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## 20 Ways to Fight Housing Discrimination

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## 20 WAYS TO FIGHT HOUSING DISCRIMINATION

*Ian Wilder, Esq.\**

### ABSTRACT

When looking at the continuing size of the problem of discrimination it is easy to be paralyzed into inaction by the sweeping scope of the undertaking. A good remedy is to find actions that an individual can take to move toward justice. Though Dr. King is often quoted as stating that “the arc of the moral universe is long, but it bends toward justice,”<sup>1</sup> that bend in the arc is caused by legions of activists pulling the future toward justice. Robert Kennedy noted in his opposition to apartheid in South Africa that “a million different centers of energy and daring . . . can sweep down the mightiest walls of oppression and resistance.”<sup>2</sup>

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\* Ian Wilder, Esq. is Executive Director of Long Island Housing Services, Inc. He has practiced law on Long Island since 1994 and lived here since 1968. Long Island Housing Services, Inc. is an over half-century-old Civil Rights nonprofit focused on Fair Housing. Its mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. This Article developed out of talks given for the Uniondale Community Land Trust, Hempstead Community Land Trust, and for Long Island Coalition for the Homeless. Thank you to the editors of the *Touro Law Review* for their incisive editing which vastly improved this article.

<sup>1</sup> Martin Luther King Jr., Sermon Delivered at the National Cathedral in Washington D.C.: Remaining Awake Through a Great Revolution (Mar. 31, 1968) (transcript available at <https://www.caribbeannationalweekly.com/caribbean-breaking-news-featured/mlk-jr-remaining-awake-revolution>).

<sup>2</sup> Robert F. Kennedy, Day of Affirmation Address at the University of Cape Town, South Africa (June 6, 1966) (transcript available at <https://www.jfklibrary.org/learn/about-jfk/the-kennedy-family/robert-f-kennedy/robert-f-kennedy-speeches>).

## I. WHAT IS FAIR HOUSING?

The first step in taking action is to have a basic understanding of where we are now. A definition of fair housing that Long Island Housing Services uses is that all people have the right to live in the housing of their choice, free from discrimination.<sup>3</sup> Additionally, it defines discrimination as the denial of equal treatment and opportunity.<sup>4</sup>

### A. Who is Protected Under the Fair Housing Law?

The state of fair housing protections is evolving, responding to the times. For example, there was a burst of civil rights protections passed during the post-Civil War Reconstruction era.<sup>5</sup> Meanwhile, with the fall of Reconstruction, passage of civil rights legislation—including fair housing rights—was not legislated again until the post-World War II civil rights era.<sup>6</sup>

Fair housing laws are written to protect everyone, though the first fair housing law was not written until Reconstruction.<sup>7</sup> Fair housing laws exist on three levels in New York: federal, state, and local.<sup>8</sup> During Reconstruction, the Civil Rights Act of 1866 was passed, which stated, in part:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United

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<sup>3</sup> Housing Discrimination Under the Fair Housing Act, U.S. DEP'T HOUS. & URBAN DEV., [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_act\\_overview](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview) (last visited June 3, 2022).

<sup>4</sup> Expanding Opportunity Through Fair Housing Choice, HUD USER, <https://www.huduser.gov/portal/periodicals/em/spring14/highlight1.html> (last visited June 3, 2022).

<sup>5</sup> *The African American Odyssey: A Quest for Full Citizenship: Reconstruction and Its Aftermath*, LIBR. CONG., [hereinafter *The African American Odyssey*], <https://www.loc.gov/exhibits/african-american-odyssey/reconstruction.html> (last visited May 10, 2022).

<sup>6</sup> *The African American Odyssey: A Quest for Full Citizenship: The Civil Rights Era*, LIBR. CONG., <https://www.loc.gov/exhibits/african-american-odyssey/civil-rights-era.html> (last visited May 10, 2022).

<sup>7</sup> Civil Rights Act of 1866, Pub. L. No. 39-26, 14 Stat. 27.

<sup>8</sup> N.Y.S. DIV. HUM. RTS., FAIR HOUSING GUIDE 13-16 (2017).

States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, 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 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.<sup>9</sup>

It was followed by the Fourteenth Amendment, which stated that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>10</sup>

This protection was enforceable against state and local governments through the passage of the Fifteenth Amendment which required that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”<sup>11</sup>

The march toward the treatment of all persons as if they are “created equal”<sup>12</sup> was halted and reversed by the end of Reconstruction.<sup>13</sup> It took nearly another hundred years for the United States to attempt a return to civil rights for all with the passage of the

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<sup>9</sup> 14 Stat. 27.

<sup>10</sup> U.S. CONST. amend. XIV, § 1.

<sup>11</sup> U.S. CONST. amend. XV, § 1.

<sup>12</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>13</sup> *The African American Odyssey*, *supra* note 5.

Civil Rights Acts of the 1960s. The Fair Housing Act passed in 1968 as the last of the 1960s Civil Rights Acts,<sup>14</sup> and it only passed in the wake of Dr. Martin Luther King's assassination and the subsequent unrest it caused.<sup>15</sup>

The Fair Housing Act, along with its amendments, makes it against federal law to discriminate in the area of housing based on a person's race, color, national origin, religion, sex, disability, or familial status.<sup>16</sup> Specifically, the prohibition against sexual discrimination has been defined to prohibit discrimination based on either sexual orientation or gender identity.<sup>17</sup>

New York State has also passed human rights laws to battle housing discrimination. In addition to the protections afforded in federal law, New York state law forbids housing discrimination on the basis of a person's marital status, sexual orientation, gender identity, gender expression, source of income, military status, age (over 18), creed, or arrest record.<sup>18</sup>

In addition, counties throughout New York may have their own human rights laws which create protected classes beyond those enumerated in federal and New York State law. For example, in Suffolk County, it is against the law to discriminate in regard to housing because of a person's group identity, veteran status, or status as a domestic violence victim.<sup>19</sup> Group identity includes actual or perceived age (over 18), alienage or citizenship status, gender, sexual orientation, or military status.<sup>20</sup> Meanwhile, in Nassau County,

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<sup>14</sup> Fair Housing Act of 1968, 42 U.S.C. §§ 3601-19, 3631 (2022).

<sup>15</sup> *History of Fair Housing*, U.S. DEP'T HOUS. & URB. DEV., [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/aboutfheo/history](https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history) (last visited May 3, 2022).

<sup>16</sup> 42 U.S.C. § 3604.

<sup>17</sup> Memorandum from Jeanine M. Warden, Acting Assistant Sec'y for Fair Hous. & Equal Opportunity, to Fair Hous. Assistance Program Agencies, & Fair Hous. Initiatives Program Grantees (Feb. 11, 2021), [https://www.hud.gov/sites/dfiles/PA/documents/HUD\\_Memo\\_EO13988.pdf](https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf) [hereinafter Executive Order Memo] (discussing the implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act).

