

Inequitable Gentrification:

A Form of Exclusionary Zoning that Violates the New Jersey Constitution

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Race, Class and Metropolitan Equity

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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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The goal was to generate new tax revenue for the city by transforming the historic beach town from a “vast wasteland”<sup>5</sup>

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<sup>1</sup> PUBLIC BROADCASTING STATION, *Flag Wars: What is gentrification?* (Jun. 17, 2003). <http://archive.pov.org/flagwars/what-is-gentrification/>.

<sup>2</sup> Peter Dreier, *Who Benefits from Gentrification?* KCET (Sept. 13, 2017). <https://www.kcet.org/shows/city-rising/who-benefits-from-gentrification>.

<sup>3</sup> U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, *Displacement of Lower-Income Families in Urban Areas Report*, 2 (May 2018) (hereinafter Report).

<sup>4</sup> ASBURY PARK WATERFRONT REDEVELOPMENT PLAN (Mar. 15, 2002)(hereinafter Redevelopment Plan) [https://www.cityofasburypark.com/egov/documents/0ccb490f\\_db40\\_e79e\\_d1ff\\_8b331de098b0.pdf](https://www.cityofasburypark.com/egov/documents/0ccb490f_db40_e79e_d1ff_8b331de098b0.pdf).

<sup>5</sup> Austin Bagues, *\$1 billion rebirth: Changing face of Asbury Park*, APP. (Jan. 27, 2017). <https://www.app.com/story/insider/extras/2017/01/26/asbury-park-gentrification-population-tourism/91219354/>.

into “a great community to live in all year round.”<sup>6</sup> The plan included the development of 3,164 housing units as well as the addition of 450,000 square feet of retail space.<sup>7</sup> 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.”<sup>8</sup>

This revitalization plan worked brilliantly. Despite a slow start as a result of the great recession,<sup>9</sup> 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.”<sup>10</sup> It was not long before the town garnered national attention, with Budget Magazine dubbing it the coolest town in American and USA today calling the shiny new Asbury Hotel the best new hotel in the country.<sup>11</sup> Weekenders from New York flocked to the tourist town during peak season as “young, creative and enthusiastic entrepreneurial types” set up shop year round.<sup>12</sup>

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<sup>6</sup> Redevelopment Plan, *supra* note 4 at 9.

<sup>7</sup> *Id.* at 22.

<sup>8</sup> City of Asbury Park, Amended and Restated Redeveloper and Land Disposition Agreement 31-32 (Oct. 28, 2002). [https://www.cityofasburypark.com/egov/documents/1419881573\\_4363.pdf](https://www.cityofasburypark.com/egov/documents/1419881573_4363.pdf).

<sup>9</sup> Caren Chesler, *Greetings From Asbury Park (Again)*, NEW JERSEY MONTHLY (May 5, 2009) <https://njmonthly.com/articles/jersey-shore/greetings-from-asbury-park-again/>.

<sup>10</sup> Bogues, *supra* note 5.

<sup>11</sup> Austin Bogues, *How Asbury Park became the 'coolest small town in America'*, APP. (Apr. 23, 2018). <https://www.app.com/story/news/local/communitychange/2018/04/23/how-asbury-park-became-coolest-small-town-america/535444002/>.

<sup>12</sup> Casey Hatfield Chiotti, *The Jewel of the Jersey Shore Gets a New Shine*, DEPARTURES (Apr. 12, 2017) <https://www.departures.com/travel/revitalization-in-asbury-park-new-jersey>.

The plan worked brilliantly for the wealthy tourists and newcomers, but perhaps not so much for the original residents of this diverse beach community.<sup>13</sup> The luxury beachfront condos priced at \$400,000 to \$1,000,000 drove up housing prices and rents throughout Asbury Park.<sup>14</sup> Housing prices increased from an average of “\$74,000 in 2000 to near \$260,000 in 2015”.<sup>15</sup> From 2017 to 2018 housing prices increased again by 32% settling at an average price of \$324,000.<sup>16</sup> 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.<sup>17</sup> 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,<sup>18</sup> environmental activists hoping

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<sup>13</sup> Bogues, *supra* note 5. “Longtime residents say the City’s changed, but wonder if there’s a place for them in its future as tourism and gentrification expand.” See Nick Corasaniti, *A Bet That Luxury Can Be a Part of Asbury Park’s Comeback Story*, NEW YORK TIMES (Jun. 1, 2018) <https://www.nytimes.com/2018/06/01/nyregion/ocean-club-bet-that-luxury-can-be-part-of-asbury-park-comeback-story.html> “The hotels that they’re building there and the condos are unaffordable for the local community, so it seems like they’re appealing to high-income, out-of-town individuals to come in and make Asbury a completely new city.”

<sup>14</sup> Nick Corasanti, *A Bet That Luxury Can Be a Part of Asbury Park’s Comeback Story*, NEW YORK TIMES (Jun. 1, 2018) <https://www.nytimes.com/2018/06/01/nyregion/ocean-club-bet-that-luxury-can-be-part-of-asbury-park-comeback-story.html>

<sup>15</sup> Austin Bogues, *Is Asbury Park rent getting too expensive?*, APP. (Jul. 25, 2017). <https://www.app.com/story/news/local/communitychange/2017/07/25/asbury-park-expensive/497439001/>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See Corasanti *supra* note 14. “Asbury Park is undoubtedly experiencing a rebirth, but the renaissance is largely confined to the water’s edge and has largely bypassed much of the rest of the city, where the majority African-American population lives on the west side and nearly one in three residents lives below the federal poverty line.”

<sup>18</sup> See Corasanti *supra* note 14. “But some worry that the proliferating development will squeeze out the city’s bohemian culture, evoking comparisons to places like Montauk — the once-sleepy fishing village at the tip of Long Island that has become a sleek, stylish and expensive resort.”

to preserve public beaches<sup>19</sup> and proponents of affordable housing seeking to promote economic justice and prevent displacement.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> However, the cease and desist was futile, given that the developer was authorized by the City’s own carefully laid redevelopment plans.<sup>23</sup> 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

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<sup>19</sup> David J. Del Grande, *Local advocates protest Asbury Park Beach Development Project*, NJ.COM (Jun. 24, 2017) [https://www.nj.com/monmouth/2017/06/asbury\\_park\\_development\\_protest.html](https://www.nj.com/monmouth/2017/06/asbury_park_development_protest.html).

<sup>20</sup> *Letter: Asbury Park Affordable Housing Coalition, APAHC: We Believe that Affordable Housing on the Waterfront is Very Important*, ASBURY PARK SUN (Mar. 11, 2019). <http://asburyparksun.com/letter-asbury-park-affordable-housing-coalition/>. “Without proactive intervention, gentrified development of Asbury Park could result in a wealthy, homogeneous and exclusive town. The [Asbury Park Affordable Housing Coalition] wants to engage with developers to ensure new projects are inclusive for all. We want to make this town a unique, inclusive and diverse place for all.”

<sup>21</sup> Steve Strunsky, *Asbury Park rethinking waterfront plans after public outcry*, NJ.COM (Nov. 26, 2018). [https://www.nj.com/monmouth/2018/11/asbury\\_park\\_revisits\\_waterfront\\_plan.html](https://www.nj.com/monmouth/2018/11/asbury_park_revisits_waterfront_plan.html).

<sup>22</sup> *Id.*

<sup>23</sup> Steve Strunsky, *Asbury Park had a plan to become really cool. It may have worked too well*. NJ.COM (Nov. 14, 2018). [https://www.nj.com/monmouth/2018/11/asbury\\_park\\_halts\\_northern\\_redevelopment.html](https://www.nj.com/monmouth/2018/11/asbury_park_halts_northern_redevelopment.html). Pat Fasano, another developer and property owner in Asbury Park, said losing in court is just what the city would do if it tries to keep iStar from moving forward with projects permitted under a redevelopment plan the company has been legally designated to carry out.

areas like Washington DC, Brooklyn or San Francisco.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> Litigation strategies in response to gentrification have also seen little

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<sup>24</sup> See Benjamin Fearnow, *Seven U.S. Cities Make Up Half of Country's Gentrification, Washington D.C. and New York Lead Displacement*, NEWSWEEK (Mar. 25, 2019) <https://www.newsweek.com/gentrification-race-cities-hispanic-black-neighborhoods-capitalism-jobs-1374064>.

<sup>25</sup> Dreier, *supra* note 2. "Widening income disparities and rising housing prices are not just confined to Los Angeles and other "hot" cities on the two coasts. These trends are occurring throughout the country." See eg. Bill Bradley, *Small-Town America Is Facing Big-City Problems*, NEXT CITY (Feb 29, 2016) <https://nextcity.org/features/view/traverse-city-small-cities-growth-planning>. (Explaining the gentrification of small resort towns like Traverse City, MI and Portland ME.). Adam Hudson, *Urban Gentrification Is Rippling Out Into the Suburbs: A Dispatch From California*, TRUTHOUT (Dec. 27, 2016) <https://truthout.org/articles/urban-gentrification-is-rippling-out-into-the-suburbs-a-dispatch-from-california/> (examining the gentrification of California suburbs).

<sup>26</sup> Adam Frank, *What Does It Take To See Gentrification Before It Happens?*, NATIONAL PUBLIC RADIO (Aug. 29, 2017) <https://www.npr.org/sections/13.7/2017/08/29/546980178/what-does-it-take-to-see-gentrification-before-it-happens>. Researchers attempting to use big data to create a early neighborhood warnings system to detect gentrification because they acknowledge one of the problems posed by gentrification is that it is difficult to detect in time to respond appropriately. "The problem with any of these obvious indicators is that by the time they appear, it may already be too late. The tide of living expenses in a given neighborhood may already be rising so fast that there is little that local groups, city planners or outside agencies can do. If you're poor or working class, it's just time to leave."

