.[128] The authors of the most-cited empirical study on the subject conclude that "the level of interaction between the income groups in [mixed-income] projects appears to be insignificant."[129] Other housing experts have cautioned that the mixed-income model rests on sociological assumptions that may not be valid.[130] In addition, sociological theory suggests that members of lower-income households themselves might dislike the social environment of an inclusionary development. Individuals tend to care a lot about their relative status in a given social setting.[131] Whatever the other benefits of living in Evergreen Woods, the adults and children in the ten affordable units (assuming they would socialize with their neighbors) might be frustrated by their difficulty in keeping up with the Joneses who occupy the other forty units.

B. Vouchers as an Instrument for Promoting Neighborhood Economic Integration

Assuming that the greater economic integration of neighborhoods is indeed an overriding policy objective, what housing assistance policies would best promote this end? For many observers, the main shortcoming of Section 8 vouchers is that they do not do enough to enhance the racial integration of neighborhoods.[132] Many users of housing vouchers live in areas where people like themselves predominate.[133] For example, a poor black tenant who holds a housing voucher commonly ends up renting in a largely poor, largely black neighborhood. Nonetheless, numerous researchers have found that, as a general matter, housing vouchers have done more than project-based subsidies to

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128. This statement assumes, for simplicity, that "units" of bonding and bridging social capital are equal in social value. In a social environment particularly lacking in one type of social capital but not the other, units of the type in short supply might be regarded as more valuable than units of the other.

129. Paul C. Brophy & Rhonda N. Smith, *Mixed-Income Housing: Factors for Success*, CITYSCAPE: J. POL'Y DEV. & RES., 1997 No. 2, at 3, 25.

130. One commentator, after reviewing the evidence, urges HUD to concentrate on integrating neighborhoods, not particular projects. Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL'Y 35, 70–81 (2002); *see also* SCHWARTZ, *supra* note 8, at 261–67. Schwartz concludes that "the limited research to date on mixed-income housing has yet to show that the presence of higher income neighbors by itself improves the economic or social condition of low-income families (e.g., by providing role models, job leads)." *Id.* at 266.

131. ROBERT H. FRANK, CHOOSING THE RIGHT POND: HUMAN BEHAVIOR AND THE QUEST FOR STATUS (1987).

132. *See, e.g.*, SCHWARTZ, *supra* note 8, at 175; James DeFilippis & Elvin Wyly, *Running to Stand Still: Through the Looking Glass With Federally Subsidized Housing in New York City*, 43 URB. AFF. REV. 777 (2008).

133. Lan Deng, *Comparing the Effects of Housing Vouchers and Low-Income Housing Tax Credits on Neighborhood Integration and School Quality*, 27 J. PLANNING EDUC. & RES. 20 (2007).

enhance the economic integration of neighborhoods. A voucher holder is far less likely than a resident of public housing and somewhat less likely than a resident of a privately owned subsidized project to live in a neighborhood with a high rate of poverty.[134] When subsidized tenants are asked whether their current neighborhood is better or worse than their previous one, 45 percent of voucher holders answer better and 12 percent answer worse.[135] By contrast, in both public and private subsidized projects, the number of tenants answering worse exceeds the number answering better.[136] In most metropolitan areas, vouchers appear also to have done more than LIHTC projects to promote neighborhood racial integration.[137]

The studies just cited, however, mainly examined the integrative effects of projects in which all units, not just some, were subsidized. Mixed-income projects conceivably could foster economic integration better than could housing vouchers, especially at the block level. The available evidence on this important question, however, is less favorable to the mixed-income project than one might expect. As noted, the recipients of many inclusionary housing units are themselves middle-class suburbanites. But even in instances where there is actual economic integration in a mixed-income project, the subsidized tenants might be stigmatized in a manner that would impair the development of bridging relationships between members of different income groups. Neighbors commonly know when a new development encompasses inclusionary units, and the residents of a mixed-income development may learn which units have subsidies tied to them. Vouchers are potentially more discreet. If both the landlord and the tenant avoid spilling the beans, the holder of a housing voucher can move into a more prosperous neighborhood incognito. The relative invisibility of a voucher promises to help normalize a voucher holder's future relationships with neighbors.

