

Just Housing, Rooted in West Oakland: How Moms4Housing Challenged Real Estate Speculation and the Racial Hierarchy in our Property Laws

Liam McSweeney*

ABSTRACT

Land-based real estate speculation drives a national housing crisis that operates on a racially hierarchical conception of private property law and doctrine. Our modern property law system developed from the colonial economy that was built on conquest and white supremacist notions of property rights. This white-supremacist spatial violence continues today. Cheryl Harris's foundational work "Whiteness as Property" conveys how these laws determine the cultural and economic value of our communities. As a result, Black Americans bear the brunt of housing inequality across rental and homeownership markets. Black people in the U.S. suffer the highest rates of eviction and displacement. Corporate real estate practices – based on the cultural and economic exploitation of land values in gentrifying Black neighborhoods – benefit white Americans most, and this is glaringly apparent in West Oakland, California. In late 2019, the neighborhood saw Moms4Housing, a group of four unhoused Black mothers, stage a dramatic and unlikely challenge to this system. They occupied a home held vacant by a private equity firm and organized to force the owners to sell the property to a community land trust. Prior to this impressive victory, they faced a violent eviction which revealed how the state polices physical space to maintain racial hierarchy. It also provided a blueprint for what can be achieved when a group of activists reject the role of the state in their community. This paper presents Moms4Housing and West Oakland as a case study of how our system of property rights supports

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* Liam McSweeney is a 2022 J.D. candidate at the University of California, Berkeley - School of Law. This fall, he will work as a Staff Attorney for the Tenant Rights Coalition of Brooklyn Legal Services in Brooklyn, New York. The author would like to thank Professors Russell Robinson and John Powell for their editorial and research assistance, and Professor Khiara Bridges for her invaluable support of this paper and this work. Finally, the author is deeply grateful to all of the housing justice and tenant organizers he has worked alongside and learned so much from.

diminished wellbeing for Black families to protect white property value, and how communities can push back.

Research shows that poor Black neighborhoods like West Oakland are some of the most lucrative spaces in the country for both landlords who rent profiteer through poorly maintained properties, and real estate speculators who hold homes vacant, then flip and sell to wealthy white newcomers. White private real estate speculators have acquired properties in the neighborhood at a shocking speed over the past two decades. Their practices lead to rapidly increased displacement and disruption of the Black community. With their bold activism, Moms4Housing presents a path toward feasible solutions. Legal scholars, professionals, advocates, and policy makers should listen to the marginalized groups organizing on the ground and elevate their voices to positions of leadership. The Moms' act of civil disobedience and direct confrontation of the corporate real estate system reveals how modern property laws still exist to maintain white supremacist violent exclusion from space. Their story is also one of resistance and success. The home they occupied was eventually sold to the Oakland Community Land Trust, a non-profit which will permanently hold the house as a transitional home for Black unhoused mothers. Moms4Housing spurred new policy initiatives at the state and local level to challenge the market-based speculative housing system that exploits Black communities. While there are significant legal and political challenges to the transformative policies the Moms' movement hopes to achieve, their activism flipped the narrative on housing in Oakland and shows a way forward. Uplifting more activism and organizing in their mold can change the public's understanding of the housing crisis to be more critical of its racial implications, and put pressure on policy makers to find solutions desired by those on the ground.

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INTRODUCTION

The Covid-19 pandemic deepened a housing crisis that has hit Black communities the hardest.¹ Policymakers, advocates, and scholars have posited many causes of this crisis, but few reckon with the full history of what got us here. Even fewer engage with the people most directly experiencing the struggles of housing insecurity. Thus, the most commonly proposed solutions often remain in the familiar paradigm of a neoliberal, market-based model. The truer framework reveals that the inequality in the current U.S. housing system is rooted in white supremacist and sexist property law doctrine that was developed for racial exclusion and conquest.²

We never addressed this history in our legal jurisprudence or contemporary policies, so when solutions are proposed the actual causes of the problem are usually ignored. Common proposals include public-private partnerships to increase housing stock, zoning for density, tax credits for home buyers, and tepid enforcement of fair housing laws. However, these policies have not affected the fundamental inequality of the market or lessened the burden on marginalized renters.³

In Part I of this paper, I will explain first how the development of private property rights centered on an association with white male identity (subsection A), and then how those rights evolved to lay the grounds for our modern racially exploitative housing system (subsection B). This history helps us understand why housing inequality remains racialized despite the advent of the Civil Rights era laws such as the Fair Housing Act, shifting racial attitudes, and the many policy attempts by democratically controlled states like California to address this problem.⁴ Part II will present the main consideration of this paper, a case study of Moms4Housing and West Oakland, California. I will lay out the background context for the Moms' action in subsection A, a chronological history of their occupation action in subsection B, and in subsection C, a description of their violent eviction and eventual victory.

Moms4Housing is a movement-based organizing collective of unhoused Black mothers. They took bold action and occupied a vacant home in late 2019 in protest against real estate speculators driving gentrification in their traditionally Black neighborhood. The Moms' story became such a touchstone because it brought together pressing issues of race, class, and gender that impact life in the Bay. This paper seeks to go beyond the generic headlines about the economic roots of gentrification in the Bay Area and will examine each aspect

1. Tina Rosales, *U.S. And California History Directly Impacts Housing Instability During COVID-19*, (February 22, 2021), <https://wclp.org/u-s-and-california-history-directly-impacts-housing-instability-during-covid-19/>.

2. Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707, 1736 (1993).

3. The private market alone, and policy incentives to spur its growth, is not enough to solve these deeper inequalities. See Ameer Chew & Chione Lucina Muñoz, Policy Link, *Facing History, Uprooting Inequality: A Path to Housing Justice in California*, 56-63 (2020).

4. *Id.* at 28.

of the Moms' activism and how it addressed the deep, structural roots of a housing system that is designed to maintain Black poverty for white benefit. Part III continues the case study and presents solutions and challenges raised by the Moms. I will consider Community Land Trusts (one of which eventually purchased the occupied home) in subsection A, public housing in subsection B, and other forms of non-market housing solutions and regulatory measures in subsection C.

Finally, in Part IV, I suggest that we need more activism and movement-building work like Moms4Housing to move past the significant political and legal hurdles that prevent the implementation of these policies. In order to shift the narrative around our land-based property system, legal scholars and advocates must take steps to uplift these voices.

PART I

A. *The History of Racialized Property Rights*

Private property rights are not just considered the bedrock of American jurisprudence, they are part of the American cultural identity. This stems directly from deliberate choices made in colonial times, when our property laws broke away from English common law to facilitate land expansion through conquest of Native territory and to create a system for the ownership of slaves.⁵ As Cheryl Harris outlines in her foundational work, *Whiteness as Property*, white identity itself became associated with property rights, and the right to exclude was the most critical element.⁶ Under the U.S. Constitution and newly formed laws, full rights to property only extended to white men. Women were excluded from owning property until 1848.⁷

Taking land from Indigenous Tribes by force, justified under the legal notions of "discovery" or "first in time," became the official law of the land after Supreme Court Chief Justice John Marshall's ruling in *Johnson v M'Intosh*. The court determined that the U.S. government held valid claim over Indian lands

5. K. Sue Park, *Conquest and Slavery as Foundational to Property Law*, 2361 *Georgetown Law Faculty Publications and Other Works*, 38 (2021) ("Colonists upended the ancient distinction in the English property tradition between real property and chattel property in order to balance the need to keep plantations whole with the demands of creditors. All these developments fostered the colonial market's rapid growth through leveraging debt anchored in property produced through the racialization, lands and people understood as monetary equivalents.").

