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Gendering the Gentrification of Public Housing: HOPE VI's Disparate Impact on Lowest-Income African American Women

Danielle Pelfrey Duryea*

INTRODUCTION

HOPE VI must have seemed so promising. When, in 1992, the Department of Housing and Urban Development (HUD) introduced the program later dubbed "HOPE VI,"¹ replacing the country's worst public housing projects with mixed-income, mixed-use, low-density new developments while providing targeted social services to low-income residents must have seemed like a worthy pursuit indeed. America's most run-down, crime-ridden, and poverty-plagued residential properties could be transformed into "human-scale" New Urbanist streetscapes, aesthetically continuous with surrounding areas, that would inspire

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1. In its early years, the program was called the "Urban Revitalization Demonstration Program" interchangeably with "HOPE VI." Where not otherwise indicated, I use "HOPE VI" to refer to both the Urban Revitalization Demonstration Program and HOPE VI because they are in essence a single program.

The "HOPE" in "HOPE VI" was the name of the existing umbrella grant program under which the Urban Revitalization Demonstration Program was initially organized. *See* S. Rep. No. 356, 102d Cong., 2d Sess. at 40 (Aug. 30, 1992). HUD and others variously list it as an acronym for "Housing Opportunities for People Everywhere" and "Homeownership and Opportunity for People Everywhere." *See, e.g.,* SUSAN J. POPKIN ET AL., A DECADE OF HOPE VI: RESEARCH FINDINGS AND POLICY CHALLENGES, 1 (2004) [hereinafter Popkin, DECADE]; U.S. Dep't of Hous. & Urban Dev., Homeownership and Opportunity for People Everywhere (Hope I), <http://www.hud.gov/progdsc/hope1fin.cfm> [hereinafter Hope I].

Also under organized the "HOPE" rubric were other public housing-related grant programs. HOPE I provided grants to organizations to help low-income people purchase public housing units; it last awarded funds in 1994. *See* Hope I, *supra*. HOPE II (HOPE for Homeownership of Multifamily Units) provided grants to organizations to help tenants purchase (and rehabilitate, if necessary) government-owned or -financed multifamily projects; it was last funded in 1995. U.S. Dep't of Hous. & Urban Dev., Section Four: Hope I, III [sic], and III and Youthbuild Programs, <http://www.hud.gov/sec4.cfm>. HOPE III (HOPE for Homeownership of Single Family Homes) gave similar grants for purchasing single-family dwellings and similarly received no funding after 1995. *Id.* HOPE IV (HOPE for Elderly Independence Demonstration) provided grants to public housing authorities to combine Section 8 rental assistance vouchers with support services so that very low-income senior citizens could remain in independent living environments; it was last funded in 1993. U.S. Dep't of Hous. & Urban Dev., Hope for Elderly Independence (Hope IV), <http://www.hud.gov/progdsc/hope4fin.cfm>.

pride and community in their residents.² Perhaps most importantly, HOPE VI's required social service component might have seemed, at last, to recognize certain structural aspects of poverty by providing holistic support services—to include health care, day care, job-training, and transportation—to public housing residents. And, with federal grants of up to \$50 million to each project selected, intended to be used to leverage private, philanthropic, and other public financing that can increase the capital available for a given project by several times,³ the program might have seemed sufficiently well-funded to make good on these promises.

Twelve years on, HOPE VI has been a mixed blessing.⁴ Proponents point to Atlanta's Centennial Place, Louisville's Park DuValle, and Washington, D.C.'s Townhomes on Capitol Hill as shining examples of urban neighborhood revitalization under HOPE VI⁵ and cite Seattle and Oakland as communities that

2. PETER CALTHORPE & WILLIAM FULTON, *THE REGIONAL CITY*, 254 (2001); Ngai Pindell, *Is There Hope for HOPE VI?*, 35 CONN. L. REV. 385, 420-424 (2003); Awards Recipients, Hope VI Mixed-Finance Public Housing, 2000 Winner, <http://www.ashinstitute.harvard.edu/Ash/hopevi.htm>; Ray Gindroz, *City Life and New Urbanism*, 29 FORDHAM URB. L.J. 1419, *passim* (2002).

New Urbanism is a school of thought in urban design that emphasizes multi-use development, walkable neighborhoods, community- and pedestrian-oriented public spaces, and aesthetic harmony between new development and existing buildings, including "traditional" architectural forms. Dating from the late 1980s, "[i]t is committed to re-establishing the relationship between the art of building and the making of community." Gindroz at 1427-28; *see also* Calthorpe & Fulton, *supra*, 254-56; Congress for the New Urbanism, Charter, <http://www.cnu.org/aboutcnu/index.cfm?formAction=charter>.

3. *See, e.g.*, Popkin, *DECADE*, *supra* note 1, at 2.

4. The work of leading HOPE VI researcher Susan Popkin, though on balance more positive than that of many commentators, consistently reflects this mixed verdict. *See, e.g.*, Susan J. Popkin, *The HOPE VI Program: What About the Residents?*, 3 (2002) [hereinafter Popkin, *What About the Residents?*] (HOPE VI "has the potential to improve former residents' lives, but it also can put vulnerable families at significant risk"); *HOPE VI Reauthorization and Small Community Mainstreet Revitalization Housing Act: Hearing on H.R. 1614 Before the House Comm. On Financial Servs.*, 108th Cong. 1 (2003) (statement of Susan J. Popkin), available at <http://www.urban.org/publications/900614.html> [hereinafter Popkin Testimony] ("Our findings indicate that the effects of the program on original residents have been mixed, but on balance the story is generally positive"); Margery Austin Turner, G. Thomas Kingsley, Susan J. Popkin, & Martin D. Abravane, *Urban Inst. What Next for Distressed Housing?* (2004), <http://www.urban.org/publications/1000654.html> ("[HOPE VI] has produced some of the most promising innovations in the history of federal efforts to revitalize distressed urban neighborhoods. But it is also responsible for some dismal failures, particularly when it comes to the relocation of vulnerable residents").

5. *See, e.g.*, Calthorpe & Fulton, *supra* note 2, at 256-58; Patrick E. Clancy & Leo Quigley, *HOPE VI: A Vital Tool for Comprehensive Neighborhood Revitalization*, GEO. J. POVERTY L. & POL'Y 527, 541 (2001); J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 428 (2003).

This note focuses on such HOPE VI "revitalization grants," which account for over \$5.8 billion of the almost \$6.2 billion that HOPE VI granted between fiscal years 1993 and 2005. U.S. Dep't of Hous. & Urban Dev., About HOPE VI, <http://www.hud.gov/offices/pih/programs/ph/hope6/about> [hereinafter About HOPE VI]. Between fiscal years 1996 and 2005, HOPE VI also made grants of almost \$440 million for demolition only and grants of more than \$2.4 million in 2005 for affordable housing development in connection with older downtown business district revitalization in communities with populations less than 50,000. *Id.*; U.S. Dep't of Hous. & Urban Dev., Main Street Grants, <http://www.hud.gov/offices/pih/programs/ph/hope6/grants/mainstreet/>. HOPE VI also made grants of less than \$15 million for "planning" only between fiscal years 1993 and 1995. About HOPE VI, *supra*.

developed extensive services and community-building programs with HOPE VI funds.⁶ They note that “original” residents⁷ who received housing vouchers have moved to census tracts with an average poverty rate of 27%, a stunning 34% decrease from the average poverty rate in their original census tract.⁸ But, as even HOPE VI’s most ardent advocates admit, there have been serious failures in implementation;⁹ HUD’s own internal auditor has found substantial administrative problems in its two program-wide reviews.¹⁰ The United States Government Accountability Office (GAO, formerly the Government Accounting Office) has identified inconsistent oversight of HOPE VI projects and failure to meet annual reporting requirements as significant weaknesses in HUD’s administration of the program. Some researchers, community activists, and “original” residents of HOPE VI redevelopment sites have criticized the program for 1) failing to collect data about and report on project outcomes,¹¹ 2) slashing the stock of affordable housing (“essentially in half or to a third”¹² in some areas) while improving bricks-and-mortar neighborhoods at the expense of “original” neighborhood residents;¹³ 3) failing to account for existing structural racial hypersegregation and isolation from economic opportunity;¹⁴ and 4) subordinating HUD’s public mission to market values of cost-minimization and efficiency.¹⁵

6. See generally ARTHUR J. NAPARSTEK & SUSAN R. FREIS, *HOPE VI: COMMUNITY-BUILDING MAKES A DIFFERENCE* (2000).

7. By “‘original’ residents” and “‘original’ households,” I mean a HOPE VI site’s resident population at the earliest HOPE VI planning, whatever form that initial “planning” may have taken. For this usage, see, e.g., Popkin Testimony, *supra* note 4; MAUREEN KENNEDY & PAUL LEONARD, *GENTRIFICATION: PRACTICE AND POLITICS*, 1 (2001).

8. G. THOMAS KINGSLEY ET AL., *HOPE VI AND SECTION 8: SPATIAL PATTERNS IN RELOCATION* 10 (2001); see also ABT ASSOC., INC., & URBAN INST., *THE HOPE VI RESIDENT TRACKING STUDY* 79 n.46 (2002) [hereinafter *RESIDENT TRACKING* 2002].

9. See, e.g., Clancy & Quigley, *supra* note 5, at 533-35; Popkin, *supra* note 4.

10. See U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF THE INSPECTOR GEN., *AUDIT OF FISCAL YEAR 1996 HOPE VI GRANT AWARD PROCESS* (1997), available at <http://www.hud.gov/oig/fig8h0001.pdf> (finding, *inter alia*, that HUD awarded \$381 million of Fiscal Year 1996 HOPE VI funds to 37 ineligible applicants); U.S. DEP’T OF HOUS. & URBAN DEV., OFFICE OF THE INSPECTOR GEN., *NATIONWIDE AUDIT: HOPE VI URBAN REVITALIZATION PROGRAM* (1998), available at <http://www.hud.gov/oig/fig960001.pdf> [hereinafter *1998 HUD Audit*] (identifying problems with program oversight, resident involvement, and supportive services).

