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Why Are the Twin Cities So Segregated?

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WHY ARE THE TWIN CITIES SO SEGREGATED?

Myron Orfield[†] & Will Stancil[††]

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I. EXECUTIVE SUMMARY

Why are the Twin Cities so segregated?[1] The Minneapolis-Saint Paul metropolitan area is known for its progressive politics and forward-thinking approach to regional planning, but these features have not prevented the formation of some of the nation's widest racial disparities and the nation's worst segregation in a predominantly white area.[2] On measures of educational and residential integration, the Twin Cities region has rapidly diverged from other regions with similar demographics, such as Portland or

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1. This article is adapted from a report issued by the Institute on Metropolitan Opportunity ("IMO") at the University of Minnesota Law School. *See* INST. ON METRO. OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? (2015), https://www1.law.umn.edu/uploads/ed/00/ed00c05a000fffeb881655f2e02e9f29/Why-Are-the-Twin-Cities-So-Segregated-2-26-15.pdf.

2. *See infra* Part II.

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Seattle.[3] Since the start of the twenty-first century, the number of severely segregated schools in the Twin Cities area has increased more than seven-fold; the population of segregated, high-poverty neighborhoods has tripled.[4] The concentration of black families in low-income areas has grown for over a decade; in Portland and Seattle, it has declined.[5] In 2010, the Minneapolis-Saint Paul region had eighty-three schools made up of ninety percent nonwhite students; Portland had two.[6]

The following article explains this paradox. In doing so, it broadly describes the history and structure of two growing industry pressure groups within the Twin Cities political scene: the poverty housing industry (PHI)[7] and the poverty education complex (PEC).[8] It shows how these powerful special interests have worked with local, regional, and state government to preserve the segregated status quo and in the process have undermined school integration and sabotaged the nation's most effective regional housing integration program.[9] Finally, in what should serve as a call to action on civil rights, this article demonstrates how even moderate efforts to achieve racial integration could dramatically reduce regional segregation and the associated racial disparities.[10]

Although the Twin Cities were committed to civil rights and racial integration through much of the 1970s, this commitment began to collapse in the mid-1980s. Political apathy about racial equality was accompanied by exclusionary housing practices in the

3. *See infra* Part II.

4. METRO. COUNCIL, CHOICE, PLACE AND OPPORTUNITY: AN EQUITY ASSESSMENT OF THE TWIN CITIES REGION, SECTION FIVE: RACIALLY CONCENTRATED AREAS OF POVERTY IN THE REGION 5 (2014), http://www.metrocouncil.org/METC/files/35/35358ee4-7976-42e6-999d-9e54790d45fe.pdf [hereinafter CHOICE, PLACE AND OPPORTUNITY] ("The most recent data show that 9% of [Minneapolis/Saint Paul's] total population currently lives in a [Racially-Concentrated Area of Poverty] tract—up from 3% in 1990."); *see also* Alana Semuels, *Segregation in Paradise?*, THE ATLANTIC (July 12, 2016), http://www.theatlantic.com/business/archive/2016/07/twin-cities-segregation/490970/ (discussing school and community segregation in the Twin Cities).

5. *See infra* Figure 4 ("Chart 3") in Part II.

6. Statistics are from data compiled by the Institute of Metropolitan Opportunity, University of Minnesota Law School. Data is on file with author and is available upon request.

7. *See infra* Section III.A.

8. *See infra* Section III.B.

9. *See infra* Part III.

10. *See infra* Part VI.

suburbs.[11] Increasing concern over the availability of affordable housing accelerated the growth of the subsidized housing industry within the central cities—the PHI.[12] The cities themselves participated in this process, creating the Family Housing Fund, a "quasipublic" intermediary, which produced thousands of housing units in Minneapolis and Saint Paul.[13] As a result of segregation, city schools declined, which gave momentum to a "school choice" movement that sought to implement free-market ideas in the education system.[14] These so-called "education reformers" would become the PEC.[15] Its policies have increased and preserved the growth of educational segregation.[16]

The PHI and PEC are both complex networks of affiliated organizations and professionals, stretching through the public, private, and nonprofit worlds.[17] The PHI centers around nonprofit housing developers but also includes funding intermediaries, for-profit tax credit "syndicators," attorneys, and lobbyists.[18] The PEC includes well-funded political advocacy groups, consultants, and, of course, many charter schools and charter school networks.[19] Both the PHI and PEC are industries in their own right, employing thousands and receiving hundreds of millions of dollars from the government and charitable foundations.[20]

Unfortunately, the PHI and PEC depend heavily on the segregated status quo. The PHI's network of professional connections is densest in the low-income central-city neighborhoods where segregation is greatest, and the majority of affordable housing is consequently sited in these areas, which offer minimal resistance to affordable development.[21] The PHI

11. *See infra* Part II.
12. *See infra* Part II.
13. *See infra* Part II.
14. *See infra* Part II.
15. *See infra* Part II.
16. *See infra* Part II.
17. *See infra* Part V.
18. *See infra* Part V.
19. *See infra* Part V.
20. *See infra* Part V.
21. INST. ON METRO. OPPORTUNITY, THE RISE OF WHITE-SEGREGATED SUBSIDIZED HOUSING 1 (2016), https://www1.law.umn.edu/uploads/15/8a/158a9849bb744b4573b59f51e4f0ab54/IMO-White-Segregated-Subsidized-Housing-5-18-2016.pdf [hereinafter THE RISE OF WHITE-SEGREGATED SUBSIDIZED HOUSING].

frequently dominates both politics and the local economy in these neighborhoods. The *raison d'être* of education reform is correcting the perceived failings of central-city schools—failures that arise from the massive concentration of low-income, nonwhite students in these schools.[22] Regional school integration is not on the agenda of the PEC, and thus such policy initiatives would threaten the influx of charitable funding into PEC organizations.

Pressure from these two political constituencies have led to a series of governmental actions and policies that have had the effect of creating and perpetuating regional segregation:

- The abandonment of a Metropolitan Council Housing Plan, which enforced the legal requirement that all cities build a "fair share" of moderate- and low-income housing.[23]
- A revision of the state's school desegregation rule to allow intentionally racially segregated schools to persist indefinitely without penalty.[24]
- The exemption of charter schools and the open enrollment system from the school desegregation rule, undermining local districts' ability to pursue integrated education.[25]
- Consistently increasing affordable housing goals for the diverse central cities, and the concomitant decrease of the same goals for affluent, majority-white suburbs.[26]
- The rise of massive public-private interaction in the affordable housing industry, such as the Corridors of Opportunity group, which sought to place nearly half the region's new subsidized housing—4500 units—in segregated areas along the Cities' newest light rail line.[27]
- The failure to consider the impact of affordable housing and education policies on older, first-ring suburbs, where segregation and concentrated poverty are growing

22. *See* INST. ON METRO. OPPORTUNITY, THE MINNESOTA SCHOOL CHOICE PROJECT PART I: SEGREGATION AND PERFORMANCE 17 (2017), https://www.law.umn.edu/sites/law.umn.edu/files/imo-mscp-report-part-one-segregation-and-performance.pdf [hereinafter MINNESOTA SCHOOL CHOICE PROJECT PART I].

23. *See infra* Part III.

24. *See infra* Part III.

25. *See infra* Part III.

26. *See infra* Part III.

27. *See infra* Part III.

rapidly,[28] endangering municipalities' financial stability and, consequently, their ability to provide basic services to residents.[29]

The combined effect of these policies, and similar actions at the local and state level, has been to reverse progress towards integration. Severe segregation—where less than one student in ten is white—has grown explosively in the region's school districts, afflicting approximately 1% of all area schools in 1995 but more than 11% today.[30] The concerted effort to achieve integration by locating subsidized housing to the suburbs, which started in the early 1970s and made substantial gains for the first fifteen years,[31] has stalled completely; as shown in Figure 1, the central cities' relative share of subsidized housing has been increasing for decades and is now higher than at any point since the 1960s.[32]

28. *See infra* Part III.

29. *See infra* Part III.

30. Statistics are from data compiled by the Institute of Metropolitan Opportunity, University of Minnesota Law School. Data is on file with author and is available upon request.

31. Derek Thompson, *The Miracle of Minneapolis*, THE ATLANTIC (Mar. 2015), http://www.theatlantic.com/magazine/archive/2015/03/the-miracle-of-minneapolis/384975/ ("Minnesota passed a law in 1976 requiring all local governments to plan for their fair share of affordable housing. The Twin Cities enforced this rule vigorously . . . ."); *see also* INST. ON METRO. OPPORTUNITY, REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES TO CUT COSTS AND REDUCE SEGREGATION 1 (2014), https://www1.law.umn.edu/uploads/ee/52/ee52be92915228d3a453e5428ea40c07/Subsidized-Housing-in-the-Twin-Cities-1-7-14.pdf [hereinafter REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES] ("At one time, the Twin Cities implemented one of the most integrative affordable housing programs in the nation, but its housing integration program was abandoned in 1986.").

32. *See* REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES, *supra* note 31, at 1 ("In recent decades, the central cities have captured a disproportionate share of subsidized housing funding."); *see also infra* Figure 1 (indicating the increase in central cities' share of subsidized housing since 1980); Section III.A. (discussing disproportionate concentration of subsidized housing in central cities).

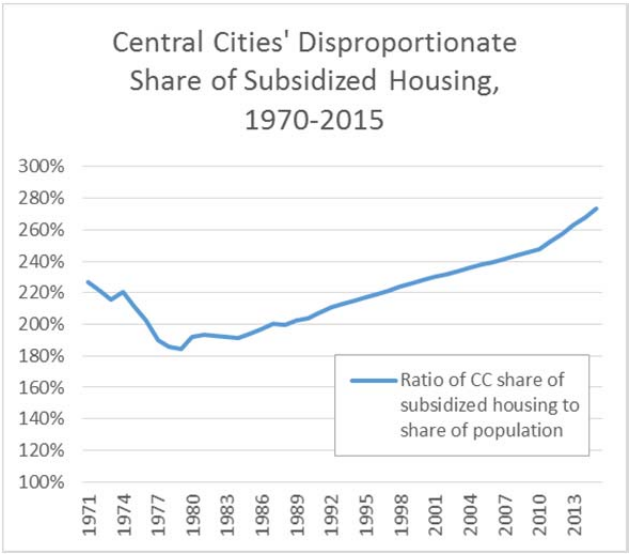


Figure 1.

Making matters worse, some older suburbs have themselves become segregated. Today, only 15% of subsidized housing units are in areas where schools are less than 30% nonwhite, the lowest figure since the beginning of the regional housing program.[33] Lack of regional support for desegregation has handicapped pro-integrative organizations such as the Dakota County Community Development Agency. In the words of its director, "The policies are what drive the funding, and the policies come from the Met[ropolitan] Council board . . . and the Minnesota Legislature . . . . [T]hey favor funding priorities that are not as prevalent in the suburban area."[34]

In the absence of countervailing pressures in the public and private sector, real progress on regional, residential, and

33. REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES, *supra* note 31, at 7 ("[N]early 60 percent of subsidized units are in attendance boundaries for majority nonwhite schools, even though those areas have less than a fourth of all students in the region.").

34. Jessie Van Berkel, *Suburbs Feel Shorted on Funds for Affordable Housing*, STAR TRIB. (Minneapolis-Saint Paul) (Oct. 31, 2014, 11:36 PM) (quoting Mark Ulfers, director of Dakota County's Community Development Agency), http://www.startribune.com/suburbs-feel-shorted-on-funds-for-affordable-housing/281132522/.

educational integration would be possible. A proactive approach to housing integration, in which subsidized housing units are distributed evenly across the region and Section 8 rental vouchers beneficiaries are distributed in proportion to regional population, would shift 9700 additional nonwhite students to schools that are currently white or integrated.[35] This would account for 80% of the student moves necessary to create a fully integrated regional school system, obviating the need for busing or other aggressive remedies.[36]

In order to reduce regional inequality, create a more competitive region, and build a better-functioning society, it is imperative that the Twin Cities reconsider their approach to subsidized housing and education.

II. WHY ARE THE TWIN CITIES SO SEGREGATED?

The Twin Cities are affluent, generous, and progressive.[37] There are dozens of organizations dedicated to serving the poor.[38] Why are racial disparities in the Cities as great as or greater than racial disparities in any part of the nation?[39] Why are our schools and neighborhoods much more segregated than regions with similar racial and economic characteristics like Seattle and Portland? It is becoming clear that many of the efforts originally intended to address poverty today actually contribute to severe and growing racial and social isolation in schools and neighborhoods,

35. *See infra* Figure 6 ("Table 2") in Part VI.

36. *See infra* Figure 6 ("Table 2") in Part VI.

37. *See generally What the Twin Cities Can Teach Us About Living Well*, HUFFINGTON POST (Nov. 18, 2013, 8:31 AM), http://www.huffingtonpost.com/2013/11/18/minneapolis-health-happin_n_4213678.html.

38. *See Our Members*, METROPOLITAN CONSORTIUM OF COMMUNITY DEVELOPERS, http://www.mccdmn.org/membership/our-members/ (last visited Mar. 10, 2017). *See generally* Cynthia Boyd, *Poverty Surging in Twin Cities' Suburbs*, MINNPOST (Oct. 27, 2011), https://www.minnpost.com/community-sketchbook/2011/10/poverty-surging-twin-cities-suburbs (discussing multiple organizations and nonprofits that are committed to bettering the circumstances of individuals in poverty).

39. *See* Christopher Magan, *Minnesota's Worsening Racial Disparity: Why it Matters to Everyone*, PIONEER PRESS (Minneapolis-Saint Paul) (Apr. 29, 2016, 1:00 PM), http://www.twincities.com/2016/04/29/minnesotas-racial-disparities-worsening -why-and-why-it-matters/ ("Minnesota has some of the worst racial disparities in the nation . . . .").

preserving the segregation that is at the root of racial inequality in the United States.[40]

Ironically, as affluent suburbs become gradually more willing to allow economic and racial integration, a growing privatized poverty "industry" has itself become a new bulwark of segregation in housing and schools.[41] Nonprofit organizations fight for funding to spend on low-income housing concentrated in the region's poorest neighborhoods, where there are no jobs and where the schools—from which most children fail to even graduate—function as pathways to prison.[42] Little funding is left for affluent suburbs that boast strong schools and job opportunities, and in recent years their applications for affordable housing have been turned down with surprising frequency.[43]

Within the region's education system, many policies persist that encourage or accelerate segregation. Self-styled education "reformers" advocate for single-race charter schools, some quite brazenly.[44] The charter system is dominated by segregated, low-performing institutions that only offer dead ends for many students.[45] By serving specific racial groups, charters deepen segregation and undermine the efforts of public schools, which have been financially weakened and are becoming more segregated.[46] Other policies—like the placement of schools[47]—

40. *See* Myron Orfield et al., *Taking a Holistic View of Housing Policy*, 26 HOUS. POL'Y DEBATE 284, 286 (2016) (stating that housing vouchers have historically been used in extremely concentrated areas, leading to the segregation of nearby schools).

41. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 13–15.

42. *See id.* at 1–3 (showing that a school's rate of poverty shares a positive correlation to low student success rates). *See generally* Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects* (Nat'l Bureau of Econ. Research, Working Paper No. 23001, 2016), http://www.equality-of-opportunity.org/assets/documents/movers_paper1.pdf.

43. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 1, 5.

44. *See* INST. ON RACE & POVERTY, FAILED PROMISES: ASSESSING CHARTER SCHOOLS IN THE TWIN CITIES 1, 38–39 (2008), http://www1.law.umn.edu/uploads/5f/ca/5fcac972c2598a7a50423850eed0f6b4/8-Failed-Promises-Assessing-Charter-Schools-in-the-Twin-Cities.pdf [hereinafter FAILED PROMISES]; *see also* MINNESOTA SCHOOL CHOICE PROJECT PART I, *supra* note 22, at 17.

45. *See* FAILED PROMISES, *supra* note 44, at 40; *see also* MINNESOTA SCHOOL CHOICE PROJECT PART I, *supra* note 22, at 17.

46. *See* FAILED PROMISES, *supra* note 44, at 40–43.

create durable avenues for white flight and facilitate the divestment of resources from the region's neediest school districts.[48] Despite evidence to the contrary, local education policymakers, charter boosters, and reformers continue to argue that gaps can be closed without addressing segregation and even assert that segregated schools are more effective than integrated ones.[49]

It is clear that this generous, progressive region must again work to become less segregated. Minnesota was once a national leader on civil rights, and the state has many laws and policies that could, if used, create more integration and less racial disparity.[50] While resistance to integration in affluent communities remains strong, it is declining.[51] When affluent communities and schools attempt greater integration, poverty advocates should help them, not undermine their efforts.

In the past, the Twin Cities' reputation for progressive civil rights activism was well deserved. Minneapolis was the first large city in the country to enact a fair housing ordinance, and Minnesota was one of the first states to pass a civil rights law outlawing housing discrimination. Support for civil rights from prominent politicians and governmental bodies was strong:

47. *See id.* at 37 (arguing that highly integrated public schools spur white enrollment to charter schools in close proximity).

48. *See id.* at 43 (discussing how poor urban school districts divert already-scarce funding toward marketing budgets to compete for enrollment with nearby charter schools).

49. *See id.* at 49 (noting that, instead of actually integrating the schools, school districts have "racial contact" programs, i.e., multicultural day, but that these measures have had little to no effect on integration); *see also* Beena Raghavendran & MaryJo Webster, *Desegregation Lawsuit Pulls in State's Charter Schools*, STAR TRIB. (Minneapolis-Saint Paul) (Nov. 30, 2015, 11:59 AM), http://www.startribune.com/desegregation-lawsuit-pulls-in-state-s-charter-schools/358457791/.

50. *See, e.g.*, Christopher Magan, *Judge Rejects Minnesota's School Integration Plans*, PIONEER PRESS (Minneapolis-Saint Paul) (Mar. 22, 2016, 2:24 PM), http://www.twincities.com/2016/03/22/judge-rejects-minnesotas-school-integration-plans/ (describing a now defunct integration scheme enacted in Minnesota in the 1990s).

51. *See, e.g.*, KIM BRIDGES, THE CENTURY FOUND., EDEN PRAIRIE PUBLIC SCHOOLS: ADAPTING TO DEMOGRAPHIC CHANGE IN THE SUBURBS (Oct. 14, 2016), https://tcf.org/content/report/eden-prairie-public-schools/ (describing the history of resistance to integration in the suburb of Eden Prairie, as well as its recent decline).

