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Jim Crow North and Fair Housing Enforcement¹

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Abstract

This article investigates how federal, state, and local government agencies enforce the federal Fair Housing Act of 1968 (also known as Title VIII of the Civil Rights Act of 1968) in Northeastern states, which are referred to here as the Jim Crow North. Focusing on data obtained from the U.S. Department of Housing and Urban Development (HUD) under the Freedom of Information Act (FOIA), this study measures the extent to which the thirteen Northeastern states—from Maine to Virginia—decided Fair Housing Act complaints in favor of Black and Latinx Americans from 1989 to 2010.

Part I presents a historical snapshot of fair housing law and policy in the Jim Crow North. Part II examines the federal legal response to residential discrimination and segregation nationwide. Part III explains the theory and methodology for calculating favorable outcomes

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made by federal, state, and local governments in Northeastern Title VIII complaints. Part IV provides the results of the favorable outcome analysis for Black and Latinx Americans. Part V spotlights New York and New Jersey to better understand their low rates of favorable outcomes in Fair Housing Act complaints. The conclusion discusses the study's findings and suggests some explanations.

The analysis leads to three key takeaways. First, it reveals considerable variations in favorable outcomes across the Jim Crow North, even between adjacent states with similar demographic traits. Such outcome variations suggest that governmental jurisdictions' support for Title VIII complainants can differ noticeably and that the region, state, or locality in which a person files a Fair Housing Act complaint makes a difference. Second, Black complainants are most likely to win their Title VIII claims in federal Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). In contrast, Latinx people are most likely to obtain favorable outcomes in federal Region III (Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). Third, Black and Latinx complainants are least likely to win Title VIII claims in federal Region II, which consists of New York and New Jersey.

Because of this third finding, the Article then explores aspects of law, race relations, and public policy in New York and New Jersey to help explain their low rates of favorable outcomes in Fair Housing Act complaints. Four facts about New York and New Jersey are considered: their comparatively high levels of (1) residential, (2) school, and (3) economic segregation, as well as (4) their lack of local jurisdictions participating in HUD's Fair Housing Assistance Program (FHAP). Our analysis assumes that if subnational governmental decisions primarily represent the demands of people and groups with the most influence at the state and local levels, and if residential, educational, and economic segregation are the preference of many people and

groups in New York and New Jersey, civil rights agencies in these states will likely respond by deciding a relatively low percentage of Fair Housing Act complaints in favor of Black and Latinx complainants. Because of data limitations, the analysis cannot directly measure the individual effects of residential, educational, or economic segregation on the decisions of FHAP agencies, so it cannot prove that one or more of these four factors cause Region II's low favorability rates. Nonetheless, the results suggest that such a causal link is plausible.

Given this conclusion, this Article proposes four recommendations for Region II. First, working closely with HUD, governors, mayors, and business leaders, New York and New Jersey should develop new incentive programs to dramatically increase the number of certified local FHAP agencies. Second, Congress and the current presidential administration should make certain that funds and other resources are available to new local FHAP agencies in New York and New Jersey to enforce the Fair Housing Act effectively. Third, HUD should play an aggressive role in helping all local jurisdictions in New York and New Jersey participate in FHAP, including the drafting of new local fair housing laws that are substantially equivalent to Title VIII. Finally, Congress and HUD should hold all FHAP agencies to a higher standard of enforcement performance in race and national origin Title VIII cases generally. Unfortunately, in light of the re-election of President Donald Trump in 2024, these recommendations must await a future administration and a Congress far more sympathetic toward fair housing rights. There is a reasonable chance that fair housing law and policy in the United States will experience turmoil throughout the remainder of the second Trump administration, and perhaps beyond. Depending on what occurs over the next few years, some of the progress made in equal housing opportunity over the past seven decades is in jeopardy.

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INTRODUCTION

Housing segregation has defined the lives of racial and ethnic minorities in urban America for much of the United States's history.⁴ The country's political and legal systems have failed to eliminate the segregated housing patterns that plague our nation.⁵ No breakthrough is in sight—only a pattern of modest decline in segregation, so segregation will remain a divisive feature of American democracy for decades to come.⁶ And although flagrant residential discrimination has declined since the 1970s,⁷ more subtle practices have arisen to take their place,⁸ making housing discrimination a moving target.⁹ As one discriminatory practice is diminished or contained, another emerges and spreads. Therefore, Douglas Massey, the Henry G. Bryant Professor of Sociology at Princeton University, concludes that the elimination of racial housing discrimination in the United States will probably “require a sustained and dedicated effort over a prolonged period of time.”¹⁰

⁴ See *infra* text accompanying notes 25-49. See generally, Robert F. Drinan, *Untying the White Noose*, 94 YALE L.J. 435 (1984) (discussing the limitations of federal housing policy to remedy racial segregation); James A. Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Residential Segregation in the United States*, 22 HOW. L.J. 547 (1979) (studying the phenomena of racial segregation in the United States); Florence W. Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 143 U. PA. L. REV. 1351 (1995) (commenting on the role of federal housing policy in creating poverty); Richard H. Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874 (1988) (discussing why fair housing laws have failed in the United States and the strategies to achieve housing integration).

⁵ See, e.g., MARIA KRYSAN & KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* 8-10 (2017) (arguing that the federal government has caused much of the housing segregation in the United States and has poorly enforced federal fair housing law).

⁶ JOHN R. LOGAN & BRIAN J. STULTS, *THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2020 CENSUS* 1-3 (2021), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf> [<https://perma.cc/B4MY-NM5E>], (last visited Oct. 4, 2024).

⁷ RICHARD H. SANDER, YANA A. KUCHEVA & JONATHAN M. ZASLOFF, *MOVING TOWARD INTEGRATION: THE PAST AND FUTURE OF FAIR HOUSING* 164 (2018).

⁸ MARGERY AUSTIN TURNER, ET AL., *HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES*, 2012 xi (2013).

⁹ Douglas S. Massey, *Racial Discrimination in Housing: A Moving Target*, 52 SOC. PROBS. 148, 148-149 (2005).

¹⁰ *Id.* at 149.

The Northeastern United States, often thought of as liberal and pioneering in many respects, has a long history of housing segregation and discrimination. That history is addressed in *The Strange Careers of the Jim Crow North*,¹¹ a thought-provoking book edited by Professors Brian Purnell, Jeanne Theoharis, and Komozi Woodard.¹² The volume's cover asserts, "Jim Crow was not a regional sickness, it was a national cancer. Even at the high point of twentieth-century liberalism in the North, Jim Crow racism hid in plain sight."¹³ As the authors present the concept of the Jim Crow North, it applies to cities and states not just in the North but also in the West.¹⁴ Purnell and Theoharis's introductory chapter presents scathing allegations about Northern and Western racism. While strict laws reinforced the Jim Crow South, cementing segregation into Southern society and backed by horrific instances of violence, "[j]udges, police officers, school board officials, PTAs, taxpayer groups, zoning board bureaucrats, urban realtors and housing developers, mortgage underwriters, and urban renewal policy makers created and maintained the Jim Crow North."¹⁵ The remainder of the book explores the experiences of individual Black activists who expose how Northern racism worked as a racial *system*.¹⁶

¹¹ THE STRANGE CAREERS OF THE JIM CROW NORTH: SEGREGATION AND STRUGGLE OUTSIDE OF THE SOUTH (Brian Purnell, Jeanne Theoharis, & Komozi Woodard eds., 2019).

¹² Brian Purnell is an Associate Professor of Africana Studies and History at Bowdoin College. Jeanne Theoharis is a Distinguished Professor of Political Science at Brooklyn College. Komozi Woodard is a Professor of American History, Public Policy, and Africana Studies at Sarah Lawrence College.

¹³ PURNELL ET AL., *supra* note 8, at back cover.

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 9 (emphasis added). Purnell and Theoharis express the intensity of their beliefs about the actual history of Jim Crow racism outside the South in the following passage: "Expanded Jim Crow systems of northern racial segregation confined [B]lack citizens to American ghettos; criminalized the spaces where they lived and learned and played; denied them schooling that would make college possible, and then turned around and refused to hire them; imprisoned hundreds of thousands of people; extracted resources from their schools; plundered their property-based wealth; allowed a rapacious, lucrative drug economy to flourish; and supported victim-blaming ideologies that laid the burden for all of these social ills at the foot of urban [B]lack people's behavior and cultures." *Id.* at 27.

Whether in the South, North, or West, residential color lines are residual relics of white supremacy and reminders of the Jim Crow racial systems that lead to immense inequities for people of color.¹⁷ In some instances, this conclusion may apply to members of other minority groups, though perhaps to a different degree, as Black Americans normally receive the greatest degree of racial prejudice, exploitation, and oppression in our nation. From this study's perspective, and as declared by Douglas Massey and Nancy Denton over three decades ago, no group has ever faced the unrelenting high level of housing segregation that Black people have experienced in the nation's major cities since the end of World War II.¹⁸

Massey and Denton's award-winning *American Apartheid: Segregation and the Making of the Underclass* is pertinent to the Northeast's Jim Crow history.¹⁹ Based on Massey and Denton's calculations, the housing markets in five Northeastern cities were "hypersegregated" in 1980.²⁰ New York, Newark, Philadelphia, Baltimore, and Buffalo had the worst conditions, with

¹⁷ See generally, THOMAS J. SUGRUE, "No Right More Elemental," in SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH (2008) (revealing how Northern cities like New York, Chicago, and Los Angeles, in contrast to cities in the Jim Crow South, had their own brand of Jim Crow laws and practices); JESSICA TROUNSTINE, *Living on the Wrong Side of the Tracks: Inequality in Public Goods Provision, 1900-1940*, in SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES (2018) (presenting data and analysis on the negative consequences of racial and ethnic housing segregation); JESSICA TROUNSTINE, *Segregation's Negative Consequences*, in SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES (2018) (presenting data and analysis on the negative consequences of racial and ethnic housing segregation).

¹⁸ DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 2 (1993). Nancy Denton, Douglas Massey's graduate student at the University of Pennsylvania, subsequently became a well-known sociologist at the University of Albany, SUNY, and is currently affiliated with the Stanford Center on Poverty and Inequality.

¹⁹ *Id.* See also the following historical studies investigating the Jim Crow North: RICHARD ARCHER, JIM CROW NORTH: THE STRUGGLE FOR EQUAL RIGHTS IN ANTEBELLUM NEW ENGLAND (2017); MARTHA BIONDI, TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY (2003); BRIAN PURNELL, FIGHTING JIM CROW IN THE COUNTY OF KINGS: THE CONGRESS OF RACIAL EQUALITY IN BROOKLYN (2013); PURNELL, THEOHARIS, & WOODARD, *supra* note 8; SUGRUE, *supra* note 14; CLARENCE TAYLOR, KNOCKING AT OUR OWN DOOR: MILTON A. GALAMISON AND THE STRUGGLE FOR SCHOOL INTEGRATION IN NEW YORK CITY SCHOOLS (1997); FREEDOM NORTH: BLACK FREEDOM STRUGGLES OUTSIDE THE SOUTH, 1940 - 1980 (Jeanne Theoharis & Komozi Woodard, eds., 2003).

²⁰ MASSEY & DENTON, *supra* note 15, at 76.

Boston, Pittsburgh, and Washington, D.C. not far behind.²¹ Massey and Denton define hypersegregated metropolitan areas as those that are “very highly segregated on at least four of . . . five dimensions at once”: unevenness, isolation, clustering, centralization, and concentration.²² Massey and Jonathan Tannen updated these findings years later, discovering that between 1970 and 2010, Black people were hypersegregated at one time or another in 52 metropolitan areas nationwide.²³ Based on the definition of the “Northeast” used in this study,²⁴ these 52 metro areas included not only New York-Newark, Philadelphia, Baltimore, and Buffalo, but also Boston, Hartford, Pittsburgh, Richmond, Roanoke, Rochester, Springfield, MA, Syracuse, Washington, D.C., and York, PA.²⁵

Because of the persistence of Northern segregation, this Article investigates how federal, state, and local governments have enforced the Fair Housing Act of 1968 in the Jim Crow North. Part I introduces Massey and Denton’s historical interpretation of fair housing law and policy in the Northeast. Part II turns to the federal legal response to residential discrimination and segregation nationwide, including the Northeast. Part III explains how this study calculates favorable outcomes made by federal, state, and local governments in discrimination complaints filed in the Northeast under the Fair Housing Act of 1968, which is also known as Title VIII of the Civil Rights Act of 1968. This aspect of the research is important since scholars pay relatively little attention to state and local Title VIII enforcement.²⁶ Part IV presents the results of

²¹ *Id.*

²² *Id.* at 74.

²³ Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025, 1027 (2015).

²⁴ This definition of the Northeast includes the six New England states (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont), New York and New Jersey, as well as Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.

²⁵ Massey & Tannen, *supra* note 20, at 1028.

²⁶ See Charles S. Bullock, III, Charles M. Lamb & Eric M. Wilk, *Cooperative Federalism and Fair Housing Enforcement*, 99 SOC. SCI. Q. 728, 729 (2018).

that analysis for Black and Latinx Americans. Part V then focuses on federal Region II (New York and New Jersey) to better understand their low rates of favorable outcomes in Title VIII complaints. The concluding section summarizes the study's findings, discusses some possible explanations for the low favorable outcomes in Region II, and proposes four recommendations to improve the Region's favorable outcomes.

I. A HISTORICAL SNAPSHOT

Scholars have published a library of books and articles on the United States's civil rights history.²⁷ Some publications, like *American Apartheid*, spend time examining the Northeast.²⁸ According to Massey and Denton, before 1900, white people and Black people "lived side by

²⁷ Part V of this Article explores some of the literature on the history of fair housing law and policy in the Northeast, focusing especially on New York and New Jersey. *See infra* text accompanying notes 115-164. *See also* the literature on the Jim Crow North, *supra* note 16, as well as two classic studies on American residential segregation and discrimination. First, Robert C. Weaver examines the growth of urban residential segregation in the North, providing evidence of the extensive use of restrictive covenants and how they isolated Black people in urban ghettos. *See* ROBERT C. WEAVER, *THE NEGRO GHETTO* (1948). He concludes that federal and local agencies, including the Federal Housing Administration (FHA) and local public housing authorities, failed to deal with the problem of race and housing. Second, Charles Abrams argues that sizeable migrations of racial and ethnic groups into predominantly white urban areas tend to worsen housing shortages, leading white Americans to respond with anger and violence. *See* CHARLES ABRAMS, *FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING* (1955). Like Weaver, Abrams exposes realtors, builders, and mortgage lenders as perpetrators of housing discrimination, but emphasizes the government's role as well in causing these problems, particularly the policies of the FHA and the Home Owners Loan Corporation. Both Weaver and Abrams urge governments to assume a more active role in combatting housing segregation and discrimination. Countless other legal, sociological, historical, political, and economic studies impressively address housing segregation and discrimination from different perspectives.