11. See, e.g., NATIONAL HOUSING LAW PROJECT ET AL., *FALSE HOPE: A CRITICAL ASSESSMENT OF THE HOPE VI PUBLIC HOUSING REDEVELOPMENT PROGRAM* 31-36 (2002) [hereinafter *FALSE HOPE*].

12. See, e.g., Lynn E. Cunningham, *Islands of Affordability in a Sea of Gentrification: Lessons Learned from the D.C. Housing Authority’s HOPE VI Projects*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 353, 358 (2001) (discussing the outcome of four projects in Washington, D.C.).

13. See, e.g., *FALSE HOPE*, *supra* note 13, at 17-31, 37-41 ENPHRONT [EVERYWHERE AND NOW PUBLIC HOUSING RESIDENTS ORGANIZING TOGETHER], *A HOPE UNSEEN: VOICES FROM THE OTHER SIDE OF HOPE VI* (2003) [hereinafter *HOPE UNSEEN*]; Pindell, *supra* note 2, at 394-95.

14. See, e.g., John A. Powell & Marguerite L. Spencer, *Giving them the Old “One-Two”:* *Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433 (2003); Pindell, *supra* note 2, at 399-402; *FALSE HOPE*, *supra* note 11, at 38.

15. See Note, *When Hope Falls Short: HOPE VI, Accountability, and the Privatization of Public Housing*, 116 HARV. L. REV. 1477 (2003) [hereinafter *When Hope Falls Short*]. Compare Harry J. Wexler, *HOPE VI: Market Means/Public Ends—The Goals, Strategies, and Midterm Lessons of HUD’s Urban*

The HOPE VI program has even been characterized, pejoratively, as the public housing aspect of urban gentrification.¹⁶ In an era of upper-middle-class return from the suburbs to the cities, it replaces public housing with developments intended to draw higher-income people to the urban core where public housing is typically located. By replacing high-poverty, often high-density public housing with mixed-income, low-density development, HOPE VI projects certainly harmonize with the return of higher-income white people from the suburbs and physical improvements to (and increasing rents and property values in) formerly run-down areas of the urban core. And, in the process of pursuing the goal of poverty deconcentration, HOPE VI projects have accelerated the displacement of lower-income—indeed, lowest-income—residents of color in city centers where HOPE VI target sites have been “islands of affordability in a sea of gentrification.”¹⁷

This displacement is occurring in the context of a deepening affordable housing crisis—what may well be “an unprecedented and growing imbalance between demand for housing and the ability to produce an adequate supply at an affordable cost.”¹⁸ And this crisis, for a complex of reasons, disproportionately

Revitalization Demonstration Program, 10 J. AFFORDABLE HOUSING 195 (2001) (a rosier view of HOPE VI's public/private amalgam).

16. See Cunningham, *supra* note 12, at 357 (describing HOPE VI project in Capitol Hill as “look[ing] to ‘original’ residents] like another tool in the hands of the area’s gentrifiers to reduce the number of affordable units”); Powell & Spencer, *supra* note 14. For various definitions of gentrification, see, e.g., KENNEDY & LEONARD, *supra* note 7, at 2.

17. Cunningham, *supra* note 12. Deconcentrating poverty has been one of the key elements of the program. Of necessity, then, in almost every HOPE VI project there are fewer (sometimes dramatically fewer) units on-site for “original” residents when the redevelopment is finished. See, e.g., GEN. ACCOUNTING OFFICE, HOPE VI: PROGRESS AND PROBLEMS IN REVITALIZING DISTRESSED PUBLIC HOUSING, 1 (1998) [hereinafter PROGRESS AND PROBLEMS]. In gentrified or gentrifying urban cores, as Cunningham (among others) observes, this is a recipe for Urban Renewal-like displacement of poor people of color if not managed properly. See *id.* at 366; FALSE HOPE, *supra* note 11, at 37-41. And, in fact, in a limited study of Section 8 voucher use with HOPE VI relocation, the average distance that relocatees have moved from their original neighborhood was 3.9 miles, soaring over 5.5 miles in larger cities. KINGSLEY ET AL., *supra* note 8, at 2; see also RESIDENT TRACKING 2002, *supra* note 8, at 11-56 (maps accompanying case studies of eight HOPE VI sites chart “original” resident displacement over wide area). These results make the program at least consonant, if not congruent, with unregulated gentrification. In worst-case scenarios, such as Boston’s Clippership development, local public housing authorities actually appear to be colluding with developers to clear a newly-desirable site of existing public housing so that it can be developed for higher-income consumption, regardless of whether it is truly “severely distressed.” See *When Hope Falls Short*, *supra* note 15, at 1494-95.

18. E.g., Molly A. Sellman, *Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing*, 20 URB. LAW. 73, 74 (1988). See also, e.g., Michael Grunwald, *Housing Crunch Worsens for Poor; HUD Aid No Match for Soaring Rents, Fewer Apartments*, WASHINGTON POST, Oct. 12, 1999, at A1 (“By all accounts, the nation is mired in a severe affordable-housing crisis, with record low vacancy rates, rents rising at twice the rate of inflation, interminable waiting lists for federal aid, and an unprecedented 5.3 million families paying half their incomes in rent.”); cf. also, e.g., Popkin, *What About the Residents?*, *supra* note 4, at 3 (“By 2002, a minimum-wage worker could not afford to rent a standard two-bedroom unit in any U.S. city”); see also César E. Torres, *The Housing Crisis Facing Low Income Families*, 29 SETON HALL L. REV. 1498, 1502-06 (1999); Jason DeParle, *The Year That Housing Died*, N.Y. TIMES MAGAZINE, October 20, 1996.

affects women: woman-headed households are twice as likely as the total population to face critical housing needs.¹⁹ Yet neither HOPE VI's proponents nor its critics have seriously considered its gender dimension. In this context of urban gentrification, affordable housing crisis, and racial hypersegregation, I argue, HOPE VI discriminates against lowest-income African American women because it disproportionately destabilizes the economically-precarious, female-headed households who predominate in the severely-distressed public housing projects its grants have targeted.

This Note applies "intersectional" feminist analysis to explore this hypothesis.²⁰ Part I reviews the historical development of HOPE VI and the statutory and regulatory structure of the program. Part II identifies the predominance of lowest-income African American women living in public housing targeted by HOPE VI grants and outlines how the program's shortcomings are likely to have had unique negative impacts on these householders *as* African American women, distinct from those it may have had on African American men and non-African American men and women. Part III proposes disparate impact litigation and policy reform as remedies for these discriminatory effects. In closing, I consider the political prospects for reforming HOPE VI to mitigate its raced and gendered disparate impact.

I. THE ROAD TO HOPE VI

HOPE VI was born during "a tumultuous period in HUD's history,"²¹ to say the least. Indeed, during HOPE VI's early years, HUD faced the possibility of being dismantled altogether.²² To appreciate the crisis facing HUD in the early 1990s, and how HOPE VI formed a crucial part of the Department's response, a brief survey of American public housing history is in order.

A. Public Housing in the United States to the Late 1980s

Although there were some federal and local government initiatives to subsidize housing before the New Deal, most consider modern American public

19. See McAuley Institute Briefs Congressional Staff on Women's Need for Affordable Housing, 31 No. CD-7 HDR CURRENT DEVELOPMENTS 11 (2003) (citing HUD's 2001 American Housing Survey).

20. Kimberlé Crenshaw is often credited with introducing this concept to legal scholarship in her article *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STANFORD L. REV. 1241 (1991). The non-additive/intersectional identity analytic had found earlier form in literary criticism. See, e.g., Deborah E. McDowell, *New Directions for Black Feminist Criticism*, in THE NEW FEMINIST CRITICISM (Elaine Showalter, ed. 1985); GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987).

21. Clancy & Quigley, *supra* note 5, at 535.

22. See, e.g., Guy Gugliotta, *HUD: Enabling Upgrades in Housing*, WASHINGTON POST, Dec. 20, 1994, at A16 ("The president gave us a direct order—change . . . or face elimination of HUD," said Department secretary Henry Cisneros. "There is something about the prospect of elimination that focuses your attention."); Bob Herbert, *Renovating HUD*, N.Y. TIMES, Oct. 18, 1998, at WK15.

housing to have begun with the United States Housing Act of 1937.²³ For the first time, as millions of formerly middle-class people became unable to afford adequate housing as a result of the Depression, the federal government systematically took responsibility for housing those who could not afford to compete for “decent, safe, and sanitary dwellings” in the private market.²⁴ Significantly, however, the 1937 Act linked that task with goals of job creation and “slum clearance”; indeed, “alleviat[ing] unemployment” preceded “remedy[ing] housing conditions” in the statutory text.²⁵ And the 1937 Act specified “families of low-income,” both urban and rural, as its intended beneficiaries.²⁶ That is, the 1937 Act’s intended beneficiaries were not the very poor, but rather middle-class people temporarily impoverished by the Depression.²⁷ As a result, it was initially believed that no federal outlay would be required beyond the initial development costs.²⁸ But because rents were fixed, the cost of upkeep soon outpaced incoming rents, and units quickly deteriorated.²⁹

Public housing was, however, racially segregated “from its beginnings,”³⁰ and was frequently the site where policymakers and politicians proved willing to “compromise[] in the face of popular demands for economic and racial segregation.”³¹ In the postwar period, suburban growth took off, supported by explicitly racist federal home loan guarantee policies that discouraged homeownership in racially-mixed city neighborhoods and heavily subsidized “white flight” to the suburbs.³² Public housing, which had mainly been built on the sites of old slums, was left stranded in city centers, now largely inhabited by people of color and the very poor.³³ Not until 1962 did official segregation end in federal public housing, but that decade’s mass construction of large inner-city public housing projects guaranteed that *de facto* racial segregation remained, and the federal government’s ongoing unwillingness to fund public housing maintenance

23. See, e.g., Torres, *supra* note 18, at 1501; Howard Husock, *We Don't Need Subsidized Housing*, CITY J., Winter 1997, at 52. The earliest federal intervention in housing issues appears to have been an 1880 grant of \$20,000 to study housing in the United States. ROBERT MOORE FISHER, TWENTY YEARS OF PUBLIC HOUSING 9 (1959), cited in Michael S. FitzPatrick, Note, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. POVERTY L. & POL'Y 421, 424 (2000).