<sup>27</sup> Gillian White, *The Steady Destruction of America's Cities*, THE ATLANTIC (Mar. 9, 2017) <https://www.theatlantic.com/business/archive/2017/03/gentrification-moskowitz/519057/>. See also Jason Richardson et al., *Shifting Neighborhoods: Gentrification and cultural displacement in American cities*, NATIONAL COMMUNITY REINVESTMENT COALITION 1, 10 (Mar. 19, 2019). <https://ncrc.org/gentrification/>. "The new residents might shift the community's focus of concern and the dynamics of political power, including black and white middle-class gentrifiers wielding political influence in local initiatives that sometimes oppose the expansion of affordable housing in their new neighborhoods."

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<sup>28</sup> or a state mandate like environmental protection laws.<sup>29</sup>

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*.<sup>30</sup> 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.<sup>31</sup> 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.”<sup>32</sup> 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,

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<sup>28</sup> See *eg* *Owens v. Charleston Housing Authority* 336 F. Supp. 2d 934 (E.D. Mo. 2004). (Holding that demolishing a public housing complex violated the Fair Housing Act due to its disparate racial impact.). *Mount Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011) (Holding that African American and Hispanic residents were disparately impacted by redevelopment plan in violation of the Fair Housing Act.).

<sup>29</sup> *Chinese Staff & Workers Association v. City of New York* 68 N.Y.2d 359 (1986). Holding that the impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since the statute includes these concerns as elements of the environment.

<sup>30</sup> *S. Burlington County NAACP v. Twp. of Mount Laurel*, 336 A.2d 713 (N.J. 1975).

<sup>31</sup> *Id.*

<sup>32</sup> *S. Burlington County County NAACP v. Twp. of Mount Laurel*, 456 A.2d 390, 415 (N. S. 1983).

fully developed residential sections, seashore resorts, and other attractive locations could not accommodate them, but simply because they are not wanted.”<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup> 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

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<sup>33</sup> *Id.*

<sup>34</sup> See Daniel Herriges, *By Any Other Name: Gentrification or Economic Exclusion?*, STRONG TOWNS (Oct. 10, 2017). <https://www.strongtowns.org/journal/2017/10/9/by-any-other-name-gentrification-or-economic-exclusion>. (Describing gentrification as another form of economic exclusion.)

<sup>35</sup> Richard Florida, *The Role of Public Investment in Gentrification*, CITYLAB (Sept. 2, 2015) <https://www.citylab.com/equity/2015/09/the-role-of-public-investment-in-gentrification/403324/>. “The reality is that the revitalization of our cities and the very structure of urban areas have long been shaped by massive public investments. These are choices made by local and federal officials, business interests, and other advantaged stakeholders who constitute the urban growth coalitions that have long shaped investment in cities.”

gentrification that forces them out of their communities just as they are transforming into the “attractive locations” that *Mount Laurel* required access to.<sup>36</sup>

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.<sup>37</sup> 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

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<sup>36</sup> See Hannah Weinstein 62 UCLA L. REV. 794, 815 (2015) “By using arguments based on a relatively straightforward understanding of police power or on almost innocuous state constitutional language, advocates fighting gentrification might win a state right to affordability-friendly zoning laws.” New Jersey, having already established in Mount Laurel the constitutional right to access affordable housing would make such a ruling more likely than in other states.

<sup>37</sup> Margaret Kohn, *What is Wrong with Gentrification?*, J.URBAN RESEARCH & PRACTICE 6, 3 (October 13, 2013).

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.

## Part II – Mount Laurel

In March of 1975, the New Jersey Supreme Court took the extraordinary step of prohibiting state and local governments from discriminating against the poor in the exercise of their land use powers.<sup>38</sup> The impetus behind this decision was not only the underlying facts of the case, but the housing crisis facing New Jersey at the time.<sup>39</sup> In discussing the housing crisis in New Jersey, the Court references Governor Cahill’s special message to the legislatures.<sup>40</sup> In that message, the Governor describes deteriorating housing in urban areas, a situation so dire that 100,000 units would need to be built to keep up with population growth and replace units which drop out of the housing market.<sup>41</sup> The brunt of this housing shortage was borne by low-income residents.<sup>42</sup> The existing stock of housing, particularly in desirable neighborhoods, was priced well beyond the reach of low-income residents.<sup>43</sup> The Mount Laurel Court premised its holding, in part, on the finding that “there is not the slightest doubt that New Jersey has been, and continues to be, faced with a desperate need for housing, especially of decent living accommodations economically suitable for low and moderate income families.”<sup>44</sup>

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<sup>38</sup> FAIR SHARE HOUSING CENTER, Mount Laurel Doctrine. <http://fairsharehousing.org/mount-laurel-doctrine/>

<sup>39</sup> S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 158 336 A.2d 713 (1975).

<sup>40</sup> *Id.* at 159.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 204. Low income residents made, on average \$15,000 per year while average housing prices in suburban counties ranged from \$33,00 in Burlington County to \$67,000 in Bergen County.

<sup>44</sup> S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 158 336 A.2d 713 (1975).

Wealthy municipalities exacerbated this housing crisis through policies of exclusionary zoning that were designed to keep out poor, city families out of the suburbs.<sup>45</sup> Often these policies included “minimum lot size requirements, single residence per lot requirements, minimum square footage requirements, and costly building codes.”<sup>46</sup> Other ways that exclusionary zoning functioned to exclude low income families was by zoning out the types of housing that these families can afford, such as apartments and multi-family homes.<sup>47</sup>

At the time of Mount Laurel, white flight to the suburbs had concentrated poverty in cities, with poverty rates of 40% in any given census tract.<sup>48</sup> The exodus to the suburbs between the 1950’s and 1970s left only the most economically disadvantaged residents in cities; a situation that decreased the tax base of many cities such that they were no longer able to provide basic services.<sup>49</sup> As the Mount Laurel Court noted, since there was no longer the possibility of the “existence of safe and decent city life”,<sup>50</sup> these urban dwellers sought accommodation among the more prosperous suburbs.<sup>51</sup>

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<sup>45</sup> Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in its Place: Affordable Housing and Geographic Scale*, 40 FORDHAM URBAN L.J. 1667, 1668 (2013).

<sup>46</sup> Elliot Anne Rigsby, *Understanding Exclusionary Zoning and Its Impact on Concentrated Poverty*, THE CENTURY FOUNDATION (Jun. 23, 2016). <https://tcf.org/content/facts/understanding-exclusionary-zoning-impact-concentrated-poverty/>.

<sup>47</sup> Henry A. Span, *How the Courts Should Fight Exclusionary Zoning*, 32 SETON HALL L. REV. 1, 9 (2001).

<sup>48</sup> Jan Blakeslee, “White Flight” to the Suburb: A Demographic Approach, 3 INST. FOR RES. ON POVERTY (Winter 1978-79) “While city tax bases are eroding and their job markets declining as companies seek cheaper, newer, or more accessible facilities in the suburb....The cities are seen increasingly as deteriorating ghettos for the poor, the unemployed, and the disadvantaged—above all, for minorities.”

<sup>49</sup> *Id.*

<sup>50</sup> *Mount Laurel I*, 67 N.J. at 173.

<sup>51</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 173 336 A.2d 713 (1975)

In the 1960's the Township of Mount Laurel was mostly farmland, but local leaders saw the demand for suburban life and developed a plan to transform the town into a prosperous suburb that could attract wealthier white residents.<sup>52</sup> In an attempt to protect the fiscal future of the municipality and its residents, the town enacted exclusionary zoning measures designed to exclude low-income residents, including the historic black community that had lived in Mount Laurel since the Revolutionary War.<sup>53</sup> Mount Laurel conceded that "its land use regulation was intended to result and ha[d]resulted in economic discrimination and exclusion of substantial segments of the area population."<sup>54</sup> Even a scheme to introduce multi-family housing that had the potential to be affordable was designed to attract only middle- and upper-income residents and those without children.<sup>55</sup> This affirmative action to provide housing to wealthier residents was contrasted with hostility towards providing housing to low-income residents.<sup>56</sup>

The trial court findings, affirmed by the Supreme Court were that Mount Laurel "through its zoning ordinances has exhibited economic discrimination in that the poor have been deprived of adequate housing and the opportunity to secure the construction of subsidized housing, and [Mount Laurel] has used federal, state, county and local finances and resources solely for the betterment of middle and upper-income persons."<sup>57</sup> By failing to provide for the needs of low-income residents the Court held that Mount Laurel's land use policy was in violation of the state

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<sup>52</sup> Fair Share Housing *supra* note 38. "The 1960s were a decade of major development plans, known as "Planned Unit Developments" (PUDs), which were intended to develop more than 10,000 homes, industrial parks and commercial centers and transform Mount Laurel from farmland to an affluent suburb."

<sup>53</sup> *Id.*

<sup>54</sup> *Mount Laurel*, 67 N.J. at 160; see also Fair Share Housing, *supra* note 38. "Mount Laurel's plans were fiscal zoning at its best, aimed at attracting the highest tax rateables, which translated into excluding the poor."