6. Harris, *supra* note 1 at 1716 ("Race and property were thus conflated by establishing a form of property contingent on race - only Blacks were subjugated as slaves and treated as property. Similarly, the conquest, removal, and extermination of Native American life and culture were ratified by conferring and acknowledging the property rights of whites in Native American land. Only white possession and occupation of land was validated and therefore privileged as a basis for property rights.").

7. Suzanne McGee & Heidi Moore, *Women's rights and their money: a timeline from Cleopatra to Lilly Ledbetter*, (Aug. 11, 2014), <https://www.theguardian.com/money/us-money-blog/2014/aug/11/women-rights-money-timeline-history>.

through their supremacy in cultivation of that land.⁸ “In *Johnson* and similar cases, courts established whiteness as a prerequisite to the exercise of enforceable property rights.”⁹ As the U.S. government turned a blind eye to forceful takeover of Indigenous land by white settlers who headed westward, they instituted credit and land use policies that managed to avoid endorsing direct confrontation, but deeply incentivized it.¹⁰ These laws allowed for acquisition of Indigenous property by land speculators to be a profitable industry with the support of financiers.¹¹ When sufficient ownership and safe control of that land was established, speculators sold to other white people who were now ready to move in in large numbers. As a result, the banks and creditors profited greatly. As we will see in Part II, this practice parallels remarkably close to the current trends of gentrification in American cities.

Still today, systematically and culturally, “private property rights” are essentially a euphemism for racial exclusion by whites. Even after the passage of the Fourteenth Amendment and equal protection laws prevented the outright legal exclusion of land ownership for Black people, scores of legal mechanisms developed to keep property ownership a white right. These included racial covenants, redlining, economic constraints, and the advent of exclusionary zoning.¹² Women were also tied to marriage as their only means to acquire property, meaning Black women faced many levels of exclusion.¹³

Black people were also excluded from neighborhoods by force. Boundaries were enforced by the state (the police), and violent white neighborhood associations and gangs, such as in “Sundown Towns.” In these cities, ordinances forced Black people to leave before dark or face violently enforced punitive consequences.¹⁴ Black people were discriminated against by banks and targeted by loan sharks in credit schemes, limiting their buying power and pushing them into segregated neighborhoods.¹⁵ They then suffered from economic disinvestment by private businesses and the U.S. government, who badly under-resourced their neighborhoods.¹⁶ Even public housing, something most Americans consider to disproportionately serve Black people,¹⁷ excluded Black

8. See *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823).

9. Harris, *supra* note 2 at 1724.

10. Park, *supra* note 5 at 38.

11. We see the parallels to West Oakland gentrification here in the idea of white newcomers “discovering” valuable land and using economic force to take it over. Park, *supra* note 5 at 47.

12. For a more detailed discussion see *The Color of Law*. RICHARD ROTHSTEIN, THE COLOR OF LAW (2017).

13. McGee & Moore, *supra* note 7.

14. ROTHSTEIN *supra* note 12, at 143.

15. *Id.* at 70.

16. *Id.* at 122.

17. This cultural association goes the point that it is now a problematic stigma that actually prevents adequate funding for public housing where Black people live, while public housing was once well-funded because it was exclusively white.

residents from its high quality housing.¹⁸ Middle- and upper-class Black Americans also suffered because property values were systematically undervalued in the neighborhoods where they owned the most homes.¹⁹

All of these institutional disadvantages harmed Black women the most. Structural bias against Black property owners combines with bias against women's property rights to further exclude Black women, and all levels of American courts have refused to take an intersectional approach to acknowledge this compounding harm.²⁰

These practices, from the colonial era on, were all designed to make "white only" spaces. The police violently maintained these spaces with forced evictions, stereotype-based harassment, and over-surveillance of Black people.²¹ These tactics reflect a modern evolution of the colonial and settler era removal of Indigenous people from their land.²² Just like how the U.S. government forced Indigenous people off of their land to make space for white communities, the modern-day policing of Black people shows that a white-only community is not just about anti-Black economic exclusion, but a literal physical removal and guarding of the space.

Richard Rothstein's book *The Color of Law* highlights how the creation of our modern segregated cities emerged during the Franklin D. Roosevelt era and the New Deal.²³ Famous for its progressive qualities, the New Deal refused to loosen the white grip on land value and property rights, and instead codified segregationist practices. The Federal Housing Administration²⁴ promoted white-only homebuyer loans, refused to build public housing in Black neighborhoods or fund assistance for Black public housing, and most notoriously, instituted the practice of redlining (a neighborhood and loan grading system that institutionalized segregation).²⁵ The segregation was intentional, structural, and entirely the result of state actions in a liberal period of government. The common narrative about racial segregation goes that racism was a part of the past, but now it is a purely economic and cultural question that mostly comes down to individual choice. This liberal view sees the Civil Rights movement and the Fair Housing Act as the end of government-backed segregation. In reality, government policies systematically and physically removed Black people from

18. *Id.* at 17, 18.

19. *Id.* at 93, 94.

20. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 Univ. Chicago Legal Forum 139 (1989).

21. ROTHSTEIN *supra* note 12, at 143.

22. See K-Sue Park, *The History Wars and Property Law*, 131 Yale L. Journal 1062 (2022).

23. See Rothstein, *supra* note 12, at 19, 20.

24. The FHA was a New Deal agency created by President Roosevelt to support the growth of home ownership during the depression. *Id.*

25. *Id.*

communities, neighborhoods, and even whole cities, and it still forms the basis of our basic housing systems.²⁶

This colorblind, neoliberal perspective also constitutes the dominant view of the courts. Since the 1970s, the U.S. Supreme Court has maintained that only *de facto* housing segregation exists. In other words, the Court believes it is entirely a result of people choosing to live around their racial peers, which happens for economic, not legal reasons.²⁷ Chief Justice John Roberts has ardently defended this view during his time at the head of the Court.²⁸ In 2015, the Court finally acknowledged the role of these discriminatory policies in keeping U.S. cities segregated today in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*²⁹ In his opinion for the majority, Justice Anthony Kennedy wrote that segregation's "vestiges remain today, intertwined with the country's economic and social life."³⁰ However, the Court's solution was fully colorblind. Kennedy created a balancing test that weighs discriminatory impact against economic interests, the latter of which is code for white property values and property rights.³¹ He writes that limitations on these claims are necessary "to protect potential defendants against abusive disparate impact claims . . . that, in turn, would set our Nation back in its quest to *reduce the salience of race* in our social and economic system."³² In other words, Justice Kennedy believes minimizing the consideration of race in our laws and jurisprudence is the best way to move on from the country's racially segregated past and present. His opinion leaves little room for future race-affirmative measures to counteract the existing legacy and active practice of racialized housing and ownership of land.

26. *Id.*

27. *Id.* at xii-xiii.

28. In a 2007 case about school segregation, Chief Justice John Roberts (largely quoting an opinion by Justice Kennedy from 1992) claimed that discrimination was "not traceable to [the government's] own actions." *Id.* at xiv. Courts also have refused to recognize any claims of intersectionality, so it is unlikely they would recognize how Black women have been harmed the most by the housing system.