134. SCHWARTZ, *supra* note 8, at 160–66; Deng, *supra* note 133, at 22; Jeffrey R. Kling et al., *Experimental Analysis of Neighborhood Effects*, 75 ECONOMETRICA 83, 87–88 (2007); Sandra J. Newman & Ann B. Schnare, "*. . . And a Suitable Living Environment": The Failure of Housing Programs to Deliver on Neighborhood Quality*, 8 HOUSING POL'Y DEBATE 703 (1997); Olsen, *supra* note 4, at 393, 407–11. *But cf.* DeFilippis & Wyly, *supra* note 132.

Federal law entitles a voucher holder to lease a rental unit outside the boundaries of the jurisdiction that granted the voucher. This portability rule gives rise to complications and, in some instances, resistance on the part of suburban jurisdictions. *See* JUDITH D. FEINS ET AL., STATE AND METROPOLITAN ADMINISTRATION OF SECTION 8: CURRENT MODELS AND POTENTIAL RESOURCES (1996) (report prepared for U.S. Department of Housing and Urban Development).

135. DUANE T. MCGOUGH, U.S. DEP'T OF HOUS. & URBAN DEV., CHARACTERISTICS OF HUD-ASSISTED RENTERS AND THEIR UNITS IN 1993, at 30 (1997).

136. *Id.*

137. Deng, *supra* note 133, at 27–28.

If the economic integration of neighborhoods is the paramount social objective, lawmakers could shape the rules governing existing forms of housing assistance with this goal in mind. But Congress no doubt would hear howls of protest if it were to consider mandating that all new public housing or LIHTC projects be scattered outside of poor neighborhoods. Because vouchers are relatively invisible, Section 8 is the more potent instrument for the affirmative promotion of economic integration. Some local housing authorities already provide counseling services to help voucher holders find apartments.[138] Several states forbid a landlord from discriminating against a tenant on the basis of the tenant's sources of income.[139] More pointedly, Congress could adjust the formulas for calculating voucher benefits in order to encourage poor voucher holders to choose to rent in more prosperous neighborhoods. To foster this sort of outcome, small financial bonuses could be provided, for example, to both the tenant and the landlord whose efforts combine to bring it about.

IV. RISING DOUBTS ABOUT THE MAGNITUDE OF THE BENEFITS OF NEIGHBORHOOD ECONOMIC INTEGRATION

Urban commentators have widely assumed that, all else equal, it is highly disadvantageous for poor adults and children to reside in a poor neighborhood.[140] This premise underpinned many of the integrationist visions that flowered in the 1960s. It eventually inspired, among many other byproducts, the mixed-income subsidized housing model.[141] Prominent sociologists closely associated with this traditional position include William Julius Wilson and, more recently, Robert Sampson.[142] According to this view, economic integration is likely to

138. Sean Zielenbach, *Moving Beyond the Rhetoric: Section 8 Housing Choice Voucher Program and Lower-Income Urban Neighborhoods*, 16 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 9, 31 (2006) (reporting mobility counseling in Philadelphia).

139. *See, e.g.*, Franklin Tower One, L.L.C., v. N.M., 725 A.2d 1104 (N.J. 1999).

140. For an overview of issues of neighborhood integration, see EDWARD G. GOETZ, CLEARING THE WAY: DECONCENTRATING THE POOR IN URBAN AMERICA (2003).

141. *See* Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons From Chicago's Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL'Y 117, 154–60 (2009) (describing how housing reformers, not public housing residents themselves, pushed the mixed-income model in Chicago).