> Not only did Hubert Humphrey and Walter Mondale hail from the Twin Cities, but so did Roy Wilkins, Clarence Mitchell, and Whitney Young. Republican governor Elmer Anderson pushed the Human Rights Act through the legislature and Congressman Al Quie helped build a Republican consensus to support the major civil rights acts of the 1960s. In the 1960s and 1970s, the state created a regional government, the Metropolitan Council ["Met Council"], and enacted a fair-share requirement in the Metropolitan Land Use Planning Act that required that all suburban communities provide their fair share of affordable housing. The Met Council worked with the Minnesota Housing Finance Agency to adopt the nation's best regional fair housing program.[52]

The Met Council explicitly sought to improve housing choice by opening up all of the region's communities to low-income residents,[53] and in the ten years prior to 1980, the percentage of regional cities offering subsidized housing increased from 8% to 51%.[54]

Also in the early 1970s, Minneapolis integrated its public schools pursuant to court order, and the state government used the momentum created by this lawsuit to adopt a desegregation rule that required racially integrated schools throughout Minnesota.[55] This rule aggressively reduced existing segregation and contained mechanisms to prevent integrated schools from slowly transitioning back into racial isolation.

As a result of all of these efforts in the 1970s and early 1980s, the Twin Cities was on a path to become one of the most integrated metropolitan areas in the United States.[56] It had all the tools in place to do so, and they were working as planned.[57] As shown in

52. INST. ON METRO. OPPORTUNITY, APPENDIX I: IMO MEMORANDUM PROVIDED TO HOUSINGLINK REGARDING AI REQUIREMENTS 3 (Oct. 10 2014), https://www1.law.umn.edu/uploads/87/2b/872b706a4820ba6fe45aa279a8a1eaab/IMO-Comments-on-FHIC-AI-Appendices.pdf [hereinafter IMO MEMORANDUM].

53. *See id.*

54. Alana Semuels, *Segregation Holds On in the Twin Cities*, CITYLAB (Jul. 13, 2016), http://www.citylab.com/politics/2016/07/segregation-in-the-twin-cities/491162/; *see also* CHOICE, PLACE AND OPPORTUNITY, *supra* note 4, at 5.

55. IMO MEMORANDUM, *supra* note 52, at 3.

56. *Id.*

57. *Id.*

Figure 2 ("Chart 1"), in the early 1990s, only about 2000 (or 2.5%) of the region's nonwhite students were in schools that were more than 90% nonwhite,[58] and only 3% of the region's population lived in majority nonwhite, high-poverty areas.[59]

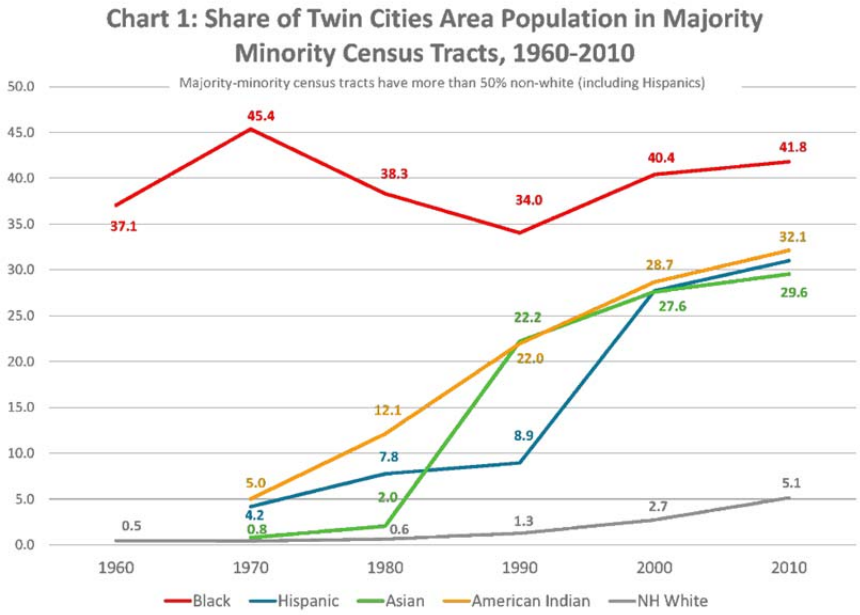


Figure 2.

Likewise, black residents living in census tracts that were more than 50% minority decreased from 45% in 1970 to 38% in 1980.[60] On the other hand, by the 1980s and 1990s, the region saw increasing shares of American Indians, Asians, and Hispanics in majority minority tracts, and by the 1990s, there was a reversal of the long-term decrease in black shares in those tracts.[61]

58. School data is for the eleven Minnesota counties in the Twin Cities metro area in 1995 and is from the Minnesota Department of Education. *See Data Reports and Analytics*, MINN. DEP'T OF EDUC., http://w20.education.state.mn.us/MDEAnalytics/Data.jsp (last visited Dec. 13, 2016).

59. CHOICE, PLACE AND OPPORTUNITY, *supra* note 4, at 5 (1990 data).

60. *See* Figure 2 ("Chart 1"). A color version of this graph is available on the Mitchell Hamline Law Review issue archive at http://open.mitchellhamline.edu/mhlr/vol43/iss1/.

61. Black shares in majority minority census tracts were calculated from IMO data provided by the Minnesota Population Center at the University of Minnesota, which manages the National Historical Geographic Information System. *See*

By 2010, the number of schools made up of more than 90% nonwhite students had increased more than sevenfold (from eleven to eighty-three); the number of nonwhite students in those highly segregated environments had risen by more than ten times (from 2000 to 25,400)—a percentage increase from 2.5% to 16%; and the share of the regional population in majority nonwhite, high-poverty areas rose by three times to 9%.[62]

Some of these changes simply reflect the fact that the region became more racially diverse during the period. However, other metro areas of roughly the same size and with similar demographic histories have not shown the same pattern of deterioration in racial segregation. For instance, as shown in Figure 3 ("Chart 2"), the number of schools in the Portland metro made up of more than 90% nonwhite students was just two in 2009 (up from zero in 2000) and in Seattle it was only twenty-five (up from fourteen).[63] The neighborhood comparisons are no better, as shown in Figure 4 ("Chart 3"). In 2012, 19% of low-income black residents of the Twin Cities lived in high-poverty census tracts (up from 13% in 2000) compared to just 3.4% of low-income black residents in Seattle (down from 3.5% in 2000) and 1.6% in Portland (down from 1.9% in 2000).[64]

National Historical Geographic Information System, UNIV. OF MINN., https://data2.nhgis.org/main (last visited Dec. 13, 2016).

62. CHOICE, PLACE AND OPPORTUNITY, *supra* note 4, at 5.

63. *Surveys & Programs*, NAT'L CENTER FOR EDUC. STAT., http://nces.ed.gov/surveys/ (last visited Dec. 16, 2016). The equivalent numbers for the Twin Cities from this source were 112 schools with more than 90% nonwhite students in 2009 compared to 37 such schools in 2000. *Id. See also infra* Figure 3 ("Chart 2") in this Part.

64. *See infra* Figure 4 ("Chart 3") in this Part. PAUL JARGOWSKY, CTR. FOR URBAN RESEARCH & EDUC., RUTGERS UNIV., COMPILATION OF BUREAU OF THE CENSUS DATA (on file with author). Similar differences for Hispanic residents exist across the metros. *Id.*

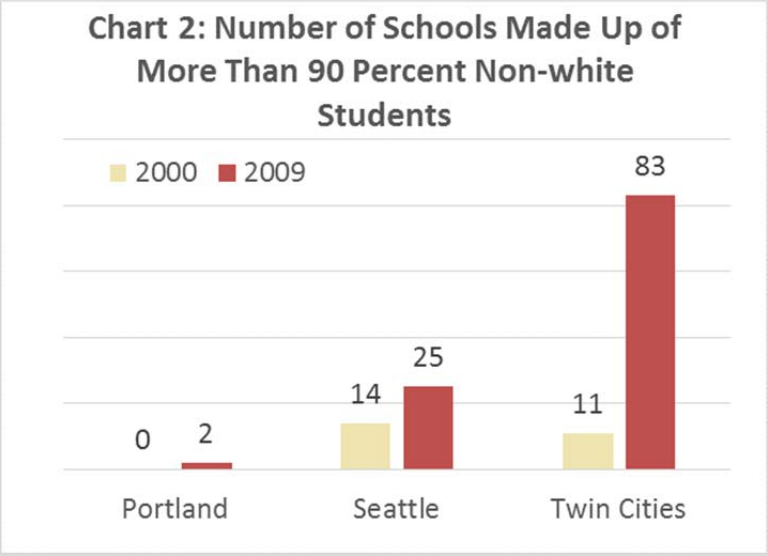


Figure 3.

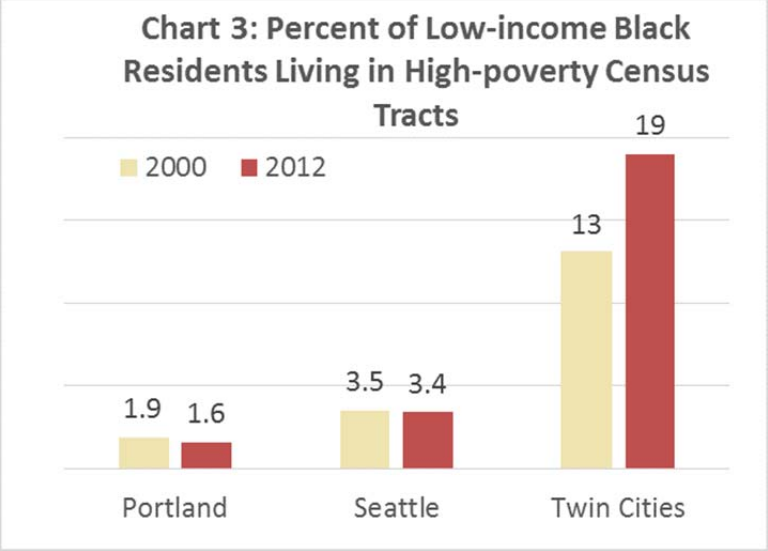
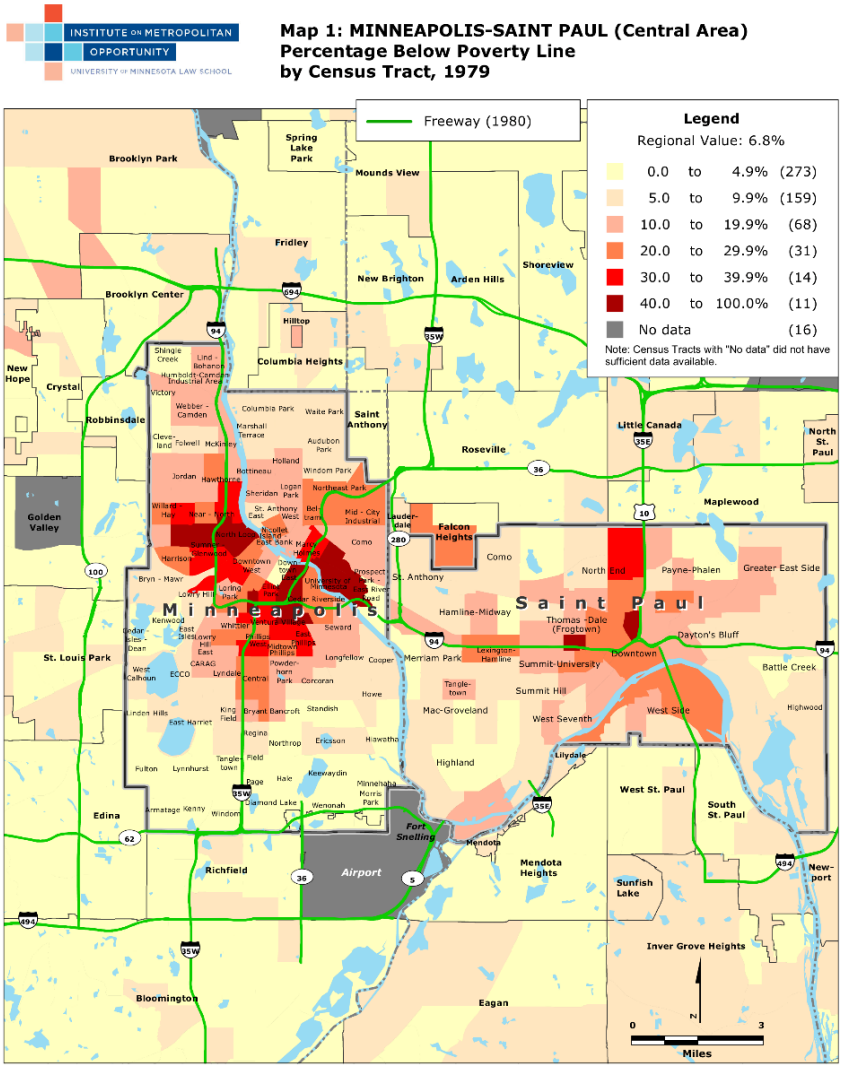
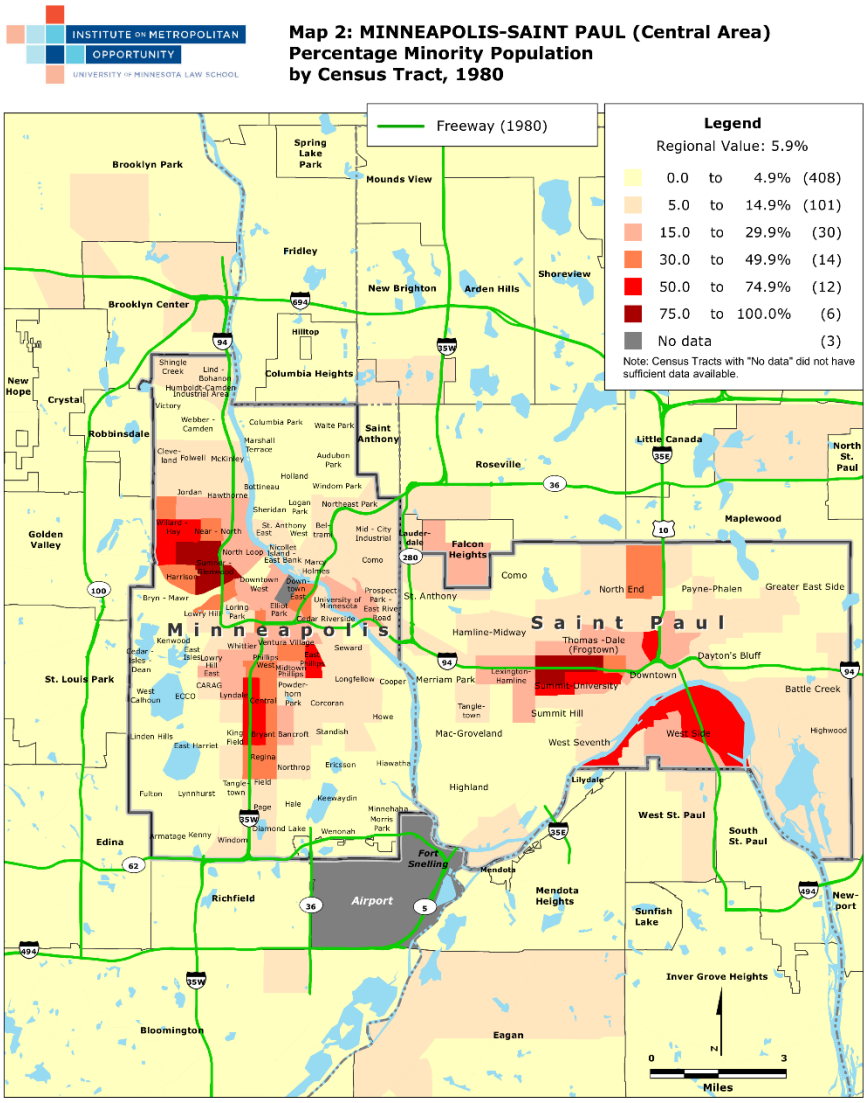


Figure 4.