24. Wagner-Steagall Housing Act, ch. 896, 50 Stat. 888 (1937) [hereinafter 1937 Act]. On the middle-class target population for New Deal federal housing, see, e.g., LAWRENCE FRIEDMAN, GOVERNMENT AND SLUM HOUSING: A CENTURY OF FRUSTRATION 99-109 (1968).

25. 1937 Act, *supra* note 24.

26. *Id.*

27. See, e.g., Friedman, *supra* note 24, at 106.

28. See *id.* at 107-09.

29. See *id.*

30. Pindell, *supra* note 2, at 400.

31. *Id.* at 402.

32. See DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 53-55 (1993); Friedman, *supra* note 24, at 142-57, 197-98.

33. See MASSEY & DENTON, *supra* note 32, at 45-48, 55-57; Friedman, *supra* note 24, at 117, 122-24.

assured that these developments too would deteriorate speedily.³⁴

By the late 1980s, most Americans considered public housing to be an abject failure.³⁵ At the turn of the decade, scandals revealed an estimated \$2 billion of losses resulting from fraud, influence peddling, and alleged misappropriation of funds at HUD's highest levels during the Reagan era.³⁶ HUD's Assistant Secretary for public housing described many local public housing authorities as "patronage parlors of disaster."³⁷ In the midst of this crisis, near the end of the first year of the George H.W. Bush administration, Congress created the National Commission on Severely Distressed Public Housing (hereinafter "the Commission") to identify the country's worst public housing projects, consider existing strategies for addressing their problems, and develop a plan for future federal government action.³⁸ The aim, Congress decreed, was "to eliminate by the year 2000 unfit living conditions in public housing projects determined by the Commission to be the most severely distressed."³⁹ From this Commission came the proposals that, under mounting political pressures, quickly generated HUD's Urban Revitalization Demonstration Program, later to be dubbed HOPE VI.

B. From the National Commission Report to HOPE VI

Almost three years after the Commission was established, just a few months before the presidential election of 1992, it released its final report. After considering development size, vacancy rates, occupancy by children, "family distress,"⁴⁰ crime rates, and physical deterioration, the Commission estimated that about 6% of the nation's public housing, approximately 86,000 units,

34. See MASSEY & DENTON, *supra* note 32, at 56-57; FitzPatrick, *supra* note 23, at 430-31.

35. See, e.g., Popkin, *What About the Residents?*, *supra* note 18, at 2. This view continued to flourish through the 1990s. See, e.g., Peter W. Salsich, Jr., *A Decent Home for Every American: Can the 1949 Goal Be Met?*, 71 N.C. L. Rev. 1619, 1639 (1993); Press Release, National Low Income Housing Coalition, Voters Decry Big Government Housing Initiative But Applaud Nonprofits' Efforts, available at <http://www.nlihc.org/pubs/mediapr.htm> (Mar. 3, 1998). In 1998, the Pew Center for the People and the Press found that HUD tied with the CIA for second-least favorably-perceived federal agency (the Internal Revenue Service, unsurprisingly, was the least favorably-perceived). Pew Ctr. for the People & the Press, *How Americans View Government: Deconstructing Distrust*, <http://people-press.org/reports/display.php3?ReportID=95> (Mar. 10, 1998).

36. See, e.g., *The Reagan Scandals*, WASHINGTON POST, July 30, 1989, at C6.

37. Michael DeCourcy Hinds, *Public Housing Ills Lead to Questions About H.U.D.*, N.Y. TIMES, July 20, 1992, at A8.

38. Pub. L. No. 101-235, Tit. V, §§ 501-07 (1989) (codified at 12 U.S.C. § 1715z-1a).

39. *Id.*

40. See NAT'L COMM'N ON SEVERELY DISTRESSED PUB. HOUSING, THE FINAL REPORT OF THE NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING: A REPORT TO THE CONGRESS AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, App. B-2 (1992) [hereinafter FINAL REPORT]. "Family distress" encompassed 1) lack of social and support services in the family's immediate area, 2) lack of employment opportunities, 3) low education, employment, and income rates, and 4) highly concentrated poverty in the area. *Id.* at App. B-3-B-5.

qualified as “severely distressed.”⁴¹ Living conditions in these units, the Commission testified, caused their residents “almost unimaginable” suffering.⁴² Nevertheless, the report expressly emphasized that the great majority of the public housing stock remained sound and “continue[d] to provide an important rental housing resource for many low-income families.”⁴³ To address the needs of “severely distressed” public housing projects and their residents, the Final Report advised, the federal government must support physical improvements, management improvements, and community support services to meet residents’ needs.⁴⁴ In the strongest terms, the Commission called on the nation to “act now to eliminate the public failure, the national disgrace, that we almost euphemistically call severely distressed public housing.”⁴⁵ Mere weeks after the Final Report was released, Congress responded by authorizing and funding the Urban Revitalization Demonstration Program (alternately called HOPE VI⁴⁶) in the fiscal year 1993 appropriations act.⁴⁷

The Demonstration Program was intended “to go beyond bricks and mortar to address the social and economic needs of the residents . . . and the health of their surrounding neighborhood” through an annual competitive grant regime for local public housing authorities (PHAs).⁴⁸ The Demonstration Program legislation emphasized that grants of up to \$50 million each should go to PHAs proposing major reconstruction of the most dilapidated projects in the country’s forty most populous cities.⁴⁹ Any one Demonstration Program grant could be used to improve up to 500 units in up to three different geographical areas, which PHAs had to identify according to the standards of “severe distress” outlined in the Commission’s Final Report.⁵⁰ The legislation required a community services component in each grant proposal and enumerated some of the supportive services envisioned in the Final Report, established a ceiling of 20% of the grant to be used for that purpose, and mandated local matching of federal social services funding up to 15% of the grant amount.⁵¹ The legislation emphasized the need to replace units lost to the affordable housing stock as a result of the new

41. *Id.* at 2. The Commission arrived at the 6% number by estimating the number of units requiring modernization that would cost more than 60% of HUD’s Total Development Cost (TDC) guidelines. *Id.* at 15. The TDC estimates the amount required to replace a unit of public housing, not including certain related costs such as site acquisition. *Id.* at 32; see also 24 C.F.R. §§ 941.103, 941.306 (2006).

42. FINAL REPORT, *supra* note 40, at xiv.

43. *Id.* at 2.

44. See *id.* at 9-33.

45. *Id.* at 6.

46. See *supra*, note 1.

47. Pub. L. No. 102-389, Tit. II (1992). HUD describes HOPE VI as a “direct result” of the report. U.S. DEP’T OF HOUS. & URBAN DEV., HOPE VI PROGRAM AUTHORITY AND FUNDING HISTORY 1 (2003), available at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/fundinghistory.pdf>.

48. Popkin, *What About the Residents?*, *supra* note 4, at 2.

49. See Pub. L. No. 102-389, *supra* note 47.

50. *Id.*

51. *Id.*

program, with no more than one-third of the units eliminated by any program to be replaced in the form of vouchers, and specifying that the remaining two-thirds must be replaced by "hard units,"⁵² whether in "conventional public housing" or in new construction or other rehabilitated units with equivalent resident eligibility standards.⁵³ And, finally, the legislation authorized HUD to halt funding to any PHA that did not "proceed in a manner consistent with the plan approved for that community."⁵⁴

From fiscal year 1993,⁵⁵ then, PHAs have submitted proposals in response to annual HUD Notices of Funding Availability (hereinafter NOFAs) that outline the factors to be considered in making each year's HOPE VI grants and the weight to be given each factor in the grantmaking process. HUD has never issued standard notice-and-comment regulations for the program.⁵⁶ Instead, it has administered the program through 1) annual NOFAs, which can change from year to year,⁵⁷ 2) the terms of its individual contracts with grant-recipient PHAs,

52. For the term "hard unit," see, e.g., W. David Koeninger, *A Room of One's Own and Five Hundred Pounds Becomes a Piece of Paper and "Get a Job": Evaluating Changes in Public Housing Policy from a Feminist Perspective*, 16 ST. LOUIS U. PUB. L. REV., 445, *passim* (1997).

53. See Pub. L. No. 102-389, *supra* note 47.

54. *Id.*

55. By the time the program was re-funded for fiscal year 1994, "HOPE VI" was apparently the preferred program name, and eventually "Urban Revitalization Demonstration Program" was dropped altogether.

56. U.S. Dep't of Hous. & Urban Dev., HOPE VI, <http://www.hud.gov/offices/pih/programs/ph/hope6/about/description.cfm> ("No regulations have been published for the HOPE VI program."); see also GAO, PROGRESS AND PROBLEMS, *supra* note 17, at 17.

57. The 2003 NOFA, for example, listed as the program's key elements:

- (1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);
- (2) Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;
- (3) Provide housing that will avoid or decrease the concentration of very low income families; and
- (4) Build sustainable communities.

U.S. Dep't of Hous. & Urban Dev., Notice of Funding Availability: Revitalization of Severely Distressed Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003 (2003) [hereinafter 2003 NOFA].

The NOFA included, *inter alia*, the following application criteria, with their relative weight:

- Need—24 points total;
- Community and Supportive Services—6 points total;
- Disability Issues—4 points total;
- Fair Housing—3 points total;
- Well-functioning Communities—8 points total;
- Overall Quality of Plan—19 points total;
- Leveraging—16 points total;
- Resident and Community Involvement—3 points total;
- Relocation—5 points total.

and 3) by sub-regulatory “guidance” and “work plans.”⁵⁸ “To an unusual extent,” Popkin has written, “the program has been shaped more through implementation than by enactment.”⁵⁹

As a result, the terms and conditions of HOPE VI-funded projects have varied considerably over time as well as from site to site; “HOPE VI has not been ‘one program’ with a clear set of consistent and unwavering goals.”⁶⁰ Indeed, for good and for ill, flexibility and local control have been program watchwords.⁶¹ For example, site selection became particularly flexible despite the fact that the Quality Housing and Work Responsibility Act of 1998 (hereinafter QHWRA) codified as “severely distressed” as any project that:

- i. requires major redesign, reconstruction, redevelopment, or partial or total demolition . . . ;
- ii. is a significant contributing factor to the physical decline and disinvestment . . . in the surrounding neighborhood;
- iii. is occupied predominantly by . . . families with children that are very low income, whose members are unemployed and dependent on various forms of public assistance, or has high rates of vandalism and criminal activity; and
- iv. cannot be revitalized through assistance under other programs.⁶²

Under the terms of later NOFAs, a PHA applying for a HOPE VI grant needed only to submit two certifications to be eligible: one certifying that the existing housing meets the definition and one prepared by an architect or engineer hired by the PHA certifying that the project is in severe physical distress.⁶³ The “soft side of HOPE VI”⁶⁴ has also varied a great deal, with the amount that PHAs were required to spend on resident services such as childcare, job training, and relocation services steadily decreasing, even as HUD began to monitor support services more closely and to provide PHAs with technical assistance.⁶⁵ And, as HUD encouraged PHAs to leverage HOPE VI grants to raise private and philanthropic funds, the program was increasingly characterized as a catalyst for neighborhood reinvestment, rather than primarily as a program to improve living

Id.