²⁸ MASSEY & DENTON, *supra* note 15. The focus here is on Massey and Denton's research because they have arguably published the most widely known housing segregation research in the United States over the past four decades. Prior to *AMERICAN APARTHEID*, which won various awards, Massey and Denton also published several major studies on housing segregation in leading sociology journals. *See, e.g.,* Douglas S. Massey & Nancy A. Denton, *Trends in the Residential Segregation of Blacks, Hispanics, and Asians: 1970-1980*, 52 *AM. SOCIO. REV.* 802 (1987); Douglas S. Massey & Nancy A. Denton, *Suburbanization and Segregation in U.S. Metropolitan Areas*, 94 *AM. J. OF SOCIO.* 592 (1988); Douglas S. Massey & Nancy A. Denton, *Racial Identity Among Caribbean Hispanics: The Effect of Double Minority Status on Residential Segregation*, 54 *AM. SOCIO. REV.* 790 (1989). Prolific through the years, Massey has many other academic interests, yet he continues to be a leading contributor to housing segregation research.

side in American cities.”²⁹ When Black-white segregation was modest and Black populations were small, the North experienced substantial Black-white interaction.³⁰

Massey and Denton observe that race relations in the Northeast changed drastically over the next three decades.³¹ During this period, white people increasingly isolated themselves from Black people in New York, Newark, Philadelphia, Pittsburgh, Boston, and Buffalo.³² Many Northern white people greeted the Great Migration of Black people into their communities with hostility.³³ “Middle-class whit[e] [Americans] were repelled by what they saw as the uncouth manners, unclean habits, slothful appearance, and illicit behavior” of some Black people.³⁴ Competition for jobs and housing produced friction with working-class white people.³⁵ Northern newspapers reinforced negative stereotypes about Black Americans by “increasingly us[ing] terms such as ‘nigger’ and ‘darkey’ in print and carr[ying] unflattering stories about [B]lack crimes and vice.”³⁶ White parents gradually stopped sending their children to integrated schools, and Black professionals lost much of their white clientele.³⁷ Racial violence occurred in Northern

²⁹ MASSEY & DENTON, *supra* note 15, at 17. Purnell and Theoharis have a different interpretation of Black-white interaction and racial justice in the North during early American history. The North, they argue, “led the nation in systemized racial injustice. Around the time of the American Revolution, as free [B]lac[k] [people] and fugitives from slavery populated northern cities, political and legal restrictions on [B]lack life increased.” For instance, in the late eighteenth century, “[B]lack citizens petitioned Boston’s city government for redress because their skin color denied them access to state-sponsored schools.” PURNELL ET AL., *supra* note 8, at 12. “Boston schools struggled with Jim Crow racism all the way through the twentieth century, and Jim Crow moved from the North to the South, from northern state courts to the highest court in the nation.” PURNELL ET AL., *supra* note 8, at 13.

³⁰ MASSEY & DENTON, *supra* note 15, at 24.

³¹ *Id.* at 26.

³² *Id.* at 24.

³³ For leading studies of the Great Migration, *see generally*, JAMES N. GREGORY, *THE SOUTHERN DIASPORA: HOW THE GREAT MIGRATIONS OF BLACK AND WHITE SOUTHERNERS TRANSFORMED AMERICA* (2005); NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* (1992); ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* (2010).

³⁴ MASSEY & DENTON, *supra* note 15, at 29.

³⁵ *Id.*

³⁶ *Id.* at 30.

³⁷ *Id.*

cities in the 1900s, especially during the “Red Summer” of 1919,³⁸ as Black people were increasingly segregated from white people in the housing market.³⁹

As evidence of the extent of racial segregation, in 1940, about 70% of Northern Black city residents would need to relocate to attain an even racial residential configuration in those cities.⁴⁰ Black isolation in New York City skyrocketed from 5% to 42% between 1900 and 1930.⁴¹ There was also great inequality in the living standards across these segregated neighborhoods. One study found that in 1957, numerous minority residents of New York City had to endure unhealthy, second-rate, congested living conditions due to housing segregation and discrimination, all of which had the effect of endangering the safety, health, and welfare of the City’s entire population.⁴²

Public policy also significantly contributed to segregated housing in the Jim Crow North. As early as 1910, Baltimore passed a racial zoning ordinance creating separate Black and white neighborhoods in the city.⁴³ Other cities adopted similar ordinances.⁴⁴ In *Buchanan v. Warley* (1917), the United States Supreme Court unanimously banned racial zoning, declaring that the property provision of the Due Process Clause of the Fourteenth Amendment prohibits state and

³⁸ *Id.* at 30, 34–35. The “Red Summer” of 1919 refers to violent racial conflicts, usually white-on-Black, that occurred in some 26 American cities and towns following the return of soldiers after World War I. The violence was primarily caused by competition for jobs, many of which had been abandoned so soldiers could join the war effort, and in some instances were now held by Black Americans. *See, e.g.,* GILBERT OSOFSKY, *HARLEM: THE MAKING OF A GHETTO: NEGRO NEW YORK, 1890–1930* 46–52 (1966); ELLOTT RUDWICK, *RACE RIOT AT EAST ST. LOUIS, JULY 2, 1917* (1982); ALLAN H. SPEAR, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO, 1890–1920* 214–22 (1967).

³⁹ MASSEY & DENTON, *supra* note 15, at 31.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 1957 New York City Fair Housing Law, New York, N.Y., Administrative Code § X41-1.0(a) (Supp. 1960-61), *quoted in* Joseph B. Robison, *Housing—The Northern Civil Rights Frontier*, 13 W. RES. L. REV. 101, 105 n.19 (1961). For details, *see* U.S. COMM’N ON CIV. RTS., *REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS* 386-93 (1959).

⁴³ MASSEY & DENTON, *supra* note 15, at 41–42.

⁴⁴ *Id.*

local government actions that would deny citizens the right to own, acquire, use, and dispose of property.⁴⁵ After *Buchanan*, residential segregation was promoted largely through racially restrictive covenants, discriminatory real estate and banking practices, and ultimately violence.⁴⁶

After 1940, the quantity and quality of housing for Black newcomers in the North became seriously restricted.⁴⁷ By blockading Black people's access to white areas, ghetto housing was subdivided for new Black arrivals.⁴⁸ Spatial isolation intensified for Black people as garages, basements, closets, and sheds were converted into apartments.⁴⁹ Housing conditions continued to deteriorate, and Black isolation grew more intense.⁵⁰ As the Great Migration from the South continued, Newark, Philadelphia, Washington, D.C., and other once predominantly white cities, saw their Black populations increase, but on a segregated basis.⁵¹ Among Northern cities, Black spatial isolation more than doubled, on average, from 1930 to 1970.⁵²

This Black spatial isolation persists today in Jim Crow North. Table 1 shows that as of 2020, four Northeastern metro areas ranked in the ten most Black-white segregated areas nationwide: Newark, New Jersey, was first; New York-Jersey City-White Plains was fourth; Philadelphia, Pennsylvania, was seventh; and Nassau County-Suffolk County, New York, was tenth.⁵³ Table 1 indicates the percentage of Black people that would need to move for the group

⁴⁵ 245 U.S. 60 (1917).

⁴⁶ MASSEY & DENTON, *supra* note 15, at 42. Restrictive covenants are clauses placed in property contracts that, among other things, white property owners used to limit or prohibit the sale or rental of real estate to certain groups of people to keep communities racially or religiously segregated. In *Shelley v. Kraemer*, the U.S. Supreme Court announced that private restrictive covenants are not unconstitutional, but that state court enforcement of discriminatory covenants constitutes a form of state action that violated the Equal Protection Clause of the Fourteenth Amendment. 334 U.S. 1 (1948).

⁴⁷ MASSEY & DENTON, *supra* note 15, at 43.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 45.

⁵² *Id.* at 46.

⁵³ LOGAN & STULTS, *supra* note 3, at 5–7, 19–20.

to be evenly distributed across neighborhoods, block groups, or blocks. For example, almost three-fourths of the populations of Newark or New York-Jersey City-White Plains would have to move to eliminate the Black-white residential segregation that existed in 2020.⁵⁴

⁵⁴ While Black spatial isolation continues in major Northeastern metropolitan areas, over time there are substantial differences in Black net migration gains and losses across leading cities in the region. According to William Frey, a well-known demographer at the University of Michigan, large numbers of Black Americans returned to Southern cities between 1975 and 2020. For instance, Atlanta received a net Black migration gain of 22,111 between 1975 and 1980, 74,705 between 1985 and 1990, 114,478 between 1995 and 2000, 118,750 between 2005 and 2010, 70,830 between 2010 and 2015, and 68,835 between 2015 and 2020. WILLIAM H. FREY, A “NEW GREAT MIGRATION” IS BRINGING BLACK AMERICANS BACK TO THE SOUTH, BROOKINGS Table B (2022), www.brookings.edu/articles/a-new-great-migration-is-bringing-black-americans-back-to-the-south [https://perma.cc/ATA8-VVSZ]. In contrast, from 1975 to 2020, several Northeastern metro areas lost far more Black migrants than they gained. This is especially true of New York City, which experienced the greatest Black net migration losses in the Northeast during these years: -139,789 between 1975 and 1980; -190,108 between 1985 and 1990; -193,061 between 1995 and 2000; -309,200 between 2005 and 2010; -249,980 between 2010 and 2015; and -301,430 between 2015 and 2020. *Id.* Additionally, certain Northeastern states mainly gained or lost Black residents during these years. Northeastern states with net Black migration gains primarily include Maryland and Virginia, whereas the largest losses in Black residents were in New York, New Jersey, and Pennsylvania. *Id.* at Table A.

Table 1. Black-White Segregation in 50 Metro Areas with the Largest Black Populations in 2020

2020 Rank	Area Name	2020	2010	2000	1990	1980
1	Newark, NJ-PA	76.6	78	80.3	82.7	82.9
2	Milwaukee-Waukesha, WI	75.1	79.6	82.2	82.8	83.9
3	Detroit-Dearborn-Livonia, MI	74.5	79.6	85.9	85.6	83.0
4	New York-Jersey City-White Plains, NY-NJ	74.3	79.1	81.2	82.0	81.7
5	Chicago-Naperville-Evanston, IL	73.8	77.1	81.5	85.2	89.1
6	Miami-Miami Beach-Kendall, FL	72.1	73.0	72.4	71.8	79.4
7	Philadelphia, PA	70.2	74.3	77.8	83.3	84.4
8	Cleveland-Elyria, OH	70.0	72.6	77.2	82.8	85.7
9	St. Louis, MO-IL	67.4	70.6	73.4	77.3	81.6
10	Nassau County-Suffolk County, NY	65.5	69.2	73.6	76.4	76.9
11	Boston, MA	64.2	67.8	71.3	73.7	79.9
12	Birmingham-Hoover, AL	61.4	65.0	69.0	70.6	72.8
13	Washington-Arlington-Alexandria, DC-VA-MD-WV	61.2	63.9	65.5	67.8	71.2
14	Cincinnati, OH-KY-IN	60.6	66.9	72.6	76.0	78.2
15	New Orleans-Metairie, LA	60.2	62.9	68.6	68.1	70.1
16	Baltimore-Columbia-Towson, MD	59.9	64.3	67.6	71.4	74.4
17	Indianapolis-Carmel-Anderson, IN	59.8	64.2	70.6	74.7	78.8
18	Los Angeles-Long Beach-Glendale, CA	59.7	65.0	67.3	73.0	81.1
19	Pittsburgh, PA	59.4	63.1	57.4	70.8	73.3
20	Columbus, OH	59.2	60.6	62.8	68.1	72.9
21	Memphis, TN-MS-AR	58.9	62.2	65.7	65.3	68.8
22	Atlanta-Sandy Springs-Alpharetta, GA	58.5	58.2	63.8	66.1	76.9
23	Warren-Troy-Farmington Hills, MI	57.2	57.9	68.1	76.7	80.5
24	Houston-The Woodlands-Sugar Land, TX	57.2	60.7	65.3	65.9	74.2
25	West Palm Beach-Boca Raton-Boynton Beach, FL	56.5	57.3	65.2	75.3	83.3
26	Fort Lauderdale-Pompano Beach-Sunrise, FL	56.0	57.6	614.0	68.9	83.7
27	Jackson, MS	54.9	56.2	56.7	60.8	69.0
28	Baton Rouge, LA	54.1	56.8	59.9	59.5	68.2
29	Fort Worth-Arlington-Grapevine, TX	53.1	56.3	59.5	62.1	78.0
30	Jacksonville, FL	52.8	52.1	53.4	57.8	67.7
31	Oakland-Berkeley-Livermore, CA	52.1	56.6	62.2	68.0	74.0
32	Greensboro-High Point, NC	52.0	54.1	53.8	54.7	59.1
33	Kansas City, MO-KS	51.6	58.6	69.2	72.8	77.6
34	Dallas-Plano-Irving, TX	50.9	55.1	59.1	62.9	78.1

2020 Rank	Area Name	2020	2010	2000	1990	1980
35	Richmond, VA	50.4	53.5	55.6	58.0	63.6
36	Camden, NJ	49.7	52.3	56.2	59.5	60.1
37	Charlotte-Concord-Gastonia, NC-SC	49.7	52.4	51.7	51.3	53.6
38	Tampa-St. Petersburg-Clearwater, FL	49.6	54.3	63.4	69.6	78.2
39	Columbia, SC	49.0	48.3	48.0	50.5	57.4
40	Nashville-Davidson--Murfreesboro--Franklin, TN	49.0	54.0	56.2	59.7	65.1
41	Minneapolis-St. Paul-Bloomington, MN-WI	47.7	50.5	58.0	62.5	67.7
42	Orlando-Kissimmee-Sanford, FL	47.3	49.3	55.1	59.0	71.0
43	Frederick-Gaithersburg-Rockville, MD	47.0	47.9	46.2	42.3	42.9
44	Virginia Beach-Norfolk-Newport News, VA-NC	45.6	46.4	45.7	49.2	59.5
45	Augusta-Richmond County, GA-SC	44.1	44.1	43.0	42.9	46.8
46	Seattle-Bellevue-Kent, WA	43.7	46.6	49.2	56.1	67.7
47	Riverside-San Bernardino-Ontario, CA	41.8	44.0	45.4	43.0	52.7
48	Phoenix-Mesa-Chandler, AZ	41.1	41.3	43.3	50.1	61.4
49	Raleigh-Cary, NC	38.8	41.1	40.0	41.0	46.2
50	Las Vegas-Henderson-Paradise, NV	37.4	35.9	39.2	49.1	62.9

Source: JOHN R. LOGAN & BRIAN J. STULTS, THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2020 CENSUS 17-18 (2021), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf> [https://perma.cc/B4MY-NM5E] (accessed October 4, 2024). Reproduced with permission.

Comparing these Black-white residential segregation data to that of Latinx and whites in Table 2 leads to some similar, yet mostly different, conclusions. Newark NJ-PA, Philadelphia, and New York-Jersey City-White Plains NY-NJ remain among the five most segregated metropolitan areas in the United States.⁵⁵ Joining the ten most segregated metro areas for Latinx and whites is Cambridge-Newton-Framingham, MA, followed later in Table 2 by Nassau

⁵⁵ LOGAN & STULTS, *supra* note 3, at 21–22.

County-Suffolk County, NY.⁵⁶ Clearly, Black-white housing segregation is noticeably greater in the North and Midwest than Latinx-white segregation. At the same time, Table 2 reveals much larger numbers of highly segregated Hispanic-white communities in California and Texas.⁵⁷ Finally, note that Latinx-white housing segregation is growing far more in Table 2 than is Black-white residential segregation in Table 1. Almost half of the metro areas listed in Table 2, for example, had increases in Latinx-white residential segregation between 1980 and 2020, only two of which are in the Northeast (Cambridge-Newton-Framingham and Nassau County-Suffolk County).⁵⁸ After examining the 1980–2020 data, sociologists John Logan and Brian Stults conclude, “[t]hese new data mostly reinforce patterns that were observed a decade ago: high but slowly declining [B]lack-white segregation, and less intense but hardly changing segregation of Hispanics from whites.”⁵⁹

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 1.