In the Twin Cities, as elsewhere in the nation, racial isolation and economic decline are intertwined. As the following maps demonstrate, the growth of poverty since 1980 has mirrored patterns of segregation.[65]



65. Maps 1 and 2 were created by IMO using data from the Minnesota Population Center. *See National Historical Geographic Information System: Version 2.0.*, UNIV. OF MINN. (2011), http://www.nhgis.org. Maps 3 and 4 were created by IMO using data from the United States Census Bureau. Larger versions of these maps are available in color at the Mitchell Hamline Law Review website: http://mitchellhamline.edu/law-review/wp-content/uploads/sites/37/2017/05/Orfield_Why-Are-the-Twin-Cities-So-Segregated_Maps.pdf.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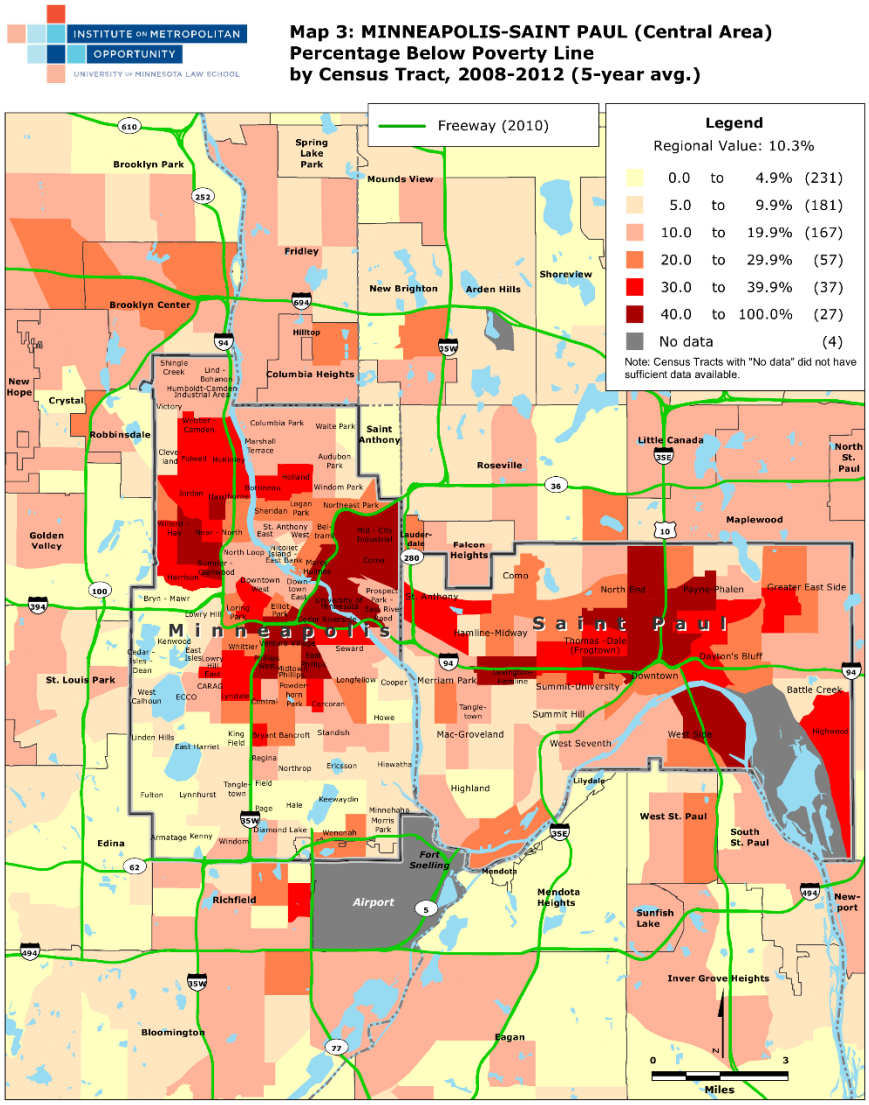
Map 2: MINNEAPOLIS-SAINT PAUL (Central Area)
Percentage Minority Population
by Census Tract, 1980
Freeway (1980)
Legend
Regional Value: 5.9%
0.0 to 4.9% (408)
5.0 to 14.9% (101)
15.0 to 29.9% (30)
30.0 to 49.9% (14)
50.0 to 74.9% (12)
75.0 to 100.0% (6)
No data (3)
Note: Census Tracts with "No data" did not have sufficient data available.
Minneapolis
Saint Paul
Airport
Miles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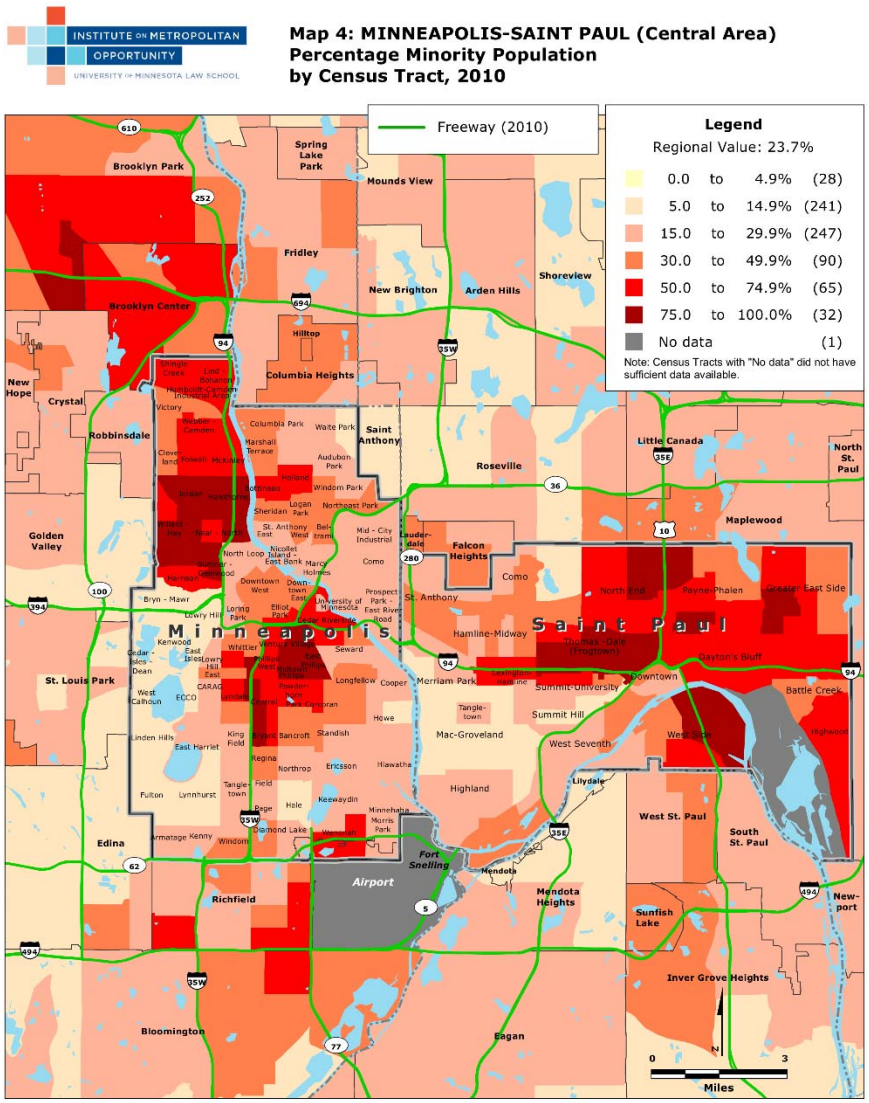
Map 3: MINNEAPOLIS-SAINT PAUL (Central Area)
Percentage Below Poverty Line
by Census Tract, 2008-2012 (5-year avg.)
Freeway (2010)
Legend
Regional Value: 10.3%
0.0 to 4.9% (231)
5.0 to 9.9% (181)
10.0 to 19.9% (167)
20.0 to 29.9% (57)
30.0 to 39.9% (37)
40.0 to 100.0% (27)
No data (4)
Note: Census Tracts with "No data" did not have sufficient data available.
Minneapolis
Saint Paul
Airport
Fort Snelling
0
3
Miles



While affluent, white enclaves in the south and southwest of the central cities have remained stable, poverty has dramatically worsened in much of Minneapolis and Saint Paul, as well as many of the older, first-ring suburbs.[66] In this way, segregation has helped

66. *See* Steve Berg, *Policies that Built First-Ring Suburbs in 1950s Now Foster Their Decline*, MINNPOST (Apr. 1, 2011), https://www.minnpost.com/cityscape/2011/04

wrench apart the economic fabric of the region, as neighborhoods or even entire cities have found themselves crippled by the rapid, destabilizing increase in poverty.[67]

In this environment, even programs designed to increase housing choice can backfire and accelerate segregation. For instance, the Section 8 Housing Voucher program is intended to provide families with flexibility in the private housing market and, in doing so, help prevent the concentration of poverty that is associated with public housing.[68] Instead, in the Twin Cities, Section 8 has replicated the ill effects of public housing. The Twin Cities contain a number of dense "clusters" of Section 8 voucher holders, concentrating poverty to a remarkable degree.[69] A small census tract in Minneapolis's Phillips community concentrates voucher holders at the rate of 802 per square mile. In another tract in the Aurora-Saint Anthony neighborhood in Saint Paul, with 583 voucher holders per square mile, 19% of households are using a voucher.[70] Of the 705 census tracts in the Twin Cities metropolitan area, only twenty-one have household voucher use rates above 10%—eight in Saint Paul, and twelve in Minneapolis.[71] By comparison, a vast number of census tracts—even densely populated census tracts—contain virtually no Section 8 voucher beneficiaries. Within the metropolitan area, 37.4% of households live in census tracts where five or fewer Section 8 vouchers have been put to use; 11.3% live in tracts without a single voucher whatsoever.[72]

Segregation and the concentration of poverty are no longer confined to the central cities. These problems have spilled over

/policies-built-first-ring-suburbs-1950s-now-foster-their-decline.

67. *See, e.g.*, MYRON ORFIELD, METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 3 (1997) (citing *1990 Summary Tape File 3A*, U.S. CENSUS BUREAU (1992), http://www2.census.gov/census_1990/1990STF3.html#3A) ("In the 1980s, the Twin Cities became the nation's fourth fastest ghettoizing region.").

68. Christopher Swope, *Section 8 is Broken*, NAT'L HOUSING INST.: SHELTERFORCE ONLINE, Jan.–Feb. 2003, www.nhi.org/online/issues/sf127.html. *See generally Housing Choice Vouchers Fact Sheet*, U.S. DEP'T OF HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8 (last visited Dec. 13, 2016).

69. Voucher concentration figures were generated using 2010 U.S. Census data.

70. *Id.*

71. *Id.*

72. *Id.*

into the region's older suburbs, particularly the first-ring suburbs in close proximity to segregated central-city neighborhoods.[73] Many of these cities are in the process of rapid, destabilizing racial and economic transition, as flight from growing segregation pushes middle-class residents into the urban fringe.[74] These changes frequently start in a city's schools, where open enrollment, alternative schooling options, and other instruments of white flight can help "flip" an integrated district into severe segregation in a matter of years. For instance, in the fifteen years following 1997, the Brooklyn Center school district transitioned from 41% nonwhite to 84% nonwhite, and 38% low-income to 82% low-income.[75] School transition often precipitates residential segregation.[76] In the decade following the 2000 United States Census, Brooklyn Center has become rapidly more segregated, with the number of white residents declining dramatically, from over two-thirds of the population to less than one-half.[77]

Not surprisingly, the region now shows some of the widest racial disparities in the country. Recent data show alarming gaps between whites and nonwhites in income, unemployment, health, and education. Poverty rates for black Minnesotans are more than four times those for whites;[78] household incomes for blacks are less

73. *See, e.g.*, CHOICE, PLACE AND OPPORTUNITY, *supra* note 4, at 23 (contrasting the sharp decrease in white residents with the drastic increase in the percentage of rental properties in Brooklyn Center and Brooklyn Park between 1990 and 2010).

74. *See* Daniel T. Lichter, et al., *Toward a New Macro-Segregation? Decomposing Segregation Within and Between Metropolitan Cities and Suburbs*, 80(4) AM. SOC. REV. 843, 846 (2015) (describing an increase in macro-segregation as whites leave increasingly integrated cities and suburbs within large metro areas).

75. Percentages were calculated by IMO from data provided by the Minnesota Population Center at the University of Minnesota, which manages the National Historical Geographic Information System. *See National Historical Geographic Information System: Version 2.0.*, UNIV. OF MINN. (2011), http://www.nhgis.org.

76. *See generally* Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods—A Constitutional Insult*, ECON. POL'Y INST. (Nov. 12, 2014), http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/.

77. *Races in Brooklyn Center, Minnesota (MN) Detailed Stats*, CITY-DATA.COM, http://www.city-data.com/races/races-Brooklyn-Center-Minnesota.html (last visited Dec. 13, 2016).

78. U.S. CENSUS BUREAU, TABLE S1701, POVERTY STATUS IN THE LAST 12 MONTHS: AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, 2010–2014, http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/S1701

than half of those for whites;[79] reading proficiency rates for black students are less than half those for whites in most school grades and years;[80] incarceration rates for blacks are twenty to twenty-five times greater than for whites;[81] and black unemployment rates are two to three times those for whites.[82] All of these disparities put the region and state near the bottom of national rankings.[83]

What has brought us to this pass? How did a state and a region once at the forefront of civil rights and integration efforts fall so far? The answers lie in a complex web of actions by public,

/0400000US27 (last visited Dec. 13, 2016) (showing a 36.5% poverty rate for black Minnesotans versus 8.9% poverty rate for white Minnesotans).

79. U.S. CENSUS BUREAU, SELECTED ECONOMIC CHARACTERISTICS, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last visited Dec. 13, 2016) (showing that the median annual income for black Minnesotans was $29,873 versus $63,127 for white Minnesotans).

80. *See Third Grade Reading Proficiency*, MINNESOTA: WORLD'S BEST WORKFORCE, https://mn.gov/mmb/worlds-best-workforce/key-goals/third-grade-reading.jsp (last visited Dec. 13, 2016) (illustrating third grade reading proficiency rates); *Third Grade Students Achieving Reading Standards by Race: Minnesota, 2006–2016*, MINNESOTA COMPASS, http://www.mncompass.org/disparities/race#1-9515-d.

81. Jeff Severns Guntzel, *Aging Inmates, Racial Disproportionality, and Other Facts About Minnesota Prisons,* MINNPOST (Dec. 2, 2010), https://www.minnpost.com/intelligencer/2010/12/aging-inmates-racial-disproportionality-and-other-facts-about-minnesota-prison ("Studies of state prison populations in the 1980s and early 1990s found that Minnesota's black per capita incarceration rates were about 20 times higher than white rates—the highest ratio reported for any state. Minnesota has done better in more recent studies, but its ratio of black to white incarceration rates is still in the top quartile."). *See generally* Andy Mannix, *Minnesota Sends Minorities to Prison at Far Higher Rates than Whites*, STAR TRIB. (Minneapolis-Saint Paul) (Apr. 14, 2016), http://www.startribune.com/minnesota-sends-minorities-to-prison-at-far-higher-rates-than-whites/374543811/ (discussing racial incarceration disparities in Minnesota).

82. U.S. CENSUS BUREAU, TABLE S2301, EMPLOYMENT STATUS: AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, 2010–2014, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk (last visited Dec. 13, 2016) (showing that the unemployment rate for black Minnesotans was 16.4% versus 5.6% for white Minnesotans); *see also* Ben Johnson, *Blacks Nearly Four Times More Likely Than Whites to Be Unemployed in Minnesota*, CITYPAGES.COM (Minneapolis-Saint Paul) (Mar. 6, 2015), http://www.citypages.com/news/blacks-nearly-four-times-more-likely-than-whites-to-be-unemployed-in-minnesota-6539946.

83. *See, e.g.*, JONATHAN M. ROSE, DISPARITY ANALYSIS: A REVIEW OF DISPARITIES BETWEEN WHITE MINNESOTANS AND OTHER RACIAL GROUPS 3 (2013), https://mn.gov/cmah/assets/COBM%20-%202013%20Research%20Report%20on%20Disparities_tcm32-33686.pdf. Various reports are also available at http://minnesotabudgetbites.org.

nonprofit, and private actors during the last thirty years in a number of policy areas, including housing, finance, education, and transportation. Due to political and governmental apathy, the well-meaning, but misdirected, efforts of housing developers and school reformers, as well as the proliferation of organizations and groups with a firm financial interest in maintaining segregated living patterns, our state has slowly reversed its civil rights heritage.

III. THE ORIGINS OF RESEGREGATION

A. Housing Policy and the Rise of the Poverty Housing Industry (PHI)

Resegregation began in the early 1980s. Rudy Perpich returned to the governor's office in 1983, alongside a solidly Democratic and liberal legislature.[84] Largely uninterested in metropolitan affairs, Perpich's initial appointee to chair the Met Council was Gerald Isaacs, a banker soon accused of having a conflict of interest and forced to resign.[85] During Isaacs's and his successor's troubled tenures, the nation's most effective fair housing program, Policy 13, was gradually dismantled.[86]

Policy 13 was reaffirmed in the Met Council's 1985 Housing Policy Plan, which was renamed "Policy 39" in 1977.[87] Under this policy, the Met Council required communities to end exclusionary zoning and assigned each community a "fair share"[88] goal.[89] The

84. *Perpich, Sr., Rudolph George "Rudy, R.G.,"* MINN. LEGIS. REFERENCE LIBR., https://www.leg.state.mn.us/legdb/fulldetail?ID=10522 (last visited Dec. 13, 2016).

85. *See* WILLIAM C. JOHNSON, GROWTH MANAGEMENT IN THE TWIN CITIES REGION: THE POLITICS AND PERFORMANCE OF THE METROPOLITAN COUNCIL 42, 50 (Thomas P. Zeit ed., 1998), http://conservancy.umn.edu/bitstream/handle/11299/2055/1/Johnson_Growth_Management.pdf (discussing Perpich's disinterest relative to his predecessor).

86. *See* METRO. COUNCIL, HOUSING POLICY PLAN 81 (2014), https://metrocouncil.org/METC/files/e3/e3202e04-5ed7-48a3-81b9-e0e5a9c83b2b.pdf.

87. *See* METRO. COUNCIL, OVERVIEW OF THE COUNCIL'S RESPONSE TO THE FAIR HOUSING COMPLAINT FILED WITH HUD 10 (2015), http://www.metrocouncil.org/getdoc/43691b3d-ffd3-42d5-a57d-d0667660571e/BusinessItem.aspx [hereinafter OVERVIEW OF THE COUNCIL'S RESPONSE].

88. *See generally* John Charles Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction*, 71 N.C. L. REV. 1573 (1993).

89. *See* All. for Metro. Stability v. Metro. Council, 671 N.W.2d 905, 911 (Minn. Ct. App. 2003) ("Beginning in the late 1970s, based on that formula, the Council calculated affordable housing needs for each community and issued guidelines for local governments to follow to create affordable housing

state housing-finance agency allocated the state's housing resources so that these communities could actually achieve their goals.[90] If the suburbs wanted access to state funds for roads, sewers, and parks, they had to allow affordable housing to be built.[91] The Council at the time described the suburban reaction as "one of anger, hostility and frustration."[92] Nonetheless, the Met Council's staff maintained that "the review role [was] an invaluable tool for implementing policy," and the body continued to leverage its funding powers to encourage integration.[93] In their words, "the available evidence strongly suggests that minority populations would like a far broader opportunity for suburban and rural living than they presently have."[94] And for a time, the Council largely succeeded in providing those opportunities.

From 1971 to 1979, the Twin Cities built as much as 73% of all new subsidized housing in suburbs, the best record in the nation.[95] At the beginning of this period, 90% of the Twin Cities' subsidized units were located in the two central cities, and only sixteen of the region's 189 municipalities had any subsidized housing at all.[96] By 1979, almost 40% of the total subsidized units were located in the

opportunities. By the early 1980s, cities began producing housing elements as part of their comprehensive plans with designations to meet the targets provided by the Council.").

90. *See* CHOICE, PLACE AND OPPORTUNITY, *supra* note 4, at 10.

91. *See id.*

92. METRO. COUNCIL, HOUSING OPPORTUNITY IN THE TWIN CITIES AREA: A STAFF BACKGROUND REPORT ON THE LOCAL AND REGIONAL RESPONSE 1967–1978, at 3 (1978) (on file with author).

