

Public Interest, Public Choice, and the Cult of Homeownership

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INTRODUCTION

Everyone loves homeownership. Owning your own home is perhaps the most visible symbol that you are a success in life: you have achieved the American Dream. A quote written thirty years ago by a trade group for savings and loan associations still captures our rhapsodic view of homeownership:

A family's home is much more than shelter. A home signifies the family's accomplishments in life, eloquently expresses its personality, establishes its place in the community, and defines the perimeter of its private and personal stake in the society. Indeed, the American dream traces its origins to the very beginning of this country, to the quest of those first colonists for the freedom to rule over their own domain, no matter how small, no matter how meager. This is a dream shared by those who have come to this country, and it is the rightful heritage of all Americans.¹

My views about the benefits of homeownership are not quite this romantic. Instead, my views are heavily influenced by years of teaching bankruptcy and researching consumer financial services transactions. This perspective has led me to examine homeownership through a hard, cold, and somewhat impersonal lens of rationality.

This approach is not without risk. I long-ago learned that whenever I present my views about homeownership I will likely offend someone, and perhaps everyone. And when I have presented my views during or after a meal, I know I face the risk of being pelted with produce. These days, I can never predict whether my views about homeownership will be more infuriating to conservatives on the economically rational Right or to liberals on the justice-oriented Left. So, I have learned to just duck and weave as I spread my heresy.

As a professor who teaches courses that appeal to both very conservative and very liberal students, I often am confronted with the tension that exists when public-interest-oriented students are asked to analyze a social problem from a financial or economic perspective. I most often encounter this tension when I teach a seminar called Economic Justice. Students in that seminar are generally 60% liberal/public-interest-oriented (of which 10% are radical left/anarchist), 30% law and economics/conservative, and 10% libertarian. Inevitably, I engage in verbal combat with the liberal/public-interest-oriented students during the first weeks of the term when we read neoclassical economics and law and economics articles. These students absolutely loathe those readings. They have told me that they feel that *any* economic analysis of the laws that involve consumers is just heartless. And they believe that taking an unemotional, detached approach to solving social problems is, at best, immoral. The public-interest-oriented law students who have taken my seminar have had a hard time ignoring what they

1. JAMES W. CHRISTIAN ET AL., ECON. DEPT' U.S. LEAGUE OF SAV. ASS'NS, HOMEOWNERSHIP, THE AMERICAN DREAM ADRIFT 11-12 (1982).

believe is the best, most equitable approach to solving a problem. By the end of the semester, though, they have embraced views from the Right and the Left and come to understand why using a business approach or applying economic theories can help them develop strategies that protect and empower the poor or working class.

Given the current state of the economy and the dramatic labor and housing market changes during the last thirty years, this Article seeks to prod public-interest-oriented students to question the assumption that homeownership is a valuable goal for blacks and Latinos. This Article first presents the financial and noneconomic benefits homeownership provides to individual owners, their households, and their communities. Second, I show how U.S. housing policies generally favor homeowners by giving them certain economic benefits and political privileges. I stress, though, that blacks and Latinos have always struggled to become homeowners and that, overall, these two groups have never received the same benefits and privileges that white homeowners have.

Third, this Article describes the housing crisis that started when housing became unaffordable for many Americans. The Article explains how the mortgage industry attempted to cure the crisis by innovating mortgage products to make it easier for renters to buy homes. Fourth, the Article shows that blacks and Latinos have never enjoyed the same homeownership benefits as whites and how they have been especially harmed in the current housing crisis. Fifth, the Article shows how the interests of the Left, Right, and government have converged to wage an unrelenting campaign to increase the number of black and Latino homeowners. I suggest that lawyers who are committed to public interest lawyering should understand that these constituents have radically different motives for wanting blacks and Latinos to buy homes. The Article ends by asking progressive law students and lawyers to ponder a few questions about the future for black and Latino homeowners given their overall socioeconomic profiles.

I. THE AMERICAN DREAM OF HOMEOWNERSHIP

The United States has supported and subsidized homeownership for well over a century. Abraham Lincoln signed the Homestead Act to encourage people to move west and establish households. After the Great Depression, the federal government's participation in housing markets increased dramatically and President Franklin D. Roosevelt's New Deal interventions completely transformed the mortgage finance market. Recent White House policies and programs also promote homeownership. These initiatives include President Clinton's National Homeownership Strategy,² President George W. Bush's

2. U.S. DEP'T OF Hous. & URBAN DEV., THE NATIONAL HOMEOWNERSHIP STRATEGY: PARTNERS IN THE AMERICAN DREAM 1-1 to 1-2 (1995).

initiative to expand homeownership for all Americans,³ and President Barack Obama's Home Affordable Modification Program.⁴ These programs had one goal: increase and maintain the number of homeowners. But why is homeownership such a good thing?

A. Financial Benefits to Owners

The most often cited benefit of homeownership is a financial one. Being a homeowner purportedly signals that a renter has finally become a responsible adult. Homeownership is said to make homeowners and their households economically responsible and financially secure.⁵ Over time, there actually has been quite a bit of truth to this homeownership narrative, since, until the buildup to the housing bubble, homeownership historically served as a forced savings device. Potential homebuyers had to save money to make a 20% down payment or they would not qualify for the low-cost fifteen- to thirty-year self-amortizing mortgages that were guaranteed by the U.S. government.⁶ The new homeowner then had to continue to save enough money to make equal monthly loan payments of principal and interest for fifteen to thirty years. At the end of the loan term, voilà, borrowers owned their own homes!

But buying a home did more than just instill the financial virtues of thrift and personal responsibility in homeowners. For decades, homes were sound, stable, long-term investments. During the early 1990s, home prices skyrocketed, and during the housing bubble, home prices in the aggregate increased by more than 50%.⁷ In some regions, housing prices increased annually by over 10%.⁸ Especially for the middle class, homeownership was a relatively safe way to increase

3. *Expanding Homeownership Opportunities: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 108th Cong. (2003) [hereinafter *Expanding Homeownership Opportunities*].

4. *What is "Making Home Affordable" All About?*, MAKING HOME AFFORDABLE, <http://www.makinghomeaffordable.gov/about-mha/faqs/Pages/default.aspx> (last updated May 31, 2012).

5. Homeowners are portrayed as financially independent citizens who embody the "core American values of individual freedom, personal responsibility and self-reliance." See Proclamation No. 7906, 70 Fed. Reg. 31,319, 31,319 (May 25, 2005).

6. Richard K. Green & Susan M. Wachter, *The American Mortgage in Historical and International Context*, J. ECON. PERSP., Fall 2005, at 93, 96–97.

7. Karl E. Case et al., *Wealth Effects Revisited 1978–2009*, at 12, (Nat'l Bureau of Econ. Research, Working Paper No. 16848, 2011); George S. Masnick, *Home Ownership Trends and Racial Inequality in the United States in the 20th Century* 9 (Joint Ctr. for Hous. Studies of Harvard Univ., Working Paper No. W01-4, 2001), available at http://www.jchs.harvard.edu/publications/homeownership/masnick_w01-4.pdf; *S&P/Case-Shiller Home Price Indices*, MACRO MARKETS, http://macromarkets.com/real-estate/sp_caseshiller.shtml (last visited Oct. 6, 2012); see also Eric Belsky & Joel Praken, *Housing Wealth Effects: Housing's Impact on Wealth Accumulation, Wealth Distribution and Consumer Spending* 4–5, 7 (Joint Ctr. for Hous. Studies of Harvard Univ., Working Paper No. W04-13, 2004), available at <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w04-13.pdf> (finding that the growth of residential real estate wealth is historically faster and more stable than the growth of corporate equities and stock wealth).

8. Karl E. Case, *Land Prices and House Prices in the United States*, in *HOUSING MARKETS IN THE U.S. AND JAPAN* 29, 30–31 (Yukio Noguchi & James Poterba eds., 1994); Case et al., *supra* note 7, at 9.

household net worth. Even now, housing wealth constitutes the bulk of household wealth for all but the highest income groups in the United States.⁹

B. Intangible Benefits to Owners

The rhapsodic view of homeownership is not just based on economics, though. Being a homeowner makes people feel good, and living in their own home brings homeowners the comfort of feeling that they are in control of the daily events in their lives.¹⁰ Except for homeowners who are having problems repaying their mortgage loans, owners report that they are in better shape physically and have less psychological distress than renters.¹¹ Though it is hard to verify or quantify happiness, homeowners take pride in having a place that is theirs and theirs alone to live in and enjoy: that place called home.¹²

Homeowners of all ages, races, genders, and from all geographic regions are generally happier with their homes (both the physical space and condition) and their neighborhoods than renters. But the level of satisfaction appears to decrease if the owner perceives that there are problems in the neighborhood (including the *problem* of blacks/Latinos moving in). It is unclear whether homeowners' happiness derives from the act of owning a home or from the fact that homeowners tend to have more money and be married, both of which are positively correlated with greater happiness. For whatever reason, homeownership is consistently associated with positive emotions.¹³

Some noneconomic benefits relate to homeownership's financial benefits. For better or worse, as Americans we define ourselves by what we own. Since a house is one of the most visible indications of a person's net worth, owning a

9. James H. Carr & Nandinee K. Kutty, *The New Imperative for Equality, in* SEGREGATION: THE RISING COSTS FOR AMERICA 15 (James H. Carr & Nandinee K. Kutty eds., 2008); U.S. DEP'T OF HOUS. & URBAN DEV., ECONOMIC BENEFITS OF INCREASING MINORITY HOMEOWNERSHIP 7 (2002), available at <http://archives.hud.gov/initiatives/blueprint/econreport-101502.pdf>.

