Introduction: A New Round of Fair Housing Struggle

In the United States, the paired struggle for fairness in housing and for equality of access to opportunity is as old as the nation itself. It is a struggle with many battles, yielding both significant gains and lamentable reversals. This book centers on the most recent of these struggles: a regulation, little known outside housing policy circles, called the Affirmatively Furthering Fair Housing (AFFH) Rule, which was issued by the Department of Housing and Urban Development (HUD) in 2015. The AFFH Rule was immediately attacked by a variety of critics, suspended by the Donald Trump administration in 2018, and then rescinded in 2020. But the debate leading up to the implementation of the rule and the lessons learned from it have the potential to reshape national housing policy, local government actions to encourage more equal access to place-based opportunities, and the landscape of racial equity more broadly. At a time of renewed national reckoning about the role of structural racism in American society, debate over the AFFH Rule is a product of that struggle and its microcosm. As future administrations consider how to address intertwined concerns of housing affordability and racial disparities in access to resources, reflection upon the AFFH Rule will be a crucial starting point.

The Affirmatively Furthering Fair Housing Rule

On July 15, 2015, President Barack Obama’s HUD secretary, Julián Castro, announced the finalization of the AFFH Rule, the most significant federal
effort in a generation to address long-standing, pervasive residential segregation by race and to increase equality of access to place-based opportunities, such as high-performing schools or access to jobs. Pointedly, Castro made the announcement in Chicago, one of America’s most racially segregated metropolitan areas.

Nearly fifty years earlier, the Fair Housing Act of 1968 had outlawed the denial of housing on the basis of race, color, religion, or sex. That landmark legislation had also instructed all executive departments and agencies to administer their programs “in a manner affirmatively to further” fair housing. Although federal officials occasionally made efforts to address the separate and unequal neighborhoods that have characterized U.S. metropolitan areas for more than a century, the Fair Housing Act’s mandate to take active steps to reduce disparities in access to place-based opportunities essentially withered on the vine. Indeed in the United States, the history of fair housing, and of racial equity more broadly, has been a famously long struggle, fraught with repeated cycles of promises, protests, backlash, and uncertain prospects for success.

Over the five decades since the passage of the Fair Housing Act, Republican and Democratic administrations have largely declined to require states or localities to take meaningful steps to reduce segregation or disparities in access to opportunity as the act’s mandate to affirmatively further fair housing required. While levels of Black-white segregation have declined somewhat since the Fair Housing Act’s passage, they remain high, and levels of Latinx-white segregation have remained largely unchanged over the past half-century. Research has consistently found that higher levels of metropolitan-area segregation are associated with lower levels of socioeconomic mobility for all residents and with negative impacts on the life chances of African American and Latinx children and young adults, including wider gaps in educational attainment, employment, and earnings; negative health outcomes; and reduced political power. Deindustrialization, suburbanization, and widening income polarization have interacted with continuing racial residential segregation to contribute to the creation and intergenerational transference of neighborhood contexts characterized by concentrated, racialized poverty.

With this mounting evidence of associations between segregated metropolitan areas, high-poverty neighborhoods, and negative outcomes for social mobility and socioeconomic opportunity, the Obama administration devoted substantial efforts to create the AFFH Rule to finally implement the 1968 act’s mandate. As enacted, the AFFH Rule requires HUD to provide grant recipients with uniform data about residential segregation and disparities in access to place-based resources and opportunities, and HUD created a publicly accessible website that generates customized maps and
tables for each jurisdiction and its surrounding region. The rule requires HUD grantees to engage with their residents to create local strategies to address disparities by race, national origin, family status, disability, and other protected characteristics in access to amenities or risks such as quality schools, proximity to employment, and exposure to environmental hazards. The rule then requires municipalities to submit plans to HUD, called Assessments of Fair Housing (AFHs). By mandating local creation of specific measurable goals and actions to reduce segregation and increase access to opportunity, the AFHs link these planning and assessment efforts to the availability of future HUD funding.

To operationalize the AFFH Rule, HUD created the AFFH Assessment Tool, which contains questions that guide grantees through effective completion of their fair housing plans. The assessment tool has several key elements, including a community participation section that requires municipalities to gather public input on fair housing issues, make their draft plans public, solicit community feedback, and address those comments and concerns before submission. It also asks municipalities how they have addressed prior fair housing goals and how that progress or lack of progress has influenced the selection of current goals. Municipalities are required to analyze the HUD-provided data and additional local data, including data on segregation and integration along lines of race and ethnicity, national origin, English proficiency, and disability; racially or ethnically concentrated areas of poverty; disparities along protected class lines in access to high-performing schools, employment, transportation, low-poverty neighborhoods, environmentally healthy neighborhoods, and disproportionate housing needs; data on access to opportunity for the residents of publicly supported housing; data on access to opportunity for individuals with disabilities; and an analysis of fair housing enforcement, outreach capacity, and resources.