58. See U.S. Dep’t of Hous. & Urban Dev., HOPE VI, *supra* note 56; Pindell, *supra* note 2, at 391; FALSE HOPE, *supra* note 11, at 18.

59. Popkin, DECADE, *supra* note 1, at 2.

60. *Id.*

61. See, e.g., NAPARSTEK & FREIS, *supra* note 6, at 9; Popkin, DECADE, *supra* note 1, at 2-3.

62. QHWRA, *supra* note 73, § 513.d.2 (codified as amended at 42 U.S.C. § 1437v (2006)). This definition has been amended slightly for clarity since 1998.

63. See, e.g., 2003 NOFA § V(A)(4)-(5).

64. Popkin, DECADE, *supra* note 1, at 33.

65. See *id.*

conditions for residents of the most “severely distressed” public housing.⁶⁶ In fact, GAO and the HUD Office of the Inspector General have both found that HOPE VI has shifted its focus from the most severely distressed large public housing developments to smaller projects with greater appeal to private investors.⁶⁷ As NOFAs rated applications with a high ratio of leveraged funds to HOPE VI resources more and more highly,⁶⁸ say some critics, HUD actually encouraged PHAs to demolish projects that were not only smaller, but also located in neighborhoods already in the process of gentrifying, because those areas could be counted on to draw substantial investment from private developers.⁶⁹

In substantial part, HOPE VI's shifting priorities reflected wider trends in national housing policy. Over the course of the 1990s, HUD and Congress increasingly emphasized employment and eventual “self-sufficiency” as the goals for public housing residents—what some have called the “in, up, out” policy.⁷⁰ As Section 8 housing vouchers, which individuals may use to acquire rental housing from private landlords, became an increasingly important component of national housing policy, Congress repealed the “one-for-one” replacement rule: HUD was no longer obligated—as it had been since 1937⁷¹—to replace every “hard unit” of public housing demolished or otherwise removed from the stock.⁷² With the passage of the QHWR, which some characterize as the “welfare reform” of public housing policy,⁷³ Congress repealed rules that had given preference to very poor (including homeless) families in public housing resident selection and allowed PHAs to take steps to attract higher-income

66. Cf. Popkin, *DECADE*, *supra* note 1, at 17, 1. Compare Sean Zielenbach, *Catalyzing Community Development: HOPE VI and Neighborhood Revitalization*, 13 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 40, 73 (2003) (“HOPE VI was not designed to be an economic development program”).

67. PROGRESS AND PROBLEMS, *supra* note 17, at 26; 1998 HUD Audit, *supra* note 10, at 8.

68. See *supra* note 57.

69. *When Hope Falls Short*, *supra* note 15, at 1483 (citing U.S. Dep't of Hous. & Urban Dev., Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002, § IX(G)(1), (July 31, 2002)).

70. See generally, e.g., Koeninger, *supra* note 52; Lisa A. Crooms, *Families, Fatherlessness, and Women's Human Rights: An Analysis of the Clinton Administration's Public Housing Policy as a Violation of the Convention on the Elimination of All Forms of Discrimination Against Women*, 36 BRANDEIS J. FAM. L. 1 (1997-98) [hereinafter Crooms, *Fatherlessness*]; cf. also Popkin, *DECADE*, *supra* note 1, at 15.

71. 1937 Act, *supra* note 24, § 8. Though what qualified as a “replacement unit” had loosened considerably over time, and eventually included housing vouchers, the basic commitment to one-for-one replacement remained in place. Compare *id.* with 42 U.S.C. § 1437p (1992); 42 U.S.C. § 1437p (1994); and 42 U.S.C. § 1437p (1995).

72. Emergency Supplemental Appropriations for Additional Disaster Assistance for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Recissions Act of 1995, Pub. L. No. 104-19, Title I (1995). This move apparently had HUD's support: in its 1995 self-reform document, HUD had endorsed allowing PHAs to “replace” demolished “hard units” with direct tenant assistance such as Section 8 vouchers. See U.S. DEP'T OF HOUS. & URBAN DEV., HUD REINVENTION: FROM BLUEPRINT TO ACTION, 2, 6-7 (1995).

73. See Crooms, *Fatherlessness*, *supra* note 70.

residents.⁷⁴

As of 2003, fifteen of 165 HOPE VI grant-recipient projects had been completed; 63,100 units had been demolished and plans approved to demolish another 20,300 units⁷⁵ with an estimated potential net loss of 107,000 “hard units” of public housing.⁷⁶ Through fiscal year 2005, HOPE VI “revitalization” grants totaled more than \$6 billion dollars.⁷⁷ Annual grants had peaked in fiscal year 1994, with more than \$750 million granted, and again in fiscal year 1999, with more than \$570 million.⁷⁸ In late 2003, HOPE VI’s incorporation into the 1937 Act was extended through 2006, and appropriations for 2003 again totaled about \$570 million.⁷⁹ HOPE VI has survived the Bush administration’s annual efforts to do away with it altogether since 2004, but appropriations plummeted to \$150 million in 2004 and \$144 million in 2005,⁸⁰ and sank further to \$100 million for fiscal year 2006.⁸¹

The HOPE VI program was in its infancy when—with the politically ascendant Newt Gingrich declaring on the front page of *The Washington Post* that “you could abolish HUD tomorrow morning and improve life in most of America,”⁸² and President Clinton apparently in agreement⁸³—HUD embarked on a rapid self-reinvention. Nevertheless, HOPE VI was essential to, and indeed quickly became the flagship program of, this reinvention. Increasingly merging HUD’s public mission with market mechanisms, HOPE VI became consonant with the privatizing, anti-government, anti-entitlement political mood of the

74. Popkin, *DECADE*, *supra* note 1, at 15-16 (citing Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276 (1998)).

75. *Id.* at 2.

76. *FALSE HOPE*, *supra* note 11, at 7.

77. About HOPE VI, *supra* note 5. According to HUD, HOPE VI operated solely by annual congressional appropriation—i.e., without statutory authorization—between fiscal years 1993 and 1999. *Id.* A coalition of housing advocacy organizations led by the National Housing Law Project disputes this characterization, citing a 1996 HUD-commissioned report that describes HOPE VI authorization as deriving from the 1992 Housing Act’s modifications to § 24 of the 1937 Act. *FALSE HOPE*, *supra* note 11, at 2 n.14. This report characterizes HUD’s current position as an attempt “to avoid complying with provisions of the U.S. Housing Act.” *Id.* By 1999, at the latest, HOPE VI was certainly incorporated into the 1937 Housing Act (as amended) via the QHWRA.

78. *FUNDING HISTORY*, *supra* note 47, at 9.

79. Pub. L. No. 108-186 Tit. IV, § 4029(e) (2003); U.S. DEP’T OF HOUS. & URBAN DEV., HOPE VI APPROPRIATIONS 13, available at <http://www.hud.gov/offices/pih/programs/ph/hope6/about/hope6appropriations.pdf>.

80. Popkin, *DECADE*, *supra* note 1, at 3; MINDY TURBOV & VALERIE PIPER, BROOKINGS INST., HOPE VI AND MIXED-FINANCE REDEVELOPMENTS: A CATALYST FOR NEIGHBORHOOD RENEWAL 58 (2005), available at http://www.brookings.edu/metro/pubs/20050913_hopevi.pdf.

81. David Nather, *Low-Level Targets of Spending Cuts*, CQ WEEKLY 3376, Dec. 26, 2005, available at <http://library.cqpress.com/cqweekly/document.php?id=weeklyreport109-000002017853&type=toc&num=86&>.

82. Kenneth J. Cooper, *Gingrich Pledges Major Package of Spending Cuts Early Next Year*, WASHINGTON POST, Dec. 13, 1994, at A1. In a not-so-veiled threat, House Speaker-elect Gingrich continued, “I think HUD’s reputation is now so bad . . . and the whole public housing policy has been such a failure that it’s very hard to sustain HUD.” *Id.*

83. See Gugliotta, *supra* note 22.

1990s.⁸⁴ By the end of the decade, HOPE VI was the only significant means by which the federal government funded new affordable housing construction.⁸⁵

II. HOPE VI, RACE, AND GENDER

In the process of redeveloping the sites of “severely distressed” public housing, HOPE VI necessarily displaces most of the sites’ “original” residents either temporarily or permanently. Statistically, the tens of thousands of households⁸⁶ displaced by HOPE VI redevelopment projects are disproportionately headed by African American women with children—not only in comparison to the U.S. population as a whole, but also in comparison to the general public housing population. In the context of the affordable housing crisis, existing racial hypersegregation and isolation from economic opportunities, the gendered wage gap, and urban core gentrification, displacement can destabilize these households in race- and gender-specific ways. That is, what researchers and activists alike have identified as serious structural and administrative problems in HOPE VI have distinct and disparate impacts on these households *because* they are disproportionately headed by lowest-income African American women.

