

Requiring a True Choice in Housing Choice Voucher Programs

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INTRODUCTION

America's struggle with residential segregation is nothing new. Over the past forty years, courts and legislatures have tried to dismantle this country's history of racial segregation and promote diversity. As housing policies shifted away from building governmentally owned and operated "hard" public housing units, housing choice voucher ("HCV") programs increased.¹ These HCV programs, formerly known as Section 8 vouchers, provide low-income families the means to rent

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1. These housing voucher programs are governed by 42 U.S.C. §§ 1437f, 1437z-5 (2000).

apartments in the private market.² Many qualifying families are given a monthly assistance payment for the amount that their rent exceeds 30% of their family's monthly adjusted income.³ Nearly every new federal dollar designated for low-income housing since the mid-1980s has gone to support these HCV programs.⁴ The vouchers are funded through grants from the U.S. Secretary of Housing and Urban Development to be administered by a local public housing authority.⁵ These federal funds may be used by the recipient anywhere in the United States.⁶ Currently, nearly 1.7 million households nationwide receive a housing voucher.⁷ Supporters of HCVs believe that "voucher and certificate programs work better and are less expensive than public housing and other forms of project-based assistance."⁸

The success of HCVs depends on the ability of the programs to reduce concentrations of poverty and increase the recipients' housing choices.⁹ As "hard" public housing units—that is, units owned and operated by the government—are phased out and demolished across the country, the number of former public housing residents receiving HCVs increases. Vouchers were chosen as the prevailing housing program because of their purported ability to disperse public housing residents throughout a metropolitan area and reduce overall racial segregation across cities. However, there are growing concerns that vouchers

2. *Id.* § 1437f(f)(7). The funding given to each family is based on a payment standard which may "not exceed 110 percent of the fair market rental . . . for the same size of dwelling unit in the same market area and shall not be less than 90 percent of that fair market rental." *Id.* § 1437f(o)(1)(B).

3. *Id.* § 1437f(o)(2)(A). The monthly assistance payment for each family is "the amount by which the rent . . . exceeds the greatest of the following . . . : (i) 30 percent of the monthly adjusted income of the family[;] (ii) 10 percent of the monthly income of the family[;]" or (iii) the amount designated in welfare assistance payments to meet the family's housing costs. *Id.* When a family initially begins receiving assistance, the family may not be required to pay more than 40% of its monthly adjusted income for rent. § 1437f(o)(3). *See generally* MARY K. CUNNINGHAM & SUSAN J. POPKIN, *THE URBAN INSTITUTE, CHAC MOBILITY COUNSELING ASSESSMENT: FINAL REPORT 1* (Oct. 2002), available at http://www.urban.org/UploadedPDF/410588_CHACReport.pdf (last visited Mar. 5, 2004) (assessing the effectiveness of Chicago's voucher program by following voucher holders for twelve months).

4. *See generally* Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 HARV. C.R.-C.L. L. REV. 289 (2002).

5. 42 U.S.C. § 1437f(o)(1)(A).

6. Lynn E. Cunningham, *Managing Assets/Managing Families: Reconceptualizing Affordable Housing Solutions for Extended Families*, 11 J. AFFORDABLE HOUSING & CMTY. DEV. L. 390, 393 (2002).

7. CUNNINGHAM & POPKIN, *supra* note 3, at 1 (reporting HUD data from 2000).

8. JOHN C. WEICHER, AMERICAN ENTERPRISE INSTITUTE, *PRIVATIZING SUBSIDIZED HOUSING* 43 (1997). *Cf.* Sam Brownback, *Resolving HUD's Existing Problems Should Take Precedence Over Implementing New Policies*, 16 ST. LOUIS U. PUB. L. REV. 235 (1997). Senator Sam Brownback asserts that "[w]ith its origins in the Depression, project-based public housing was developed both for its direct job-creating potential and to meet the housing needs of the eligible poor. It is this dual purpose that explains why project-based assistance, on average, costs up to twice as much as vouchers for each family assisted." *Id.* at 241 (footnote omitted).

9. *See generally* LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* 27 (2000).

cannot meet these goals. Former public housing residents appear to be clustering in poor communities near their original public housing unit.¹⁰

This Note argues that current HCV programs are inadequate to meet their original goals of dispersing public housing residents throughout a metropolitan area and reducing overall racial segregation in the city. In the 1960s, courts across the nation found acts of local, state, and federal governments racially discriminatory and illegal under Title VI. These holdings led to often-criticized court-ordered remedies. While the vast majority of these remedies are no longer being implemented, they should not be forgotten. The implementation and outcomes of court-ordered remedies provide an opportunity to better understand the social problems associated with race in this country. This Note addresses the remedies that resulted from the *Gautreaux* litigation in Chicago. The lessons learned from this litigation should help to shape housing policy in the future. Specifically, the Department of Housing and Urban Development (“HUD”) should require local housing agencies administering a HCV program to show program recipients available rental properties in middle- and upper-class neighborhoods. In order for units in such areas to be a real option for the recipient, programs and policies must remove the many barriers that poor households face when they seek to relocate to a wealthier neighborhood. Not only are increased counseling and support services necessary to remove structural and financial barriers, but programs are also needed to shift individual preferences. Racial and economic integration cannot be successful so long as individuals refuse to live next door to people who are racially and socioeconomically different from themselves. To shift these preferences, the government should institute mobility grants, and equity insurance programs, as well as increase investigation and prosecution of those who commit hate crimes.

This Note uses Chicago as a case study. Chicago is similar to many cities: it has a history of residential segregation and a shortage of low-income housing. Chicago’s history also illustrates the government’s general shift in policy goals away from racial integration toward improving economic integration. I argue that poor minority families, particularly past public housing residents, face unique barriers that must be addressed, even under a housing program that focuses on developing mixed-income communities. When implementing a HCV program that targets past public housing residents, a “colorblind” approach is not enough. The lessons of Chicago’s *Gautreaux* litigation and its subsequent remedies illustrate the necessity of supporting a metropolitan-wide mobility program.

Part One of this Note discusses the *Gautreaux* litigation.¹¹ In these cases,

10. MARGERY AUSTIN TURNER ET AL., SECTION 8 MOBILITY AND NEIGHBORHOOD HEALTH: EMERGING ISSUES AND POLICY CHALLENGES 2000, http://www.urban.org/UploadedPDF/sec8_mobility.pdf (last visited Mar. 5, 2004) (citing PAUL FISCHER, A RACIAL PERSPECTIVE ON SUBSIDIZED HOUSING IN THE CHICAGO SUBURBS (2000)).

11. The district court in *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981), summarized the litigation’s primary cases:

Gautreaux v. Chicago Housing Authority, 265 F.Supp. 582 (N.D.Ill.1967) (tenants have the right to maintain an action alleging that housing is being administered in a racially discriminatory manner); *Gautreaux v. Chicago Housing Authority*, 265 F.Supp. 582 (N.D.Ill.1967) (evidence established that CHA intentionally chose sites and adopted tenant assignment procedures for the purpose of maintaining existing patterns of residential separation of the races); *Gautreaux v. Chicago Housing Authority*, 304 F.Supp. 736

plaintiffs attacked the Chicago Housing Authority's ("CHA") and HUD's history of segregated housing practices, which led to two judicial remedies. First, the courts compelled the CHA to develop "scattered-site" public housing units. Second, a consent decree required HUD to fund a metropolitan-wide Section 8 voucher program. As a result of this mandate, HUD developed the Gautreaux Assisted Housing Program ("GAHP"). While both remedies faced numerous challenges, the GAHP was more successful. GAHP's success contributed to the nation-wide policy shift from "hard" public housing units to voucher programs. Understanding why GAHP was successful is important to avoid recreating isolated and predominately poor minority communities.

Part Two provides explanations for why housing discrimination and segregation persist. This Note focuses on the individual, community, and programmatic barriers to desegregation and discusses how the accumulation of rational individual preferences results in segregated communities. It discusses how these barriers affect the implementation of scattered-site housing and HCV programs, particularly how they limit the housing stock available to voucher recipients and, thus, the recipients' options.

Part Three focuses on Chicago's current attempts to use HCV programs to disperse low-income families throughout the city. The GAHP officially ended in 1998, when HUD satisfied its court-ordered obligation to provide desegregated

(N.D.Ill.1969) (supplemental judgment order ordering that no public housing be developed in census tracts with more than 30% minority population); *Gautreaux v. Chicago Housing Authority*, 436 F.2d 306 (7th Cir. 1970); cert. denied, 402 U.S. 922, 91 S.Ct. 1378, 28 L.Ed.2d 661 (1971) (no abuse of discretion, a year after original order entered, to impose deadlines for submissions to plan commission and city council); *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971) (dismissal for lack of jurisdiction of a request for injunction against HUD prohibiting it from continuing to provide relief to CHA reversed); *Gautreaux v. Romney*, 332 F.Supp. 366 (N.D.Ill.1971), rev'd 457 F.2d 124 (7th Cir. 1972) (insufficient nexus between CHA housing program and HUD's Model Cities program to permit enjoining of Model Cities funds to Chicago because of lack of compliance with 1969 judgment order); *Gautreaux v. Chicago Housing Authority*, 342 F.Supp. 827 (N.D.Ill.1972), aff'd sub nom., *Gautreaux v. City of Chicago*, 480 F.2d 210 (7th Cir. 1973), cert. denied, 414 U.S. 1144, 94 S.Ct. 895, 39 L.Ed.2d 98 (1974) (district court ordered CHA to by-pass Chicago City Council approval for selection of sites for low rent housing); *Gautreaux v. Romney*, 363 F.Supp. 690 (N.D.Ill.1973), rev'd sub nom. *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930 (7th Cir. 1974) (district court has authority to order suburban or metropolitan area relief for constitutional violations occurring within city limits); *Gautreaux v. Chicago Housing Authority*, 384 F.Supp. 37 (N.D.Ill.1974), petition for writ of mandamus denied sub nom., *Chicago Housing Authority v. Austin*, 511 F.2d 82 (7th Cir. 1975) (district court has the authority to refer the issue of intracity relief to a U.S. Magistrate to serve as a Master); *Hills v. Gautreaux*, 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792 (1976) (district court has the authority to undertake remedial efforts beyond the boundaries of the municipality in which the constitutional violation occurred and may, in its discretion, order metropolitan relief).

Id. at 667 (original spacing maintained).

housing opportunities to 7100 families.¹² Chicago's current HCV programs face special challenges due to the demolition of thousands of CHA public housing units. Apart from the loss of physical housing stock, an immediate need exists to relocate thousands of former public housing tenants who have special needs. This Note argues that vouchers can be an appropriate means of rectifying past discrimination, but relying solely on the private rental market only perpetuates segregation.

Chicago's past experiments with scattered-site housing and the GAHP provide guidance for overcoming barriers voucher holders face when integrating into mostly white, middle-class communities. Clearly, the government cannot force integration and diversity. Instead, housing policies and regulations must support individual homeowners, landlords, and voucher recipients when making individual choices that further integration. Housing policy must allow recipients a true choice of housing locations and shift individual preferences toward diversity. This Note argues that along with increased counseling and support services for voucher recipients, the government should institute mobility grants and equity insurance programs. Increased investigation and prosecution of those who commit hate crimes is imperative. Experience has shown that metropolitan-wide mobility programs are necessary to provide all people with the opportunity to live in an economically viable community.