Based on this assessment of data and information gathered during public engagement activities, the assessment tool asks grant recipients to identify pressing local fair housing challenges and then to pinpoint and to prioritize the factors that contribute to those issues, particularly those that limit realistic opportunities to live in a variety of neighborhoods and drive disparities in access to opportunity. Finally, the tool asks grant recipients to set goals designed to overcome those contributing factors, to clarify how each goal addresses that contributing factor, and to set out metrics, milestones, time frames, and parties responsible for achieving the goals. Crucially, to ensure implementation, HUD requires that metrics, milestones, and strategies be included in subsequent Consolidated Plans, Annual Action Plans, and Public Housing Authority Plans.

HUD timed the due dates for the AFHs to precede the due dates for Community Development Block Grant (CDBG) Consolidated Plans and
Public Housing Authority Plans, which must include fair housing elements from the AFHs. The AFFH Rule obligates HUD to review fair housing plans within sixty days; any plan not reviewed within sixty days is deemed accepted. HUD reviews each AFH to evaluate whether the program participant has met the rule’s requirements for analysis, assessment, and goal setting, and the rule mandates that HUD reject an AFH if it is found to be inconsistent with fair housing or civil rights requirements or is substantially incomplete. For any AFH that is not accepted, the rule requires HUD to provide in writing the reasons for nonacceptance and guidance as to how the AFH should be revised to be accepted.

In Fiscal Year 2019, HUD’s Community Planning and Development department disbursed $7.7 billion in block grants and related funding to more than 1,200 state and municipal governments. The block grant programs all require state and local governments to conduct annual and long-term strategic planning for their use of these funds in what is known as the Consolidated Plan process. Withheld block grant funding for failure to complete the AFH process would represent a significant financial burden for some HUD program participants—and potentially an effective incentive to comply with the AFFH regulation. Similarly, HUD also requires public housing agencies to conduct annual and long-term planning and produce a Public Housing Authority Plan. To receive block grant funds, program participants must submit a Consolidated Plan to HUD every three to five years and certify that they will comply with all statutory and regulatory requirements, including the AFFH provision.

In the process of its development and after its release, the AFFH Rule was praised and criticized. From the Right, it was decried as social engineering and a federal takeover of the suburbs. Conservative members of Congress tried repeatedly to repeal or undermine the rule after its passage. From the Left, it was criticized as unlikely to be effective, given only blunt enforcement mechanisms. Some took issue with its focus on racial segregation rather than racial equity. Yet others heralded the rule as the most significant step forward for addressing place-based inequality in the United States since the passage of the Fair Housing Act itself in 1968.

This book analyzes multiple dimensions of this new rule, including failures of past efforts to reduce segregation, how the AFFH Rule was crafted, what the effects of the rule have been so far, and how it interacts with other pressing contemporary housing issues, such as gentrification. Work on the book began with a series of public workshops in 2016 about the AFFH Rule as it was initially being implemented. We have worked to update the chapters as much as possible, as the landscape has changed dramatically over and over again in the intervening years. The book lays out criticisms of the AFFH Rule from the Left and the Right and then, given the efforts of the
Trump administration to curtail it, asks where we can go from here. By examining the near past and the distant past, we seek to identify promising new directions for future policies and practices.

**The Role of Place in Socioeconomic Mobility and Racial Equity**

Over the past half-century, socioeconomic mobility in the United States has declined dramatically. Ninety percent of children born in the 1940s grew up to earn more than their parents, compared to only 50 percent of children born in the 1980s. These backward steps have not been experienced evenly. As socioeconomic mobility has declined broadly across America, the economic gains experienced by African American households immediately following the civil rights movement have largely reversed. The majority of African American households whose parents were in the middle class in the post–civil rights era have experienced downward mobility since, moving lower in the income distribution today than they were in their parents’ generation.

These trends are even more dramatic when considering how directly place shapes a child’s chances of moving up the economic and social ladders. Neighborhood characteristics are strong predictors of upward socioeconomic mobility, especially for children starting out in the lower half of the income distribution. In particular, the degree of racial and economic segregation in a metropolitan area dramatically influences children’s upward economic advancement. The socioeconomic characteristics of neighborhoods are particularly powerful predictors of the educational and economic attainment of African American and Latinx young adults, whose neighborhoods are by and large physically separate and materially unequal from the neighborhoods in which white young adults grow up. Today, residential segregation by race nationwide remains high, and income segregation is increasing, exacerbating gaps in intergenerational mobility by race.