<sup>18</sup> N.Y. EXEC. LAW § 296(2-a) (McKinney 2022).

<sup>19</sup> SUFFOLK COUNTY, N.Y., HUM. RTS. CODE, §§ 528-5, 528-6, 528-9(A)(1)-(3), (8)-(9) (2001).

<sup>20</sup> *Id.* § 528-6.

individuals cannot discriminate as to housing because of a person's ethnicity, veteran status, or first responder status.<sup>21</sup>

### B. Where Are We Now?

At times, it seems we have not moved much toward desegregation. The recent *Newsday Long Island Divided* investigation shows a map of Merrick and Freeport separated by the Meadowbrook Parkway.<sup>22</sup> Merrick is shown as 88% White and Freeport as 24% White.<sup>23</sup> The investigation states: "As one of the most segregated suburbs in America, Long Island is crisscrossed by racial barriers. Some, like the Meadowbrook, are visible. Some are the invisible product of historical forces including zoning regulations, mortgage redlining, the boundaries of 124 school districts, housing prices, and racial steering and blockbusting . . . ."<sup>24</sup>

## II. HOW DO WE OVERCOME THESE FAIR HOUSING CHALLENGES?

Long Island Housing Services understands that the state of Fair Housing is not a singular event, but rather a process that is in response to the evolving understanding of who is still being shut out of the housing market. The 1988<sup>25</sup> and 2021<sup>26</sup> changes to the Fair Housing Act are illustrative of the increased understanding of the needed protections to provide fair housing to everyone. For instance, the Fair

<sup>21</sup> NASSAU COUNTY, N.Y., ADMIN. CODE, tit. C-2, § 21-9.8 (2021).

<sup>22</sup> Olivia Winslow, *Dividing Lines, Visible and Invisible: Segregation of Blacks, Whites Built into the History of Long Island*, *NEWSDAY: LONG ISLAND DIVIDED*, PART 10 (Nov. 17, 2019), <https://projects.newsday.com/long-island/segregation-real-estate-history>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* Blockbusting is the business practice of trying "to persuade homeowners to sell or rent dwellings by suggesting that people of a particular race, etc. have moved, or are about to move into the neighborhood." U.S. DEP'T HOUS. & URB. DEV., FAIR HOUSING: EQUAL OPPORTUNITY FOR ALL 2 (2011), [https://www.hud.gov/sites/documents/FHEO\\_BOOKLET\\_ENG.PDF](https://www.hud.gov/sites/documents/FHEO_BOOKLET_ENG.PDF).

<sup>25</sup> Fair Housing Amendments Act of 1987, Pub. L. 100-430, §13(a), 102 Stat. 1636 (1988).

<sup>26</sup> Press Release, U.S. Dep't Hous. & Urb. Dev., HUD To Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity (Feb. 11, 2021), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_21\\_021](https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_021).

Housing Act itself was amended in 1988 to add familial status and disability.<sup>27</sup> Also, in response to a Supreme Court decision in the area of employment that defined discrimination based on sex to include discrimination based on sexual orientation and gender identity, the United States Department of Housing and Urban Development (“HUD”) adopted the same definition of discrimination based on sex in the area of housing.<sup>28</sup> HUD’s memorandum referenced the Executive Order on “*Bostock v. Clayton County*, which held that the prohibitions against sex discrimination in the workplace contained in Title VII of the Civil Rights Act of 1964 extend to and include discrimination on the basis of sexual orientation and gender identity.”<sup>29</sup>

Similar to the evolving definition of fair housing on the federal level, a new understanding of fair housing happens at the county and state level. The addition of local source of income laws is illustrative of the effect that advocacy has on the improvement of fair housing laws. In 2006, through local advocacy,<sup>30</sup> Nassau County passed its own Human Rights Law that included source of income as a protected basis.<sup>31</sup> It took advocates, including Long Island Housing Services, eight years to get source of income protections added to Suffolk County law beginning in 2014.<sup>32</sup> It took another five years for the same local advocates to build a statewide coalition which added source

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<sup>27</sup> Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619-20, 1622, 1635 (codified as amended at 42 U.S.C. §§ 3602, 3604-3606, 3631). The 1988 Act uses the term “handicap,” but I will use the more current term, “disability,” in its stead.

<sup>28</sup> *Id.*

<sup>29</sup> Executive Order Memo, *supra* note 17.

<sup>30</sup> See Press Release, *Suffolk County Legislature Passes Strengthened Human Rights Bill*, ERASE RACISM (Sept. 12, 2014), <https://www.eraseracismny.org/component/content/article/6-press-releases/345-suffolk-passes-strengthened-human-rights-bill> (explaining that the same local advocacy that led the effort for Nassau County to include source of income as a protected class in fair housing law also led the effort for Suffolk County to include it in 2014).

<sup>31</sup> NASSAU COUNTY, N.Y., ADMIN. CODE §§ 21-9.0, 21-9.2, 21-9.7 (2004).

<sup>32</sup> See Press Release, Long Island News & PR, *Community and Civil Rights Organizations Celebrate Suffolk County Legislature's Vote to Strengthen Human Rights Law*, LONGISLAND.COM (Sept. 10, 2014), <https://www.longisland.com/news/09-10-14/suffolk-legislature-human-rights-law.html>.

of income protections to New York State Human Rights law in 2019.<sup>33</sup> In a last minute example, while this article was going through its second round of editing, New York State added status as a domestic violence victim as a protected class for housing.<sup>34</sup>

### A. What Can One Person Do?

This brings us to the point of this article. What are some actions that anyone can take to move all of us closer to the “American Dream” of being able to live where they want free of discrimination?

#### 1. *Be a Fair Housing Tester*

Private fair housing nonprofits across the country use testing as a primary tool of investigation and enforcement.<sup>35</sup> The most common scenario is Long Island Housing services sends out pairs of testers with the same economic profile, except one is a person from a protected class and the other is not. For example, the protected class testers sent to the Bay Shore housing development Brook Gardens Apartments were to check on discrimination based on disabilities and source of income.<sup>36</sup>

Long Island Housing Services said Friday it sent testers to the complex to find out whether the complex was obeying federal, state and county fair housing laws, which prohibit bias against people with disabilities.

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<sup>33</sup> *Join the Statewide Source of Income Coalition Here*, #ENDINCOMEBIASNY, <https://www.endincomebiasny.com/about/en> (last visited May 3, 2022); *Suffolk County Legislature Passes Strengthened Human Rights Bill*, *supra* note 30.

<sup>34</sup> *Governor Hochul Signs Legislation Protecting Victims of Domestic Violence*, N.Y. STATE (May 13, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protecting-victims-domestic-violence>.

<sup>35</sup> If you live on Long Island, you can contact Long Island Housing Services to volunteer to be a tester at [info@LIFairHousing.org](mailto:info@LIFairHousing.org) or 631-567-5111. Elsewhere, for a local Fair Housing Initiatives Program (FHIP) nonprofit, see *Contact FHIP Organizations*, U.S. DEP'T HOUS. & URB. DEV., [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/contact\\_fhip](https://www.hud.gov/program_offices/fair_housing_equal_opp/contact_fhip) (last visited May 3, 2022).