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 170.

constitution. This holding was premised on an understanding that the constitution required “zoning regulation, like any police power enactment, [to] promote public health, safety, morals or the general welfare.”<sup>58</sup> Because “universal and constant need for such housing is so important and of such broad public interest”, the general welfare which municipalities must consider when enacting zoning ordinances extends beyond their borders.<sup>59</sup>

The broad holding of Mount Laurel defines the general welfare in the use of police powers as representing the needs of poor residents as well as wealthy ones.<sup>60</sup> In making this statement, the Court has deviated from Supreme Court precedent which established that zoning laws are constitutional as long they related to the general welfare and were reasonable.<sup>61</sup> The premise of the Mount Laurel holding is the land use policies that favor the rich over the poor may be viewed as unconstitutional because they fail to provide for the general welfare and only provide for the welfare of wealthy residents.<sup>62</sup> Specifically, the Court held that a municipality cannot, as a means of encouraging “good” tax ratables, use police powers to limit or exclude certain types of housing.<sup>63</sup> The Court recognized that the incentives of local governments in pursuing economic development may not always align with the needs of low income residents and thus warned municipalities that the relief from the consequences of the local tax system cannot be achieved through exclusion of the poor.<sup>64</sup>

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<sup>58</sup> *Id.* at 175.

<sup>59</sup> *Id.* at 179.

<sup>60</sup> *Id.*

<sup>61</sup> *Ambler Realty Co. v. Village of Euclid*, 297 F. Supp. 307, 316 (N.D. Ohio 1924).

<sup>62</sup> *Mount Laurel*, 67 N.J. at 183.

<sup>63</sup> *Id.* at 185-86

<sup>64</sup> *Id.*

The aspirational goals established by the Mount Laurel doctrine were not realized because of the enormous difficulties in crafting a suitable remedy to address exclusionary zoning.<sup>65</sup> In Mount Laurel I, the Court determined that the municipalities engaging in unconstitutional exclusionary zoning should be given a chance to remedy their zoning ordinances and practices without court interventions.<sup>66</sup> Rather than complying with the mandates of Mount Laurel, municipalities across the state worked together to develop strategies to undermine and overturn Mount Laurel.<sup>67</sup> In response to this pervasive non-compliance to Mount Laurel's constitutional mandate, the Court decided Mount Laurel II and, in doing so, created a comprehensive plan to enforce the Mount Laurel Doctrine.<sup>68</sup> Most significantly, Mount Laurel II utilized the State Development Guide Plan (SDGP) to establish which municipalities were "obligated to take affirmative steps to ensure that realistic opportunity for construction of its fair share of low and moderate income housing existed within its borders."<sup>69</sup> The Court also instituted the "builder's remedy", allowing builders to bring litigation against municipalities who were not in compliance with Mount Laurel. The Court could then issue a court order allowing

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<sup>65</sup> John M. Payne, *Reconstructing the Constitutional Theory of Mount Laurel II*, 3 WASH. U. J.L. & POL'Y 555, 561 (2000).

<sup>66</sup> *Mount Laurel I* at 192.

<sup>67</sup> Fair Share Housing, *supra* note 38.

<sup>68</sup> G. Allan Tarr & Russell S. Harrison, *Legitimacy and Capacity in State Supreme Court Policymaking: The New Jersey Court and Exclusionary Zoning*, 15 RUTGERS L.J. 513, 515 (1984). The court "established guidelines and procedures that would ensure active and detailed judicial supervision of local compliance." James McGuire, *The Judiciary's Role in Implementing the Mount Laurel Doctrine: Deference or Activism?* 23 SETON HALL L. REV. 1276, 1283 (1993)

<sup>69</sup> Bernard K. Ham, *Exclusionary Zoning and Racial Segregation: A Reconsideration of the Mount Laurel Doctrine*, 7 SETON HALL CONST. L.J. 577, 599 (Winter 1997). Fair share was eventually defined in a later case where the Court held that fair share included present need and prospective need where present need was determined using three factors: growth area, present employment and median income and prospective need was based on the same three factors plus employment growth. *AMG Realty Co. v. Warren Township* 207 N.J. Super. 388, 504 A.2d 692, 700-01 (Law Div. 1984).

the developer to proceed, so long as they 20% of the units of the new development are set aside for low to moderate income families.<sup>70</sup>

Following Mount Laurel II, developers flooded the Courts, bringing “well over 100 suits against 70 municipalities between 1983 and 1986”.<sup>71</sup> The increased litigation and lobbying efforts eventually incentivized the legislature to enact the Fair Housing Act.<sup>72</sup> The purpose of the FHA was to remove the obligation of enforcing Mount Laurel from the judiciary and place it in an administrative agency that would be “better suited to the task.”<sup>73</sup> The administrative agency established by the FHA was the Council on Affordable Housing (COAH).<sup>74</sup> COAH helped to enforce the SDRP by issuing “substantive certifications” to municipalities in compliance, granting six year repose from builder-initiated litigation challenges.<sup>75</sup>

The difficulty of enforcing the goals of Mount Laurel eventually came down to the difficulty in defining “fair share”. As the Courts attempted to clarify the definition of fair share, a complicated formula was devised to assign a certain number of units of low-income housing to each municipality.<sup>76</sup> The complexity of this calculation led to widespread pushback, leading COAH to adopt a simplified calculation of assigning units to municipalities in the growth share

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<sup>70</sup> Fair Share Housing, *supra* note 38; James McGuire, *The Judiciary’s Role in Implementing the Mount Laurel Doctrine: Deference or Activism?* 23 SETON HALL L. REV. 1276, 1288-89 (1993).

<sup>71</sup> Ham, *supra* note 69 at 600.

<sup>72</sup> *Id.*

<sup>73</sup> McGuire, *supra* note 70 at 1293.

<sup>74</sup> John M. Payne, *General Welfare and Regional Planning: How the Law of Unintended Consequences and the Mount Laurel Doctrine Gave New Jersey a Modern State Plan*, ST. JOHN’S L.REV. 1103, 1110 (1999).

<sup>75</sup> McGuire *supra* note 73 at 1295; John Payne *supra* note 74 at 1115.

<sup>76</sup> Roderick M. Hills, Jr., *Saving Mount Laurel?*, 40 FORDHAM URB. L.J. 1611, 1622 (Oct. 2013).

method.<sup>77</sup> The idea behind growth share is that “municipalities should require some number of affordable units to be built in some fixed ratio to new market-rate housing units or new commercial square footage.”<sup>78</sup> The problem with the COAH growth share model was that, in requiring municipalities to be responsible only for their projected growth, it neglected to factor in the allocated fair share.<sup>79</sup> Furthermore, as the Appellate Court held in rejecting COAH’s initial growth share proposal, the method would allow each “each municipality [to] control[] its destiny.”<sup>80</sup> Essentially, replacing fair share with growth share would allow municipalities to abandon their obligations to provide low-income housing by ceasing all growth and development.<sup>81</sup>

The rejection of the growth share model eventually led to a “gap period” of fifteen years between 1999 and 2015 where COAH was unable to enforce Mount Laurel obligations.<sup>82</sup> In 2015, the Supreme Court of New Jersey intervened, holding that all future enforcement of Mount Laurel obligations would be performed through the courts.<sup>83</sup> The failures of COAH, along with the inadequate enforcement mechanism of voluntary compliance and builder’s remedies have

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 1621. “The most frequently used ratio, for instance, would require twenty percent of all new market-rate housing or one affordable unit for every 2000 square feet of new nonresidential space to be set aside for low-and moderate-income housing.”

<sup>79</sup> David N. Kinsey, *Articles Inspired by the Work of John M. Payne: The Growth Share Approach to Mount Laurel Housing Obligations: Origins, Hijacking, and Future*, 63 RUTGERS L. REV. 867, 877 (Spring, 2011).

<sup>80</sup> *In re Adoption of Third Round Substantive Rules of the N.J. Council on Affordable Hous.*, 914 A.2d 348, 377 (N.J. Super. Ct. App. Div. 2007).

<sup>81</sup> Jason McCann, *Pushing Growth Share: Can Inclusionary Zoning Fix What is Broken With New Jersey’s Mount Laurel Doctrine?*, 59 RUTGERS L. REV. 191, 209 (Fall, 2006).

<sup>82</sup> Joseph Marsico, *A Forty Year Failure: Why the New Jersey Supreme Court Should Take Control of Mount Laurel Enforcement*, 41 SETON HALL LEG. J. 149, 160-61 (2017).

<sup>83</sup> *Mount Laurel IV*, 110 A.3d at 42. The administrative forum is not capable of functioning as intended by the FHA. “towns must subject themselves to judicial review for constitutional compliance, as was the case before the FHA was enacted.”

meant that the goals established by Mount Laurel I are far from realized so that the state is facing a greater affordable housing crisis today than in 1975.

### Part III: Gentrification

Today, the problem of concentrated poverty and lack of affordable housing greatly surpasses the problem identified by the Mount Laurel Court.<sup>84</sup> Between 1970 and 2010, the number of urban neighborhoods with poverty rates exceeding 30 percent nearly tripled, to 3,100, and the number of poor persons living in these neighborhoods doubled from 2 million to 4 million.<sup>85</sup> The affordable housing crisis in New Jersey is considerably worse than in 1975, with some estimates suggesting that over 200,000 units must be built to keep up with demand.<sup>86</sup> Amidst this crisis is a new problem of gentrification and the impact it has on these marginalized low-income communities.<sup>87</sup>

Gentrification is generally defined as “the change that occurs when a traditionally low-income neighborhood experiences an influx of new, higher-income residents.”<sup>88</sup> Most researchers studying gentrification look at information in the aggregate and track changes across

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<sup>84</sup> Paul A. Jargowsky, *Architecture of Segregation: Civil Unrest, the Concentration of Poverty, and Public Policy*, THE CENTURY FOUNDATION (Aug. 9, 2015) [https://tcf.org/assets/downloads/Jargowsky\\_ArchitectureofSegregation.pdf](https://tcf.org/assets/downloads/Jargowsky_ArchitectureofSegregation.pdf).