These trends are intertwined with a widening wealth gap that further reinforces economic inequality, particularly by race. For the majority of U.S. homeowners, their homes are their most valuable assets. Thus, one reason for the substantial racial and ethnic disparities in wealth is the disparity in rates of homeownership and in its financial returns. Homeownership rates in the United States reached record highs in 2004 and 2005, when more than three out of every four (76 percent) white non-Hispanic households were homeowners. But even at this peak, only half of Black households (49 percent) and Latinx households (50 percent) owned their own homes. The economic growth in the first decade of the 2000s and the devastating recession beginning in 2008 were caused in part by the increased global investment in U.S.
homes, commodified through the packaging of home mortgage loans into securities. The precipitous decline in home values and the increased rate of foreclosures after 2008 contributed to a widening of the racial wealth gap between white and non-white households. In 2016, the median white household had a net worth of $171,000, nearly ten times the median Black household’s net worth of $17,600 and roughly eight times the median Latinx household’s net worth of $20,700. By 2019, the white homeownership rate had fallen to 73 percent, while the Black homeownership rate had fallen to 41 percent and the Latinx rate to 47 percent—leaving a 26 to 32 percentage point gap in homeownership rates by race and ethnicity. Even looking solely at those who do own their homes, white homeowners have substantially more net housing wealth, or home equity, than non-white homeowners.

As homeownership rates have declined over the past decade, housing costs for renters have risen—in many cities, faster than renters’ incomes. Increasing rent burdens for low- and moderate-income households have contributed to the rise of the most active local and national movements for affordable housing in recent memory. For instance, in 2018 and 2019, tenants’ rights activists in Oregon and California won the passage of state laws enabling rent regulation, while tenants in New York strengthened existing rent regulations. Affordable housing organizers in Minneapolis worked with the mayor and city council to enact a “Minneapolis 2040” plan that changed zoning: across the roughly 75 percent of the city previously zoned for single-family homes, construction of three-family (or more) homes is now generally allowed. Similarly, the Oregon state legislature enacted a law in 2019 requiring the creation of multifamily zoning in municipalities statewide. At the same time, conversations about racial equity, especially after the rise of the Black Lives Matter movement, continue to capture public attention and spur a focus on the wide and persistent racial wealth gap as well as racial disparities in measures of access to opportunity.

A home, of course, is also much more than just an asset. The level and quality of neighborhood-based resources are powerful predictors of individual life chances. The condition, security of tenure, and location of one’s home, whether owned or rented, all have substantial impacts on one’s health, well-being, and socioeconomic mobility. The structure of governance in the United States makes access to crucial public services and resources, such as schools or policing, dependent on the location of one’s home. In consequence, the level or quality of these services varies substantially based on jurisdiction or neighborhood. Indeed, differentiation by residential location in the United States is part of a spatial structure that organizes our social lives. Neighborhoods are not just separated by race, ethnicity, and income; they are also unequal. The average Latinx or African American individual lives in a neighborhood with a substantially higher poverty rate (8 to 10
percentage points) and a lower-performing local school (16 to 22 percentage points) than the average white individual. Neighborhoods shape families across generations, and the inequality of those neighborhoods must be conceptualized as a central dimension of social stratification and racial inequality in the United States.

Because housing policy lies at the intersection of declining socioeconomic mobility and persistent racial and ethnic inequality in wealth and income, housing in recent years has become an issue of greater significance in national politics than has been seen in decades. From mortgage underwriting to foreclosures, rent regulation to evictions, housing cost burdens to exclusionary zoning, gentrification and Yes in My Backyard (YIMBY) organizations, housing policy issues have inspired an array of contemporary local and national social movements. The AFFH Rule connects these movements to the ongoing struggle for racial equality. It also creates leverage to make real changes in local and regional policy.

Nationally, the AFFH Rule has been referenced and expanded upon by a range of actors. Democratic presidential candidates in the 2020 cycle, including Bernie Sanders, Elizabeth Warren, Cory Booker, Kamala Harris, Pete Buttigieg, Amy Klobuchar, and former HUD secretary Julián Castro, all released housing plans that, at least in part, aimed to address disparities in access to place-based resources and opportunities. Sanders proposed national just-cause eviction requirements and rent regulation as well as investments in public housing and housing choice vouchers. He also proposed making federal housing and transportation funds contingent on remedying restrictive zoning ordinances and using HUD’s authority to encourage state and local land-use policies that advance racial, economic, and disability integration. Warren proposed an expansive plan to reform land-use rules that restrict affordable housing construction and further racial segregation and recommended investments that would begin to close the racial wealth gap through targeted homeownership assistance. Warren’s proposal also increased funding for public housing and strengthened protections for renters. Castro released a detailed plan to expand the housing choice voucher program, prohibit discrimination based on source of income, create a renters’ tax credit, invest in subsidized housing, create federal land-use guidelines, and to use an expanded CDBG program to require zoning reforms that would advance fair housing and reduce racial disparities. Harris proposed a federal tax credit designed to ease the burden of rents for low- and moderate-income households. Booker proposed a federal tax credit for renters paying more than 30 percent of their income on rent and offered policies designed to restrain exclusionary zoning.