I. COURT-CREATED HOUSING POLICY: THE GAUTREUX LITIGATION

Chicago has a long history of housing segregation.¹³ Between 1955 and 1965, the CHA built nearly 10,000 apartment units.¹⁴ These apartments were concentrated in mid-rise and high-rise buildings in a relatively small number of housing developments.¹⁵ The developments were built along two corridors beginning in Chicago's downtown and extending south and west.¹⁶ This created residential clustering as "white residents moved from South and West Side neighborhoods into outlying city and suburban areas, while nearly equivalent numbers of African-American (and a smaller stream of Latino) residents located in neighborhoods closer to the central city."¹⁷

At nearly the same time, a significant portion of Chicago's industrial firms relocated, downsized, or went out of business. The effects of "Chicago's deindustrialization were especially pronounced in inner-city, largely minority neighborhoods on the city's South and West Sides. Unemployment shot up and other signs of neighborhood stress, such as declining school performance by young people, rising crime rates, and residential abandonment" became commonplace.¹⁸ The selective out-migration of working and middle-class blacks concentrated

12. CUNNINGHAM & POPKIN, *supra* note 3, at 1-2.

13. For a detailed discussion of Chicago's history of segregated housing, see HARVEY WARREN ZORBAUGH, *THE GOLD COAST AND THE SLUM: A SOCIOLOGICAL STUDY OF CHICAGO'S NEAR NORTH SIDE* (Phoenix ed. 1976).

14. See Larry Bennett, *Restructuring the Neighborhood: Public Housing Redevelopment and Neighborhood Dynamics in Chicago*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 54, 55 (2000) (examining four cases of public housing redevelopment in Chicago).

15. *Id.*

16. *Id.*

17. *Id.* at 55-56.

18. *Id.* at 56.

poverty and other social problems in inner-city ghettos across the nation.¹⁹ As social capital left the inner city, the remaining residents became isolated from upwardly mobile role models, neighborhood institutions, and social networks that provide access to mainstream vehicles of social control and resistance to social problems such as crime, teenage pregnancy, and dropping out of high school.²⁰

Aldermen on the Chicago City Council reacted to these demographic shifts by instituting policies that further defined Chicago's developing patterns of housing segregation. The aldermen feared that public housing was the first step to neighborhood racial transition.²¹ These racial shifts threatened the aldermen by undermining their traditional political networks and voting blocks. In 1955, the city council made CHA site proposals subject to a local alderman veto. Between "the mid-1950s until the mid-1960s, white aldermen routinely blocked the siting of CHA projects within their wards"; black aldermen did not.²²

In 1966, nearly 43,000 black residents of and applicants for public housing brought a class action suit against the CHA and HUD alleging that the agencies discriminatorily built public housing in predominately black neighborhoods and assigned tenants to housing projects based on their race.²³ This began the *Gautreaux* litigation.

A. The Chicago Housing Authority Remedy

In the 1967 case, *Gautreaux v. Chicago Housing Authority* ("*Gautreaux I*"),²⁴ the federal district court denied the CHA's motion to dismiss and stated that the plaintiffs "[had] the right under the Fourteenth Amendment to have sites selected for public housing projects without regard to the racial composition of either the surrounding neighborhood or of the projects themselves."²⁵ In 1969, the federal district court granted summary judgment in favor of the plaintiffs, finding that the CHA violated the Civil Rights Act of 1866²⁶ and the Equal Protection Clause of the Fourteenth Amendment by building public housing and discriminatorily assigning

19. See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987) (discussing the social plight of and public policy approaches toward the ghetto underclass).

20. Bennett, *supra* note 14, at 60. While William J. Wilson's theory is controversial, the Seventh Circuit appears to agree with this "cycle of poverty" analysis. See *infra* text accompanying notes 71-80.

21. Bennett, *supra* note 14, at 56.

22. *Id.* Indeed,

CHA admitted that it had followed a policy of informally clearing proposed family public housing sites with the alderman in whose ward the proposed site was located and of eliminating each site opposed by the alderman. This procedure had resulted in the rejection of 99½% of the units proposed for sites in white areas which had been initially selected as suitable for public housing by CHA.

Hills v. Gautreaux, 425 U.S. 284, 287 n.4 (1976) (citing *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907, 910, 912-13 (N.D. Ill. 1969)).

23. See RUBINOWITZ & ROSENBAUM, *supra* note 9, at 1; Schuck, *supra* note 4, at 319-20.

24. *Gautreaux v. Chicago Hous. Auth.*, 265 F. Supp. 582, 583 (N.D. Ill. 1967).

25. *Id.*

26. 42 U.S.C. §§ 1981, 1983 (2000).

tenants to the developments based on their race.²⁷ The court based its ruling on uncontested evidence which showed that the public housing system was racially segregated. Specifically, the court noted that four projects with an overwhelmingly white resident population were located in white neighborhoods, while the rest of the family units (over 99%) were located in black neighborhoods and housed nearly all black tenants (99%).²⁸

To remedy these violations, the district court ordered the development of "scattered-site housing."²⁹ While dicta in the court's 1967 opinion denying the defendant's motion to dismiss appears to support color-blind procedures,³⁰ the court's 1969 remedy is race-based in that it sought to substantially increase the number of public housing units in areas where the majority of the residents were white.³¹ To this end, the court ordered the CHA to build or buy 700 family units in low-rise buildings in predominantly white areas of Chicago.³² The court also enjoined the CHA from building public housing in non-white areas without simultaneous construction of at least 75% (later just 50%³³) of all new family public housing units in predominately white areas inside Chicago or Cook County.³⁴ A non-white area was understood to have an African-American population of at least 30% and was called a "Limited Public Housing Area."³⁵ The remainder of Cook County was included in the "General Public Housing Area."³⁶

The court also ordered the CHA to change its tenant-assignment procedures.

27. *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907, 913-14 (N.D. Ill. 1969).

28. *Hills v. Gautreaux*, 425 U.S. 284, 288 (1976). "[T]he public housing system operated by the CHA was racially segregated, with four overwhelmingly white projects located in white neighborhoods and with 99½% of the remaining family units located in Negro neighborhoods and 99% of those units occupied by Negro tenants." *Id.*

29. *Id.* at 289-91.

30. *Gautreaux v. Chicago Hous. Auth.*, 265 F. Supp. 582, 583 (N.D. Ill. 1967). The court stated that the plaintiffs have the "right under the Fourteenth Amendment to have sites selected for public housing projects *without regard to the racial composition* of either the surrounding neighborhood or of the projects themselves." *Id.* (emphasis added).

31. *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. 736, 740 (N.D. Ill. 1969).

32. *Id.* at 738.

33. Joseph Seliga, Comment, *Gautreaux a Generation Later: Remediating the Second Ghetto or Creating the Third?*, 94 Nw. U. L. REV. 1049, 1060 (2000). "This ratio was later reduced to one unit in the General Area for every one unit in the Limited Area as a result of difficulties in constructing scattered-site units." *Id.* at 1057; *see also Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. at 739.

34. *Gautreaux v. Landrieu*, 523 F. Supp. 665, 666 (N.D. Ill. 1981).

35. *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. at 737. There was a significant increase in the number of Latinos in Chicago between 1969 and the present. By the 1990 Census, Latinos composed nearly 20% of Chicago's total population. Seliga, *supra* note 33, at 1061. While the *Gautreaux* judgment "order considers the Limited Housing Area to be those areas having greater than thirty percent non-white population," the district court in *Gautreaux v. Pierce*, 548 F. Supp. 1294, 1295 (N.D. Ill. 1982), interpreted "non-white" or "minority" to stand exclusively for African-Americans. Seliga, *supra* note 33, at 1061. The court reasoned that "the exclusion of African-Americans from housing opportunities in predominately white areas . . . was the impetus for the *Gautreaux* litigation." *Id.* Thus, low-income Latino neighborhoods were considered part of the General Area. *Id.* at 1061-62. Since 1987, "over fifty percent of the 1822 scattered-site units built or purchased by the receiver have been located in census tracts in which the population is at least sixty percent Latino." *Id.* at 1062.

36. *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. at 737.

Half of the new units could be reserved for low-income families who already lived in the new development's neighborhood. The other available units were assigned on a first-come, first-served basis.³⁷ Race was not considered. Finally, the court prohibited the housing authority from building "large numbers of dwelling units in or near a single location; and . . . dwelling units . . . of more than 240 persons."³⁸

The court hoped that the scattered-site developments would "foster peaceful, stable integration, minimize white 'fight and flight,' reduce public housing's stigma, and reassure the community about the neighborhoods' futures."³⁹ These hopes were squelched when political resistance from white, black, and Latino neighborhoods impeded the program's implementation. In 1972, a frustrated district court ordered the CHA to by-pass the City Council's approval of sites selected for low-rent housing.⁴⁰ For nearly twenty years, the CHA halted almost all construction. During this time, the CHA waiting list grew to more than 40,000 people.⁴¹

Finally, the court appointed a receiver to administer the CHA in 1987.⁴² The court appointed the Habitat Company, a private developer, to manage the construction of all new CHA housing. Between 1969 and 1997, less than 300 scattered-site housing units were constructed⁴³ in more than fifty-seven Chicago communities.⁴⁴ However, the new units were not built in the predominately white communities the plaintiffs envisioned.⁴⁵

Since 1987, "over fifty percent of the 1822 scattered-site units built or purchased by the receiver have been located in census tracts in which the population is at least sixty percent Latino" and only 7.2% of the public housing units have been built in areas with a population more than 70% white.⁴⁶ Political opposition, high land prices, and a lack of vacant land and federal funds were blamed for making "development of scattered-site units in majority white areas prohibitively expensive."⁴⁷ The scattered-site housing plan was also constrained by the Supreme Court. Originally, the judgment order considered that "one-third of [the] scattered-site housing could be built in the suburbs of Cook County,

37. Each applicant was placed on a waiting list based on when his or her application was received. *Id.* at 739-40, 742 (citing Pls.' Ex. B). The applicant at the top of the list was offered at least two, but up to three, available apartments starting with the location with the highest vacancy rate. If the applicant rejected the available units, he or she was placed at the end of the list. *Id.* at 742-43 (citing Pls.' Ex. B).

38. *Landrieu*, 523 F. Supp. at 666.

39. Schuck, *supra* note 4, at 320; see also RUBINOWITZ & ROSENBAUM, *supra* note 9, at 1-2; *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. at 736 (enforcing *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969)).

40. *Gautreaux v. Chicago Hous. Auth.*, 342 F. Supp. 827, 830 (N.D. Ill. 1972), *aff'd sub nom.*, *Gautreaux v. City of Chicago*, 480 F.2d 210 (7th Cir. 1973).

41. BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST, PUBLIC HOUSING TRANSFORMATION: GAUTREAU, at www.bpichicago.org/pht/gautreaux.html (last visited Jan. 13, 2004) [hereinafter BPI].

42. RUBINOWITZ & ROSENBAUM, *supra* note 9, at 27.

43. Seliga, *supra* note 33, at 1060.

44. BPI, *supra* note 41.

45. *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d 930, 930-31 (7th Cir. 1974).

46. Seliga, *supra* note 33, at 1062; see also *supra* note 35 and accompanying text.

47. Seliga, *supra* note 33, at 1062.

surrounding Chicago, through the cooperation of local governments."⁴⁸ However, the Supreme Court's decision in *Milliken v. Bradley*, prevented inter-district remedies for racial segregation when the remedy would impermissibly interfere with local governments.⁴⁹ Requiring the CHA to construct scattered-site housing in the Chicago suburbs would impermissibly interfere with local government operations.⁵⁰

Forty thousand families are included in the *Gautreaux I* judgment order, but only 6% of these public housing residents live in scattered-site housing created under *Gautreaux I*.⁵¹ This is a far cry from the results the *Gautreaux I* court hoped for when ordering a remedy for the CHA's constitutional violation.