<sup>85</sup> Joe Cortright, *City Report: Lost in Place*, CITY OBSERVATORY (Apr. 14, 2014) <http://cityobservatory.org/lost-commentary-post/>.

<sup>86</sup> Holly Schepisi, *We Must Stop the Affordable Housing Crisis*, NORTHJERSEY.COM (May 2, 2017) <https://www.northjersey.com/story/opinion/contributors/2017/05/02/we-must-stop-affordable-housing-crisis/101146216/>.

<sup>87</sup> See Jason Richardson et al., *supra* note 27.

<sup>88</sup> Rachel Borgadus Drew, *Gentrification: Framing our Perceptions*, ENTERPRISE COMMUNITY PARTNERS, INC. (2018) <https://www.enterprisecommunity.org/download?fid=10224&nid=7602>. Gentrification is a particular type of revitalization that involves the influx of new residents, and with them the threat of displacement.”)

subsets of populations.<sup>89</sup> This is often done by comparing census tract data over time.<sup>90</sup> One way to recognize gentrification is by identifying areas that “experience accelerated gains in income and the number of White residents, over and above the increases experienced in the larger metropolitan area.”<sup>91</sup> Some problems with this method of measurement is that it fails to capture small changes on the ground that may have a big impact on residents.<sup>92</sup> Also, because gentrification can occur gradually at an unpredictable rate, using census data may fail to recognize communities in the early stages of gentrification.<sup>93</sup> Much of the focus tends to be on neighborhoods that experience rapid change rather than those gentrifying at a slower pace.<sup>94</sup>

Gentrifiers are typically young, college educated, child-less and non-immigrants.<sup>95</sup>

While gentrification only impacts a small portion of low-income communities, it typically occurs in urban centers or other communities that have the potential to offer affluent gentrifiers cultural and social opportunities not found in the suburbs.<sup>96</sup> Other factors that influence gentrification include rising rents in surrounding suburbs leading to tight housing markets, rapid job growth and public policy initiatives designed to promote city-living.<sup>97</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Report, *supra* note 3.

<sup>92</sup> Drew, *supra* note 88.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Miriam Zuk et al., *Gentrification, Displacement, and the Role of Public Investment*, 33 J. OF PLANNING LITERATURE 31, 37 (2018)

<sup>96</sup> Isis Fernandez, *Let's Stop Cheering, and Let's Get Practical: Reaching a Balanced Gentrification Agenda*, 12 GEO. J. POVERTY LAW & POL'Y 409, 413 (Fall, 2005); *See also* J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405 (Spring 2013). Opportunities offered by cities are increasingly seen as inaccessible to those in the suburbs due to urban sprawl and traffic congestion.

<sup>97</sup> Fernandez, *supra* note 96 at 413.

While gentrification is often vilified, it can present enormous opportunities to low income communities.<sup>98</sup> Often the greatest benefit of gentrification comes in the form of an increase in the city’s tax base.<sup>99</sup> This higher tax base subsequently leads to improved municipal services such as sanitation, parks and libraries as well as structural and aesthetic improvements to the neighborhood.<sup>100</sup> Other benefits of gentrification include increased investment in security measures leading to reduced crime rates.<sup>101</sup> Gentrification can mean that neighborhoods that experienced “blight and concentrated poverty, with all the devastating effects those conditions have on child and adult life outcomes, become less blighted and more integrated.”<sup>102</sup>

These neighborhood improvements do not just benefit the gentrifiers but can also improve the quality of life for the native residents<sup>103</sup> Low-income residents of gentrified communities report higher levels of employment, higher income and greater levels of educational attainment.<sup>104</sup> The higher levels of employment likely arise from jobs in the service industry that are generated by gentrification.<sup>105</sup> Increased demand for municipal services might also lead to an increase in municipal employment.<sup>106</sup> In the area of education, there are examples

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<sup>98</sup> *Id.* at 409. Gentrification has been recognized as a desirable economic process for cities because it increases property values and enlarges the tax base.

<sup>99</sup> *Id.* at 414 . Higher revenues will give cities more flexibility and discretion for spending on new or improved services

<sup>100</sup> *Id.* See also Zuk, *supra* note 95 at 32. These physical upgrades are a result of both individual actions and state-sponsored investments in housing and infrastructure.

<sup>101</sup> Drew, *supra* note 88 at 6; See also Byrne, *supra* note 96 at 423. Gentrified neighborhoods also are likely to experience reductions in crime, especially violent crime.

<sup>102</sup> ALLAN MALLACH, *THE DIVIDED CITY*, 115 (Island Press; 2nd ed. 2018).

<sup>103</sup> Byrne, *supra* note 101 at 405-06.

<sup>104</sup> Report, *supra* note 3 at 8.

<sup>105</sup> Byrne, *supra* note 96 at 419.

<sup>106</sup> *Id.*

of newcomers working with local residents to improve public education and the Mayors of gentrifying communities are more likely to focus on improving public schools to continue to attract new, wealthy residents.<sup>107</sup> Another small but meaningful improvement to gentrifying neighborhoods that benefits native residents is the increased options for retail.<sup>108</sup> Typically, low-income communities have “fewer and smaller retail stores, such as supermarkets, banks, and drug stores, than higher-income neighborhoods.”<sup>109</sup> This lack of competition means that low-income families have less choice and pay higher prices for goods and services.<sup>110</sup> In gentrifying communities, the growth of retail was greater than in non-gentrifying low income communities.<sup>111</sup>

Despite all its potential benefits, gentrification is often not an adequate solution to addressing the needs of low-income communities because the benefits are only available to those that can withstand the strong exclusionary displacement pressures that are often the byproduct of gentrification.<sup>112</sup> Displacement is defined as the “processes through which one demographic or ethnic group succeeds another in an urban neighborhood.”<sup>113</sup> Displacement can be direct, such as when tenants can no longer afford to stay because landlords raise the rent to take advantage

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<sup>107</sup> *Id.* at 424.

<sup>108</sup> Report, *supra* note 3 at 8.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* Gentrification has been associated with bringing healthy food options in a previous food desert, such as Harlem. Prior to the early 2000s, Harlem lacked larger grocery stores, leaving little choice for low-income residents except to shop at local bodegas (mini markets) with few healthy options. With urban revitalization from the Upper Manhattan Empowerment Zone spreading into underserved areas such as Harlem, the area has seen an increase in the number of chain grocery stores.

<sup>112</sup> *Id.*

<sup>113</sup> Fernandez, *supra* note 96 at 416 citing Lance Freeman & Frank Braconi, *Gentrification and Displacement*, 8 THE URBAN PROSPECT 1, 1 (2002)

increased demand for housing.<sup>114</sup> Alternatively, indirect cultural displacement occurs when residents choose to leave because the services and support that low-income families rely on disappears.<sup>115</sup>

Displacement from cities has contributed to the concentration of poverty in suburbs.<sup>116</sup> As part of the Moving to Opportunity studies, researchers found that those families that were displaced from low-income neighborhoods tended to eventually move to neighborhoods with even higher poverty levels.<sup>117</sup> The impact of displacement is believed to be the cause of increased concentration of poverty in suburbs.<sup>118</sup> Displacement may also explain the decrease in concentrated poverty in some of America's large and rapidly gentrifying cities, while small and medium sized metros have seen a surge in concentrated poverty.<sup>119</sup>

Local residents of gentrifying communities experience cultural displacement as a result of the "degradation of their community networks and institutions as new entities move in and

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<sup>114</sup> Report, *supra* note 3 at 4-5; Byrne, *supra* note 96 at 410.

<sup>115</sup> Report, *supra* note 3 at 4-5; Byrne, *supra* note 96 at 410.

<sup>116</sup> Bethany Li, *Now is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification* 85 *FORDHAM L. REV.* 1189, 1197-98 (Dec. 2016). "But since 2000, concentrated poverty in the suburbs has grown at three times the rate of poverty growth in cities. In 2000, the number of poor people living below the federal poverty line was greater in urban areas than in the suburbs, but by 2010, the number of poor people in the suburbs was greater than those in urban and rural areas."

<sup>117</sup> Jennifer Comey et al., *Struggling to Stay out of High-Poverty Neighborhoods: Lessons from the Moving to Opportunity Experiment*, *METRO. HOUS. & CMTYS CTR.*, 3 (2008).

<sup>118</sup> Bethany Li, *supra* note 116 at 1197-98. Jargowsky, *supra* note 84. "With gentrification driving up property values, rents, and taxes in many urban cores, some of the poor are moving out of central cities into decaying inner-ring suburbs."

