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Fair Housing: Introduction

Home is the place where you live. Home may be a house, an apartment, a condominium, or more broadly, a neighborhood, a village, a city, or a region. It can include the school you attend, your place of work, the bike trails you ride on for recreation, or the parks you bring your children to. The three Articles and one Essay contained in this Issue center on the idea that housing is a foundational element of society, one which all people deserve to freely choose. However, inequality, lack of affordability, and poor implementation of the Fair Housing Act have hampered access to housing, and thereby have limited equal access to the institutions, opportunities, and culture that define the communities that people call home.

Volume 65 of the *Buffalo Law Review* begins with a themed Issue on fair housing. As discussed in the following pages, the concept of fair housing entails more than equal access to affordable housing units. As noted by David D. Troutt in the lead Article of this Issue, *Inclusion Imagined: Fair Housing as Metropolitan Equity*, housing determines access to schools, transportation, jobs, and other institutions central to promoting opportunity and redressing the legacy of segregation and discrimination.¹ Troutt argues that the Supreme Court's decision in *Inclusive Communities*,² and the Department of Housing and Urban Development's (HUD) most recent articulation of the requirement to "affirmatively further fair housing" suggest a broader scope of the Fair

1 David D. Troutt, *Inclusion Imagined: Fair Housing as Metropolitan Equity*, 65 BUFF. L. REV. 5 (2017).

2. *Tex. Dep't of Hous. & Cmty Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

Housing Act. Troutt then articulates a theoretical framework for metropolitan equity that bridges the gap between fair housing and what he describes as the “equitable potential” of the Fair Housing Act.

Next, Andrea J. Boyack’s Article, *Equitably Housing (Almost) Half a Nation of Renters*, documents the changing face of the American Dream of homeownership to the reality of a nation of renters.³ Boyack describes how housing policy unequally incentivizes homeownership compared to rentals, despite evidence suggesting the rental population outpaces homeowners. Even where public and private funding have been utilized to increase affordable units, Boyack notes that the focus has been on large-scale multi-unit projects in low-opportunity neighborhoods. One solution Boyack advocates for to increase the quality of affordable housing, is to shift focus to scattered site single and two to four family units in high-opportunity neighborhoods.

In *Affirmatively Furthering Equal Protection: Constitutional Meaning in the Administration of Fair Housing*, Blake Emerson details an approach he terms “administrative equal protection” which would enable state actors and local governments to use race-conscious action without violating equal protection doctrine.⁴ This approach calls for the use of strong empirical evidence to support the need for race-related policies, as well as a process for subjecting the proposed policy to public scrutiny, to alleviate concerns that the basis for race-related policy is non-arbitrary. Emerson then discusses the potential application of this approach to HUD’s “affirmatively further fair housing” rule.

Sam Magavern and Aaron Bartley close out this Issue

3. See generally Andrea J. Boyack, *Equitably Housing (Almost) Half a Nation of Renters*, 65 BUFF. L. REV. 109 (2017).

4. See generally Blake Emerson, *Affirmatively Furthering Equal Protection: Constitutional Meaning in the Administration of Fair Housing*, 65 BUFF. L. REV. 163 (2017).

with their Essay, *The PUSH Green Development Zone: Building Housing Equity from the Ground Up*, which describes one example of a community based attempt to solve structural inequality.⁵ The Essay describes how PUSH, People United for Sustainable Housing, a Buffalo-based nonprofit, strategically targeted twenty-five blocks for a community-based redevelopment strategy focusing on housing, culture, workforce, and infrastructure.

While there is no simple solution presented here, our hope is that the ideas and analyses put forth in this Issue will help decision makers at all levels—governmental entities, policy-makers, private business, attorneys, neighborhood stakeholders—when considering the comprehensive effects of housing policy on community development. When inequality is acknowledged and equal access to opportunity is prioritized, whole regions can thrive. Housing policy is an indispensable part of this process.

5. See generally Sam Magavern & Aaron Bartley, *The PUSH Green Development Zone: Building Housing Equity from the Ground Up*, 65 BUFF. L. REV. 237 (2017).