B. The Department of Housing and Urban Development Remedy

In a companion suit, *Gautreaux v. Landrieu* ("*Gautreaux II*") the same plaintiffs alleged HUD "sanctioned and assisted CHA's racially discriminatory public housing."⁵² Plaintiffs sought to prevent HUD from providing further assistance to the CHA until these practices were eliminated. The district court dismissed the case for lack of jurisdiction in 1971, but the Seventh Circuit Court of Appeals reversed after determining that HUD could be held liable along with the CHA for the local housing authority's discriminatory policies because HUD knew of and did not stop these unconstitutional practices.⁵³

1. Metropolitan-Wide Remedy: Including the Suburbs

The Seventh Circuit held that HUD violated the Due Process Clause of the Fifth Amendment⁵⁴ and the Civil Rights Act of 1964⁵⁵ for funding a racially discriminatory public housing system in Chicago.⁵⁶ In *Gautreaux II*, the court of appeals held that a metropolitan-wide plan was "necessary and equitable" to remedy HUD's past discrimination.⁵⁷ In this case, the Seventh Circuit was forced to distinguish *Milliken v. Bradley*.⁵⁸ In *Milliken*, the Supreme Court reversed a judgment of the Sixth Circuit, which approved metropolitan-wide relief in the school desegregation context.⁵⁹ The *Milliken* plan would have required the fifty-four school districts in the Detroit metropolitan area to consolidate in an effort to remedy racial discrimination in the operation of the Detroit public schools.

48. *Id.* at 1061 n.65 (citing *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. 736, 739 (N.D. Ill. 1969)).

49. 418 U.S. 717, 741-42 (1974).

50. Seliga, *supra* note 33, at 1065 n.65.

51. *Id.* at 1049-50.

52. 523 F. Supp. 665, 667 (N.D. Ill. 1981).

53. *Id.* at 667 ("Seventh Circuit reversed, finding that HUD was liable along with CHA for Chicago's discriminatory housing patterns because HUD knowingly acquiesced to CHA's unconstitutional procedures." (citing *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971)); see also *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d 930, 933 (7th Cir. 1974).

54. U.S. CONST. amend. V.

55. 42 U.S.C. § 2000.

56. *Hills v. Gautreaux*, 425 U.S. 284, 289 (citing *Romney*, 448 F.2d at 739-40).

57. *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d at 936.

58. 418 U.S. 717 (1974).

59. *Id.*

The court of appeals found metropolitan-wide relief was appropriate in *Gautreaux II* because, unlike local schools, there was not a "deeply rooted tradition of local control of public housing; rather, public housing is a federally supervised program with early roots in federal statutes."⁶⁰ Housing discrimination had been prohibited by federal law for more than a century.⁶¹

Second, the court found that the problems inherent in building public housing outside of Chicago's city limits did not pose the same administrative burdens posed by bussing thousands of school children to schools under the control of other local governments.⁶² The court equated both the CHA and HUD to any other landowner and saw any problems arising from housing construction as insignificant when compared to restructuring an entire school system.⁶³

The court differentiated *Milliken* in a third way. In *Milliken*, there was no evidence of discrimination by the affected suburban school districts. In *Gautreaux II*, the court noted that the record contained evidence of suburban discrimination.⁶⁴

Finally, the court noted that both parties agreed that "the metropolitan area is [the] single relevant locality for low rent housing purposes and that a city-only remedy will not work."⁶⁵ The court referred to numerous statements from both parties demonstrating their support for a metropolitan-wide plan.⁶⁶ For example, HUD's General Counsel advocated for a metropolitan-wide plan, stating that "State legislatures have determined that the city and its surrounding area comprise a single

60. *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d at 936 (citing 42 U.S.C. §§ 1401-1440); *Romney*, 448 F.2d at 737-40).

61. *Id.* (citing 42 U.S.C. §§ 1982, 3608(d)(5)).

62. *Id.*

63. *Id.*

64. *Id.* at 937.

Plaintiff's Exhibit 11 indicates that of twelve suburban public housing projects, ten were located in or adjacent to overwhelmingly black census tracts. And although the case was not limited to public housing, it is not irrelevant that we recently took judicial notice of widespread residential segregation "in Chicago and its environs." *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 335 (7th Cir. 1974). We went on to hold that a prima facie showing had been made that this segregation had discriminatory effects throughout the metropolitan area.

Id.

65. *Id.*

66. *Id.* The Seventh Circuit cited a CHA memorandum dated December 21, 1971:

CHA fully agrees that public housing must be metropolitan in nature, and not confined to the City of Chicago. It has so stated on numerous occasions before this court. It has offered testimony that a dispersal program for public housing will not work unless it is operated on a metropolitan basis.

Id. (citing R. Doc. 167, at 27). Similarly, the court cited a December 17, 1971 HUD Memorandum which took a similar position:

[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. The City and the suburbs together make up what I call the "real city." To solve problems of the "real city", *only metropolitan-wide solutions will do.*

Id. (citing Statement by Secretary Romney, App. Z, at 15-16, to HUD's Mem., Dec. 17, 1971, R. Doc. 283, Attach. 6, Mem. 2, at 2) (alteration and emphasis in original).

'locality' for low-rent housing purposes."⁶⁷ This determination was made because the legislature realized that many cities cannot meet their low-rent housing needs within the city limits. The elimination of slums and the creation of decent low-income housing are metropolitan-wide problems, but of particular concern to central cities where the impact of housing problems are most intense.⁶⁸

The court of appeals found no inherent reason for HUD to tie housing market areas to arbitrary political boundaries.⁶⁹ The problems of the central city extended beyond the city's borders and affected the surrounding community. Thus, the solution to concentrated poverty needed to include all of the affected areas.⁷⁰

The court also noted evidence of white flight and the migration of blacks into the city.⁷¹ Samuel J. Simmons, former HUD Assistant Secretary for Equal Opportunity, referred to this phenomenon as "the [w]hite noose around the country's largest cities."⁷² Simmons noted that "in the majority of the large metropolitan areas [w]hite[s] and [b]lacks still live largely separate lives."⁷³ The district judge himself predicted that unless patterns of racial separation were reversed in Chicago, there would be little chance of undoing the intensifying separation of whites and blacks in the city.⁷⁴ The President's Commission on Civil Disorders estimated that if the current trend of racial residential concentration continued with blacks moving into and whites moving out of the central city, blacks would account for fifty percent of Chicago's population by 1984.⁷⁵ The district judge added that "[b]y 1984 it may be too late to heal racial divisions."⁷⁶ An expert in the case testified that white flight would be reduced if suburban areas were desegregated.⁷⁷ Simmons sought to explain the problem:

As [w]hites have left the cities, jobs have left with them. After 1960, three-fifths of all new industrial plants constructed in this country were outside of central cities. In some cases as much as 85% of all new industrial plants located outside central cities were inaccessible to [b]lacks and other minorities who swelled ghetto populations.⁷⁸

The court of appeals found these statements and views to "convey a solemn warning."⁷⁹ The court asserted that action must be taken to end a "vicious cycle of poverty" that results in trapping poor, minority residents living in "jobless slums . . .

67. *Id.* (citing Pls.' Ex. 13, at 3-4).

68. *Id.* (citing Pls.' Ex. 13, at 3-4).

69. *Id.* at 938.

70. *Id.*

71. *Id.* The court noted that white flight caused similar problems in cities such as Indianapolis, Indiana; Atlanta, Georgia; Washington, D.C.; and Cleveland, Ohio. *Id.*

72. *Id.* at 937 (citing Pls.' Ex. 7, at 3-4).

73. *Id.*

74. *Id.* at 938.

75. *Id.*

76. *Id.* (citing *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907, 915 (N.D. Ill. 1969)).

77. *Id.* An expert demographer "testified that by providing desegregated housing opportunities in the suburban areas, the rate of white exodus from the city would diminish." *Id.*

78. *Id.* (citing Pls.' Ex. 9, at 3).

79. *Id.*

. to lives of crime and violence."⁸⁰ Based on these arguments for metropolitan-wide relief, the court of appeals remanded the case and ordered the creation of a metropolitan-wide plan to fulfill two goals. First, the court sought to formally desegregate the public housing system in Chicago created from unconstitutional site selection and tenant assignment procedures. Second, it sought to increase the supply of dwelling units as quickly as possible in areas where blacks accounted for less than thirty percent of the population.⁸¹

After the appellate court order, HUD requested United States Supreme Court review of the remedy in light of *Milliken*.⁸² The Court stated, "The relevant geographic area for purposes of the respondents housing options is the Chicago housing market, not the Chicago city limits."⁸³ The Court ultimately affirmed the lower court's remedy,⁸⁴ marking the first time it authorized a desegregation plan to extend beyond the community where the legal violation took place.⁸⁵

These decisions led to a metropolitan-wide consent decree. In 1981, fifteen years after the original suit was filed, the district court approved a consent decree between the plaintiffs and HUD.⁸⁶ This metropolitan-wide plan involved five housing authorities in addition to the CHA. Unlike the 1969 judgment order entered against the CHA, which divided Cook County into two areas (limited and general), HUD's consent decree divides the Chicago Standard Metropolitan Statistical Area, composed of six counties, into three areas: general (less than thirty percent minority population), limited (thirty percent or greater minority population), and revitalizing (areas with substantial minority populations that are undergoing redevelopment).⁸⁷

2. The Gautreaux Assisted-Housing Program

The 1981 consent decree created the Gautreaux Assisted-Housing Program ("GAHP").⁸⁸ It provided for the placement of 7100 persons into assisted units in

80. *Id.*

81. *Id.* at 738-39.

82. *Hills v. Gautreaux*, 425 U.S. 284, 292 (1976).

83. *Id.* at 299.

84. *Id.* at 297-300 (holding metropolitan-wide relief against HUD was an appropriate remedy for past discrimination); see also RUBINOWITZ & ROSENBAUM, *supra* note 9, at 2.

Since scattered-site housing construction would be the type of remedy that would impermissibly interfere with the operation of the local governments, the ability to construct scattered-site housing was significantly limited after *Milliken*. . . . Since *Hills* involved a different governmental unit, [HUD], which has responsibility over housing throughout the metropolitan area of Chicago, and a different remedy, the use of Section 8 rental housing vouchers, instead of construction of new housing, an interdistrict remedy was upheld.

Seliga, *supra* note 33, at 1061 n.65 (internal citations omitted).

85. See *Hills*, 425 U.S. at 305-06.

86. *Gautreaux v. Landriau*, 523 F. Supp. 665, 667-68, 672 (N.D. Ill. 1981), *aff'd sub nom.*, *Gautreaux v. Chicago Hous. Auth.*, 690 F.2d 601 (7th Cir. 1982).

87. *Id.* at 668-69.

88. Schuck, *supra* note 4, at 320.

the general and revitalized areas.⁸⁹ GAHP utilized Section 8 vouchers, created by Congress in 1974.⁹⁰

Under Section 8, the public housing authority (here, the CHA) provides vouchers to income-eligible families. Generally, the vouchers' value equals the difference between 30% of family income and an agency-prescribed payment standard defined as some percentage of the "fair market rent" figure determined by the agency.⁹¹

Families who were part of the *Gautreaux* plaintiff class and requested to participate in the GAHP received Section 8 housing vouchers.⁹² These vouchers could be used in neighborhoods where less than thirty percent of the residents were African-American.⁹³ The Leadership Council for Metropolitan Open Communities ("Leadership Council"), a non-profit agency, assisted participants who searched for housing in either diverse city neighborhoods or the suburbs.⁹⁴ The non-profit agency offered counseling to prepare families for success in their new homes.⁹⁵ Between 1976 and 1998, the GAHP assisted more than 25,000 volunteers in moving to over 100 communities throughout the Chicago metropolitan area.⁹⁶ Nearly half relocated to integrated suburbs and half to integrated neighborhoods in the city.⁹⁷ The GAHP ended in 1998, when the court held that HUD had "satisfied its court-ordered obligation to provide desegregated housing opportunities to 7100 families."⁹⁸

3. GAHP Outcomes

While some scholars question the courts' ability to affect and implement social change, research suggests that the GAHP, created out of the court order in *Gautreaux v. Landrieu*,⁹⁹ did a remarkable job of promoting desegregation in Chicago.¹⁰⁰ GAHP participants who moved to mostly white suburbs were better off than those relocated into mostly black city neighborhoods. Longitudinal studies

89. *Landrieu*, 523 F. Supp. at 669.

90. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 653 (1974) (codified as amended at 42 U.S.C. § 1437f (2000)).

91. Schuck, *supra* note 4, at 320.

92. *Id.* at 320-21.

93. BP1, *supra* note 41.

94. *See* Schuck, *supra* note 4, at 321. The Leadership Council was chosen by HUD and approved by the plaintiffs as the contractor to provide placement assistance. *Landrieu*, 523 F. Supp. at 668.

95. BP1, *supra* note 41.

96. *Id.*

97. *Id.*

98. *Id.*

99. 523 F. Supp. 665.

100. *See* William N. Eskridge, Jr. & Philip P. Frickey, *An Historical and Critical Introduction* to HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW*, at lv (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994). *See generally* GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

documented the different experiences of GAHP suburban movers and city movers.¹⁰¹

In the fall of 1998, when HUD's obligation to fund the GAHP ended and the last relocation was completed, the program had moved 7100 low-income black families out of inner-city neighborhoods (over 90% black). Most participants moved to more than 100 suburban communities (96% white, on average), and the rest (a comparison group) moved to other neighborhoods within Chicago (99% black, on average) that were demographically similar to the neighborhoods they had left. In contrast, most families who left CHA housing with Section 8 vouchers but did not participate in the GAHP and, therefore, did not receive mobility counseling, ended up moving to other black, high-poverty neighborhoods.¹⁰²

The suburban movers lived in communities with less crime and violence, but experienced a higher risk of racist encounters.¹⁰³ The victims of these encounters characterized them as upsetting, infrequent, and non-violent.¹⁰⁴ During the first year after relocation, suburban movers initially experienced more harassment than did city movers. However, after the first year, the two groups experienced similar levels of harassment and social integration.¹⁰⁵

The suburbs also offered a better educational environment. Suburban schools were safer, had smaller class sizes, and provided higher educational standards.¹⁰⁶ While this resulted in long-term benefits to the students, in the short term, many students found that they had difficulty meeting their new school's expectations.¹⁰⁷

[C]hildren of suburban movers were more likely than their city counterparts to be in high school, on a college track, in a four-year college, in a job, and in a job with benefits. Nonetheless, they had very similar rates of behavior problems, similar grades, and similar class ranks. Given the much higher standards the suburban movers faced, however, this ostensible equivalence probably reflects a higher level of performance.¹⁰⁸

Encouraged by the apparent outcomes of the GAHP suburban movers, "Federal policy has . . . marshall[ed] Section 8 as the programmatic vehicle for almost all new assistance since the mid-1980s."¹⁰⁹

101. See Schuck, *supra* note 4, at 321. See generally RUBINOWITZ & ROSENBAUM, *supra* note 9.

102. Schuck, *supra* note 4, at 321 (citing William P. Wilen & Wendy L. Stasell, *Gautreaux and Chicago's Public Housing Crisis: The Conflict Between Achieving Integration and Providing Decent Housing for Very Low-Income African Americans*, 34 CLEARINGHOUSE REV. 117, 126 nn.79-82 (2000)).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 321-22.

108. *Id.*

109. *Id.* at 322.

The success of mobility programs is based on the assertion that neighborhoods affect those who live in them. The outcomes reported for those participating in the GAHP have been recreated in other studies. The “presence of middle-class, affluent, and professional-managerial neighbors [is] positively related to educational attainment and negatively related to school drop-out.”¹¹⁰

These results suggest that neighborhoods influence children and adolescents through the resources they have to offer. Possible explanations for the benefits of middle-class neighborhoods include: the presence of adult role models committed to the labor force; the presence of peers whose families share values and have high educational aspirations; the number and quality of neighborhood and community organizations, including schools; a variety of amenities such as playgrounds, recreational facilities, and libraries; and the availability of supervised youth activities.¹¹¹

A non-profit agency provides one explanation for why mixed-income communities are a valuable objective of housing policy:

[O]ne of public housing’s greatest obstacles is its isolated concentration of poor people, a phenomenon that destroys the norms of everyday life and perpetuates social and economic deprivation. Many argue that economic integration through the presence of higher-income tenants can contribute to a more stable environment by exposing public housing residents to role models and the linkages they bring to the broader community.¹¹²

Since Section 8’s inception in 1974,¹¹³ there has been widespread support for vouchers to replace traditional public housing. Currently, nearly 1.7 million households nationwide participate in the Section 8 program.¹¹⁴ Some researchers suggest that “voucher and certificate programs work better and are less expensive than public housing and other forms of project-based assistance.”¹¹⁵ A study by the General Accounting Office confirms this statement, reporting “that the total per-unit costs for housing production programs are from 32 to 59 percent greater than

110. See Martha A. Gephart, *Neighborhoods and Communities as Contexts for Development*, in 1 NEIGHBORHOOD POVERTY: CONTEXT AND CONSEQUENCES FOR CHILDREN 1, 42 (Jeanne Brooks-Gunn et al. eds., 1997) (citing studies that control for family status and background).

111. *Id.*

112. Bennett, *supra* note 14, at 60 (quoting METROPOLITAN PLANNING COUNCIL, CHANGING THE PARADIGM: A CALL FOR NEW APPROACHES TO PUBLIC HOUSING IN THE CHICAGO METROPOLITAN REGION 15 (Oct. 1996)). Bennett uses this “nonprofit planning organization’s report on public housing reforms [to] represent[] one of the more sustained explanations of why mixed-income communities represent a worthwhile objective for neighborhood planning efforts.” *Id.* at 59.

113. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 653 (1974) (codified as amended at 42 U.S.C. § 1437f (2000)).

114. CUNNINGHAM & POPKIN, *supra* note 3, at 1.

115. *E.g.*, WEICHER, *supra* note 8, at 43.

for housing vouchers in the first year and from 12 to 27 percent greater over 30 years."¹¹⁶

HUD's HOPE VI¹¹⁷ and HCV programs indicate that creating mixed-income communities is a goal of the federal government. This goal is based on the premise that neighborhoods affect those who live in them. However, "[d]ispersing the poor will only command majority support if most people believe that it will improve poor neighborhoods a lot more than it will harm more affluent ones."¹¹⁸ For this perception to prevail, the public's image of public housing residents must be transformed. Part Two of this Note addresses some of the barriers and institutions that reinforce negative perceptions of public housing residents. If these barriers are not overcome, HCV recipients will not have the opportunity to move to low-poverty areas. It is not enough for HCV programs to relocate past public housing residents from publicly run to privately owned and operated units when both are located in isolated, poor, minority communities.

II. THE PERSISTENCE OF SEGREGATED HOUSING

Often HCV programs' goal of relocating families to low-poverty areas is frustrated by individual, community, and programmatic barriers. Critics of HCV programs argue that the positive outcomes of voucher programs are overstated. For example, Richard Ford asserts that local governments have both the means and the incentive to restrict land use in a way that excludes low-income housing and thus voucher recipients. He argues that traditional *Gautreaux* programs "demand[] that these socially isolated poor not only develop a work ethic and mainstream social skills sufficient to win them jobs in the *private* sector of a middle-class suburb, but also that they do so while simultaneously acculturating themselves to a new social milieu."¹¹⁹ A person facing more individual, community, and programmatic barriers and possessing fewer resources will likely have a difficult time attempting

116. U.S. GEN. ACCOUNTING OFFICE, GAO-01-901R COSTS AND CHARACTERISTICS OF FEDERAL HOUSING ASSISTANCE 4 (2001), at <http://www.gao.gov/new.items/d01901r.pdf> (last visited May 18, 2004).

117. HOPE VI grants are awarded by HUD to public housing authorities with severely distressed public housing units. They are used for four main purposes. First, the grants can be used to rehabilitate existing public housing projects by changing the physical shape of the building or for demolition of severely distressed public housing. OFFICE OF PUBLIC AND INDIAN HOUSING, U.S. DEP'T OF HOUSING AND URBAN DEV., ABOUT HOPE VI (2003), at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/> (last visited Mar. 23, 2004). Second, they can be used to empower residents and promote self-sufficiency through support service programs. *Id.* Third, the grants can be used to acquire new sites for construction in order to "plac[e] public housing in nonpoverty neighborhoods and promote mixed-income communities." *Id.* (emphasis added). Finally, HOPE VI grants can fund partnerships with other agencies. *Id.*

118. Christopher Jencks & Susan E. Mayer, *The Social Consequences of Growing Up in a Poor Neighborhood*, in INNER-CITY POVERTY IN THE UNITED STATES 111, 122 (Laurence E. Lynn, Jr. & Michael G.H. McGeany eds., 1990).

119. Richard Ford, *Down by Law*, 25 BOSTON REV. 11 (2000), available at <http://www.bostonreview.net/BR25.3/ford.html> (last visited Mar. 23, 2004) (alterations added) (emphasis in original). This portion of Ford's argument highlights the economic and social challenges families face after they have relocated. For the purposes of this Note, I focus specifically on challenges to *making* the original move to mixed-income communities.

to move into an economically viable community. While these barriers relate to housing segregation in general, the experiences of displaced Chicago public housing residents are highlighted.

A. Individual Barriers

The transition from publicly owned and operated housing to private rental units can be difficult. "Although some public-housing residents displaced by redevelopment move into replacement housing, are successful in procuring private housing through certificates or vouchers, or move in with family members; others move to other ghettos, become homeless, or simply disappear."¹²⁰ Many displaced public housing residents face unique challenges that must be overcome to successfully transition to the private market. Like all of us, each public housing resident faces unique individual barriers to maintaining self-sufficiency. For public housing residents, however, personal problems and the social costs of relocation may make it impractical to relocate to a new neighborhood. While these barriers are unique to each individual, the next Part provides examples of what some of these personal challenges may include.

1. Personal Challenges

Many long-term public housing residents have personal problems that prevent them from becoming self-sufficient. In Chicago, many CHA tenants are dependent on welfare and unemployed.¹²¹ Most of the developments are extremely dangerous and some residents have experienced traumatic events, such as witnessing or being the victim of a violent crime, that will affect them even after moving.¹²² Gang- and drug-related crime is prevalent.¹²³

Many households include one or more members with a criminal record.¹²⁴ When a family member has a criminal record it may be harder for that family to relocate following the passage of the Quality Housing and Work Responsibility Act of 1998.¹²⁵ This federal law allows the CHA to evict or refuse to relocate public

120. Kristen D.A. Carpenter, *Promise Enforcement in Public Housing: Lessons from Rousseau and Hundertwasser*, 76 TUL. L. REV. 1073, 1105 (2002) (footnotes omitted); see also Jennifer Hochschild, *Creating Options*, 25 BOSTON REV. 14-15 (2000), available at <http://www.bostonreview.net/BR25.3/hochschild.html> (arguing for voluntary relocation but, at the same time, making the situation more livable for those residents who remain in the housing project).

121. TURNER ET AL., *supra* note 10, at 47.

122. See J. GARBARINO ET AL., *NO PLACE TO BE A CHILD: GROWING UP IN A WAR ZONE* (1991) (comparing growing up in a Chicago public housing development with growing up in a war zone).

123. SUSAN J. POPKIN ET AL., *THE HIDDEN WAR: CRIME AND THE TRAGEDY OF PUBLIC HOUSING IN CHICAGO* 157-58 (2000). Living with extreme violence can cause lasting trauma, anxiety, and depression, and have profound effects on a child's development. SUSAN J. POPKIN & MARY K. CUNNINGHAM, *THE URBAN INSTITUTE, SEARCHING FOR RENTAL HOUSING WITH SECTION 8 IN THE CHICAGO REGION* 17 (2000).