Table 2. Latinx-White Segregation in 50 Metro Areas with the Largest Latinx Populations in 2020

2020 Rank	Areaname	2020	2010	2000	1990	1980
1	Salinas, CA	61.3	60.9	58.8	56.9	55.1
2	Newark, NJ-PA	61.1	62.6	64.9	67.0	67.0
3	Los Angeles-Long Beach-Glendale, CA	61.0	63.4	63.1	61.1	57.3
4	Philadelphia, PA	60.0	64.4	66.7	70.0	70.2
5	New York-Jersey City-White Plains, NY-NJ	58.8	63.1	65.4	65.0	65.2
6	Chicago-Naperville-Evanston, IL	55.0	57.2	61.5	63.1	65.0
7	Cambridge-Newton-Framingham, MA	54.4	56.8	59.3	55.4	51.3
8	Bakersfield, CA	52.0	52.3	53.5	55.1	54.2
9	Oxnard-Thousand Oaks-Ventura, CA	51.8	54.5	56.1	52.2	53.1
10	Anaheim-Santa Ana-Irvine, CA	51.4	54.1	54.9	49.8	42.4
11	Dallas-Plano-Irving, TX	50.0	51.9	53.4	49.7	48.5
12	Houston-The Woodlands-Sugar Land, TX	49.9	52.5	53.4	47.8	47.7
13	Oakland-Berkeley-Livermore, CA	48.2	48.3	46.9	38.8	36.5
14	Frederick-Gaithersburg-Rockville, MD	47.7	48.8	45.9	36.5	28.5
15	Washington-Arlington-Alexandria, DC-VA-MD-WV	47.3	48.2	48.2	44.0	32.9
16	San Diego-Chula Vista-Carlsbad, CA	47.1	49.6	50.6	45.3	41.8
17	Phoenix-Mesa-Chandler, AZ	46.4	49.3	52.1	48.6	52.2
18	Atlanta-Sandy Springs-Alpharetta, GA	46.3	49.5	51.5	35.2	30.3
19	Nassau County-Suffolk County, NY	46.1	48.5	46.9	42.3	37.1
20	San Francisco-San Mateo-Redwood City, CA	46.1	50.2	52.8	48.3	43.9
21	San Jose-Sunnyvale-Santa Clara, CA	45.4	47.6	50.8	48.0	45.2
22	Fresno, CA	45.3	46.5	46.7	47.7	46.2
23	Miami-Miami Beach-Kendall, FL	45.2	46.1	44.1	50.4	52.7
24	New Brunswick-Lakewood, NJ	44.7	46.9	49.4	45.4	47.3
25	Denver-Aurora-Lakewood, CO	44.6	48.8	50.1	46.5	48.6
26	Charlotte-Concord-Gastonia, NC-SC	42.9	45.6	48.2	31.7	27.1
27	West Palm Beach-Boca Raton-Boynton Beach, FL	42.9	42.6	42.5	41.7	43.1
28	Tucson, AZ	42.5	46.2	48.8	49.7	52.7
29	Riverside-San Bernardino-Ontario, CA	42.2	42.4	42.5	35.8	38.1
30	Fort Worth-Arlington-Grapevine, TX	42.1	45.6	47.7	44.6	47.5
31	San Antonio-New Braunfels, TX	41.3	46.1	49.8	52.3	57.5
32	Orlando-Kissimmee-Sanford, FL	41.1	40.2	38.7	29.1	28.6
33	Las Vegas-Henderson-Paradise, NV	40.9	42.0	42.4	28.9	22.5
34	Salt Lake City, UT	39.6	42.8	41.0	31.1	31.0

2020 Rank	Areaname	2020	2010	2000	1990	1980
35	Austin-Round Rock-Georgetown, TX	38.9	43.2	45.6	41.7	45.5
36	Minneapolis-St. Paul-Bloomington, MN-WI	38.4	42.6	46.5	35.6	36.4
37	Tampa-St. Petersburg-Clearwater, FL	37.9	40.7	44.4	45.3	49.8
38	Brownsville-Harlingen, TX	37.7	40.2	41.2	39.8	37.6
39	Visalia, CA	37.5	37.5	41.0	39.6	37.6
40	El Paso, TX	37.3	43.1	45.2	49.7	53.8
41	McAllen-Edinburg-Mission, TX	36.6	39.2	39.5	37.9	41.0
42	Corpus Christi, TX	36.3	41.3	45.7	47.5	52.1
43	Sacramento-Roseville-Folsom, CA	36.1	38.8	40.6	37.2	36.9
44	Stockton, CA	34.2	34.1	36.4	36.1	37.7
45	Fort Lauderdale-Pompano Beach-Sunrise, FL	34.2	33.2	31.0	25.9	26.1
46	Modesto, CA	33.6	34.2	35.2	33.3	35.7
47	Albuquerque, NM	32.1	36.4	39.7	40.5	45.0
48	Seattle-Bellevue-Kent, WA	30.0	33.3	30.1	20.3	18.8
49	Portland-Vancouver-Hillsboro, OR-WA	29.9	34.3	34.4	26.0	21.4
50	Laredo, TX	24.4	30.7	28.1	33.8	41.6

Source: JOHN R. LOGAN & BRIAN J. STULTS, *THE PERSISTENCE OF SEGREGATION IN THE Source METROPOLIS: NEW FINDINGS FROM THE 2020 CENSUS 21-22* (2021), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf> [https://perma.cc/B4MY-NM5E] (accessed October 4, 2024). Reproduced with permission.

II. THE LEGAL RESPONSE

A. *Federal Laws*

Since 1960, Congress has passed multiple equal housing opportunity laws to combat the persistent patterns of racial discrimination and segregation in housing.⁶⁰ Foremost among these is the Fair Housing Act of 1968, which prohibits discrimination based on race, color, religion, sex, and national origin in the sale, rental, and financing of housing and in the performance of

⁶⁰ See generally, ROBERT G. SCHWEMM, *HOUSING DISCRIMINATION: LAW AND LITIGATION* chs. 4–29 (2017) (discussing Title VIII’s substantive coverage as well as its enforcement, and other sources of federal fair housing law).

brokerage services.⁶¹ Beyond these five protected classifications, Title VIII outlaws six specific practices: (1) refusals to rent or sell housing; (2) discrimination in the terms, conditions, or privileges of rentals and sales in housing; (3) advertising that indicates a preference, limitation, or discrimination; (4) misrepresenting the availability of housing for rent or sale; (5) discrimination in loans for purchasing, constructing, improving, or repairing housing; and (6) discrimination in access to or membership in multiple-listing services or organizations for real estate brokers.⁶² Individuals claiming a Fair Housing Act violation may assert multiple claims of discrimination.⁶³ Title VIII also forbids retaliation against complainants or anyone who speaks up for others,⁶⁴ and it requires that all federal agencies implement their housing-related programs “affirmatively to further” fair housing.⁶⁵ In 1988, Congress amended the Fair Housing Act to protect two additional groups: persons with disabilities⁶⁶ and families with children under the age of eighteen.⁶⁷

Other federal laws address equal housing opportunities. Title VI of the Civil Rights Act of 1964 outlaws discrimination on account of race, color, or national origin in any federal or

⁶¹ 42 U.S.C. §3604-05. Sex discrimination was not prohibited by the Fair Housing Act but was added by Congress as a protected classification in 1974 through the Housing and Community Development Act, 42 U.S.C. §5301.

⁶² 42 U.S.C. §§ 3604–06.

⁶³ *Id.*

⁶⁴ 42 U.S.C. §3617.

⁶⁵ 42 U.S.C. §3608(d), e(5). In *Trafficante v. Metro. Life Ins. Co.*, the Supreme Court ruled that Congress intended the Fair Housing Act to outlaw *both* discrimination *and* segregation in housing. 409 U.S. 205 (1972). Justice Douglas, writing for a unanimous majority in *Trafficante*, stressed that Senator Walter Mondale (D-MN), a major author and advocate of Title VIII, viewed the legislation as requiring not only nondiscrimination in housing but integration as well. In Mondale’s words, the Fair Housing Act was designed to “replace the ghettos ‘by truly integrated and balanced living patterns.’” (Mondale quoted in 409 U.S. at 211). For Title VIII’s legislative history, see Jean Eberhart Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L. J. 149 (1969); Hugh Davis Graham, *The Surprising Career of Federal Fair Housing Law*, 12 J. POL’Y HIST. 215 (2000); Rigel C. Oliveri, *The Legislative Battle for the Fair Housing Act (1966-1968)*, in *THE FIGHT FOR FAIR HOUSING: CAUSES, CONSEQUENCES, AND FUTURE IMPLICATIONS OF THE 1968 FEDERAL FAIR HOUSING ACT* 28-39 (Gregory D. Squires ed., 2018); Jonathan Zasloff, *The Secret History of the Fair Housing Act*, 53 HARV. J. ON LEGIS. 247 (2016).

⁶⁶ 42 U.S.C. §3602(h).

⁶⁷ 42 U.S.C. §3602(k).

federally assisted program.⁶⁸ The Equal Credit Opportunity Act of 1974 bars discrimination by creditors on grounds of sex, marital status, race, color, religion, national origin, or age.⁶⁹ The Home Mortgage Disclosure Act of 1975 provides data on the amount and location of home improvement and mortgage loans to stop lending institutions from discriminating against particular neighborhoods, often in minority communities, when granting loans.⁷⁰ In addition, President Kennedy's Executive Order 11063 prohibits discrimination on account of race, color, creed, or national origin in the sale, lease, or rental of property owned or operated by the federal government.⁷¹ Lastly, Section 1982 of the Civil Rights Act of 1866 proclaims that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."⁷²

Overall, the above laws seem to protect a wide variety of equal housing opportunity rights that one would expect in American democracy today. But major problems remain. Segregated cities and neighborhoods still exist in much of the United States.⁷³ Blatant housing discrimination has decreased since the passage of Title VIII,⁷⁴ but as one type of discrimination is diminished or contained, another appears and spreads.⁷⁵ An additional problem involves how to best enforce the laws above. From the viewpoint of this study, a key question is how to enforce the Fair Housing Act of 1968 most effectively and efficiently. As will be seen, the answer does not come easily.

⁶⁸ 42 U.S.C. §§2000d–2000d-6.

⁶⁹ 15 U.S.C. §§1691–1691(f).

⁷⁰ 12 U.S.C. §§2801–2809.

⁷¹ Exec. Order No. 11,063, 3 C.F.R. 652 (1959–1963).

⁷² 42 U.S.C. §1982.

⁷³ See *supra* text accompanying notes 3, 22, 50–56, and Tables 1 and 2.

⁷⁴ See *supra* text accompanying note 4.

⁷⁵ See *supra* text accompanying notes 5 and 6.

B. Enforcing Title VIII

The U.S. Department of Housing and Urban Development (HUD), created in 1965 to administer federal housing and urban development laws, is responsible for the overall enforcement of the Fair Housing Act.⁷⁶ The Department of Justice (DOJ) also plays an indispensable role by filing suit in cases where there is reasonable cause to believe the Fair Housing Act has been violated.⁷⁷ Other federal agencies must “affirmatively further” fair housing in their programs (including the Departments of Agriculture, Defense, and Veterans Affairs; the Federal Reserve Board; the Federal Deposit Insurance Corporation; and the Federal Home Loan Bank Board).⁷⁸ Yet according to national laws, regulations, and executive orders, HUD is “*the* principal Federal agency” responsible for Title VIII’s administration and enforcement, including the “development of policies, procedures, regulations, standards, guidelines, and resources for the implementation” of the Fair Housing Act.⁷⁹

HUD’s Title VIII enforcement heavily depends on the effectiveness and efficiency of its administrative complaint system.⁸⁰ HUD enforces the nation’s fair housing laws by investigating, conciliating, and closing complaints claiming that housing discrimination has occurred or is about to occur.⁸¹ HUD has 100 days to investigate and decide on each complaint unless it is impractical to do so.⁸² First, HUD determines whether the agency has jurisdiction to deal with a

⁷⁶ 42 U.S.C. §3608. *See generally*, Roberta Achtenberg, *Keynote Address*, 143 U. PA. L. REV. 1191 (1995); U.S. COMM’N ON CIV. RTS., THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--1974: TO PROVIDE FOR FAIR HOUSING ch. 1 (1974).

⁷⁷ 42 U.S.C. §3614. *See* U.S. DEP’T OF HOUS. & URB. DEV., 1994 ANNUAL REPORT TO CONGRESS ON FAIR HOUSING PROGRAMS 26-32 (1996); Zasloff, *supra* note 62.

⁷⁸ U.S. COMM’N ON CIV. RTS., *supra* note 73, chs. 2-3.

⁷⁹ U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 74, at 9 (emphasis added).

⁸⁰ U.S. COMM’N ON CIV. RTS., *supra* note 73, at 27-32; U.S. DEP’T OF HOUS. & URB. DEV., LIVE FREE: ANNUAL REPORT ON FAIR HOUSING FISCAL YEAR 2010 17-34 (2011).

⁸¹ *See, e.g.*, Bullock, Lamb, & Wilk, *supra* note 23, at 730-31.

⁸² 42 U.S.C. §3610(g)(1).

complaint.⁸³ On a finding of reasonable cause, HUD's Office of Fair Housing and Equal Opportunity (FHEO) tries to resolve the dispute between the complainant and the respondent voluntarily.⁸⁴ Closure occurs with a successful conciliation or when a fair housing dispute is resolved in an appropriate judicial forum.⁸⁵

Although HUD is primarily responsible for enforcing federal fair housing protections, the processing of complaints under certain conditions shifts to state or local agencies dealing with housing discrimination.⁸⁶ If HUD has identified a state or local agency that administers a law that is "*substantially equivalent*" to Title VIII, then the Fair Housing Assistance Program (FHAP) agency *must* be given the first opportunity to investigate the complaint and, if found meritorious, attempt conciliation.⁸⁷

⁸³ U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 77, at 17.

⁸⁴ *Id.* at 29.

⁸⁵ U.S. DEP'T OF HOUS. & URB. DEV., THE STATE OF FAIR HOUSING: FY 2006 ANNUAL REPORT ON FAIR HOUSING 30–38 (2007). HUD's publications use the concept of "closure" in various ways, which may be confusing. *See*, for example, *infra* text accompanying notes 95–103 for a discussion of HUD's description of five types of closures in Title VIII complaints. By contrast, this Article focuses specifically on favorable administrative outcomes in Title VIII complaints filed by Latinx and Black Americans, that is, whether federal, state, and local governments reach outcomes favoring those Title VIII complainants. Thus, a favorable outcome is one that leaves a Fair Housing Act complainant better off than if no complaint had been filed, and favorable outcomes result from two types of HUD closures: conciliations or cause determinations, discussed in *infra* text accompanying notes 98, 99, and 102. Ultimately, favorable administrative outcomes usually result in a financial remedy for the complainant, a housing unit for the complainant, an affirmative action agreement that applies to the respondent's future behavior, or some combination of the three. For instance, conciliation agreements may include "a requirement for the respondent to pay a civil penalty or to attend fair housing training" or "assurances that the respondent will eliminate discriminatory policies and practices, provisions to remedy any other fair housing violations and prevent future violations, provisions for periodic reporting by the respondent, and provisions for HUD or the FHAP agency to monitor compliance with the agreement." U.S. DEP'T OF HOUS. & URB. DEV., ANNUAL REPORT ON FAIR HOUSING FY 2012–2013 18 (2014).

⁸⁶ Charles S. Bullock, III, & Charles M. Lamb, *Strengthening American Fair Housing Enforcement: A Proposal*, 28 U.C. DAVIS SOC. JUST. L. REV. 168, 179–180 (2024).

⁸⁷ 42 U.S.C. §3610(f)(1). *See* Charles S. Bullock, III, & Charles M. Lamb, *Race, Fair Housing Enforcement, and the Fair Housing Assistance Program*, 25 RUTGERS RACE & L. REV. 213, 231–232 (2025). To our knowledge, the only law professor to study FHAP systematically is Northwestern University's Michael Schill. *See* Michael H. Schill, *Implementing the Federal Fair Housing Act: The Adjudication of Complaints*, in FRAGILE RIGHTS WITHIN CITIES: GOVERNMENT, HOUSING, AND FAIRNESS 143–76 (John Goering ed., 2007); Michael H. Schill & Samantha Friedman, *The Fair Housing Amendments Act of 1988: The First Decade*, 4 CITYSCAPE 57 (1999). However, for a recent study by political scientists, *see* Bullock & Lamb, *supra* note 83.