10. See *Americans Polled Prove Importance of Home Is Undiminished Even Among Non-Home Owners*, MEREDITH CORP (Oct. 31, 2011), <http://meredith.mediaroom.com/index.php?s=2311&item=77869>; *Even as Housing Values Sink, There's Comfort in Homeownership*, PEW RES. CENTER (Feb. 19, 2009), <http://www.pewsocialtrends.org/2009/02/19/even-as-housing-values-sink-theres-comfort-in-homeownership>.

11. NAT'L ASS'N OF REALTORS, AMERICAN ATTITUDES ABOUT HOMEOWNERSHIP 3, 26 (2011); Peter H. Rossi & Eleanor Weber, *The Social Benefits of Homeownership: Empirical Evidence from National Surveys*, 7 HOUSING POL'Y DEBATE 1, 13–14 (1996); William M. Rohe et al., *The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research* 4–11 (Joint Ctr. for Hous. Studies of Harvard Univ., Working Paper No. LIHO-01.12, 2001); Robert D. Dietz, *The Social Consequences of Homeownership* 4–5 (June 18, 2003) (unpublished study for the Homeownership Alliance), available at <http://www.scribd.com/doc/18332673/The-Social-Consequences-of-Homeownership>; *Even as Housing Values Sink, There's Comfort in Homeownership*, *supra* note 10. Having better health produces another financial benefit for homeowners: lower health care costs.

12. Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511, 511, 514 (2007) (discussing the American obsession with and love of the concept of "home").

13. NAT'L ASS'N OF REALTORS, *supra* note 11; Rossi & Weber, *supra* note 11, at 13–15; Rohe et al., *supra* note 11, at 2–8, 10; Dietz, *supra* note 11, at 5; *Even as Housing Values Sink, There's Comfort in Homeownership*, *supra* note 10.

house reflects positively on the owner.¹⁴ In addition to serving as outward displays of success, houses evoke powerful emotions and memories.¹⁵

C. External Benefits to Children and Communities

In addition to making individual owners happy, most homeowners and renters believe that homeownership is good for children. Families who have or are expecting children prefer to own their own homes, and married couples with children are more likely than single people to be homeowners.¹⁶ U.S. housing policies support these preferences based on the view that “[d]ecent, affordable, and stable housing promotes family stability and creates a positive environment for raising children.”¹⁷ Homeowners’ children generally score higher than renters’ children on academic achievement tests, are less likely to become high school dropouts, and are more likely to graduate from high school.¹⁸ Studies show that children of homeowners tend to be more stable emotionally, have fewer behavioral problems in school, and are much less likely than renters’ children to be arrested, become pregnant, or become teenage parents.¹⁹ It is unclear whether the children of homeowners fare better than renters’ children because of parenting skills, stronger parental involvement in their children’s educational development, or the wealth and stability of the homeowner parents. Similarly, it is unclear whether homeowners’ children are more successful than renters’ children because homeowners tend to be less mobile than renters and, thus, their children have greater household stability.²⁰

Homeownership is also said to provide positive external benefits for neighborhoods and society generally, and for the owners of adjoining properties specifically.²¹ Homeownership is said to create civic-minded stakeholders in

14. JULIET B. SCHOR, *THE OVERSPENT AMERICAN: UPSCALING, DOWNSHIFTING, AND THE NEW CONSUMER* 32–33 (1998).

15. Sarah Nettleton & Roger Burrows, *When a Capital Investment Becomes an Emotional Loss: The Health Consequences of the Experience of Mortgage Possession in England*, 15 *HOUSING STUD.* 463, 469, 476 (2000).

16. William M. Rohe & Leslie S. Stewart, *Homeownership and Neighborhood Stability*, 7 *HOUSING POLY DEBATE* 37, 43 (1996); Donald R. Haurin et al., *The Impact of Homeownership on Child Outcomes* 7 (Joint Ctr. for Hous. Studies of Harvard Univ., Working Paper No. LIHO01-14, 2001), available at www.jchs.harvard.edu/publications/homeownership/liho01-14.pdf; Dietz, *supra* note 11, at 1–2, 4.

17. BIPARTISAN MILLENNIAL HOUS. COMM’N, *MEETING OUR NATION’S HOUSING CHALLENGES* 7 (2002), available at <http://permanent.access.gpo.gov/lps19766/www.mhc.gov/mhc/final.pdf>; see also FANNIE MAE FOUND., *AFRICAN AMERICAN AND HISPANIC ATTITUDES ON HOMEOWNERSHIP: A GUIDE FOR MORTGAGE INDUSTRY LEADERS* 13 (1998).

18. HABITAT FOR HUMANITY NYC, *BENEFITS OF HOMEOWNERSHIP* 1–2, available at <http://www.habitatnyc.org/pdf/Toolkit/homewonership.pdf>.

19. Rohe & Stewart, *supra* note 16, at 7; Rossi & Weber, *supra* note 11, at 27; Haurin et al., *supra* note 16, at 2, 14; Dietz, *supra* note 11, at 4.

20. Rohe & Stewart, *supra* note 16, at 43, 54; Rossi & Weber, *supra* note 11, at 27; Haurin et al., *supra* note 16, at 2; Dietz, *supra* note 11, at 4.

21. LEE ANNE FENNELL, *THE UNBOUNDED HOME: PROPERTY VALUES BEYOND*

communities and more involved citizens who will keep their homes in better physical condition and better protect their communities.²² Investing in and being staked to real property makes homeowners more likely than renters to maintain their homes, to maintain gardens, to do or pay for lawn work, and to perform home repairs.²³ Homeowners are *especially* likely to make repairs that remove hazards to their health, and will make repairs that, if left undone, would harm the market value of the house.²⁴

Legislators routinely cite the social and civic benefits of homeownership to support generous homeownership subsidies.²⁵ This homeownership narrative is also largely accurate, as homeowners have an incentive to care about their neighborhoods and communities in ways renters do not. Even if homeowners want or need to move quickly, they face higher transaction costs. Selling a house takes time, and homeowners can incur substantial expenses when selling a house and buying a new one.²⁶ Because of these higher transactions costs, homeowners are considerably less mobile and less likely to be planning a move than renters.²⁷

Of course, homeowners have a selfish, short-term reason to lobby for favorable neighborhood amenities and to take good care of their homes. In theory, they will live in the community to enjoy the parks, roads, and other desirable services that they and other homeowners have lobbied to get for their neighborhoods. So, not surprisingly, homeowners are more likely to lobby for greater amenities in their communities (parks, community centers, better schools, and better roads) and to have higher levels of participation in activities that

PROPERTY LINES 67 (2009); Karla Hoff & Arijit Sen, *Homeownership, Community Interactions, and Segregation*, 95 AM. ECON. REV. 1167, 1171 (2005).

22. *Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Institutions: Hearing Before the Subcomm. on Fin. Inst. & Consumer Credit of the H. Comm. on Fin. Servs.*, 110th Cong. 56 (2007) (statement of Harry H. Dinham, President, National Association of Mortgage Brokers) [hereinafter *Subprime and Predatory Lending*]; CHRISTOPHER E. HERBERT ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., HOMEOWNERSHIP GAPS AMONG LOW-INCOME AND MINORITY BORROWERS AND NEIGHBORHOODS, at v (2005), available at <http://www.huduser.org/Publications/pdf/HomeownershipGapsAmongLow-IncomeAndMinority.pdf>.

23. See Rohe & Stewart, *supra* note 16, at 45, 47–48; Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?* 17 (Nat'l Bureau of Econ. Research, Working Paper No. 6363, 1998); Dietz, *supra* note 11, at 6.

24. Rohe & Stewart, *supra* note 16, at 52–55; Clive Crook, *Housebound: Why Homeownership May Be Bad for America*, ATLANTIC MONTHLY, Dec. 2007, at 21, 22; DiPasquale & Glaeser, *supra* note 23, at 25; Dietz, *supra* note 11, at 3–5.

25. *Expanding Homeownership Opportunities*, *supra* note 3, at 7–8 (statement of Sen. Paul S. Sarbanes) (“When a family buys a home, they are buying more than brick and mortar. They are really buying into the neighborhood. With each homeowner, we create another anchor in a community, another advocate for better schools, safer streets, small business development. Common sense tells us and evidence actually confirms that homeowners are more engaged citizens and more active in their communities.”).