124. See POPKIN ET AL., *supra* note 123, at 4.

125. 42 U.S.C. § 1437d(1)(6) (2000). The statute states:

[T]hat any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public

housing residents or potential residents who use illegal drugs, abuse alcohol, commit violent crimes, or participate in criminal activity to the detriment of other residents or employees of public housing.¹²⁶ The Act has been called the “one-strike” policy.¹²⁷ It requires the CHA “to utilize lease provisions in which the tenant assumes responsibility for the criminal activity of his or her guests and household members.”¹²⁸ In *Department of Housing & Urban Development v. Rucker*,¹²⁹ the Supreme Court upheld the authority of the CHA and other public housing authorities to “evict tenants for the drug activity of household members and guests whether or not the tenant knew, or should have known, about the activity.”¹³⁰ Thus, fewer families are eligible for relocation as the number of individuals ineligible for public housing increases.¹³¹

2. Social Costs of Relocation

Relocated tenants often miss their old public housing community. Residents report attachment to their home even if it was unsafe and stigmatized.¹³² One major loss is the disintegration of social and economic networks that many families developed to help make ends meet.¹³³ For example, members of expanded kin networks may benefit from a collective give and take relationship that distributes scarce resources. Members may be expected to assume responsibility for others in the network even when this causes an extra burden to the provider.¹³⁴ For example, families—particularly single mothers—may have a relationship with other mothers to share childcare responsibilities. Public housing residents may be disconnected from needed social services after they move into a private apartment because the process of providing these services has not been streamlined outside the traditional

housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.

126. Seliga, *supra* note 33, at 1063 n.79.

127. SoCheung Lee, *Serving the Invisible and the Many: U.S. Supreme Court Upholds the Rucker One-Strike Policy*, 11 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 415, 415 (2002).

128. *Id.*

129. 535 U.S. 125 (2002).

130. Lee, *supra* note 127, at 415 (citing *Rucker*, 535 U.S. at 127-28).

131. Seliga, *supra* note 33, at 1063.

132. See POPKIN ET AL., *supra* note 123, at 118.

133. KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK 149-53. (1997). Edin and Lein detail the expenses that single mothers face and how they manage to survive on a substandard AFDC budget. *Id.* at 23-56. These mothers’ limited decisions on how to acquire supplementary income often mediated their decision to accept low wage work or to receive AFDC. *See id.* at 141-42. Some mothers relied on other family members, boyfriends, or the father of their children for support. *Id.* at 149-67. When domestic support was unavailable the mothers often relied on the informal economy for jobs. *Id.* at 172-78. The informal economy includes all earnings from unreported income from otherwise legal activities as well as any income from illegal activities. *Id.* Some women received help from churches or private charities. *Id.* at 178-80. The neighborhood that the mothers lived in often affected their survival strategy. *Id.* at 184.

134. See CAROL STACK, ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY, 90-94 (1974).

public housing setting.¹³⁵ Although public housing residents are not often thought of as having a great deal of political clout, it is arguable that relocated tenants face political dilution from the dispersion of public-housing residents.¹³⁶ When tenants live in concentrated public housing they are often in the same voting district. It is more likely that a political candidate will address issues important to the tenants as a group when they are a larger portion of the electorate and perhaps more visible.¹³⁷

B. Community Barriers

“Using the law to promote diversity in residential communities is probably more difficult than promoting it in any other public policy domain.”¹³⁸ In the end, private housing means private choices. These individual choices result, when aggregated, in collective action and often segregation. In his article *Judging Remedies: Judicial Approaches to Housing Segregation*,¹³⁹ Peter Schuck describes how racial prejudice, classism, white flight, and traditional residential clustering are likely to contribute to racial segregation and isolation.¹⁴⁰ Next, this Note uses Schuck’s four factors to discuss how factors contributing to racial segregation and isolation influence a voucher holder’s experience locating an apartment.

1. Racism

Both public policy and private actors reinforce racial prejudice. The practices of private developers, brokers, and housing consumers explain some segregation.¹⁴¹ Prejudice also partly explains why “[n]eighborhoods in which blacks live both in the central city and in the suburbs have lower socioeconomic status than those in which comparable whites live.”¹⁴² Research suggests that whites have tried to “thwart, prevent, and deter” blacks from moving into neighborhoods that whites consider to be theirs.¹⁴³ Throughout the twentieth century, deep-seated racial prejudice led whites to try to expel blacks moving into their neighborhood through “thousands of small acts of terrorism.”¹⁴⁴ In his book, Stephen Meyer records criminal activity targeting minorities who move into majority white neighborhoods

135. Carpenter, *supra* note 120, at 1108.

136. *See id.* at 1112.

137. *See id.*

138. Schuck, *supra* note 4, at 289.

139. *Id.*

140. *Id.* at 295.

141. *See generally* JOHN YINGER, CLOSED DOORS OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION (1995).

142. *See* TURNER ET AL., *supra* note 10, at 25 (citing John R. Logan et al., *Minority Access to White Suburbs: A Multiregional Comparison*, 74 SOC. FORCES 851 (1996)).

143. Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 335 (Fall 2001/Winter 2002) (reviewing STEPHEN GRANT MEYER, AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS (2000)); *see also* JEANNINE BELL, POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIMES 28-47 (2002) (illustrating how hate crimes are used to threaten and deter minority residents who move into largely white neighborhoods).

144. Rubinowitz & Perry, *supra* note 143, at 337 (quoting MEYER, *supra* note 143, at 6).

"and the failure, by and large, of the criminal justice system to arrest, prosecute, convict, and punish the perpetrators of these race-based crimes."¹⁴⁵ Other commentators have agreed. For example:

In 1990 the Joneses, a [b]lack family, moved into a house in a mostly working-class [w]hite neighborhood in St. Paul, Minnesota. In the first month after the Joneses moved in the tires of their car were slashed. The second month, the tailgate of their brand new station wagon was broken. A few weeks later, a young [w]hite man called the Joneses son a "nigger" as he was walking down their street. Three months after they moved in a large cross was burned in their front yard. Later the same night, another cross was burned in front of their apartment building across the street from their house. As one of very few [b]lack families in the neighborhood, the Joneses were frightened and felt very vulnerable.

The local police to whom they turned for protection did little to help them.¹⁴⁶

As was the case for the Joneses, attacks are frequently aimed at black owners. "Middle-class status based on education and income offered no protection against racial crimes."¹⁴⁷ Voucher holders that relocate into mostly white neighborhoods may face "reactive hate crime[s]" similar to those experienced by the the Joneses.¹⁴⁸ These racist acts may directly affect former minority public housing residents as they are victimized by those who fear their "entrance into a previously homogenous area."¹⁴⁹

Voucher recipients also struggle with real or perceived discrimination. Many potential renters do not consider housing in a particular neighborhood because they perceive they are unwelcome.¹⁵⁰ Other families, particularly families with teenagers, do experience explicit discrimination.¹⁵¹ Landlords appear to fear that teenagers (particularly black men) pose a greater risk to their property.¹⁵² On occasion, neighborhood residents complain that voucher recipients are responsible for increased crime and social disorder.¹⁵³ Often, investigations of these complaints

145. *Id.* at 337.

146. BELL, *supra* note 143, at 28. This is just one example from Bell's book of a "reactive hate crime" or a crime motivated "by the personal threat posed by outsiders' entrance into a previously homogenous area." *Id.* at 22.

147. Rubinowitz & Perry, *supra* note 143, at 339.

148. BELL, *supra* note 143, at 22.

149. *Id.*

150. TURNER ET AL., *supra* note 10, at 33. For example, voucher recipients may have heard of other families' racist encounters when they moved into a new neighborhood. The *Chicago Tribune* reported that six families who moved into scattered-site units in a majority Latino neighborhood asked to be relocated when they encountered various forms of harassment and intimidation. Flynn McRoberts, *Move from CHA High-Rise Can Involve a Leap of Faith*, CHI. TRIB., Sept. 2, 1998, at A1.

151. TURNER ET AL., *supra* note 10, at 33.

152. *See id.* at 33, 34.

153. *See id.* at 15; *see, e.g.*, Michael A. Fletcher, *A Neighborhood Slams the Door; Racist Acts Drive Philadelphia Family Out of White Area*, WASH. POST, May 18, 1996, at A01 (This article tells the story of Bridget Ward who moved into a white working-class neighborhood with her family. Beginning the night of her arrival, her home was vandalized and her family threatened because of their race.).

find that the accused was not a voucher recipient.¹⁵⁴ These false claims may “reflect racial prejudice or fears about racial change in the neighborhood.”¹⁵⁵

2. Classism

A voucher holder may also face classism, which is “discrimination on the basis of wealth, income, social class, or perceived ability to pay.”¹⁵⁶ These biases seem almost natural in a capitalist society.¹⁵⁷ Perhaps this is why government efforts to move persons into neighborhoods they could not otherwise afford on their own creates intense resistance.¹⁵⁸ This opposition is triggered by the current residents’ concern for their family, children, and property.¹⁵⁹ Practically, however, it is difficult to distinguish between racism and classism because race and income are highly correlated.¹⁶⁰ There has been great public resistance when courts rely on “the nondiscrimination principle” (a negative right) to create diverse residential neighborhoods through “an affirmative judicial mandate” targeting neighborhoods committed to classism.¹⁶¹ Thus, as a society we can believe that integration is important but shirk this ideal when it conflicts with our personal interest in keeping our neighborhood isolated.

3. White Flight

The third contributor to segregation is white flight. White flight is a pattern of behavior related to both racism and classism. Economist Thomas Schelling demonstrated how individual choices transform small differences in group attitudes about neighborhood diversity into relatively high levels of segregation.¹⁶² Under Schelling’s model “[u]nless blacks and whites do not have any preferences about neighborhood composition or their preferences happen to converge on the identical

154. See TURNER ET AL., *supra* note 10, at 15.

155. *Id.*

156. Schuck, *supra* note 4, at 294.

157. *Id.* at 301-02. Schuck argues that in the U.S., classism is supported by government policies in so far as the federal government spends at least “twice as much on the mortgage interest deduction as on all housing programs for the poor, such as Section 8 rental vouchers and public housing.” *Id.* at 302 (citing CHRISTOPHER HOWARD, *THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES 27-28* (1997)).

158. *Id.*

159. *Id.* at 294.

160. *Id.* at 302.

161. *Id.* at 294. For example, the N.J. Supreme Court took this approach in *Mount Laurel*, New Jersey where the court “invoked a principle it created out of whole cloth” that all people should have access to suburban communities regardless of their ability to pay. This finding has found little political or moral support. See *id.* (referring to *S. Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975), and *S. Burlington County NAACP v. Township of Mount Laurel*, 456 A.2d 390 (N.J. 1983)). Similarly, in *Yonkers*, New York the District Court’s decision to require diversity as a remedy for past wrongs resulted in a costly struggle between the community and judge. *Id.* (citing *United States v. Yonkers Bd. of Educ.*, 518 F. Supp. 191 (D.C.N.Y. 1981)).

162. See *id.* at 297.

integration level, the unraveling process will ensue and segregated housing patterns will persist or even grow."¹⁶³

Most blacks would generally like to live in a neighborhood that is fifty percent black, a neighborhood that most whites would move away from, resulting in a neighborhood that is close to one hundred percent black.¹⁶⁴ Critics of the *Gautreaux* model of integration might argue that integration created by scattering a small number of black families throughout white neighborhoods, is illegitimate because it presumes all blacks want to live in majority white neighborhoods.¹⁶⁵

Homeowners in a neighborhood with an influx of voucher holders may feel pressure to move to another neighborhood based on anxieties "aris[ing] out of their predictions about how the independent choices of their existing neighbors will affect them, their children, their neighborhood, their vulnerability to crime, and their property values."¹⁶⁶ Property values are one measure of a neighborhood's well-being and stability.¹⁶⁷ The perception that voucher recipients will bring crime and disruptive behavior may raise residents' concerns of declining property values.¹⁶⁸ However, the concern with declining property values is linked with race and class bias.

