

Inequitable Gentrification:  
A Form of Exclusionary Zoning that Violates the New Jersey Constitution

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From the perspective of many low-income families, gentrification is the ultimate social injustice; where “wealthy, usually white, newcomers are congratulated for “improving” a neighborhood whose poor, minority residents are displaced by skyrocketing rents and economic change.” A social injustice promulgated by local government action, gentrification is no longer confined to our big cities and is increasingly impacting smaller cities and towns as municipalities seek to increase their tax base by luring wealthy residents in search of urban amenities and replace low income residents in the process. The defining characteristic of this type of gentrification is that it is inequitable: providing benefit to the wealthy, who are often white, at the expense of the poor, who are often people of color. This paper presents an argument that this type of inequitable gentrification, where the police power is used to limit the housing options of the poor in favor of the wealthy, is in direct violation of the New Jersey State Constitution.

In 2002 Asbury Park, a historic shore town with a population of 17,000 people and a poverty rate of 30%, undertook a massive redevelopment project. The goal was to generate new tax revenue for the city by transforming the historic beach town from a “vast wasteland” into “a great community to live in all year round.” The plan included the development of 3,164 housing units as well as the addition of 450,000 square feet of retail space. The City of Asbury Park put considerable city resources behind this plan including agreeing to “utilize the right of eminent domain on behalf of the Master Developer..., expedite the review and approval process..., vacate and deed certain public streets at no cost, as well as issue tax abatement plans to the Master Developer.”

This revitalization plan worked brilliantly. Despite a slow start as a result of the great recession, by 2017 Asbury Park had been transformed into a hipster wonderland, complete with “upscale housing, restaurants, shops, nightlife, a refurbished boardwalk - even a pinball museum.” It was not long before the town garnered national attention, with Budget Magazine dubbing it the coolest town in America and USA Today calling the shiny new Asbury Hotel the best new hotel in the country. Weekenders from New York flocked to the tourist town during peak season as “young, creative and enthusiastic entrepreneurial types” set up shop year round.

The plan worked brilliantly for the wealthy tourists and newcomers, but perhaps not so much for the original residents of this diverse beach community. The luxury beachfront condos priced at \$400,000 to \$1,000,000 drove up housing prices and rents throughout Asbury Park. Housing prices increased from an average of “\$74,000 in 2000 to near \$260,000 in 2015”. From 2017 to 2018 housing prices increased again by 32% settling at an average price of \$324,000. Renovated apartments that were once affordable were converted into expensive condos, pricing residents out of the beach-front East side and forcing some to move to the West side, a historically black neighborhood that remains mired in the poverty. As development continues to sweep through Asbury Park, protest has come fast and fierce from long-time residents bemoaning the changing character of the community, environmental activists hoping to preserve public beaches and proponents of affordable housing seeking to promote economic justice and prevent displacement.

At the November 8, 2018 town council meeting, a large crowd of local residents turned out to oppose several projects proposed by the designated “Master Developer”, iStar. In response to the outcry, the Town Council unanimously approved a resolution to halt construction on a boardwalk replacement project which was part of the original redevelopment plan. However, the cease and desist was futile, given that the developer was authorized by the City’s own carefully laid redevelopment plans. It appeared that, for Asbury Park, the City’s

own economic incentives had created an apparently unstoppable, market-driven gentrification that threatened to harm the very residents who should have benefitted from the City's renaissance.

The small shore town of Asbury Park is not often what comes to mind when we think about the casualties of gentrification. Typically, the word gentrification evokes images of gleaming high rises and gourmet coffee shops appearing on the edges of major metropolitan areas like Washington DC, Brooklyn or San Francisco. Rarely do we think about small and medium sized towns as hotbeds of gentrification. However, what happened to Asbury Park is happening to communities across the country, leading to a pricing out of local residents and a further concentration of poverty in neighborhoods deemed un-gentrifiable.

As evidenced by the recent steps of the Asbury Park City Council to stop further development, the political response to gentrification often comes too late to make a difference. By the time the local residents begin to see and feel the impacts of gentrification, market forces may be too great to stem the tide. Furthermore, at that point, local leaders may no longer be responsive to their original constituents and instead cater to the demands of developers and wealthy newcomers. Litigation strategies in response to gentrification have also seen little success, mainly because redevelopment is squarely within the police powers of a local municipality and thus the only feasible legal challenge occurs if there is a violation of either a federal statute like the Fair Housing Act or a state mandate like environmental protection laws.

New Jersey is in a unique position to challenge gentrification through litigation because of the precedent established in 1975 in the landmark case of *NAACP v. Mount Laurel I*. In *Mount Laurel I*, the New Jersey Supreme Court held that municipalities practicing exclusionary zoning as a means of excluding low income and minorities residents were not meeting their obligation to provide for the general welfare and therefore were in violation of the state constitution. In a subsequent case, the ruling was expanded upon, with the Court reasoning that "the State controls the use of land, all of the land. In exercising that control it

cannot favor rich over poor.” Consequently, the Court reasoned that allowing municipalities to continue to favor the rich over the poor would mean:

“poor people forever zoned out of substantial areas of the state, not because housing could not be built for them but because they are not wanted; poor people forced to live in urban slums forever not because suburbia, developing rural areas, fully developed residential sections, seashore resorts, and other attractive locations could not accommodate them, but simply because they are not wanted.”

While Court was describing the exclusion of the poor from communities where they may never have been members, displacement caused by gentrification can similarly be described as exclusion of the poor from their own communities in the face of rising housing costs.

Gentrification rarely begins as a market driven phenomenon but is typically assisted by local zoning laws, tax abatements, the use of eminent domain, or other government conduct that benefits developers and wealthy residents. When local governments take affirmative steps to promote gentrification in this way, without similarly taking steps to stop the inevitable displacement that will result, these governments are mirroring the conduct denounced by the Mount Laurel Court. Essentially, using the police power to promote this inequitable gentrification is the equivalent of the exclusionary zoning laws that Mount Laurel attempted to overturn.

This paper presents an argument that local governments violate the state constitution not just by exclusionary zoning that keeps out low income residents, but also by inequitable gentrification that forces them out of their communities just as they are transforming into the “attractive locations” that *Mount Laurel* required access to.

Part II of this paper examines the impetus of the Mount Laurel decision by exploring the housing conditions at the time of the decision and the harms caused by exclusionary zoning practiced by many municipalities. Part III compares the housing issues at the time of Mount Laurel with today, including a careful study of gentrification, both its potential and its problems. Part IV

equates the harm caused by exclusionary zoning to the harm caused by displacement. This section also specifically applies the holding of Mount Laurel to local government action in promoting gentrification to establish a constitutional basis for prohibiting inequitable gentrification. Part V proposes a remedy to inequitable gentrification through the application of the Mount Laurel Doctrine. Furthermore, this section examines the remedies tried and proposed by subsequent Mount Laurel litigation to promote inclusionary zoning and determines which, if any, of these remedies may work to prevent inequitable gentrification. Finally, Part VI of this paper concludes by presenting two case studies in gentrification. The first examines the very early stages of gentrification occurring in Elizabeth, NJ, along with an analysis of the local government's role in promoting this gentrification. Then Washington DC is presented as a contrast to Elizabeth. As the fastest gentrifying city in America, there are some important lessons to learn from how the DC government failed to protect its residents from the overwhelming displacement pressures while they continued to lure wealthier, whiter residents.