142. *See* WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987); Robert J. Sampson et al., *Durable Effects of Concentrated Disadvantage on Verbal Ability Among African-American Children*, 105 PROC. NAT'L ACAD. SCI. 845 (2008). Sampson and his co-authors note the importance and difficulty of controlling for the possibility that households that move out of a neighborhood with concentrated poverty differ from households that remain.

have a variety of beneficial consequences.[143] A poor schoolchild is more likely to encounter helpful peers and adult role models at local public schools. A poor adult who resides near more prosperous neighbors is more likely to hear of job opportunities through informal social networks. Scenarios such as these have kindled support for policies to "dismantle the ghetto"[144] and economically integrate subsidized housing projects previously occupied exclusively by the very poor.[145] Initial studies of the effects of one such effort, the Gautreaux program in Chicago, appeared to confirm that moving to a more prosperous neighborhood significantly improves a child's schooling and employment outcomes.[146]

Most housing policy specialists rightly seek to end the ghettoization of poor households in mammoth subsidized housing projects.[147] When poor households are clustered in a neighborhood of conventional private housing, however, it is hardly so clear that policymakers should seek to disperse the concentration. Recently published studies have begun to destabilize the former consensus that a poor adult or child is significantly disadvantaged by residing among other poor people. These studies suggest that the net social benefits of the economic and racial integration of neighborhoods, while probably still positive, are not as large as previously thought.

The HUD-funded Moving to Opportunity (MTO) studies have been the most influential, largely because of the magnitude of the MTO experiment and the high quality of the research design.[148] The households participating in MTO

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143. *See generally* Ingrid Gould Ellen & Margery Austin Turner, *Does Neighborhood Matter? Assessing Recent Evidence*, 8 HOUSING POL'Y DEBATE 833 (2001).

144. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 15, 218 (1993).

145. The pertinent literature primarily focuses on the integration of entire neighborhoods, not of individual blocks (what a mixed-income project seeks to integrate). The social dynamics of neighborhoods and blocks obviously may differ.

146. *See, e.g.*, LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, CROSSING THE CLASS AND COLOR LINES (2000). For concerns about the methodologies used in the Gautreaux studies, see CURRIE, *supra* note 12, at 103–04, and SCHWARTZ, *supra* note 8, at 169–70.

147. *See, e.g.*, Schill, *supra* note 22. *But cf.* Brian A. Jacob, *Public Housing, Housing Vouchers and Student Achievement: Evidence From Public Housing Demolitions in Chicago*, 94 AM. ECON. REV. 233 (2004) (finding that living in a high-rise public housing project does not by itself impair the educational outcomes of children).

148. The findings of the MTO studies are summarized in Kling et al., *supra* note 134. The first published MTO studies reported greater positive benefits from economic integration. *See, e.g.*, CHOOSING A BETTER LIFE? EVALUATING THE MOVING TO OPPORTUNITY SOCIAL EXPERIMENT (John Goering & Judith D. Feins eds., 2003). In particular, Jens Ludwig et al., *The Effects of MTO on Children and Parents in Baltimore*, *id.* at 153, found that poor children aged five to twelve had better educational outcomes when their parents moved them to higher-income neighborhoods. But a later study concluded that MTO data indicated that neighborhood effects on educational outcomes are small. Lisa Sanbonmatsu et al., *Neighborhoods and Academic Achievement: Results From the Moving to Opportunity Experiment*, 41 J. HUM. RESOURCES 649 (2006).

were volunteers who at the outset were residing in public housing projects in Baltimore, Boston, Chicago, Los Angeles, or New York. Most were both poor and members of minority groups. These households were randomly divided into three groups: a control group whose members remained in their public housing units; a constrained housing voucher group that was awarded vouchers but could use them only in a low-poverty neighborhood; and an unconstrained housing voucher group that was not limited by neighborhood. Most households in the last group used their vouchers to rent dwelling units in high-poverty, mostly minority neighborhoods. Those in the constrained voucher group, the primary focus of the experiment, mostly chose to move to relatively prosperous neighborhoods that also were predominantly minority. Four to seven years later, researchers assessed the outcomes for teenagers and adults. According to the traditional view, the outcomes of children in the constrained voucher group—the beneficiaries of neighborhood economic integration—should have been significantly superior to the outcomes for the children in the other two groups. This proved to be true for teenage girls.[149] For teenage boys, however, living in a more prosperous neighborhood generally turned out to be disadvantageous, to roughly the same extent that it had been advantageous for girls.[150] These boys, perhaps because their parents had moved them to what they regarded to be a "wrong pond," were significantly more likely than the boys in the other two groups to use drugs and alcohol and to be arrested for a property crime. The adults in the MTO experiment who moved to low-poverty neighborhoods showed gains in mental health, but not in employment, physical health, and freedom from welfare dependence.[151]