Under this model, one would anticipate that all middle-class persons—black and white—would resist the building of a housing project near their homes or the in-migration of poor people.¹⁶⁹ One real-world example has borne this theory out, the CHA's scattered-site housing program. The scattered-site program was met with great resistance from persons of all races when the city looked to place units in their neighborhood.¹⁷⁰ Perhaps, then, this pattern of behavior is better described as middle-class flight instead of white flight.¹⁷¹

163. *Id.* at 297-98.

164. *Id.* at 298. This figure was based on the results of a survey. NATHAN GLAZER, *WE ARE ALL MULTICULTURALISTS NOW* 40 (1997).

165. Seliga, *supra* note 33, at 1067.

166. Schuck, *supra* note 4, at 300. *See, e.g.*, Tod Robberson, *Hard Feelings Over Subsidized Housing in Mount Vernon*, WASH. POST, Apr. 20, 1996, Final Edition, at A01. In Mount Vernon, Virginia, there is a division between families receiving housing vouchers and "area homeowners, who say their suburban world of \$100,000 to \$500,000 housing is threatened by the steady encroachment of housing for the poor." *Id.* One homeowner is working to have his neighbor, a voucher recipient, evicted.

[S]ince some of his neighbors began renting to welfare recipients a few years ago, drug activity and other disruptive behavior have increased in the complex. "My quality of life has plummeted. My property value has suffered. I can't sell my property as long as I have people on assisted housing living next door."

Id.

167. TURNER ET AL., *supra* note 10, at 16.

168. *Id.* at 16-17.

169. Schuck, *supra* note 4, at 300.

170. *See supra* text accompanying notes 46-47.

171. Compare this with note 22, *supra*, describing a case in which black aldermen did not resist siting housing in their districts. This may be attributed to the black districts in the city already being poorer and the location of substandard housing. However, the "middle-class flight" argument assumes that black suburban residents would resist the influx of poor residents. As such, class is an independent issue. Race is also an independent issue when whites resist even middle-class blacks moving in, but class, not race, is the focus of subsidized housing.

4. Clustering

Of the four factors, clustering appears the most benign cause of segregation. "Ethnic groups in the United States have always clustered together in enclaves until they felt comfortable in the dominant culture—but they have also clustered afterwards to some extent."¹⁷² "[G]eographic clustering may simply reflect the original locations of the[] families" because individuals want to live close to their friends, family, and social networks.¹⁷³ Clustering may also arise from "seemingly neutral market factors,"¹⁷⁴ such as "access to services and availability of public transportation."¹⁷⁵

While Section 8 recipients are more geographically dispersed than are public housing residents, in suburban Chicago the majority of voucher recipients are located in the southern suburbs.¹⁷⁶ This makes sense if racially mixed or predominately minority neighborhoods are more "open and welcoming to minority [voucher] recipients" than are white neighborhoods.¹⁷⁷ For example, an African American is most likely to find housing with her voucher in a weak housing market.¹⁷⁸ This can lead to geographical clustering in higher-poverty and higher-minority neighborhoods.¹⁷⁹ At the same time, these communities "are particularly vulnerable to being destabilized by an influx of poor households or by incomers who are disruptive of behavioral norms."¹⁸⁰

It seems natural that CHA tenants may want to live near family and friends and may be more likely to consider living in a neighborhood where they know a current resident. Critics of forced integration, such as John Calmore, argue that "[f]air housing must be reconceptualized to mean not only increased opportunity for blacks to move beyond their socio-territorial disadvantage but also to mean enhanced choice to overcome opportunity-denying circumstances while continuing to live in black communities."¹⁸¹ Critics like Calmore suggest that low-income African-American families should be able to choose to live in a community with a largely African-American population. They are less concerned with racial integration than with creating mixed-income communities.

Racism, classism, white flight, and clustering are all factors that make it difficult for voucher holders to have a true choice in locating a neighborhood that best suits their preferences. Voucher holders may have limited opportunity to move into mostly white neighborhoods because of real or perceived racial discrimination. Some may even face "reactive hate crime[s]."¹⁸² Current residents of a

172. Schuck, *supra* note 4, at 296.

173. TURNER ET AL., *supra* note 10, at 39.

174. Schuck, *supra* note 4, at 296.

175. TURNER ET AL., *supra* note 10, at 39.

176. *Id.* at 9 (citing PAUL FISCHER, SECTION 8 AND THE PUBLIC HOUSING REVOLUTION: WHERE WILL THE FAMILIES GO? (1999)).

177. *Id.* at 25.

178. *Id.* at 24.

179. *Id.* at 24-25.

180. *Id.* at 25 (citation omitted); Mary E. Pattillo, *Sweet Mothers and Gangbangers: Managing Crime in a Black Middle-Class Neighborhood*. 76 SOC. FORCES 747 (1998).

181. John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1495 (1993).

182. BELL, *supra* note 141, at 22 ("Reactive hate crimes are motivated by the personal threat posed by outsiders' entrance into a previously homogenous area.").

neighborhood with an influx of voucher holders may feel pressure to move based on fear that their current neighbors will leave and more voucher holders will enter causing the neighborhood crime rate to increase and their property value to decline.¹⁸³ These factors are particularly difficult to address because they are all based on individual choices that result, when aggregated, in collective action and often segregation. Next this Note addresses obstacles, put in place by the voucher program itself, that recipients must overcome to locate homes that best suit their needs.

C. Programmatic Barriers

At the most general level, advocates of HCV programs assume that the private rental market is a cheaper and more effective way of providing housing to low-income families than public housing. However, for this assumption to be true, there must be enough landlords in middle-class or affluent neighborhoods willing to rent units to voucher holders. At the moment, a shortage of low-income housing strains this assumption.

1. Landlords

The supply of low-income apartment units is dwindling, in part, because “many owners of private rental properties . . . are leaving the federal housing voucher program.”¹⁸⁴ Landlords with property in higher-value neighborhoods have little incentive to accept housing vouchers.¹⁸⁵ They have no problem locating tenants able to pay the full market value on their own and may want to avoid the extra administrative work required to accept the voucher.¹⁸⁶ Even landlords who regularly accept voucher recipients may view public housing residents as “undesirable” and too risky.¹⁸⁷ If landlords in desirable locations refuse to rent to voucher recipients, then the program will fail. The positive benefits of voucher programs depend upon low-income housing being available in middle- and upper-class neighborhoods.

However, landlords in lower-value neighborhoods have an incentive to accept the vouchers because they provide a guaranteed stream of rent.¹⁸⁸ This makes it easier for voucher holders to find an apartment in a lower-income neighborhood than it is to find a unit in a better-off neighborhood. In some cases, housing

183. Schuck, *supra* note 4 at 300.

184. Rochelle E. Lento, *What Does the Future Hold for Affordable Housing & Community Development Under the Bush Administration?*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 170, 171 (2001). *See, e.g.*, Stephanie A. Crockett, *Portsmouth Helps Tenants Find Homes but Few Landlords Accept Families in Aid Program*, VIRGINIAN-PILOT (Norfolk, Va.), July 7, 2000, at B1. The Portsmouth Redevelopment and Housing Authority “is required to help residents relocate as part of a settlement agreement” finalized in the U.S. Eastern District of Virginia. *Id.* The mobility program is working to help move families out of a 160-unit building contaminated with lead. *Id.* A major challenge to relocation has been the lack of landlords willing to rent units to voucher recipients. *Id.*

185. TURNER ET AL., *supra* note 10, at 24.

186. *Id.* at 24, 33.

187. *Id.* at 48.

188. *Id.* at 24.

vouchers may help stabilize a neighborhood.¹⁸⁹ Landlords who accept housing vouchers must keep their unit up to “housing quality standards.”¹⁹⁰ These standards often require improvements that have the potential to increase property values.¹⁹¹ However, the goal of voucher programs should be to move public housing tenants into economically advantaged neighborhoods. Landlords in economically viable communities must be recruited to the voucher program so that the costs of searching for an apartment (such as time, transportation costs,¹⁹² and disappointment at being denied an apartment) in economically viable neighborhoods are not significantly higher than the costs of finding an apartment in high-poverty areas more familiar to displaced CHA tenants.

2. Low-Income Housing Stock

Across the nation, there is a shortage of low-income housing and a dwindling supply of low-income apartment units. This is due, in part, to the demolition of public housing projects and their “revitalization with fewer units.”¹⁹³ “[O]ne million families in forty cities are on waiting lists for public housing or rent subsidies and . . . waiting times have increased drastically.”¹⁹⁴ The hardship faced by families on the waiting list is aggravated by the reduction of government owned public housing units. During the Clinton administration, one hundred thousand dilapidated public housing units were demolished.¹⁹⁵ The one-for-one replacement requirement, mandating that every destroyed unit be replaced, has been abolished.¹⁹⁶ “[F]ederal law now permits replacement housing to take the form of

189. *Id.* at 23-24. For example, Alex Schwartz describes how New York City used vouchers “as de facto operating subsidies for some of the projects it helped finance.” *Id.* at 24. He argues that when used this way, Section 8 vouchers “increase[] a development’s rent roll, enabling owners to better maintain the property, provide additional services, build up reserves, and tolerate higher operating costs for vacancy and arrearage losses.” *Id.* (citation omitted).

190. *Id.* at 23-24. To “aid[] low-income families in obtaining a decent place to live and [to] promot[e] economically mixed housing,” housing quality standards (“HQS”) are established by the Secretary. 42 U.S.C.A. §§ 1437f(a), f(o)(8)(B). “[L]ocal housing codes or . . . codes adopted by a public housing agency” can be used instead of the HQS as long as the local or adopted codes “meet or exceed” the HQS established by the Secretary. 42 U.S.C.A. § 1437f(o)(8)(B). The HQS can be found at 24 C.F.R. § 982.401. “[C]riteria for . . . key aspects of housing quality” such as: sanitary facilities, food preparation and refuse disposal, space and security, thermal environment, illumination and electricity, structure and materials, interior air quality, water supply, lead-based paint, access, site and neighborhood sanitary condition, and smoke detectors are expounded. 24 C.F.R. § 982.401 (2003).

191. TURNER ET AL., *supra* note 10, at 23-24.

192. People being relocated from public housing usually rely on public transportation which makes “searching for housing . . . time-consuming and costly.” *Id.*

193. Schuck, *supra* note 4, at 322 (citation omitted); *see also* TURNER ET AL., *supra* note 10, at 9.

194. Lento, *supra* note 184, at 171 (citing a 1999 report by the Department of Housing and Urban Development).

195. *Id.*

196. Carpenter, *supra* note 120, at 1105 (citing U.S. DEP’T OF HOUS. & URBAN DEV., RELOCATION AND EXPANDING OPPORTUNITIES FOR PUBLIC HOUSING RESIDENTS: DRAFT RECOMMENDATIONS ON RELOCATION GUIDANCE FOR THE HOPE VI PROGRAM 3 (2000)).

other project-based or tenant-based assistance, such as Section 8 vouchers and certificates, in addition to 'hard' public-housing units."¹⁹⁷ Incentives are needed for new low-income housing stock to be developed.

Historically, zoning and land-use regulations have been used to limit rental housing in wealthy suburbs.¹⁹⁸ Therefore, most rental units are "concentrated in central cities, older suburbs, and less-affluent neighborhoods."¹⁹⁹ Because it is difficult for voucher recipients to find moderately priced rental housing in affluent communities, their placement may reflect the distribution of affordable rental housing.²⁰⁰

There is concern that the demolition of public housing stock will flood the housing market with displaced public housing residents, and voucher holders will not have time to find an apartment in a desirable neighborhood.²⁰¹ Currently families who receive a voucher have sixty days to find an appropriate apartment.²⁰² The HCV administrator can allow additional time if needed.²⁰³ "Large families with children seem to have a particularly difficult time because of the limited availability of three- and four-bedroom units in the private rental market."²⁰⁴

Understanding the barriers that families moving from public housing to the private market with HCVs face is important. Part Three considers government programs that could be used to mitigate these challenges, which may reduce the chance that Ford's prediction will come to fruition that only the relatively strong will succeed, thus leaving behind a super-underclass.²⁰⁵ In the next Part, I argue that HCV programs must have services in place to help recipients overcome the personal, community, and programmatic barriers they face. Without these programs, the choices of HCV participants will remain limited and our neighborhoods segregated. HCV programs should focus on relief for the entire metropolitan area and moving public housing residents into low-poverty areas.