93. *Id.* at 9.

94. *Id.*

95. METRO. COUNCIL, 1979 SUBSIDIZED HOUSING ACTIVITY IN THE TWIN CITIES METROPOLITAN AREA 6 (1980) [hereinafter 1979 SUBSIDIZED HOUSING ACTIVITY] (on file with author); *see also* IMO MEMORANDUM, *supra* note 52, at 18–19 (citing Robert H. Freilich & John W. Ragsdale, Jr., *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009 (1974)) ("In direct response to the passage of the Federal Fair Housing Act and the promulgation of its siting rules, the first school desegregation lawsuit against the state of Minnesota, and the New Jersey Supreme Court's decision in Mount Laurel, the Met Council (pursuant to its statutory and constitutional duty to achieve a fair share distribution of affordable housing) and the Minnesota Housing Finance Agency (now Minnesota Housing) created and operated the most effective suburban affordable housing plan with the greatest pro-integrative civil rights effect in the nation's history." (internal citations omitted)).

96. *See* 1979 SUBSIDIZED HOUSING ACTIVITY, *supra* note 95, at 6.

suburbs, and low-income families had subsidized options in ninety-seven different communities.[97] Slowly but surely, central-city housing segregation was being erased.[98]

But this would ultimately prove the high-water mark for regional integration. The suburban share of affordable housing, which increased from 10% to 40% in just a decade, has remained almost unchanged to the present day, even as the regional population shifted more and more into the suburbs.[99] In more than thirty years, the central cities' share of regional subsidized housing has never dipped below 57%.[100] In other words, by the 1980s, the forces that would block further progress had begun to coalesce in earnest.

During the 1970s, the Met Council chair, Al Hofstede—at the time, a former Minneapolis Alderman and the city's future mayor—had been forced to fight a constant rearguard action to keep affordable housing subsidies in the suburbs.[101] He pushed state and local governments to avoid concentrating housing subsidies in the two central cities and to deploy these resources in the suburbs to create a more racially integrated metropolitan area.[102] But directing affordable housing towards the suburbs inevitably kept these resources out of the central cities.[103] This

97. *Id.*

98. *See id.*

99. EDWARD G. GOETZ, KAREN CHAPPLE & BARBARA LUKERMANN, THE AFFORDABLE HOUSING LEGACY OF THE 1976 LAND USE PLANNING ACT (Jan. 2002), https://conservancy.umn.edu/handle/11299/1960.

100. Statistics are from data compiled by the Institute of Metropolitan Opportunity, University of Minnesota Law School. Data is on file with author and is available upon request. *See also* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 3; *see also* Will Stancil, *Affordable Housing Is an Industry, Too*, STREETS.MN (Oct. 8, 2015), http://streets.mn/2015/10/08/affordable-housing-is-an-industry-too/.

101. *See* IMO MEMORANDUM, *supra* note 52, at 18–19.

102. *Id.* at 20 (citing METRO. COUNCIL, DISCUSSION STATEMENT ON METROPOLITAN DEVELOPMENT POLICY 39 (Oct. 1973)).

103. *Id.* at 29 (citing BERKELEY PLANNING ASSOCS., ASSESSMENT OF THE IMPACT OF THE HOUSING OPPORTUNITY PLAN (AHOP) FINAL REPORT: VOLUME II, CASE STUDY NARRATIVES (1979) (prepared for the Office of Community Planning and Housing Development, U.S. Department of Housing and Urban Development under Contract H-4308 at III-17)) ("Before 1975, seventy percent of subsidized family housing was built in the central cities. By 1976, almost sixty percent was built in the suburbs and by the end of the decade virtually all of family subsidized housing was being built in the suburbs.").

generated resistance from central-city housing agencies and the urban developers who could expect to build new affordable projects.[104]

In what would prove to be a significant setback for suburban integration, the cities of Minneapolis and Saint Paul collaborated to create the Family Housing Fund (the Fund) in 1980.[105] This entity quickly became a useful ally and an effective policy instrument for those who believed that public resources should be put to use by building affordable housing in low-opportunity central-city neighborhoods. With large philanthropic and governmental resources, the Fund aggressively promoted the construction of subsidized housing in the core cities, effectively pushing more government housing funds into the cities' most segregated neighborhoods.[106]

In its first decade, the Fund focused on housing in the central cities, pumping a reported 10,500 low-income units into Minneapolis and Saint Paul.[107] The organization eventually grew into one of the largest regional players in affordable development, and to this day it continues to contribute to projects across the metro area.[108] But a disproportionate share of its efforts are still focused on the two central cities, and as shown in Figure 5 ("Table 1"), a disproportionate share of the units it helps finance are located within segregated census tracts.[109]

104. *Id.* at 32 ("When the [LIHTC] program began, central cities housing officials, angry at the loss of low income housing funds to the suburbs during the 1970s, petitioned the legislature to create central city sub-allocators for LIHTC funds.").

105. *See* FAMILY HOUS. FUND, FAMILY HOUSING FUND ANNUAL REPORT: 2012 ACCOMPLISHMENTS AND FINANCIALS 3 (Dec. 2013), www.fhfund.org/wp-content /uploads/2014/10/2012_Annual.pdf.

106. *See generally* Robert Franklin, *$8.5 Million Grant Goes Toward Housing for 3,400 Families*, STAR TRIB. (Minneapolis-Saint Paul), Apr. 26, 1998, 1988 WLNR 1643322; Ingrid Sundstrom, *Financial Transaction Nets Housing Agencies $4.2 Million*, STAR TRIB. (Minneapolis-Saint Paul), May 30, 1986, 1986 WLNR 1120819.

107. Robert Franklin, *Housing Fund Turns to Suburbs: $7 Million McKnight Grant to Help Provide More Living Units*, STAR TRIB. (Minneapolis-Saint Paul), Feb. 26, 1991, 1991 WLNR 3707058.

108. *See generally History*, FAM. HOUSING FUND, http://www.fhfund.org/history/ (last visited Dec. 13, 2016).

109. *See* Figure 5 ("Table 1").

Table 1: Twin Cities Seven County Area
Subsidized Units Covered by Family Housing Fund and
Other Funders* by Percentage Minority in Census Tracts
1999 to 2013

Number of Units:

% Minority in Tract:	Family Housing Fund Units	Other Funder Units	Total Units	Renter Units
0 to 19%	1,279	3,734	620,429	111,015
20 to 29%	1,525	3,900	238,646	82,431
30 to 49%	1,502	3,304	134,306	62,802
50 to 100%	4,633	4,300	118,685	64,347
Total	8,938	15,238	1,112,066	320,595

Share of Units in Tracts:

% Minority in Tract:	Family Housing Fund Units	Other Funder Units	Total Units	Renter Units
0 to 19%	14.3	24.5	55.8	34.6
20 to 29%	17.1	25.6	21.5	25.7
30 to 49%	16.8	21.7	12.1	19.6
50 to 100%	51.8	28.2	10.7	20.1
Total	100.0	100.0	100.0	100.0

Sources: Minnesota Housing (MHFA), 2012 HousingLink, 2010 U.S Census Bureau.

Figure 5.

And these figures, which only examine housing projects that the Fund directly finances, underestimate the organization's regional influence. The Fund intertwines itself with the Twin Cities' housing policy apparatus: its directors sit on the boards of a number of regional projects and collaborations, and the organization works closely with virtually every other major public, private, and nonprofit entity in affordable housing construction

and finance.[110] Although the organization is today most frequently described as a nonprofit,[111] its public sector roots ensure that it maintains unusually close ties with local governmental entities. For example, its president of thirty-five years is a former deputy director of the Minneapolis housing agency—Minneapolis Housing and Redevelopment Authority.[112] The Fund has also created subsidiaries to participate more directly in housing development. These include the Twin Cities Housing Development Corporation[113] and, more recently, the Twin Cities Community Land Bank (The Land Bank).[114] The Land Bank, itself an increasingly important participant in the housing scene, works with private banks to acquire foreclosed properties for conversion into affordable housing, mostly in distressed Minneapolis neighborhoods, particularly in North Minneapolis.[115]

The Met Council began to back away from the fair share commitments of the Land Use Planning Act and Policy as a result of pressure from two sides. On one, there were conservative suburban politicians who characterized integration as social engineering; on the other, there was an increasingly organized housing community, clustered around powerful proponents of

110. *See Staff and Board*, FAM. HOUSING FUND, http://www.fhfund.org/staff-board/ (last visited Dec. 13, 2016) (indicating the wide variety of companies and organizations with which staff and board members are involved).

111. FAM. HOUSING FUND, http://www.fhfund.org/ (last visited Dec. 13, 2016) ("The Family Housing Fund is a nonprofit intermediary organization . . . .").

112. *See* Frederick Melo, *A Number of Long-Serving Nonprofit, Government Officials Set to Retire*, PIONEER PRESS (Minneapolis-Saint Paul) (June 27, 2015), http://www.twincities.com/2015/06/27/a-number-of-long-serving-nonprofit-government-officials-set-to-retire/ (noting that Fulton had served as president since 1980 and had previously worked with other housing agencies).

113. The Twin Cities Housing Development Corporation was described upon its creation in 1986 as "quasipublic" by the *Star Tribune*. Ingrid Sundstrom, *Family Housing Fund Now Developing Rental Units*, STAR TRIB. (Minneapolis-Saint Paul), Mar. 1, 1986, 1986 WLNR 1127165. However, today it bills itself on its website only as a "nonprofit developer." *About*, TWIN CITIES HOUSING DEV. CORP., http://www.tchdc.org/about (last visited Dec. 13, 2016).

114. *About Us*, TWIN CITIES COMMUNITY LAND BANK, http://www.tcclandbank.org/about.html (last visited Dec. 13, 2016) (noting that the organization started its work in 2009).

115. The Land Bank provides maps of its projects. *See Resources*, TWIN CITIES COMMUNITY LAND BANK, http://www.tcclandbank.org/maps.html (last visited Dec. 13, 2016).

inner-city development like the Family Housing Fund.[116] Housing dollars returned to segregated neighborhoods.[117] Much of the land that had once been zoned to be inclusionary and multifamily in the suburbs quietly reverted to large-lot, single-family home zoning.[118] In the end, the very effective fair share program was ended not only by racially motivated white opposition from affluent suburbs, but also by the changing priorities and self-interest of central-city politicians and housing developers and the neglect of a disengaged Met Council and liberal legislature.[119]

The advent of a new federal program, the Low Income Housing Tax Credit (LIHTC), also helped accelerate resegregation of the Twin Cities.[120] Prior to 1986, federally supported housing programs, known as HUD (United States Department of Housing and Urban Development) programs, were closely regulated by civil rights rules and pro-integrative court decisions.[121] In 1986, HUD programs were replaced by tax credits, which were administered by the United States Department of the Treasury and subject to fewer civil rights rules.[122] This loosening of federal oversight gave the central-city housing developers another opportunity to capture a greater share of affordable development.[123]

As Minnesota enabling legislation was created in 1986 to administer LIHTC, the distribution system was designed to ensure that a disproportionate share of these credits would be dedicated to the central cities, effectively returning government-supported

116. *See generally* Edward Goetz, Karen Chapple & Barbara Lukermann, *Enabling Exclusion: The Retreat from Regional Fair Share Housing in the Implementation of the Minnesota Land Use Planning Act*, 22 J. PLAN. EDUC. & RES. 213, 217–18 (2003).

117. *See id.* at 213–14.

118. *Id.* at 223–24.

119. *Id.*

120. *See* Meredith Rieth, *Segregation Under the Guise of the Fair Housing Act: Affirmatively Furthering Segregative (and Expensive) Housing Development*, 33 LAW & INEQ. 285, 300 (2015).

121. *See generally* NAT'L LOW INCOME HOUS. COAL., A BRIEF HISTORICAL OVERVIEW OF AFFORDABLE RENTAL HOUSING (2015) (discussing the historical involvement of the HUD and other federal programs in providing housing).

122. *See id.* at 7; *see also Data Sets*, U.S. DEP'T OF HOUSING & URB. DEV, https://www.huduser.gov/portal/datasets/lihtc.html (last visited Dec. 13, 2016) ("Created by the Tax Reform Act of 1986, the LIHTC program gives state and local LIHTC-allocating agencies the equivalent of nearly $8 billion in annual budget authority to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.").

123. NAT'L LOW INCOME HOUS. COAL., *supra* note 121, at 7.

housing to segregated neighborhoods.[124] Minneapolis and Saint Paul both became "sub-allocators," and the Met Council (with input from the Minnesota Housing Finance Agency) was empowered to set the cities' minimum allotment of tax credits.[125] The Met Council chose to award the cities each a share that was far in excess of their shares of regional population.[126] Even beyond that, credits were awarded by a competitive point system that relied on calculated criteria.[127] Accordingly, these criteria ensured that the cities always received an even greater share than their guaranteed minimum.[128] In addition, these criteria frequently disadvantaged proposals for projects in mostly white, growing city neighborhoods or suburbs.[129]

LIHTC is also been notable for drawing another group of well-funded interests into the affordable housing world: for-profit investors and intermediaries.[130] In order to utilize tax credits, housing managers and developers form single-purpose partnerships with for-profit investors.[131] The investors buy their way into the partnership for the price of the tax credits, which are then deducted from the investors' annual tax bills.[132] The entire process, called syndication,[133] is facilitated by specialized attorneys and financial professionals.[134] The investors and syndicators have a strong interest in preserving the LIHTC system but no economic

124. *See* Rieth, *supra* note 120, at 285, 300–03.

125. REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 2.

126. *Id.* at 3 ("In 2012, about 25% of the region's population and housing units were located in Minneapolis and Saint Paul. However, more than twice this share of the region's subsidized housing was located there—59 percent of all subsidized units and 53 percent of LIHTC units.").

127. *Id.* at 20–24 (explaining the process through which points are allocated).

128. *Id.* at 20–21 ("State law currently guarantees that Minneapolis and St. Paul each receive a share of tax credits significantly greater than their share of the region's population.").

129. *Id.* at 23–26.

130. *See id.* at 20.

131. *See generally id.* at 22–23.

132. *Id.*

133. *Id.* at 24–25.

134. *See id.* at 25 ("[S]yndication drags a number of third parties into the affordable housing market . . . . These include not only the private investors, but specialized coordinators, or syndicators.").

interest whatsoever in pursuing genuine integrative affordable housing goals.[135]

Growing (and largely white) suburbs were always resistant to building affordable housing,[136] and when the central cities began to recapture federal funding through LIHTC and other means,[137] suburban governments did not oppose their efforts. Nor was there significant opposition at the state level. The Met Council, the regional entity with the most power to ensure that housing subsidies were put towards integrative ends, instead took an easier, more politically palatable path and directed money into urban communities where affordable development would meet no opposition.[138]

During the 1980s and 1990s, community development organizations became more influential and more deeply entrenched in metropolitan politics.[139] The collaborative funding structure of the tax credit gave rise to dozens of neighborhood-based low-income development organizations that actively sought to build housing in the areas they represented; those areas were almost invariably depressed central-city communities.[140] Because voter turnout and political participation were low in these neighborhoods, and there were few commercial or other interests with the resources to compete politically, community developers

135. *See id.* ("[Syndicators] may have objectives that are at odds with the housing objectives of the tax credit grant.").

136. *See* OVERVIEW OF THE COUNCIL'S RESPONSE, *supra* note 87, at 10.

137. *See supra* note 129 and accompanying text.

138. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 1 ("[P]otential projects in higher-opportunity suburban areas have gone unfunded."); *see also id.* at 3 ("Subsidized housing in the Twin Cities is highly concentrated in the region's two central cities. In 2012, about 25 percent of the region's population and housing units were located in Minneapolis and Saint Paul. However, more than twice this share of the region's subsidized housing was located there—59 percent of all subsidized units and 53 percent of LIHTC units.").

139. *See, e.g.*, METRO. CONSORTIUM OF CMTY. DEVELOPERS, 2014 ANNUAL REPORT (2014), http://www.mccdmn.org/wp-content/uploads/2014-MCCD-Annual -Report -Final.pdf (discussing the formation of the Metropolitan Consortium of Community Developers in 1989 and its path to becoming an influential organization involved in metropolitan politics).

140. *See, e.g.*, *Membership,* METROPOLITAN CONSORTIUM OF COMMUNITY DEVELOPERS, http://www.mccdmn.org/membership/our-members/ (last visited Dec. 13, 2016) (listing various community development organizations in Minnesota).

could easily build strong political constituencies.[141] These neighborhood entities in turn built coalitions with banks, which were required under the Community Reinvestment Act to show investment activity in segregated neighborhoods.[142] It was much cheaper and easier for banks to donate or loan a few million dollars to neighborhood housing developers than to actively pursue fair lending practices. By funding community developers, a bank could also generate strong allies who could be counted on to praise the bank's reinvestment policy and who would be unlikely to challenge any potentially discriminatory lending.[143]

The small neighborhood organizations, headed by and staffed with local activists, collaborated closely with larger, wealthier developers. The small neighborhood organizations, sometimes with nonwhite leadership, were politically attractive and wielded outsized influence, so they could effectively appeal for subsidies for "their" projects.[144] In reality, however, the design and construction of these projects were almost always beyond the financial resources and technical expertise of the tiny neighborhood group and instead were conducted almost entirely by a larger partner—usually a well-established nonprofit or for-profit developer.[145]

141. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 12 ("[W]hile developing in a particular neighborhood may be expensive, a community development corporation based in that neighborhood creates a political constituency for development activity focused in that neighborhood.").

142. *See generally* OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY DEVELOPMENTS FACT SHEET (2014), https://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-loans.pdf [hereinafter COMMUNITY DEVELOPMENTS FACT SHEET] (discussing what constitutes "community development" for banks seeking to comply with the Community Reinvestment Act); *see also* OFFICE OF THE COMPTROLLER OF THE CURRENCY, LOW-INCOME HOUSING TAX CREDITS: AFFORDABLE HOUSING INVESTMENT OPPORTUNITIES FOR BANKS 7 (2014), https://www.occ.gov/topics/community-affairs/publications/insights/insights-low-income-housing-tax-credits.pdf [hereinafter LOW-INCOME HOUSING TAX CREDITS] ("An important incentive for banks investing in LIHTCs is the [Community Reinvestment Act] consideration they may receive for making these investments.").