26. See Rohe & Stewart, *supra* note 16, at 43, 51–52.

27. WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 74–75 (2001).

improve the value, safety, and desirability of their neighborhoods.²⁸ Homeowners have an economic incentive to lobby for amenities that help increase the market value of their homes, since these types of amenities are capitalized in the prices of homes in these neighborhoods.²⁹

II. HOMEOWNERSHIP PRIVILEGES

Because of the financial, emotional, and civic benefits associated with homeownership, homeowners are given certain economic privileges. Certainly, the U.S. government provides some financial assistance for renters, like the federal Housing Choice Voucher Program and the Low-Income Housing Tax Credit.³⁰

But for almost 100 years, the U.S. government has significantly subsidized the costs of homeownership, and, as discussed below, makes significant tax allowances to encourage homeownership. To help restore confidence in the housing markets and help the country recover from catastrophic economic losses during the Great Depression, the United States created the Federal Housing Administration (FHA) and the agency now known as Fannie Mae.³¹ U.S. housing policies during the New Deal helped transform the residential housing finance market into one that relied primarily on fifteen- to thirty-year fixed-interest rate, self-amortizing loans. To encourage banks to extend credit to aspiring homeowners, the United States provided insurance for these fifteen- to thirty-year private mortgage loans and guaranteed that, in the event of a borrower default, the U.S. government would repay the loans.³² Because lenders knew the United States bore the risk of nonpayment, they had an economic incentive to keep costs low for these government-insured loans. As a result, mortgage costs were lower for homeowners who qualified for these loans.³³ So, for almost a century, U.S. homeowners who qualified for these self-amortizing government-insured loans have had significantly lower housing costs than homeowners who were not approved for these low-cost loans.

28. Hoff & Sen, *supra* note 21, at 1170–71; *see generally* Lee Anne Fennell, *Homes Rule*, 112 YALE L.J. 617, 643 (2002) (discussing “quality-enhancing users”—people who actively make positive contributions to the community’s well-being and help achieve better schools and safer neighborhoods).

29. Hoff & Sen, *supra* note 21, at 1170–71.

30. The Housing Voucher Choice Program was created by the Housing and Community Development Act of 1974. Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty: A Response to Schill and Wachter*, 114 U. PA. L. REV. 1351, 1355 (1995).

31. Vincent J. Cannato, *A Home of One’s Own*, NAT’L AFFAIRS, Spring 2010, at 69, 73.

32. *See id.*

33. William E. Nelson & Norman R. Williams, *Suburbanization and Market Failure: An Analysis of Government Policies Promoting Suburban Growth and Ethnic Assimilation*, 27 FORDHAM URB. L.J. 197, 226–31 (1999) (tracing the history of government intervention in the housing markets to expand home ownership by loosening financial requirements).

The largest and most often-touted economic privilege the U.S. government gives homeowners is preferred tax treatment. Homeowners who itemize their tax deductions can reduce their tax burden by deducting interest on mortgage loans (including home equity loans and lines of credit) on their primary and secondary homes up to a certain dollar amount. Itemizers can also deduct state and local real property taxes from their income, and can shield some of the profits from the sale of their homes from taxes.³⁴

Finally, homeowners are given the power to influence how other properties in their neighborhoods can be used or developed. Because homeowners are viewed as having a greater stake in their communities than renters do, local land use policies and regulations give homeowners the power to contest proposed zoning changes in their neighborhoods if they deem the proposed uses to be undesirable. Homeowners routinely organize and lobby to thwart attempts to place public projects they deem undesirable—like hazardous waste facilities or industrial developments—in their neighborhoods.³⁵ But homeowners are allowed to object to more than just potentially harmful (though socially beneficial) projects. Single-family homeowners routinely lobby to exclude multifamily or other affordable housing from their neighborhoods.³⁶ Homeowners argue that such housing will lower the value of their homes, cause overcrowding, and generally destroy the neighborhood's social order.³⁷ Over time, homeowners have used their stakeholder powers to live near people like them and in houses like theirs, which is why so many communities in the United States continue to have distinct racial and economic identities.³⁸

III. THE HOMEOWNERSHIP CRISIS

While we love homeownership, lately, homeownership has not loved us back. The housing crisis that the United States is still experiencing actually started well before the 2008 global economic meltdown.

A. Home Price Appreciation

The current crisis had its genesis in the beginning of the 1990s, when U.S.

34. JOINT COMM. ON TAXATION, PRESENT LAW AND BACKGROUND RELATING TO TAX TREATMENT OF HOUSEHOLD DEBT 23–24 (2011).

35. See FISCHEL *supra* note 27, at 162–64.

36. FENNELL, *supra* note 21, at 156–60; Iglesias, *supra* note 12, at 554–55.

37. FENNELL, *supra* note 21, at 156–60; Iglesias, *supra* note 12, at 553.

38. For example, the mere mention of the names of certain locales would cause most people to visualize the type of person most likely to live there. Examples include Aspen, Harlem, Key West, Chevy Chase, Westchester County, South Beach, Beverly Hills, and Cape Cod. Of course, prior views of who lives in Harlem may no longer be accurate. See Iglesias, *supra* note 12, at 540 (discussing “dark side” of focus on the home, including segregation, homelessness, and the NIMBY syndrome); Sam Roberts, *New York City Losing Blacks, Census Shows*, N.Y. TIMES, Apr. 3, 2006, at A1.

housing prices escalated.³⁹ At the same time home prices appreciated, wages were stagnant, real median household income declined, and the savings rate hovered at or below zero.⁴⁰ Home price appreciation was good for existing homeowners and was consistent with the narrative that homeownership is economically beneficial. But the combination of stagnant wages, no savings, and higher housing costs priced buyers of moderate means out of housing markets, *especially* high-appreciating markets.⁴¹ These negative economic factors also made it almost impossible for buyers to qualify for low-cost government-insured loans, since they had no money for a down payment or to make monthly payments on a fixed-rate, fifteen- to thirty-year self-amortizing mortgage loan.⁴²

B. Mortgage Innovation to the Rescue

To make sure renters could continue to buy homes (and existing homeowners could buy bigger homes), U.S. political leaders encouraged lenders to innovate their mortgage products.⁴³ And innovate they did. The lending industry created, and then extensively marketed, a wide array of nontraditional exotic mortgage products that would have been unrecognizable to lenders who approved the traditional low-cost, low-risk fifteen- to thirty-year self-amortizing fixed-rate mortgages.⁴⁴ During the frenzied days leading up to the housing bust, lenders all but eradicated historical lending criteria by allowing people to buy their homes even if they made no down payment, had bad credit, could not (or would not) document their income and assets, and would never have qualified for a loan based on traditional lending criteria.⁴⁵

39. See Charles Himmelberg et al., *Assessing High House Prices: Bubbles, Fundamentals and Misperceptions*, J. ECON. PERSP., Fall 2005, at 67, 67.

40. See *The Endangered Middle Class: Is the American Dream Slipping out of Reach for American Families?: Hearing Before the S. Comm. on Health, Educ., Labor, & Pensions*, 112th Cong. 6, 12 (2011), available at <http://www.help.senate.gov/imo/media/doc/Reich.pdf> [hereinafter *The Endangered Middle Class*] (statement of Robert B. Reich, former U.S. Secretary of Labor).

41. The President of the National Association of Realtors testified before Congress that the affordability crisis had created a nation of “housing haves” who purchased homes before the price explosion and “housing have nots” who were forced to “scale down their expectations and make lifestyle sacrifices to afford adequate shelter.” *Expanding Homeownership Opportunities*, *supra* note 3, at 51–53.

42. See *The Endangered Middle Class*, *supra* note 40, at 12.

43. For example, President Bush’s 2004 Budget proposed that lenders offer subprime loans to borrowers who could not meet traditional underwriting standards because of bad credit ratings. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2004, at 164 (2003).

44. See Gene Amromin et al., *Complex Mortgages 1* (Nat’l Bureau of Econ. Research, Working Paper No. 17315, 2011), available at <http://www.nber.org/papers/w17315>.