HUD's complaint system sounds straightforward, but problems have plagued enforcement of Title VIII. Historically, the main problem has been that HUD's enforcement power is limited to purely *voluntary* informal methods of conference, conciliation, and persuasion.⁸⁸ Under the Fair Housing Act, if either party refuses to negotiate, HUD can usually take no meaningful action, as no form of legal coercion backs up its enforcement powers. Unlike most federal agencies, HUD lacks the power to initiate its own enforcement actions. Instead, HUD must wait for a person to file a complaint and then, when appropriate, mediate the differences between the complainant and the respondent. However, this is not true with respect to the DOJ. As Richard Sander, Yana Kucheva, and Jonathan Zasloff, a research team at UCLA Law School, observe, DOJ's power to "investigate patterns and practices of housing discrimination and bring lawsuits to stop violations . . . was probably the single most important provision"⁸⁹ of the 1968 Fair Housing Act, although a "hostile attorney general might render the DOJ enforcement power useless."⁹⁰

⁸⁸ See, e.g., U.S. COMM'N ON CIV. RTS., *supra* note 73, at 4. According to the U.S. Commission on Civil Rights, "HUD's lack of enforcement power under Title VIII has been a major stumbling block to the protection of rights under that title. When HUD finds discrimination and attempts to conciliate a resolution, the Department is successful only about half the time. If respondents do not agree to HUD's proposals in conciliation, the probability of further action is low; only 10% of the cases HUD cannot conciliate are referred to the Department of Justice (DOJ) and few of those cases are pursued." U.S. COMM'N ON CIV. RTS., THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT 5 (1979). Or, in the words of HUD Secretary Patricia Roberts Harris in 1978: "The lack of adequate enforcement power has been the most serious obstacle to the development of an effective Fair Housing Program within HUD. Our present authority is limited to a purely voluntary process of 'conference, conciliation, and persuasion'.... Simply put, 'conciliation' all too often has proved an inadequate means of securing compliance with the substantive provisions of Title VIII. Respondents frequently ignore HUD's conciliation process because there is no real inducement to cooperate. Where conciliation is successful, it is most often because the respondent knows that a realistic threat of private litigation is present, should HUD's efforts fail. But where the victim of discrimination meets with the HUD conciliator and with the respondent, and it is evident that the complainant is unrepresented by counsel, conciliation often collapses. There is no credible threat of 'consequences' should the respondent refuse to cooperate." U.S. COMM'N ON CIV. RTS., THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT 10 (1979).

⁸⁹ SANDER, KUCHEVA, & ZASLOFF, *supra* note 4, at 136.

⁹⁰ *Id.* at 144.

The 1988 Fair Housing Amendments Act strengthened equal housing opportunity enforcement in two major ways. HUD can still send a case to the DOJ if it has reasonable cause to believe that Title VIII was infringed. But under the Amendments Act, the DOJ can also sue in cases involving “general public importance,” exclusionary zoning, or where a conciliation agreement was broken.⁹¹ Alternatively, HUD can refer cases to its own administrative law judges (ALJs) instead of forwarding them to the DOJ.⁹² When HUD’s ALJs discover a Fair Housing Act violation, they can order damages, injunctive relief, and attorney’s fees.⁹³

III. Theory and Methodology

A. *Assessing Favorable Outcomes*

Federal fair housing enforcement has received mounting attention since the civil rights efforts of the 1960s. During the 1970s, the U.S. Commission on Civil Rights published exhaustive studies on how federal agencies enforced—or failed to enforce—the country’s equal housing opportunity laws.⁹⁴ Yet scholars have devoted far less attention to state and local enforcement.⁹⁵

To help fill this gap, this Article measures *favorable outcomes* in Title VIII complaints filed by Black and Latinx people and closed by HUD as well as state and local FHAP agencies in the nation’s three Northeastern regions (see Figure 1): Region I (the New England states), Region II (New York and New Jersey), and Region III (Delaware, Maryland, Pennsylvania,

⁹¹ 42 U.S.C. §3614.

⁹² See generally, U.S. COMM’N ON CIV. RTS., THE FAIR HOUSING AMENDMENTS ACT OF 1988: THE ENFORCEMENT REPORT 49–67 (1994) (describing the legal framework for the administrative adjudication of FHA complaints and the duties of administrative law judges in said process).

⁹³ 42 U.S.C. §3612(g)(3)–(p).

⁹⁴ U.S. COMM’N ON CIV. RTS., FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT (1970); U.S. COMM’N ON CIV. RTS., *supra* note 73.

⁹⁵ See Bullock, Lamb, & Wilk, *supra* note 23, at 729.

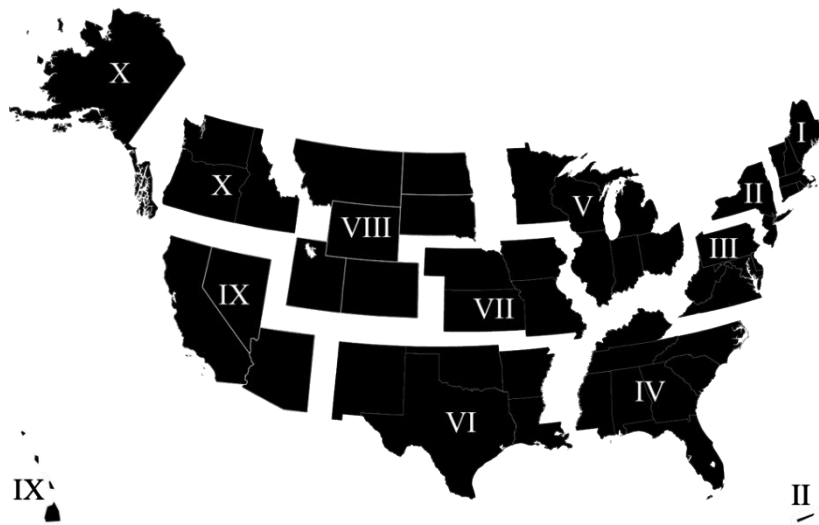
Virginia, and West Virginia).⁹⁶ This analysis covers the period between 1989 and 2010 and relies on two rich data sets received from HUD under the Freedom of Information Act (FOIA).⁹⁷ The data provides details on each Title VIII complaint filed during this period, including why it was filed and how it was decided; whether HUD, a state agency, or a local agency resolved the complaint; and when it was received and closed. It also reveals the type(s) of discrimination alleged; whether an agency attempted conciliation and, if so, the dates that conciliation was undertaken and achieved; and the number of failed conciliations before success occurred. In addition, it discloses whether relief was awarded to a complainant and how much, along with the reason(s) why a case was closed. Using these data, this Article calculates favorable outcomes to reveal the extent to which federal, state, and local governments resolve Title VIII complaints in favor of Black and Latinx complainants.

Figure 1

⁹⁶ We use the concept of favorable outcomes in our Title VIII enforcement research. In this Article, “favorable outcomes” refers to the percentage of Title VIII complaints decided in favor of Fair Housing Act complainants. This term is often used in political science to describe general outcomes in the administrative process. A few other authors, such as Michael Schill, *supra* note 84, calculate how often Title VIII complainants win their claims, but to our knowledge no one else uses the term “favorable outcomes” in fair housing research.

⁹⁷ U.S. DEP’T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP’T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

The Ten Standard Federal Regions



Based on HUD's Fair Housing Act implementation approach, there are five possible enforcement outcomes for a Title VIII complaint: administrative closures, irrelevant claims, conciliations, no cause determinations, and cause determinations.⁹⁸ First, *administrative closures* include cases in which a civil rights agency loses contact with a complainant; a complainant fails to cooperate with an investigation or withdraws a complaint without resolution; or a trial begins in a private lawsuit brought by a complainant.⁹⁹ Second, *irrelevant claims* are those in which a civil rights agency finds that housing discrimination is not the basis of a complaint, such as a dispute between a tenant and a landlord that is unrelated to Title VIII.¹⁰⁰ Third, *conciliations* include situations in which HUD serves as an informal mediator between a Title VIII

⁹⁸ See, e.g., U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 74, at 15–16. Note that “if a single complaint alleged multiple bases, it was counted under each basis alleged.” U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 77, at 21. Hence, following the approval of the Fair Housing Amendments Act, 20% of HUD's complaints alleged multiple bases of discrimination, and 47% of its race-based complaints were multiple basis complaints. U.S. DEP'T OF HOUS. & URB. DEV., THE STATE OF FAIR HOUSING: REPORT TO THE CONGRESS PURSUANT TO SECTION 808e OF THE FAIR HOUSING ACT 15 (1990).

⁹⁹ See U.S. DEP'T OF HOUS. & URB. DEV., 1995 ANNUAL REPORT TO CONGRESS: [THE STATE OF FAIR HOUSING IN AMERICA] 38 (1997).

¹⁰⁰ See U.S. DEP'T OF HOUS. & URB. DEV., 1996 ANNUAL REPORT TO CONGRESS ON THE STATE OF FAIR HOUSING IN AMERICA 12–13 (1999).

complainant and a respondent in seeking to resolve a case.¹⁰¹ Conciliations occur when a voluntary agreement is reached between the complainant and the respondent with a government agency's assistance or when a Title VIII complaint is withdrawn because the parties reach a private agreement.¹⁰² Fourth, *no cause determinations* occur when a civil rights agency concludes there is no reasonable cause to believe that the respondent has violated Title VIII.¹⁰³ If so, the "complainant can still litigate the dispute privately" but cannot pursue further action through the agency.¹⁰⁴ Finally, *cause determinations* occur when agency officials believe sufficient evidence indicates that a respondent violated Title VIII.¹⁰⁵ Adjudication then proceeds before an administrative law judge or in an appropriate court.¹⁰⁶

To assess how often Black and Latinx complainants receive a Title VIII resolution in their favor in the Jim Crow North, this Article focuses on the two enforcement outcomes that favor complainants: cause determinations and conciliations. Cause determinations favor a complainant because they increase the likelihood of receiving a remedy. Administrative closures, no-cause determinations, and irrelevant claims are unfavorable because the complainant's position is not improved.

B. Research Assumptions

The forthcoming analysis is based on certain assumptions. First, this research assumes that if state and local governmental decisions predominantly reflect the demands of people and groups with the most influence at the subnational level, and if those people and groups support

¹⁰¹ *Id.* at 13.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

residential, educational, and economic segregation,¹⁰⁷ then civil rights agencies in a state will respond by deciding a comparatively low proportion of Title VIII complaints in favor of Latinx and Black complainants.¹⁰⁸ This Article does not prove that a causal relationship exists between residential, educational, and economic segregation on the one hand and low favorable outcomes, but it does indicate that a causal link is quite possible.

Second, this study assumes that Fair Housing Act complaints filed nationwide are equally meritorious across the states and cities that are the focus of this study. Because of this assumption, variations in complainants' rates of success from state to state are the product of differences in the processing of Title VIII cases by HUD as well as state and local governments participating in FHAP. Variations could stem from differences in the standards applied, training of staff, commitment of supervisors, biases held by staff, or myriad other factors.¹⁰⁹ Assessment of any or all these possibilities is beyond the scope of the data available.

¹⁰⁷ Political theorists have debated these and related concepts. See, e.g., ROBERT A. DAHL, WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY (1961) (arguing that influential groups vie in the political system, and government's role is to act as the mediator between these groups).

¹⁰⁸ In *Making the Second Ghetto*, which addresses Chicago's housing segregation, historian Arnold Hirsch observes that his study principally focuses not on Black people but on white Americans. "That is where the power was," he writes. "[W]hat we are looking at here is the construction of the ball park within which the urban game is played. And there is no question that the architects, in this instance, were whites." ARNOLD HIRSCH, MAKING THE SECOND GHETTO xvi (1998). Likewise, regarding equal educational opportunity, Gary Orfield and Danielle Jarvie argue that desegregation successes "were a product of decades of struggle by Black leaders who had concluded from generations of experience that White institutions would not produce demanding schools for Blac[k] [people] and would keep the best opportunities for their own children." Gary Orfield & Danielle Jarvie, *Black Segregation Matters: School Resegregation and Black Educational Opportunity*, UCLA CIV. RTS. PROJECT 35 (Dec. 17, 2020), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/black-segregation-matters-school-resegregation-and-black-educational-opportunity> [<https://perma.cc/C7DQ-B7XJ>] (last visited May 5, 2024). If many public-school systems may be characterized as white institutions, so too may many civil rights agencies, even if their leaders and employees reflect a reasonable measure of racial and ethnic diversity.

¹⁰⁹ See Charles S. Bullock, III, & Charles M. Lamb, *A Search for Variables Important in Policy Implementation*, in IMPLEMENTATION OF CIVIL RIGHTS POLICY 4–17 (Charles S. Bullock, III, & Charles M. Lamb eds., 1984) (presenting ten variables that influence the successful implementation of civil rights policy). See also Charles M. Lamb, *Equal Housing Opportunity*, in IMPLEMENTATION OF CIVIL RIGHTS POLICY 158–177 (Charles S. Bullock, III, & Charles M. Lamb eds., 1984) (analyzing how those variables effect fair housing implementation).

It is also important to note that this Article *does not assume* that civil rights agencies necessarily decide favorable or unfavorable outcomes for Fair Housing Act complainants “correctly”; administrative enforcement decisions can be wrong. Still, ultimately, the measurement of favorable outcomes is a reasonable way to evaluate the effectiveness of fair housing enforcement because the lower supportive outcome rates are, the more likely that Title VIII is not being seriously or aggressively enforced. In other words, higher rates of favorable outcomes reflect more rigorous and effective enforcement of the Fair Housing Act.¹¹⁰ Because all three levels of government process the same type of complaints, this study can determine whether state and local governments produced as many favorable outcomes for fair housing complainants as HUD.

Nor is it assumed that changes in the diversity of a state’s residents necessarily mean that Black-white housing segregation is decreasing. For example, consider Maryland, which has the most diverse population among the East Coast states as its Latinx and Asian residents have noticeably increased recently, especially in the Washington suburbs.¹¹¹ Even so, Maryland’s white and Black residents are still frequently segregated. Elliott Davis, writing for the *U.S. News & World Report*, elaborates: Baltimore “has a pattern of racial segregation – with Black residents living in mostly the western and eastern parts of the city – that dates back to more than a century

¹¹⁰ See Charles M. Lamb & Eric M. Wilk, *Civil Rights, Federalism, and the Administrative Process: Favorable Outcomes by Federal, State, and Local Agencies in Housing Discrimination Complaints*, 70 PUB. ADMIN. REV. 412, 414 (2010); Charles S. Bullock, III, Eric M. Wilk, & Charles M. Lamb, *Fair Housing Enforcement in the South and Non-South*, 96 SOC. SCI. Q. 941, 946–53 (2015); Bullock, Lamb, & Wilk, *supra* note 23, at 729, 734–41; Charles S. Bullock, III, Charles M. Lamb, & Eric M. Wilk, *African American and Latino Discrimination Complaints: Comparing Volume and Outcomes*, 102 SOC. SCI. Q. 2676, 2679–87 (2021).