29. See *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 576 U.S. 519 (2015).

30. This case was viewed as a victory for civil rights advocates because it allowed disparate impact discrimination claims in fair housing cases. In other words, in certain extreme cases, just the existence of a statistical racial disparity in housing, without a facially racially discriminatory law, is enough to prevail in a discrimination claim. However, Justice Kennedy seems to want disparate impact to mean two things at once. He clearly acknowledges the lasting structural impact of government-backed discriminatory policy, and then at the same time he wants to pretend like a whole new system was put in place after the Civil Rights era. Just after he states that discriminatory policies' "vestiges remain today," he then writes, "*during this time*, various practices were followed, sometimes with governmental support, to encourage and maintain the separation of the races." This is a subtle move that *almost* fully acknowledges structural racism in the housing market, but then confines these practices (which in reality are ongoing) to a bygone era. This move is arguably more dangerous than denying the discrimination ever happened, as it forecloses us from understanding the modern evolution of these discriminatory practices. *Id.* at 528, 542.

31. *Id.* at 533.

32. *Id.* at 543-544 (emphasis added).

Many liberals and conservatives say that American cities are so segregated today because Black people, like white people, just want to stay in their communities with each other, or don't have the financial means to move.³³ However, this "segregation by choice" is only true when it comes to the decisions of white people.³⁴ The mainstream view says that since the passage of the Fair Housing Act, we all have individual freedom and autonomy, and any barriers that still exist are purely economic.³⁵ However, to comprehend what is happening with real estate speculation today in West Oakland, where Black neighborhoods are often in the roughest shape but hold the biggest profit margins for landlords and speculators, we must understand a proper history of *de jure* segregation – or segregation created by law – and its modern evolutions.³⁶

The exploitation of Black neighborhoods is a structural feature of racial-capitalism and our racialized property doctrine. Rothstein stresses, "we have created a caste system in this country, with African-Americans kept exploited and geographically separate by racially explicit government policies. Although most of these policies are now off the books, they have never been remedied and their effects continue."³⁷ Today, fully legal economic practices (which Justice Kennedy determined are important enough to be used as a factor that limits the number of discrimination claims³⁸) ensure that government sponsored "race-neutral" programs have a disparate effect across race, further harming Black

33. The fact that very few lawmakers or real estate professionals would argue that racial preference is shown in our current laws and practices is also telling of the liberal consensus. Outside of a select few tenant and housing justice advocates, no one is really arguing that we need to address racism in our existing laws. "Yes in my backyard" (YIMBY) liberals, groups typically composed of left-of-center politicians, citizens, and land use professionals are a good example. They argue that we need more development, more housing, more upzoning, but rarely do they point to racism in our policies, and they never address the real, deep roots of racial hierarchy in our jurisprudence and how that still holds us back. Even when groups like YIMBYs admit that there is a racial effect to policies like our zoning laws, they still propose race-neutral policy solutions and never address the structure of the law, assuming that if there are just a greater amount of housing options available, these issues will fix themselves.

34. See SHERYLL CASHIN, *WHITE SPACE, BLACK HOODS* 112 (2021). "Whites tend to prefer majority-white neighborhoods that are less than 20 percent Black and often resist moving to spaces with more than a smattering of nonwhite people. While most whites accept integration in principle, many still express strong preferences to remain socially distant from nonwhites, particularly Black Americans."

35. This is an idea supported by the popular "law and economics" movement and often reiterated by Judge Richard Posner. It has also become a consensus on the bench, with the support of liberal Justices like Stephen Breyer, who has joined Roberts in stringently arguing that legal segregation is a thing of the past. Richard Rothstein, Research Associate at the Economic Policy Institute, Presentation at the Economic Policy Institute: Modern Segregation (March 6, 2014).

36. Richard Florida, *How Poor Americans Get Exploited by Their Landlords*, CITYLAB (March 21, 2019), <https://www.bloomberg.com/news/articles/2019-03-21/housing-exploitation-is-rife-in-poor-neighborhoods>. (For more on the economic, cultural, and emotional impact of this, see Matthew Desmond's ethnographic eviction study, *Evicted*. (MATTHEW DESMOND, *EVICTED* (2016)).

37. ROTHSTEIN, *supra* note 12, at xvii.

38. The argument goes that if every statistical racial inequity in housing could lead to a discrimination claim, the law would be so overinclusive that our economic system would cease to function as it currently does.

tenants and homeowners. Exclusionary zoning persists across America. It is justified by racially prejudiced property value estimates and the states violent enforcement of evictions at higher rates in Black neighborhoods.³⁹ In other words, zoning is predominantly a tool used to protect white property values.

The biggest problem in putting high legal value on the economic interests of the real estate industry is that it operates on a structure that, by design, necessitates poor Black neighborhoods to function.⁴⁰ Because segregation hoards resources and economic opportunities in white neighborhoods, “normal” and “neutral” economic interests are just *white interests*. Further, this “racial order” is enforced by boundary maintaining tools like over-policing, state surveillance, private white opposition to all local integration measures, and restrictions on the building of low-income housing.⁴¹ The state, private citizens, and private companies intentionally make efforts to ensure wealthier neighborhoods remain white. When white neighborhoods maintain racial segregation, they are able to protect an image of a place that appears to justify the hoarded opportunities those neighborhoods get.⁴² I will return to these systems in further detail when I discuss the Moms4Housing action, as they relate directly to the Moms’ modern-day story.

We can’t untangle the web of American racial injustice without centrally and directly addressing housing policy – who gets to live where and in what conditions. The effects of this system go beyond forced segregation and white communities gaining a structural advantage. It’s also a story of how the state disinvested and actively harmed Black communities, intentionally making Black neighborhoods hard places to live.⁴³ Further, housing correlates with nearly all measures of socioeconomic welfare and cultural preservation.⁴⁴ And finally, but

39. See Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://perma.cc/D9TJ-HMPR>.

40. See CASHIN *supra* note 34. (Cashin describes how racial and class segregation is necessary for over-resourced neighborhoods to exist. *Id.* at 6. The concentration of wealthy people filters through our tax system to hoard wealth and opportunities in white neighborhoods. *Id.* at 111. Cashin considers the tools of the state and private entities in the areas of boundary maintenance, opportunity hoarding, and stereotype-driven surveillance. She suggests that all these tools are used to justify Black poverty and create a racial order. *Id.* at 112-116, 168. The way we view Black poverty, stigmas, and the stereotype of the “thug” allow us to justify the exploitation of the “Black Hood” and employ punitive, rather than progressive, opportunity creating solutions to concentrated poverty. *Id.* at 48.)

41. *Id.* at 48, 112-116.

42. These hoarded opportunities are things like better transportation, schools, public facilities, and economic benefits. Of course, all of these create a feedback loop that allows the communities to stay wealthy and keep the image that justifies their resource advantage.

43. Environmental dumping, the cultural stigma of “the ghetto,” credit discrimination for community benefits like business loans, the destructive effect of “urban renewal,” and the allowance of urban blight while plowing over poor Black neighborhoods to build infrastructure - these are all examples of the “intentional sacrifice” of Black communities through underdevelopment “to feed America’s growth and expansion.” See Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2126 (2021).

44. Your zip code determines how well resourced your schools are, how good your health care is, whether you are over policed, what your income is likely to be, what kind of business and

no less importantly, we cannot overstate the personal and sentimental importance of a home. Cultural heritage and sense of community are lost to sweeping displacement during periods of gentrification. Part II will tell the story of what happens to the people who live in these exploited neighborhoods and what the community has done to fight back.