Also pertinent is a recent study by Robert Putnam, the most prominent analyst of social capital.[152] After reviewing the vast literature on the consequences of the integration of neighborhoods, particularly by race and ethnicity, Putnam comes to sobering conclusions. He asserts that residents of diverse neighborhoods have less social capital than do residents of more homogeneous neighborhoods.[153] Moreover, the members of an ethnic group who live in a relatively integrated neighborhood are likely to have weaker ties to other members of their own ethnic group than they would if they lived in an ethnic enclave.[154] Putnam affirms his support for integration, but he is compelled

149. Kling et al., *supra* note 134, at 103; Sanbonmatsu et al., *supra* note 148, at 678–79.

150. Kling et al., *supra* note 134, at 105; Sanbonmatsu et al., *supra* note 148, at 678–82.

151. *But cf.* David M Cutler et al., *When are Ghettos Bad? Lessons From Immigrant Segregation in the United States*, 63 J. URB. ECON. 759 (2008) (finding that although ghettoization on average may help some immigrants in U.S. cities, it is detrimental to poor immigrants).

152. Putnam, *supra* note 122.

153. *Id.* at 149–51, 156.

154. *Id.* at 148–51.

by his findings to shift his emphasis to the long-term benefits of neighborhood diversity.[155]

Other less-publicized studies similarly cast doubt on the traditional view that economic integration gives rise to significant social benefits. Philip Oreopoulos finds that growing up in a poor neighborhood does not by itself lead to worse outcomes for children.[156] His results indicate that a child's household environment has a far greater effect than a child's neighborhood environment.

Various studies on residential preferences suggest that most poor minority households do not warm to the prospect of moving to wealthier white neighborhoods. For example, most African Americans state in surveys that they prefer to live in a neighborhood that is mostly African American.[157] Some of these responses may stem from concerns that nonblack neighbors might discriminate against blacks. There is recent econometric evidence, however, that many African Americans are positively attracted to living in a mostly black neighborhood.[158] An affirmative taste for stratifying by social class also seems to be widespread, even among members of lower-status groups. Individuals who have not graduated from college, for example, seem to be willing to pay a premium to live in a neighborhood that is not mostly inhabited by college graduates.[159]

The revisionist thesis that poor people garner no more than modest benefits from living in a neighborhood that is not poor is consistent with the residential choices that most poor people make. As noted, poor minority households that hold housing vouchers tend to end up renting in mostly poor, mostly minority neighborhoods. This would be less common, no doubt, if more landlords in prosperous neighborhoods were willing to participate in Section 8 and if voucher holders were unconcerned about how warmly they would be received by their new neighbors. The revisionist works just cited suggest, however, that most voucher holders may affirmatively prefer to live

155. *Id.* at 163–65.

156. Philip Oreopoulos, *The Long-Run Consequences of Living in a Poor Neighborhood*, 118 Q. J. ECON. 1533 (2003).

157. *See* Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan Areas*, 86 CORNELL L. REV. 729, 737 (2001) (citing Reynolds Farley et al., *Continued Residential Segregation in Detroit: "Chocolate City, Vanilla Suburbs" Revisited*, 4 J. HOUSING RES. 1 (1993)).

158. Patrick Bayer et al., *Separate When Equal?: Racial Inequality and Residential Segregation* (Yale Working Papers on Econ. Applications and Policy, Discussion Paper No. 09, Oct. 2005).