<sup>36</sup> Maura McDermott, *LI Rental Complex Reaches \$11G Settlement Over Housing Bias Allegations*, NEWSDAY (Jan. 25, 2021), <https://www.newsday.com/business/housing-discrimination-disabilities-bay-shore-t87927>.

State and local laws also ban discrimination against people who receive income from legal sources such as government housing vouchers for people with low incomes or disabilities. Discrimination based on race, gender and other factors also is illegal.

The group said a tester seeking an apartment for a person with disabilities was told no unit was available, while a tester without disabilities was told an apartment was open and was able to view it. In addition, testers who have housing vouchers were told the complex does not accept them and that there was a long waiting list for units, while those without vouchers were allowed to see an open apartment.<sup>37</sup>

Fair Housing testers can also complete other investigative work such as checking listings on the Redfin website to help determine whether Redfin was engaging in a digital form of redlining.<sup>38</sup>

## 2. *Funding, Funding, Funding*

Jim Collins, a business writer, talks about the flywheel of goods or services that creates a perpetual income stream in a for-profit business in his monograph, *Good to Great and the Social Sectors: Why Business Thinking is Not the Answer*.<sup>39</sup> He goes on to recognize that nonprofit services are detached from income generation.<sup>40</sup> In fact, they can be separate constituencies. Therefore, a fair housing nonprofit that successfully enforces the law for individuals can still be dependent on government support to keep those services going.<sup>41</sup> The same is true

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<sup>37</sup> *Id.*

<sup>38</sup> Complaint for Violation of the Fair Housing Act – Federal Question Jurisdiction and Jury Demand, Nat'l Fair Hous. All. et al. v. Redfin Corp., No. 2:20-cv-01586 (W.D. Wa. Oct. 28, 2020), <https://nationalfairhousing.org/wp-content/uploads/2021/12/Redfin-Filed-Complaint-1.pdf>.

<sup>39</sup> JIM COLLINS, *GOOD TO GREAT AND THE SOCIAL SECTORS: WHY BUSINESS THINKING IS NOT THE ANSWER* 23-24 (2005).

<sup>40</sup> *Id.* at 24-25.

<sup>41</sup> For example, sixty-six percent of Long Island Housing Services revenue for its 2021 financial year was based on government grants. JL & CO., Long Island Housing Services Financial Statements and Supplementary Information June 30, 2021 and

for governmental enforcement. That said, you should contact your federal, state, and local elected officials to demand that increased funding goes to government initiatives such as: HUD, New York State Division of Human Rights, Suffolk and Nassau County Human Rights Commissions, local community land trusts, community development financial institutions, fair housing nonprofits, and mobility programs for voucher holders.<sup>42</sup> Long Island Housing Services is one of the nonprofits that receives funding from a number of these government agencies to fund its fair housing work.

### 3. *Access, Access, Access*

A part of Fair Housing is ensuring that access to housing meets people where they are so that they can enjoy their housing the same as their neighbors. Housing providers must give access to housing in order to make it equally available to all people, including those who have limited English proficiency, persons with disabilities, and persons without internet access. One step to ensuring that housing providers give appropriate access is demanding that all levels of government grantors make this a requirement.

### 4. *Criminal Convictions as a Protected Class*

Individuals who have been arrested are now part of a protected class in housing in New York State.<sup>43</sup> According to New York State

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2020, p. 4, <https://www.lifairhousing.org/wp-content/uploads/2022/02/21-LIHS-FINAL-fin-stmt.pdf>.

<sup>42</sup> *What Are Housing Mobility Programs and Why Are They Needed?*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 19, 2019), <https://www.cbpp.org/research/housing/what-are-housing-mobility-programs-and-why-are-they-needed> (“Housing mobility programs help low-income families with children use Housing Choice Vouchers to move to high-opportunity neighborhoods. These neighborhoods often have less poverty, better schools, less crime, and more resources such as grocery stores and parks, which together promote better health and life satisfaction for parents and children and improve children’s chances of succeeding in school and earning more as adults. Evidence suggests many low-income families would like to move to high-opportunity communities, but barriers—including high housing costs, discrimination, and a shortage of willing landlords—often prevent them from doing so. Mobility programs give families more choices about where they can live, which is an important complement to investing in historically disadvantaged communities to create new opportunities for residents.”).

<sup>43</sup> *Know Your Rights: Fair Housing Zoom Event*, N.Y. STATE DIV. HUM. RTS. (Apr. 30, 2020), <https://dhr.ny.gov/fair-housing-month-2020#fairhousing3b> (“As of July

law, the protected status extends to someone who was arrested in either a favorably resolved arrest, an adjournment in contemplation of dismissal (“ACOD”) and a sealed conviction record, or a youthful offender adjudication.<sup>44</sup>

As has been done across the country, we need to expand this protected class to include those who have a criminal conviction.<sup>45</sup> First, it benefits all for returning citizens to be able to easily reintegrate into society, including being able to find housing the same as everyone else. For someone to establish themselves in an area and become a productive member of that community, the first need they must meet is to have a stable place to live. Secondly, considering that our criminal justice system targets communities of color, we must remediate the unjust effects of that systemic racism.<sup>46</sup> In response to this societal circumstance, laws have been implemented across the country that make conviction a protected class.<sup>47</sup> In addition, HUD has already issued guidance that requires a balancing test in using criminal conviction in housing decisions because denial of housing might have a disparate impact.<sup>48</sup> Contact your federal, state, and county elected officials to demand that criminal conviction be made a protected class.

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11, 2019, the Human Rights Law prohibits discrimination in public and private housing based on a favorably resolved arrest record, an adjournment in contemplation of dismissal, a sealed conviction record, or a youthful offender adjudication. A housing provider cannot inquire about these types of records and if they obtain such records from a background check, they cannot discriminate based on this information.”).

<sup>44</sup> N.Y. EXEC. LAW § 296 (McKinney 2022).

<sup>45</sup> See, e.g., SEATTLE, WASH., MUNICIPAL CODE §14.09.025(A)(1); PORTLAND, OR., CITY CODE §30.01.86; COOK COUNTY, ILL., CODE OF ORDINANCES §§ 42-38(b)(8), (c)(5).

<sup>46</sup> Racism, Racial Discrimination, Xenophobia And Related Forms Of Intolerance, Follow-Up To And Implementation Of The Durban Declaration And Programme Of Action: Report Of The Special Rapporteur On Contemporary Forms Of Racism, Racial Discrimination, Xenophobia And Related Intolerance, Doudou Diène\*: Addendum: Mission To The United States Of America, pp.14-17, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/130/57/PDF/G0913057.pdf?OpenElement> (last visited May 17, 2022); see also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

<sup>47</sup> MUN. CODE § 14.09.025(A)(1); CTY. CODE § 30.01.86; CODE OF ORDINANCE §§ 42-38(b)(8), (c)(5).