B. *The Racialization of Real Estate Speculation*

In recent decades, land-based real estate speculation emerged from global capital as one of the defining forces of racial housing inequality. Real estate speculation describes the process by which, through credit or liquidated assets, a major developer or private equity firm purchases properties that they hope will dramatically appreciate in value. The idea is to buy a cheap property where the land is likely to grow steeply in value, so the owner can sell at a high rate without improving the property and without necessarily any intention to rent while they own it. The home itself is an investment, not an immediate profit generator like it is for traditional landlords.

Speculation exploits our racialized ideas of where property is valuable and who should own property. Huge developers and private equity firms facilitate the process of displacing Black families from their neighborhoods while profiteering with skyrocketing rents and selling homes to primarily white people. It is one of the primary forces of gentrification and is driven by a complex set of laws. It holds roots in the same doctrines and policies discussed above that led to white conquest of Native land and allowed for enslaved people to be tradable property.⁴⁵

Speculation on single-family homes took off after the Great Recession in 2008 and remains strong today. Huge firms snatch up a large number of foreclosed houses to use as assets.⁴⁶ Some speculators even create arrangements with credit agencies to have a long line of credit as security for the same creditors' *own foreclosures*.⁴⁷ The way it works is that the private equity firm buys a home that the creditor foreclosed on *using a loan from that same creditor*

public transit is available to you, and much more, including how society views your status and whether other groups outside your community trust you. See David Sanchez, et al., *An Opportunity Agenda for Renters the Case for Simultaneous Investments in Residential Mobility and Low-income Communities*, CENTER FOR AMERICAN PROGRESS (Dec. 2015), https://americanprogress.org/wp-content/uploads/2016/09/LowIncomeRenters-report1.pdf?_ga=2.154375920.939919630.1651609236-1871815121.1651609235.

45. "Because these features of the land system construct the enclosure and produce its liquidity in the modern marketplace, they now constitute the prescriptive features of a land regime in the process of propagation around the world that is heralded as the path to accessing the wealth of the global speculative real estate market." Park, *supra* note 5, at 61.

46. Francesca Mari, *The Housing Vultures*, N.Y. REV. (June 11, 2020), <https://perma.cc/WWZ4-5LXR>. Blackstone, the U.S.'s largest private equity firm, became the nation's largest real estate agent. See *id.*

47. This sounds extremely confusing, but the basic takeaway is that the creditors are off-loading entirely all risk.

to buy it.⁴⁸ It is a rigged game that ensures foreclosures against small owners in neighborhoods like West Oakland are profitable. These firms have zero connection to the neighborhood and often operate in heavily Black neighborhoods, which were hit hardest by the foreclosure crisis.⁴⁹

The racially hierarchical speculation model operates legally because of who we believe deserves to own property. The scholarship of Harris and Rothstein help us understand this when we combine their insights. Harris insists that the racially exclusive history of our property laws signifies much more than just an old set of rules: “Legality has material and conceptual consequences.”⁵⁰ Building on this idea, Rothstein illustrates how *de jure* segregation manifests in our current housing and land use reality.⁵¹ Our deep housing inequality is a result of these two intertwined forces: a culture that perceives property as white and a system that formally legalizes actions with a racially exclusive impact. These forces impact our property system when we create policies like large tax credits for homebuyers, which is a very white group.⁵²

Current angst about refunding public housing also relates to racialized ideas of who gets property rights from the government and who deserves support to live in a safe, dignified place of shelter. Harris states:

“Whiteness as property undergirds a white subjectivity that is induced to reject any sense of connection to Blackness. Instead, white subjectivity is constructed in antagonism to, and perceives itself as victim of, Blackness. As Professor Derrick Bell describes, the fact that the face at the bottom of the well is Black operates as racial reassurance for those outside the white elite.”⁵³

When Harris wrote *Whiteness as Property* nearly 30 years ago, she called for a race-specific program of affirmative action to change our policies and jurisprudence on property. We must look beyond whether our laws are facially

48. “By the end of 2014, [the credit company] OneWest’s commitment to [the equity firm] Colony had grown to \$45 million—more than all the money it made available to African American and Latino home buyers over five years.’ When those with access to credit fail, they fail up.” *Mari*, *supra* note 41 (quoting author Aaron Glantz).

49. Some activists and advocates have thus likened speculation to a neo-colonial model.

50. Cheryl Harris, *Reflections on Whiteness as Property*, 134 HARV. L. REV. F. 1, 8 (2020). The full quote here is instructive: “Legality has material and conceptual consequences: as signified in Jeremy Bentham’s famous aphorism, expectations affirmed as property are not physical but metaphysical; a ‘mere conception in the mind,’ forming intrinsic value so that ‘our property becomes part of our being.’ This intimate, affective tie is mutually constitutive of both property and ‘our being’ — of subjectivity. And this subjectivity takes the concept of property deep into the heart of race and race deep into the heart of property. Time and time again, the law elevates and ratifies (white) expectations with regard to property. Yet these determinations fail to liquidate the claims of the racially dispossessed.” *Id.* at 8-9 (internal citations omitted). It is important to understand that all the modern decisions we make on property law are based on these racialized expectations. *See id.* at 9.

51. ROTHSTEIN, *supra* note 14, at xii.

52. Brandi Snowden & Nadia Evangelou, *Racial Disparities in Homeownership Rates*, (March 3, 2022), <https://www.nar.realtor/blogs/economists-outlook/racial-disparities-in-homeownership-rates>.

53. Harris *supra* note 50, at 7 (internal citations omitted).

racist. We must create solutions that actually shift the balance of power toward Black communities to hold control over their property, and change our subjective notions of who property belongs to. Further, it is essential we disrupt the effect of legalized violent white control over land accumulation and speculation.⁵⁴ To find out how we can do this, we need look no further than West Oakland. Here, displacement of Black families is among the highest in the nation, speculation rages at a shocking pace, and white movement into the neighborhood threatens the cultural identity of the proud stretch of city that once bore the founding of the Black Panthers. To tell the story of housing in West Oakland, I will tell the story of four unhoused Black mothers who became unlikely activist heroes.

PART II

A. *The Moms and Black Displacement*

Note: In the Fall of 2020, I worked as a legal intern for Alliance of Californians for Community Empowerment and Moms4Housing, two organizing groups discussed in this section.

In late 2019, four Black mothers in Oakland, California, named Dominique Walker, Sharena Thomas, Tolani King, and Sameerah Karim, faced a bleak reality. Walker, who held a full-time job (all of the mothers were employed), had just been evicted and was living in a hotel with her children where she felt unsafe.⁵⁵ She had nowhere to go, no family to stay with, and no new unit that she could afford. She worked as an organizer and shared what happened with her co-worker, Carroll Fife. Fife is a longtime East Bay movement organizer for Alliance of Californians for Community Empowerment who emerged from the Black Panther tradition in Oakland. She recognized these Black mothers were suffering – struggling with the need to raise a family without safe shelter, they were stigmatized as bad mothers, receiving little support from the government, and cut out from the property system – and they were not alone.

This section will tell the story of Moms4Housing and how they addressed the struggle poor Black mothers face in the housing market. It will outline how and why the Moms, along with Fife, organized the occupation of a vacant home before a violent eviction, and how they eventually won the battle and converted the home into ownership under a community land trust to serve housing insecure Black mothers. Their story highlights the importance of activism and what happens when someone demands that housing be treated as a human right.