The eventual Democratic party candidate, Joe Biden, ultimately proposed a plan also aiming to directly address place-based racial disparities.
His plan included restoring and implementing the AFFH Rule, conditioning receipt of federal CDBG and transportation funding on the elimination of exclusionary zoning regulations, strengthening the Community Reinvestment Act, maintaining existing disparate impact liability under the Fair Housing Act, reinstating the power of the Consumer Financial Protection Bureau to investigate discriminatory lending, providing housing choice vouchers to all eligible households, creating a new first-time homebuyer tax credit, creating a new renter’s tax credit, helping tenants facing eviction access legal assistance, and allocating increased funding and tax credits to affordable housing production. Perhaps just as important as the details of any of these plans is the fact that these presidential candidates generated new public dialogue about housing affordability and racialized wealth disparities that had been largely absent from previous campaigns.

This public dialogue is further strengthened by the immense power exercised through protest, particularly in the wake of the intertwined health, social, economic, and political crises of 2020. The unprecedented force of the 2020 resurgence of the Black Lives Matter movement has moved conversations about the pervasiveness of white supremacy in U.S. society to the forefront, contributing to significant changes in public perception about racial discrimination, particularly among white audiences. Importantly, the movement has sharpened this growing recognition of the nature of racial discrimination faced by Black Americans, providing a clearer lens through which to view the AFFH Rule.

In 2016, the Movement for Black Lives platform articulated a call to end the war on Black people and a call for reparations—including reparations to atone for long-standing housing discrimination. In addition, the movement demanded divestment from policing and prisons; investment in education and health care; community control over schools and public safety, together with participatory budgeting processes; and reforms to existing political processes that would support independent Black political power and Black self-determination. The platform also called for economic justice, including reforming the tax code, strengthening workers’ rights, devoting resources to encourage cooperative or collective ownership, and delivering a right to land, clean air, clean water, and housing. Although the 2020 protests were sparked initially by police violence in a context of enduring white supremacy, the participation of millions of Americans nationwide helped underscore a growing understanding that racism must be understood not as individualized prejudice but as systematic white supremacist subordination—as ideologies, policies, and practices that normalize and perpetuate racialized inequalities. This movement pointedly underscores the deep historical roots undergirding the AFFH Rule, giving it renewed urgency. Seen this way, the racialized disparities in homeownership rates or neighborhood
resources that the rule was designed in part to address must be seen as products of racism and a white supremacist social and economic order.

In response to the momentum of the Black Lives Matter movement, Donald Trump countered by continuing to stoke division, especially along racial lines. Among many elements of his response, he reassured his widespread resentment of protestors and dissent, reaffirmed support for white supremacists, and continued to double down on his racist and divisive rhetoric. Reminiscent of his 2016 campaign, his calls for “law and order” were shouted over the calls for justice, even as protests continued through all fifty states throughout the summer of 2020. His actions illuminated a clear connection between racist ideologies and the policy decisions that uphold these divisions, especially urban and regional policies that continue to enable neighborhood-based socioeconomic and racial inequality. In July he tweeted:

At the request of many great Americans who live in the Suburbs, and others, I am studying the AFFH housing regulation that is having a devastating impact on these once thriving Suburban areas. Corrupt Joe Biden wants to make them much worse. Not fair to homeowners, I may end!

Critics and pundits widely viewed Trump’s invocation of the AFFH Rule as an attempt to reverse declining suburban support by further inflaming racial divides. In the following weeks, Trump continued this rhetoric, evoking segregationist fearmongering from the 1960s. He claimed that because of the AFFH Rule, “Your home will go down in value and crime rates will rapidly rise” and that the rule “will totally destroy the beautiful suburbs. Suburbia will be no longer as we know it.” On July 23, 2020, the Trump administration issued a final rule titled “Preserving Community and Housing Choice” that repealed the 2015 AFFH Rule.

These statements that presaged the rule’s repeal highlight the ways that the struggle for racial justice extends across every urban block and suburban front yard. In so doing, it clarified and amplified what is at stake in the fight to revive—or “end”—the AFFH Rule. Addressing racial disparities in housing produced by white exclusion and resource hoarding requires a complex reimagining of multiple dimensions of our collective ways of life. The work of the AFFH Rule is to root out the ways in which white supremacy has become physically embedded in the American landscape.

The Meaning of Fair Housing

Although much of the dialogue around housing centers on matters of affordability and only implicitly engages issues of fairness, the dialogue is
not often explicitly framed in terms of “fair housing.” It is worth stepping back, then, to ask what “fair housing” is and what acting “affirmatively to further” it should entail. The dual mandate of the Fair Housing Act, to end discrimination and “to provide . . . for fair housing throughout the United States,” raises the question of what is—or should be—“fair” about housing.