III. CURRENT HCV PROGRAMS' ABILITY TO PROMOTE DESEGREGATION

A. *The Demolition of CHA Property and the Displacement of Tenants*

Currently in Chicago and across the nation, large numbers of families are using rent subsidies to move from dilapidated high-rise public housing into privately owned apartments.²⁰⁶ Mismanagement and substandard living conditions in CHA high-rises led the federal government to take over the CHA in 1995.²⁰⁷ HUD placed

197. Carpenter, *supra* note 120, at 1106 (citing U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 196, at 3); *see also* Bennett, *supra* note 14, at 54-55.

198. TURNER ET AL., *supra* note 10, at 31.

199. *Id.* (citing MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY STABILITY* (1997)).

200. *See id.* at 31.

201. *See id.* at 48.

202. 24 C.F.R. § 982.303 (2003).

203. *Id.*

204. TURNER ET AL., *supra* note 10, at 47.

205. Ford, *supra* note 119.

206. TURNER ET AL., *supra* note 10, at 45.

207. SUDHIR ALLADI VENKATESH, *AMERICAN PROJECT: THE RISE AND FALL OF A MODERN GHETTO* 265 (2000). There are fifteen housing authorities across the nation that

the CHA in receivership and formed a new interim management team.²⁰⁸ In 1996, Congress passed the Omnibus Consolidated Rescissions and Appropriations Act²⁰⁹ requiring local housing authorities to conduct “viability assessments” to determine if the existing public housing units should be rehabilitated or demolished.²¹⁰ A development was to be demolished if the cost of rehabilitation exceeded the cost of demolishing the unit and providing all current tenants with housing vouchers.²¹¹ Nearly 19,000 CHA units, including almost all of its high-rises, failed the test.²¹² The CHA and HUD are not responsible for replacing these “hard units.”²¹³

In June of 1999, HUD withdrew its oversight of the CHA, and four months later, the CHA released its “Plan for Transformation.”²¹⁴ The plan called for a thirty-three percent reduction in CHA housing stock, demolition of nearly all high-rise apartment buildings, and rehabilitation or construction of almost 25,000

have gone into receivership since 1979. UNITED STATES GENERAL ACCOUNTING OFFICE, PUBLIC HOUSING: INFORMATION ON RECEIVERSHIPS AT PUBLIC HOUSING AUTHORITIES 1 (2003) available at <http://www.gao.gov/new.items/d03363.pdf> (last visited Feb. 4, 2004). During receivership, outside parties are given the power to manage the housing authorities. *Id.* Receiverships usually arise as a last resort from “long-standing, severe, and persistent management problems that led to deterioration of the housing stock.” *Id.* at 2. Four housing authorities’ judicial receiverships arose out of lawsuits: Boston Housing Authority, Chester Housing Authority, Housing Authority of Kansas City, and District of Columbia Housing Authority. *Id.* at 7. The other eleven receiverships were administrative and covered: Beaumont Housing Authority (TX), Camden Housing Authority (NJ), Chicago Housing Authority (IL), East St. Louis Housing Authority (IL), Lafayette Housing Authority (LA), Housing Authority of New Orleans (LA), Orange County Housing Authority (TX), St. James Parish Housing Authority (LA), San Francisco Housing Authority (CA), Springfield Housing Authority (IL), and Wellston Housing Authority (MO). *Id.* at 6-7.

208. VENKATESH, *supra* note 207, at 265.

209. Omnibus Consolidated Rescissions and Appropriations Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996).

210. 42 U.S.C. § 1437z-5 (2000). The test applied to developments with more than 300 units and vacancy rates of ten percent or more. Bennett, *supra* note 14, at 54; see also POPKIN ET AL., *supra* note 123, at 8 (indicating that the new law has “made it easier for housing authorities to demolish and redevelop their worst properties”).

211. Bennett, *supra* note 14, at 54. The demolition of concentrated public housing projects is not a new idea. In July 1972, the first three public housing buildings of St. Louis’s Pruitt-Igoe were dynamited. Elizabeth Birmingham, *Reframing the Ruins: Pruitt-Igoe, Structural Racism, and African American Rhetoric as a Space for Cultural Critique*, 63 W. J. COMM. 291, 291 (1999).

212. POPKIN ET AL., *supra* note 123, at 8; see also *High-Rise Housing Tumbles*, ENR (Engineering News Record), March 20, 1995, at 19. The demolition of the Robert Taylor Homes is part of a plan developed out of the legal settlement with Henry Horner Homes’ residents, who sued the CHA and HUD in 1991 for failing to properly maintain and fund the housing projects. *Id.*

213. [T]he 1998 Quality Housing and Work Responsibility Act abolished the one-for-one unit replacement commitment (which had been suspended by previous legislation), increased the percentage of working poor families that might dwell in public housing developments, and “allow[ed] a PHA to use funds flexibly . . . for mixed financed projects.”

Bennett, *supra* note 14, at 54-55 (quoting Jerry J. Salama, *The Redevelopment of Distressed Public Housing: Early Results from HOPE VI Projects in Atlanta, Chicago, and San Antonio*, 10 HOUS. POL’Y DEBATE 95, 97 (1999)).

214. *Id.* at 58 (The plan was approved by HUD in early February 2000.).

apartments.²¹⁵ The CHA wanted to shift from an “owner and manager of public housing’ to a ‘facilitator of housing opportunities.’”²¹⁶

B. HCV Programs for Displaced CHA Tenants

Vouchers are the central strategy for providing replacement housing to residents whose housing units failed the viability assessment and will be demolished. The CHA estimates that nearly 6150 households will need to be relocated with Section 8 vouchers due to the demolitions between 1999 and 2004.²¹⁷ However, the current voucher program is significantly different from the GAHP. Since 1998, the courts have not supervised HCV programs to ensure that integration occurs as the vouchers are used.²¹⁸ The *Gautreaux* litigation’s focus on desegregation is still necessary today. The metropolitan-wide goal of relocating public housing residents to low-poverty, low-minority neighborhoods should be continued because it is essential to achieving integration.

In October 2002, the CHA had approximately 26,000 vouchers available.²¹⁹ It was hoped that vouchers would reduce concentrations of poverty and increase housing choice throughout the metropolitan area.²²⁰ However, there are growing concerns that “former public housing residents may be clustering in poor neighborhoods not far from their original developments.”²²¹ If true, vouchers will not meet one of their central goals: dispersing public housing residents throughout the metropolitan area and reducing overall racial segregation in the city.

The Leadership Council, Housing Choice Services, and CHAC administer three of the current voucher programs. When GAHP ended in 1998, the Leadership Council (which provided the counseling and mobility services to GAHP recipients) continued to provide their services in relocating CHA tenants.²²² “In 2001, the agency was commissioned to create a new *Gautreaux*-type program for people who wish to move to low-poverty neighborhoods.”²²³

Housing Choice Services administers a mobility program in the Cook County suburbs, and CHAC Inc. is the private corporation responsible for the HCV program in Chicago. CHAC uses “individual counseling, life-skills training, landlord negotiation seminars, neighborhood tours, and a security deposit loan assistance program—to foster moves to low-poverty, low-minority neighborhoods.”²²⁴ CHAC has an annual budget of \$2.1 million and serves nearly 1000 households.²²⁵ Even with these resources, an Urban Institute study found that CHAC participants still struggled to find a home with their housing voucher. At least half of the respondents reported concerns about finding an affordable

215. *Id.*

216. *Id.* (citing CHICAGO HOUSING AUTHORITY, PLAN FOR TRANSFORMATION 4 (2000)).

217. Seliga, *supra* note 33, at 1080 n.156 (citing CHICAGO HOUSING AUTHORITY, PLAN FOR TRANSFORMATION 20 (1999)).

218. *See id.* at 1064.

219. CUNNINGHAM & POPKIN, *supra* note 3, at 1.

220. RUBINOWITZ & ROSENBAUM, *supra* note 9, at 45.

221. TURNER ET AL., *supra* note 10, at 45 (citing FISCHER, *supra* note 176).

222. CUNNINGHAM & POPKIN, *supra* note 3, at 2.

223. *Id.*

224. *Id.*

225. *Id.* at 6.

apartment, landlords who will rent to families with children, landlords who will accept Section 8, and a place with enough bedrooms.²²⁶ Respondents also reported concerns about accessing transportation for apartment hunting.²²⁷

The biggest difference between the GAHP and the current mobility programs are the number of voucher recipients. GAHP relocated 150 families per year until 1998 when the program had fulfilled HUD's obligation by successfully moving 7100 beneficiaries of housing vouchers. Currently, 1026 households enter CHACs program each year, and 26,000 vouchers are administered by the CHA's HCV program. In addition, as "hard" public housing units in Chicago are demolished, thousands of families will join the HCV rolls.²²⁸

Early reports indicate that these mobility programs have not had the same success as the Leadership Council under the GAHP. The Urban Institute study found that of the 105 study participants who moved, eight percent moved to neighborhoods with very low poverty rates (less than ten percent poor); almost a quarter (twenty-three percent) moved to neighborhoods where the poverty rate was between ten and twenty percent poor; and the remaining sixty-nine percent moved to mid range or high-poverty neighborhoods.²²⁹

"Since January 1996, twelve hundred of fifteen hundred relocated families have resettled in census tracts with a population that is over ninety percent African-American.²³⁰ Of the thirty census tracts in Chicago receiving the greatest number of CHA families, all but two are at least ninety-seven percent African-American."²³¹ Displaced CHA residents have moved to neighborhoods just as isolated and poor as the ones they left. The many benefits of mixed income communities cannot be realized in these neighborhoods.

C. Possible Solutions to Relocation Barriers Faced by Displaced CHA Residents

Displaced CHA residents face special challenges as they try to relocate to economically viable communities. In this Part, programs and policies that would support CHA residents as they transition from public housing to an apartment in the private market are discussed. These programs address the personal, community, and programmatic barriers identified in Part Two. Developing tools to overcome these barriers are more important than ever before. A study commissioned by the National Center of Poverty Law found:

[T]hat residents displaced by the demolition now live in other Chicago neighborhoods that are just as segregated and as poor as the ones they left. The study tracked more than 3,200 families relocated from public housing from 1995 to 2002 with Section 8 vouchers or certificates. . . . It concluded that about 8.3 percent of the residents moved to neighborhoods that were at least 90 percent black and that nearly 50

226. *Id.* at 18.

227. *Id.*

228. *Id.* at 1.

229. *Id.* at 24.

230. Seliga, *supra* note 33, at 1081 (citing Flynn McRoberts & Linnet Myers, *Out of the Hole, Into Another*, CHI. TRIB., Aug. 23, 1998, at A1).