143. *See* LOW-INCOME HOUSING TAX CREDITS, *supra* note 142, at 9 ("Participating in LIHTC projects provides banks with opportunities to expand existing customer relationships and to develop new customer relationships.").

144. *See generally* COMMUNITY DEVELOPMENTS FACT SHEET, *supra* note 142 (considering ways in which banks can work with community organizations in order to comply with the Community Reinvestment Act).

145. REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 13 ("[L]arge[r] developers are able to independently conduct most

This rising nexus of political and economic forces contributed even further to the concentration of affordable housing in the central cities.[146] With favorable political tailwinds in segregated neighborhoods, large firms are less sensitive to costs, leading to major projects with ballooning budgets.[147] By comparison, because opposition to suburban affordable housing is greater,[148] developers face more resistance in the legal and political spheres, and, in any case, proportionately fewer dollars are available.[149] Although this has resulted in more cost-effective construction in the suburbs, it is unsurprising that many developers have little interest in an integrative model that offers fewer profits in exchange for harder work.

Affordable development sometimes contributes to a feedback loop of segregation, where a concentration of low-income housing in a neighborhood accelerates abandonment and disinvestment, which in turn attracts yet more attention from community developers and makes affordable development even easier to pursue.[150] For example, in the aftermath of the 2008 recession, North Minneapolis, which had for years been a high priority for community development, was one of the areas in the state hit

development, while neighborhood groups are forced to partner with builders, architects, financiers, and each other.").

146. Bloomberg News, *Building Affordable Housing Is Hardly Affordable*, FIN. AND COM. (July 26, 2016, 12:28 PM), http://finance-commerce.com/2016/07/building-affordable-housing-is-hardly-affordable/.

147. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 13 ("In terms of raw spending and revenue, the activities of the large members far outstrip those of the smaller members."); *see also id.* at 32 tbl.A.1 (showing determinants of per unit cost of affordable housing projects).

148. *See generally* Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507 (2015) (upholding the feasibility of bringing a disparate-impact claim in a dispute where a community-based non-profit challenged "where housing for low-income persons should be constructed in Dallas, Texas—that is, whether the housing should be built in the inner city or in the suburbs"); Michael Hoban, *Many Suburbs Dodging Issue of Affordable Housing*, URBANLAND (May 31, 2016), http://urbanland.uli.org/development-business/many-u-s-suburbs-dodging-issue-affordable-housing-construction/.

149. Christina Hoag, *Low-Income Housing Funds Are Drying Up All Over America*, TAKE PART (Jan. 13, 2015), http://www.takepart.com/article/2015/01/13/low-income-housing.

150. Frederick Melo, *U Professor Takes a Contrary View on Affordable Housing Development*, PIONEER PRESS (Minneapolis-Saint Paul) (Feb. 23, 2014), http://www.twincities.com/2014/02/23/u-professor-takes-a-contrary-view-on-affordable-housing-development/.

hardest by the foreclosure crisis.[151] Ironically, the area has become the epicenter of several major local affordable projects and initiatives, as foreclosed properties in distressed neighborhoods are cheap to acquire, and banks have proven more than willing to turn them over to developers and land banks at a discount.[152] At times, developers in these areas seem to have taken it upon themselves to convert every abandoned structure into new, permanent low-income housing. While this continual evolution of the housing stock keeps developers and financial professionals busy, it manifestly does not offer residents of distressed neighborhoods new housing opportunities in more affluent areas, promote racial integration, or promote economic integration.

Together, the entities involved in affordable development form a web of tightly interconnected government agencies, nonprofits, private developers, banks, and investors, which are all dependent upon a profitable model of building low-income housing in poor central-city neighborhoods. This collection of interests has coalesced into a dominant force in affordable housing in the Twin Cities. Collectively they are hereafter referred to as the poverty housing industry, or PHI.

B. The Creation of the Poverty Education Complex (PEC)

The rise of the PHI in the early 1990s was accompanied by a parallel movement in education policy. As Twin Cities neighborhoods resegregated, so did the schools. This triggered a decline in test scores, which was used by self-styled "school reformers" as evidence of the failure of central-city public education. School reformers argued that Minnesotans needed more "choice" in education: both the ability to choose which public school district to attend and also the option to choose between

151. *See, e.g.*, ANDRIANA ABORIETES & ROSE CARR, FED. RESERVE BANK OF MINNEAPOLIS, WEATHERING THE STORM: COMMUNITY DEVELOPERS IN MINNESOTA FACE THE FORECLOSURE CRISIS (2009), https://www.minneapolisfed.org/publications/community-dividend/weathering-the-storm-community-developers-in-minnesota-face-the-foreclosure-crisis ("In the hardest-hit parts of the two cities—North Minneapolis and St. Paul's East Side neighborhoods—foreclosures are dismantling neighborhood revitalization efforts . . . .").

152. *See, e.g.*, Jessica Mador, *Saving Foreclosed Homes in North Minneapolis*, MPR NEWS (Dec. 7, 2009), https://www.mprnews.org/story/2009/12/07/reclaiming-foreclosed-homes-in-north-minneapolis.

traditional public and independent charter schools.[153] They asserted that charter schools and choice would create a competitive race to the top and greater racial integration.[154] Similar to what happened in the affordable housing sector, a lucrative private education sector quickly established itself, consisting of advocacy groups, charter research organizations, charter schools, and charter support companies. This network of organizations is hereafter collectively referred to as the poverty education complex, or PEC.

Enhancing school integration efforts was one of the initial arguments made in support of creating open enrollment and charter schools, the two primary school choice measures in Minnesota.[155] However, both programs eventually evolved to share many of the same strategies and results that southern segregationists used to elude the mandates of *Brown v. Board of Education*.[156] Tellingly, charter proponents have completely abandoned any effort to defend the programs on the basis of integrative outcomes.

Historically, most charters were predominantly nonwhite, poor, and located in the central cities.[157] In more recent years,

153. *See* FAILED PROMISES, *supra* note 44, at 1.

154. *See generally* JOE NATHAN, CHARTER SCHOOLS: CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION (1996) (providing an overview of the charter school movement); TED KOLDERIE, CREATING THE CAPACITY FOR CHANGE: HOW AND WHY GOVERNORS AND LEGISLATURES ARE OPENING A NEW-SCHOOLS SECTOR IN PUBLIC EDUCATION (2004), http://www.educationevolving.org/pdf/Creating-Capacity-for-Change-Summary.pdf (explaining that public education has adapted to racial integration).

155. *See* CITIZEN'S LEAGUE, CHARTERED SCHOOLS = CHOICES FOR EDUCATORS + QUALITY FOR ALL STUDENTS, at I (1988), https://citizensleague.org/wp-content/uploads/2013/05/424.Report.Chartered-Schools-Choices-for-Education-Quality-for-All-Students.pdf ("Minneapolis and St. Paul have learned that school desegregation based solely on numbers and transportation produces neither sufficient integration nor assured access to quality education. We need a new approach to multicultural education that values quality as much as it does quotas, and that moves us closer to real integration as a community."). The Citizen's League report was one of the first detailed proposals for charter schools in the United States.

156. *See* 347 U.S. 483 (1954).

157. Myron Orfield & Thomas Luce, *Charters, Choice, and the Constitution*, 2014 U. CHI. LEGAL F. 377, 389–90 (2014), http://school-diversity.org/pdf/13_Orfield.pdf (explaining that the percentage of charters which are predominantly nonwhite has been high for most years since the mid-1990s).

much of the growth in charter enrollments has been in nearly all-white schools that appear in suburban areas where the public schools are becoming racially diverse—much like segregation academies in the Deep South.

White or nonwhite, charter schools in the Twin Cities remain very segregated.[158] Nearly 90% of black students at charters attend a segregated school, as do about 80% of Hispanic and Asian-American students.[159] Meanwhile, over 70% of white charter attendees attend a white-segregated school.[160] In most cases, these numbers continue to rise. The vast majority of charters, and especially nonwhite segregated schools, have produced poor student performance, even after controlling for their high poverty rates.[161]

Charters have been remarkably open about their attempts to create single-race enclaves, particularly in the central cities. While legally mandated segregation is forbidden, charters have found an effective workaround, one that skirts as close as possible to the enforced separation of the Jim Crow era—a large number of charters are culturally-focused and overwhelmingly composed of a single racial group, ensuring that students from any other group will remain isolated.[162] The strategy has proven highly effective at maintaining racial lines, as the degree of segregation at charters is much higher than at traditional public schools.[163] While even segregated traditional schools typically include a small minority of diverse students, segregated charters frequently enroll hundreds of students from one ethnic group, often without a single exception.[164] The public school system, forced to compete with charters for students and funds, is now slowly following suit, dividing diverse student bodies into separate schools, each explicitly targeted at a separate racial group.[165]

158. INST. ON METRO. OPPORTUNITY, CHARTER SCHOOLS IN THE TWIN CITIES: 2013 UPDATE 1 (2013) [hereinafter CHARTER SCHOOLS IN THE TWIN CITIES] ("This update . . . shows that charters are still much more likely to be segregated than their traditional counterparts.").

159. *Id.* at 5–6

160. *Id.* at 6.

161. *Id.* at 8–10.

162. FAILED PROMISES, *supra* note 44, at 39.

163. *Id.*

164. *Id.* at 39–40.

165. Beth Hawkins & Cynthia Boyd, *The Rise of Voluntarily Segregated Schools: New Trend, Familiar Problems*, MINNPOST (Nov. 19, 2008),

Similarly, the early years of open enrollment were dominated by race-neutral student movements.[166] But in recent years, growing numbers of white students are using the program to move from racially integrated schools (or schools in racial transition) to much less racially diverse schools[167]—a pattern closely resembling optional school boundaries, which were outlawed by the Supreme Court in the 1970s.[168] One key political support for the PEC came in the late 1990s, when the Minnesota Attorney General's office sharply changed its interpretation of the meaning of the federal equal protection clause. While civil rights stalwart John R. Tunheim was Chief Deputy Attorney General of Minnesota, elected state and local officials had been told they had broad discretion to integrate local schools.[169] After Tunheim left to become a federal judge, the Attorney General's office issued an opinion asserting that, without proof of discriminatory conduct, the integration plans it had previously encouraged were likely to be found illegal, in part because they included race-conscious remedies that could be found to discriminate against whites.[170] The opinion defended segregated schools, arguing that "*Brown v. Board of Education* did *not* stand for the proposition that racially segregated schools, without more, are inherently unequal."[171] The new rule, rather than being based in any existing law, was instead rooted in the office's speculative

https://www.minnpost.com/politics-policy/2008/11/rise-voluntarily-segregated-schools-new-trend-familiar-problems.

166. INST. ON METRO. OPPORTUNITY, OPEN ENROLLMENT AND RACIAL SEGREGATION IN THE TWIN CITIES: 2000–2010, at 7 (2013), http://www1.law.umn.edu/uploads/30/c7/30c7d1fd89a6b132c81b36b37a79e9e1/Open-Enrollment-and-Racial-Segregation-Final.pdf (explaining the transition from race neutral moves to more integrative or segregative moves).

167. *Id.*

168. *See, e.g.*, Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979); Milliken v. Bradley, 418 U.S. 717 (1974); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971).

169. STATE OF MINN. DEP'T OF CHILDREN, FAMILIES & LEARNING, STATEMENT OF NEED AND REASONABLENESS, IN THE MATTER OF PROPOSED RULES RELATING TO DESEGREGATION: MINNESOTA RULES CHAPTER 3535 (3535.0100 to 3535.0180) 7 (1998), https://www.leg.state.mn.us/archive/sonar/sonar-02791.pdf [hereinafter FAMILIES & LEARNING] ("The present rule assumes that there should be a certain racial balance, and requires districts to propose desegregation plans when that balance has been exceeded.").

170. *See id.*

171. *See id.* at 169.

assumption that the U.S. Supreme Court would soon declare almost all proactive integrative strategies unconstitutional.[172]

But charter schools and districts using the open enrollment program did not even have to abide by this new, greatly weakened integration rule. The new rule exempted charters and open enrollment from its requirements, making it nearly impossible for local schools to effectively integrate.[173] In the case of charters, this was achieved by a provision of the law bizarrely declaring that they are not considered "schools" for the purpose of the integration rule.[174] After the effective destruction of the integration rule, school segregation skyrocketed,[175] which in turn accelerated housing segregation and raised the profile of the community developers in the PHI.

Both the PHI and the PEC sought to exploit huge government programs in the areas of housing and education to create highly salaried administrative positions and private wealth. But unlike most powerful corporate interest groups, the PHI and the PEC tended to be active supporters of Democratic politicians. In part, this is out of necessity: both networks are heavily active within the Democratically-controlled central cities.

As the PHI and PEC grew more influential and the Met Council stopped enforcing Policy 39, the region's heretofore tiny black ghetto exploded in size, growing at the fourth fastest rate in the nation during the 1980s.[176] Meanwhile, Minneapolis's schools went from 34% nonwhite to 59% nonwhite in just twelve years.[177]

172. Nothing of the sort ever happened; indeed, the Supreme Court has gone on to affirm the permissibility of integration efforts like those previously used in Minnesota. *Id.* at 20–21 ("[T]here is a serious question whether the imposition of a strict numerical definition of segregation, followed by the use of a race-based remedy, such as student assignments based solely on race, or racial quotas at schools, would be sustained.").

173. *See generally* Margaret C. Hobday, Geneva Finn & Myron Orfield, *A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration*, 35 WM. MITCHELL L. REV. 948 (2009).

174. MINN. R. 3535.0110 subp. 8 (A) ("For purposes of parts 3535.0160 to 3535.0180 only, school does not mean . . . charter schools under Minnesota Statutes, chapter 124E.").

175. Hobday, Finn & Orfield, *supra* note 173.

176. Paul A. Jargowsky, *Ghetto Poverty Among Blacks in the 1980s*, 13 J. OF POL'Y ANALYSIS & MGMT. 288, 293 (1994).

177. ORFIELD, *supra* note 67, at 43.

IV. RESISTANCE

These regressive trends did not go unnoticed or unopposed. Unfortunately, efforts to reverse or slow the process of resegregation have thus far all been met with limited success, quickly foundering against suburban pushback or, more recently, the increasing influence of entrenched housing and education interests.

In 1992, fair housing advocates sued the Met Council and the city of Minneapolis over their segregated affordable housing policies.[178] After several years, the defendants settled in what became known as the Hollman Consent Decree,[179] using the lawsuit as an opportunity to expand suburban affordable housing. Several heavily-segregated public housing projects in North Minneapolis would be demolished, and replacement units would be constructed in the suburbs. Programs to encourage greater racial and economic integration were also instituted; for instance, public housing residents would also be given special "mobility vouchers" to help them find new housing.[180]

These efforts were no match for the political, social, and economic forces opposing integration. Over two hundred families applied for mobility vouchers.[181] But 71.9% of these applicants were subsequently unable to find a qualifying lease within the time frame allowed and thus were prevented from relocating.[182] This strongly indicated that the unavailability of accessible affordable housing was a major culprit in continuing residential segregation.

But the PHI, rather than regarding this disappointing outcome as a symptom of entrenched housing discrimination,

178. *See id.* at 20; *see also* EDWARD GOETZ, CTR. FOR URBAN & REG'L AFFAIRS, UNIV. OF MINN., *HOLLMAN V. CISNEROS*: DECONCENTRATING POVERTY IN MINNEAPOLIS, REPORT NO. 1: POLICY CONTEXT AND PREVIOUS RESEARCH ON HOUSING DISPERSAL 1 (2002), http://www.housinglink.org/Files/Hollman-Compilation.pdf [hereinafter REPORT NO. 1].

179. *See* EDWARD GOETZ, CTR. FOR URBAN & REG'L AFFAIRS, UNIV. OF MINN., *HOLLMAN V. CISNEROS:* DECONCENTRATING POVERTY IN MINNEAPOLIS, REPORT NO. 2: PLANNING FOR NORTH SIDE REDEVELOPMENT 1 (2002), http://www.housinglink.org/Files/Hollman-Compilation.pdf.

180. *See* GOETZ, REPORT NO. 1, *supra* note 178, at 35.

181. EDWARD GOETZ, CTR. FOR URBAN & REG'L AFFAIRS, UNIV. OF MINN., *HOLLMAN V. CISNEROS*: DECONCENTRATING POVERTY IN MINNEAPOLIS, REPORT NO. 8: POLICY CONTEXT AND PREVIOUS RESEARCH ON HOUSING DISPERSAL 35 (2002), http://www.housinglink.org/Files/Hollman-Compilation.pdf.

182. *Id.*

instead interpreted it as an indication that fair housing is unviable and undesirable. To evaluate the outcome of the lawsuit, the Family Housing Fund commissioned a study that characterized efforts to provide more suburban housing choices as "dispersal" or "deconcentration."[183] The evaluation approached the public debate over integration narrowly, focusing heavily on the views of a small number of mostly-white housing activists and a local community of non-English-speaking Asian immigrants.[184] It did not acknowledge the political forces, including those within the black community, that were continuing to fight to prevent segregation and preserve integrated schools.

The fight for integration was also taking place within the legislature. A political coalition of the cities and older suburbs urged a return to the Met Council's Policy 39 and proposed a bill that would strongly condition state funding on a city's willingness to provide a fair share of low-income housing.[185] But this bill was opposed by conservative suburban politicians, some of whom were quite explicit about their desire to maintain the suburbs as havens for the wealthy.[186] The bill passed both houses but was ultimately vetoed by Republican governor Arne Carlson.[187]

After protracted political battles, a compromise measure emerged in its place: a new law that dropped carrot-and-stick tactics for an approach that was "all carrot," so to speak. Suburban communities would voluntarily negotiate housing goals with the Met Council, and strong housing performance would be rewarded with increased funding, which would come from one of several

183. *See* GOETZ, REPORT NO. 1, *supra* note 178, at 61. This is the same study that demonstrated that most families seeking relocation were unable to find a qualifying lease.

184. *See* EDWARD GOETZ, CTR. FOR URBAN & REG'L AFFAIRS, UNIV. OF MINN., *HOLLMAN V. CISNEROS*: DECONCENTRATING POVERTY IN MINNEAPOLIS, REPORT NO. 6: THE EXPERIENCE OF DISPERSED FAMILIES (2002), http://www.housinglink.org/Files/Hollman-Compilation.pdf.