As Alexander von Hoffman illustrates in Chapter 1 of this volume, civil rights activists created the “open housing” movement (as it was originally called) during World War II. The movement for open housing gained momentum in the 1950s and 1960s through challenges to government-sponsored or enforced housing segregation and to the widespread use of racially restrictive covenants that prohibited non-white or non-Christian individuals from purchasing housing. The term “open housing” captures fair housing’s first meaning in its goal of opening housing opportunities that were denied on the basis of race or religion. The second, affirmative meaning of fair housing—to reduce segregation and increase access to opportunity—embodies a broader and arguably more controversial set of policy aspirations for a more inclusive, equal, and “fair” society. One of the Fair Housing Act’s sponsors, Senator Walter Mondale, saw the goal of the act ultimately as the creation of “truly integrated neighborhoods.”

How exactly one interprets what it means to create fairness in housing, however, is complex. The AFFH Rule identifies a mandate to “overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing,” but what form that overcoming should take has been a crucial point of division in housing policy for decades. As Edward Goetz points out in Chapter 5, this mandate could be interpreted in at least three ways: first, as opening up exclusionary communities to new residents; second, as dismantling structural incentives that perpetuate racially segregated living patterns; or third, as working to actively integrate residential patterns, even if this integration has the consequence of significantly changing the composition of neighborhoods that have historically been predominately populated by people of color. The chapters that follow explore the tensions among these different interpretations.

**The History of Fair Housing: From 1866, to 1968, to 2015**

To fully understand the significance of housing policy in reproducing inequality and to effectively engage in the contemporary policy debates regarding housing, it is revealing to look back at two key historical moments: first, the Reconstruction period and subsequent rise of racial residential segregation; and second, the civil rights movement and the push for the Fair
Housing Act of 1968. The advances and the setbacks of these earlier rounds of struggle frame the challenges faced by the AFFH Rule.

**The Reconstruction Amendments and the Civil Rights Act of 1866**

In the midst of the Civil War, Congress passed the Thirteenth Amendment to the Constitution, and in 1865, the states ratified it, abolishing slavery and involuntary servitude throughout the nation and giving Congress the power to enact further legislation to enforce the amendment. Almost as soon as the Civil War had ended and the Thirteenth Amendment had been ratified, however, white officials in the South began to resist emancipation. States and municipalities enacted Black Codes (laws that applied only to African American individuals) to re-create the social and economic structure of slavery, criminalizing “vagrancy” to force freed individuals to sign labor contracts with white employers, allowing sheriffs to hire out Black “vagrants” to white employers to work off their sentences, and providing that Black employees who left before the end of a contract would forfeit all their wages for the year and could be arrested and returned to their “masters.”

State and local officials generally refused to enforce whatever limited rights their newly enacted state constitutions actually granted to African American residents, white citizens used violent intimidation and terror to oppress Black neighbors, and white planters collaborated to compel freed slaves to work for their former masters or other planters on terms dictated by the employer. Carl Schurz, investigating the progress of Reconstruction, noted that the freed man was “not only not permitted to be idle” but “positively prohibited from working or carrying on a business for himself” and “[wa]s just as much bound to his employer ‘for better and for worse’ as he was when slavery existed in the old form.”

Despite this exploitation of Black labor, arguably the most pressing problem facing freed men and women was access to land. During the Civil War, some freed slaves were able to access land abandoned by former plantation owners, but in 1865, President Andrew Johnson’s Amnesty Proclamation stripped that property from the freed men and women and returned it to white plantation owners. Land—“this absolutely fundamental and essential thing to any real emancipation of the slaves—was continually pushed by all emancipated Negroes and their representatives in every Southern state,” W. E. B. Du Bois observed. Appeals to state and federal officials for land, however, were “met by ridicule, [and] by anger.”

**Promise**

In response to Southern efforts to effectively re-enslave the newly freed men and women, the Republican majority in Congress enacted the nation’s first
civil rights law, the Civil Rights Bill of 1866. President Johnson vetoed the legislation, arguing that the bill “intervenes between capital and labor and attempts to settle questions of political economy through the agency of numerous officials,” but Congress overrode the veto. Reinforcing the Thirteenth Amendment, Congress intended for the legislation to make everyone born in the United States truly full citizens. The statute stated that all

shall have the same right in every State and Territory in the United States to make and enforce contracts; to sue, be parties and give evidence; to inherit, purchase, lease sell hold, and convey real and personal property; and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by the white citizens, and shall be subject to like punishment, pains, and penalties and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

In light of the Black Codes, Congress recognized the urgent need for federal protections against discrimination by the states. As important, Congress also recognized the danger of private discrimination by white individuals and white collectives, acting to deny African American men and women equal social and economic rights, especially equal rights in land. In his veto, President Johnson complained about the congressional recognition of the asymmetry of political, legal, and social power in a context of white supremacy, arguing that “the distinction of race and color is by the bill made to operate in favor of the colored and against the white race” and presaging contemporary arguments regarding “reverse discrimination.”

As the struggle between Republican legislators and President Johnson continued, congressional leaders sought to enshrine the civil rights protections in a constitutional amendment and thus protect them against a later congressional repeal. Congress proposed the Fourteenth Amendment in 1866, and the states ratified it in 1868, solidifying the citizenship of all those born within the United States; prohibiting states from depriving citizens of life, liberty, and property without due process of law; and prohibiting states from denying to any person within their jurisdiction the equal protection of the laws.