54. Clearly there are also issues here that relate deeply to the Native struggle with lost land and land dispossession. These issues are critically important to understanding not only the Black struggle but the whole of the housing justice struggle against speculation and inequality. This system which exploits Black communities would not be what it is today if it were not built on laws designed to dispossess Native people of their land. However, the details of this struggle are largely beyond the scope of this paper.

55. E. Tammy Kim, *Moms 4 Housing: Redefining the Right to a Home in Oakland*, N.Y. REV. (Mar. 9, 2020), <https://perma.cc/L9Y3-U3ZB>.

The housing crisis harms all groups of working-class people, but it hits Black communities the hardest, especially in high-priced coastal cities.⁵⁶ Oakland has had a large Black population since the Great Migration, and West Oakland particularly has been an important hub of Black life. The housing crisis is changing that, as West Oakland is one of the fastest gentrifying areas in the country. The Black population bears the brunt of that displacement.⁵⁷ Oakland saw a more dramatic shift in these areas since 2012 than any city in the country.⁵⁸ A staggering 80% of low-income renters in Oakland are rent-burdened.⁵⁹ In the two years prior to the Moms' action, houselessness increased by 47% in Oakland to about 8,000 people, over a quarter of whom are under 18, as median one-bedroom rent soared to nearly \$2,500.⁶⁰ A shocking 50% of Black Californians statewide are rent burdened, with half of those paying over 50% of their income on rent alone.⁶¹ Over the past two decades, West Oakland's Black population has made way to a highly educated white population.⁶² The people that make up the Black community have been uprooted from their lives in the Bay and pushed to the exurbs.⁶³

This forced, rapid change means the community suffers a real personal loss. These Black communities lose a sense of home and a sense of safety that comes from being around the people and services they are familiar with. It is also a literal violent disruption of life, with sheriffs knocking down the door to evict.

56. Policy Link, *Oakland's Displacement Crisis by the Numbers*, (2020), available at <https://www.policylink.org/sites/default/files/PolicyLink%20Oakland's%20Displacement%20Crisis%20by%20the%20numbers.pdf>.

57. Louis Hansen, *Oakland, S.F. neighborhoods fastest gentrifying in U.S.*, (June 18, 2020), <https://www.mercurynews.com/2020/06/18/oakland-s-f-neighborhoods-fastest-gentrifying-in-u-s/>.

58. *Id.*

59. Low-income means someone who makes around minimum wage. Rent burdened means the tenant spends 30% or more of their income on rent. Policy Link, *supra* note 56.

60. Democracy Now!, *Moms 4 Housing: Meet the Oakland Mothers Facing Eviction After Two Months Occupying Vacant House*, (Jan. 14, 2020), https://www.democracynow.org/2020/1/14/oakland_california_moms_4_housing. This is up from \$1952 per month in 2012, an already very steep rate. Curbed San Francisco, *Bay Area rents soared 40 to 50 percent since 2012*, (Jan. 30, 2018), <https://sf.curbed.com/2018/1/30/16950444/bay-area-rent-san-francisco-oakland-san-jose>.

61. There are more statistics on how hard the housing crisis has hit Black Californians. See generally Matt Levin, *Black Californians' Housing Crisis, by the Numbers*, (June 20, 2020), <https://www.kqed.org/news/11825550/black-californians-housing-crisis-by-the-numbers>.

62. "In Oakland, the black population fell 8 percent between 2000 and 2010, and 4 percent more between 2010 and 2014. Ananya Roy, a geographer at UCLA, told me that the "commodification of housing" as applied in Oakland translates into "black banishment." Kim, *supra* at note 38.

63. It is likely that the statistics shared above, especially about the speed of displacement, actually underestimate how hard Black people are hit in communities like West Oakland. Black neighborhoods are the most susceptible to informal evictions (when a landlord forces someone out of their own through an illegal method of harassment or economic threats but does not actually file an unlawful detainer action in court or serve a notice to leave). Even when tenants aren't actually forced out of their home, landlord harassment is a harrowing experience that can upset their life. For some fantastic work by local activists to visually map these effects, see Anti-Eviction Mapping Project, *Anti-Eviction Mapping Project* (2021), <https://antievictionmap.com/>.

Policing in these neighborhoods primarily serves the incoming white community. Eventually, community institutions that make the neighborhood culturally what it is are removed, and with them go the bonds that tie the place together. When the Whole Foods and chic bars come in, it signals to Black residents this community is not for you – the opportunities here are for white people.

If Black people want to hold onto their own sense of community, they have to move and try to start again, and this change is forced upon them. For Dominique Walker, the choice to organize with Fife (and eventually occupy a vacant home) was forced by necessity:

“I was born and raised in Oakland. And most of folks are either displaced out, at least 45 minutes to a couple hours out, or they’re displaced onto the street. So, I was commuting for hours trying to get into Oakland to serve my community. And after situations didn’t work out living on couches and in rooms, I was living in hotel rooms. And being homeless is very violent. And I’ve seen the development in my children since they’ve had shelter. My son took his first steps on Magnolia Street, said his first words. My daughter turned 5 in the house on Magnolia Street. It’s an absolute necessity to have shelter. And it’s a basic human right.”⁶⁴

The severity of the situation for people like the Moms is why researcher Matthew Desmond dubbed the eviction crisis for Black women what mass incarceration is to Black men, and the greatest driver of poverty in America.⁶⁵ This is a powerful, illustrative statement, but the reality is even worse. Desmond is right to draw a comparison that shows the violence of evictions and how they tear apart communities. However, Black women also suffer deeply from mass incarceration.⁶⁶ The fact that they are evicted at the highest rates only adds to the violent disruption of their communities. This identity is just another layer of oppression.

B. Occupation

Walker tried all the existing channels for rental assistance but just couldn’t find the money to pay rent. Fife offered her an alternative – stage an act of civil disobedience and occupy a vacant home. Walker agreed and declared her motivation: “The goal of our organization is to reclaim houses back into the hands of the community and to house unsheltered moms and children. . . We are reclaiming this house from a billion-dollar corporation who bought this house at

64. Democracy Now!, *supra* note 60.

65. Gillian B. White, *America’s Insidious Eviction Problem*, (Mar. 1, 2016), <https://www.theatlantic.com/business/archive/2016/03/eviction-matthew-desmond-housing/471375/>.