159. Patrick Bayer et al., *A Unified Framework for Measuring Preferences for Schools and Neighborhoods*, 115 J. POL. ECON. 588, 626 (2007). For anecdotal support, see MARY PATILLO, BLACK ON THE BLOCK: THE POLITICS OF RACE AND CLASS IN THE CITY 297–99 (2007) (recounting how a poor black woman resented that a wealthier black neighbor "looked down on" her).

amidst people like themselves.[160] Some mayors have learned this lesson the hard way. In the 1950s, many cities used the power of eminent domain to raze entire poor neighborhoods, such as Southwest Washington, D.C., and Boston's West End.[161] City officials rarely attempt this today, partly because they are aware that many impoverished residents value their neighborhoods and would rush to poverty lawyers in an effort to stave off the bulldozer.[162]

The studies on neighborhood integration just mentioned are hardly the final word on this complex social issue. Like most commentators, I welcome the prospect of increased residential integration by race and income, especially within a territory the size of a high school district, a plausible social milieu for fostering bridging social capital. Mixed-income housing projects attempt, however, to promote integration at the fine-grained level of the block, a venue in which the nurturing of bonding social capital plausibly should be given higher priority.[163] Taken as a whole, the recent social scientific findings suggest that the social benefits of mixed-income projects are unlikely to outweigh the inherent inefficiency and unfairness of the approach.[164]

V. WHY SUPPORT FOR PROJECT-BASED SUBSIDIES PERSISTS

Financial interests and antimarket ideologies spur much of the support for the production of subsidized housing projects, mixed-income or otherwise. A government program that annually dispenses billions of dollars—whether for the production of ethanol, submarines, or affordable housing—brings into existence constituencies whose members then provide continuing political support for the program. Many housing advocates are connected to organizations whose revenues depend on the continued development of affordable projects. Organizations of this stripe have created the National Low Income Housing Coalition, which is spearheading the effort to make the nascent National Housing Trust Fund a functioning entity. In the early 1990s, Paul Grogan, the president of one of the nation's largest syndicators of LIHTCs, lobbied fervently and suc-

160. *See also* GOETZ, *supra* note 140, at 241.

161. *See* HOWARD GILLETTE, JR., BETWEEN JUSTICE AND BEAUTY: RACE PLANNING AND THE FAILURE OF URBAN POLICY IN WASHINGTON, D.C. (1995) (on events in Southwest, D.C.); Marc Fried, *Grieving for a Lost Home: Psychological Costs of Relocation*, *in* URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 359 (James Q. Wilson ed., 1966) (on Boston's West End).

162. *Cf.* John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433 (2003) (lamenting the effects of neighborhood gentrification).

163. Robert C. Ellickson, *The Puzzle of the Optimal Social Composition of Neighborhoods*, *in* THE TIEBOUT MODEL AT FIFTY 199 (William A. Fischel ed., 2006).

164. *See also* SCHWARTZ, *supra* note 8, at 261–66 (concluding that the case for fostering greater income integration is not yet proven).

cessfully to make the LIHTC program permanent.[165] Attorneys who specialize in the development of affordable housing projects have created a 3000-member American Bar Association group that publishes a journal and holds annual conferences.[166] The unions that represent the construction trades tend to favor project subsidies not only because construction projects employ their members but also because a legislature may be amenable to dictating that project developers pay "prevailing wages."[167] In suburbs where the supply of housing is inelastic, the imposition of inclusionary housing exactions on developers may boost the value of both new and existing houses.[168] Federal, state, and local politicians all have learned that having the power to influence project approvals can provide leverage to raise campaign contributions. It is hardly news that HUD's project programs have frequently been rocked by scandal.[169]

Ideological commitments have primarily motivated some boosters of subsidized projects. Edith Wood, the most prominent early proponent of U.S. projects, had scorn for the outcomes produced by the forces of supply and demand.[170] Chester Hartman, for decades one of the most prominent critics of housing vouchers, favors scrapping the market system of housing supply and replacing it with a new system in which nonprofit entities, supported by government grants covering all capital costs, would provide housing at one-third of current market rents.[171] Yet these advocates of bricks-and-mortar solutions to the affordable housing problem tend to underappreciate the subtleties of

165. *See, e.g.*, Paul Grogan, Op-Ed, *Points of Urban Light*, WASH. POST, July 19, 1992, at C3. From 1986 to 1998, Grogan was president of the nonprofit Local Initiatives Support Corporation (LISC).