¹¹¹ See Marissa J. Lang & Ted Mellnik, *Census Data Shows Maryland is Now the East Coast’s Most Diverse State, While D.C. is Whiter*, WASH. POST (Aug. 12, 2021), <https://www.washingtonpost.com/dc-md-virginia/2021/08/12/dc-virginia-maryland-census-redistricting-2/>. Based on the 2020 Census, Maryland joined “five other states—California, Hawaii, Texas, Nevada and New Mexico—...in having people of color comprise the majority of their population.” *Id.*

ago.”¹¹² Moreover, Davis notes that “[a] 2015 data brief from the Maryland Equity Project at the University of Maryland's College of Education found that as public school enrollment became more diverse in the state, schools became more segregated.”¹¹³

IV. The Northeastern States

A. Region I: The New England States

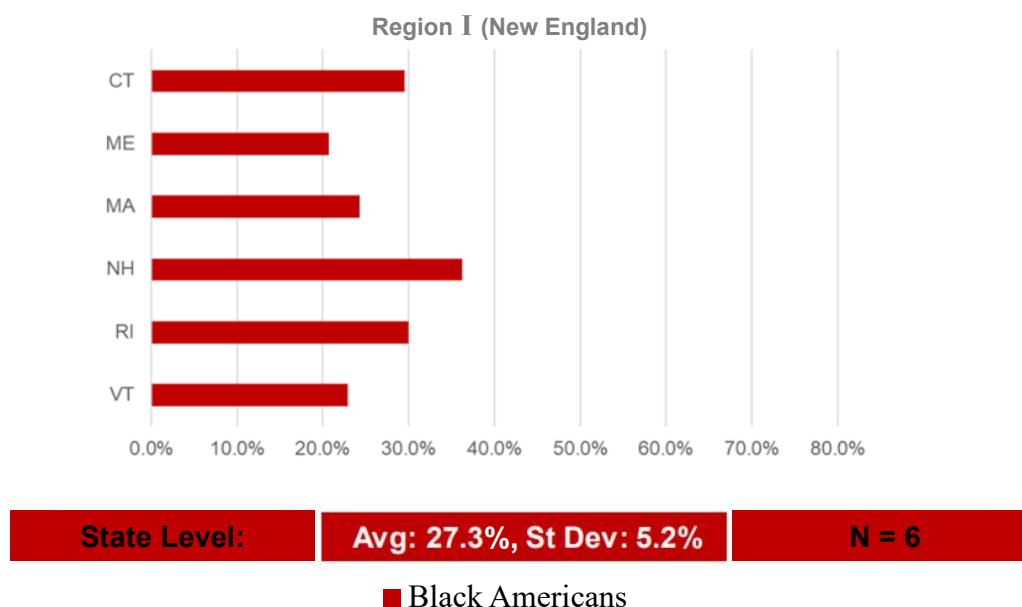
The emphasis of this Article now shifts to Title VIII enforcement by HUD and subnational FHAP agencies in the country's three Northeastern regions, which are part of the Jim Crow North. Figure 2 reveals that in Region I, New Hampshire had the highest rate of favorable outcomes for Black Title VIII complainants, followed by Rhode Island, Connecticut, and Massachusetts. Region I's favorable outcomes tended to fall between 20% and 30% and never reached 40%. The average rate of favorable outcomes for Black complainants in the region was 27.3%.

Figure 2

¹¹² Elliott Davis Jr., *Maryland Sees Growth in Racial Diversity, but Challenges Persist*, U.S. NEWS & WORLD REP. (Nov. 8, 2021), <https://www.usnews.com/news/best-states/articles/2021-11-08/census-maryland-grows-in-diversity-but-inequality-persists>.

¹¹³ *Id.*

Favorability Rates by HUD and FHAP Agencies in Region I (New England) for Race and National Origin Complaints Filed by Black Americans, 1989–2010



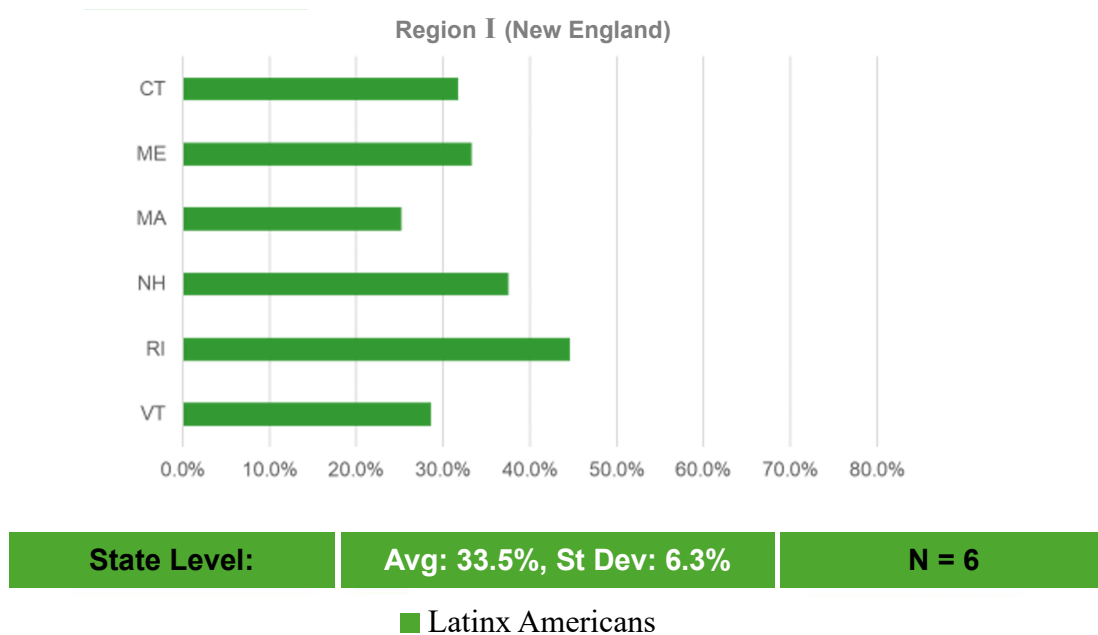
Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

For Latinx Title VIII complainants in New England, Figure 3 shows Rhode Island leading the way with a favorability rate of more than 40%, followed by New Hampshire, Maine, and Connecticut. Favorable outcomes for Latinx people in Region I fell between 25% and 45%, a slightly wider range than Black outcomes, as reported in Figure 2. The average rate of favorable outcomes for Latinx complainants in the region was 35.3%. There is some similarity in the ranking of New England states in terms of the relative levels of success for the two groups of complainants. New Hampshire and Rhode Island are the states in which Black and Latinx

complaints most often succeed. Vermont is consistently the next-to-last state in terms of whether a state provides favorable outcomes for complainants.

Figure 3

Favorability Rates by HUD and FHAP Agencies in Region I (New England) for Race and National Origin Complaints Filed by Latinx Americans, 1989–2010



Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

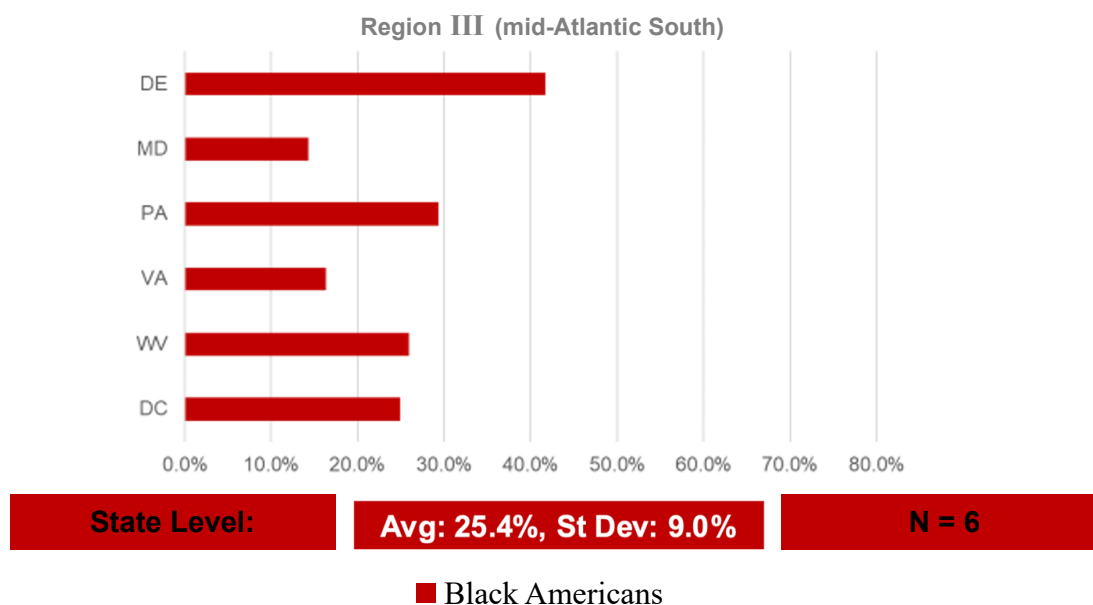
B. Region III: The Mid-Atlantic South

Next, Figure 4 focuses on Region III, which reveals that the mid-Atlantic South differs from Region I with far greater variation in favorable outcomes for Black Title VIII complainants. Delaware provided Black people with favorable outcomes in 41.7% of all Fair Housing Act complaints, compared to less than half of that in Maryland (14.3%) and a similarly small

favorable outcome rate in Virginia (16.3%). As a result of the lack of success in those two states, the average for Region III is slightly lower than Region I.

Figure 4

Favorability Rates by HUD and FHAP Agencies in Region III (Mid-Atlantic South) for Race and National Origin Complaints Filed by Black Americans, 1989–2010



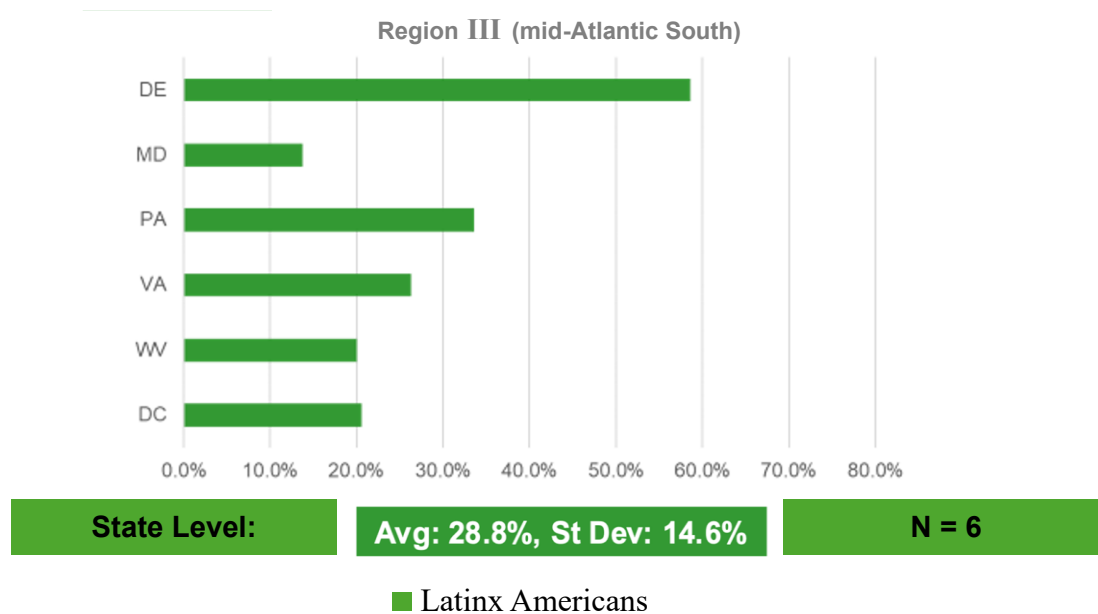
Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

Figure 5 shows that Delaware has a 58.6% favorability outcome rate for complaints filed by Latinx individuals in Region III. This is in stark contrast with Maryland, which has the lowest favorability rate for Latinx or Black Americans (13.8% and 14.3% respectively) in the Mid-Atlantic region. Pennsylvania, which ranked second in terms of favorable outcomes for Black people (29.4%), is also second for Latinx people (33.6%). Four of the Region III states have the

same ranking for the two types of complainants, with shifts in ordering limited to Virginia and West Virginia. The Spearman's rho for Region III is a strong .771, which is statistically significant at $p = .072$.

Figure 5

Favorability Rates by HUD and FHAP Agencies in HUD Region III (Mid-Atlantic South) for Race and National Origin Complaints Filed by Latinx Americans, 1989–2010



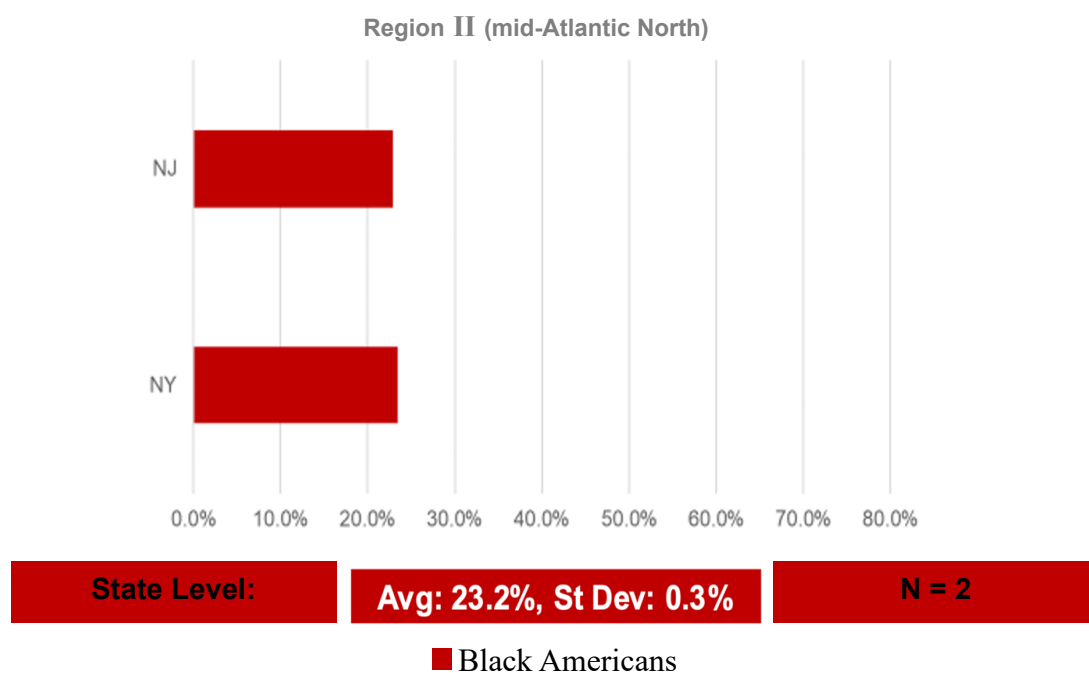
Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

C. Region II: The Mid-Atlantic North

The mid-Atlantic North is next in the spotlight, as Figure 6 reports the share of favorable outcomes for Black Title VIII complainants in Region II. New York and New Jersey rank about the same in this regard (23.4% compared to 22.9%), with a humble average favorable outcome rate of only 23.2% for Black people.

Figure 6

Favorability Rates by HUD and FHAP Agencies in Region II (Mid-Atlantic North) for Race and National Origin Complaints Filed by Black Americans, 1989–2010



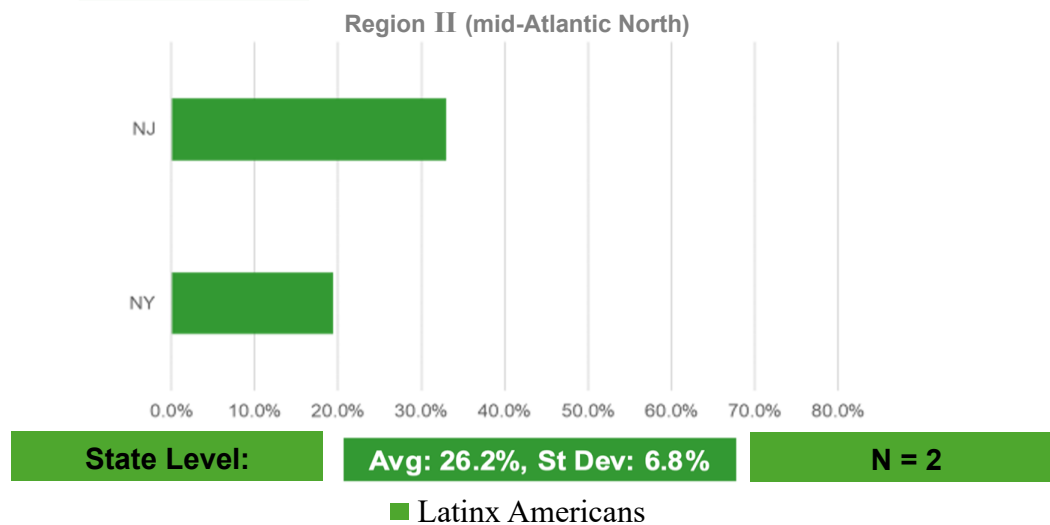
Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

As Figure 7 demonstrates, Latinx complainants fare substantially better in New Jersey than in New York. This is surprising because New York State has long been acknowledged as an

innovator in authorizing fair housing laws¹¹⁴ and was “clearly the national leader in fair housing law” prior to the passage of the federal Fair Housing Act.¹¹⁵ Even so, as emphasized later,¹¹⁶ certain cities and metropolitan areas in New York and New Jersey have historically had exceptionally high rates of residential and school segregation for both Black and Latinx Americans when compared to other Jim Crow North states and the country overall.¹¹⁷

Figure 7

Favorability Rates by HUD and FHAP Agencies in Region II (Mid-Atlantic North) for Race and National Origin Complaints Filed by Latinx Americans, 1989–2010



Source: U.S. DEP’T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP’T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (obtained by the authors under the Freedom of Information Act).