The Thirteenth, Fourteenth, and later Fifteenth (prohibiting discrimination on the basis of race in voting) Amendments held out the promise of a Reconstruction that could bring forth a true multiracial democracy. Together, these Reconstruction amendments transformed the Constitution from a document that was designed to protect the rights of individual white male property holders from interference by the state into a document that
made it possible for the federal government to protect the rights of all those within the United States from discrimination by those states. Electorates voted large numbers of African American officials into almost every level of public office, from city councils, to state legislatures, to Congress. For a brief moment, Black men (although not yet women) were part of the structure of governance, and “poor men were ruling and taxing rich men.”

**Protest**

White elites’ opposition to Reconstruction, however, only intensified as African American elected officials revealed the falsity of white supremacist myths. Further, the economic situation of the South after the Civil War was dire. Industrialization was transforming not only the northern economy but also the southern one. White plantation owners still owned land but now found it much more difficult to extract labor at no or very low cost. White and Black workers without property struggled to survive. Nationally, the fledgling labor movements, in the words of Du Bois, “never had the intelligence or knowledge, as a whole, to see in Black slavery and Reconstruction, the kernel and meaning of the labor movement in the United States,” and the hope for a “union of democratic forces never took place.” After the disputed 1876 presidential election, northern Republicans agreed to remove federal troops from the South, cede control back to the white planter elites, and essentially abandon the freed people in exchange for awarding the White House to Republican Rutherford B. Hayes. “Redeemer” governments quickly took power across the South, rewriting state constitutions to further disenfranchise and disempower Black citizens.

Still, farmers’ alliances, including the National Farmers’ Alliance and the Colored Farmers’ Alliance, sprung up in the 1880s and 1890s and solidified into the Populist or People’s Party, seeking to strengthen direct democracy through such changes as the direct election of U.S. senators and to enact policies equalizing the playing field between small farmers and industry, such as a graduated income tax. Georgia Populist Party leader Tom Watson addressed racially mixed crowds of farmers, saying that “the colored tenant is in the same boat as the white tenant, the colored laborer with the white laborer, and that the accident of color can make no difference in the interests of farmers, croppers, and laborers.” In North Carolina, the fusion of Republican and Populist voters won control of the North Carolina General Assembly, governorship, and most of the U.S. congressional seats in a powerful alliance of Black and white Republicans and small farmers. This Black-white political alliance precipitated the only coup d’état in U.S. history, in the Wilmington Massacre of 1898, when white Democratic party leaders led a mob of thousands of white supporters to terrorize the Black community, murder scores of Black residents, and overthrow the
democratically elected, multiracial fusion government, chasing the elected leaders from the city.\textsuperscript{43}

**Prospects**

The Civil Rights Bill of 1866 and the Reconstruction amendments held out the promise of a multiracial democracy, including crucial protections for basic rights and the ability to acquire and transfer property. But the Civil Rights Bill of 1866 failed to address the overwhelming inequity in land ownership by race that divided the South and the nation. In the words of Du Bois:

> To emancipate four million laborers whose labor had been owned, and separate them from the land upon which they had worked for nearly two and a half centuries, was an operation such as no modern country had for a moment attempted. The German and English and French serf, the Italian and Russian serf, were, on emancipation, given definite rights in the land. Only the American Negro slave was emancipated without such rights and in the end this spelled for him the continuation of slavery.\textsuperscript{44}

Nevertheless, these first, contested steps taken by Fourteenth Amendment and the Civil Rights Bill of 1866 charted a direction for future civil rights organizations, such as the National Association for the Advancement of Colored People (NAACP), to chip away at the assumptions undergirding white supremacy and to assert Black citizenship and property rights. It would take until 1968 to pass the Fair Housing Act, but five decades of grassroots organizing and legal cases based on the Fourteenth Amendment and the Civil Rights Bill of 1866, such as *Buchanan v. Warley* (1917), *Shelley v. Kraemer* (1948), and *Jones v. Alfred H. Mayer Co.* (1968), prepared the legal and intellectual groundwork.

**The Fair Housing Act of 1968**

Following the end of Reconstruction, white collective violence against Black residents of integrated neighborhoods at the end of the eighteenth and beginning of the nineteenth centuries forced African American neighbors from their homes and neighborhoods, creating a more segregated metropolitan landscape. Following Baltimore’s passage of a municipal segregation ordinance in 1910, cities across the South passed laws “requiring . . . the use of separate blocks for residences, places of abode and places of assembly by white and colored people respectively.”\textsuperscript{45} After the NAACP successfully challenged explicit municipal racial zoning provisions pursuant to the Fourteenth Amendment’s Equal Protection Clause in *Buchanan v. Warley*
(1917), white strategies to solidify separate and unequal living patterns focused increasingly on the diffusion of private racially restrictive covenants in white communities.