<sup>48</sup> U.S. DEP’T HOUS. & URB. DEV., APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS, at 6-7 (2016).

## **B. Changes That Need to be Made on the Federal Level**

### ***1. Expand Housing Choice Vouchers***

The federal government does not directly provide affordable housing for low-income citizens. Instead, it funds programs like the Housing Choice Voucher, commonly known as Section 8 vouchers, which provides holders a subsidy to go into the market to rent housing.<sup>49</sup> There is an insufficient number of vouchers for everyone who needs and qualifies for one.<sup>50</sup> Also, the funding for individual vouchers must be increased so that they can be used in high opportunity areas,<sup>51</sup> as envisioned by the program.<sup>52</sup> Lastly, the program was designed to help voucher holders purchase housing.<sup>53</sup> Tell your U.S. senators and congressperson that the federal

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<sup>49</sup> 24 C.F.R. § 982.1 (2022).

<sup>50</sup> *Universal Housing Vouchers*, PD&R EDGE (Nov. 9, 2021), <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-110921.html> (“In 2019, approximately 2.3 million households received HCVs, which was insufficient to meet the extensive need. That same year, according to HUD’s latest Worst Case Housing Needs report, 7.8 million very low-income households did not receive any housing assistance and experienced a severe rent burden (meaning that they spent at least half of their monthly income in rent), lived in severely inadequate housing, or both.”).

<sup>51</sup> *Affordable Housing in High Opportunity Areas*, FREDDIE MAC (Dec. 3, 2019), [https://mf.freddiemac.com/research/duty-to-serve/20191203\\_affordable\\_housing\\_high\\_opportunity\\_areas.html](https://mf.freddiemac.com/research/duty-to-serve/20191203_affordable_housing_high_opportunity_areas.html) (“People’s economic opportunity depends a lot on where they live. Some areas foster economic success more than others, offering residents economic opportunity and mobility. These areas typically have high incomes or low levels of poverty, strong economic growth, well-run schools, public transportation, and access to quality health care. Areas with these benefits are generally referred to as high opportunity areas.”).

<sup>52</sup> *About the Housing Choice Vouchers Program*, U.S. DEP’T HOUS. & URB. DEV., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/about](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about) (last visited June 3, 2022) (“Housing choice vouchers allow very low-income families to choose and lease or purchase safe, decent, and affordable privately-owned rental housing.”).

<sup>53</sup> *HCV Homeownership Program*, U.S. DEP’T HOUS. & URB. DEV., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/homeownership](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/homeownership) (last visited May 3, 2022) (“The Housing Choice Voucher (HCV) homeownership program allows families that are assisted under the HCV program to use their voucher to buy a home and receive monthly assistance in meeting homeownership expenses.”).

government must invest in providing a housing choice voucher for everyone in need of housing.

## 2. *Source of Income as a Protected Class*

Source of income discrimination is outlawed in New York State, Nassau County, and Suffolk County human rights law.<sup>54</sup> The New York State law includes, for example:

[C]hild support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income.<sup>55</sup>

This needs to be a nationwide law. Market-based housing solutions, such as federal housing voucher programs, are worthless if landlords will not accept the vouchers. In addition, housing providers' refusal to accept legal alternative forms of income is a way to circumvent protections against discriminating against an individual based on race or disability. Please contact your U.S. senators and congresspeople to request that they support incorporating source of income as a protected class under the federal Fair Housing Act.

## 3. *Decent, Affordable Housing*

The market has been unable to provide the amount of affordable housing needed on a large enough scale.<sup>56</sup> Up through World War II, the United States built affordable housing for low income and middle-class persons.<sup>57</sup> However, as the federal

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<sup>54</sup> N.Y. EXEC. LAW § 296 (2022); NASSAU COUNTY, N.Y., ADMIN. CODE, tit. C2 § 21-9.8 (2001); SUFFOLK COUNTY, N.Y., HUM. RTS. CODE § 528-6 (2001).

<sup>55</sup> N.Y. EXEC. LAW § 292 (McKinney 2022).

<sup>56</sup> Andrew Aurand et al., *The Gap: A Shortage of Affordable Homes*, NAT'L LOW INCOME HOUS. COALITION (Mar. 2021) [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2021.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf).

<sup>57</sup> RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 49 (2017).

government started its withdrawal from providing affordable housing after World War II, it also failed to adequately fund the maintenance of its affordable housing stock.<sup>58</sup> Specifically, the 1999 Faircloth Amendment prevents the federal government from increasing the stock.<sup>59</sup> It must be repealed. Please contact your U.S. senators and congresspeople to inform them that the federal government must invest in building and maintaining decent, safe, and affordable housing.

#### **4. Target Low-Income Housing Tax Credits**

The federal government programs that provide a low-income housing tax credits for the private construction of affordable housing have helped increase building stock.<sup>60</sup> The use of such tax credits could be greatly improved by targeting the use of those credits to build affordable housing in high opportunity areas. A key to helping individuals escape poverty is giving them access to communities with high investments in public infrastructure by providing affordable housing opportunities there. Additionally, siting low-income housing in high opportunity areas would help move us toward a society where everyone truly has a choice of where they want to live. It would also help overcome implicit bias by integrating communities to individualize experiences with fellow residents of various perceived racial groups, rather than those interactions being based upon stereotypes. Please contact your U.S. senators and congresspeople to tell them that the federal government must target low-income housing tax credits to high opportunity areas.

#### **5. Remedy for Civil Rights Violations**

Rothstein's *The Color of Law* demonstrates that segregation in the United States resulted from governmental action on all levels.<sup>61</sup> He argues that these government actions violate the Civil Rights Law of 1866, Fifth Amendment, Thirteenth Amendment, and Fourteenth Amendment.<sup>62</sup> This malfeasance has had a continuing effect on generations of African Americans by denying them access to high

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<sup>58</sup> *Id.* at 73.

<sup>59</sup> 42 U.S.C. § 1437g(g)(3)(A) (2018).

<sup>60</sup> 26 U.S.C. § 42 (2020).

<sup>61</sup> ROTHSTEIN, *supra* note 57, at 219-21.

<sup>62</sup> *Id.* at viii-x.

opportunity areas with high levels of government investment. By restricting this crucial access, the effects of these policies have ultimately denied them the benefit of a multi-decade increase in real estate values that have created intergenerational wealth.<sup>63</sup>

An example of a remedy that Rothstein gives involves our own Levittown.<sup>64</sup> The government-backed loans that paid for the Levittown development to be built required that the properties not be sold to African Americans, which was memorialized in the federal government approved deeds to the properties.<sup>65</sup> As of the printing of Rothstein's book in 2017, the original purchase price of those properties in current dollars was \$75,000,<sup>66</sup> but the current market values are "\$350,000 and [up]."<sup>67</sup> Rothstein proposes that the federal government could purchase those homes at market value and sell them to the descendants of the injured African Americans at \$75,000, the purchase price their families would have paid.<sup>68</sup> Please contact your U.S. senators and congressperson to tell them that the federal government needs to compensate African Americans for denying access to home equity and high opportunity areas as a result of the federal government's responsibility for the creation of housing segregation.