¹¹⁴ See, e.g., Laurence D. Pearl & Benjamin B. Turner, *Survey: Fair Housing Laws—Design for Equal Opportunity*, 16 STAN. L. REV. 849, 850–51, 873–75, 884–86 (1964); Robison *supra* note 39, at 110–26.

¹¹⁵ SANDER, KUCHEVA, & ZASLOFF, *supra* note 4, at 124.

¹¹⁶ See *infra* text accompanying notes 125–50.

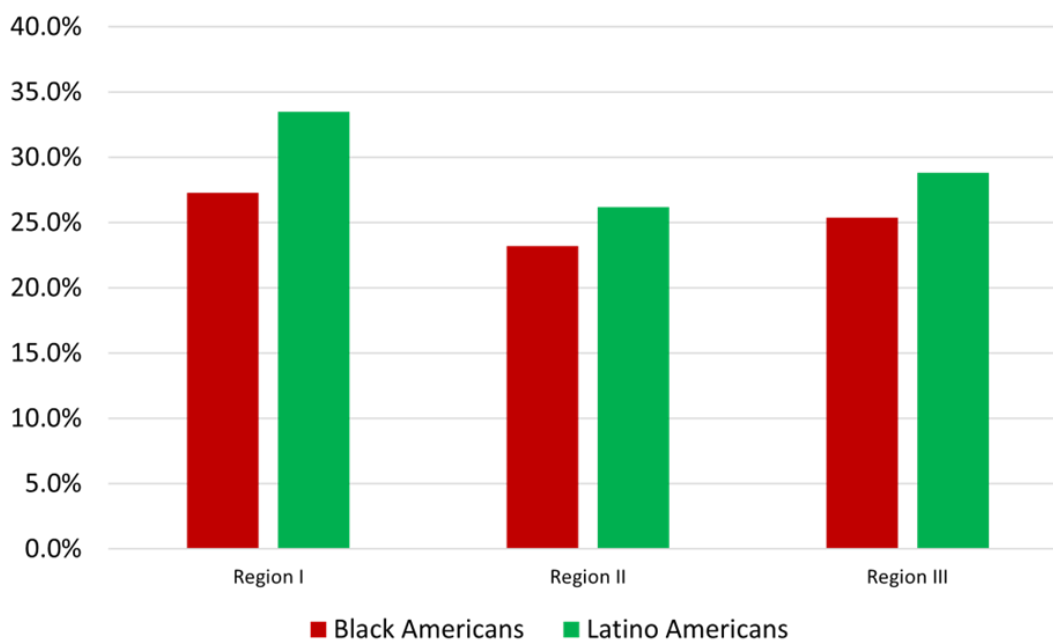
¹¹⁷ See, e.g., Danielle Cohen, *NYC School Segregation: A Report Card from the UCLA Civil Rights Project; Still Last, Action Needed Now*, 39–47 (2021), <https://eric.ed.gov/?id=ED613550> [<https://perma.cc/4YYW-7PJV>]; Mary Ann Koruth, *Judge Says New Jersey Failed to Address ‘Persistent Racial Imbalance’ in its Public Schools*, USA TODAY (Oct. 9, 2023), <https://www.usatoday.com/story/news/education/2023/10/09/new-jersey-persistent-segregation-schools/71115416007/> [<https://perma.cc/6HLZ-HGAR>].

D. Comparing Regions

Finally, Figure 8 compares favorable outcomes for Title VIII complaints across Regions I, II, and III. On average, Black and Latinx complainants fare best in Region I. However, both sets of complainants experience *the least* success in Region II. What considerations could explain this surprisingly low favorable outcome rate in Region II? A closer look at New York and New Jersey promotes a broader understanding of this low rate of success attained by Fair Housing Act complainants.

Figure 8

Favorable Outcomes for Black and Latinx Americans Claiming Racial or National Origin Discrimination by Region, 1989–2010



Source: U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2005) (obtained by the authors under the Freedom of Information Act); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY DATA SET (2013) (2013) (obtained by the authors under the Freedom of Information Act).

V. New York and New Jersey

Part V of this Article has two objectives: to highlight four basic facts about New York and New Jersey that are critical to this analysis and then attempt to link those facts to these states' low favorable outcomes in Title VIII complaints filed by Latinx and Black Americans. The four facts are New York and New Jersey's high levels of (1) residential, (2) school, and (3) economic segregation, and (4) their lack of local jurisdictions participating in HUD's Fair Housing Assistance Program. Regrettably, there are many moving parts to this analysis—intertwined in complicated ways—that affect favorable outcomes in an unknowable number of Title VIII complaints in both states. Therefore, this study cannot prove that Region II's low favorability rates in Title VIII cases are caused by one or more of these four factors. Yet an evaluation of these factors suggests that one or more such causal links are not only conceivable but likely.

A. Residential Segregation

Many have long viewed the Northeast as a leader in civil rights. Before the passage of Title VIII, several Northeastern states played prominent roles in the American fair housing movement by enacting innovative-sounding laws.¹¹⁸ New York and New Jersey were two of the most important among such states, with New York State and New York City often leading the way. According to the U.S. Commission on Civil Rights, in 1959, “New York State had the longest and widest experiences with laws against discrimination in publicly-assisted housing, and

¹¹⁸ See, e.g., U.S. COMM'N ON CIV. RTS., *supra* note 39, at 399–415. For a detailed examination of the content and spread of state and local fair housing laws and policies between 1919 and 1968, see Charles S. Bullock, III, & Charles M. Lamb, *The Diffusion of American Fair Housing Law and Policy*, 105 SOC. SCI. Q. 2039 (2024). That study emphasizes that “[p]rogressive subnational governments can promote the rights of politically marginalized individuals and groups when the national government and other subnational jurisdictions do not.” *Id.* at 2039. It also finds that New Jersey and especially New York State had progressive fair housing laws and policies during those five decades compared to other states. *Id.* at 2040–41; 2045–50. However, obviously, the passage of these laws does not necessarily mean that they were effectively and efficiently enforced, either before or after Title VIII's enactment.

New York City had a law against discrimination in private housing.”¹¹⁹ Two years later, the Commission labeled New York a “pioneer State in civil rights laws”¹²⁰ after observing that the state’s first fair housing law provided foreign immigrants “the right to acquire and transfer housing property for 6 years after filing a notice of intent to become a citizen.”¹²¹

Civil rights scholars and fair housing advocates reached similar conclusions. Joseph Robison wrote that “[o]ne of the earliest effective anti-discrimination laws was adopted in New York State in 1939, applicable to all housing built under the state housing statutes.”¹²² According to Robison, “[i]t provided simply, ‘For all the purposes of this chapter, no person shall, because of race, creed, color or national origin, be subjected to *any* discrimination.’”¹²³ Lawrence Pearl and Benjamin Turner concluded that New York was “a pioneer both in state and in municipal fair housing legislation” and that “[t]he most comprehensive fair housing laws [in 1964 were] those of New York and Massachusetts,” as these laws contained a “detailed description of unfair housing practices, provision for an administrative commission, procedures for handling complaints, and a method of obtaining judicial review.”¹²⁴

However, many historians and sociologists reached less positive conclusions because large metropolitan areas in New York and New Jersey have long experienced housing segregation and discrimination. For example, Columbia University’s eminent urban historian, Kenneth T. Jackson, stressed that New York City’s 1916 zoning ordinance—the first of its kind—had the effect of not only “limiting land speculation and congestion” but also of keeping out

¹¹⁹ U.S. COMM’N ON CIV. RTS., *supra* note 39, at 399.

¹²⁰ U.S. COMM’N ON CIV. RTS., HOUSING: 1961 UNITED STATES COMMISSION ON CIVIL RIGHTS REPORT 120 (1961).

¹²¹ *Id.* at 121.

¹²² Robison, *supra* note 39, at 110.

¹²³ *Id.* (quoting N.Y. Pub. Housing Law § 223 (1955))(emphasis added).

¹²⁴ Pearl & Turner, *supra* note 111, at 884, 851.

“[B]lac[k] [Americans] and people of limited means.”¹²⁵ Following New York City’s lead, 76 cities had approved comparable zoning laws by 1926, and 1,322 municipalities adopted them over the next decade.¹²⁶ Zoning, with its setback requirements and minimum lot sizes, became stylish in America’s suburbs as a way to fence out “undesirables.”¹²⁷ Other historical research presents more conventional insights into fair housing developments in the Northeast. Thomas Sugrue’s *Sweet Land of Liberty* delves into housing discrimination and segregation in Pennsylvania, New York, and New Jersey, where Levittowns symbolized the region’s fondness for suburban racial and ethnic exclusion during the post–World War II era.¹²⁸

Sociological research also supports the finding of persistent housing segregation in America by relying on census data to calculate residential segregation patterns in U.S. metropolitan areas.¹²⁹ In 2011, John Logan and Brian Stults identified three key trends when 2010 data were compared with figures from earlier decades. First, decreases in Black-white housing segregation since 2000 were similar to what it was in the 1990s.¹³⁰ Residential segregation between Black people and white people was highest in 1960 or 1970, they note,¹³¹

¹²⁵ KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 242 (1985).

¹²⁶ *Id.*

¹²⁷ *Id.* See also, e.g., Michael N. Danielson, *Suburban Autonomy*, in *THE POLITICS OF EXCLUSION* (1976); DAVID M. P. FREUND, *COLORED PROPERTY: STATE POLICY AND WHITE RACIAL POLITICS IN SUBURBAN AMERICA* 60–70 (2007); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 48–57 (2017); TROUNSTINE, *supra* note 14, at 5–9.

¹²⁸ SUGRUE, *supra* note 14, at 200–02, 210–12, 222–27. As explained by Sugrue, Levittowns were named after William Levitt, a real estate developer from New York who became a leader in the mass production of affordable suburban housing from the late 1940s to the early 1960s. Levitt was known for refusing to sell homes to Black, Asian, Latinx, and Native Americans.

¹²⁹ See, e.g., Reynolds Farley & William H. Frey, *Changes in the Segregation of Whites from Blacks during the 1980s: Small Steps Toward a More Integrated Society*, 59 AM. SOCIO. REV. 23 (1994) (using census data to analyze segregation patterns in 1990 and trends in segregation between 1980 and 1990); MASSEY & DENTON, *supra* note 15, at 20–25, 46–48, 63–66, 70–77.

¹³⁰ JOHN R. LOGAN & BRIAN J. STULTS, *THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS* 2 (2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf> [<https://perma.cc/NPZ8-X2AJ>].

¹³¹ *Id.*

but it very gradually dropped between 1980 and 2010.¹³² Second, Latinx and Asian Americans were substantially less segregated than Black Americans.¹³³ In addition, because the size of our Latinx and Asian populations are increasing, their ethnic enclaves are inclined to become more homogeneous and isolated than they were before 1980.¹³⁴ Third, the localities where the average Black, Latinx, and Asian Americans live continue to be vastly different racially from where the average non-Hispanic white person resides.¹³⁵ And even though more people of color are moving to the suburbs, they often cannot gain access to predominantly white areas.¹³⁶

Logan and Stults's 2011 report shows that the country's third- and fourth-most Black-white segregated metropolitan areas with the largest Black populations were, respectively, New York-White Plains-Wayne, NY-NJ, and Newark-Union, NJ-PA.¹³⁷ Their calculations similarly demonstrate that the New York City and Newark metro areas with the largest Hispanic populations ranked second and third nationwide with respect to Hispanic-white segregation and that the Edison-New Brunswick, NJ, and the New York-White Plains-Wayne, NY-NJ, metropolitan areas with the greatest Asian populations ranked first and second, respectively, in terms of Asian-white segregation.¹³⁸ Generally, then, racial and ethnic housing segregation is widespread with respect to Black, Hispanic, and Asian people in the New York City and Newark metropolitan areas.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 6.

¹³⁸ *Id.* at 12–18.

More recently, New York Governor Kathy Hochul released an in-depth report in 2023 on residential segregation and the impediments to equal housing opportunity in her state.¹³⁹ Among other things, the report emphasized that segregated housing patterns exist throughout New York State and that “access to community resources, poverty, and substandard housing conditions consistently fall along segregated racial and ethnic lines.”¹⁴⁰ The report concluded that 33% of all New York residents lived in “highly white/non-white segregated counties,” while 44% of downstate counties had similar levels of segregation.¹⁴¹ Notably, about 95% of Black households resided in New York counties with high Black/white segregation.¹⁴² Compounding this problem, only about a third of Black households and a quarter of Latinx households owned their homes, compared to two-thirds of white households.¹⁴³ The report concludes with the claim that New York State has “succeeded in continuing to pass legislation and engage in partnerships aimed at strengthening the fair housing law and its enforcement,” and that it would “continue to confront and address the enforcement of the enhanced protections created by” state law.¹⁴⁴

But only time will tell whether the segregation that has long plagued the New York State and New York City housing markets will be meaningfully reduced, and whether fair housing enforcement will be appreciably improved. Given the comparative data in Figure 8, significant increases in favorable outcomes for both Black and Latinx Title VIII complainants are necessary

¹³⁹ N.Y.S. Off. of Governor Kathy Hochul, *Governor Hochul Releases Fair Housing Report Revealing Segregated Housing Patterns and Obstacles to Housing Opportunities Across New York* (May 5, 2023), <https://www.governor.ny.gov/news/governor-hochul-releases-fair-housing-report-revealing-segregated-housing-patterns-and> [<https://perma.cc/FEF6-YF66>].

¹⁴⁰ N.Y.S. DIV. OF HOUS. & CMTY. RENEWAL, FAIR HOUSING MATTERS NY: AN ASSESSMENT OF FAIR HOUSING IN NEW YORK STATE 1 (Apr. 2023), <https://hcr.ny.gov/system/files/documents/2023/05/2023-fair-housing-matters-ny-public-cmt-draft-june-16-deadline.pdf>.

¹⁴¹ *Id.* at 40.

¹⁴² *Id.*

¹⁴³ *Id.* at 30.

¹⁴⁴ *Id.* at 200–01. No comparable report has ever been conducted in New Jersey to our knowledge.

for New York to enforce its substantially equivalent fair housing law as well as Delaware, New Hampshire, Rhode Island, Connecticut, and Pennsylvania enforce theirs. Overall, then, it seems reasonable to conclude that New York's deep-rooted housing segregation—and probably that of New Jersey as well—would be weakened over time by significantly higher rates of favorable outcomes in Fair Housing Act complaints investigated, conciliated, and closed by federal, state, and local civil rights agencies.

B. Educational Segregation

Educational segregation in the Jim Crow North is directly related to residential segregation, as is true in most of the nation. As UCLA's Gary Orfield explains, "[s]egregated urban school systems are built on a base of housing segregation. The vast differences between inner-city and suburban schools help determine where families with choices will live."¹⁴⁵ This nation's system of housing and school segregation is "rooted in a variety of public and private forms of discrimination that operated for many decades and have not been fundamentally changed by weak and very thinly enforced fair housing laws."¹⁴⁶ Hence, the high levels of housing segregation in New York and New Jersey likely explain why Region II may have more school segregation than Regions I and III. Relatedly, the lower rates at which Region II Fair Housing Act complaints are resolved in favor of the complainant may contribute to even higher levels of housing and school segregation.

¹⁴⁵ Gary Orfield, *Housing and the Justification of School Segregation*, 143 U. PA. L. REV. 1397, 1398 (1995).