<sup>119</sup> Richard Florida, *Concentrated Poverty Is Spreading to the Suburbs*, *THE ATLANTIC* (Aug. 11, 2015) <https://www.theatlantic.com/politics/archive/2015/08/concentrated-poverty-is-spreading-to-the-suburbs/432534/>. "Concentrated black poverty has increased the fastest in places like Syracuse, New York; Dayton, Ohio; Gary, Indiana; and Wilmington, Delaware, while it has actually declined in larger metros like New York City, Los Angeles, Atlanta, and Washington, D.C."

replace existing churches, schools, and local businesses.”<sup>120</sup> Changes in the racial demographics of gentrifying communities can exacerbate feelings of social isolation among local residents.<sup>121</sup> In Camden, New Jersey, where there is no evidence of direct displacement, residents often viewed development as creating “white spaces”, where the existing residents were unwelcome.<sup>122</sup> These new, white residents will have different values and preferences, they are likely to use their newly found political power to change the neighborhood in ways that best accommodate their needs without giving much consideration to existing residents.<sup>123</sup> The subsequent changes in “public facilities, transportation patterns, support services, are all clearly making the area less livable, then the pressure for displacement is already severe.”<sup>124</sup>

### Part III: A comparison of gentrification and exclusionary zoning

There are many similarities between inequitable gentrification and exclusionary zoning that would suggest the same constitutional principle can apply to both. First, both processes are motivated by the same economic incentives.<sup>125</sup> They both involve the use of the police power

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<sup>120</sup> Drew, *supra* note 88 at 10.

<sup>121</sup> *Id.* Social and cultural norms accepted by longterm residents may be derided by newcomers, who can leverage their economic and political resources to discourage behaviors deemed undesirable.

<sup>122</sup> Stephen Danley & Rasheda Weaver, “*They’re Not Building It for Us*”: *Displacement Pressure, Unwelcomeness, and Protesting Neighborhood Investment*, SOCIETIES 8, 74 (2018)

<sup>123</sup> *Gentrification poses a new dilemma for many US cities*, CITY MAYORS (Sept. 29, 2011) <http://www.citymayors.com/development/us-cities-gentrification.html>. “The new arrivals often bring different expectations and resources, which change the dynamics of central urban neighborhoods. Because the more affluent newcomers are better educated and typically vote in higher percentages than poorer residents, they can influence municipal budgets.”

<sup>124</sup> Zuk, *supra* note 95 at 35.

<sup>125</sup> Daniel Kay Hertz, *Why Do We Continue To Be Surprised By Gentrification?*, BELT MAGAZINE (Aug 23, 2018) <https://beltmag.com/surprised-by-gentrification/>.

through land use policies like zoning as well as the creation of public-private partnerships.<sup>126</sup> Neither benefit the general welfare when it is defined broadly<sup>127</sup>, and inequitable gentrification does not benefit even the more narrow, traditional description of general welfare.<sup>128</sup> Finally, both inequitable gentrification and exclusionary zoning are beneficial to wealthier residents while causing significant harm to low income communities through the further concentration of poverty.<sup>129</sup>

The use of police power can be used to promote displacement to force out low income residents or the same power can be used to enact exclusionary zoning to keep them out and both acts are predicated upon the same local government economic incentives.<sup>130</sup> Whether the municipality is a gentrifying community or a prosperous suburb, both collect revenue from taxes giving “each local jurisdiction a strong incentive to maximize the assessed value of its real estate” and to “compete for business location, investment and retention, and for more well-heeled residents.”<sup>131</sup> In the middle-class neighborhoods that enact exclusionary zoning, “local

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<sup>126</sup> Bradley Pough, *Neighborhood Upzoning and Racial Displacement: A Potential Target for Disparate Impact Litigation?* 21 U. PA. J.L. & SOC. CHANGE 267, 272 (2018); Rigsby, *supra* note 46.

<sup>127</sup> *Mount Laurel I* at 177.

<sup>128</sup> Alanna Schubach, *Stop blaming the hipsters: Here's how gentrification really happens (and what you can do about it)*, BRICK UNDERGROUND (Feb. 15, 2015) <https://www.brickunderground.com/rent/what-causes-gentrification-nyc>.

<sup>129</sup> Daniel Lichter, Domenico Parisi & Michael C. Taquino, *The Geography of Exclusion: Race, Segregation, and Concentrated Poverty*, 59 SOCIAL PROBLEMS, 364, 383 (2012); Tanvi Misra, *From Gentrification to Decline: How Neighborhoods Really Change*, CITYLAB (Apr. 10, 2019) <https://www.citylab.com/equity/2019/04/gentrified-cities-neighborhood-change-displacement-poverty-data/586840/>.

<sup>130</sup> See Daniel Kay Hertz, *supra* note 125. Investment in white suburbs encouraged white flight and a disinvestment in cities while investment in cities through gentrification is essentially the same force working in reverse. “It’s now clear that rapid investment can happen in a new subdivision, encouraging white flight, or in an established urban neighborhood, displacing older residents; extreme disinvestment can take place in a post-industrial urban center or a post-war suburb. Regardless of the location, both rapid investment and disinvestment represent the same forces of inequality and power.”

<sup>131</sup> Barbara L. Bezdek, *To Attain “The Just Rewards of So Much Struggle”: Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. VOL.37, 53 (2006).

governments have a powerful incentive to block the migration of those they deem undesirable and those who tend to make greater demands on public services.”<sup>132</sup> This powerful incentive is essentially the same one that encourages gentrifying communities to replace its low-income long-time residents with wealthier newcomers.<sup>133</sup>

Exclusionary zoning and gentrification are also both accomplished through the use of the police power in regulating land use. In the suburbs, exclusionary zoning in the form of minimum lot sizes and limitations on multifamily houses work to drive up the cost of all housing within the community making it unaffordable to low income residents.<sup>134</sup> Similarly, zoning ordinances imposed in gentrifying communities, like building height limits or restrictions on the number of units in a development, reduce the supply of housing in the face of increasing demand.<sup>135</sup> Alternatively, in communities that are at the very early stages of gentrifying, the local government may choose to zone for increased density to attract residents seeking a more urban lifestyle.<sup>136</sup> Ultimately, the goal of zoning is to increase property values so that sometimes it

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<sup>132</sup> *Id.* at 58.

<sup>133</sup> Nitish Jain, Sameer Hasija, & Serguei Netessine, *Impacts of Gentrification, A Policy Primer*, WHARTON PUB. POL'Y INITIATIVE (Nov. 21 2016). “Gentrification provides a fiscal windfall for the city government. More affluent residents contribute more income tax to city coffers, and appreciating home values beget higher property taxes.” Zuk, *supra* note 95 at 32. Government working in conjunction with private actors makes up the larger political economy that aims to accumulate capital through land use management and city development, echoing the idea of the city as a “growth machine”. See also Collin Kinninburgh, *How to Stop Gentrification*, THE NEW REPUBLIC (Aug. 9, 2017). The displacement of low-income residents in New Orleans demonstrates the benefits of displacement for communities looking to gentrify. “This wholesale displacement of one-fifth of the city’s population created the kind of opening that real-estate developers and their political allies could only dream of in other cities. Property values were at a low, and the potential for remaking the city unprecedented.”

<sup>134</sup> Bradley Pough, *supra* note 126 at 272.

<sup>135</sup> Rigsby, *supra* note 46. Recently, use of exclusionary zoning has expanded into the urban core as wealthy and largely white families move back into cities. Within cities, policies like building height limits and school district lines increase property values and force low-income families into areas of concentrated poverty.; Li, *supra* note 104 at 1204. As with exclusionary zoning in suburbs, downzoning in affluent urban neighborhoods shuts out low-income people. John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV 91, 100 (2014)

<sup>136</sup> Serkin & Wellington, *supra* note 45 at 1685

comes from large-lot zoning, such as what happens in suburban neighborhoods while other times but it comes from requiring more dense mixed-use development.<sup>137</sup> The resulting increase in property values will exclude residents from prosperous suburbs and displace residents from gentrifying neighborhoods.<sup>138</sup>

While zoning itself is a powerful tool used by communities to exclude low income residents and promote gentrification,<sup>139</sup> there are many other local government initiatives that can have the same impact.<sup>140</sup> These initiatives include “investing in physical infrastructure, structuring land use decisions, and incentivizing business location.”<sup>141</sup> In Mount Laurel, the focus of the litigation was on the exclusion of low-income residents established through restrictive zoning ordinances but another prominent form of exclusion was the approval of developments that were designed to accommodate only wealthier residents.<sup>142</sup> Often these arrangements with developers come in the form of a private-public partnerships, a common

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<sup>137</sup> *Id.*

<sup>138</sup> Mangin, *supra* note 135 at 100. “If San Francisco or Washington, D.C., wants to zone for low-density row houses rather than multifamily apartment buildings near BART or Metro stops, they are free to do so. If they want to impose robust parking requirements, which further limit density and add to the cost of development, they are free to do that, too.”

<sup>139</sup> Bethany Li, *supra* note 116. Zoning is one of the most prominent tools local governments use to gentrify

<sup>140</sup> Zuk, *supra* note 95 at 31-32.

<sup>141</sup> *Id.* at 35; “Jersey City has offered controversial tax abatements to purchasers of property in the city's highest-need areas. In addition to granting tax breaks to property purchasers, Jersey City has also offered tax breaks to businesses that operate out of the most distressed areas of the city. These incentives offer property developers long-term tax deferments that significantly improve the economics of purchasing property as an investment.”; Fernandez, *supra* note 96 at 422; *See also*, Dreier, *supra* note 2. “Many local government officials began to jump on the “revitalization” train, using taxpayer dollars to fix the sidewalks, provide more police protection, offer tax breaks to new businesses, rezone neighborhoods to encourage development and “rebrand” neighborhoods with fancy names.”