### C. Changes That Need to Be Made on the State Level

#### 1. Activate New Fair Housing Laws

New York State just enacted nine fair housing laws in response to the *Newsday Long Island Divided* investigation.<sup>69</sup> The laws provide new tools to address systemic racism, particularly focused on the real estate industry:

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<sup>63</sup> *Id.* at 318-23.

<sup>64</sup> *Id.* at 70-72.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 313.

<sup>67</sup> *Id.* at 182-83.

<sup>68</sup> *Id.* at 202.

<sup>69</sup> Yancey Roy, *Gov. Kathy Hochul Signs Anti-Discrimination Laws Spurred by Newsday Housing Probe*, *NEWSDAY*, (Dec. 21, 2021, 7:40 PM), <https://www.newsday.com/news/nation/hochul-legislation-long-island-divided-1.50457898>.

The new laws increase fines for violating housing discrimination laws, mandate more anti-bias training, standardize procedures for real estate agents and increase brokers' fees to pay for deployment of undercover homebuyers to test whether agents are 'steering' clients to or away from neighborhoods based on race.

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The package of new laws also will: Increase the amount of required training for real estate professionals relating to fair housing, cultural competency and implicit bias. Require standardized 'intake' procedures for brokers working with clients, and create a penalty for failure to comply. Require brokers serving as office managers to supervise other real estate professionals. Require all state and local agencies that receive state housing aid to take meaningful steps to further fair housing and report those steps to the state Legislature at regular intervals. Create a telephone hot line for reporting housing discrimination.<sup>70</sup>

Laws need funding and active enforcement to have an effect. Please contact your New York State senator and assembly member to let them know you support these laws and the devotion of sufficient resources to ensure that they are funded and enforced. One of those laws may provide funding to a number of fair housing nonprofits, including Long Island Housing Services, to provide fair housing testing services.

## 2. *End Home Rule Zoning*

The New York State constitution grants municipalities the power of home rule zoning, which allows them to make zoning decisions within their borders.<sup>71</sup> This ability of municipalities to segregate using their zoning powers is a relic, and it must be ended. Housing is a regional interest of all the citizens of a state, not just merely the interest of a small governmental body where the piece of

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<sup>70</sup> *Id.*

<sup>71</sup> N.Y. CONST. art. IX, § 1.

property happens to be located. The most direct route to abolish home rule zoning would be to repeal it from the state Constitution. Another more circuitous route, which has gained some political traction, is to create an as-of-right administrative appeal process for affordable housing.<sup>72</sup> All of the states surrounding New York already have some form of this process, with varying degrees of success.<sup>73</sup> Please contact your New York State senator and assembly member to notify them that you support ending the stranglehold that home rule zoning has on the ability to build much-needed affordable housing.

### 3. *End School District Interference in Zoning Decisions*

A school district's job is to educate all children.<sup>74</sup> It is contradictory to the mission of a school district to oppose affordable housing for children to live in within its district, though this is a regular occurrence.<sup>75</sup> School districts are a creation of New York State; therefore, the state can enact legislation stating that opposition to affordable housing development is a misuse of school district funding.<sup>76</sup> School district lines are also a relic of our racist history. Thus, broadening school district lines to be more inclusive would lessen their effect of reinforcing segregation.<sup>77</sup> Please contact your

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<sup>72</sup> Noah Kazis, *Ending Exclusionary Zoning in New York City's Suburbs*, NYU FURMAN CTR. (Nov. 9, 2020), [https://furmancenter.org/files/Ending\\_Exclusionary\\_Zoning\\_in\\_New\\_York\\_Citys\\_Suburbs.pdf](https://furmancenter.org/files/Ending_Exclusionary_Zoning_in_New_York_Citys_Suburbs.pdf).

<sup>73</sup> *Id.* at 3.

<sup>74</sup> David Winzelberg, *Reading, Writing and Arresting Development*, LONG ISLAND BUS. NEWS (Sept. 27, 2019), <https://libn.com/2019/09/27/reading-writing-and-arresting-development>; N.Y. EDUC. LAW § 3201 (McKinney 2022) (“No person shall be refused admission into or be excluded from any public school in the state of New York on account of race, creed, color or national origin.”).

<sup>75</sup> Winzelberg, *supra* note 74 (“But when it comes to adding much-needed multifamily housing, increasing opposition from school districts has made the process even tougher, and become one of the biggest obstacles in getting projects off the ground.”).

<sup>76</sup> N.Y. EDUC. LAW § 1501 (McKinney 2022).

<sup>77</sup> *School Segregation Maps, 2013-2014*, ERASE RACISM, <https://www.eraseracismny.org/component/content/article/17-teaching-tool/433-school-segregation-maps> (last visited May 3, 2022) (“If districts followed town and city boundaries, none would have an overwhelming proportion of poor students and all would be racially diverse.”).

New York State senator and assembly member to let them know you support ending school district interference in housing decisions. Additionally, you can contact the New York State Comptroller to investigate whether school district interference in housing decisions is a misuse of their funds as part of the Comptroller's regular audit of their finances.

#### 4. *Correct Textbooks to Show the History of Segregation*

The idea to ensure that history books should correctly portray the history of discrimination was presciently raised in Rothstein's *Color of Law*.<sup>78</sup> A Southern Poverty Law Center report on the failure to teach the history of slavery states that "students lack a basic knowledge of the important role [slavery] played in shaping the United States and the impact it continues to have on race relations in America."<sup>79</sup> As Donald Yacovone, a Harvard University historian, stated:

If America is to be a nation that fulfills its democratic promise, the history of slavery and white supremacy have to be taught in schools across the country. We need to acknowledge that white supremacy remains an integral part of American society and we need to understand how we got to where we are.<sup>80</sup>

As Rothstein states: "If young people are not taught an accurate account of how we came to be segregated, their generation will have little chance of doing a better job of desegregating than the previous ones."<sup>81</sup> Since the continuing effects of systemic racism are not part of their lived experience, it is difficult for many white people to

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<sup>78</sup> ROTHSTEIN, *supra* note 57, at 198-200. These pages include specific examples of failures of history textbooks to address segregation.

<sup>79</sup> Kate Shuster, *Teaching Hard History*, S. POVERTY L. CTR., <https://www.splcenter.org/20180131/teaching-hard-history#part-iv> (last visited May 18, 2022); *see also* NIKOLE HANNAH-JONES, *THE 1619 PROJECT: A NEW ORIGIN STORY* xvii-xxxiii (2021).