45. *Frenzy of Risky Mortgages Leaves Path of Destruction*, EPOCH TIMES, May 10–16, 2007, at A6; Gretchen Morgenson, *Home Loans: A Nightmare Grows Darker*, N.Y. TIMES, Apr. 8, 2007, at B1. These loans, which were used globally, had a number of variations. Some were no income, no asset (NINA) loans, so the borrower did not need to disclose income *or* assets and could be approved based on the borrower’s employment, credit history, the property value, and the down payment (if any). Another

These exotic products gave renters no incentive to be thrifty or financially responsible. Borrowers no longer needed to save to make a down payment because lenders relaxed (or abandoned) the requirement for one. Homeowners had no need to save enough money to make a fully amortized monthly loan payment because their initial loan payments often were so low. Though payments for interest-only or adjustable-rate mortgage loans could increase (often dramatically) when the initial low interest rates (which were commonly referred to as teaser rates) reset upwards, homeowners did not seem to think they would ever be required to repay these loans at a fully amortized rate.⁴⁶ Instead, homeowners happily accepted these loans based on the faulty assumption that, as long as housing price appreciation continued, lenders would happily refinance their high-cost, high-risk mortgage products.⁴⁷

C. *The Inevitable Collapse*

This irrational exuberance came to an end when house prices stopped appreciating, interest rates rose, real household income remained stagnant, and the unemployment rate rose. This toxic combination caused record numbers of homeowners—especially those who bought their homes using high-cost, high-risk mortgage products—to fall behind on their mortgage payments.⁴⁸ People whose homes were worth less than the outstanding mortgage debt (i.e., upside-down homeowners) defaulted, and many chose to walk away from their homes when they realized how far underwater they were.⁴⁹ In fact, even though government

variation, a no income no asset, no employment (NINANE) loan, did not require the borrower to disclose income, assets, or employment. See also *Preserving the American Dream: Predatory Lending Practices & Home Foreclosure Before the S. Comm. on Banking, Hous., & Urban Affairs*, 110th Cong. 18–20 (2007) (statement of Jean Constantine-Davis, Senior Attorney, AARP Foundation); József Hegedüs, *Housing Policy and the Economic Crisis: The Case of Hungary*, in HOUSING MARKETS AND THE GLOBAL FINANCIAL CRISIS: THE UNEVEN IMPACT ON HOUSEHOLDS 113, 123 (Ray Forrest & Ngai Ming Yip eds., 2011).

46. *Subprime and Predatory Lending*, *supra* note 22, at 6–8 (statement of Hon. Shelia C. Bair, Chairwoman, Federal Deposit Insurance Corporation); *Subprime and Predatory Lending*, *supra* note 22, at 53 (statement of Allen Fishbein, Director of Housing and Credit Policy, Consumer Federation of America); BRIAN BUCKS & KAREN PENCE, FED. RESERVE BD. OF GOVERNORS, DO HOMEOWNERS KNOW THEIR HOUSE VALUES AND MORTGAGE TERMS? 2–3 (2006); Lauren M. Ross & Gregory D. Squires, *The Personal Costs of Subprime Lending and the Foreclosure Crisis: A Matter of Trust, Insecurity, and Institutional Deception*, 92 SOC. SCI. Q. 140, 149–151 (2011).

47. ALLEN J. FISHBEIN & PATRICK WOODALL, CONSUMER FED’N OF AM., EXOTIC OR TOXIC? AN EXAMINATION OF THE NON-TRADITIONAL MORTGAGE MARKET FOR CONSUMERS AND LENDERS 8 (2006); Vikas Bajaj & Julie Creswell, *Home Lenders Hit by Higher Default Rates*, N.Y. TIMES, Feb. 22, 2007, at C1.

48. Amromin, et al., *supra* note 44, at 2–3; Press Release, Leadership Conference on Civil Rights, National Civil Rights Groups Call for Immediate Moratorium on Foreclosure Resulting from Risky Subprime Loans (Apr. 4, 2007), <http://www.civilrights.org/press/2007/national-civil-rights-groups.html>.

49. See John Leland, *Facing Default, Some Abandon Homes to Banks*, N.Y. TIMES, Feb. 29, 2008, at A1; Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosures*, N.Y. TIMES, Nov. 6, 2007, at A1.

officials declared that the 2007 recession was over, significant numbers of homeowners still have outstanding mortgage debt that exceeds the value of their still-depreciating homes.⁵⁰ As of the end of 2011, more than eleven million homeowners were upside-down on their loans, 1.3 million were delinquent on their mortgage payments, and approximately two million were involved in foreclosure proceedings.⁵¹

IV. BLACKS, LATINOS, AND HOMEOWNERSHIP

Homeownership is not as profitable today as it was twenty years ago. For decades, U.S. housing policies have helped to smooth the road to homeownership and remove the financial obstacles that prevented moderate income renters from becoming homeowners. Unfortunately, only white homeowners could expect the United States to clear obstacles that thwarted their desires to become homeowners. The road to homeownership has never been smooth for blacks and Latinos and the U.S. government itself is responsible for placing obstacles in their way.

A. The Past: Redlining, Racist Covenants, Steering

Federal housing policies made it easier for lenders to discriminate against blacks and Latinos by creating “redlined” areas, encompassing properties in racially mixed areas deemed to be high-risk and uninsurable. The United States refused to insure private fixed-rate self-amortizing mortgage loans if the borrower wanted to purchase a home in a neighborhood deemed “redlined.”⁵² Because the United States would not guarantee loans for homes in redlined areas, private lenders would not approve low-cost, low-interest rate loans for blacks to buy homes in nonwhite neighborhoods.⁵³ These housing policies legitimized housing discrimination, and it was virtually impossible for *any* borrower to obtain a low-cost, low-risk loan to purchase a home in a nonwhite area. This did not change until redlining was deemed illegal in a 1962 Executive Order that directed all

50. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 2012, at 9–11 (2012), available at <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2012.pdf>; ‘Great Recession’ Over, *Research Group Says*, MSNBC (Sept. 20, 2010), http://www.msnbc.msn.com/id/39269753/ns/business-eye_on_the_economy/t/great-recession-over-research-group-says/#.UFkFW11ROQ.

51. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *supra* note 50, at 1, 17, 19.

52. Douglas S. Massey, *Origins of Economic Disparities: The Historical Role of Housing Segregation*, in SEGREGATION: THE RISING COSTS FOR AMERICA, *supra* note 9, at 39, 69–70.

53. Massey, *supra* note 52; see also MEIZHU LUI, ET AL., THE COLOR OF WEALTH: THE STORY BEHIND THE U.S. RACIAL WEALTH DIVIDE 95 (2006) (Neighborhoods in all-white areas received the highest “blue” or “A” rating. Neighborhoods in black areas received the lowest “red” or “D” rating, which led to the use of the term “redlining.” Neighborhoods that bordered black neighborhoods received a “green” or “C” rating, which was only slightly higher than redlined neighborhoods.).

federal agencies insuring or guaranteeing housing loans to prevent discrimination based on race.⁵⁴

In addition to increasing the costs to buy a home in a nonwhite neighborhood, the United States imposed or supported policies that kept blacks out of white neighborhoods. White homeowners used restrictive housing covenants to maintain racially homogeneous neighborhoods. Generally speaking, restrictive covenants were private contractual agreements between property owners stating that neither they nor their heirs would sell or lease their homes to blacks.⁵⁵ Although the U.S. Supreme Court ruled in 1917 that local zoning laws that mandated segregated neighborhoods were unenforceable, state and federal courts routinely enforced these private restrictive covenants.⁵⁶ Worse yet, until the U.S. Supreme Court ruled that these covenants were illegal in 1948, FHA underwriting standards favored properties that included these racist real property covenants, and federal banking regulations made it virtually impossible for lenders to issue low-cost, long-term loans that were *not* FHA-insured.⁵⁷

In addition to the difficulties blacks faced when they tried to purchase a home in a nonwhite neighborhood with a low-cost mortgage, or to purchase homes in white neighborhoods that did not have restrictive covenants, blacks rarely even learned that homes were available in higher appreciating (i.e., white) neighborhoods because realtors routinely steered blacks away from those areas.⁵⁸ To avoid the inconvenience, humiliation, and time required to find and buy a home in a white neighborhood, blacks often chose to buy homes in predominately black urban areas.⁵⁹

However, while voluntarily choosing to buy a home in a nonwhite area may have been better emotionally for black and Latino potential buyers, this choice had expensive and negative financial consequences. Steering restricted blacks and Latinos to homes in neighborhoods that were not as desirable or valued in housing markets.⁶⁰ Homes in nonwhite areas tended to be older and have fewer of

54. Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (Nov. 24, 1962).

55. Massey, *supra* note 52, at 55.

56. *Buchanan v. Warley*, 245 U.S. 60, 81–82 (1917); *see, e.g., Shelley v. Kraemer*, 334 U.S. 1, 4–8 (1948) (describing the lower courts' enforcement of private restrictive covenants).

57. *Shelley*, 334 U.S. at 22–23 (striking down as unconstitutional state court enforcement of racially restrictive covenants). *See generally* Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L. J. 186 (2005) (describing how the FHA's section 203(b) insurance program discriminated against African Americans, effectively precluding their ability to obtain desirable home loans).

58. *See* John F. Kain & John M. Quigley, *Housing Market Discrimination, Homeownership, and Savings Behavior*, 62 AM. ECON. REV. 263, 264, 269–70 (1972); Deborah L. McKoy & Jeffrey M. Vincent, *Housing and Education: The Inextricable Link*, in SEGREGATION: THE RISING COSTS FOR AMERICA, *supra* note 9, at 125, 128, 132.