<sup>142</sup> S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 168 336 A.2d 713 (1975) The deals established with developers were designed to ensure that new apartments to “attract a highly educated and trained population base to support the nearby industrial parks in the township as well as the business and commercial facilities” and “that the developer must provide in its leases that no school-age children shall be permitted to occupy any one-bedroom apartment and that no more than two such children shall reside in any two-bedroom unit.”

strategy used to incentivize economic development in gentrifying communities where local governments are anxious to encourage new developments.<sup>143</sup> Public-Private partnerships can skew the incentives of local governments because they blur “the traditional separateness of the public and private sectors”<sup>144</sup> so that local governments act as “co-investors, as much as they exercise the police power to promote the general welfare.”<sup>145</sup> These types of deals are another example of how local governments use the police power, to directly benefit developers and their wealthy clientele without considering the needs of the poor that are excluded from accessing these developments or displaced by the rising rents that often result in the surrounding community.<sup>146</sup>

Whereas the Township of Mount Laurel argued that their rezoning and redevelopment plans were at least designed to benefit their constituents, even if they did not benefit those beyond the town’s borders; local governments that engage in inequitable gentrification in hopes of increasing investments cannot make the same claim. A municipality like Mount Laurel may actually believe that it is acting in the general welfare when it excludes low-income residents, especially if the general welfare is defined by their existing residents.<sup>147</sup> Prior to the Court’s

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<sup>143</sup> Bezdek, *supra* note 131 at 39

<sup>144</sup> *Id.* at 47.

<sup>145</sup> *Id.* at 47. The result of profit-driven local government is that “business recruitment, economic development, community revitalization, and development approvals and expenditures, has grown over the decades and the result is neither coordinated nor targeted or calibrated to the general welfare. *Id.* at 49. *See also* White, *supra* note 27. “Private organizations have different interests and responsibilities when it comes to making plans to spruce up a neighborhood. And that can mean that their investments don’t happen an egalitarian manner, or benefit a diverse group of residents.”

<sup>146</sup> Alanna Schubach, *supra* note 128. Celia Weaver, research director at the activist group New York Communities for Change, in discussing the gentrification policies of New York City under Mayor Ed Koch “The city brought in big real estate developers and corporations with generous tax abatements and other government subsidies. Public money for the poor was rerouted to the rich.”

<sup>147</sup> Joseph Marsico, *supra* note 82 at 157.

broadening of the term “general welfare” to include residents outside the acting municipality, many believed that the only welfare consideration was that of the municipality itself.<sup>148</sup> However, gentrifying communities that enact zoning ordinances or enter into private-public partnerships with the goal of attracting greater development and wealthier residents cannot even meet this pre-Mount Laurel standard for general welfare unless their redevelopment measures also include plans to ensure that their original constituents are not displaced.<sup>149</sup> Thus the harm of inequitable gentrification in some ways exceeds that of exclusionary zoning because “city leaders become too reliant on the plans and dollars of the private sector, the people who had been living and working in these neighborhoods all along have no one to look out for them and the lives they’ve built.”<sup>150</sup>

Exclusionary zoning and inequitable gentrification both cause similar harm to low income communities. Specifically, municipalities that exclude or displace low-income families contribute to the problem of concentrated poverty.<sup>151</sup> Exclusionary zoning creates isolated enclaves for middle class families, forcing economic and racial segregation,<sup>152</sup> while gentrification essentially accomplishes the same task by pushing out minority low income

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<sup>148</sup> *Mount Laurel I* at 177.

<sup>149</sup> White, *supra* note 27.

<sup>150</sup> *Id.*

<sup>151</sup> Zuk, *supra* note 95 at 40; Jargowsky, *supra* note 84. Neighborhoods of concentrated poverty are not the “value-free outcome of the impartial workings of the housing market. Rather, in large measure, they are the inevitable and predictable consequences of deliberate policy choices.”

<sup>152</sup> Daniel Lichter, Domenico Parisi & Michael C. Taquino, *The Geography of Exclusion: Race, Segregation, and Concentrated Poverty*, 59 SOCIAL PROBLEMS, 364, 383 (2012) “America’s poor and affluent populations are increasingly being sorted unevenly across poor (and economically declining) and nonpoor communities.”

residents.<sup>153</sup> Both exclusionary zoning and inequitable gentrification promote the growth of neighborhoods of concentrated poverty, where residents have less employment opportunities, worse educational and health outcomes, increased crime and insufficient government services.<sup>154</sup> These race-neutral exclusionary policies became “powerful engines of racism,” subjugating poor black families to communities of concentrated poverty.<sup>155</sup>

Throughout the opinions of Mount Laurel I and II there are indications that the Court would view inequitable gentrification as a similar constitutional violation to exclusionary zoning. For example, in Mount Laurel II the Court specifically address the constitutionality of municipalities that use their zoning powers to push out the poor stating that “the zoning power is no more abused by keeping out the region's poor than by forcing out the resident poor.”<sup>156</sup> Notably, the Court makes an exception for areas where the poor represent a disproportionately large segment of the population.<sup>157</sup> This exemption could be viewed as a condoning the actions of gentrifying cities to push out residents, but such a view fails to acknowledge how gentrification fundamentally changes the communities that the poor are being pushed out of. The idea that these urban communities are exempt from actions that displace residents is

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<sup>153</sup> Tanvi Misra, *From Gentrification to Decline: How Neighborhoods Really Change*, CITYLAB (Apr. 10, 2019) <https://www.citylab.com/equity/2019/04/gentrified-cities-neighborhood-change-displacement-poverty-data/586840/>. “As low-income people leave the central city, they’re arriving in suburbs and increasing the poverty in the suburbs.”

<sup>154</sup> THE FEDERAL RESERVE SYSTEM AND THE BROOKINGS INSTITUTE, *The Enduring Challenge of Concentrated Poverty*, 1, 13-15 (2008) [https://www.brookings.edu/wp-content/uploads/2016/06/1024\\_concentrated\\_poverty.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/1024_concentrated_poverty.pdf); see also Florida, *supra* note 119. “Concentrated neighborhood poverty shapes everything from higher crime rates to limited social mobility for the people — and especially the children — who live in these neighborhoods.”

<sup>155</sup> ANTI-POVERTY NETWORK, *An Uncomfortable Truth: Racism, Injustice, and Poverty in New Jersey* (Sept. 2016). <http://www.antipoverty.org/resources/Documents/The%20Uncomfortable%20Truth%20Final%20-%20web.pdf> 13 “Municipalities have created barriers to the construction of low income housing in order to preserve long-standing patterns and practices of racial discrimination and exclusion.”

<sup>156</sup> *Mount Laurel II* at 214.

<sup>157</sup> *Id.* at 215.

premised on the idea that cities are not desirable places to live.<sup>158</sup> Once the city begins to gentrify, it becomes as desirable for low-income residents as those much-discussed suburbs focus of Mount Laurel.<sup>159</sup> Furthermore, the nature of gentrification is such that by the time the exclusionary effects are readily apparent, it may be too late to reverse the impact.<sup>160</sup>

The Court also suggests that rehabilitated cities also have a duty to prevent the exclusion of low-income residents.<sup>161</sup> Specifically, in discussing the plight of the urban poor, the Court notes that housing shortages prevent them from moving to “either rehabilitated city [or] in outlying municipalities.”<sup>162</sup> Furthermore, as gentrifying cities begin developing, they can no longer be classified as communities exempt from the constitutional obligation to reduce displacement because they would meet the criteria of being a developing community, precisely because they would be on “the path of inevitable future residential, commercial and industrial demand and growth.”<sup>163</sup>

#### Part V – Possible Remedies

The similarity between exclusionary zoning and inequitable gentrification lends itself to applying the same constitutional principle to both. However, the remedy established to correct the constitutional violations incurred by municipalities through exclusionary zoning would be significantly different from those that would work to control inequitable gentrification. First, the

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<sup>158</sup> *Mount Laurel I*, 67 N.J. at 173. The Court in *Mount Laurel I* noted that white flight had diminished the existence of “safe and decent city life.”

<sup>159</sup> *Drew*, *supra* note 88 at 6.

<sup>160</sup> *Frank*, *supra* note 26.

<sup>161</sup> *Mount Laurel I* at 173.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 160.

fair share doctrine cannot be easily applied to the problem of inequitable gentrification. Rather, growth share may be more a suitable solution to affirmatively addressing inequitable gentrification, even where it was found unacceptable with regards to the exclusionary zoning problem.

Mount Laurel established that each community must affirmatively afford the opportunity for the development of low income housing “at least to the extent of the municipality's fair share of the present and prospective regional need therefor.”<sup>164</sup> A subsequent case further defined fair share based on the regional need as well as the needs of the specific region in terms of both present and prospective need.<sup>165</sup> The very definition of gentrification would mean that a community in the early stages of the process would already have more than its fair share of low-income residents.<sup>166</sup> Therefore, allowing a gentrifying community to simply maintain its fair share of the regional need for low income housing essentially provides a license to displace residents. The harm of exclusionary zoning is mitigated by the fair share doctrine, which imposes on the municipality an obligation to allow low-income residents access to wealthy suburbs.<sup>167</sup> The harm of inequitable gentrification is displacement and therefore the remedy must be structured around policies that limit displacement, rather than ones which have the potential to promote it.<sup>168</sup>

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<sup>164</sup> *Id.* at 724-26.

<sup>165</sup> *AMG Realty Co. v. Warren Township* 207 N.J. Super. 388, 504 A.2d 692, 700-01 (Law Div. 1984).