231. *Id.* (citing Brian Rogal, *CHA Residents Moving to Segregated Areas*, CHI. REP., July-Aug. 1998, at 3). "Of the 19,095 Chicago families using Section 8 vouchers, 70% are living in census tracts that are at least 90% black." *Id.* at n.88.

percent of the families moved to neighborhoods where there was a high concentration of poverty. The study also found that while some families located housing in neighborhoods that were slightly better than their old ones, their new neighborhoods has [sic] high crime, poor schools and substandard housing.²³²

These findings are in sharp contrast to the outcomes of the GAHP.²³³

1. Solutions to Individual Barriers

Currently, nearly 1.7 million households receive a Section 8 housing subsidy.²³⁴ One million families in forty cities are on waiting lists for public housing or rent subsidies²³⁵ and during the Clinton administration, 100,000 dilapidated public housing units were demolished.²³⁶ Clearly, relocated public housing residents are a small percentage of the total voucher recipient pool. However, this population may face greater individual challenges than the typical voucher recipient does because of their past experiences in public housing and its corresponding stigmatization. Public housing residents are more likely to be unemployed, and have lower incomes and education levels.²³⁷ Many residents have criminal records and depend on welfare.²³⁸ These tenants may lose their social and economic networks when they move. Supportive services, which are often available in traditional public housing, are not as easily accessible outside the inner city.²³⁹ Specific challenges to the apartment search include a lack of time and accessing transportation.

Some of these barriers can be confronted with individualized counseling and support services. Counselors should help each family come up with a plan to make the transition to their new home. This may include accessing new social service providers and streamlining support services. The most difficult challenge may be for those residents with a criminal record or a family member with a criminal record. Under the current law, the CHA is under no obligation to help this group of residents relocate and in some cases may even need to evict them. What will happen to this group of families is unclear. Perhaps they will move in with other family members, become homeless, or end up in jail.²⁴⁰

These recipients need help finding an appropriate unit. Finding an apartment in a high-poverty area is easier than finding one in a low-poverty, mostly white suburb. A mobility program should try to lessen the burden of apartment hunting by locating interested landlords, and driving voucher holders to view apartments in the suburbs. To implement this solution, each recipient of federal voucher funding should have to demonstrate that their voucher program has a plan for showing

232. John W. Fountain, *Suit Says Chicago Housing Renewal Plan Perpetuates Segregation*, N.Y. TIMES, Jan. 24, 2003, at A18.

233. See *supra* text accompanying notes 99-109.

234. CUNNINGHAM & POPKIN, *supra* note 3, at 1.

235. Lento, *supra* note 184, at 171.

236. *Id.*

237. See *supra* text accompanying note 121.

238. See *supra* text accompanying notes 123-31.

239. See *supra* text accompanying notes 132-37.

240. See *supra* text accompanying notes 124-31.

voucher holders apartments in low-poverty areas. This requirement could be added to HUD's voucher funding regulations.

2. Solutions to Community Barriers

In 1968, Senator Brook, while speaking in support of Title VII stated:

America's future . . . does not require imposed residential and social integration; it does require the elimination of compulsory segregation in housing, education, and employment. . . . It does not require that government interfere with the *legitimate personal preferences* of individuals; it does require that government protect the freedom of individuals to choose where they wish to live.²⁴¹

Nearly thirty-five years later, it is clear that some "personal preferences" further segregation. We need to rethink which personal preferences are legitimate and which are not. Racism and classism are inappropriate in a diverse society. Next, this Note addresses programs the government should create through legislation and regulations that influence individual housing preferences in order to reduce resistance to integration.

As we saw with scattered-site developments, there is great community resistance to large numbers of public housing residents or perceived voucher holders entering a community. The GAHP was partially successful at avoiding this resistance by moving a small number of voucher holders into nearly 100 neighborhoods. With the new publicity of HCV and the increase in the number of recipients, suburban dwellers are likely to assume that their new minority neighbors are voucher recipients whether they are or not. Racism, classism, white flight, and clustering may become more pronounced and overt as large numbers of CHA tenants relocate and suburban residents begin to take notice. Suburban homeowners' prejudices and stereotypes create anxiety that the presence of voucher holders in their neighborhood will bring crime and reduce property values.

This anxiety may lead to white flight. Mobility grant programs may reduce white flight by dispersing voucher recipients throughout predominantly white communities. A mobility grant program would provide "direct economic subsidies to individual blacks willing to move into predominately white neighborhoods."²⁴² This payment would be in addition to the HCV, which is "the difference between 30 percent of family income and an agency-prescribed payment standard defined as some percentage of the 'fair market rent' figure determined by the agency."²⁴³ A mobility grant program would help stimulate black demand for apartments in mostly white suburbs. The "[s]ubsidies should be only as large as are required to shift the pattern of black demand. They should be largest for areas with no black population and should decline rapidly as the black presence increases."²⁴⁴ However, the success of a mobility grant program would depend on market-specific research.²⁴⁵

241. 114 CONG. REC. 2525 (1968) (emphasis added).

242. Richard H. Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874, 928 (1988).

243. Schuck, *supra* note 4, at 320.

244. Sander, *supra* note 242, at 929.

245. *Id.*

The success of metropolitan-wide integration depends on black families being spread out across the city.²⁴⁶ There are three main benefits for having blacks move into neighborhoods surrounding the inner city evenly. First, as more blacks move to these mostly white neighborhoods, it makes it easier for other blacks to follow them, encouraging continued integration.²⁴⁷ Second, if multiple areas are integrated at the same rate then the demand for housing by blacks in any particular neighborhood is relatively low.²⁴⁸ Finally, white flight is reduced, and white demand stabilized, when whites perceive that integration is widespread and diffuse because it is less likely they will be able to avoid integrating areas by moving.²⁴⁹

If mobility grants would promote demand for suburban apartments, equity insurance may promote supply. Equity insurance may increase landlord and neighbor support of voucher holders moving into their community. Homeowners in predominately "white areas who are faced with the prospect of integration—and believe that resegregation will follow—often assume . . . that property values will fall as blacks enter."²⁵⁰ This fear fuels neighborhood opposition to integration.²⁵¹ Equity insurance guarantees owners the property value of their home will not fall below a certain level. "If property values fall below the insured amount, the owner can simply sell the property to the insuring government agency."²⁵² This program could help stabilize white demand and reduce white flight.

Similarly, voucher holders may fear that racism and classism will make them targets of hostility if they move into a predominately white neighborhood. Mobility counseling should include information on the benefits of moving to a mixed-income neighborhood. The supportive services offered by the HCV program should also be discussed. With proper information and counseling, voucher holders can make informed choices about where it is best for them to live.

White resistance to integration that involves violations of local, state, or federal criminal laws must be met with swift investigation, arrests, and the accompanying sanctions and punishment.²⁵³ Hate crime legislation may help promote this response because it signals to law enforcement that these offenses should be treated seriously.²⁵⁴ Greater enforcement will deter criminals and may provide victims of these racist attacks comfort knowing that they are not alone and that the community does not condone these hateful acts.

In the end, white suburbanites need to change the way they view low-income minorities moving into "their" neighborhood. Much of the current literature discussing voucher programs tends to view "the economically diverse neighborhood . . . as a magnet to pull poor and presumably deviance-prone people back into the social mainstream."²⁵⁵ This presumption must change in order to allay

246. *Id.* at 928-29. "If nearly all blacks seeking integration move into one or two neighborhoods on the fringe of the ghetto, black and white demand for housing becomes dramatically imbalanced and resegregation occurs." *Id.*

247. *Id.* at 929.

248. *Id.*

249. *Id.*

250. *Id.* at 930.

251. See *supra* text accompanying notes 145-49.

252. Sander, *supra* note 242, at 930.

253. Rubinowitz & Perry, *supra* note 143, at 397.

254. *Id.* at 398.

255. Bennett, *supra* note 14, at 60.

fears that those “deviance-prone people” will take over the suburban neighborhood diminishing the neighborhood’s quality of life and property values. The best way to allay these fears may be through experience.

3. Solutions to Programmatic Barriers

Mobility programs should continue to try to convince landlords that accepting housing vouchers is a good thing. HCV programs that search for available units should be expanded beyond the city limits. Metropolitan-wide relief is still crucial to achieving integration and providing all people the opportunity to live in an economically viable community. In *Gautreaux v. Chicago Housing Authority*, the Seventh Circuit held that a metropolitan-wide plan was “necessary and equitable” to remedy HUD’s past discrimination.²⁵⁶ The court based this holding on the fact that while low-rent housing was of central importance to the central city, the problems of isolated public housing extend beyond the city’s borders and affect the surrounding community. Landlords both in the city and its surrounding communities often view displaced CHA residents as particularly risky tenants. One simple solution to help recruit landlords is to pay them an extra fee for the additional administrative tasks HCV programs require.

The shortage of low-income housing shows the need for “hard” public housing stock and metropolitan-wide mobility programs. The need is particularly great for families with teenagers and large families. The lack of low-income housing also shows the importance of Hope VI grants in Chicago and other redevelopment projects, which seek to create mixed-income public housing where segregated high rise housing projects used to stand. At the moment, the private market is not able to meet the HCV programs’ demand for low-income apartments in affluent neighborhoods.

CONCLUSION

Moving individuals from high-rise public housing into neighborhoods with similar levels of poverty, crime, and educational achievement does not advance the goals of the *Gautreaux* litigation. While the dilapidated CHA high-rises needed to be demolished, the solution is not to move residents from a vertical ghetto to a horizontal ghetto.²⁵⁷ The positive outcomes attributed to vouchers can not come to fruition under these circumstances.

The GAHP highlighted Section 8’s potential to provide an environment where social and community networks can be developed in a way that was not possible in the crime ridden high rise housing projects. When HCV recipients are moved into less economically disadvantaged neighborhoods they are able to lose some of the social-status stigma indicated by their address. They may also have access to better schools for the children, safer neighborhoods, and more job opportunities. All of the benefits of mixed income communities show that promoting economically and racially diverse neighborhoods is a worthwhile policy goal.

While HUD met its obligation to relocate the required number of persons in integrated communities, the CHA has yet to fulfill its obligation of moving the

256. 503 F.2d 930, 936 (7th Cir. 1974); *see supra* text accompanying notes 82-85.

257. TURNER ET AL., *supra* note 10, at 46.

majority of the *Gautreaux* class of forty thousand families into integrated areas.²⁵⁸ Individual personal preferences must be changed to promote diverse communities. Mobility grants, compensating black voucher holders for the extra burden of moving to white suburbs could increase demand for these apartments in the suburbs. Increased enforcement of hate crimes targeting blacks could reduce overt racism and classism and increase demand for housing in the suburbs. Equity insurance could help diminish the argument that allowing black voucher holders in the neighborhood will reduce property values and the resulting white flight. Increased counseling is also needed.

The demolition of thousands of public housing units appears to be straining the HCV program in Chicago. In the end, there is still a need for public housing stock to serve low-income families, particularly with large families. Developing this housing stock will not be easy, as demonstrated with the scattered-site program. However, the CHA already owns prime real estate in Chicago, which can be redeveloped into mixed income communities. The more integrated all communities are, the less resistance there will be to blacks moving into the suburbs and whites moving into the revitalized housing projects.

The lessons of Chicago's public housing and voucher programs are relevant across the nation. It is true that most communities do not have HCV programs as large as Chicago's, nor do they have the same number of public housing residents seeking affordable housing on a tight deadline. However, economic and racial segregation is prevalent across the nation and individual housing choices work to perpetuate that system. Similarly, the solutions I suggest are not limited to a large city. Requiring HCV programs to help recipients find homes in non-poor neighborhoods is imperative to reap the benefits of a diverse society.

258. Seliga, *supra* note 33, at 1065.

Only newly built housing is covered by the CHA judgment order, which mandates that for every new public housing unit built in a non-white area, one unit be built in a white area. The *Gautreaux* plaintiffs were requesting that the Section 8 program also be covered by the judgment, so for every resident relocated into private housing with a Section 8 subsidized rental voucher in a non-white area, one resident be relocated into rental housing in a white area.

Id. at 1051, n.10 (citing *Gautreaux v. Chicago Hous. Auth.*, 981 F. Supp. at 1094). "In a 1997 decision, the court rejected the *Gautreaux* plaintiffs' request that Section 8 housing vouchers be covered by the *Gautreaux* judgment order, which would have enabled public housing residents with Section 8 vouchers to be relocated equally in white and non-white areas." *Id.* at 1051.