66. The Sentencing Project, *Incarcerated Women and Girls*, (November 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>. (Report showing that in the U.S. Black women suffer rates of incarceration 1.7 times that of white women).

a foreclosed price. It has been vacant for two years while people are living out on the street.”⁶⁷

The Moms targeted the property owner, Wedgewood, because they saw it as a predatory private equity company that looks to acquire vacant houses in “hot” neighborhoods as an investment, not to house people. Wedgewood is not alone in this model. Some estimate that speculators, including most of the largest equity firms, own up to 35% of all rental stock in the country.⁶⁸ They are holding property in an area experiencing an epidemic of houselessness, have no connection to the community, and flip properties like trading cards they wait to appreciate. Fife sought to directly challenge this model: “What we’re saying is corporations should not be able to hold vacant properties when there is a housing crisis. There should not be people living on the streets when there are places where they can live.”⁶⁹

One might view Wedgewood’s model as purely a prudent investment strategy, but the history discussed in Part I tells a more pernicious story. The legality of land-based speculation developed out of the early colonial system where real property tied to land for the efficiency of the slavery based-economic model, which eased the risk on creditors investing in large plantations.⁷⁰ Credit loosened and the modern quick and easy foreclosure laws were created to encourage white westward expansion on Native lands, lessening the risk for creditors where they feared territorial conflict.⁷¹ Here we find a striking parallel to present day West Oakland. Not too long ago, purchasing a home in rough condition in lower-income West Oakland would have been a risky proposal for a private equity firm. Upkeep to meet building enforcement codes was more expensive than it was worth, and eviction would not have been a viable method to protect the earning potential of the property.⁷² Now, after decades of rising housing costs, stagnated wages, and lobbying to make summary eviction proceedings even easier for landlords, evictions are commonplace.⁷³ Further, they affect Black Americans the most, and not just because they happen to be disproportionately low income. It is likely that anti-Black bias makes landlords

67. Democracy Now!, *supra* note 60.

68. Blackstone and Steve Schwartzman, a top Trump donor and economic aide, are among the biggest investors in speculative real estate. Mari, *supra* note 31.

69. Democracy Now!, *supra* note 60.

70. Park, *supra* note 5 at 38.

71. *Id.* at 52.

72. Evictions used to be so rare that they would draw a crowd just to witness the spectacle, often times in protest of the Sheriff’s action; now in California over a hundred evictions occur every day and more than 2% of renters experience eviction every year. Jake Blumgart, *Why More Americans Are Getting Evicted*, (Mar. 17, 2016), <https://slate.com/business/2016/03/an-interview-with-matthew-desmond-on-evicted-his-book-about-the-eviction-crisis-in-america.html>; Eviction Lab, *Eviction Map California*, (2021), *available at*, <https://evictionlab.org/map/#/2016?geography=states&bounds=-190.672,8.435,-44.648,62.634&type=er&locations=06,-117.903,35.5>.

73. Jake Blumgart, *Why More Americans Are Getting Evicted*, SLATE: METROPOLIS (Mar. 17, 2016, 11:44 AM), <https://slate.com/business/2016/03/an-interview-with-matthew-desmond-on-evicted-his-book-about-the-eviction-crisis-in-america.html>.

more likely to evict Black tenants than other people of color, a trend Fife feels she has consistently observed in Oakland, and one that the data on eviction notices backs up.⁷⁴

Even for non-rented or non-occupied units, the same mortgage laws, modernized even further to protect banks, allow these initially risky property bets to feel secure to the speculators.⁷⁵ Since the recession hit, private equity firms bought foreclosed single-family homes at the greatest density in Black neighborhoods.⁷⁶ Sometimes the symbolism is not so subtle – a for-sale sign outside a newly renovated home on the block of the Moms’ house recently advertised “OwnWestOakland.com.”⁷⁷ Despite these parallels to the patterns of settler expansion on Native land financed by east coast banks, the dominant view still claims that real-estate speculation is a race-neutral matter of supply-side economics. Walker pushed back on this narrative of natural economic movement, and centered what was happening to Black people in the Bay. She speaks instead of active displacement: “talking to my community, everybody had the same story. Everybody that was originally in Oakland, they are either displaced hours away and have to commute to work. Or they are displaced out in the streets. Our goal is to reclaim land back into the hands of the community, where it belongs.”⁷⁸ She declared, “Oakland is not for the speculators.”⁷⁹

The Moms sought to change the standard neoliberal, economic-based perception of displacement with activism. When they occupied the home, they started an organizing campaign that loudly proclaimed at every opportunity: *for every one unhoused person in the city, there are four vacant units*. They said what is happening in West Oakland is not an accident of economics. Rather, it is an inevitable outcome of a system built to exploit land on which Black people live. Vacant homes diminish supply and raise rents for everyone in the area. Fife and the Moms hit a nerve with this message – it resonated with everyone from housing insecure residents to community members to housing justice advocates across the nation. The non-productive use of land of this vacant home exposed the lie of the rationale for U.S. property use laws.⁸⁰ Walker felt their use of the

74. “As Fife would soon learn, ACCE’s Latino renters often faced threats and harassment, but weren’t often thrown out, “whereas black families are actually evicted, especially black mothers.” (In 2016, renters in majority-black neighborhoods of Oakland were more than twice as likely to receive an eviction notice, compared to majority-Latino neighborhoods.)” Kim, *supra* note 55 at 2.

75. The mortgage laws that allowed the 2008 foreclosure collapses to happen are the same ones that allowed private equity to then profit from the damage with speculation.

76. Mari, *supra* note 46.

77. Compass, *2903 & 2905 Magnolia*, (2021), <https://www.ownwestoakland.com/>.

78. Lam Thuy Vo, *A Group Of Women Occupying An Empty House In A Gentrified Neighborhood Because “Housing Is A Human Right” Were Forcibly Evicted*, (January 14, 2020), <https://www.buzzfeednews.com/article/lamvo/activist-woman-moms-house-evicted-oakland-gentrification>.

79. *Id.*

80. The oft-quoted Lockean justification of maximizing the productivity of land holds racist origins that devalued land-use practices of non-white populations. See Park, *supra* note 5 at 61.

land was most efficient – “Housing is a human right. I pay bills there. I pay water, PG&E, internet. We live there. . . We want to purchase the home; it needs to belong back in the hands of the community. It was stolen through the foreclosure crisis.”⁸¹

Fife wanted to directly challenge the liberal consensus that the displacement and affordability crisis is simply about a lack of housing supply and show that the crisis is actually driven by how supply is regulated. Further, the Moms simply needed a place to stay for their family’s safety. Walker saw it as a necessary part of her children’s growth, despite the risk of involving them in the action: “It’s just been amazing to have a shelter for my children and to be this example for them. People always ask me — there’s children involved. And I want my children to know that their mother was on the right side of history.”⁸²

After moving into the house in late November 2019 and fixing up some disrepair to make it a home, by December the Moms’ story was circling all around the Bay. It seemed like all the frustration with rising rents and cost of living, the tech cultural takeover, and the intense anti-Black gentrification of Oakland found an outlet all at once. By the next month, the story was covered in prominent national news outlets⁸³ as one of the most celebrated stories of activism in the country. Fife and the Moms used the spotlight to work with supportive Oakland council member Nicki Fortuna-Bas to propose the Tenant Right to Purchase Act (TOPA), which gives tenants a chance to purchase a home before a corporate buyer.⁸⁴ This was the Moms’ first attempt to use their daring activism to change policies and make speculation more difficult.

The Moms attended community events, organizer meetings, and met with neighbors. Even though West Oakland is still a predominantly Black community, the neighborhood association meetings (consider who owns property) are still often overwhelmingly white. Neighbors were mostly supportive at these events until TOPA was proposed. Suddenly, the tone shifted. One white neighbor had heard about the legislation and attended the meeting with fliers that said “Stop TOPA.” Her initial sympathy to the Moms turned into a somewhat demur opposition, as she did not even realize they would be in attendance. Still, she was confident enough to speak with her other white neighbors about the “lawlessness” of the bill and how their property rights would be stripped.⁸⁵

It must be noted what these neighbors felt was “lawless” (the Moms) and what was legal (corporate real estate practices), how racial bias may affect that view, and how this is pervasive as a liberal view. To these neighbors, the individual autonomy rights of (mostly white) property owners pitted them against the Moms, for reasons they felt facially race neutral. In a revealing

81. Vo, *Supra* note 78.

82. Democracy Now!, *supra* note 60.

83. Jill Cowan & Conor Dougherty, *Homeless Mothers Are Removed From an Oakland House*, (Jan. 15 2020), <https://www.nytimes.com/2020/01/15/us/oakland-homeless-eviction.html>.