185. *See* H.F. 2171, 78th Leg., Reg. Sess. (Minn. 1994), https://www.revisor.mn.gov/laws/?year=1994&type=0&doctype=Chapter&id=594&format=pdf.

186. Dane Smith, *House OKs Penalties for Suburbs Lacking Low-Cost Housing*, STAR TRIB. (Minneapolis-Saint Paul), Apr. 30, 1993, 1993 WLNR 3952597 (quoting state representatives Eileen Tompkins and Todd H. Van Dellen) ("People moved to Apple Valley for the good life . . . . We're not going to sit here and let [the housing bill] ruin our community . . . . The suburbs exist for a reason . . . . They give people something to shoot for.").

187. H.R. Journal, 78th Leg., Reg. Sess. 8807–08 (Minn. 1994), https://www.leg.state.mn.us/archive/vetoes/1994veto_ch594.pdf.

newly created accounts.[188] Although this new law did not diminish the fair share and civil rights obligations already enshrined in Minnesota law, it created little additional pressure for cities to integrate, conditioning no preexisting funding on their compliance.[189] This was called the Livable Communities Act.[190]

Simultaneously, pressure for integration was mounting at the grassroots level. In 1995, the NAACP sued the state of Minnesota, alleging that segregation in Minneapolis had led to unconstitutionally inadequate city schools.[191] The lawsuit was the subject of detailed press coverage. These events coincided with crowded, emotional school board meetings in which hundreds of black parents from North Minneapolis forcefully opposed the city's effort to return to segregated neighborhood schools.[192] Much of the testimony centered on the injustice of Minneapolis's highly segregated pattern of neighborhood development and affordable housing construction.[193]

Suburban school boards, frightened by the prospect of mandated busing, proposed a negotiated resolution to the crisis. But this proposal collapsed when black community leaders noted that school integration without busing would require the creation of low-income housing in the wealthy suburbs—something suburban communities were unwilling to provide.[194] The Orono school superintendent, for instance, argued that, "The issue isn't as simple as providing low-cost housing." He instead suggested that the city focus on "creating jobs."[195] As the *Star Tribune* pointed out at the time, the suburbs failed "to put anything concrete on the

188. Kristine Nelson Fuge, *Exclusionary Zoning: Keeping People in Their Wrongful Places or a Valid Exercise of Local Control?*, 18 HAMLINE J. PUB. L. & POL'Y 148, 163–66 (1996).

189. *See* MINN. STAT. § 473.25 (2016) (listing the requirements of the program, none of which include conditioning preexisting funding on compliance).

190. Metropolitan Livable Communities Act of 1995, ch. 255, art. 1, § 1, 1995 Minn. Laws 2592, 2593–600 (codified at MINN. STAT. §§ 473.25–255 (2016)).

191. *See generally* Cynthia Boyd & Beth Hawkins, *School Integration Through the Years*, MINNPOST (Nov. 17, 2008), https://www.minnpost.com/infodoc/2008/11/school-integration-through-years.

192. *See generally* Jon Hilson, *NAACP Sues Minnesota To Defend Desegregation*, THE MILITANT (Oct. 16, 1995), http://www.themilitant.com/1995/5938/5938_3.html (discussing community resistance to desegregated school model).

193. *See id.*

194. Mike Kaszuba, *Suburban Housing Costs Keep Poor Away*, STAR TRIB. (Minneapolis-Saint Paul), Aug. 4, 1996, 1996 WLNR 5051342.

195. *Id.*

table," which "[left] them open to criticism that they are motivated more by fear of a court ruling than good intentions."[196]

Developments at the regional level were accompanied by a major push for more affordable housing within the central cities themselves, particularly Minneapolis. Throughout the 1990s, housing costs had been a topic of increasing importance in Minneapolis politics, as projections showed that within a few years even middle-class families would struggle to find affordable residences.[197] By 1994, this had led to the emergence of a high-profile grassroots campaign for affordability, which ceaselessly lobbied the city government for massive new investments in housing. The centerpiece and primary objective of this campaign was the creation of a Minneapolis Affordable Housing Trust Fund, which would build thousands of affordable units within the city.[198] Initially, the campaign included many civil rights advocates; when the City Council finally created a task force to address the issue, it placed john powell, a noted civil rights researcher, at its head.[199]

But political opposition to integration from state and regional government, as well as reluctance by the city to whole-heartedly address the affordability issue, created a problem: without participation by the Minneapolis suburbs, any attempt to provide huge amounts of cheap housing in the city itself would inevitably intensify segregation. This question divided housing activists. Nonetheless, absent any commitment from the state or Met Council to support integration, Minneapolis was incapable of resolving the problem on its own.

Meanwhile, the concerns raised by civil rights advocates did little to stop the efforts to construct ever-more affordable housing in Minneapolis. In 2001, these efforts culminated in the election of

196. *Id.*

197. *See* BARBARA J. RONNINGEN, MINN. STATE DEMOGRAPHIC CTR., RENTAL HOUSING BECOMES MORE AFFORDABLE IN THE 1990S (2003), https://www.mn.gov/admin/assets/Rental-housing-becomes-more-affordable-in-the-1990s-msdc-sept2003_tcm36-76775.pdf (providing an overview of housing costs in the 1990s); *Proportion of Households Burdened by Housing Costs, Minnesota*, MINN. 2020 (Jan. 2013), http://www.mn2020.org/assets/uploads/article/Jan2013_housing_graphs.pdf (providing graphs depicting housing costs in the 1990s).

198. *See* CITY OF MINNEAPOLIS, CITY OF MINNEAPOLIS AFFORDABLE HOUSING TRUST FUND 3 (2013), http://www.ci.minneapolis.mn.us/www/groups/public/@cped/documents/webcontent/wcms1p-105333.pdf.

199. *See* Kevin Diaz, *Task Force Lays Out Aggressive Plan for Affordable Minneapolis Housing*, STAR TRIB. (Minneapolis-Saint Paul), June 24, 1999, 1999 WLNR 6445395.

R.T. Rybak as mayor, a close ally of the PHI and PEC. Rybak campaigned heavily on the affordable housing issue, calling it his "top priority" and promising to erect an enormous "housing thermometer" to measure progress towards construction goals in front of City Hall.[200] Under Rybak, the city finally created the long-discussed Affordable Housing Trust Fund (AHTF).[201] In its first decade of operation, the AHTF would pour over $73 million into affordable development, resulting in the creation of over 6000 units in Minneapolis.[202] As is the case with nearly all of Minneapolis's affordable units, the vast majority of these are located in segregated, distressed neighborhoods.[203]

The AHTF replicated in microcosm a simple dynamic that was occurring throughout Minneapolis and Saint Paul. Although there was considerable political pressure to build affordable units in the metropolitan area, and the PHI provided a robust institutional framework for doing so, the state and Met Council were refusing to ensure that the suburbs received their fair share of housing.[204] As a result, all of the effort and resources for affordable housing found themselves focused in the neighborhoods of least resistance: the most racially-isolated, lowest-income regions of the two central cities.

The NAACP's civil rights efforts ran up against the same problem. Its victory in obtaining the 1995 Hollman Consent Decree, under which Minneapolis was obligated to raze segregated housing projects in North Minneapolis, was reversed when the suburbs failed to construct promised replacement units.[205] The

200. Steve Brandt, *Rybak's Top Issue, Housing, Gets the Spotlight*, STAR TRIB. (Minneapolis-Saint Paul), Apr. 7, 2002, 2002 WLNR 12194576.

201. *See* CTR. FOR CMTY. CHANGE, MINNEAPOLIS APPROVES INCREASED FUNDING FOR ITS AFFORDABLE HOUSING TRUST FUND (2014), http://housingtrustfundproject.org/minneapolis-approves-increased-funding-for-its-affordable-housing-trust-fund/.

202. Justin Miller, *Minneapolis Renters Face Huge Affordable-Housing Shortage*, MINNPOST (Jan. 14, 2014), https://www.minnpost.com/politics-policy/2014/01/minneapolis-renters-face-huge-affordable-housing-shortage.

203. *See* CMTY. PLANNING & ECON. DEV., CITY OF MINNEAPOLIS, CITY OF MINNEAPOLIS AFFORDABLE HOUSING TRUST FUND 2002–2012, at 7 (2013), http://www.minneapolismn.gov/www/groups/public/@cped/documents/webcontent/wcms1p-105333.pdf.

204. *See* Semuels, *supra* note 4.

205. *See generally* Ciara Carolyn Torres, *Housing in the Heartland: An Examination of the* Hollman v. Cisneros *Consent Decree, the Politics of Racial Concentration and the Possibilities Offered by Democratic Experimentalism*, 17 NAT'L

intransigence of suburban and regional governments had created the unenviable choice between public housing in the cities and no public housing at all, and the community split over whether to cancel the demolitions it had formerly requested.[206]

Jesse Ventura's Met Council, first appointed in 1998, provided a valuable assist in the push to massively increase affordable central-city housing construction. One of its most important tasks was to implement the Livable Communities Act (LCA).[207] Though the LCA represented a compromise measure, lacking the enforcement mechanisms of previous approaches, a number of civil rights advocates were still optimistic that it could trigger a transformation of the suburbs, reducing segregation in the region. In 2002, the law's sponsor told the *Star Tribune* it was accomplishing its goals and "ha[d] helped change the debate on affordable housing in most suburbs from 'whether' to 'how.'"[208]

But in a repudiation of the fair housing proponents who supported the passage of the act, Ventura's Met Council used the LCA to give the highest affordable housing goals to the deeply segregated central cities and low-income, rapidly segregating suburbs.[209] By 2007, local media was acknowledging that the LCA had "fallen far short" of meeting its affordable unit targets, with a number of suburban communities producing a tiny fraction of their negotiated goals.[210]

Ventura's Met Council had cynically used a law passed to open up whiter suburbs for affordable housing to *increase* the affordable housing shares of segregated neighborhoods. This reversal effectively undermined the political coalition for metropolitan

BLACK L.J. 98 (2003) (providing an extensive overview of the history and aftermath of the Hollman Consent Decree).

206. Kevin Diaz, *MCDA Calls Affordable Housing Report 'Problematic,'* STAR TRIB. (Minneapolis-Saint Paul), Aug. 17, 1999, 1999 WLNR 6451578.

207. Metropolitan Livable Communities Act of 1995, ch. 255, art. 1, § 1, 1995 Minn. Laws 2592, 2593–600 (codified at MINN. STAT. §§ 473.25–255 (2016)).

208. Steve Brandt, *Affordable Housing: Where Battle Lines—and Solutions—Are Being Drawn*, STAR TRIB. (Minneapolis-Saint Paul) (Jan. 20, 2002), 2002 WLNR 12172593.

209. The Met Council does not maintain a public list of Livable Communities Act per-community housing goals. The goals are on file at the Institute of Metropolitan Opportunity.

210. Scott Neal, *Editorial: Metro Failing to Meet Housing Goals*, STAR TRIB. (Minneapolis-Saint Paul) (July 17, 2007), http://edenprairieweblogs.org/scottneal/post/1062/.

reform that had existed between the central cities and older suburbs during the 1990s.

Previous Met Councils had used lawsuits as a fulcrum on which to leverage significant fair housing and civil rights reforms, like desegregating schools and integrating neighborhoods. But when Ventura's Met Council was sued to enforce the fair share requirement of the Land Use Planning Act, it reacted with hostility, hiring one of the region's best corporate law firms to defeat the under-resourced civil rights advocates.[211]

During the next several years, Minneapolis and Saint Paul would add more units of subsidized, very low-income housing than would be built in all the suburbs combined. Between 2002 and 2011, the region produced 2249 new, very affordable units (affordable to those earning 30% of the metro median income).[212] Ninety-two percent of these units were produced in the central cities, which have 23% of the region's population.[213] In other words, the central cities received four times their fair share of very low-income units. Virtually all of these units were located near segregated or re-segregating schools. Of the 7253 new and preserved very affordable units from this period, 74% were in the central cities—over three times their fair share.[214]

Faced with the undeniable failure of the LCA to accomplish its original aims, the Met Council, rather than restoring its previous, more successful policies, abandoned any pretense of fighting segregation. The Met Council's own documents captured an obvious change in priorities. As late as 1996, its Regional Blueprint discussed the stalled progress towards suburban housing integration, noting with concern that the situation had not improved in over a decade.[215] But by 2004, even this vestigial anxiety over civil rights had vanished.[216] That year's Regional Development Framework only noted that "[t]he region will, of course, need much more housing in the next 30 years" and

211. All. for Metro. Stability v. Metro. Council, No. C7-02-007774, 2003 WL 25485305 (D. Minn. 2003).

212. Data on regional housing production were obtained from resources maintained by HousingLink, including its annual reports; the most recent report is available at http://www.housinglink.org/Files/Housing_Counts_2002_2013.pdf.

213. *Id.*

214. *Id.*

215. *See* METRO. COUNCIL, REGIONAL BLUEPRINT 59 (1996).

216. METRO. COUNCIL, REGIONAL DEVELOPMENT FRAMEWORK 13 (2004).

emphasizes the importance of "public-private partnerships" in expanding housing supply.[217]

In 2010, the Council negotiated a new set of LCA goals.[218] From a civil rights perspective, the results were disastrous: the housing goals for exurban communities dropped by 42%, and the goals for predominately white communities dropped by 63%.[219] But the goals for the two central cities increased by 43%.[220]

Rather than acknowledging its own drifting priorities, the Council now claims, in a bold rewrite of history, that fair housing efforts were scuttled as part of a premeditated policy change. Its 2014 Housing Policy Plan ambiguously states that "actions in 1998 and 1999 eliminated [the Policy 39 fair share plan] from the metropolitan development guide."[221] But the Council has been unable to provide any record of such actions, and, under pressure to explain its odd assertion, has finally suggested that this landmark fair housing policy was eliminated by implication, after years of nonenforcement.[222] In other words, the Met Council, once an agency deeply concerned with the problem of regional segregation, now claims that its most important civil rights tool has simply atrophied away due to years of nonuse.[223]

Two decades of battles on behalf of integration have painted a gloomy picture of life in poor Twin Cities neighborhoods.[224] But

217. *Id.*

218. *See* Housing Preservation Project, *Met Council Establishes Two Sets of Housing Goals for Cities Starting in 2011*, TCHOUSINGPOLICY.ORG (2011), http://www.tchousingpolicy.org/act_locally/index.php?strWebAction=article_print&intArticleID=618; *see also* METRO. COUNCIL, METROSTATS 8 (2011), http://www.tchousingpolicy.org/_uls/resources/downloads/2011_2.11_AffordableHousing_MS2010.pdf (discussing the "2010 LCA housing goals" and the shortfalls in reaching these goals).

219. *See* METRO. COUNCIL, 2010 LIVABLE COMMUNITIES ACT (LCA) GOALS (2010) (on file with author). *See generally* METRO. COUNCIL, METROSTATS, *supra* note 218 (providing data regarding Affordable Housing Production in the Twin Cities Region and looking at planning and goals in central cities, developed suburbs, developing suburbs, rural centers, rural areas, and the metro area).

220. Figures generated by comparing the original 1995 goals to the 2010 goals. *See* IMO MEMORANDUM, *supra* note 52, at 19–20 (graphically illustrating the affordable housing goals for the Livable Communities Act between 1996 and 2010).

221. HOUSING POLICY PLAN, *supra* note 86, at 18.

222. IMO MEMORANDUM, *supra* note 52, at 32.

223. *Id.* at 32–33.

224. REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES, *supra* note 31, at 1.

the Met Council, it seems, subscribes to a different vision of housing disparities—a vision also favored by affordable housing developers.[225] In this view, the defining problem of housing inequality is simply a shortage of units, and low-income minorities no more want to live in the suburbs than they are missed by the affluent whites already there.[226] The solution is simple and never changes: more money is needed to build more units, wherever space for them can be found.

This viewpoint, characteristic of the PHI, now dominates housing policy, with real consequences for Twin Cities residents. The share of affordable housing in higher-income white suburbs has declined to the lowest percentage since the 1970s.[227] Meanwhile, unprecedented concentrations of subsidized housing, developed at heavy expense, is being targeted for locations near transit lines in poor neighborhoods. This land is potentially valuable and, if used for commercial or market-rate development, could have jumpstarted the recovery of those neighborhoods. Even though most unfilled *entry-level* jobs are now in the suburbs,[228] often without transit access,[229] the PHI continues to assert that affordable housing must be close to transit hubs and the central business districts, which serve as the region's largest clusters of *highly-skilled* jobs.[230]

Research shows that low-income housing tenants in growing suburbs are more likely to be employed at better jobs, with their children more likely to be doing better in higher-performing schools.[231] More than 60% of all nonwhite residents of the Twin Cities and 40% of nonwhite residents of subsidized housing live in

225. IMO MEMORANDUM, *supra* note 52, at 13.

226. *See id.*

227. Semuels, *supra* note 54.

228. Bruce Katz & Katherine Allen, *Help Wanted: Connecting Inner-City Job Seekers with Suburban Jobs*, 17 BROOKINGS REV. 31, 32 (1999), http://www.nsl.ethz.ch/displus/140/docs/bkatz.pdf.

229. *See* Adie Tomer, *Transit Access and Zero-Vehicle Households*, METROPOLITAN POL'Y PROGRAM AT BROOKINGS 6 (2011), https://www.brookings.edu/wp-content/uploads/2016/06/0818_transportation_tomer.pdf (stating that transit accessibility rates in major cities are nearly double that of suburban areas).

230. Katz & Allen, *supra* note 228, at 33.

231. Brett Theodos, Claudia Coulton & Amos Budde, *Getting to Better Performing Schools: The Role of Residential Mobility in School Attainment in Low-Income Neighborhoods*, 16 CITYSCAPE 10 (2014).

the suburbs,[232] and subsidized housing units in the suburbs have the region's longest waiting lists.[233] Nonetheless, the PHI argues that low-income racial minorities would prefer to stay in central-city neighborhoods, despite those neighborhoods' existing segregation or badly-performing schools, and that subsidized housing must be built in these communities to accommodate them.[234]

The PHI also argues that concentrating subsidized housing in poor neighborhoods will revitalize the housing markets of those neighborhoods.[235] But there is little evidence of any sustained or transformative revitalization during the last three decades of building subsidized housing in these neighborhoods.[236] Nor is there good evidence of long-term economic development benefits of concentrating subsidized housing anywhere else in the country.[237] In fact, studies on local subsidized housing projects suggest that major projects have no effect at all on neighborhood recovery.[238]

For some civil rights advocates, this is a familiar story—Minnesota is not the only place where development interests have succeeded in convincing politicians that affordable housing is synonymous with civil rights. But events in other regions also show that ignoring segregation can have costs. In 2009, Westchester County, a relatively progressive suburb of New York, was sued for its failure to remedy racial isolation.[239] The county's federally-

232. Statistics are from U.S. Census American Community Survey and Housing and Urban Development data compiled by the Institute on Metropolitan Opportunity, University of Minnesota Law School. Data is on file with author and is available upon request.