Beginning in the early 1900s, real estate developers marketed middle-class suburban living in planned neighborhoods. These developers promoted deed restrictions governing the use of properties as a noteworthy amenity. Some covenants also included explicit prohibitions on residence by non-white people. These binding covenants ran with the property deed and generally prohibited all future purchasers from selling to non-white, and often non-Christian, buyers. The National Conference on City Planning provided a platform that helped these racially restrictive covenants spread countrywide, while the National Association of Real Estate Boards revised its code of ethics in 1924 to prohibit real estate agents from “introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individual whose presence will clearly be detrimental to property values in that neighborhood.”

In the midst of the Great Depression, Congress created the Federal Housing Administration (FHA) to insure mortgages and to facilitate long-term loans with fixed monthly payments. To systematize appraisals and underwriting, the FHA also created an underwriting manual that urged the use of “proper zoning and deed restrictions” to protect against changes that diminished “desirable neighborhood character.” It stated that the “more important among the adverse influential factors are the ingress of undesirable racial or nationality groups” and gave higher ratings to those properties and neighborhoods that had restrictive covenants in place.

In 1935, the federal Home Owners’ Loan Corporation (HOLC) created “Residential Security Maps” that color-coded neighborhoods of major cities according to appraisers’ view of their profitability for mortgage lending, driven in part by racial or ethnic composition. Neighborhoods seen as higher lending risks were shaded red, leading to the term “redlining” to describe the denial of loans or financial services because of a neighborhood’s racial or ethnic composition. The FHA provisions and the HOLC maps emboldened discrimination by real-estate agents, banks, sellers, and landlords.

As a result of the combination of these public and private policies, between 1880 and 1940, levels of segregation increased substantially nationwide. In 1880, an African American household had a one-in-two chance of having a non–African American neighbor. By 1940, that likelihood had declined to just over one in three.

Civil rights organizations, such as the NAACP, developed political and legal campaigns to challenge public policies and private practices that excluded African American homeseekers from white neighborhoods—from municipal segregation ordinances, to racially restrictive covenants, to
redlining—and from white schools. As discussed above, litigation by the NAACP led the Supreme Court to invalidate segregation ordinances in 
Buchanan v. Warley (1917). In another case brought by the NAACP concerning racially restrictive covenants, 
Shelley v. Kraemer (1948), the Court held that, even if the Constitution did not prohibit private racial discrimination, courts could not enforce private racially restrictive covenants because court enforcement would constitute state action in violation of the Fourteenth Amendment’s Equal Protection Clause. Perhaps best known among these cases is Thurgood Marshall’s victory in 
Brown v. Board of Education (1954), wherein the Supreme Court held that “separate educational facilities are inherently unequal” and that segregation in public education deprived Black students of their right to the equal protection of the laws guaranteed by the Fourteenth Amendment.49 Even after 
Brown, however, racial discrimination in housing by lenders, brokers, landlords, and other private actors continued to be legally permissible and pervasive. The real estate development and financing practices that facilitated suburbanization after World War II essentially blocked Black households from the opportunity to move to these new suburban developments and continued to limit their ability to accumulate home equity.

As public and private investment in suburban land and infrastructure grew after World War II, property values in many inner-city neighborhoods began to fall. To confront this urban decline, Congress created national urban-renewal programs in the Housing Acts of 1949 and 1954. These acts provided federal funds to municipalities to acquire land, raze existing structures, and pave the way for private construction. Cities frequently used the program to demolish poor, and often predominantly non-white, neighborhoods that were categorized as “blighted,” uprooting and displacing large numbers of Black, Latinx, and immigrant residents.

In 1966, Martin Luther King Jr. and the Southern Christian Leadership Conference (SCLC) announced a collaboration with the Coordinating Council of Community Organizations on the Chicago Freedom Movement, comparing residential segregation to colonization and seeking “to bring about the unconditional surrender of forces dedicated to the creation and maintenance of slums and ultimately make slums a moral and financial liability upon the whole community.”50

King subsequently noted the parallels between spatial control through plantations under slavery and spatial control through metropolitan segregation: “The plantation and ghetto were created by those who had power, both to confine those who had no power and to perpetuate their powerlessness. The problem of transforming the ghetto, therefore, is a problem of power—confrontation of the forces of power demanding change and the forces of power dedicated to the preserving of the status quo.”51
Focused on securing “open housing,” the movement led marches through the summer of 1966 into all-white neighborhoods on Chicago’s southwest and northwest sides to expose white opposition to residential integration and, in King’s words, to “draw this hate into the open.”52 The marchers were consistently jeered, taunted, and met with violence from hostile white residents. King pointed out that “many whites who oppose open housing would deny that they are racists.”53 Against this hostility to neighborhood integration, however, King had little concrete progress to show, even after seven months of marches, protest, and meetings.