84. Discussed in detail in Part III.

85. See Kim, *supra* note 55 at 8.

moment, a white neighbor asked Misty Cross, another Black mom who had joined the original group, if she was ready for the “big responsibility” of owning a home.⁸⁶ This question focuses on an individual and should not impact support for a policy, but more importantly, it struck Cross as belying a sort of patronizing racism. She noted, “it must seem hard for folks to see Black and brown folks rise above poverty when we’ve been at the bottom of the totem pole for so long.”⁸⁷

C. *Violent Eviction and Sale to the Land Trust*

As the Moms gained more press, Wedgewood started to move an eviction proceeding through court. Unwilling to negotiate with the Moms, and confident they had the legal authority to move forward, one of their executives called the Moms “bullies and thieves” and said that council members who requested that Wedgewood sell the house to a non-profit “didn’t know the law.”⁸⁸ A spokesman for Wedgewood paid little concern to the issues raised by the activists, stating, “the solution to Oakland’s housing crisis is not the redistribution of citizens’ homes through illegal break-ins and seizures by squatters.”⁸⁹ This description mischaracterizes the property as a “citizens’ home,” even though the corporate owner Wedgewood never intended to rent it to anyone. Next, Wedgewood pushed forward with their police-enforced legal measure, the unlawful detainer action, to protect their private space.

Attorney Leah Simon-Weisberg earned the Moms a stay in early December. In her answer to the eviction, she argued that housing is a human right, and that the city of Oakland had failed in its duty to make housing available to the Moms. She used international treaties to back this argument that challenged U.S. property law, writing that a city has an obligation to house its residents to preserve human rights.⁹⁰ Simon-Weisberg’s argument eventually inspired former-assemblyman Rob Bonta,⁹¹ whose district included West Oakland, to propose a state constitutional amendment to make housing a human right.⁹²

This amendment would have a dramatic effect on takings and other parts of our property jurisprudence. It could allow for the enactment of more racially equitable and affordable housing policies. It would empower states and local municipalities to aggressively and inclusively zone. Most importantly, it would allow a strong legal argument for cities to use regulatory power to reign in the

86. *Id.*

87. *Id.* at 8-9.

88. Katie Wolffe, *Moms 4 Housing Group Reaches Agreement to Buy Vacant House*, (Jan. 20, 2020), <https://www.kqed.org/news/11797001/moms-4-housing-group-reaches-agreement-to-buy-vacant-house>.

89. More accurately, Wedgewood should describe the house as an asset. Cowan & Dougherty, *supra* note 83.

90. Molly Solomon & Katie Wolffe, *Moms 4 Housing in Oakland Vow to Fight Potential Eviction*, (Dec. 31, 2019), <https://www.kqed.org/news/11793299/moms-4-housing-in-oakland-vow-to-fight-potential-eviction>.

91. Bonta was recently appointed Attorney General by Governor Newsom.

92. The amendment is still under consideration at the time of this writing.

actions of landlords and corporate real estate actors.⁹³ Cities could more strictly procedurally regulate when evictions are allowed, and the state could punish cities that don't provide enough affordable housing for their residents.⁹⁴ With these changes, state and local governments would have the policy tools to lessen the exploitative impact of real estate speculation on Black communities.

However, the stay was short lived, and after a temporary finding in favor of Wedgewood, the superior court judge issued an eviction ruling against the Moms in early January.⁹⁵ Still, this was not without some progress. In what many assumed would be an open-and-shut legal case, the judge took time to seriously consider Simon-Weisberg's argument that the housing crisis has gotten so bad that the courts must intervene. At the initial hearing, Judge McKinney remarked "There's no doubt these are extremely important issues, but I think it's finding the right venue and the right case for that . . . I'll certainly consider all the arguments presented."⁹⁶ The bold arguments about housing as a human right and international law failed before the court, which was bound to apply precedent and statutory property law. However, the radical argument that questioned if these laws are just was firmly entered into the discourse. This is attributable to the Moms who so clearly exposed how housing laws are so often in opposition to our basic understanding of fairness. When the laws function to keep these Moms out of a home in supply-choked Oakland, just so a house can be held vacant and in blight, it is natural for many to begin to question the purpose of the laws.

Two weeks later, well past midnight, the Alameda County Sheriff carried out a violent and dramatic eviction.⁹⁷ A text blast alerted supporters who arrived by the hundreds, but they were met by the Sheriff's department, equipped with a full SWAT team, armed with assault rifles, and a ballistic vehicle (a small tank). Although the Sheriff declined to press charges, all of the Moms in the house at the time were arrested and removed. The Sheriff used military force to police this property and this space. Fife has since told organizers that the line she heard from the Sheriff, who authorized the eviction action, was that they were responding to the presence of Fred Hampton, Jr.⁹⁸ The cost for this eviction ran upwards of \$40,000 on personnel alone (the Sheriff's office told reporters it was only around \$10,000). The Sheriff never reached out to the Moms prior to their

93. Eric Tars, National Low Income Housing Coalition, *Housing as a Human Right*, 2016 Advocates Guide, (2021) https://nlihc.org/sites/default/files/2016AG_Chapter_1-6.pdf.

94. Molly Solomon, *What Would 'Housing as a Human Right' Look Like in California?*, (Feb. 12, 2020), <https://www.kqed.org/news/11801176/what-would-housing-as-a-human-right-look-like-in-california>.

95. *Id.*

96. Solomon & Wolfe, *supra* note 90.

97. In an incredible on-air TV moment, Fife and Walker were notified by *Democracy Now!* interviewer Amy Goodman in the middle of taping a segment that the Sheriff arrived in the middle of the night to evict the Moms. *Democracy Now!*, *supra* note 60.

98. Son of the late Black Panther Chairman who was murdered by the FBI and Chicago police.

action, despite their claims to the contrary. E-mail records reveal they only consulted Wedgewood's attorney, once actually referring to him as the Moms' legal counsel.⁹⁹ Walker (who was not in the home at the time of the arrests), recalls the experience, accusing the Sheriff of "strategic" timing, and saying: "I'm angry that my sisters are in handcuffs. Our supporters are in handcuffs right now, all because we have the right to housing. This movement is just beginning, and we see what we're up against. But we also see what they are afraid of. They're afraid of us mobilizing 300 people in 15 minutes. That's what we did."¹⁰⁰

The Sheriff, it seems, responded to the specter of the Panther Party, an autonomous Black radicalism that has aroused harsh responses of law enforcement since its inception. The Sheriff's department itself said they were responding to a threat of "anarchist and criminal elements."¹⁰¹ The Sheriff¹⁰² never provided a further explanation for what caused such a response; therefore, one can assume the cause was the poor Black mothers themselves, and their alignment with radical organizers.