59. Kain & Quigley, *supra* note 58, at 264, 269; McKoy & Vincent, *supra* note 58, at 132.

60. McKoy & Vincent, *supra* note 58, at 132.

the amenities found in newer homes, especially suburban homes in predominately white areas.⁶¹ In addition, because whites have always had higher homeownership rates,⁶² steering them away from black or Latino neighborhoods decreased the pool of potential purchasers for homes in nonwhite neighborhoods and limited the demand for homes in these neighborhoods. At the same time, steering whites—especially higher-income whites—to white neighborhoods increased the demand for those homes and inflated the value of homes in those neighborhoods.⁶³

Steering whites away from nonwhite neighborhoods and making it harder for nonwhites to buy homes anywhere other than in those neighborhoods stigmatized those neighborhoods in housing markets.⁶⁴ The stigma that *those* homes were not as valuable as homes in white neighborhoods was capitalized into home values, which caused homes in nonwhite neighborhoods to have lower appreciation rates.⁶⁵ As a result, blacks had higher buying costs (because lenders would not approve them for low-cost, government-insured loans) but their homes were not valued as highly in housing markets and would not appreciate as much, since only purchasers who were similarly shut out of more desirable markets would want to buy these houses.⁶⁶

Though redlining and racial covenants are now banned by federal laws and policies,⁶⁷ years of discrimination in housing and lending markets have resulted in homes in racially mixed areas having lower rates of appreciation than homes in white neighborhoods.⁶⁸ Studies suggest that by the 1970s housing market obstacles that denied blacks low-cost financing and prevented them from buying higher-appreciating homes may have doubled their out-of-pocket housing costs relative to what those costs would have been if they had been able to buy a home in the 1950s.⁶⁹ So, while white homeowners have been able to buy homes cheaply since the 1930s and have always been allowed to buy homes in high-appreciating areas, blacks and Latinos have had radically different experiences as homeowners.

61. Kain & Quigley, *supra* note 58, at 270.

62. See, e.g., *Homeownership Rates by Race and Ethnicity of Householder: 1994 to Present*, U.S. CENSUS BUREAU, <http://www.census.gov/housing/hvs/data/histtab16.xls> (last visited Oct. 6, 2012) [hereinafter *Homeownership Rates*].

63. McKoy & Vincent, *supra* note 58.

64. Of course, given the racial mores at the time, few whites sought to move into nonwhite neighborhoods. And those who might have been willing to move had a strong financial incentive not to because they could not get low-cost, FHA-insured loans to purchase homes in those areas. See Gordon, *supra* note 57, at 206–09.

65. Fennell, *supra* note 28, at 645.

66. Massey, *supra* note 52, at 72, 76; McKoy & Vincent, *supra* note 58, at 133.

67. The U.S. Department of Housing and Urban Development prohibits this type of housing discrimination by making it unlawful for real estate agents to restrict or attempt to restrict a potential purchaser's real estate choices in order to help perpetuate segregated housing patterns. 24 C.F.R. § 100.70(a)–(d) (2012).

68. Kain & Quigley, *supra* note 58, at 273.

69. *Id.*

*B. The Present**1. Racial Homeownership Gap*

The myriad obstacles blacks and Latinos faced in housing and lending markets resulted in their homeownership rates in the 1950s and 1960s significantly lagging behind white homeownership rates. This racial homeownership gap narrowed after Congress passed fair housing laws and once federal agencies started enforcing those laws.⁷⁰ And for the last two decades, U.S. politicians have made concerted efforts to close the gap. For example, in 1995, President Clinton's Secretary of the Department of Housing and Urban Development worked with private lending groups, secondary market investors, nonprofit agencies, and governmental agencies as part of the White House *National Homeownership Strategy*.⁷¹ The *Strategy* was designed to increase the overall number of homeowners by eight million by 2000, in large part by creating affordable and flexible financing arrangements.⁷² The *Strategy* specifically sought to help minority and low-income potential homeowners overcome the barriers they faced when they attempted to become homeowners. The *Strategy* was hailed as a success, as overall homeownership rates increased from 64.2% to 67.4% between 1994 and 2000 and there were almost 2.4 million new black and Latino homeowners over that time period.⁷³

The George W. Bush administration also made homeownership a key part of its agenda, finding that "[b]uying a home is the biggest single investment most people will make in their lives."⁷⁴ It set a goal of creating 5.5 million more minority homeowners by 2010.⁷⁵ To remove barriers to homeownership for minorities, the Bush White House issued *America's Homeownership Challenge* to the real estate, mortgage, and banking industries.⁷⁶ The *Challenge* recognized that many low-income families, especially black and Latino households, lacked the savings to make a down payment or pay closing costs. Although the Bush administration created the American Dream Downpayment Fund to help potential buyers, it became clear that the effort to increase minority ownership rates could succeed only with the help of the lending industry.

70. HERBERT ET AL., *supra* note 22, at viii; Stuart A. Gabriel & Stuart S. Rosenthal, *Homeownership in the 1980s and 1990s: Aggregate Trends and Racial Gaps*, 57 J. URB. ECON. 101, 101–05 (2005); *Homeownership Rates*, *supra* note 62.

71. See U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 2, at 1-1, 1-3.

72. *Id.* at 1-1.

73. BIPARTISAN MILLENNIAL HOUS. COMM'N, *supra* note 17, at 20, 90.

74. Press Release, White House Office of the Press Secretary, Fact Sheet: America's Ownership Society: Expanding Opportunities (Aug. 9, 2004), available at <http://georgewbushwhitehouse.archives.gov/news/releases/2004/08/20040809-9.html>.

75. THE WHITE HOUSE: GEORGE W. BUSH, A HOME OF YOUR OWN: EXPANDING OPPORTUNITIES FOR ALL AMERICANS 2 (2002), available at <http://georgewbush-whitehouse.archives.gov/infocus/homeownership/homeownership-policy-book-background.html>.

76. *Id.*

The Bush administration challenged the real estate industry to work in conjunction with Wall Street to develop innovative loan financing options that facilitated a market approach to increasing minority homeownership.⁷⁷ The *Challenge* was also hailed as a success, and the combined effects of initiatives pursued during the Bush and Clinton administrations, low interest rates, and an overall strong economy helped homeownership rates to increase from approximately 64% to approximately 69% from 1985 to 2005.⁷⁸ In fact, despite the housing meltdown, overall homeownership rates in 2010 and 2011 were approximately 66%.⁷⁹

These optimistic numbers disguise the fact that homeownership rates have always varied dramatically by race. The homeownership gap between whites and other racial or ethnic minority groups has consistently hovered around 25%—even after explicit housing and lending discrimination was deemed illegal by the U.S. Supreme Court and by federal fair housing and lending laws *and* despite repeated efforts to close the gap. White homeownership rates have not been less than 70% since 1995 and even rose to a high of 76% in 2004. In marked contrast, no other racial group had homeownership rates that exceeded 70% in that or any other year. The homeownership rates for other groups in 2004 were as follows: 48% for Latinos, just over 49% for blacks, and 58% for all other races. Black homeownership rates hit an all-time high of approximately 49% in 2004, while the highest Latino homeownership rate reached 50.1% in 2007.⁸⁰ Although homeownership rates for all groups for the past thirty years have ranged between 64% to almost 69%, rates for blacks and Latinos have never reached those highs.⁸¹

2. Taxes

Few black and Latino homeowners receive homeownership tax benefits. Most itemizers are high-income homeowners, and most high-income homeowners are white.⁸² Thus, the generous homeownership tax benefits (i.e., the mortgage interest and property tax deductions, and the capital gains exclusion) provided by the U.S. Tax Code are useful to only the small percentage of high-income homeowners who itemize their deductions.⁸³ So, while white, high-income

77. *Id.* at 2–3.

78. *Homeownership Rates for the U.S. and Regions: 1965 to Present*, U.S. CENSUS BUREAU, <http://www.census.gov/housing/hvs/data/histtab14.xls> (last visited Oct. 6, 2012) [hereinafter *Homeownership Rates*].

79. *Id.*

80. *Homeownership Rates*, *supra* note 62 (The “all other races” category “[i]ncludes people who reported Asian, Native Hawaiian or Other Pacific Islander, or American Indian or Alaska Native regardless of whether they reported any other race, as well as all other combinations of two or more races.”).

81. *Id.*; *Homeownership Rates*, *supra* note 78.

82. See CONG. OF THE U.S., CONG. BUDGET OFFICE, *THE TAX TREATMENT OF HOMEOWNERSHIP: ISSUES AND OPTIONS*, at xi, xviii, 11 (1981).

83. See *id.*; Eric Toder, Brookings Inst. Tax Policy Ctr., *Mortgage Interest Deduction:*

homeowners can derive significant financial benefits from these tax expenditures, black and Latino homeowners miss out yet again.⁸⁴

3. Stakeholder Powers

While all homeowners have the right to contest proposed zoning changes, high-income homeowners have been much more successful at excluding undesirable property uses from their neighborhoods. Multiunit apartments or high-density public housing projects, and socially beneficial but stigmatized projects (like group homes and hazardous waste sites) are almost always excluded from high-income neighborhoods.⁸⁵ Not surprisingly, most high-income neighborhoods are predominately white. So, these undesirable projects are disproportionately located in or near black or Latino neighborhoods.⁸⁶

Excluding undesirable projects from high-income predominately white neighborhoods helps ensure that the white homeowners' property values are protected against any potential harm that might result from being near these projects. Of course, routinely placing those public uses in lower-income and minority neighborhoods makes homes in those neighborhoods less desirable and less valuable, since, even if socially beneficial, those undesirable projects are capitalized in the value of the homes. Again, the combination of pushing undesirable property uses *into* black and Latino neighborhoods and steering blacks and Latinos *away from* higher-appreciating white neighborhoods has helped ensure that blacks and Latinos will own a disproportionate number of homes in neighborhoods that have lower appreciation rates.