<sup>80</sup> Liz Mineo, *How Textbooks Taught White Supremacy*, HARV. GAZETTE (Sept. 4, 2020), <https://news.harvard.edu/gazette/story/2020/09/harvard-historian-examines-how-textbooks-taught-white-supremacy>.

<sup>81</sup> ROTHSTEIN, *supra* note 57, at 199.

understand such continuing effects.<sup>82</sup> Please contact your New York State senator and assemblymember to let them know you support requiring that textbooks correctly show the history of government sponsorship of segregation and discrimination.

### 5. *Create Public Banks*

Public banks create opportunities for the banking system to be used for the public good.<sup>83</sup> North Dakota has had a public bank for over a century.<sup>84</sup> In an article by Ameya Pawar and Harish I. Patel, they state that:

A public bank is owned and operated by a state or local government, and works for local stakeholders. They can coordinate with state and local governments to finance things like affordable housing and public options for broadband and childcare. Most importantly, a public bank can help reverse the racial wealth gap by lending to Black and Brown families in search of inexpensive capital available mostly to white people.<sup>85</sup>

In order for public banks to be created by the state and municipalities in New York, the law would have to be changed to allow municipalities to set up banks.<sup>86</sup> Please contact your New York State senator and assembly member to notify them of your support towards laws that allow for the creation of a statewide public bank as well as local public banks.

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<sup>82</sup> *Id.* at 198-200.

<sup>83</sup> *Public Banks: Bank of North Dakota*, INSTITUTE FOR LOCAL SELF-RELIANCE, <https://ilsr.org/rule/bank-of-north-dakota-2> (last visited May 3, 2022).

<sup>84</sup> *Id.*

<sup>85</sup> Ameya Pawar & Harish I. Patel, *Public Banking Can Help Bridge the Racial Wealth Gap in the Post-Pandemic Recovery*, CHI. REP. (July 7, 2020), <https://www.chicagoreporter.com/public-banking-can-help-bridge-the-racial-wealth-gap-in-the-post-pandemic-recovery>. The article lists other racial justice measures that a public bank can finance: baby bonds; affordable mortgages; access to capital; and cannabis and reparative policies. *Id.*

<sup>86</sup> Susan Arbetter, Sen. James Sanders' Public Banking Bill: How it Could Work in New York, STATE POL. (MAY 3, 2021), <https://nystateofpolitics.com/state-of-politics/new-york/politics/2021/05/03/public-banking--how-it-could-work-in-new-york>.

## 6. *Move Government Deposits*

A banking institution's use of the funds deposited with it can reinforce or help overcome segregation.<sup>87</sup> For instance, the Depression-era practice of banks redlining communities of color to deny them access to mortgages is still prevalent today.<sup>88</sup> This has caused the Department of Justice, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency to join together last year to launch a new Combatting Redlining Initiative.<sup>89</sup> The National Community Reinvestment Coalition reviews banks' records to determine how well they are using their investment to improve society.<sup>90</sup> New York State should create preferences for depositing public funds into banks with excellent community reinvestment records in order to encourage that behavior. Please contact your New York State senator and assembly member to let them know you support creating preferences to move state and local government deposits to financial institutions with excellent community reinvestment records.<sup>91</sup>

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<sup>87</sup> Stella J. Adams, *Putting Race Explicitly into the CRA*, in 4 REVISITING THE CRA: PERSPECTIVES ON THE FUTURE OF THE COMMUNITY REINVESTMENT ACT 167, 167-69 (Feb. 2009), [https://www.frbsf.org/community-development/files/putting\\_race\\_explicitly\\_cra.pdf](https://www.frbsf.org/community-development/files/putting_race_explicitly_cra.pdf).

<sup>88</sup> Press Release, Dep't of Justice, Justice Department Announces New Initiative to Combat Redlining (Oct. 22, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-new-initiative-combat-redlining> ("Redlining is an illegal practice in which lenders avoid providing services to individuals living in communities of color because of the race or national origin of the people who live in those communities.").

<sup>89</sup> *Id.*

<sup>90</sup> *It's Our Money. Keep it in Our Neighborhoods: We Need a Strong Community Reinvestment Act*, NAT'L CMTY. REINVESTMENT COAL., <https://ncrc.org/treasureCRA> (last visited May 3, 2022). Long Island Housing Services is a member of the National Community Reinvestment Coalition.

<sup>91</sup> The Office of the Comptroller of the Currency has a rating system of "Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance." Office of the Comptroller of the Currency: Community Developments: Fact Sheet, Community Reinvestment Act, March 2014, <https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf> (last visited May 18, 2022). "The OCC evaluates a bank's activities under CRA based on information about both: 1. The institution—its capacity, constraints, business strategies, competitors, and peers; and 2. The community served — its demographic and economic data, and lending, investment, and service opportunities." *Id.*

## D. Changes That Need to be Made on the Local Level

### 1. *Affirmatively Further Fair Housing (“AFFH”) with United States Department of Housing and Development (“HUD”) Funds*

The 1968 Fair Housing Act requires all funds distributed by HUD to be used with the goal of affirmatively furthering fair housing.<sup>92</sup> “This mandate imposes an affirmative obligation on the federal government and recipients of funds it administers to take actions to undo historic patterns of segregation and other types of discrimination and afford access to opportunity long denied.”<sup>93</sup> Specifically, any state, county, town, or village receiving HUD funds must actively work to overcome previously erected structures that reinforce segregation.<sup>94</sup> It is not enough for them to simply refrain from open discrimination. They must tear down old exclusionary schemes and replace them with new processes that are inclusionary.<sup>95</sup> Each municipality receiving HUD funds signs a separate certification every year to say that they are doing so.<sup>96</sup> The Case against Westchester County was based upon this requirement.<sup>97</sup> The first place they must start is with removing old exclusionary zoning schemes and replacing them with inclusionary processes. This requirement to replace exclusionary zoning with inclusionary applies to both HUD grantees and subgrantees. That means if a county, which does not have independent zoning powers, has towns and villages as their subgrantees, the county must ensure that the towns and villages are actively removing barriers to inclusion in order to receive their allocated funds. For instance, in financial year 2022, Nassau County is allocating subgrantee funds to 22 municipalities ranging from

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<sup>92</sup> 42 U.S.C. § 3608(e)(5) (1988).

<sup>93</sup> Elizabeth Julian, *The Duty to Affirmatively Further Fair Housing: A Legal as Well as Policy Imperative*, JOINT CTR. FOR HOUS. STUD. HARV. UNIV. 268, 269 (2017).

<sup>94</sup> See generally Thomas Silverstein, *Overcoming Land Use Localism: How HUD’s New Fair Housing Regulation Can Push States to Eradicate Exclusionary Zoning*, 5 UNIV. BALT. J. LAND & DEV. 25 (2015). Exclusionary zoning is one major impediment to desegregation that violates a municipality’s duty to affirmatively further Fair Housing. *Id.*

<sup>95</sup> Julian, *supra* note 93.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 270; United States *ex rel.* Anti-Discrimination Ctr. Metro N.Y., Inc. v. Westchester Cnty., 668 F. Supp. 2d 548 (S.D.N.Y. 2009).