To date, however, researchers have essentially left uninvestigated HOPE VI’s impact at the convergence of race and gender.⁸⁷ Even when commentators think to mention that the “‘residents living in despair’ [discussed in the Commission’s Final Report] were primarily minority women and children—predominantly African-American and extremely poor,”⁸⁸ the gender element immediately drops out the subsequent discussion.⁸⁹ Indeed, data is not even compiled in such a way as to make gender legible as a category of analysis in many housing statistics, including most studies of HOPE VI. For example, *The HOPE VI Resident Tracking Study*, “the first systematic look at what has happened to original residents of distressed public housing developments targeted for revitalization under the HOPE VI program,”⁹⁰ provides charts of data on survey respondents’ ages, races and ethnicities, number of children in household, and years lived in

84. See, e.g., *When Hope Falls Short*, *supra* note 15; Koeninger, *supra* note 52.

85. See U.S. Dep’t of Hous. & Urban Dev., Public Housing Development, <http://www.hud.gov/progdesc/pdev.cfm> (“HUD has not provided new funding for public housing development since [fiscal year] 1994”); FitzPatrick, *supra* note 23, at 423.

86. See KINGSLEY ET AL., *supra* note 8, at 7.

87. Though perhaps not an ideal example of feminist analysis, Koeninger, *supra* note 52, is a notable exception. Seven years on from Koeninger’s article, Lisa A. Crooms appears to be the only figure “bring[ing] a feminist approach, or at least a feminist perspective, to public housing policy” in the legal literature. *Id.* at 447. Her work is somewhat idiosyncratic, however, and is significantly as much cultural analysis as policy commentary. See, e.g., Crooms, *Fatherlessness*, *supra* note 70.

88. Popkin, *DECADE*, *supra* note 1, at 8.

89. *Id.* (The paragraph proceeds: “In other words, African-American and Hispanic residents suffered the effects of living in the worst public housing . . . [A] staggering 88% of the people who lived in the neighborhoods surrounding the severely distressed developments were minorities.”).

90. *RESIDENT TRACKING 2002*, *supra* note 8, at i.

public housing, but not on respondents' genders.⁹¹ But by comparing the gender-related statistic that the demographers most regularly track—the number of female-headed households with children⁹²—with income and race/ethnicity data, we can estimate the disproportion of the impact of HOPE VI on lowest-income African American women.

A. The Statistical Predominance of Lowest-Income African American Women in HOPE VI Target Communities

As leading HOPE VI researcher Susan Popkin observed in testimony to the House Financial Services Committee in 2003, “the problems HOPE VI seeks to address are among the most complex and difficult to solve.”⁹³ It may not be not surprising, then, to learn that there are significant demographic differences between the public housing population as a whole and the segment of that population living in the nation’s most “severely distressed” public housing projects.

First, the average HOPE VI “original” household is likely to be even poorer than the average public housing household. Although the total percentage of all public housing households with an annual income of less than \$15,001⁹⁴ is comparable to the total percentage of HOPE VI “original” households making less than \$15,001 per year,⁹⁵ the distribution within this range of extremely low

91. *Id.* at App. A-132-133, A-135-136. See also, e.g., SUSAN POPKIN ET AL., ABT ASSOC. INC., AN HISTORICAL AND BASELINE ASSESSMENT OF HOPE VI, VOLUME I: CROSS-SITE REPORT, 3-10-11 (chart of HOPE VI site “Resident Characteristics” that includes race/ethnicity, median income, and income source), 4-13-17 (chart of HOPE VI site “Neighborhood Demographics and Resources” that includes racial/ethnic and poverty rate statistics) (1996).

Further complicating matters, detailed statistics on HUD-assisted renters and their units are published irregularly; at writing, the most recent “snapshot” compiled data for 1998. U.S. Dep’t of Hous. & Urban Dev., A Picture of Subsidized Households in 1998 (1998) [hereinafter PICTURE 1998]. See also DUANE T. MCGOUGH, U.S. DEP’T OF HOUS. & URBAN DEV., CHARACTERISTICS OF HUD-ASSISTED RENTERS AND THEIR UNITS IN 1993 (1997) [hereinafter CHARACTERISTICS 1993].

92. The fact that this is the gender-related statistic that demographers of subsidized housing consistently find noteworthy may itself be significant. Cf. generally Lisa A. Crooms, *The Mythical, Magical “Underclass”: Constructing Poverty in Race and Gender, Making the Public Private and the Private Public*, 5 J. GENDER RACE & JUST. 87 (2001) [hereinafter Crooms, “Underclass”] (arguing that welfare reform “support[s] the proposition that . . . public poverty is a matter of private gender dysfunction” and perpetrates “the myth [of] pathologically raced and dysfunctionally gendered . . . poor, black men, women, and children in inner city ghettos”).

93. Popkin Testimony, *supra* note 4, at 1.

94. At 81% in 2004. U.S. Dep’t of Hous. & Urban Dev., Resident Characteristics Report as of May 31, 2004: Public Housing; National—US (2004) (on file with author) [hereinafter *Characteristics* 2004]. This report engine was formerly known as the Multifamily Tenants Characteristics System (MCTS). For the period of November 2004 to March 2006, the percentage of all public housing households with annual income of less than \$15,001 stood at 77%. U.S. Dep’t of Hous. & Urban Dev., Resident Characteristics Report as of Feb. 28, 2006: Public Housing; National—US (2006) (on file with author).

95. At 79% in 2002. See SUSAN J. POPKIN ET AL., HOPE VI PANEL STUDY: BASELINE REPORT, 2-2 (2002) [hereinafter *BASELINE* 2002]. This is the only major study of HOPE VI populations at “baseline,” before HOPE VI activities begin. Congress commissioned this study in 1999; the researchers planned to

incomes is markedly different for the subgroup of people living in severely distressed sites targeted by HOPE VI. Only one-fifth of all public housing households make less than \$5,000 annually;⁹⁶ more than one-third of the HOPE VI sample's household incomes fall under \$5,000.⁹⁷ Whereas 42% of all public housing households have yearly incomes between \$5,000 and \$10,000,⁹⁸ only 31% of HOPE VI "original" households do.⁹⁹ Only 14% of HOPE VI "original" households¹⁰⁰ make between \$10,001 and \$15,000 annually, compared to 18% of public housing households generally.¹⁰¹ Therefore the population living in HOPE VI target sites is more likely than the public housing population at large to be living in the most extreme poverty.¹⁰²

Second, HOPE VI "original" households are dramatically more likely to be headed by African American women. HUD's 2004 Resident Characteristics Report for public housing estimates that 38% of all public housing households are female-headed households with children.¹⁰³ But an estimated 66% of "original" HOPE VI households with children have single female heads.¹⁰⁴ Though the 2004 Resident Characteristics Report estimates that 47% of all public housing heads of household are African American,¹⁰⁵ the *Panel Study Baseline Report* estimates that 89% of people who head HOPE VI "original" households

publish biannual reports on the living conditions and well-being of "original" residents of five developments in which HOPE VI-funded revitalization began in mid- to late 2001. *Id.* at i, ix. As we do not yet have an update, however, for purposes of closer comparison with this baseline report, I will use 2004 demographic profiles of public housing residents generally.

96. *Characteristics* 2004, *supra* note 94, at 1.

97. *BASELINE* 2002, *supra* note 95, at 2-2.

98. *Characteristics* 2004, *supra* note 94, at 1.

99. *BASELINE* 2002, *supra* note 95, at 2-2.

100. *Id.*

101. *Characteristics* 2004, *supra* note 94, at 1. Further, twice as many HOPE VI site residents report receiving welfare as residents of public housing generally do. *Compare id.* (16% receiving welfare) with *BASELINE* 2002, *supra* note 95, at 2-2 (32% receiving welfare). But a higher percentage of HOPE VI households report wages as part of their income than in the general public housing population. *Compare BASELINE* 2002, *supra* note 95 (37%), with *Characteristics* 2004, *supra* note 94 (31%).

102. Under HUD definitions, households are "low income" if their annual income is at or below 80% of the "area median income" (AMI) or "median family income" (MFI) for households in their geographic area. "Very low income" is at or below 50% of AMI/MFI, and "extremely low income" is at or below 30% of AMI/MFI. See FALSE HOPE, *supra* note 11, at iii; U.S. Dep't of Hous. & Urban Dev., Notice PDR-2004-01: Estimated Median Family Incomes for 2004, Attachment 1 (Jan. 28, 2004). The estimated U.S. MFI for 2004 was \$57,500. *Id.* Current AMIs range from around \$20,000 in parts of rural Kentucky to almost \$100,000 in San Francisco County, California.

103. *Characteristics* 2004, *supra* note 94. This is somewhat less than, but roughly continuous with, earlier estimates of female-headed public housing households that include more than one person. In 1989, an estimated 41% of public housing households were female-headed and included two or more persons. PATRICK A. SIMMONS, ED., *HOUSING STATISTICS OF THE UNITED STATES* 299 (1997). In 1993, such households represented about 42% of public housing households. *CHARACTERISTICS* 1993, *supra* note 94, at 12.

104. See *BASELINE* 2002, *supra* note 95, at 2-2 (73% of households are families with children; 90% of families with children are headed by a single woman; 90% of 73% is 66% of all households).

105. *Characteristics* 2004, *supra* note 94. In 1998, the average total household income in public housing was \$9,091. *PICTURE* 1998, *supra* note 91, at Supplement on Incomes & Household Members 4.

are African American.¹⁰⁶ These differentials suggest that “original” households with children in HOPE VI target projects are at least twice as likely to be headed by African American women than households with children in public housing generally.

Unfortunately, the limited data currently available makes it impossible at this point to understand the demographics of HOPE VI “original” residents in greater detail. But this limited comparison with the public housing population at large (to say nothing of the general U.S. population) makes clear that African American woman-headed households have disproportionately “suffered the effects of living in the worst public housing, and the same residents later experienced the consequences—good and bad—of the changes that HOPE VI brought about.”¹⁰⁷

B. The Raced and Gendered Disparate Impacts of HOPE VI Failures

The statistical predominance of African American woman-headed households in HOPE VI target sites strongly suggests that those who have suffered the brunt of the program’s acknowledged shortcomings¹⁰⁸ are extremely poor African American women—and particularly African American women in caretaking relationships with children, whether as mother, grandmother, aunt, or guardian. But even the program’s strongest critics have not considered how failing to monitor and report on project outcomes, improving “bricks-and-mortar” at the expense of “original” residents and cutting the overall stock of affordable housing in a gentrifying city’s urban core, not accounting for existing structural racial hypersegregation and isolation from economic opportunity, and subordinating HUD’s public mission to market values would cause specifically disparate gendered as well as raced effects under present conditions of urban core gentrification and affordable housing crisis.