233. *See* MINN. HOUS. P'SHIP, SURVEY OF APPLICANTS TO THE MINNEAPOLIS PUBLIC HOUSING AUTHORITY SECTION 8 WAITING LIST 3 (2008), http://nlihc.org/sites/default/files/SIRR-MN-2008-3.pdf.

234. *See, e.g.*, Amanda Kolson Hurley, *When Integrating the Suburbs Isn't Enough*, CITYLAB.COM (Feb. 18, 2016), http://www.citylab.com/housing/2016/02/when-integrating-the-suburbs-isnt-enough/462765/ (providing statements from several people connected to community developers, including the primary lobbyist in Minnesota for PHI).

235. REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES, *supra* note 31, at 28.

236. *Id.* at 25.

237. JILL KHADDURI, KIMBERLY BURNETT & DAVID RODDA, TARGETING HOUSING PRODUCTION SUBSIDIES: LITERATURE REVIEW 63 (2003), https://www.huduser.gov/publications/pdf/targetinglitreview.pdf.

238. REFORMING SUBSIDIZED HOUSING IN THE TWIN CITIES, *supra* note 31, at 26–30.

239. U.S. Anti-Discrimination Ctr. v. Westchester Cty., 668 F. Supp. 2d 548 (S.D.N.Y 2009).

mandated analysis of impediments to fair housing had almost completely ignored the issues of race and segregation; the county claimed that "the most pressing impediment to fair housing was the lack of affordable housing stock" and that it had done "an outstanding job in increasing the stock of affordable housing."[240] The county had indeed added thousands of affordable units,[241] though many of its wealthy municipalities contributed little to this effort.[242] But, in an ominous decision for the Twin Cities, a federal judge decided this was insufficient.[243] Pointing out that "fair housing" and "affordable housing" are distinct concepts, she determined that the county had defrauded the federal government when it claimed to have fulfilled its housing-related civil rights obligations.[244]

V. THE PHI AND PEC TODAY

The PHI has grown ever more influential, and today it functions, in essence, as its own sector of industry. Community Development Corporations ("CDCs") alone account for revenues approaching $200 million per year, distributed across dozens of organizations with thousands of employees,[245] and a dense network of financial professionals specializing in affordable-housing funding has grown to support these institutions.[246] Today, most workers in the field of affordable housing come from a financial or development background and have little or no connection to metropolitan policymaking or civil rights.[247]

240. *Id.* at 551.

241. *See id.* at 564–65.

242. *See id.* at 559.

243. *See id.* at 564–565.

244. *Id.* at 554–55.

245. *See* REFORMING SUBSIDIZED HOUSING POLICY IN THE TWIN CITIES, *supra* note 31, at 26–30.

246. *See, e.g.*, *Current NHC Members*, NAT'L HOUSING CONF., http://www.nhc.org/members (last visited Dec. 13, 2016) (listing the largest partners of NHC, a national organization for affordable housing, as four large financial or investment institutions); *Learn More about SHOP Home Mortgage*, SHOP HOME MORTGAGE, http://www.shop-mortgage.org/about-shop-home-mortgage (last visited Dec. 13, 2016) (explaining that SHOP is an organization in the greater Twin Cities that partners with financial institutions and other organizations to provide home mortgages).

247. *See, e.g.*, *Leadership*, CORRIDORS OF OPPORTUNITY, http://www.corridorsofopportunity.org/partners/leadership (last visited Dec. 13,

In the public sector, the affordable housing policy apparatus has changed course to accommodate these new participants, with their heavily-financialized, entrepreneurial outlook.[248] Consequently, policymakers have minimized the role of integration even as a secondary aim of affordable development; for instance, the state today awards only 9 out of 246 available priority points for LIHTC projects located in an economically integrated neighborhood and no points at all for projects in white or racially integrated locations.[249]

In the early 2000s, Twin Cities nonprofit foundations, which heretofore had been strong supporters of integrated schools and neighborhoods, also began dramatically increasing funding to supporters of central-city housing and charter schools.[250] Their support for integration and civil rights seemed to diminish.[251]

By the time Mark Dayton was elected governor, members of the PHI would monopolize appointments to state agencies involved in housing and metropolitan development. Susan Haigh, the president of low-income housing developer Habitat for Humanity and an alumna of the affordable housing community, was appointed chair of the Met Council.[252] At the head of the Minnesota Housing Finance Agency was Mary Tingerthal, a financial professional who, according to her official biography, "coordinated the work of the Housing Partnership Fund . . . , Housing Partnership Ventures, [and] the Charter School

2016). Although a selection of the leaders on this list work in community focused organizations, many work in for-profit or government positions. *Id.*

248. See Rieth, *supra* note 120, at 287 ("This program serves not as a means to further fair housing, but rather favors expensive placements in segregated areas or communities in danger of re-segregating.").

249. *See* MINN. HOUS. FIN. AGENCY, LIHTC SELF-SCORING WORKSHEET (2013), http://www.mnhousing.gov/get/MHFA_012461.

250. Trends are from data compiled by the Institute of Metropolitan Opportunity, University of Minnesota Law School. Data is on file with author and is available upon request. Authors went through grant lists and 990 tax forms to determine how much money was going to civil rights, charters, and community developers. *See Form 990, Return of Organization Exempt From Income Tax*, I.R.S. (Aug. 2, 2016), https://www.irs.gov/uac/about-form-990 ("Tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations file [a 990] form to provide the IRS with the information required by section 6033.").

251. *Id.*

252. *See Meet Our Leadership Team*, TWIN CITIES HABITAT FOR HUMANITY, https://www.tchabitat.org/about/leadership#1 (last visited Dec. 13, 2016).

Financing Partnership, a new conduit for charter school loans . . . ."[253]

The PHI has evolved to keep abreast of new trends in urban development, such as increased enthusiasm for transit-oriented planning.[254] But as a consequence of the industry's risk-averse, technocratic leadership and minimal institutional expertise in civil rights, these efforts have almost always resulted in funding being directed into segregated urban neighborhoods.[255] For example, in 2007, many of the largest participants in affordable housing development teamed up with transit advocates and other regional reform groups to create Corridors of Opportunity, which would help distribute millions of dollars of new federal and philanthropic support.[256] Many of these millions ended up funding housing projects along the region's new Green Line light rail, as part of an attempt to create 4500 affordable units along the transit corridor.[257] Despite the fact that the Green Line passes through relatively affluent areas of both central cities, virtually all of the planned affordable units were located in one heavily-impoverished stretch in Saint Paul, including one neighborhood which boasts the dubious distinction of being the state's second-poorest census tract.[258]

253. *Governing Board*, NAT'L COMMUNITY INV. FUND, http://www.ncif.org/connect/about-ncif/ncif-trustees (last visited Dec. 13, 2016).

254. *See* CORRIDORS OF OPPORTUNITY, HOUSING/TRANSIT-ORIENTED DEVELOPMENT LOAN PROGRAM REQUEST FOR PROPOSALS 1 (Aug. 15, 2011), http://tcclandbank.org/downloads/Corridors-of-Opportunity-RFP.pdf.

255. *See, e.g.*, *The Poverty Housing Industry Is a Problem*, HOUSINGWIRE (Feb. 28, 2015), http://www.housingwire.com/blogs/1-rewired/post/36385-the-poverty-housing-industry-is-a-problem (discussing that housing funding must be distributed in a more even way, "rather than concentrating such projects in distressed, low-income, minority neighborhoods").

256. CORRIDORS OF OPPORTUNITY, *supra* note 254, at 1 ("[T]he partner lending institutions of the [Corridors of Opportunity] Initiative, will lend up to $14.3 million for the acquisition, rehabilitation, construction, and preservation of single family and multifamily affordable housing . . . and large multifamily housing or mixed-use transit oriented developments along . . . [the Green Line].").

257. TWIN CITIES LOCAL INITIATIVES SUPPORT CORP., CENTRAL CORRIDOR AFFORDABLE HOUSING COORDINATED PLAN: RECOMMENDED POLICIES AND STRATEGIES 5 (Jan. 2012), http://www.tclisc.org/PDFs/big_picture.pdf (explaining The Big Picture Project's expanded goal to achieve 4500 affordable housing units between 2011–2020).

258. *See Frogtown/Thomas-Dale Neighborhood*, MINN. COMPASS, http://www.mncompass.org/profiles/neighborhoods/st-paul/frogtown-thomas-dale (last visited Dec. 13, 2016).

In some ways, Corridors of Opportunity looks like the PHI in microcosm. It is led by a board composed of public officials and community organizations from Minneapolis and Saint Paul, affordable housing financiers, and a number of charter school affiliates.[259] Notable members include: the vice president of the Family Housing Fund (the "Fund"); the executive director of the Twin Cities branch of Local Initiatives Support Corporation (LISC), a financial organization which supports affordable housing nationwide; the president and CEO of Twin Cities Community Land Bank, the Family Housing Fund's subsidiary; a member of the Itasca Project, a group run by the national consulting firm McKinsey & Co., which promotes charter schools across the Twin Cities region; a president and CEO of a local charter school; the executive director of Nexus Community Partners, a community development organization focusing almost entirely on the poorest neighborhoods in North and South Minneapolis and Eastern Saint Paul; and the executive director of the Cornerstone Group, a for-profit real-estate company.[260] Met Council President Susan Haigh, formerly of Habitat for Humanity, sits as a co-chair.[261] There are no board members from civil rights organizations.

Besides showing the tangle of interests promoting inner-city affordable housing, Corridors of Opportunity illustrates another feature of the PHI: its tendency to blur the lines between the public and private sector. Corridors of Opportunity is theoretically a public entity, though it is largely composed of individuals from the private and nonprofit sectors. But to spur development along the Green Line, it works closely with a private-sector counterpart, the Central Corridor Funders Collaborative.[262] The Funders Collaborative, confusingly, includes many of the same members as Corridors of Opportunity, including LISC, the TCC Land Bank, the Family Housing Fund, and the Met Council.[263] Making matters

259. *Leadership*, CORRIDORS OF OPPORTUNITY, *supra* note 247.

260. *Id.*

261. *Id.*

262. *See Funders Collaborative and Corridors of Opportunity Recognized in Secretary's Award Presented to the Saint Paul Foundation*, CENT. CORRIDOR FUNDERS COLLABORATIVE BLOG (Oct. 2, 2013), http://www.funderscollaborative.org/blog-archive/funders-collaborative-and-corridors-of-opportunity-recognized-in-secretarys-award-presented-to-the-saint-paul-foundation.

263. *See* CENT. CORRIDOR FUNDERS COLLABORATIVE, THE BIG PICTURE PROJECT: PROGRESS REPORT 2016 (2016), http://www.funderscollaborative.org/wp-content/uploads/2016/04/BigPictureProgressReport2016Finalsingles.compressed.pdf.

worse, some of the organizations involved—for instance, the Family Housing Fund—have at times been described as "quasipublic" in character.[264] For outsiders, this labyrinth of collaboration makes it next to impossible to monitor the use of public money, to safeguard civil rights responsibilities, and to efficiently utilize disclosure laws.

The PEC is somewhat more centralized and interconnected than the PHI, with local advocacy organizations relying more than housing developers on the charitable contributions of extremely wealthy benefactors and major foundations. For instance, in 2014, the Bush Foundation awarded $200,000 in "Education Ecosystem" grants to nearly a dozen Twin Cities education reform organizations.[265] "Ecosystem" is an appropriate descriptor, as many of the recipients are closely intertwined, sometimes in ways that call their independence into question. For example, grant recipient Charter School Partners, theoretically an analysis and research organization, shared an office with fellow recipient MinnCAN, the former Minnesota chapter of national charter advocacy organization 50CAN.[266] National "grassroots" advocacy groups, such

The Big Picture Project, a collaborative project aimed at creating affordable housing and strengthening public and private investment in low-income neighborhoods, is hosted, in part, by Twin Cities LISC and supported by the Central Corridor Funders Collaborative. *Id.* at 8. Big Picture Oversight team members include individuals from the Metropolitan Council, Twin Cities LISC, and Family Housing Fund. *Id.* at 2; *see also Affordable Housing: Other Investments*, CENT. CORRIDOR FUNDERS COLLABORATIVE, http://www.funderscollaborative.org/affordable-housing/other-investments (last visited Dec. 13, 2016) ("The Funders Collaborative provided seed funding to the Twin Cities Community Land Bank for the purposes of acquiring strategic buildings or parcels of land along the Green Line for equitable development purposes.").

264. Taylor Gee, *Something Is Rotten in the State of Minnesota*, POLITICO (July 16, 2016) http://www.politico.com/magazine/story/2016/07/minnesota-race-inequality-philando-castile-214053.

265. *Minnesota Education Equity Partnership*, BUSH FOUND., https://www.bushfoundation.org/minnesota-education-equity-partnership (last visited Dec. 13, 2016).

266. *See* Sarah Lahm, *MinnCAN Shifts as Minneapolis School Board Race Gets "Animated,"* BRIGHT LIGHTS SMALL CITY BLOG (Oct. 1, 2016), http://www.brightlightsmallcity.com/minncan-shifts-as-minneapolis-school-board-race-gets-animated. Although the groups once shared office space, both MinnCAN and Charter School Partners have since disbanded. *See id.* ("[MinnCAN] shared space in southeast Minneapolis with local, but now defunct, charter school champions, Charter School Partners."); Andrea Roethke, *Thank*

as Students for Education Reform and Educators 4 Excellence, have been very active in the Twin Cities. The national media has frequently accused these two groups of serving as front organizations for wealthy donors, using their considerable financial resources to recruit thousands of rank-and-file members and creating the appearance of organic education advocacy.[267] At times, PEC organizations have come under scrutiny in local media for acting as financial conduits between national financiers and local school politics.[268]

Beyond these advocacy and support organizations, the PEC also includes, of course, hundreds of charter schools themselves. While some of these are simply small specialty institutions, such as Montessori schools, others are large and powerful regional actors. Charter superintendents sometimes earn considerably higher salaries than their counterparts in traditional public schools. One local charter "entrepreneur" attracted criticism when his personal compensation exceeded $270,000; his schools also employed several family members, bringing total compensation to more than $400,000.[269] Other Twin Cities charters are members of national charter school networks such as KIPP—schools that have been

You, MINNCAN BLOG (Sept. 28, 2016), https://minncan.org/blog/thank-you-2 (announcing that MinnCAN had disbanded).

267. *See, e.g.*, Valerie Strauss, *How to Spot a Fake 'Grassroots' Education Reform Group*, WASH. POST (Oct. 12, 2014), https://www.washingtonpost.com/news/answer-sheet/wp/2014/10/12/how-to-spot-a-fake-grassroots-education-reform-group.

268. Alejandra Matos, *Out-of-State Money Pouring into Minneapolis School Board Race*, STAR TRIB. (Minneapolis-Saint Paul) (Oct. 30, 2014), http://www.startribune.com/out-of-state-money-pouring-into-minneapolis-school-board-race/280863712.

269. Steve Brandt, *Mahmoud's 273K Salary Raises Eyebrows*, STAR TRIB. (Minneapolis-Saint Paul) (Aug. 15, 2012), http://www.startribune.com/mahmoud-s-273k-salary-raises-eyebrows/166274586. By contrast, charters usually pay their teachers low wages and provide few benefits, leading to high turnover. *Compare* MINN. ASS'N OF CHARTER SCH., MINNESOTA CHARTER SCHOOLS ANNUAL COMPENSATION (SALARY & BENEFITS) SURVEY REPORT - 2008 FINDINGS 1, http://www.mncharterschools.org/_uls/resources/2008_Compensation_Summary.pdf (last visited Apr. 26, 2017) (listing the average salary and benefits package for licensed Minnesota charter school teachers as $46,792), *with* NAT'L EDUC. ASS'N, RANKINGS AND ESTIMATES 19 (Dec. 2011), http://www.nea.org/assets/docs/NEA_Rankings_And_Estimates_FINAL_20120209.pdf (listing the average base salary for Minnesota public school teachers as $53,680).

frequently accused of practicing "corporate-style, finance-driven" education, roughly analogous to the dominant approach in affordable housing construction.[270]

In some cases, charter schools have hidden connections to for-profit companies. For example, Minnesota offers several online "virtual" high schools, which are largely based out of rural locales such as Fergus Falls or Houston, Minnesota.[271] Although ostensibly public schools like any other, these online schools pay millions of dollars a year to purchase curriculums from for-profit companies like K12 Incorporated, which help set up the schools and provide ongoing technical and instructional support.[272] Elsewhere in the nation, online high schools have been heavily criticized for providing low-quality education and failing to assist the struggling students they often court.[273]

Studies of student performance in Twin Cities charter schools have established that they underperform traditional public schools and have done so for all twenty years of their existence.[274] For all the attention and publicity they receive, and for all the corporate and philanthropic support they muster, charter schools are not only more segregated than traditional public schools, but actively contribute to greater segregation and weaker educational

270. *See* Jerusha Conner, *Public Schools Are a Public Good*, U.S. NEWS (Apr. 16, 2015, 11:15 AM), http://www.usnews.com/opinion/knowledge-bank/2015/04/16/charter-schools-threaten-a-cornerstone-of-american-democracy.

271. *See, e.g.*, MINN. VIRTUAL ACAD., http://mnva.k12.com/who-we-are/letter2.html (last visited Dec. 13, 2016) (stating that Minnesota Virtual Academy is a program of Houston Public Schools).

272. Information about the contractual relationship between the Fergus Falls and Houston School Districts and charter support companies was obtained through a Minnesota Data Practices Act request.

273. *See, e.g.*, Trip Gabriel, *More Pupils Are Learning Online, Fueling Debate on Quality*, N.Y. TIMES (Apr. 5, 2011), http://www.nytimes.com/2011/04/06/education/06online.html (stating that online education saves states money but does nothing to reduce the need for remedial college courses when students take online courses to make up for failed brick-and-mortar courses).