King and the movement struggled to effectively organize Chicago’s culturally and economically diverse Black residents and faced mounting opposition from many white residents. That August, the movement’s leaders announced plans to march through the all-white town of Cicero, where, fifteen years earlier, thousands of white residents had rioted for days after an African American World War II veteran, Harvey E. Clark, and his family had attempted to move into an apartment there. The Illinois governor ultimately had to call in the National Guard to stop the violence, and the Clark family left the state.

With local white leaders fearful of a new round of violence in Cicero and King struggling to gain traction among Black Chicagoans, he and other civil rights leaders met with Illinois governor Otto Kerner and Chicago mayor Richard Daley and agreed to call off the marches into white neighborhoods; in turn, city officials agreed to do more to promote fair housing. Civil rights leaders generally saw the agreement as a failure. Indeed, the city did little to fulfill its commitments, and the Chicago Real Estate Board would not even agree to drop its legal challenge to Chicago’s largely ineffective fair housing ordinance. King that summer nevertheless highlighted the importance of tenant union organizing and pathways to homeownership as well as Black-owned banks. In his presidential address to the SCLC, King focused largely on access to housing and schools and on the spatial dimensions of inequality, urging members to continue the fight:

Let us be dissatisfied until the tragic walls that separate the outer city of wealth and comfort from the inner city of poverty and despair shall be crushed by the battering rams of the forces of justice. Let us be dissatisfied until those who live on the outskirts of hope are brought into the metropolis of daily security. Let us be dissatisfied until slums are cast into the junk heaps of history, and every family will live in a decent, sanitary home. Let us be dissatisfied until the dark yesterdays of segregated schools will be transformed into bright tomorrows of quality integrated education. Let us be
dissatisfied until integration is not seen as a problem but as an opportunity to participate in the beauty of diversity.\textsuperscript{54}

The limited success of the Chicago open housing campaign was one of King’s relative failures in the civil rights movement. The struggles of the campaign highlight the vociferous opposition and violent resistance that efforts to promote racially integrated living patterns provoked in the past and still provoke today.

**Promise**

During the summer of 1967, more than 150 uprisings erupted in cities across the country, triggered by racially discriminatory housing policies and urban inequality generally. President Lyndon Johnson convened the National Advisory Commission on Civil Disorders, commonly known as the Kerner Commission after its chair, Otto Kerner. The Kerner Commission’s report, released in February 1968, described the nation as “moving toward two societies, one black, one white—separate and unequal.”\textsuperscript{55} The report determined that housing discrimination, residential segregation, and economic inequality were causing increasing societal division, and it recommended that Congress “enact a comprehensive and enforceable open housing law.”\textsuperscript{56}

President Johnson and Senator Mondale had pushed for a federal fair housing bill in 1966 and 1967, without success. Mondale recalled, “A lot of civil rights was about making the South behave and taking the teeth from [southern segregationist] George Wallace,” but the proposed fair housing law “came right to the neighborhoods across the country. This was civil rights getting personal.”\textsuperscript{57}

On April 4, 1968, King was assassinated, and the threat of widespread civil unrest loomed. Senator Jacob Javits, speaking in support of the Fair Housing Act, warned that “the crisis of the cities . . . is equal to the crisis which we face in Vietnam.”\textsuperscript{58} Mondale, the primary drafter of the Fair Housing Act, cautioned that “our failure to abolish the ghetto will reinforce the growing alienation of white and black America. It will ensure two separate Americas constantly at war with one another.”\textsuperscript{59}

Congress recognized that discriminatory housing practices hurt not only individuals who were denied access to housing but the whole community. Mondale emphasized that citywide problems were “directly traceable to the existing patterns of racially segregated housing.”\textsuperscript{60} The sponsors of the Fair Housing Act pointed out that cities were overburdened and underfinanced specifically as a result of discrimination in housing. For instance, Mondale stated that the Fair Housing Act was necessary to address the “declining tax base, poor sanitation, loss of jobs, inadequate education opportunity, and urban squalor” that central cities faced.\textsuperscript{61}
Introduction

Congress repeatedly framed the Fair Housing Act as legislation intended to address the complex web of challenges that discrimination in housing had entrenched in segregated metropolitan areas. Senator Edward Brooke emphasized that the “tax base on which adequate public services, and especially adequate public education, subsists has fled the city,” and he noted that the objective of the Fair Housing Act “must [be to] move toward [the] goal” of recreating “adequate services in the central city” by rooting out systemic discrimination.62

Within a week of King’s assassination, Congress finally passed the Fair Housing Act, often referred to as the “last plank” of civil rights legislation. It set out the goal of providing for fair housing throughout the nation and fulfilling two promises. First, the Fair Housing Act prohibited discrimination in housing on the basis of race, color, religion, and national origin (and subsequently, after amendments in 1974 and 1988, sex, disability or handicap, and familial status).63 Second, the Fair Housing Act required that “all 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.”64 In short, the Fair Housing Act held out the promise of ending discrimination in housing and bringing about “fair housing” more broadly throughout the United States.