4. Modern Redlining: Subprime Lending

While black and Latino overall homeownership rates increased more than white homeownership rates during the housing bubble,⁸⁷ blacks and Latinos received a disproportionate share of the nontraditional, high-cost loans the mortgage industry innovated to make home buying more affordable. More than 50% of all loans blacks received to purchase homes, and 40% of the loans Latinos received, were subprime loan products. In contrast, less than 20% of home-purchase loans issued to white borrowers were high-cost loans. This disparity

Background Information 1 (July 28, 2011), available at <http://www.taxpolicycenter.org/events/upload/handout-Eric-Toder-July-28.pdf>; *Rich House, Poor House: The Two Faces of Home Equity Lending*, CONSUMERS UNION (Mar. 1997), <http://www.consumersunion.org/finance/home-tx2.htm>.

84. See Toder, *supra* note 83.

85. William A. Fischel, *An Economic History of Zoning and a Cure for Its Exclusionary Effects*, 41 URB. STUD., 317, 330–31 (2004).

86. Massey, *supra* note 52, at 73.

87. BIPARTISAN POLICY CTR., DEMOGRAPHIC CHALLENGES AND OPPORTUNITIES FOR U.S. HOUSING MARKETS 19–21 (2012), available at <http://bipartisanpolicy.org/sites/default/files/BPC%20Housing%20Demography.pdf>; RAKESH KOCHHAR ET AL., PEW HISPANIC CTR., THROUGH BOOM AND BUST: MINORITIES, IMMIGRANTS AND HOMEOWNERSHIP, at i (2009).

exists for all income levels as evidenced by the fact that approximately 25% of *higher*-income black borrowers and approximately 17% of *higher*-income Latino borrowers received a subprime high-cost mortgage product, while only approximately 13% of *lower*-income white borrowers received these high-cost loans.⁸⁸

These high-cost products allowed black and Latino households to buy homes, but saddled them with crushing mortgage debt loads. Because the loan products had adjustable rates and other high-risk features, these groups faced a higher risk of defaulting on their loans and losing their homes to foreclosure. And this is exactly what has happened during this economic slump.

5. *Wealth Loss*

Even before the Great Recession, black and Latino households had significantly lower household net worth than white households. In 2000, median household wealth for whites was \$79,400, while median household wealth for blacks was \$7,500—smaller by ten-fold—and Latinos' household wealth was \$9,750.⁸⁹ By 2009, median household wealth for whites was \$113,149, an amount that vastly exceeded median household wealth for blacks (\$5,677) and Latinos (\$6,325).⁹⁰ While the current economic crisis has wiped out years of accumulated wealth for U.S. households, it has had an especially devastating effect on black and Latino households.

Between the years 2005 and 2009, median wealth for white households fell 16%.⁹¹ In stark contrast, median wealth fell 53% for blacks and 66% for Latinos.⁹² Median wealth for white households is now twenty times that of black households and eighteen times that of Latino households. And the vast majority of these recent losses are related to housing (i.e., foreclosures or housing price depreciation).⁹³

88. See DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, UNFAIR LENDING: THE EFFECT OF RACE AND ETHNICITY ON THE PRICE OF SUBPRIME MORTGAGES (2006); KATHRYN L.S. PETTIT ET AL., URBAN INST., HOUSING IN THE NATION'S CAPITAL 18 (2009); Michael Powell, *Bank Accused of Pushing Mortgage Deals on Blacks*, N.Y. TIMES, June 7, 2009, at A16.

89. SHAWNA ORZECOWSKI & PETER SEPIELLI, NET WORTH AND ASSET OWNERSHIP OF HOUSEHOLDS: 1998 AND 2000 2, 6, 12 (2003), available at <http://www.census.gov/prod/2003pubs/p70-88.pdf>; see also NAT'L URBAN LEAGUE, THE STATE OF BLACK AMERICA 2005, at 15, 22 (2005) (reporting that median net worth for blacks is ten times less than white net worth).

90. RAKESH KOCHHAR ET AL., PEW RESEARCH CTR., WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS AND HISPANICS 1–2 (2011), available at <http://pewresearch.org/pubs/2069/housing-bubble-subprime-mortgages-hispanics-blacks-household-wealth-disparity>.

91. *Id.*

92. *Id.*

93. *Id.*

V. SO, WHY IS HOMEOWNERSHIP A GOOD THING FOR BLACKS AND LATINOS?

Americans of all ages, races, and economic classes passionately embrace homeownership, which is not surprising, since it is hard to avoid the hype associated with owning your own home. Civil rights and low-income housing groups, the housing sector (realtors, lenders, secondary market investors, Fannie Mae and Freddie Mac, etc.) and the U.S. government *all* relentlessly tout the financial and psychological benefits of homeownership.⁹⁴ Given the tortured road to homeownership blacks and Latinos have traveled, combined with the disproportionately large financial losses these two racial groups have suffered in the Great Recession, one has to wonder: why is there almost universal support for increasing homeownership rates for these two groups?

A. Support from the Left

Civil rights organizations, low-income housing groups, and others on the political Left support homeownership for blacks and Latinos because increasing and maintaining homeownership rates should help close the ever-widening racial wealth gap. Because all households experience positive psychological, social, and financial benefits after they buy a home, the Left, not surprisingly, thinks that creating more black and Latino homeowners is a good thing. And, if blacks and Latinos increase and maintain their ownership levels, this could signal that blacks have finally erased the remaining vestiges of historical discrimination in housing and lending markets and that blacks and Latinos are finally no longer marginal, fringe members of U.S. society.⁹⁵

B. Support from the Right

The Right wants blacks and Latinos to buy homes because it would signal that these groups finally understood the importance of being part of our ownership society. President George W. Bush summed up the support from the Right for higher minority homeownership rates in the statement he made at the first White House Conference on Increasing Minority Homeownership in 2002: “We can put light where there’s darkness, and hope where there’s despondency in this country. And part of it is working together as a nation to encourage folks to

94. FANNIE MAE FOUND., *supra* note 17, at 13–14; Anna Maria Santiago et al., *Be It Ever So Humble, There’s No Place Like Home: The Experiences of Low-Income, Minority Homebuyers*, in FAIR AND AFFORDABLE HOUSING IN THE U.S.: TRENDS, OUTCOMES, FUTURE DIRECTIONS 289, 290–91 (Robert Mark Silverman & Kelly L. Patterson eds., 2011).

95. As an example, the Leadership Conference on Civil Rights recently stated, “the right to the American dream of homeownership has always been an important goal of the civil rights movement. Home ownership is the means by which most Americans build wealth and improve their lives and it is essential for stable, healthy communities.” *Strengthening Our Economy: Foreclosure Prevention and Neighborhood Preservation: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs* 110 Cong. 46 (2008) [hereinafter *Strengthening Our Economy*] (statement of Wade Henderson, President & CEO, Conference on Civil Rights).

own their own home.”⁹⁶ So, those on the Right also want to increase black and Latino homeownership rates, but for different reasons.

For those on the Right, higher homeownership rates would mean that blacks and Latinos understand that if they save, work hard, make personal sacrifices and change their spending habits, they will have a stake in society.⁹⁷ Being a stakeholder would then cause the groups to behave differently, to be more responsible, and to stop looking to the government for assistance.⁹⁸ In addition, if blacks and Latinos “attain the dignity, stability, and economic empowerment of homeownership,”⁹⁹ the United States can decrease its financial support for government expenditures on rental assistance programs, including housing voucher programs and subsidized rental housing.

C. *Support from the Government*

The government has encouraged renters to become homeowners, and our political leaders are so enamored by homeownership that they designated June as National Homeownership Month.¹⁰⁰ The U.S. government has made a concerted effort for the last twenty years to get more blacks and Latinos to buy homes. But why?

Homeownership is good for the U.S. economy because of its positive spillover effects. A robust housing market boosts the employment rate, since workers must be employed to design, construct, or rehabilitate homes. The housing sector also increases the demand for consumer goods and services, since builders must purchase construction materials and homeowners must furnish their new homes. Before 2007, consumer spending accounted for 70% of all economic activity in the United States.¹⁰¹ In addition, for years, housing revenue (including

96. See Mel Martinez, Sec’y, U.S. Dep’t of Hous. and Urban Dev., Remarks at the World Affairs Council of Northern California Meeting (Oct. 17, 2002), <http://archives.hud.gov/remarks/martinez/speeches/wrldaffairs.cfm>.

97. Press Release, White House Office of the Press Sec’y, Fact Sheet: America’s Ownership Society: Expanding Opportunities (Aug. 9, 2004), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/08/20040809-9.html>.