¹⁴⁶ *Id.* Orfield argues that "[t]he issue of housing deserves much more sophisticated consideration because theories of housing change are very directly related to decisions about ending school desegregation. If housing segregation is caused or strongly affected by school desegregation plans, then any plan for lasting integration must take housing into account." *Id.* at 1404.

Another significant study by Gary Orfield and Danielle Jarvie finds that from 1968 until 2018, the Northeast never seriously desegregated its schools.¹⁴⁷ “Urban desegregation in the South was ordered in 1971, and in a much weaker form in the North in 1973 but was critically limited by 1974.”¹⁴⁸ Nor have there been any “major legal or policy advances since that time,” Orfield and Jarvie write.¹⁴⁹ Relying on nationwide data, Orfield and Jarvie demonstrate that from 2000 to 2018, Black student enrollment in Northeastern public schools decreased marginally, from 15.4% to 14.0%.¹⁵⁰ In contrast, white student enrollment in public schools plunged from 67.4% to 52.9%.¹⁵¹ Many white parents in New York and New Jersey’s large cities transferred their children to private schools. As a result, Black students attending intensely segregated (90–100%) non-white schools climbed from 42.7% in 1968 to 51.5% in 2018.¹⁵²

Ultimately, low favorable outcomes in Latinx and Black Fair Housing Act complaints reinforce the residential *and* educational segregation that remain entrenched in New York and New Jersey after many decades. In terms of schools, a higher rate of favorable Title VIII outcomes would constitute a valuable step in this nation’s quest to provide equal educational opportunity for all persons living in the United States. The relationship is probably stronger in terms of undermining housing segregation, but it is advantageous with respect to school desegregation as well.

¹⁴⁷ Orfield & Jarvie, *supra* note 105, at 28–29.

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 20.

¹⁵¹ *Id.*

¹⁵² *Id.* at 29. The figures cited pertain to the Northeast more broadly. For historical insights into school desegregation efforts in the New York City metropolitan area, *see, e.g.* BIONDI, *supra* note 16; TAYLOR, *supra* note 16.

C. Economic Segregation

There is a relationship not only between residential and school segregation in the Jim Crow North but also between income segregation and the former two. Income, and its role in determining housing affordability, is often a significant factor in families' choices about where to live. As such, income tends to influence not only residential living patterns but also the socioeconomic composition of an area's schools. Regrettably, there are many moving parts once the economic segregation variable is added to the equation—intertwined in various complicated ways—that affect favorable outcomes in an unknowable number of Title VIII complaints in New York and New Jersey. Even though untangling and measuring these relationships is baffling, economic segregation plays a role in understanding the larger picture in the Jim Crow North.

It is well established that income segregation has grown since the 1970s¹⁵³ and that it is exceptionally noticeable in various parts of the Northeast. For example, Sean Reardon and Kendra Bischoff discovered that in 2007, the New York-Wayne-White Plains, NY-NJ metro area had the second highest level of family income segregation in the nation, with *half* of all its neighborhoods being either poor or affluent.¹⁵⁴ This surely overlaps with the housing and school segregation in New York and New Jersey: where there is economic segregation, there is also residential and educational segregation. Thus, for decades, policy makers and scholars have recognized the links in the “chain of racial discrimination” in America. As put by President Lyndon Johnson, Black adults are seriously harmed by housing discrimination, as are their

¹⁵³ Sean Reardon and Kendra Bischoff find that “[t]he share of the population in large and moderate-sized metropolitan areas who live in the poorest and most affluent neighborhoods has more than doubled since 1970.” SEAN F. REARDON & KENDRA BISCHOFF, *MORE UNEQUAL AND MORE SEPARATE: GROWTH IN THE RESIDENTIAL SEGREGATION OF FAMILIES BY INCOME, 1970–2009* 0 (2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report111111.pdf> [<https://perma.cc/542G-VYKT>].

¹⁵⁴ *Id.* at 17–18.

children and the Black community. “Where housing is poor, schools are generally poor. Unemployment is widespread,” he insisted.¹⁵⁵ “Family life is threatened. The community’s welfare burden is steadily magnified.”¹⁵⁶ “These,” Johnson argued, “are the links in the chain of racial discrimination.”¹⁵⁷ Or as the famous Swedish sociologist Gunnar Myrdal explains, “[i]n an interdependent system of dynamic causation there is no ‘primary cause’ but everything is cause to everything else.”¹⁵⁸

As the nation becomes more racially diverse, Americans will have to face the reality of racially mixed communities, schools, and workplaces. But a key consideration in the future is economic integration, an idea that is unpopular among many. Racial housing discrimination has subsided to some extent in the last several decades,¹⁵⁹ and people of different colors and ethnic backgrounds can coexist more peacefully and live in the same neighborhoods more so today than in the past. Yet the rich and the poor remain segregated, with the latter often occupying the nation’s most undesirable housing stock in or near the urban core. Most Americans hold their wealth in home equity, and the discriminatory practices that prevented Black and Latinx people from buying homes in the mid-twentieth century have compounding effects on economic segregation with every generation.¹⁶⁰ Even average Americans, in an attempt to protect their

¹⁵⁵ Special Message to the Congress Recommending a Program for Cities and Metropolitan Areas, 1 PUB. PAPERS 89 (Jan. 26, 1966).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 78 (1944).

¹⁵⁹ See *supra* note 3 and accompanying text. See, e.g., SANDER, KUCHEVA & ZASLOFF, *supra* note 4 (noting that by the mid-1970s, flagrant residential discrimination had declined and become less of an absolute barrier for Black Americans seeking housing in predominantly white neighborhoods). See also, MARGERY AUSTIN TURNER, ET AL., *supra* note 5 (discussing how more subtle practices of housing discrimination have arisen since the 1970s).

¹⁶⁰ See, e.g., Rashawn Ray, Andre M. Perry, David Harshbarger, Samantha Elizondo, & Alexandra Gibbons, *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity* (2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [<https://perma.cc/63T9-3592>] (emphasizing that 75.8% of white families own their homes, compared to

families, property, and quality of life, may continue to try to keep the poor out of their neighborhoods by resisting the construction of low-income or affordable housing.¹⁶¹

Again, low favorable outcomes in Title VIII complaints are likely associated with the preferences of people and groups with the greatest influence at the state and local levels of government. Thus, if subnational governmental decisions mainly embody the demands of the most influential people and groups, and if economic segregation is actually the predisposition of many prominent people and groups in a state, we would anticipate that civil rights agencies in these states would respond by resolving a low proportion of Fair Housing Act complaints in favor of Latinx and African American complainants.¹⁶² It follows that even if racial residential and educational segregation substantially decline over time, economic segregation may persist, as will its effects. However, given the data currently available, it is impossible for this study to measure the extent to which majority preferences for residential, educational, or economic segregation affect Title VIII enforcement.

E. The Lack of Local FHAP Agencies

New York and New Jersey have few FHAP agencies. In 2024, New York had one local agency, the Westchester County Human Rights Commission.¹⁶³ None operated in New Jersey.¹⁶⁴ Previous HUD fair housing reports to Congress included no references to local FHAP agencies

only 46.4% of Black families, and that homes in Black communities are “valued at \$48,000 less than predominately white neighborhoods for a cumulative loss in equity of approximately \$156 billion.”).

¹⁶¹ See, e.g., Harvard Law Review Association, *Addressing Challenges to Affordable Housing in Land Use Law: Recognizing Affordable Housing as a Right*, 135 HARV. L. REV. 1104, 1108 (2022) (discussing how local planning boards are often subject to capture due to some homeowners’ fear that new housing developments for lower-income and minority residents will lead to certain negative consequences for their neighborhood).

¹⁶² See *supra* text accompanying notes 104–05.

¹⁶³ *Fair Housing Assistance Program (FHAP) Agencies*, U.S. DEP’T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies [https://perma.cc/2E8X-DT8V] (last visited October 30, 2024).

¹⁶⁴ *Id.*

in New Jersey.¹⁶⁵ Yet, at one point in time, New York had others in New York City, Albany, Geneva, and Rockland County.¹⁶⁶ Is there a relationship between the shortage of local FHAP agencies in these two states and their low rates of favorable outcomes in Title VIII complaints?

It is possible that such a relationship exists. The shortage of local FHAP agencies in New York and New Jersey may lead meritorious claimants to doubt whether local governments will actively address their concerns about housing discrimination and segregation. Still, such a conclusion is speculative because of a lack of data. Nonetheless, local FHAP agencies have provided higher rates of favorable outcomes to Fair Housing Act complaints than HUD or state FHAPs.¹⁶⁷ And if local FHAP agencies are more likely to provide favorable outcomes than HUD or state FHAP agencies, then those favorable outcome results will naturally feed back into the residential and education segregation variables. It stands to reason then that the absence of local agencies in New York and New Jersey has likely contributed to these states' low rates of favorable outcomes, limited enforcement of fair housing laws, and high levels of housing segregation. Since HUD processes most complaints in Region II, whether those HUD offices apply less exacting standards than in other regions may be an area of future research.

CONCLUSION

No matter what laws require, two critical questions normally remain: Are they effectively enforced? And if not, how can their implementation be changed to improve enforcement? This is particularly true of civil rights laws in a nation marked by many forms of discrimination

¹⁶⁵ *Id.* FHAP was created in 1979. See U.S. COMM'N ON CIV. RTS., PROSPECTS AND IMPACT OF LOSING STATE AND LOCAL AGENCIES FROM THE FEDERAL FAIR HOUSING SYSTEM 5-6 (1992). This Article's authors examined all HUD FHEO annual reports from 1980 to 2023 and found no reference to a local FHAP agency in New Jersey.

¹⁶⁶ U.S. DEP'T of HOUS. & URB. DEV., *supra* note 95, at 38; U.S. DEP'T of HOUS. & URB. DEV., *supra* note 77, at 66.

¹⁶⁷ Bullock, Lamb, & Wilk, *supra* note 23 at 728, 738, 740–41.

throughout its history. This Article assumes that if a law can be effectively enforced in the United States, effectiveness can be measured by calculating favorable outcomes of the administrative enforcement process. This does not mean that federal, state, and local fair housing agencies always “correctly” decide favorable outcomes for Title VIII complainants. Sometimes, they make mistakes. But overall, measuring favorable outcomes is a legitimate way to explore the effectiveness of fair housing enforcement. The lower the favorable outcome rates are, the more likely that fair housing laws are not being rigorously enforced.

Three conclusions emerge from the above analysis of Fair Housing Act enforcement in the Northeastern United States. First, considerable variations in favorable outcomes are apparent, even between adjacent states. For instance, the Delaware state FHAP agency favored Black complainants 41.7% of the time, while in neighboring Maryland, the state FHAP agency had a 14.3% favorability rate. Similarly, New Hampshire’s favorability rate for Black people was 36.2%, whereas Vermont’s was 22.9%, and so on. This shows that bureaucracies in the same region of the country may differ dramatically in their handling of Title VIII complainants, even if they have similar demographic characteristics. Although adjacent states may have different rates at which minorities’ complaints lead to relief, there is a tendency for each state to be relatively similar in the success of Black and Latinx Americans, with both sets of minorities experiencing more success in some states than others. This pattern was especially strong for Region III.

A second finding is that complaints from Latinx Americans are generally more successful in a state than complaints filed by Black people. In ten states, including all those in New England, the favorable outcome percentage for Latinx complainants exceeded that for Black Americans. Only in New York, West Virginia, and Maryland do Black complainants come away

with favorable outcomes at higher rates than Latinx complainants. The greater success of Latinx people in these ten states could be explained by at least two considerations: there may be more anti-Black bias than anti-Latinx bias among government officials who resolve Title VIII complaints, or Latinx people may be more reluctant to file government complaints than Black individuals—especially if they or their family members are undocumented immigrants—so their complaints could deal with more serious or easily provable discriminatory offenses.¹⁶⁸

Third, prior research demonstrates that when federal, state, and/or local agencies enforce a national program, the level of government involved makes a difference. FHAP agencies at both the state and local levels are often more effective at conciliating Title VIII complaints and providing remedies than HUD.¹⁶⁹ In the Northeast, some states—such as Delaware, New Hampshire, and Rhode Island—decide in favor of Title VIII complainants much more often than do Maryland, Massachusetts, New Jersey, or New York, with the latter two almost wholly lacking in local FHAP agencies. The lower likelihood of success in New Jersey and New York is probably partly due to the lack of local FHAPs, the processing units before which Title VIII complainants are most likely to succeed nationally.

While other studies address possible solutions to housing, school, and economic segregation,¹⁷⁰ this Article focuses on how to use the Fair Housing Assistance Program to improve Title VIII enforcement in Region II. In this regard, the 1992 recommendations of the

¹⁶⁸ See the discussion in Bullock, Lamb, & Wilk, *supra* note 104, at 2686–87 (2021) (suggesting possible explanations).

¹⁶⁹ Charles S. Bullock, III, Eric M. Wilk & Charles M. Lamb, *Bureaucratic Effectiveness and Civil Rights Enforcement*, 49 STATE & LOC. GOV.'T REV. 87, 101 (2017).

¹⁷⁰ The literature is substantial. On housing segregation and discrimination, *see generally*, JOHN YINGER, *Public Policy to Combat Discrimination in Housing: A Comprehensive Approach* in CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION (1995). On school desegregation, *see generally* GARY ORFIELD, DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 345–61 (1996). On economic segregation, *see generally* Tatiana Walk-Morris, *Eliminating Racial Segregation is Good Economic Policy*, PLAN. MAG. (Jan. 1, 2021), <https://www.planning.org/planning/2021/winter/eliminating-racial-segregation-is-good-economic-policy/> [<https://perma.cc/M5AU-C886>].

U.S. Commission on Civil Rights on the federal fair housing system are still reasonable and justifiable.¹⁷¹ First, mayors, other local officials, and local business leaders in New York and New Jersey should work closely with HUD to develop new incentive programs to increase the number of certified local FHAP agencies in both states.¹⁷² Second, Congress and the current presidential administration should provide funds and other resources to new local FHAP agencies in New York and New Jersey to enable them to enforce the Fair Housing Act effectively and efficiently at the grassroots level.¹⁷³ Third, HUD should play an aggressive role in helping *all* local jurisdictions in New York and New Jersey actively participate in the Fair Housing Assistance Program; this includes drafting new local fair housing laws that are substantially equivalent to Title VIII and being available to provide advice, training, and other assistance to these local governments so they can accomplish the objectives of the Fair Housing Act.¹⁷⁴ In the final analysis, Congress and HUD should hold *all* FHAP agencies to a higher standard of performance in race and national origin Title VIII cases, which would naturally include those in Region II. A higher standard of enforcement performance is possible by FHAP agencies because state and local legislatures have the power to require broader coverage of protected groups,¹⁷⁵ the

¹⁷¹ U.S. COMM’N ON CIV. RTS, *supra* note 160, at 31–34.

¹⁷² *Id.* at 32.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 33.

¹⁷⁵ For instance, California’s Fair Employment and Housing Act, CAL. GOV’T CODE §§ 12900–12996, provides additional protections to some people of color by prohibiting housing discrimination based on source-of-income, ancestry, genetic information, and hair texture and style. See Charles S. Bullock, III, Charles M. Lamb, & Eric M. Wilk, *Memo to President Biden on State and Local Fair Housing Enforcement*, N.Y.U. J. LEGIS. & PUB. POL’Y QUORUM (2021).

use of more procedural tools in fair housing enforcement,¹⁷⁶ and stronger powers to grant administrative relief to fair housing complainants.¹⁷⁷

However, politics will play a vital role in determining whether fair housing enforcement will be strengthened in the foreseeable future and whether those changes will include overhauling FHAP. Donald Trump's 2024 re-election as president makes those goals incredibly unlikely. During his first term in office, President Trump rescinded the Obama administration's attempt to comply with the Fair Housing Act's requirement of affirmatively furthering fair housing.¹⁷⁸ Some two weeks later, Trump and his HUD secretary, Ben Carson, published an opinion piece in *The Wall Street Journal*: they claimed that "[t]he crime and chaos in Democrat-run cities" were destroying suburbs and that President Obama's HUD regulations to further fair housing would "abolish single-family zoning, compel the construction of high-density 'stack and pack' apartment buildings," causing the suburbs to "look and feel the way far-left ideologues and technocratic bureaucrats think they should."¹⁷⁹ Later, President Trump attacked Joe Biden's fair housing proposals, insisting that Biden would "abolish the suburbs" and telling voters, "you're

¹⁷⁶ Beyond the comparable enforcement powers of the federal government under the Fair Housing Act of 1968, in 1985, thirteen FHAP agencies were authorized to issue cease-and-desist orders in housing discrimination cases, twelve could hold public hearings based on the presumption that publicity encourages nondiscrimination, eleven could issue injunctions, and fifteen could initiate complaints or court action. See ABT ASSOC. INC., THE FAIR HOUSING ASSISTANCE PROGRAM EVALUATION 106 (1985).