166. American Bar Association, Affordable Housing and Community Development Law Information, http://new.abanet.org/Forums/Affordable/Pages/Information.aspx (last visited Mar. 25, 2010).

167. *See* Sarah Dunn, John M. Quigley & Larry A. Rosenthal, *The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing*, 59 INDUS. & LAB. REL. REV. 141 (2005) (estimating that application of California's prevailing-wage law raised the cost of constructing assisted housing by 9 to 37 percent).

168. *See* Jenny Schuetz et al., *Silver Bullet or Trojan Horse: The Effects of Inclusionary Zoning on Local Housing Markets* (NYU, Furman Ctr. for Real Estate & Urban Policy, Working Paper, 2009) (finding this result in the greater Boston area, but not in the San Francisco Bay area); *see also* Antonio Bento et al., *Housing Market Effects of Inclusionary Zoning*, CITYSCAPE: J. POL'Y DEV. & RES., 2009 No. 2, at 7, 20 (finding that, from 1988 to 2005, the prices of new houses rose 2 to 3 percent faster in California cities that had adopted inclusionary zoning policies than in those that had not). *See generally* GLAESER & GYOURKO, *supra* note 8, at 81–86 (analyzing inclusionary zoning as a tax on market-rate housing development); Ellickson, *supra* note 38 (noting that "inclusionary" governments commonly are exclusionary in many respects).

169. IRVING H. WELFELD, HUD SCANDALS: HOWLING HEADLINES AND SILENT FIASCOES (1992); Tad DeHaven, *Three Decades of Politics and Failed Policies at HUD* (Cato Inst., Policy Analysis No. 655, 2009).

170. *See, e.g.*, WOOD, RECENT TRENDS, *supra* note 16, at 43–47.

171. CHESTER HARTMAN, BETWEEN EMINENCE AND NOTORIETY: FOUR DECADES OF RADICAL URBAN PLANNING 248 (2002).

housing markets. An infusion of portable vouchers into a city boosts both the quality and quantity of housing supply because the rise in demand helps induce landlords to upgrade their buildings to attract tenants.[172] Conversely, an infusion of subsidized projects adds less than might be expected to the total housing stock because it tends to displace private production that would otherwise occur.[173] Those who rank project subsidies above vouchers tend to ignore these secondary effects.

The report of the Bipartisan Millennial Housing Commission evinces a similar lack of confidence in housing markets. Perceiving a "shrinking rental supply," the commission advocates massive government aid to add at least five million designated affordable units to the housing stock.[174] In the process of pressing for this solution, the commission's report refers to statistics that show that there were actually 3.2 million more rental housing units than renting households in the United States in 1999.[175] The report claims that "vouchers alone will not be enough in housing markets where the supply is inadequate or to provide housing opportunities in areas with fast-growing employment."[176] The commission, however, failed to name any specific metropolitan area where it deemed these conditions to prevail. In 2002, the year of the commission's report, the vacancy rate for rental units in the seventy-five largest metropolitan areas was 8.8 percent, and it exceeded 14 percent in the fast-growing metropolitan areas of Atlanta, Phoenix, and San Antonio.[177] In contrast, in metropolitan Boston, New York, and San Francisco—centers of efforts to produce mixed-income housing projects—the vacancy rate for rental units in 2002 was about half the national average.[178] In virtually all metropolitan areas, reducing barriers to unsubsidized housing production and providing rent-burdened households with additional funds to help them choose

172. CURRIE, *supra* note 12, at 107–08; Todd Sinai & Joel Waldfogel, *Do Low-Income Housing Subsidies Increase the Occupied Housing Stock?*, 89 J. PUB. ECON. 2137, 2154–55 (2005).

173. Stephen Malpezzi & Kerry Vandell, *Does the Low-Income Housing Tax Credit Increase the Supply of Housing?*, 11 J. HOUSING ECON. 360 (2002); Michael P. Murray, *Subsidized and Unsubsidized Housing Stocks 1935 to 1987: Crowding Out and Cointegration*, 18 J. REAL EST. FIN. & ECON. 107 (1999); Sinai & Waldfogel, *supra* note 172, at 2154–55 (finding that an additional unit of project-based housing adds 0.17 to 0.28 units to the total occupied housing stock, while a voucher adds 0.65 units).