<sup>166</sup> *Drew*, *supra* note 88.

<sup>167</sup> *Mt. Laurel I*, 336 A.2d at 728. The original mandate of Mount Laurel was to require municipalities to provide a "reasonable opportunity for an appropriate variety and choice of housing"

<sup>168</sup> *Byrne*, *supra* note 96 at 425

One remedy that may be better suited to addressing gentrification than it was for exclusionary zoning is the concept of growth share. The rationale that inspired the growth share method is the reason that it would work well to encourage low-income housing in gentrifying communities where it could not in suburbs.<sup>169</sup> Growth share works because it is in a municipality's "interest to "accommodate some growth or redevelopment" given that "local governments in New Jersey are heavily dependent on property tax ratables."<sup>170</sup> Unlike wealthy suburbs that may already have large municipal revenue as a result of their past exclusionary zoning, and therefore may not be inclined to continue to grow, gentrifying communities have a much greater incentive to promote growth.<sup>171</sup> Whereas, suburbs may decide that "tax revenues generated by market-rate residential units are not sufficient to cover the costs of services to the affordable units," gentrifying communities are already paying for the cost of services so any additional revenue they can bring in to cover their costs is an added benefit.<sup>172</sup>

The growth share method proposed by COAH was criticized for requiring the difficult calculation of projected growth, but gentrifying communities could avoid this controversial calculation by apply the pure growth share option. Under a pure growth model, a city's obligation for low income housing would be tied to building permits and thus fluctuate each year.<sup>173</sup> Applying this method to gentrifying communities would allow them to adjust their affordable housing obligations as they grow so that cities experience rapid growth would have to

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<sup>169</sup> Hills, *supra* note 76 at 1622.

<sup>170</sup> *Id.* (citing John M. Payne, *The Paradox of Progress: Three Decades of Mount Laurel Doctrine*, 5 J. PLAN. HIST. 126, 139 (2006)).

<sup>171</sup> Fernandez, *supra* note 96 at 413.

<sup>172</sup> Hills, *supra* note 76 at 1623.

<sup>173</sup> Daniel Meyler, *Is Growth Share Working for New Jersey?*, 13 N.Y.U. J. LEGIS. & PUB. POL'Y 219, 248 (2010).

account for that growth by accommodating a greater number of low-income housing in their developments.<sup>174</sup>

While growth share could be one option to moderate the impact of gentrification on low-income communities, alone it would not be sufficient to prevent significant displacement. First, growth share would essentially require developers to create mixed-income housing, if this type of housing replaces low income housing there will be a net decrease in affordable units.<sup>175</sup> Furthermore, the developers may choose to build less units and the subsequent reduced supply increases rent across the community further exacerbating displacement.<sup>176</sup>

The challenge for gentrifying communities, to recruit wealthy residents and developers while protecting tenants from displacement, will require more than a single strategy.<sup>177</sup> Fortunately, growth share is just one of the many methods that local governments can develop to ensure equitable gentrification.<sup>178</sup> Another important goal of gentrifying communities is to

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<sup>174</sup> *Id.*

<sup>175</sup> Jarred Schenke, *Is HUD's \$6B Mixed-Income Housing Strategy To Blame For Housing Shortage?*, BISNOW (Mar. 10, 2017) <https://www.bisnow.com/national/news/construction-development/huds-funding-faces-uncertainty-for-mixed-income-players-71491>. “Perhaps one of its most prominent faults, critics contend, is the mixed-income strategy actually led to a loss in overall public housing stock in the United States. Early programs — especially the Hope VI program — did not require authorities to replace public housing units one-for-one in new projects.”

<sup>176</sup> Benjamin Scheider, *CityLab University: Inclusionary Zoning*, CITYLAB (Jul. 17, 2018) <https://www.citylab.com/equity/2018/07/citylab-university-inclusionary-zoning/565181/>; Kriti Ramakrishnan, Mark Treskon, & Solomon Greene, *Inclusionary Zoning: What Does the Research Tell Us about the Effectiveness of Local Action?*, URB. INST., (January 2019). “These studies examined the effects of IZ laws on cities in California and found that the policies produced few units, increased the cost of market-rate homes, and reduced the construction of new homes.”

<sup>177</sup> Byrne, *supra* note 96 at 425.

<sup>178</sup> Donald C. Bryant Jr. & Henry W. McGee Jr., *Gentrification and the Law, Combatting Urban Displacement*, 25 WASH. U. J. URB. & CONTEMP. L. 43 (1983); Diane K. Levy, Jennifer Comey & Sandra Padilla, *Keeping the Neighborhood Affordable: A Handbook of Housing Strategies for Gentrifying Areas*, THE URBAN INST. (2006); David D. Troutt, *Displacement Risk and Gentrification: The CLiME Displacement Risk Indicators Matrix (DRIM) Methodology* (Nov., 2017) <https://clime.newark.rutgers.edu/sites/CLiME/files/Displacement%20Risk%20and%20Gentrification.pdf>

preserve the stock of existing affordable housing.<sup>179</sup> Preserving affordable housing must include offsetting the inevitable increase in rent that occurs in gentrifying communities.<sup>180</sup> One way to ensure that affordable housing remains available is to increase the availability of vouchers.<sup>181</sup> Rent control may also be one method of “blunting direct displacement.”<sup>182</sup> There should also be measures taken to limit the cultural displacement that occurs when new residents move into a community. For example, the municipality could provide greater support for “community-led organizations that encourage cross-race and cross-class connections.”<sup>183</sup>

In promoting equitable gentrification, municipalities must be proactive rather than reaction.<sup>184</sup> Once gentrification is apparent, that is, once the economic incentives offered by local governments have yielded their desired effect, it becomes nearly impossible to stem the flow of continued gentrification and displacement.<sup>185</sup> Local governments must take action at the very early stages, so that all new redevelopment proposals should include affirmative steps to prevent displacement.

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<sup>179</sup> Report, *supra* note 3 at 9. “Programs that preserve existing affordable housing, particularly in gentrifying neighborhoods, are important tools for ensuring that long-term, low-income residents who want to stay have the ability to do so .”

<sup>180</sup> Drew, *supra* note 88 at 11.

<sup>181</sup> *Id.* at 12; Report, *supra* note 3 at 9, “Voucher holders pay 30 percent of their income toward rent, and the subsidy covers the difference between that and an allowable payment standard, determined largely by the Fair Market Rent (FMR).” Byrne, *supra* note 96 at 430, Set asides and inclusionary zoning can work only where there is strong demand for housing because it raises the cost to the developer.

<sup>182</sup> Byrne, *supra* note 96 at 426. A recent New York City study points to rent control as an explanation for why gentrification does not cause more displacement.

<sup>183</sup> Report, *supra* note 3 at 13.

<sup>184</sup> Drew, *supra* note 88 at 11.

<sup>185</sup> *Id.* As noted above, most data and research on gentrification is backward looking, and only identifies areas undergoing change after the process is well underway. This not only limits the ability of policymakers to respond to challenges in a timely manner, but may also blunt the effectiveness of any intervention if local conditions have already changed irreparably

## Part IV – The Gentrification of Elizabeth, NJ and Washington DC

Across New Jersey, small towns and cities are proposing redevelopment plans with the hopes of bringing in wealthy residents and businesses to increase tax revenue.<sup>186</sup> Many of these projects have started development. There is no predicting which of these cities will become the next Asbury Park but there is no doubt that, if the development is successful, there will be some level of gentrification and displacement.<sup>187</sup> Many of these cities and towns have established ambitious goals for redevelopment, focusing all their resources on attracting developers and wealthy residents without including plans to offset the inevitable displacement of their low income residents.<sup>188</sup>

Elizabeth, NJ a large, majority Hispanic city where the median family income of \$42,000<sup>189</sup> is slowly and quietly attempting a massive rebranding effort as it seeks to redevelop.<sup>190</sup> First came the luxury Harbor Front Village at Elizabeth’s waterfront in 2015.<sup>191</sup> Selling at \$309,000 to \$400,000,<sup>192</sup> the houses significantly exceeded the average home price of

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<sup>186</sup> Colleen O’Dea, *Challenge for NJ Cities: Gentrify Without Driving Out Less-Affluent Residents*, NJSPOTLIGHT (Dec. 13, 2018) <https://www.njspotlight.com/stories/18/12/12/next-challenge-for-nj-cities-gentrify-without-driving-out-less-affluent-residents/>. “With millennials, and even aging baby boomers, seeking more compact living in walkable communities with mass transit, several of New Jersey’s cities are experiencing construction booms that include new office buildings and housing.

<sup>187</sup> *Id.*

<sup>188</sup> HOUSING AND COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY, *Thriving Cities: A New Urban Agenda* (2018). “New Jersey’s failure to make the public investment needed for real, grassroots, community development left matters to the market — and the market alone isn’t enough. We can and must do better to include the long-term residents of neighborhoods undergoing rapid change in the decision making that dramatically affects their homes.”

<sup>189</sup> CITY DATA, <http://www.city-data.com/city/Elizabeth-New-Jersey.html> (last visited May 13, 2019).

<sup>190</sup> *Id.*

<sup>191</sup> Katie Lannan, *Luxury waterfront condos latest glimpse of redevelopment in Elizabethport*, NJ.COM (Jun. 9, 2015) [https://www.nj.com/union/2015/06/luxury\\_waterfront\\_condos\\_latest\\_glimpse\\_of\\_redevel.html](https://www.nj.com/union/2015/06/luxury_waterfront_condos_latest_glimpse_of_redevel.html).