98. See *Expanding Homeownership Opportunities*, *supra* note 3, at 44 (statement of Mel Martinez, Secretary, United States Department of Housing and Urban Development).

99. *Id.* at 2 (statement of Rep. Katherine Harris).

100. Resolution Recognizing National Homeownership Month and the Importance of Homeownership in the United States, H. Res. 477, 110th Cong. (2007).

101. Peter S. Goodman, *Homeowners Feel the Pinch of Lost Equity*, N.Y. TIMES, Nov. 8, 2007, at A1. Because higher home prices increase household wealth, housing price appreciation stimulates consumer spending. Governor Frederic S. Mishkin, Member, Bd. of Governors of the Fed. Reserve, Speech on Enterprise Risk Management and Mortgage Lending at the Forecaster’s Club of New York (Jan. 17, 2007), available at <http://www.federalreserve.gov/newsevents/speech/Mishkin20070117a.htm>. Before the housing bust, the National Association of Home Builders estimated that the impact of building 100 new homes adds over \$11.6 million of new economic activity, \$1.4 million in new taxes and fees, and 250 new jobs. Estimates before the bust was that new households add \$2.8 annually in additional income to localities. *Expanding Homeownership Opportunities*, *supra* note 3, at 60

homebuilding, home sales, and home furnishing) *alone* accounted for almost a quarter of the U.S. economy.¹⁰²

The strength of housing markets is often a bellwether for the general strength of the U.S. economy and, as the current financial crisis shows, weak housing markets can create volatility across the spectrum of credit markets both in the United States and abroad. Because housing spending plays such a critical role in the growth of the U.S. economy, the U.S. government naturally has an incentive to create and subsidize programs and initiatives that make it easier for renters to become homeowners.

But individual political leaders have a selfish reason to encourage home sales. Buying and selling houses is economically beneficial for realtors, homebuilders, banks, and other members of the financial services industry. Given the political and financial influence of this industry, elected leaders have a political incentive to create home buying programs and to encourage and subsidize home purchases, *even if* those programs might not be in the best interest of the people who are being encouraged to become and remain homeowners. Just to provide a sense of how influential these groups are, the lobbying group broadly defined as the “financial sector” (which includes real estate interests and banks) has consistently provided the largest source of campaign contributions to federal candidates and parties.¹⁰³ Their contributions are bipartisan, though at least until 2008, Republicans traditionally received higher contributions than Democrats. In the 2008 election cycle—when the recession was underway and the U.S. was still in the midst of an economic meltdown—these groups donated \$468.8 million to federal campaigns and candidates.¹⁰⁴ This was an 80% increase from the previous election cycle. The real estate industry alone gave \$135 million to federal candidates and campaigns in 2008, with the National Association of Realtors leading the pack with a \$4.3 million contribution.¹⁰⁵

Public and private housing sector participants are intensely loyal to each other and have consistently rallied to defend each other from attack. For example, before Fannie Mae was rescued by the U.S. government, it viewed the mortgage brokers, realtors, and lenders as unofficial partners in the effort to increase the

(statement of James R. Rayburn, First Vice President, The National Association of Home Builders).

102. Courtney Schlisserman & Joe Richter, *U.S. Metropolitan Home Values Drop Most in Six Years*, BLOOMBERG (Jul. 6, 2007), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aDPbZ0uuxP6E>; *see also* Belsky & Praken, *supra* note 7, at 4 (noting that in recent years, housing consumption and related expenditures have accounted for nearly one quarter of the gross domestic product; over the past fifty years, housing has accounted for between one fifth and one quarter of the gross domestic product).

103. *Interest Groups*, OPEN SECRETS, <http://www.opensecrets.org/industries/index.php> (last visited Oct. 6, 2012).

104. *See Top Interest Groups Giving to Members of Congress, 2008 Cycle*, OPEN SECRETS, <http://www.opensecrets.org/industries/mems.php?party=A&cycle=2008> (last visited Oct. 6, 2012).

105. *Real Estate*, OPEN SECRETS, <http://www.opensecrets.org/industries/indus.php?ind=F10> (last visited Oct. 6, 2012).

number of Latino and black homeowners.¹⁰⁶ Likewise, during hearings held as part of the Bush administration's initiative to expand homeownership opportunities for minorities, the Chair of the Senate Committee on Banking, Housing, and Urban Affairs referred to realtors, homebuilders, and the financial services industry as "partners" in the government's attempts to expand minority homeownership.¹⁰⁷

In turn, the housing sector's partners, including the National Association of Home Builders (typically a supporter of Republican politicians), were very protective of Fannie Mae and Freddie Mac and routinely joined with liberal Democrats to block attempts to regulate these government housing entities.¹⁰⁸ Political leaders from both parties have been very protective of their moneyed private sector housing partners.¹⁰⁹ Even when it became clear just before the Great Recession that mortgage banks and lenders were behaving recklessly and were preying on certain low-income (and predominately minority) borrowers, and even when it was clear that many of the nontraditional subprime mortgage products that lenders were pushing were overly complex and unduly risky, political leaders resisted attempts to regulate lenders or to ban any of their risky (but enormously profitable) loan practices and products.¹¹⁰

D. Reexamining Black and Latino Homeownership

Since at least the early 1990s, increasing the number of black and Latino homeowners has been a priority for virtually all public and private actors involved with the housing sector—on the Left and on the Right. One would think that the severity of the housing market crash and the failure of all recent legislative housing initiatives to help homeowners and jump-start the U.S. economy would cause the Left, the Right, and this country's elected leaders to critically reassess the benefits of homeownership. That has not happened. Instead, the Bush and Obama administrations and the members of Congress who served during those administrations have responded to the foreclosure crisis by encouraging renters

106. See *Expanding Homeownership Opportunities*, *supra* note 3, at 3–4 (statement of Rep. Katherine Harris).

107. *Id.* at 3 (statement of Sen. Richard C. Shelby, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

108. See ROBERT W. KOLB, *THE FINANCIAL CRISIS OF OUR TIME* 110, 112 (2011); NAT'L ASS'N OF HOME BUILDERS, *HOMEOWNERSHIP WORKS* 11 (2011); *National Ass'n of Home Builders Summary*, OPEN SECRETS, <http://www.opensecrets.org/pacs/lookup2.php?strID=C00000901> (last visited Oct. 6, 2012).

109. Alan Zibel, *Housing Lobby in Rare Defeat on Mortgage Limits*, WALL ST. J. WASH. WIRE (Sept. 22, 2011, 4:41 PM), <http://blogs.wsj.com/washwire/2011/09/22/housing-lobby-in-rare-defeat-on-mortgage-limits>.

110. FIN. CRISIS INQUIRY COMM'N, *THE FINANCIAL CRISIS INQUIRY REPORT*, at xvi–xviii (2011).

and financially struggling existing owners to go into or remain in debt and generally do whatever it takes to remain in their homes.¹¹¹

Neither the Left, the Right, nor political leaders have made any serious effort to explain to renters that most of them will *never* benefit from the homeownership tax breaks. And, of course, no one seems willing to deliver the somber news that homeownership is not—and never has been—a low-risk, low-cost, high-return, sure-fire deal if you are black or Latino. The problem with this convergence of interest in increasing minority homeownership rates exemplifies the political dynamic that often exists when opposing sides (in this case, the Right and Left) *both* support the same cause. As is often the case when opposing groups agree on something, because everyone thinks blacks and Latinos should own their own homes, no one wants to be the one to ask: why is homeownership such a good thing for blacks and Latinos?

Public-interest-minded lawyers on the Left should not reject the goal of increasing minority homeownership rates simply because it also happens to be a goal of the Right or because U.S. housing policy is heavily influenced by the private housing sector's interests. Still, civil rights groups and progressive housing advocates should consider the following three questions before they continue to encourage blacks and Latinos to plunge into debt to buy a house: First, why is there almost universal support for increasing and maintaining high minority homeownership rates? Second, why do blacks and Latinos continue to fare so poorly in housing markets? And third, why do we strongly resist even considering whether homeownership might be bad for these groups right now? Here are possible responses to these questions.

Answer 1: Demographics

Those involved with progressive politics support increased homeownership rates for blacks and Latinos so blacks and Latinos can live in homes in neighborhoods that have higher quality schools and other desirable amenities.¹¹² Progressives also support minority homeownership because it might help increase black and Latino overall household wealth, which then makes it more likely that these groups can bequeath that wealth to their heirs by investing in their education.¹¹³ However, the public and private housing sectors' support for increased black and Latino homeownership rates has little or nothing to do with the laudable goal of eradicating vestiges of discrimination in housing or lending

111. See Tara Siegel Bernard, *Hope and Frustration in New U.S. Effort to Help Homeowners*, N.Y. TIMES, May 26, 2012, at B1 (discussing past failed efforts to help underwater homeowners).