1. Failing to Monitor and Report Sufficiently on Project Outcomes

Proponents, researchers, and critics alike lament the fact that HUD monitoring of project outcomes has been, until recently, retrospective and partial at best,¹⁰⁹ “selective and incomplete”¹¹⁰ at worst. So the fact is that we do not know—and probably can never reconstruct—what has happened to the “original” residents dispersed by almost the whole first decade of HOPE VI projects because it apparently occurred to no one to track what happened to them. Even the most detailed national investigation, the 2002 *HOPE VI Resident Tracking Study*,

106. BASELINE 2002, *supra* note 95, at 2-2.

107. Popkin, DECADE, *supra* note 1, at 8.

108. See, e.g., Popkin Testimony, *supra* note 4, at 4.

109. See RESIDENT TRACKING 2002, *supra* note 8, at 6-7.

110. FALSE HOPE, *supra* note 11, at 33. HUD did not even have a central mechanism to track HOPE VI activities for at least the first five years of the program. See *id.* (citing PROGRESS AND PROBLEMS, *supra* note 17, at 6).

considers just eight of the 165 HOPE VI sites, and its sample is further seriously compromised by the fact that it is a retrospective study. As the authors acknowledge,

we could only survey those households that we were able to locate through HUD or [public housing authority] databases and through other types of public records Thus we were more likely to find those residents still living in public housing or using vouchers than those who no longer received assistance In general, the most difficult people to find in such a tracking effort are those who move frequently, double up with another family, do not have a usual place to live (i.e., are homeless), or those who have moved out of the area.¹¹¹

On this accounting, as many as one-third of all “original” residents seem likely to have been “lost” in the redevelopment process,¹¹² and, as the authors indicate, are likelier than the sample population to be facing housing crises. Thus the study’s finding that 14% (of the sample) have left assisted housing altogether¹¹³ obviously does not include that 34% of the entire “original” population who could not be located for the study.¹¹⁴ A related problem afflicts the similarly retrospective 2001 study *HOPE VI and Section 8: Spatial Patterns in Relocation*, which reports the resettlement patterns of just 31% of HOPE VI relocatees: those who have received Section 8 voucher assistance.¹¹⁵ Only the *Panel Study* is for the first time providing a non-retrospective look at not only resettlement patterns, but also resident opinion of pre- and post-relocation housing.¹¹⁶

As a result, it is currently impossible to prove or disprove definitively the hypothesis that, overall, HOPE VI projects have had disparate negative impacts on the lowest-income African American women who disproportionately form

111. RESIDENT TRACKING 2002, *supra* note 8, at 6-7.

112. The study had a response rate of 66%. *Id.* at 7. Although on age, number of children, household income, and other such indicators the sample population was comparable to the “original” population as a whole (based on MTCS data for the housing project in the year that the grant was made), gender is unfortunately not one of the variables compared. *See id.* at 6-7, App. A-132-33.

113. *Id.* at ii.

114. One might speculate, further, that the 14% subgroup (some 9% of the whole original population) might on the whole have left assistance for different reasons than the non-respondent 34%.

115. KINGSLEY ET AL., *supra* note 8, at 2.

116. According to the *False HOPE* report, HUD now collects from HOPE VI grantees quarterly progress reports that include resident relocation data, but does not make this data available to the public. *FALSE HOPE*, *supra* note 11, at 34. It will be imperative for researchers to have access to these reports. The *Panel Study* has yielded several reports to date, including: ELIZABETH COVE, MICHAEL EISEMAN, SUSAN J. POPKIN, URBAN INST., RESILIENT CHILDREN: LITERATURE REVIEW AND EVIDENCE FROM THE HOPE VI PANEL STUDY—FINAL REPORT, available at http://www.urban.org/UploadedPDF/411255_resilient_children.pdf; Susan J. Popkin, Mary K. Cunningham, & Martha Burt, *Public Housing Transformation and the Hard-to-House*, 16 HOUSING POL’Y DEBATE 1 (2005), available at http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1601_Popkin.pdf; and Embry M. Howell, Laura E. Harris, Susan J. Popkin, *The Health Status of HOPE VI Public Housing Residents*, 16 J. HEALTH CARE FOR THE POOR & UNDERSERVED 273 (2005).

their “original” populations. That is, HUD’s historical failure to monitor sufficiently even the whereabouts—let alone other experiences such as landlord sexual harassment, childcare problems, and homelessness—of “original” residents who do not or cannot return to the revitalized site effaces the probable race- and gender-specific effects of dispersing the residents of HOPE VI target developments. We can, nevertheless, engage in some informed speculation about such effects that can and should form a basis for future empirical research.

2. Improving Neighborhoods at the Expense of Neighborhood Residents

Critics of HOPE VI most often and most vociferously argue that, contrary to its original intended purpose, in practice the program has encouraged local PHAs to cultivate neighborhoods, not people. The manifestations of this misplaced emphasis range from pushing “original” residents (very poor and mostly African American) out of central city sites to make way for gentrifiers (mostly white and professional-class),¹¹⁷ to failing to involve “original” residents meaningfully (or at all) in revitalization planning¹¹⁸ (which HUD itself describes as an “essential”¹¹⁹ part of HOPE VI planning), to failing to provide appropriate and/or adequate social, support, and/or relocation services to “original” residents of HOPE VI sites,¹²⁰ to breaking up existing communities and social support networks among public housing residents.¹²¹

In cities where the housing market is “tight,” Popkin testified before Congress in 2003, “many former residents [end] up in other distressed communities.”¹²² That is to say, where gentrification is in process, a “substantial proportion”¹²³—some 60%¹²⁴—of the “original” residents who are permanently displaced by HOPE VI redevelopment¹²⁵ will be relocated to areas that are less poor, but still not “low-poverty” areas.¹²⁶ Because they are disproportionately represented in the “original” HOPE VI resident population, this likely affects lowest-income African American women in at least equal disproportion. As income-mixing is a guiding principle of the program, the fact that at least 60% of non-returning

117. See generally Cunningham, *supra* note 12; powell & Spencer, *supra* note 14.

118. See FALSE HOPE, *supra* note 11, at 17-22; HOPE UNSEEN, *supra* note 13, at 11-12; see also Popkin, DECADE, *supra* note 1, at 39-40.

119. U.S. Dep’t of Hous. & Urban Dev., [HOPE VI] Community and Supportive Services, <http://www.hud.gov/offices/pih/programs/ph/hope6/css/index.cfm>.

120. See generally powell & Spencer, *supra* note 14; HOPE UNSEEN, *supra* note 13, at 7-8; see also Popkin Testimony, *supra* note 4, at 4.

121. See FALSE HOPE, *supra* note 11, at 37-38; HOPE UNSEEN, *supra* note 13, at 9-10, 11.

122. Popkin Testimony, *supra* note 4, at 1.

123. *Id.*

124. See *id.* at 3; RESIDENT TRACKING 2002, *supra* note 8, at iv-v.

125. *I.e.*, are not able or choose not to return to the redeveloped site for whatever reason, including receipt of Section 8 vouchers. *Id.* at iv.

126. *Id.* at iv-v. That is, they live in neighborhoods with more than 20% poverty rates. *Id.* Two-thirds of the 60% are still living in high-poverty neighborhoods (more than 30% of the residents are poor) after relocation. *Id.* at v.

residents are relocating to other poor and extremely poor neighborhoods ought to be of serious concern. But there are several race- and gender-specific reasons why this might happen to lowest-income African American women at a rate even greater than their proportion of the HOPE VI "original" resident population.

A high rate of domestic violence may prevent "original" residents from returning to the redeveloped site, leaving them in this at-risk group of returnees. HOPE VI developments typically have new income, credit, criminal record, and behavior criteria that "original" residents must meet to be readmitted to the redeveloped housing, standards intended to cut crime and vandalism and to encourage "self-sufficiency" behaviors including waged work.¹²⁷ But women are disproportionately affected by such elevated requirements when they are or have been victims of domestic violence, which extremely poor African American women experience at rates substantially higher than average. Women in families with a household income of less than \$7,500 experience intimate partner violence at more than twice the rate that women with household incomes of over \$15,000 do and are 61% more likely to suffer domestic violence than women with household incomes between \$7,500 and \$15,000.¹²⁸ And African American women on the whole experience battering at a 35% higher rate than white women as a group.¹²⁹ With a full third of African American female heads of HOPE VI target site households earning annual income of \$5000 or less, these women would appear to be at a very high risk of intimate partner violence indeed.¹³⁰ Whether because of the violent behavior of battering partners or because of the police presence elicited by such violence, these women can find themselves excluded or evicted from their rehabilitated former homes—even from other public housing to which they have relocated.¹³¹

Particularly under current welfare restrictions, women who are displaced from HOPE VI sites may suffer more than men from reduced, disrupted, or missing social services. Where residents are not fully included in the HOPE VI planning process, social service packages are that much less likely to incorporate all the elements to meet the needs and concerns of a mainly impoverished African

127. See, e.g., John J. Ammann, *Housing Out the Poor*, 19 ST. LOUIS U. PUB. L. REV. 309, 320 (2000).

128. CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE 4, 10 (2000), available at <http://www.ojp.usdoj.gov/bjs/abstract/ipv.htm>. Similarly, between one-third and two-thirds of welfare recipients report surviving past or enduring present domestic violence. JODY RAPHAEL & RICHARD M. TOLMAN, TRAPPED BY POVERTY, TRAPPED BY ABUSE: NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE, 21 (1997), available at http://www.ssw.umich.edu/trapped/pubs_trapped.pdf.

129. RENNISON & WELCHAN, *supra* note 128, at 4.

130. See *supra* Part II.A.

131. See, e.g., Tara M. Vrettos, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 CARDOZO WOMEN'S L.J. 97 (2002). Under the new housing subtitle of the Violence Against Women and Department of Justice Reauthorization Act of 2005, such evictions and exclusions will now be definitively illegal, at least in project-based Section 8 housing, the Section 8 voucher program, and public housing. Pub. L. No. 109-162, §§ 601-07; 119 Stat. 2960 (2006). The devil, as ever, will be in the details of implementation.