<sup>192</sup> *Id.*

\$263,000.<sup>193</sup> Presciently, the developer noted at the time "after seeing a noticeable gentrification influx that sparked new housing developments, we are excited to contribute by introducing this gated community on the waterfront."<sup>194</sup> In the Frog Hollow neighborhood, the city foreclosed on a 1.5 acre parcel, sold the property to developers for 1.5 million along with a five-year tax abatement for the development of market rate homes.<sup>195</sup> The historic Hersh Building in downtown Elizabeth is being renovated to convert the building into 93 luxury units with additional retail space on the bottom floor.<sup>196</sup> Several more projects are proposed near Elizabeth's soon to be remodeled train station, including Vinty, a high-end five story development which will include 267 units as well as several commercial tenants. Vinty will include amenities such as "a courtyard with a pool, outdoor games, a large outdoor chessboard, outdoor fireplaces, cabanas, an outdoor television, a dog park, and a hydroponic greenhouse."<sup>197</sup> The advertisement for the Vinty retail space describes the place as "designed to attract young active residents looking to live the hip urban lifestyle."<sup>198</sup> The City of Elizabeth offered the developers of Vinty a PILOT agreement, essential a property tax exemption.<sup>199</sup> Meanwhile, the

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<sup>193</sup> City Data, *supra* note 189.

<sup>194</sup> Lannan, *supra* note 191.

<sup>195</sup> Fran Sullivan, *Elizabeth Neighborhood to Get a Facelift with Multi-Million Dollar Renovation*, TAPINTOIT.NET (Nov. 27, 2018) <https://www.tapinto.net/towns/elizabeth/articles/elizabeth-neighborhood-to-get-a-facelift-with-multi-million-dollar-renovation>

<sup>196</sup> Jared Kofsky, *93 Apartments Coming to Historic Midtown Elizabeth Tower*, JERSEYDIGS (Mar. 20, 2018) <https://jerseydigs.com/93-apartments-in-historic-midtown-tower-125-broad-street-elizabeth/>

<sup>197</sup> Jared Kofsky, *Details Revealed for Vinty, An Upcoming 267-Unit Development in Elizabeth*, JERSEYDIGS (Dec. 15, 2017) <https://jerseydigs.com/190-union-street-elizabeth-mixed-use-development-details-revealed/>. <https://www.livevinty.com/>. (last visited May 15, 2019). The Vinty website includes information on additional amenities such as a golf simulator and dog spa.

<sup>198</sup> <http://images4.loopnet.com/d2/nnguog4L3O6Q2xa6CECCnCETgm75f2IGpIY6gaX8BYs/document.pdf> (last visited May 13, 2019).

<sup>199</sup> Jared Kofsky, *Tax Exemption Planned for Elizabeth's Vinty Development*, JERSEYDIGS (Jun. 8, 2018) <https://jerseydigs.com/tax-exemption-vinty-development-190-union-street-elizabeth/>

developers agreed to “develop and maintain a one-acre public park along the Elizabeth River [which] will connect with the Elizabeth River Trail, and will feature park benches, a garden, bird houses, and an area to display art.”

There is no indication that the City of Elizabeth, in negotiating the deal to revitalize their downtown, took any steps to ensure that their residents could afford to live at the Vinty, let alone any consideration of the displacement effects that occur through rising rent. Like Asbury Park in 2002, Elizabeth is only at the very early stages of reinventing itself. In Elizabeth, there is still a chance to establish policies that will prevent the displacement and disenfranchisement of its long-time residents. Elizabeth could still implement some of the numerous policies recommended by the Housing and Community Development Network of New Jersey to ensure that residents are not “priced out of their neighborhood in the name of progress.”<sup>200</sup> Elizabeth could still follow the example set by its neighboring city, Newark, setting a goal of “equitable opportunity and growth so that all residents in all of our neighborhoods” benefit from investment and development in the city.<sup>201</sup> Without taking any of these steps, the local government is mimicking the actions of Mount Laurel and favoring the rich over the poor.

The final section of this paper examines the impact of inequitable gentrification in the nation’s fastest gentrifying city, Washington DC.<sup>202</sup> Washington DC provides a useful case study

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<sup>200</sup> O’Dea, *supra* note 186.

<sup>201</sup> CITY OF NEWARK, *Newark Forward, A Blueprint for Equitable Growth and Opportunity in Newark*, (Oct. 2018) <https://drive.google.com/file/d/1UY60Q0Pu3CbeG2bk2CYurHz8hdAvi0Ke/view>. Under Mayor Ras Baraka, the City of Newark has set itself apart from many other New Jersey cities in establishing a goal of creating “a culture of participation and inclusion that enables inequality to be replaced by equitable opportunity prosperity and growth rather the gentrification and displacement that describes too many American cities.”

<sup>202</sup> Katherine Shaver, *D.C. has the highest ‘intensity’ of gentrification of any U.S. city, study says*, WASHINGTON POST (Mar. 19, 2019) [https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/?utm\\_term=.69af691adbdc](https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/?utm_term=.69af691adbdc).

in understanding the role that local government plays in promoting gentrification and displacement. Washington DC and the local government has been roundly criticized for its role in promoting displacement.<sup>203</sup> The criticism reached its peak in the filing of a complaint alleging that DC government used its land use policies in a way that discriminated against certain groups and is currently the subject of a lawsuit for enacting policies that displaced residents.<sup>204</sup>

The complaint against the DC government alleges that the government's redevelopment plan attempts "to alter land use in order to attract people who are of a certain age range, in order to attract people who are a certain profession."<sup>205</sup> Specifically, the complaint claims that the government promoted high density luxury one-bedroom and studio apartments without any analysis on the impact these projects may have on the neighborhoods.<sup>206</sup> The focus of the DC plan was to promote high density communities knowing that the densest developments would experience the most displacement.<sup>207</sup> The complaint also alleges that the Zoning Commission was required to investigate the potential for displacement and gentrification but failed to do so on numerous occasions.<sup>208</sup>

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<sup>203</sup> Jason Richardson et al., *supra* note 27. According to one study, Washington DC has seen the gentrification of 40% of its low-income neighborhoods. This gentrification has led to the displacement of 20,000 African American residents.

<sup>204</sup> Jenna Wang, *Residents Sue Washington D.C. For Racist Gentrification Practices*, FORBES (Jun. 28, 2018), <https://www.forbes.com/sites/jennawang/2018/06/28/residents-sue-washington-d-c-over-1-billion-for-racist-gentrification-practices/#16fa00f53e8f>

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *C.A.R.E v. Bowser*, United States District Court, District of Columbia, Civil Action No. 1:18-cv872, 158 (Apr. 17, 2018).

<sup>208</sup> *Id.* at 168.

Washington DC and Elizabeth, represent the opposite ends of the gentrification spectrum; but both municipalities used their police powers to create opportunities for wealthy residents and developers without giving significant consideration to the native low-income residents that would be displaced. For the tens of thousands of DC residents that have been displaced, it is too late for the local government to act. For the residents of Elizabeth there is still the hope that local governments can promote gentrification while balancing the need of low-income residents so that revitalization of the city does not ultimately cause more injury to their residents than it provides benefits.<sup>209</sup>

The gentrification of Washington DC and the attempts at gentrification in Elizabeth are actually not very different from what the local government of Mount Laurel, NJ was attempting in the 1960's and 70's. While the Mount Laurel Doctrine has come to stand for the unconstitutionality of exclusionary zoning, and certainly that was the harm that the Court was seeking to prevent other communities from engaging in, Mount Laurel is actually a story about gentrification and displacement. The town of Mount Laurel was doing more than simply excluding low income residents, it was using its police powers to increase its tax rates by displacing the existing low-income residents as well as excluding new ones.<sup>210</sup>

Ultimately, there is no fundamental difference between the use of police powers to exclude of low-income residents or to displace them. The Mount Laurel Court recognized the

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<sup>209</sup>Fernandez, *supra* note 96 at 422-23. "Cities that do not plan for the effects of gentrification open themselves up to the criticism that they are helping those who need it least: the wealthy gentrifiers." Li, *supra* note 109 at 1189. "Many low-income neighborhoods need government injection of resources. But if this remaking of the neighborhood displaces low-income residents that have long demanded many of these services, then this effort does not benefit them."

<sup>210</sup> Fair Share Housing *supra* note 38. "The goal was to get them [poor black residents] out of the Township in order to enhance the PUD marketing plan to attract predominantly white middle-class and upper middle-class families and first-class commercial and industrial rateables."

importance of housing as one of the most basic human needs<sup>211</sup> and also established the unconstitutionality of using the police powers to deny certain residents of the right to shelter.<sup>212</sup> The Court understood that local governments have every incentive to contribute to the increase in the cost of housing, exacerbating the affordability crisis in the state. The burden of these resulting housing price increases is the same whether it is “felt primarily by people who are excluded from the municipality—people who are prevented from ever moving in the first place, or who are forced to move out because they cannot afford higher rents.”<sup>213</sup> Inequitable gentrification and exclusionary zoning are essentially two sides of the same coin, and the courts should treat them as such by finding that both violate the New Jersey State Constitution.

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<sup>211</sup> *Mount Laurel I* at 178.

<sup>212</sup> John Payne, *supra* note 65 at 564. “The actual ‘constitutional basis’ of *Mount Laurel II* is that the New Jersey Constitution embodies an implicit constitutional right to shelter.”

<sup>213</sup> Serkin & Wellington, *supra* note 45 at 1671.