112. See, e.g., *Strengthening Our Economy*, *supra* note 95.

113. MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 109–10 (1995).

markets. Instead, their support derives from the indisputable reality that these racial groups have and likely will continue to have higher birth rates.¹¹⁴

If black and Latino households are not lured into homeownership, future U.S. housing markets will collapse. From 2000 to 2010, more than 90% of the population growth in the United States came from minority groups overall. During that period, the Latino population in the United States increased by 43% (from 35.3 to 50.5 million). The U.S. population likely will be just over 50% white by 2040, and will drop to 46.3% by 2050.¹¹⁵ Latinos are now 16% of the U.S. population, and are 23% of all people under age seventeen.¹¹⁶ The demographic group that is most likely to transition from renting to owning homes consists of young people forming their own households. Latinos will soon make up the largest percentage of that group, and, if they do not purchase homes, there simply will not be sufficient numbers of potential future homebuyers.¹¹⁷ So, the U.S. government continues to push for higher black and Latino homeownership rates because, if these groups do not buy homes, overall homeownership rates in the future will plummet.

This is not just my wild-eyed conspiratorial theory. Ten years ago Congress held a hearing titled *Expanding Homeownership Opportunities: Increasing Minority Homeownership, and Expanding Homeownership to All Who Wish to Attain It*.¹¹⁸ During that hearing, Republican members of Congress, the Secretary of Housing and Urban Development during the Bush administration, and representatives from the real estate industry all proclaimed their desire to increase minority homeownership. But if you read the prepared statements, you see that the fulfillment of this vision—of more minority homeowners—is motivated by the possibility of adding billions to the U.S. economy.¹¹⁹ And a prepared statement of the President of the National Association of Realtors starkly notes that:

[T]he biggest source of household growth . . . will come from minorities and immigrants. Very simply, minorities will account for 64 percent of all new households. . . . The creation of these additional households will require more home construction as well as favorable economic conditions to lure potential homebuyers. The real estate industry and our

114. Sabrina Tavernise, *Whites Account for Under Half of Births in U.S.*, N.Y. TIMES, May 17, 2012, at A1.

115. Sudeep Reddy, *U.S. News: Latinos Fuel Growth in Decade*, WALL ST. J., Mar. 25, 2011, at A2.

116. Jeffrey Passel et al., *Hispanics Account for More than Half of Nation's Growth in Past Decade*, PEW RES. CTR. (Mar. 24, 2011), <http://www.pewhispanic.org/2011/03/24/hispanics-account-for-more-than-half-of-nations-growth-in-past-decade>.

117. BIPARTISAN POLICY CTR., *supra* note 87, at 13, 30–32.

118. *Expanding Homeownership Opportunities*, *supra* note 3.

119. *Expanding Homeownership Opportunities*, *supra* note 3, at 1 (statement of Rep. Katherine Harris).

Federal policy makers have a responsibility and obligation to ensure these groups are not ignored in their quests for housing opportunities.¹²⁰

Progressives may not realize it, but the real estate industry is fully aware that its future profitability depends on luring black and Latino renters into homeownership.

A 2012 report issued by the Bipartisan Policy Center further confirmed the importance of black and Latino births to the housing industry. This report noted that the “Echo Boom” generation, consisting of adults between the ages of fifteen and twenty-nine in 2010, is more racially diverse than any prior generation.¹²¹ More than 20% of the generation that will soon be in their prime home-buying years is Latino, 14% of the Echo Boomers were born outside the United States, and 11% have at least one parent who is an immigrant.¹²² This makes this generation the largest group of second-generation citizens since the generation born to immigrants who came to the United States between 1890 and 1910.¹²³ In sharp contrast to the Echo Boomers, the generation over the age of sixty-five is generally whiter than subsequent generations. Eighty percent of Americans over the age of sixty-five and 70% of Americans between the ages of forty-five and fifty-nine are white, while only 7% are Latino.¹²⁴ In contrast, less than 60% of all people between the ages of fifteen and twenty-nine are white, and only 55% of children under the age of eighteen are white.¹²⁵

The motives of the Right and the housing industry have nothing to do with bettering the lives of Latinos and blacks. And the U.S. government no longer supports homeownership simply because of the idealized view of the American Dream. Instead, U.S. politicians continue to enact laws and policies that help keep financially strapped homeowners moored to loans for unaffordable homes because the financial services lobby *needs* those laws.

Answer 2: More Demographics

Blacks and Latinos continue to fare poorly in housing markets partly because of lingering vestiges of housing discrimination, and even the U.S. government has admitted that “discrimination and segregation likely contribute” to this gap.¹²⁶ Historical and current lending practices and housing discrimination, however, do not fully explain why blacks and Latinos have and will continue to fare poorly in housing markets. Because of a few painful demographic realities, blacks and

120. *Id.* at 51 (statement of Cathy Whatley, President, National Association of Realtors).

121. BIPARTISAN POLICY CTR., *supra* note 87, at 13.

122. *Id.*

123. *Id.*

124. *Id.* at 30.

125. *Id.*

126. HERBERT ET AL., *supra* note 22, at viii; *Homeownership Rates*, *supra* note 62.

Latinos have not and will not receive the full economic or emotional benefits associated with homeownership.

Blacks and Latinos are disproportionately more likely to attend high-poverty and low-performing K–12 schools, which is not terribly surprising, since those groups are steered to lower-income nonwhite neighborhoods, and schools in lower-income nonwhite neighborhoods are statistically more likely to be lower performing.¹²⁷ As a result, these groups are more poorly educated overall than whites, have higher high school dropout rates, and thus tend to be less educated than whites.¹²⁸ These K–12 educational gaps then cause blacks and Latinos to have lower post-secondary college attendance and completion rates, which causes them to have lower-wage jobs and lower savings rates, but higher unemployment rates, and higher overall job instability relative to whites.¹²⁹ To compound their difficulties in the housing markets, lower overall marriage rates for blacks and Latinos decrease their overall household income and wealth.¹³⁰ Homeowners with lower incomes and wealth are less likely to buy and remain in their homes. Blacks and Latinos are more likely to have only one income in their households, making it harder for them to buy homes and remain in them. Their lower marriage rates, thus, help explain why they have higher loan default and foreclosure rates.

These stark demographic disparities may be the logical and natural consequences of years of racial discrimination against blacks and Latinos. *Alternatively*, these disparities may be caused by lifestyle choices these groups have made and continue to make. Whatever the cause, though, these demographic realities, combined with lingering vestiges of discrimination in housing markets, shut blacks and Latinos out of the more desirable U.S. housing markets and all-but-guarantee that they will sit at the back of the homeownership bus.

Answer 3: Shoot the Messenger

Most progressives do not want to even consider whether blacks and Latinos should avoid buying homes because of their educational, income, and wealth gaps, or because of their lifestyle choices. The idea of rejecting a goal (increasing homeownership rates) that is so entrenched in Left politics is anathema. Equally as

127. See Fennell, *supra* note 28, at 650–53; *Table A-23-2: Average Reading Scale Scores, by Grade and Selected Student and School Characteristics: Selected Years, 1992–2011*, NAT'L CENTER FOR EDUC. STAT., <http://nces.ed.gov/programs/coe/tables/table-rd2-2.asp> (last visited Aug. 25, 2012).

128. *Table A-16-2: Number and Percentage Distribution of Public High Schools, by Student Retention Rate and Selected School Characteristics: Academic Year 2009–10*, NAT'L CENTER FOR EDUC. STAT., <http://nces.ed.gov/programs/coe/tables/table-lrs-2.asp> (last visited Oct. 6, 2012).

129. See Sun Jin Jez, *The Influence of Wealth and Race in Four-Year College Attendance*, at 10 (Research and Occasional Papers Series, Ctr. for Studies in Higher Educ., UC Berkeley, No. CSHE.18.08), available at <http://cshe.berkeley.edu/publications/docs/ROPS-Jez-Wealth-Race-11-13.pdf>; LUI ET AL., *supra* note 53, at 226–29.

130. ALGERNON AUSTIN, ECON. POLICY INST., REDUCING POVERTY AND INCREASING MARRIAGE RATES AMONG LATINOS AND AFRICAN AMERICANS 7–10 (2011).

repugnant, though, is the concept of engaging data that show a trend or a pattern that is not flattering to a group that progressives would like to protect or support (like blacks and Latinos). When confronted with this type of data, progressives have a tendency to try to bury or discredit it (lest we be accused of blaming the victim). Or, to shoot the messenger.

CONCLUSION

I am not suggesting that blacks or Latinos should be blamed because they continue to have lower homeownership rates, or because their houses tend not to appreciate at rates comparable to homes owned by whites, or because they have higher mortgage costs, loan default rates, and foreclosure rates. But it helps no one to ignore the risks these two groups face if they continue to pursue full membership in the cult of homeownership given the state of the economy generally, and their relative strengths in U.S. employment and housing markets specifically.

If public-interest-oriented law students and lawyers view homeownership using a hard, cold lens of rationality, one thing becomes clear: blacks and Latinos should give themselves a time-out from home buying until they can close at least some of the demographic gaps that currently make them less competitive in lending and housing markets *even though* remaining a renter is inconsistent with years of sustained efforts by the Left, the Right, and the government to increase homeownership rates for these groups.