174. BIPARTISAN MILLENNIAL HOUS. COMM'N, *supra* note 26, at 17–18.

175. Calculated from data provided in *id.* at 16 fig.6.

176. *Id.* at 18.

177. U.S. CENSUS BUREAU, HOUSING VACANCIES AND HOMEOWNERSHIP, ANNUAL STATISTICS: 2002, at tbl.5 (2004), http://www.census.gov/hhes/www/housing/hvs/annual02/ann02t5.html. Rental vacancy rates tend to be relatively high in the fast-growing metropolitan areas of the Sunbelt.

178. *Id.* (reporting vacancy rates of 4.3, 4.6, and 5.2 percent respectively for these three metropolitan areas).

among existing dwellings would be far more efficient and fairer than ramping up construction of units set aside as sites for subsidies.[179]

Nevertheless, the political prospects of a shift to an all-voucher strategy are dim.[180] Critics of vouchers deploy a predictable litany of objections. Those on the left assert that vouchers mostly inflate rents and that a large fraction of voucher holders will end up not being able to find housing. Those on the right claim that vouchers overly destabilize neighborhoods.[181] On balance, the wealth of evidence on all these issues indicates that the concerns are overblown.[182] Nonetheless, members of Congress feel little pressure to convert project-based housing aid to tenant-based aid. The staunchest supporters of project-based subsidies, while not numerous, are sophisticated and well organized. The millions of poor households who would be the primary beneficiaries of an expanded voucher program are diffuse and not mobilized. Enough said.

CONCLUSION: THE MEDIOCRITY OF THE MIXED-INCOME HOUSING PROJECT

Mixed-income affordable housing projects are unquestionably superior to the large ghettoized public housing structures that until recently blighted the most populous American cities. While the process of developing a mixed-income project is likely to give rise to more red tape per subsidized unit, a private mixed-income project is likely to endure longer than a public housing project and to be better managed and less socially troubled.

Nonetheless, building mixed-income subsidized projects is a mediocre policy approach. In most contexts, using tax revenues to enhance spending on housing vouchers would be far more efficient and fairer than devoting those same revenues to providing inclusionary units. Although hardly problem-free, vouchers confer greater benefits on recipients and avoid many of the pitfalls

179. *See* GLAESER & GYOURKO, *supra* note 8, at 119–36; WEICHER, *supra* note 25, at 27–28.

180. *See* Olsen, *supra* note 60, at 112–24; WEICHER, *supra* note 25, at 43–44.

181. Howard Husock, *Let's End Housing Vouchers*, 10 CITY J. 84 (2000).

182. *See* CURRIE, *supra* note 12, at 106–08; WEICHER, *supra* note 25, at 43. Most studies conclude that vouchers do not significantly inflate rents; see Olsen, *supra* note 4, at 421–22, for a summary. *But cf.* GLAESER & GYOURKO, *supra* note 8, at 116–18 (implying that rent increases are to be expected where housing supply is inelastic). Nationally, over two-thirds of Section 8 awardees are able to benefit from their vouchers, with the lowest success rates in New York City, Los Angeles, and other rent-control jurisdictions in which vacant apartments are relatively scarce. *See* MERYL FINKEL & LARRY BURON, STUDY ON SECTION 8 VOUCHER SUCCESS RATES ii, iv (2001) (report prepared for U.S. Department of Housing and Urban Development). On neighborhood impacts, see Zielenbach, *supra* note 138.

of project-based aid.[183] Experience indicates that the mixed-income project approach is far more flawed. It has blossomed primarily on account of the political influence of those who gain from supplying these developments. That a return to the traditional public housing model would be worse yet hardly establishes an affirmative case for the mixed-income model.