\$20,000 to the village of Stewart Manor to \$3,095,000 to the Town of Hempstead.<sup>98</sup> If a municipality fails to do so, it then may be obligated to return their HUD funds. Please contact your county, town, and village elected officials to tell them that you expect them to use their HUD funds to affirmatively further fair housing to desegregate as required by the 1968 Fair Housing Act.

## 2. *Is Your Town or Village Actively Desegregating?*

Regardless of whether your municipality receives HUD funds, it should be working to overcome existing systemic racism by actively working to be more inclusionary in its structures. Inclusionary zoning would require changes on a number of fronts. First, they would allow for the building of accessory dwelling units (“ADUs”).<sup>99</sup> Second, inclusionary zoning would allow for minimal lots sizes so that there can be a greater variety of type and price housing.<sup>100</sup> Third, such zoning would include rental permit rules that do not go beyond health and safety,<sup>101</sup> so that they encourage renters and do not intrude on their lives any more than home ownership. It would remove rental

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<sup>98</sup> Nassau County OCD FY 2022 Public Hearing on Annual Action Plan, Wednesday, May 18, 2022, <https://www.nassaucountyny.gov/DocumentCenter/View/37384/Nassau-County-FY2022-Action-Plan?bidId=> (last visited May 20, 2022).

<sup>99</sup> Marcel Negret & Mark McNulty, *RPA Lab: New York State Accessory Dwelling Unit (ADU) Legislation Fact Sheets*, REGIONAL PLAN ASSOCIATION (Oct. 8, 2021), <https://rpa.org/latest/lab/new-york-state-adu-legalization-fact-sheets> (“We must expand housing opportunities for people of all incomes and ages throughout all of New York . . . .”); *Be My Neighbor: Untapped Housing Solutions: ADUs and Conversions*, REGIONAL PLAN ASSOCIATION (July 2020), <https://rpa.org/work/reports/be-my-neighbor#land-use-and-segregation> [hereinafter *Be My Neighbor*].

<sup>100</sup> *Be My Neighbor*, *supra* note 99 (“[P]redominantly White municipalities have self-segregated through various ways, but a key strategy has been creating exclusionary zoning rules where the only permitted residential uses are large single-family detached houses. When examining the housing stock for each of the 782 municipalities in our region that have control over their land use, one can observe that the share of single-family detached units increases in areas where spatial segregation by race, ethnicity, and income is starker. For example, municipalities where more than 90 percent of the housing stock is provided in the form of single-family detached units, the percent of the White population is 86 percent, with Black and Latinx representing less than 2 and 6 percent of the population, respectively.”).

<sup>101</sup> Kazis, *supra* note 72, at 16-17.

requirements like those in Brookhaven<sup>102</sup> and Southampton<sup>103</sup> codes that require renters to be “a traditional family” or the “functional

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<sup>102</sup> The Town of Brookhaven Code defines “family” as:

(1) The following groups shall be considered a family:

(a) Any number of persons related by blood, marriage, legal adoption or legal foster relationship, living and cooking together as a single, nonprofit housekeeping unit.

(b) Four or more persons occupying a single dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

(2) It shall be presumed that four or more persons living in a single nonprofit dwelling who are not related by blood, marriage, legal adoption or legal foster relationship do not constitute the functional equivalent of a traditional family. This presumption can be overcome only by a showing that, under the standards enumerated in Subsection (3) hereof, the group constitutes the functional equivalent of a traditional family. A determination as to the status of such group may be made in the first instance by the Chief Building Inspector or his designee, or on appeal from an order, requirement, decision or determination made by him, by the Zoning Board of Appeals in conformance with this Chapter 85 of the Brookhaven Town Code.

(3) In determining whether four or more persons living in a single nonprofit dwelling who are not related by blood, marriage, legal adoption or legal foster relationship constitute the functional equivalent of a traditional family pursuant to Subsection (2), the following factors shall be evaluated:

(a) The group is one which lives and cooks together as a single housekeeping unit, shares expenses for food, rent, ownership costs, utilities and other household expenses. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family.

(b) The group is of a permanent and stable nature and is neither a framework for transient or seasonal living nor merely an association or relationship which is transient or seasonal in nature. Nothing herein shall preclude the seasonal use of a dwelling unit by a group which otherwise meets the standards of this subsection at its permanent residence. Evidence of such permanence and stability includes, but is not limited to:

[1] The presence of minor children regularly residing in the household who are enrolled in a local school.

[2] Members of the household have the same address for the purposes of voter registration, drivers' licenses, motor vehicle registration, filing of taxes and delivery of mail.

[3] Members of the household are employed in the area.

[4] The household has been living together as a unit for a year or more, whether in the current dwelling or in other dwelling units.

[5] The existence of a head of the household that cares for the occupants in a family-like living arrangement.

[6] Common ownership of furniture and appliances among the members of the household.

[7] Any other factors reasonably related to whether or not the occupants are the functional equivalent of a family.

(c) All other requirements of this chapter regarding the use and occupancy of a residence for one family shall be complied with.

(d) Any determination under this subsection shall be limited to the status of a particular group of persons as a family and shall not be interpreted as authorizing any other use, occupancy or activity.

(e) In no case shall a residence for a single family be occupied by more than the number of persons permitted under the standards presented in this chapter.

(f) Floor plans of the dwelling unit shall be submitted to the Chief Building Inspector or his designee, and on appeal if necessary to the Zoning Board of Appeals, and must conform to all Town and state laws, regulations and codes.

(g) There shall be at least one room which is not designed as a conventional bedroom, bathroom, foyer, storage area or closet.

(h) The Chief Building Inspector, or his designee, or the Zoning Board of Appeals may impose such conditions and safeguards as it shall deem reasonable, necessary and/or advisable in order to maintain the stability and character of the neighborhood and protect the health, safety and welfare of the community.

Town of Brookhaven, NY, Zoning, Article I, §85-1, Definitions: Family.

<sup>103</sup> The Town of Southampton Code defines “family” as:

One of the following:

A. One, two or three persons occupying a dwelling unit; or

B. Four or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

(1) Evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage or legal custody shall create a rebuttable presumption that such persons do not constitute the functional equivalent of a traditional family.