¹⁷⁷ The 1985 ABT Associates Inc. report found that of the fifteen FHAP agencies surveyed, fourteen could award actual damages without using the conciliation process, eight could recommend the revocation of brokers' licenses, seven could award punitive damages, and six could obtain imbursements for pain and suffering. *Id.* at 106–07.

¹⁷⁸ See, e.g., Heather R. Abraham, *Fair Housing's Third Act: American Tragedy or Triumph?* 39 YALE L. & POL'Y REV. 1, 10–11, 39–40, 47–48 (2020). 42 U.S.C. §3608(d) contains Title VIII's AFFH mandate, which declares, "[a]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes."

¹⁷⁹ Donald J. Trump & Ben Carson, Opinion, *We'll Protect America's Suburbs*, WALL ST. J. (Aug. 16, 2020), <https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133>.

not going to have low-income housing built right next to you, which drives down your housing value, and a lot of crime comes in.”¹⁸⁰

But that was only President Trump’s initial attack on the right to fair housing and its enforcement. At the beginning of Trump’s second term, three actions—all swift and harsh—highlighted his even stronger opposition to equal housing opportunity and federal fair housing enforcement. First, President Trump and Elon Musk, the head of the president’s Department of Government Efficiency (DOGE), were determined to force the early retirements of HUD employees, especially at the Office of Fair Housing and Equal Opportunity, which is primarily responsible for overseeing the enforcement of federal fair housing law, including the Fair Housing Act of 1968.¹⁸¹ Forcing a large number of key retirements in HUD’s Office of Fair Housing and Equal Opportunity, whether at agency headquarters in Washington, D.C. or in its field and regional offices nationwide, could be devastating for federal fair housing enforcement, as would firing important HUD fair housing officials who refuse to retire. If federal fair housing enforcement needs dramatic improvement, an enforcement effort without significant experience and expertise would be inimical to achieving such improvement.¹⁸² Yet, according to the

¹⁸⁰ Donald J. Trump *quoted in* Zack Stanton, *Trump Doesn’t Understand Today’s Suburbs—And Neither Do You*, POLITICO (Aug. 6, 2020, 4:30 AM), <https://www.politico.com/news/magazine/2020/08/06/suburbs-history-race-politics-391966>.

¹⁸¹ See Matthew Cullen, *Trump Defended Musk’s Cost-Cutting Effort*, N.Y. TIMES (Feb. 7, 2025), https://messaging-custom-newsletters.nytimes.com/dynamic/render?campaign_id=57&emc=edit_ne_20250207&instance_id=146980&isViewInBrowser=true&nl=the-evening&paid_regi=0&productCode=NE®i_id=101230296&segment_id=190451&sendId=190451&uri=nyt://newsletter/9f311f64-aada-55b4-9a43-fb26f242069f&user_id=c381d9629074a2326a73a23fac978056. The following assessment of the second Trump administration and fair housing was written prior to May 2025. As of that time, of course, one could only speculate about what legal and policy directions the administration might take prior to the 2028 presidential election.

¹⁸² Between September 2010 and December 2022, HUD lost about 18% of its federal employees, leading Marcia Fudge, President Biden’s HUD secretary, to advise a Senate committee, “[u]ntil we can start to build up our staff, and build up our capacity, we are at risk of not doing the things we should do.” Mekela Panditharatne, *Rebuilding Federal Agencies Hollowed Out by Trump and Congress*, BRENNAN CTR. FOR JUST. (Apr. 5, 2023),

Associated Press (AP), President Trump intends to make extreme cutbacks in the staff of FHEO, which is primarily responsible for enforcing Title VIII at the federal level. Based on the AP report, the Trump administration proposal would reduce FHEO's staff "from 572 employees . . . to 134 people [meaning] a nearly 77% reduction to the program—the type of bone-deep cut" that fair housing proponents feared of President Trump.¹⁸³

On March 11, 2025, Will Fischer of the Center on Budget and Policy Priorities updated the list of anticipated staff slashes at HUD.¹⁸⁴ Fischer summarizes the administration's targets, writing that Musk and DOGE plan on firing a least half of HUD's overall staff, including 77% of those at FHEO as well as 84% of HUD employees that provide homelessness assistance, promote affordable housing, and help with disaster recovery.¹⁸⁵ About two weeks later, the Shriver Center on Poverty Law reported that Americans would hear of policy changes in fair housing, but "the deeper crisis is the systematic dismantling" of HUD's programs intended to

<https://www.brennancenter.org/our-work/analysis-opinion/rebuilding-federal-agencies-hollowed-out-trump-and-congress> [<https://perma.cc/5SZ5-62EV>].

¹⁸³ Sally Ho & Jesse Bedayn, *Trump Administration Looks to Slash HUD Workers Tackling the Housing Crisis* at 4, AP NEWS, <https://apnews.com/article/doge-hud-trump-turner-affordable-housing-musk-0176c8539fa9b5959198c351c97b8652> (last visited Mar. 10, 2025). For the impact of cutting FHEO staff in HUD's Chicago office, see Lizzie Kane, *Local HUD Workers Terminated in Recent Trump Administration Cuts*, CHICAGO TRIBUNE (Feb. 26, 2025), https://www.yahoo.com/news/local-hud-workers-terminated-recent-224000266.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAACVrrDmlZW5LyDJzSWCmrVAU9PjIzI9ECTyXTaDdPAQwbAOWzeMQrX41zj1B0tAqqac9gEyDQqt7V6k4uWGtUYbM8aMxQunJBdVBGciHxKp4fZ5UXQ1Ca14z7aXM6zb_3djBFUXfzGV0DuUOMPT-dxQRemd8uzE23MhocxcVzWd. Kane reports on one FHEO probationary employee in Chicago whose work "primarily focused on fair housing investigations that looked into how systemic issues such as redlining continue to negatively affect certain groups of people and their housing choices." Suggesting that the Chicago office was "'slightly'" understaffed," the employee stated there was a "'ginormous' backlog of [fair housing] complaints." See generally Jennifer Ludden, *HUD Employees Are Bracing for What They Hear Will Be 'Drastic' Staff Cuts*, BUFF. TORONTO PUB. MEDIA (Feb. 14, 2025), <https://www.wbfo.org/2025-02-14/hud-employees-are-bracing-for-what-they-hear-will-be-drastic-staff-cuts> (observing that HUD offices responsible for dealing with civil rights laws, homelessness, affordable housing, disaster relief, and research on housing issues "could lose most" of their employees).

¹⁸⁴ Will Fischer, *DOGE-Driven HUD Cuts Will Make It Harder for People to Afford Housing, Exit Homelessness*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 11, 2025), <https://www.cbpp.org/blog/doge-driven-hud-cuts-will-make-it-harder-for-people-to-afford-housing-exit-homelessness>.

¹⁸⁵ *Id.*

eliminate residential discrimination and segregation.¹⁸⁶ These budgetary alterations would leave only about 120 FHEO personnel to process all fair housing complaints handled by HUD annually, nationwide.¹⁸⁷ As a result, the FHEO scheme is “not just a cut—it’s a death sentence” for effective federal fair housing enforcement.¹⁸⁸

The Thurgood Marshall Institute, aligned with the NAACP Legal Defense Fund in New York, indicates these damages are directly linked to Project 2025, the political plan to consolidate executive power in support of highly conservative policies, with the belief that Donald Trump would win re-election in 2024.¹⁸⁹ The Institute contends that Project 2025 not only disagrees with America’s efforts to fight residential discrimination but promotes the view that fair housing programs “produce ‘intergenerational poverty traps’ and ‘discourage work, marriage, and meaningful paths to upward economic mobility.’”¹⁹⁰ To achieve its objectives, Project 2025 would fire many of HUD’s experienced fair housing officials and give those jobs to short-term Trump appointees.¹⁹¹ According to the Institute, Project 2025 believes that this approach would permit a president looking to undermine fair housing rights to act more quickly without Congress’s approval.¹⁹² As of April 2025, the expectation remained that FHEO’s staff would still be cut by 77%.¹⁹³

¹⁸⁶ *The White House Puts Fair Housing on the Chopping Block*, SHRIVER CTR. ON POVERTY L. (Mar. 27, 2025), <https://www.povertylaw.org/article/hud-cuts-put-fair-housing-on-the-chopping-block/>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *What Project 2025 Means for Black Communities: Equal Access to Housing*, LDF THURGOOD MARSHALL INST., <https://tminstituteldf.org/equal-access-to-housing-project-2025/> (last visited Apr. 4, 2025).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Debra Karmin, *Watch Dog Agency to Investigate Attempted Cuts to Fair Housing Groups*, N.Y. TIMES (Apr. 1, 2025), <https://www.nytimes.com/2025/04/01/realestate/fair-housing-investigation.html>.

The second action demonstrating Trump II's opposition to equal housing opportunity and federal fair housing enforcement is the appointment of Scott Turner as the new HUD secretary.¹⁹⁴ Shortly thereafter, Turner eliminated the Affirmatively Furthering Fair Housing (AFFH) policy of the Obama and Biden administrations.¹⁹⁵ According to Turner, terminating the AFFH policy "restores trust in local communities and property owners, while protecting America's suburbs and neighborhood integrity."¹⁹⁶ Yet it is unlikely that this conservative turnaround on AFFH will lessen the wide-ranging housing segregation in the United States, even though it could encourage some local governments to join or rejoin FHAP if its certification standards were lowered.

Third, President Trump and Elon Musk significantly reduced funding for HUD's Fair Housing Initiatives Program (FHIP), which provides grants to private nonprofit organizations to help people who think they were discriminated against in the housing market.¹⁹⁷ Sixty FHIP

¹⁹⁴ Regarding Turner's background in housing policy, see Jesse Coburn & Andy Kroll, *Trump's HUD Secretary Has a History of Fighting Housing Assistance*, PROPUBLICA (Dec. 23, 2024), <https://truthout.org/articles/trumps-hud-secretary-pick-has-a-history-of-fighting-housing-assistance/> [https://perma.cc/K3HK-PYHF]. Coburn and Kroll conclude that Turner "may soon oversee the nation's efforts to build affordable apartments, protect poor tenants and aid the homeless." They add that "[a]s a lawmaker in the Texas House of Representatives, Turner voted against those very initiatives." See also Colin Gordon, *Trump's Next HUD Secretary Would Have a Lot to Do to Address the History of Racist Housing Policy—and Trump's Own Comments and History Suggest That's Unlikely*, THE CONVERSATION (Nov. 26, 2024), <https://theconversation.com/trumps-next-hud-secretary-would-have-a-lot-to-do-to-address-the-history-of-racist-housing-policy-and-trumps-own-comments-and-history-suggest-thats-unlikely-240646> [https://perma.cc/B2X9-6L4L]. Gordon argues that Turner "is poised to pick up where the first Trump 'Heritage Foundation's sweeping blueprint for the second Trump administration. Penned by Ben Carson, Trump's first HUD secretary, it proposes a radical retreat from federal 'overreach' that would include gutting anti-discrimination provisions in federal programs and deferring to localities on zoning." Project 2025, Gordon notes, "would also bar noncitizens from public housing and reverse 'all actions taken by the Biden Administration to advance progressive ideology.'"

¹⁹⁵ See U.S. Dep't of Hous. & Urb. Dev., *Secretary Scott Turner Cuts Red Tape by Terminating AFFH Rule*, https://www.hud.gov/press/press_releases_media_advisories/hud_no_25_034 [https://perma.cc/APF6-97XV] (last visited Mar. 29, 2025). In 2020, the first Trump administration eliminated HUD's AFFH policy developed under Barack Obama, but it was restored under Joe Biden.

¹⁹⁶ *Id.*

¹⁹⁷ See Jesse Bedayn, *Trump Administration to Slash Funding*, AP NEWS (Feb. 28, 2025), <https://apnews.com/article/trump-doge-housing-crisis-cuts-discrimination-d0c6e3b4b030787a1f60a7dc153153dd>.

agencies were informed in March 2025 that HUD was discontinuing their grants because they “no longer effectuate the program goals or agency priorities.”¹⁹⁸ The shocking effects of these funding reductions were promptly reported in several states.¹⁹⁹ FHIP organizations in four states filed suit against DOGE and HUD, maintaining that an “egregious overstep” by the Trump administration occurred when it rescinded about \$30 million in funding previously approved by Congress.²⁰⁰

During these uncertain times, “fasten your seatbelts, it’s going to be a bumpy” ride.²⁰¹ It is difficult to know where the administration’s early chaos will eventually lead fair housing policy and its enforcement at the federal level, not to speak of the subnational levels. They may remain moving targets for some time—or even persist throughout the president’s second administration. Proponents of progressive fair housing changes will likely have to wait at least one presidential administration to significantly improve Title VIII enforcement, let alone to increase the chances of Black and Latinx complainants receiving higher favorable outcomes in New York and New Jersey, where it is especially needed. Simultaneously, fair housing proponents must keep in mind that state and local agencies are often the most effective in

¹⁹⁸ Quoted in Joyce Vance, *The People Trump and DOGE Hurt*, CIV. DISCOURSE WITH JOYCE VANCE (Mar. 14, 2025), <https://joycevance.substack.com/p/the-people-trump-and-doge-hurt>. It was later reported that 66 FHIP agencies were notified about cuts amounting to \$30 million in HUD grants. Debra Kamin, *Cuts to Housing Nonprofits Will Spur Discrimination, Democrats Say*, N.Y. TIMES (Mar. 17, 2025), <https://www.nytimes.com/2025/03/17/realestate/warren-waters-hud-doge-budget-cuts.html>. Yet another account claims the administration was cutting “78 of 162 FHIP grants.” Jordan Smith, *DOGE Slashes Grant to Indiana’s Lone Fair Housing Nonprofit, Prompting Class Action Lawsuit*, INDYSTAR (Mar. 17, 2025), <https://www.indystar.com/story/news/local/indianapolis/2025/03/17/trump-doge-cuts-hit-fair-housing-center-of-central-indiana-prompting-lawsuit/82468644007/>.

¹⁹⁹ For examples, see Bedayn *supra* note 194; Vance *supra* note 195; Damin *supra* note 195.

²⁰⁰ Debra Kamin, *Housing Discrimination Groups Sue DOGE and HUD for Cutting Funds*, N.Y. TIMES (Mar. 14, 2025), <https://www.nytimes.com/2025/03/13/realestate/fair-housing-discrimination-cuts-lawsuit.html?rsrc=flt&smid=url-share>.

²⁰¹ Paraphrased quote from Bette Davis’s character in ALL ABOUT EVE (Twentieth Century Studios Inc. 1950).

providing favorable outcomes in Title VIII claims.²⁰² This underscores the importance of continued engagement at the subnational level,²⁰³ especially given the hostility to fair housing that is already coming from the national government during President Trump's early second term, and the fact that some areas with the most severe housing segregation problems are Democratic strongholds.²⁰⁴

²⁰² See generally Lamb & Wilk, *supra* note 107; Bullock, Lamb, & Wilk, *supra* note 23.

²⁰³ See Bullock & Lamb, *supra* note 115, for an examination of state and local fair housing accomplishments before 1968.

²⁰⁴ See *supra* text accompanying notes 18, 22, 29, 38–40, 48–50, 52–55, 120, 123, 134–40.