American female population. Among these individuals, women with children and elderly women would probably be most vulnerable to the loss of social networks ruptured by displacement. Therefore these subsegments of the population may seek to relocate within reach of existing social networks, potentially at the expense of neighborhood "quality."

There is reason to believe that HOPE VI's emphasis on housing vouchers may also leave African American women leaving HOPE VI sites disproportionately vulnerable to sexual harassment in the private and voucher-based housing markets. Although public housing officials are of course capable of sexually harassing their tenants,¹³² Section 8 and private landlords multiply exponentially the possibility that a tenant will be sexually harassed, since tenants deal directly with individual landlords in these markets. Because women are more vulnerable to landlord sexual harassment than men,¹³³ and because some estimate the rate of sexual harassment in housing to rival that of sexual harassment in employment,¹³⁴ voucher use may bring fresh injury to many female-headed households.¹³⁵ Not only economic vulnerability, but also racist cultural assumptions about African American women's sexuality¹³⁶ may further increase this women's exposure to landlord sexual harassment.

3. Not Accounting for Existing Conditions of Racial Hypersegregation and Isolation from Economic Opportunity

Empirical studies suggest that HOPE VI has had far greater success in deconcentrating poverty than in deconcentrating racial segregation for African Americans.¹³⁷ But race is also a crucial factor isolating individuals and neighborhoods from economic opportunity.¹³⁸ This fact is exacerbated for African American women because they are subject to structural sex discrimination in relation to the general population as well as to African American men.

The affordable housing crisis, while undeniably serious for many Americans, in fact puts most pressure on very low- and extremely low-income people.¹³⁹ The

132. See, e.g., Sherri M. Owens, *Housing Official Charged in Sex Case; A Woman Said Eviction Was Threatened and Another Said the Man Made Sexual Advances*, ORLANDO SENTINEL, Jun. 24, 2002, at F1.

133. See Nicole A. Forkenbrock Lindemeyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW & INEQ. 351 (2000).

134. See id.; Maggie E. Reed, Linda L. Collinsworth, & Louise F. Fitzgerald, *There's No Place Like Home: Sexual Harassment of Low Income Women in Housing*, 11 PSYCHOL. PUB. POL'Y & L. 439 (2005).

135. See, e.g., Joan Treadway, *N.O. Housing Study Finds Extensive Bias; Increased Choices Noted in Analysis*, TIMES-PICAYUNE (New Orleans, LA) (Apr. 27, 2000), at B1 (finding high rate of sexual harassment complaints against Section 8 landlords in New Orleans).

136. See, e.g., such classic studies as: Hazel V. Carby, *'On the Threshold of Woman's Era': Lynching, Empire, and Sexuality in Black Feminist Theory*, 12 CRITICAL INQUIRY 262 (1985); Ann DuCille, *The Occult of True Black Womanhood: Critical Demeanor and Black Feminist Studies*, 19 SIGNS 591 (1994).

137. See, e.g., RESIDENT TRACKING 2002, *supra* note 8, at v.

138. See generally, e.g., powell & Spencer, *supra* note 14; Pindell, *supra* note 2, at 406-07.

139. FALSE HOPE, *supra* note 11, at ii-iii, 8-9.

pressures of affordable housing crisis disproportionately affect the African American women displaced from HOPE VI redevelopment sites because they are overwhelmingly extremely-low income. HUD reports that, although the stock of rental units affordable to low-income people has actually increased in recent years, the nation lost 1.3 million units (8%) affordable to very low-income people and 940,000 units (14%) affordable to extremely low-income people between 1991 and 1999.¹⁴⁰ Because of the racial dimension of the gender wage gap—African American women earn, on average, sixty-three cents for every dollar that white men earn¹⁴¹—African American women “original” residents who earn wages are substantially less likely to be able to meet higher income requirements for readmission to redeveloped HOPE VI sites. If just under 20% return to the redeveloped site,¹⁴² and just under 30% relocate to other public housing,¹⁴³ most of which remains isolated from current economic opportunities even when it is less impoverished than the original site,¹⁴⁴ approximately one-third of HOPE VI “original” residents are receiving Section 8 vouchers¹⁴⁵ and another one-fifth facing the private market.¹⁴⁶ As a further result of the wage gap, African American women who are permanently displaced from HOPE VI sites are much more likely to face housing crises related to ability to pay for rent or utilities in both the Section 8 and private markets; Popkin estimates that 40% of all HOPE VI relocatees face such pressures.¹⁴⁷ They are further more likely to have difficulty affording enough food for their families, as Popkin estimates that about half of HOPE VI relocatees do.¹⁴⁸ This raises the vulnerability of this population to homelessness: poorly-managed relocation services—including a lack of the intensive services that the so-called “hard to house” need¹⁴⁹—can fatally destabilize already financially-precarious households, putting lowest-income African American women, especially those with children, at dispropor-

140. *Id.* (citing Kathryn P. Nelson, Office of Policy Development and Research, U.S. Dep’t of Housing and Urban Development, *Testimony Before the House Comm. on Financial Servs., Subcommittee on Housing and Community Opportunity* 107th Cong. (2001)). For definitions of low, very low, and extremely low incomes, see *supra* note 102.

141. AMY CAIAZZA, ET AL., INST. FOR WOMEN’S POLICY RESEARCH, *THE STATUS OF WOMEN IN THE STATES 2* (2004), available at <http://www.iwpr.org/pdf/R260.pdf>. White women, on the other hand, make seventy cents on the white male dollar, while African American men make seventy-five cents on the white male dollar. *Id.*

142. See RESIDENT TRACKING 2002, *supra* note 8, at 64.

143. See *id.*

144. See powell and Spencer, *supra* note 14.

145. See KINGSLEY ET AL., *supra* note 8, at 2; RESIDENT TRACKING 2002, *supra* note 8, at 64. Section 8 vouchers provide a greater, but not unlimited, choice of housing location.

146. Such numbers must remain provisional, however, because this retrospective survey cannot account for “lost” residents, who may total as much as 20% of the “original” resident population. See KINGSLEY ET AL., *supra* note 8, at 3; *supra* notes 109-16 and accompanying text.

147. Popkin Testimony, *supra* note 4, at 3.

148. *Id.*

149. *Id.* Popkin notes both the need for and the lack of intensive services for this population, which inhabits a substantial part of the most severely distressed public housing, the “housing of last resort.” *Id.*

tionate risk of eventual homelessness. As commentator Ngai Pindell argues, housing “[s]trategies that do not engage th[e] underlying apparatus[es] of structural racial and economic segregation] will be ineffective in dismantling it”;¹⁵⁰ this is true for the intersection of structural sex discrimination with structural racial and economic segregation as well.

4. Subordinating HUD’s Public Mission to Market Values

The student author of *When Hope Falls Short* persuasively argues that the amalgam of public and private values in HOPE VI has resulted in the worst of both worlds and the best of neither:

[HOPE VI has] narrowed the terms of the public conversation about affordable housing and diminish[ed] the public space in which this conversation can occur The economic perspective offers assurances that contract law and the exercise of choice will produce both efficient and socially desirable outcomes . . . [but i]n the absence of third-party beneficiaries with standing under HUD contracts, meaningful choice by public housing residents, and opportunities for public input via notice-and-comment procedures, HOPE VI’s public and private partners have been insulated from significant sources of accountability. At the same time, the rigor of data collection and analysis and the vibrancy of collective debate over public purposes have been squelched.¹⁵¹

Most obviously for lowest-income African American women, the loss of public accountability mechanisms to the market’s “cult of efficiency”¹⁵² means that their interests as a constituency, which are traditionally underrepresented in any event, are that much more likely to be overridden by powerful market forces. Indeed, because tenants have no right to sue to enforce tenant-participation requirements of HUD-PHA HOPE VI contracts, this constituency in fact has no right to have its interests aired, considered, debated, or included in the planning process. Public-private partnerships should check market mechanisms with public values such as fair housing standards.

As a result of structural defects and managerial failures in the HOPE VI program, lowest-income African American women have likely suffered harms that are distinct—not merely in degree, but in kind—from those suffered by poor black or white men or poor white women, even those who have been similarly displaced from HOPE VI target projects. It is not merely in an additive sense that lowest-income African American women displaced by HOPE VI redevelopment will have suffered the racist and sexist effects of the present conditions of the American housing landscape, then, but convergently or “intersectionally.” Those

150. Pindell, *supra* note 2, at 406.

151. *When Hope Falls Short*, *supra* note 15, at 1497-98.

152. *Id.* at 1497.

who collect empirical data on HOPE VI must reanalyze all available data to determine the extent of these intersectional harms and plan future analyses to detect them as well.

III. WHAT IS TO BE DONE? REMEDYING HOPE VI'S RACE- AND GENDER-DISPARATE IMPACTS

As is, HOPE VI seems destined to continue concentrating its most damaging effects on some of the country's most vulnerable people unless it is significantly reformed. Until and unless there is serious policy reform, HOPE VI site "original" residents should organize to obtain legal remedies for the program's disparate impact to date.¹⁵³

A. Disparate Impact Litigation

If my hypothesis is correct, various criteria used in HOPE VI redevelopment that are apparently race- and gender-neutral—for site selection, "original" resident readmission, relocation policies, etc.—have a disparate discriminatory effect on lowest-income African American women. But, under the Fair Housing Act of 1968, (hereinafter FHA),¹⁵⁴ HUD is obligated to "administer the programs related to housing and urban development in a manner affirmatively to further the [FHA] policies" of promoting integration and prohibiting discrimination in housing.¹⁵⁵ Individuals are entitled to sue to enforce their rights not to be discriminated against in housing on the basis of, among other things, race and sex. Both intentional discrimination and actions and policies that have an unintended discriminatory effect are actionable.¹⁵⁶ That is, even when a policy is not discriminatory on its face, HUD is still responsible for ensuring that it does not disproportionately and negatively affect a protected class of people. "Original" HOPE VI residents who are African American women, twice over a protected class under the FHA, should institute disparate impact litigation to vindicate their rights under that law.