(2) The foregoing presumption may be rebutted by submitting evidence to the Chief Building Inspector that all of the following are present:

(a) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit;

(b) The occupants share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which various

equivalent of a traditional family.” Fourth, inclusive zoning would allow for the building of multi-family dwelling as of right on suitably sized parcels.<sup>104</sup> Fifth, such zoning would allow for affordable housing to be built throughout the municipality, rather than being confined to clustered areas.<sup>105</sup> Sixth, inclusive zoning would require impactful industries, such as sewage treatment and energy generation, to be spread throughout a municipality, including siting in high opportunity

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occupants act as separate roomers is not deemed to be occupied by the functional equivalent of a traditional family;

(c) The group shares expenses for food, rent or ownership costs, utilities and other household expenses;

(d) The group is permanent and stable. Evidence for such permanency and stability may include:

[1] The presence of minor dependent children regularly residing in the household who are enrolled in local schools;

[2] Members of the household have the same address for purposes of voter registration, driver's license, motor vehicle registration and filing of taxes;

[3] Members of the household are employed in the area;

[4] The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;

[5] There is common ownership of furniture and appliances among the members of the household; and

[6] The group is not transient or temporary in nature.

(e) Any other factor reasonably related to whether the group is the functional equivalent of a family.

(3) An appeal from the Chief Building Inspector's determination may be taken to the Licensing Review Board, by written request, within 30 days of such determination. The Licensing review Board shall hold a public hearing on such appeal within 30 days after receipt of written notice of such appeal and, after such hearing, shall make written findings and a decision either sustaining or reversing such determination within 30 days after close of such public hearing.

Town of Southampton, Chapter 270-1 Rental Properties: Definitions: FAMILY.

<sup>104</sup> Kazis, *supra* note 72, at 19 (“Local governments have intense political incentives to avoid new development as well. As currently structured, suburban local governments tend to review land use proposals on a project-by-project basis. As a result, project opponents who believe they will be directly affected by a new development, generally those within a block or two of the project site, are mobilized and fight hard against new construction. Meanwhile, the benefits of any particular new development are more diffuse and do not inspire active support.”).

<sup>105</sup> *Id.* at 16-17.

areas.<sup>106</sup> Seventh, inclusive zoning would require amenities and services to be equally available throughout the municipality.<sup>107</sup> Please contact your town or village officials and ask them: How are they overcoming segregation? Do they have inclusive zoning? Do they site affordable housing in high opportunity areas?

### 3. *Local Preferences*

HUD allows local housing authorities to give preferences to certain classes of persons, and these preferences might seem neutral or socially positive on their face.<sup>108</sup> The problem is that if these preferences are based on already existing residency in a municipality, and that municipality is less diverse than the surrounding area, then these preferences serve to reinforce patterns of segregation.<sup>109</sup> Therefore, it is left to the municipality to certify that their use of HUD

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<sup>106</sup> Robert D. Bullard, *The Legacy of American Apartheid and Environmental Racism*, 9 J. CIV. RTS. & ECON. DEV. 445, 445 (1994) (“In the real world, some communities are located on the ‘wrong side of the tracks’ and, as a result, receive different treatment. Where one lives can affect one’s educational opportunity, quality of life, access to health care, and exposure to environmental threats. Discrimination is a chief cause of social, economic, and environmental inequities that exist in the larger society. Moreover, racial discrimination limits mobility, reduces neighborhood and residential options, diminishes job opportunities, and subjects millions of Americans to environmental and health threats.”).

<sup>107</sup> Margery Austin Turner & Solomon Greene, *Causes and Consequences of Separate and Unequal Neighborhoods*, URB. INST.: PROJECT: STRUCTURAL RACISM EXPLAINER COLLECTION, <https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-neighborhoods> (last visited May 22, 2022) (“America’s history of residential segregation has produced a system of neighborhoods that are not only separate but structurally unequal. Racial discrimination, poverty, and the political fragmentation of metropolitan regions all undermine the political and market power people and communities need to garner quality services from government and the private sector. The poor quality of public schools in many communities of color is arguably the most consequential challenge, but communities of color typically lack many other public and private services like quality health centers, food markets, parks and recreational facilities, and transit, with detrimental consequences for people’s near-term well-being and long-term life chances.”).

<sup>108</sup> *United States Sues Oyster Bay, N.Y., for Housing Discrimination*, U.S. DEP’T JUST. (Apr. 10, 2014), <https://www.justice.gov/opa/pr/united-states-sues-oyster-bay-ny-housing-discrimination>.

<sup>109</sup> *Id.*

funds do not discriminate.<sup>110</sup> Self-certification by municipalities has failed to enforce the law. Thus, the simplest solution is to ban local preferences as a method of determining who receives affordable housing from the limited stock available. It is a much better path than doing the constant statistical analysis of local preferences to ensure they do not discriminate against any protected class. Please contact your town or village officials to ask them to ban all local preferences because they can often act to reinforce segregation.

#### **4. *Suffolk County: Ensure the Passage of the Fair Housing Advisory Board Recommendations***

In response to the *Newsday Long Island Divided* investigation, Suffolk County impaneled an ad hoc Fair Housing Advisory Board to issue a report on the changes needed to improve fair housing in the county.<sup>111</sup> The first recommendation in the report, to create a permanent Fair Housing Advisory Board, was enacted in 2021.<sup>112</sup> Long Island Housing Services was a member of the Task Force and is a member of the Advisory Board. Organizations, such as Long Island Housing Services, may continue to receive funding to execute fair housing testing if the funding recommendations in the report are enacted. If you are a Suffolk County resident, please contact your county legislator and the county executive to request that the Fair Housing Task Force recommendations be passed. Also, please contact your legislator to find out how to attend meetings of the new Suffolk County Fair Housing Advisory Board.

#### **5. *Nassau County***

Additionally in 2019, in response to the *Newsday Long Island Divided* investigation, Nassau County Executive Laura Curran announced the formation of the Nassau County Fair Housing Advisory

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<sup>110</sup> Julian, *supra* note 93, at 269.

<sup>111</sup> SUFFOLK CNTY. LEGISLATURE, FAIR HOUSING TASK FORCE REPORT 3 (2021), <https://www.scnylegislature.us/DocumentCenter/View/78262/2021-Suffolk-County-Fair-Housing-Task-Force-Report-PDF>.

<sup>112</sup> Suffolk Cnty. Legislature, Res. No. 645-2021 (Aug. 9, 2021), <https://apps2.suffolkcountyny.gov/legislature/resos/resos2021/i1546-21.pdf>.

Board.<sup>113</sup> That Advisory Board has never had a public meeting. If you are a Nassau County resident, please contact your county legislator and the new county executive to request the Fair Housing Advisory board be constituted and meet.

### **E. And Many More Actions to Take**

There are still more actions that an individual can take to fight for fair housing ranging from supporting federal nominees focused on civil rights to passing a statewide co-op transparency law and repealing the Nassau County law making emergency workers a super protected class. If you would like to become more involved, the Long Island Housing Services email list provides action alerts and updates on its fair housing work locally.<sup>114</sup>

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<sup>113</sup> Daniel Hampton, *Nassau Unveils New Anti-Housing Discrimination Plan*, PATCH (Nov. 22, 2019, 3:41 PM), <https://patch.com/new-york/mineola/nassau-unveils-new-anti-housing-discrimination-plan>.

<sup>114</sup> To join that list, email [info@LIFairHousing.org](mailto:info@LIFairHousing.org).