Some specific indictments are in order. One mediocre federal program is HOPE VI, a vehicle for razing a failed public housing project (a good idea) and replacing it, commonly at extraordinarily high cost, with a new mixed-income development (a bad idea).[184] Another is the Low-Income Housing Tax Credit, the program of federal aid that now encompasses a greater number of dwelling units than the entire stock of public housing.[185] Yet another is the nascent National Housing Trust Fund—the favorite of many housing advocates—that Congress nominally established in 2008.[186]

The critique also calls into question the wisdom of city and state inclusionary programs that require developers of market-rate housing to provide either affordable units or in-lieu fees to finance others' development of mixed-income projects. These inclusionary policies, like the federal programs just identified, are mediocre in the sense that the resources devoted to them would be far better allocated otherwise. The exaction of inclusionary housing from developers first began in the 1970s. By 2003 the various inclusionary programs had generated, nationwide, on the order of 90,000 new subsidized housing units, less than 0.1 percent of the national housing stock.[187] The exaction of inclusionary housing is most prevalent in states where housing is exceptionally expensive, such as California, Maryland, Massachusetts, and New Jersey. Both theory and evidence suggest that so-called "inclusionary" policies have actually contributed to the high cost of housing in these jurisdictions.[188] And it is undisputed that these same states, and their municipalities, impose unusually

183. Voucher programs share some of the potential shortcomings of project-based programs. The officials who administer them may be incompetent or corrupt. *See, e.g.*, Cindy Loose, *Five D.C. Housing Employees Charged; Only 10 of 400 New Rent Vouchers Issued Since 1990 Didn't Involve Bribery, Probe Finds*, WASH. POST, Apr. 13, 1994, at A1. All forms of housing aid may foster dependency among recipients. *See* Mark Shroder, *Does Housing Assistance Perversely Affect Self-Sufficiency? A Review Essay*, 11 J. HOUSING ECON. 381 (2002). And any form of in-kind housing benefit, as opposed to a cash transfer, arguably reflects an unjustified paternalism. *But cf.* Olsen, *supra* note 4, at 368–70.

184. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 63, at 21 (estimating that HOPE VI costs between 27 and 42 percent more per unit than does providing housing vouchers).

185. Glaeser and Gyourko also urge elimination of the LIHTC program. GLAESER & GYOURKO, *supra* note 8, at 104–14.

186. This Trust Fund "seems likely to repeat the worst mistakes of past housing history." *Id.* at 119.

187. Porter, *supra* note 38, at 241.

188. *See supra* note 168 and accompanying text.

severe legal constraints on housing supply.[189] Collectively, their perverse policies include exclusionary zoning practices, strict growth controls, and complex environmental reporting requirements that enable opponents to delay (and sometimes derail) proposed housing developments.[190]

The allure of the mixed-income project has entranced too many housing advocates active in California, Massachusetts, and the other exclusionary states. Those who genuinely wish to help poor households would be wiser to devote their efforts to documenting and publicizing their states' unjustified constraints on housing supply and to supporting legislation to lower those barriers.[191] These reforms, coupled with more extensive use of vouchers, would render vastly greater benefits to low-income people who lack decent and affordable housing. The mixed-income project strategy is a far less efficient and a far less equitable means to that noble end.

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189. According to one index, these four states are among the nine most restrictive in the nation. Joseph Gyourko et al., *A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index*, 45 URB. STUD. 693, 711 (2008).

190. *See generally* ELLICKSON & BEEN, *supra* note 62, at 368–93, 760–818. On the consequences in California, see John M. Quigley & Steven Raphael, *Regulation and the High Cost of Housing in California*, 95 AM. ECON. REV. 323 (2005); in New York, see Edward L. Glaeser et al., *Why Is Manhattan So Expensive? Regulation and the Rise in House Prices*, 48 J.L. & ECON. 331 (2005).

191. Glaeser and Gyourko have proposed, for example, that Congress place a cap of $300,000 on the home mortgage interest deduction available to a taxpayer who resides in a county where housing prices are high and housing production historically has been low. The additional federal revenues raised would be used to reward counties of the same description that later witnessed significantly higher rates of housing production. GLAESER & GYOURKO, *supra* note 8, at 121–32, 142–71.