In brief, there would be three steps to disparate impact analysis under the FHA in this case: 1) Is there a *prima facie* case of disparate impact on the plaintiffs? 2) If the answer is yes, is there a countervailing justifying government purpose? 3) If the answer is yes, would another, less discriminatory policy serve the govern-

153. As the *False HOPE* report points out, HUD's failure to promulgate notice-and-comment rules for the program violates HUD's own general regulations on rulemaking. See *FALSE HOPE*, *supra* note 11. There may therefore also be a case for judicial review of the agency decision not to regulate for the program, but this possibility is beyond the scope of this note.

154. 42 U.S.C. § 3601 (2006).

155. 42 U.S.C. § 3608(e)(5) (2006).

156. See *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (cited in Dana L. Miller, Comment, *HOPE VI and Title VIII: How a Justifying Government Purpose Can Overcome the Disparate Impact Problem*, 47 St. Louis U. L.J. 1277 n.43 (2003)).

ment's interests equally well?—*i.e.*, is the government's proffered justification a "mere pretext"?¹⁵⁷ Establishing the *prima facie* case of whether the policy "bears more heavily on one [protected class] than another"¹⁵⁸ would probably not be difficult, since "original" residents of HOPE VI sites are overwhelmingly members of protected classes.¹⁵⁹ It is at the subsequent stages of the analysis that commentator Dana L. Miller suggests that this litigation would fail.

Miller offers four possible countervailing justifications that the government might offer in such a case: integrated living patterns, urban revitalization, resident self-sufficiency, and PHA efficiency.¹⁶⁰ Of course, this would be a site-specific, fact-intensive analysis in each disparate impact case brought. In some cases, there would be manifest illegitimate purpose to meet the required showing that present policies are "mere pretext";¹⁶¹ in others, plaintiffs would need to offer less discriminatory alternative policies that HOPE VI could institute in order to achieve the same four ends.¹⁶² But, generally speaking, none of these goals deserve to qualify as justifying government purposes under the FHA because the program's record casts doubt on its policies' relevance to and impact on all four. As discussed in Part II.B of this Note, even the limited existing empirical studies indicate that HOPE VI does little to promote racial integration.¹⁶³ Empirically and theoretically, the benefits of mixed-income development without adequate support and community-building services are in serious doubt as well,¹⁶⁴ and some housing advocates argue that HOPE VI mixed income redevelopment practice is "unnecessary and inconsistent" in any event.¹⁶⁵ On the basis of legislative history alone, neighborhood revitalization should be adjudged subordinate to resident support, gentrification subordinate to uplift, bricks subordinate to people.¹⁶⁶ To date, there has been little systematic evaluation of whether HOPE VI community and supportive services programs have successfully helped "original" residents move toward self-sufficiency.¹⁶⁷ Further, resident self-sufficiency must be assessed not by the success only of those who are able to return to the redeveloped site, but by the successes or difficulties

157. See Miller, *supra* note 156, at 1293. As Miller notes, housing discrimination doctrine "has developed largely through analogy to existing [employment discrimination] doctrine." *Id.* at 1292.

158. *Washington v. Davis*, 426 U.S. 229, 242 (1976) (quoted in Miller, *supra* note 156, at 1295).

159. See *supra*, Part II.A; Miller, *supra* note 156, at 1292-96 (discussing circuit split on the *prima facie* case standard in housing discrimination cases and concluding that "virtually any" HOPE VI decision would have a disparate impact on members of a protected class).

160. See Miller, *supra* note 156, at 1300-03.

161. *E.g.*, Boston's Clippership development. See *infra* note 17.

162. See Miller, *supra* note 156, at 1304-07.

163. See *supra* note 137 and accompanying text; see also Pindell, *supra* note 2, at 425-429; Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 *How. L. J.* 913, 922-24 (2005).

164. See, *e.g.*, Susan J. Popkin, et al., *The Gautreaux Legacy: What Might Mixed-Income and Dispersal Strategies Mean for the Poorest Public Housing Tenants?*, 11 *HOUSING POL'Y DEBATE* 911, 928 (2000).

165. FALSE HOPE, *supra* note 11, at 13.

166. See *supra* Part I.B.

167. Popkin, *DECADE*, *supra* note 1, at 39.

experienced by those permanently displaced from the site as well; the courts should not reward “cherry-picking” the tenant population. And, finally, PHA efficiency is important, but lack of central federal control ought not to be merely assumed to result in greater local efficiency. Nor should PHA efficiency be controlling; if the ultimate goal of fair housing is not being advanced, efficiency is meaningless. In sum, though in theory Miller’s four justifying government purposes can “embody the concept that the government has a legitimate interest in promoting the production of affordable housing,” courts should determine that in HOPE VI practice they have not contributed to that ultimate aim.

Disparate impact litigation on behalf of African American woman “original” HOPE VI site residents would certainly not be easy: there is not yet a great deal of case law that considers sexual harassment in housing,¹⁶⁸ for example, or that comprehends the unique harms that may occur at the intersection of identity categories.¹⁶⁹ But there is some precedent for each, and this litigation could lead the way in developing both of these areas of the law.

B. Starting Points for Policy Reform

The necessary complement to resident litigation to remedy past discrimination is policy reform to prevent present and future discrimination. The essential policy reforms would include:

- Making requirements for “original” tenant participation in project planning enforceable by tenants in court;
- Reinstating a genuine one-for-one replacement requirement;
- Standardizing criteria for returning to HOPE VI developments that do not penalize victims of domestic violence and account for the raced and gendered wage gap;
- Rather than leveraging public housing to encourage gentrification, leveraging gentrification to develop “opportunity housing”¹⁷⁰ that brings public housing residents closer to jobs, services, and resources; and
- Encouraging collaboration between HOPE VI site planners and city PHAs to

168. *But see* Forkenbrock Lindemeyer, *supra* note 133, at n.35 (list of cases).

169. *But see, e.g.,* Harrington v. Cleburne Co. Board of Educ., 251 F.3d 935 (11th Cir. 2001) (accepting option of “an ‘intersectional’ theory of discrimination, that is that the defendant treated [the plaintiff] disparately because she belongs simultaneously to two or more protected classes,” although plaintiff did not wish to pursue this theory); Lam v. University of Hawaii, 40 F.3d 1551, 1562 (9th Cir. 1994) (“when a plaintiff is claiming race *and* sex bias, it is necessary to determine whether the employer discriminates on the basis of that *combination* of factors, not just whether it discriminates against people of the same race or of the same sex” (emphasis in original)); Hicks v. Gates Rubber Co., 833 F.2d 1406, 1416-17 (10th Cir. 1987) (finding that “a trial court may aggregate evidence of racial hostility with evidence of sexual hostility” in employment discrimination context).

170. *See* Powell & Spencer, *supra* note 14.

ensure that projects take holistic, long-term—not short-term, neighborhood-by-neighborhood—views of metropolitan health.¹⁷¹

CONCLUSION

As a matter of law as well as of justice, HUD must move to correct HOPE VI's disparate impacts on lowest-income African American women. If the political climate in which HOPE VI came into existence and developed into its present incarnation was unfriendly to the concerns I have raised here, however, then surely the present political climate is outright hostile. Even during the economically booming 1990s, HUD secretary Cisneros had to "'hope[] against reason' to preserve a status quo that [was] at a record level of distress."¹⁷² If in 1996 low-income housing was "an unpopular cause at a time when even popular causes [had] trouble getting financed," how much less of a priority must this issue be in the midst of a "jobless recovery" following a long recession?¹⁷³ The controversy surrounding HUD's management of HOPE VI can hardly have made this flagship program more politically appealing, particularly to those already skeptical about the Department and the project of subsidized low-income housing.¹⁷⁴ And very poor African American women, as a constituency, continue to suffer not only from objective lack of political influence but also from the scurrilous myth of the "welfare queen," that toxic spawn of racism, classism, and misogyny.¹⁷⁵

With other HUD funding for new housing development at a virtual standstill, and the Bush administration attempting to destroy even this program, advocates may be tempted simply to attempt to preserve the HOPE VI status quo. Of course, HOPE VI must be preserved; it is the only remaining federal source of new public housing development. Even if the Bush administration succeeds in permanently doing away with it, however, many grants currently remain outstanding, and there is ample opportunity remaining to prevent the failures of the past from being replicated as these projects move toward completion.

Like many of the people now coming to the end of their welfare benefits as a result of its 1998 "reform," HUD's HOPE VI as currently configured seems destined to fail quietly while giving a superficial appearance of success.¹⁷⁶ Like those shrinking welfare rolls, HOPE VI neighborhoods look nicer. But researchers have only begun to ask what is actually happening to the individuals who are

171. See LISA ROBINSON & ANDREW GRANT-THOMAS, RACE, PLACE, AND HOME: A CIVIL RIGHTS AND METROPOLITAN OPPORTUNITY AGENDA (2004).

172. DeParle, *supra* note 18, at 68.

173. *Id.*

174. See, e.g., Husock, *supra* note 23, at 50.

175. See, e.g., Crooms, "Underclass," *supra* note 92.

176. Cf. *id.*; Crooms, *Fatherlessness*, *supra* note 70, (discussing the cultural and legal dimensions of Reaganite privatization followed by Clintonite "welfare reform" for poor African Americans, including for housing policy of particular relevance to poor African American men and women).

dispersed from the public housing units eliminated by HOPE VI redevelopment. When the HOPE VI panel study is complete, we may have a more complete picture, but in the meantime the seeming successes of cleared welfare rolls and "revitalized" urban neighborhoods may only be temporarily hiding far greater future problems. This is particularly worrisome if, as I have suggested, the HOPE VI program has a disproportionate negative impact on lowest-income African American woman-headed households, especially those with children. I have outlined here a set of hypotheses that must of course be confirmed or refuted by further empirical research on the HOPE VI "original" resident population. If confirmed, however, disparate impact litigation could be an appropriate remedy: to prevent another "disaster in every generation"¹⁷⁷ that mires very poor African American women and their children in the most extreme poverty and to force programmatic reform that seriously commits to providing these families with genuine "opportunity housing."

177. FitzPatrick, *supra* note 13.