274. *See generally* Kim McGuire, *Charter Schools Struggling to Meet Academic Growth*, STAR TRIB. (Minneapolis-Saint Paul) (Feb. 17, 2015), http://www.startribune.com/charter-schools-struggling-to-meet-academic-growth/292139891/.

outcomes in the school system.[275] The PEC has created a race to the bottom, rather than a race to the top.[276]

VI. A BETTER SOLUTION

Could the current divided state of the Twin Cities have been avoided? One very clear and straightforward path to a more integrated region would have been to more evenly distribute subsidized housing across the metropolitan area. A more proactive approach to the location of LIHTC, Section 8 project-based housing, and Section 8 voucher-eligible rental units could have made a serious dent in regional segregation, creating better-integrated schools. Better-integrated schools, in turn would reduce many of the pressures that drive white flight and create housing segregation.[277]

This is clearly demonstrated by a simulation of the racial make-up of Twin Cities schools in a region where the existing subsidized housing stock is evenly distributed. For the purposes of the simulation, an integrated school was defined as one with nonwhite enrollment between twenty and sixty percent—a range consistent with most definitions.[278] In 2012–2013, 230 of the roughly 500 schools with defined attendance boundaries in the seven-county region[279] had racial mixes in this range;[280] 86 schools had nonwhite shares greater than 60%; and 175 schools had nonwhite shares less than 20%.[281] If integrating all schools was achieved simply by having

275. *See, e.g.*, CHARTER SCHOOLS IN THE TWIN CITIES, *supra* note 158, at 13.

276. *See generally supra* Section III.B (discussing the PEC's role in promoting Minnesota charter schools).

277. *See* THE RISE OF WHITE-SEGREGATED SUBSIDIZED HOUSING, *supra* note 21, at 8.

278. HALLEY POTTER, KIMBERLY QUICK & ELIZABETH DAVIS, THE CENTURY FOUND., A NEW WAVE OF SCHOOL INTEGRATION (Feb. 9, 2016), https://tcf.org/content/report/a-new-wave-of-school-integration/ ("Social scientists and education researchers sometimes use enrollment at or above 70 percent of a single racial or ethnic group as a threshold for measuring racial isolation.").

279. The "Twin Cities Region" is a "thriving community of nearly 3 million people, in 7 counties and 182 communities, encompassing nearly 3,000 square miles." *The Twin Cities Region*, METRO. COUNCIL, https://metrocouncil.org/About-Us/Who-We-Are/The-Twin-Cities-region.aspx (last visited Jan. 22, 2017).

280. This definition excludes charter, magnet, and special purpose schools without clearly defined attendance boundaries.

281. *See infra* Figure 6 ("Table 2") in this Part.

students of appropriate races in the appropriate schools trade places, then roughly 12,100 nonwhite students in schools above the 60% ceiling would have to trade places with 12,100 white students in schools below the 20% floor.[282] However, a choice program would be unlikely to actually result in one-for-one trades across schools.[283]

Instead, if only 75% of the nonwhite students leaving predominantly nonwhite schools were replaced by white students, then about 14,850 nonwhite students would have to relocate to predominantly white and already-integrated schools in order for all schools to be below the 60% ceiling. If 50% of moving nonwhite students were replaced by white students, then 17,750 nonwhite students would have to move. Although these numbers are non-trivial, they nonetheless represent only a fraction of nonwhite enrollment in the seven-county metropolitan area: in the most optimistic scenario, only 7% nonwhite students would change schools, while in the least optimistic, only 11% would. In other words, integration can still be achieved with relatively minor enrollment transfers.

Figure 6 ("Table 2") shows the potential impact of making changes in the existing distributions of LIHTC and Section 8 units and in the racial mix of subsidized housing residents.[284] The simulations show the potential integrative impacts if (1) subsidized units had been distributed across the region in proportions equal to the distribution of students in the region's schools and (2) the racial mix of residents of those units were the same everywhere. The children in each of the households in subsidized units were then assumed to attend the relevant neighborhood school.[285]

282. *See infra* Figure 6 ("Table 2") in this Part.

283. *See, e.g.*, FAILED PROMISES, *supra* note 44, at 28, 49.

284. Race data is available for LIHTC, Section 8 vouchers, and most (roughly two-thirds) Section 8 project-based units. Race distributions for Section 8 project-based units with no race data were estimated using the racial make-up of the Section 8 project-based sites closest to each unit missing data.

285. The number of children per subsidized unit was estimated using household data from the United States Bureau of the Census. The number and age distribution of children per unit were allowed to vary by race. Children in subsidized units were then assigned to the neighborhood elementary, middle, and high schools based on the estimated age distribution for all subsidized units "assigned" to specific school attendance boundaries.

Table 2: School Integration Simulations

	Elementary	Middle	High	Total
Number of minority students who would have to change schools in order to achieve racial balance in 2012-13				
100% Replacement	6,847	2,469	2,791	12,107
75% Replacement	8,056	3,528	3,284	14,868
Number of additional minority students who would already be in a racially integrated school if the racial make-up of subsidized housing were the same across the region and:				
LIHTC units were distributed across school attendance areas in proportion to school enrollments	2,028	355	541	2,924
Section 8 project-based units were distributed across school attendance areas in proportion to school enrollment	837	178	259	1,274
Section 8 voucher useage were distributed across school attendance areas in proportion to school enrollment	3,541	774	1,216	5,531
Total	6,406	1,307	2,016	9,729
Percentage of total moves needed for racially balanced schools (100% Replacement)	94	53	72	80
Percentage of total moves needed for racially balanced schools (75% Replacement)	80	37	61	65

Number of Schools Included in the Analysis	Elementary	Middle	High	Total
Predominantly White (0% - 20% nonwhite)	102	35	38	175
Diverse (20% - 60% nonwhite)	153	36	43	232
Predominantly Nonwhite (60% - 100% nonwhite)	58	18	13	89
Total	313	89	94	496

Definitions:
"Racial balance": an outcome where the racial make-up of all schools in the region falls between 20 and 60 percent nonwhite.
"100% Replacement": all nonwhite students leaving a predominantly nonwhite school are replaced by a white student from a predominantly white or racially diverse school.
"75% Replacement": all nonwhite students leaving a predominantly nonwhite school are replaced by a white student from a predominantly white or racially diverse school.

Sources: Minnesota Housing Finance Agency, Minnesota Department of Education and the Census Bureau.

Figure 6.

The program with the greatest potential impact is the Section 8 voucher program.[286] If Section 8 voucher usage was distributed

286. *See Housing Choice Voucher Fact Sheet*, U.S. DEP'T OF HOUSING & URB. DEV.,

evenly across the region and the distribution of households was race-neutral, a total of 5531 nonwhite students currently in predominantly nonwhite schools would instead be attending a racially balanced school.[287] The fact that the greatest potential for pro-integrative actions lies with the voucher program is encouraging in one way because changing the regional distribution of Section 8 vouchers does not necessarily involve one-for-one construction of new units in areas with shortfalls.[288] In many areas, existing rental units could fill the void simply by increasing the number of landlords who accept vouchers.[289] On the other hand, resistance to vouchers is still significant in many parts of the region.[290]

Adding the effects of equalizing the distribution of LIHTC and Section 8 project-based units increases the total number of nonwhite students in racially balanced schools to 9729. This represents a very substantial share of the total number of moves needed to eliminate racially segregated schools (predominantly white as well as predominantly nonwhite) in the region.[291] Fully

http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8 (last visited Dec. 13, 2016); *see also* 42 U.S.C. § 1437f(o) (2016) (codifying the Section 8 voucher program); 24 C.F.R. § 982.1 (2016) (providing the description and purpose of the HUD Housing Choice Voucher program).

287. *But cf.* Michelle Wilde Anderson, *Colorblind Segregation: Equal Protection as a Bar to Neighborhood Integration*, 92 CALIF. L. REV. 841, 870 (2004) ("Even if the technical purification of tenant assignment practices and equal distribution of site selection were to occur (though there is evidence to the contrary), it would provide a feeble corrective for the inertia of thousands of apartments, hundreds of developments, and numerous cities ordered according to race.").

288. *See* Stephanie DeLuca et al., *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families*, 647 ANNALS 268, 273 (2013) ("Those that could not be accommodated in the new housing developments were given the option to relocate to another public housing project, receive vouchers to find rental units in the private market, or relocate without any form of housing assistance.").

289. *But cf.* Laura Bacon, Godinez v. Sullivan-Lackey*: Creating A Meaningful Choice for Housing Choice Voucher Holders*, 55 DEPAUL L. REV. 1273, 1297 (2006) ("The widespread refusal of landlords to rent to voucher-holders may be the 'most serious obstacle' to the utility of the Section 8 Program.").

290. *See generally* Christopher Swope, *Subsidizing Blight*, GOVERNING (May 2002), http://www.governing.com/topics/health-human-services/housing/Subsidizing-Blight.html (discussing the destabilizing effect of multiple interests in the Section 8 voucher program).

291. *See* Hobday, Finn & Orfield, *supra* note 173, at 939–40 ("After nearly ten

80% of the needed moves would now be unnecessary if the region had distributed the existing stock of subsidized housing in a location- and race-neutral fashion.[292] And even if only 75% of nonwhite students leaving predominantly nonwhite schools are replaced by white students, two-thirds of the needed "moves" would be unnecessary.[293] In other words, if subsidized housing was currently distributed more equitably, it would be unnecessary to even discuss perennially controversial topics like pro-integrative school boundary reforms or busing programs.

These simulations represent fairly rough estimates. And as previously discussed, there are forces in education policy that both actively promote greater segregation and insulate existing segregation from legal and administrative remedies.[294] For instance, as long as charter schools and open enrollment remain exempted from the state's desegregation rule, privileged racial groups can use these alternative education systems as safe enclaves from integration.[295]

However, despite these caveats, the fundamental message of these models is clear. Over long periods of time, relatively modest housing policy changes have the potential to make a serious dent in school segregation.[296] Further, many of these very worthy programs currently have long waiting lists for participation.[297] If they were

years of Minnesota's educational school-choice experiment, segregation in Minnesota schools has only intensified—its students of color have steadily become more isolated in high-poverty, low-performing schools.").

292. Myron Orfield, *Regional Strategies for Racial Integration of Schools and Housing Post-Parents Involved*, 29 LAW & INEQ. 149, 165 (2011) ("For instance, if LIHTC and project-based Section 8 units were assigned randomly by race and located across the region in the same proportions as the overall population, then the region would be nearly a third of the way to the goal of integrated schools.").

293. *Id.*

294. *Cf.* Cindy Lavorato & Frank Spencer, *Back to the Future with Race-Based Mandates: A Response to Missed Opportunity*, 36 WM. MITCHELL L. REV. 1747, 1794–1805 (2010) (detailing the forces of segregation in two Minnesota school districts).

295. Myron Orfield, *Choice, Equal Protection, and Metropolitan Integration: The Hope of the Minneapolis Desegregation Settlement*, 24 LAW & INEQ. 269, 340 (2006).

296. J. William Callison, *Achieving Our Country: Geographic Desegregation and the Low-Income Housing Tax Credit*, 19 S. CAL. REV. L. & SOC. JUST. 101, 118 (2010) ("[T]his Article proposes using the Federal Low-Income Housing Tax Credit (LIHTC) program as a tool for improving integration in high-income areas with the greatest resources. Advocates for school integration have long argued that school integration has a strong, positive impact on residential integration.").

297. Rebecca T. Rotem, *Using Disparate Impact Analysis in Fair Housing Act*

expanded to levels commensurate with demand and modified to reflect the modest changes included in the simulations, these programs have the potential to eventually create something very special in America—a stably integrated regional school system.[298] The longer we leave this opportunity untapped, the more it demands to be considered.

VII. CONCLUSION

The numbers of highly segregated schools and neighborhoods in the Twin Cities are increasing rapidly, as is the growth of concentrated poverty.[299] It does not have to be this way. Minnesota had laws to prevent it.[300] When they were implemented and enforced, they were effective.[301] Sadly, political leaders from both parties dismantled the civil rights protections designed to prevent highly segregated schools.[302] Fair housing laws are still on the books, but they haven't guided housing policies for decades.[303] Political leaders are now set to further weaken these laws.[304] This political apathy has allowed highly profitable engines of segregation to flourish in our schools and neighborhoods.[305] A

Claims: Landlord Withdrawal from the Section 8 Voucher Program, 78 FORDHAM L. REV. 1971, 1978 (2010).

298. *Cf.* Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1568–69 (2007) ("While public school choice is an important tool for achieving socioeconomic school integration, housing policy offers a complementary strategy.").

299. *See supra* Part II.

300. *See* MINN. STAT. §§ 363A.09, 473.25–255 (2016).

301. *See supra* Part IV.

302. *See* Christoper P. McCormack, Note, *Business Necessity in Title VIII: Importing an Employment Discrimination Doctrine into the Fair Housing Act.*, 54 FORDHAM L. REV. 563, 578–79 (1986) ("It is also clear, however, that racially neutral practices of business and governmental actors in the housing sphere disproportionately limit the housing opportunities of members of protected groups."). *Cf.* Kriston Capps, *Why Democrats and Republicans Need to Talk About Affordable Housing*, CITYLAB (July 26, 2016), http://www.citylab.com/politics/2016/07/why-democrats-and-republicans-need-to-talk-about-affordable-housing/492959/ (explaining that affordable housing is a neutral topic that both parties should discuss).

303. *See* Semuels, *supra* note 4; *see, e.g.*, MINN. STAT. § 363A.09.

304. Kriston Capps, *What's at Stake in Trump's Pick to Lead HUD*, CITYLAB (Nov. 11, 2016), http://www.citylab.com/housing/2016/11/trump-and-the-future-of-fair-and-affordable-housing/507269/.

305. *See supra* Part IV.

number of influential entities now have hundreds of millions of dollars, thousands of employees, stunning political power, and a vested interest in maintaining the segregated society they service.[306] Indeed, as things are today, we could refer to a SHI—segregated housing industry—instead of a PHI; the PEC may as well be the SPEC.

One common set of buzzwords used to defend the allocation of resources to segregated neighborhoods is "equity in place": the notion that low-income communities of colors can be and should be restored from poverty without any fundamental change to living patterns.[307] But to civil rights advocates, not to mention many members of the communities in question, "equity in place" sounds suspiciously like "separate but equal."[308] There is, after all, a long tradition in American society of asking segregated communities to self-improve—while remaining segregated. This approach has not been exclusively the province of racists and racial supremacists.[309] In the aftermath of the Civil War, prominent writers and scholars (white and nonwhite alike) theorized that freed slaves must undergo "moral uplift" before joining middle-class society and that otherwise, integration could only bring chaos.[310] Today's policymakers use more sensitive language, but sometimes echoes of "moral uplift" appear in their recommendations.[311] Whether because of ideology, convenience, or simple carelessness, both the PHI and PEC have at times defended the idea that the solution to long-standing racial inequality is not social change but simple

306. *See* Michelle Adams, *Separate and UnEqual: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 430 (1996) ("But vast residential segregation on the basis of race did not develop overnight; its antecedents lie in actions taken by a myriad of private actors, aided in substantial part by local, state, and federal governmental entities.").

307. *See* Lisa M. Krzewinski, *Section 8's Failure to Integrate: The Interaction of Class-Based and Racial Discrimination*, 21 B.C. THIRD WORLD L. J. 315, 320–21 (2001) (reviewing Stephen Grant Meyer's 2000 book, *As Long as They Don't Move Next Door*, and stating that "many recipients end up using their subsidies to pay for their current low-income housing units or move within their own segregated neighborhoods; section 8 is clearly not helping poor minorities leave poor minority neighborhoods").

308. *See* Plessy v. Ferguson, 163 U.S. 537 (1896) (analyzing the "separate but equal" doctrine and Jim Crow laws).

309. Frederick C. Harris, *The Rise of Respectability Politics*, THE DISSENT, Winter 2014, at 33, 34.

310. *Id.*

311. *Id.*

largesse, directed from the government and the wealthy towards the poor and the segregated.[312] Sometimes, these entities are altruistic and genuinely well-meaning, but history and social science alike show that their approach will probably never succeed.

For policymakers and politicians still interested in integration, there is also an important broader lesson in the Twin Cities' return to segregation. For many years, civil rights advocates have treated segregation as primarily a product of white racism.[313] But the Minnesota experience shows that racial separation isn't always driven solely by a desire to exclude. When policymakers become apathetic about integration, economic forces and interest group politics can work in concert to pull nonwhite citizens into undesirable neighborhoods and failing schools, just as surely as racism can keep the same beleaguered minorities out of white enclaves.[314] Because of this, true and permanent integration cannot be effected by simply overcoming racial animus; advocates must also overcome institutions that have grown up around a segregated society and ultimately draw purpose from a segregated status quo. Some of these same institutions may profess to represent a progressive outlook or even work to help segregation's victims. Nonetheless, they remain invested in a society where racial concentration is preserved, not remedied. If these forces are not accounted for, even regions that have made remarkable progress can backslide into racial separation and isolation. This is what happened in Minnesota. Exclusionary pressures were comparatively weak in Minneapolis and Saint Paul. Advocates of integration assumed this alone was enough to create lasting social change. They were wrong.

But it is not too late to create a truly integrated society. Doing so would require a number of steps. Existing fair housing laws must be maintained and enforced. Fundamental civil rights protections must be applied to all parts of public education.[315] Governments and foundations must recommit to a racially integrated society, the society that was Martin Luther King's dream and that most Americans still aspire to. Public and philanthropic funds should go

312. *See supra* Part IV.

313. J. MORGAN KOUSSER, COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION 67 (1999).

314. *See supra* Part III.

315. john a. powell, *Living and Learning: Linking Housing and Education*, 80 MINN. L. REV. 749, 792–93 (1996).

to organizations that affirmatively further fair housing practices, not to those whose activities perpetuate segregation. And these commitments must extend to the entire Twin Cities area, not just to underprivileged pockets in Minneapolis and Saint Paul. The poverty housing industry should become a partnership for integrated housing; the poverty education complex should become a partnership for equal opportunity in integrated schools. Changing our current course will involve hard work and it may be less profitable for many of the entities that currently control housing and education policy. But our Minnesota values say that it is necessary, and our history shows that it is possible.

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