Further, it is likely that stigmas of activist Black mothers played into the heightened response. Fife emphasized how our political and gender norms contribute to the common misrepresentation of the Moms action: "It's important to understand the history of civil disobedience in this country, because every single right that we have today was won by people engaging and pushing on what was legal. Right? So it's important to not criminalize women who are trying to bring attention and justice and humanity to the masses, for everyone. They are not the criminals here. The criminal system is [the] one that allows homelessness."¹⁰³ Here, the Sheriff is positioning the Moms as trespassers, meaning people who are occupying a space where they are not legally allowed to be. His justifications are based on economic reasons (because they do not own the home or pay rent), but much of this is built on a notion that associates the racial and gender identity of the Moms and their allies with criminality. The Sheriff is carrying out his job based on the laws on the books, but the problem is the laws on the books were developed from, and reinforce these racist and sexist associations.

99. E. Tammy Kim, *Moms 4 Housing: A Dramatic Eviction Revisited*, (April 22, 2020), <https://www.nybooks.com/daily/2020/04/22/moms-4-housing-a-dramatic-eviction-revisited/>.

100. *Id.*

101. Note: This paper leans heavily on the reporting of E. Tammy Kim because the Moms themselves stated they thought her reporting best represented the truth of their story. This paper is operating on the Critical Race Theory tenet that activist voices should be uplifted in academia, so this is my small attempt to do this. *Id.*

102. It's worth noting the problematic nature of the sheriff's office here. The office is elected, but its race notoriously receives little to no media coverage and is thus ignored by the public, yet once in office, the sheriff has nearly unchecked discretionary authority. Sheriff Greg Ahern, seen as a man of deeply conservative ideology, has mostly run unopposed in one of the most progressive counties in the country.

103. Democracy Now! *Oakland Moms Who Occupied Vacant Property to Highlight Housing Crisis Celebrate Unexpected Victory*, (Jan. 24, 2020), https://www.democracynow.org/2020/1/24/moms_4_housing_oakland_california.

Finally, make no mistake – despite the economic justifications and legal structures in their favor, Wedgewood has consistently acted with intentional disregard for the law. In December 2021, Wedgewood agreed to a \$3.5 million dollar settlement with the state for operating their business on a repeated practice of illegal evictions. Now in his role as state Attorney General, Rob Bonta alleged that the company regularly evicted tenants without just cause¹⁰⁴, ignored tenants’ rights to keep living in their home on pre-existing leases, targeted absentee homeowners of foreclosed homes to intentionally deceive the tenants living there, failed to provide essential services to tenants, and even falsified declarations to further unlawful evictions.¹⁰⁵ Wedgewood denies any wrongdoing. Fife declared this act of enforcement the start a new era of accountability, and it once again shows the immense impact of Moms4Housing.¹⁰⁶ Since the founding of our country, Black mothers acting collectively for the survival of their families and communities have been viewed as trespassers and transgressors of the law. Meanwhile, repeat violators and exploiters of the law like Wedgewood hide behind a visage of a respected business and a home provider. We must ask, who are the real “criminals” of West Oakland?

The eviction of the Moms further reveals how the state uses violence to protect white property. Here, we saw the state acting to physically remove Black mothers and their children from a neighborhood, simply to hold a home vacant. We must question property laws that use the resources of the state to protect private investments that actively harm Black communities.¹⁰⁷ It is relevant to wonder how the race of the Moms played into the violent response of the Sheriff, and what would have happened if the occupiers were white. In a system that was created to allow white ownership of land by conquest, the police are the arm of the state that enforces this.¹⁰⁸

104. Just Cause is an important statewide regulation on evictions that requires landlords to hold a good faith legal reason to bring an eviction case, requires proper notice procedures, and regulates rent increases.

105. Spencer Whitney, Matthew Green, *Real Estate Investor at Center of Oakland’s ‘Moms 4 Housing’ Standoff Hit by State With \$3.5 Million Penalty for Unlawful Evictions*, (December 8, 2021), <https://www.kqed.org/news/11898493/real-estate-investor-at-center-of-oaklands-moms-4-housing-standoff-fined-3-5-million-for-unlawful-evictions>.

106. *Id.*

107. The irony of this use of resources must be noted – a private equity company spent money to hold a property in disrepair as an “investment,” supported by the state spending a hugely unnecessarily large sum to forcibly protect that investment and the owners’ white property interest. As discussed earlier, that “investment” is really just a fleeting financial asset, briefly held to slightly tip up a large company’s bottom line, and an interest that is protected by the state with military force. But the thing that these private companies and the state are not investing in is the health of the Black community that lives in that neighborhood. Not only was the house left vacant, but Wedgewood ignored blight laws and left the house in disrepair, creating an unsafe and unsightly space in the neighborhood. In other words, their financial investment was an active disinvestment in the neighborhood community, and was financially and forcefully incentivized by the State.

108. It is also worth wondering, why does the Sheriff enforce evictions in the first place? Park, *supra* note 5 at 58.

The Moms had secured a promise from Wedgewood to allow them to return to the house after their eviction to gather their belongings; instead, they found most of their furniture and possessions broken and sitting in the mud. Reporting reveals that Wedgewood worked with the Sheriff to manipulate the Moms expectations around this matter.¹⁰⁹ There is a stark contrast in how the property of each group was treated by the Sheriff. The Sheriff's actions show the police arm of the state works to protect a white owned private company's property with violence, but bends the rules when it comes to poor Black mothers' right to assembly, right to their possessions, and the right to be treated with dignity by the government.

This eviction brings to mind the McCloskeys, the middle-aged white couple in St. Louis who pointed guns at peaceful Black Lives Matter protesters marching past their affluent home in a white, wealthy part of the city. The McCloskeys became poster boys for then-President Donald Trump's racially coded 2020 re-election campaign promise to "protect the suburbs." Trump wanted to use government authority to support armed white suburbanites, while even in left-leaning Oakland, Black mothers are violently evicted by SWAT teams to protect the property rights of a corporation with no connection to the community.

Still, despite all of the problematic racialization of the eviction action, Walker found enough hope in the activism to tell reporters the next day: "[L]ast night was amazing. It just showed me that it's still Oakland. We're still Oakland. We are a town of resistance, and we fight back. And we saw our community have our full backs last night. Within 15 minutes, there were over, I think, 300 people mobilized, in 15 minutes. That's people power."¹¹⁰

In the weeks prior to the eviction, Fife and other organizers helped the Moms find new homes that they were able to move to after they were forced out of the occupied house. Fife was able to cobble together allies who convinced Wedgewood, hampered by enough bad press, to sell the property. Moms4Housing scored a huge victory in the fall of 2020 when they finalized and publicly announced the sale of "Moms' House," as it is affectionately known, to the Oakland Community Land Trust. The Trust is a non-profit that owns the land, but sells the home and leases the land on the condition that they will remain affordable. The next part of this paper will discuss the benefits of this arrangement, and how the community land trust helps protect West Oakland from the forces that landed the Moms in this position in the first place. But finally, we will close this section with some heartwarming news – Moms4Housing achieved their ultimate goal. The home underwent a thorough renovation¹¹¹ funded by the Land Trust who will now ensure that the house will

109. Kim, *supra* note 99.

110. Democracy Now!, *supra* note 60.

111. Wedgewood had left the home badly blighted, not near code even for a vacant home (those codes are rarely enforced). Their presence not only drives up rents and contributes to a shortage of supply in the neighborhood, but also worsens the safety and aesthetics for current residents. The fact that this persists is also racialized. Studies in Chicago revealed that city code

become a transitory home for Black mothers facing housing insecurity. This January, the first new moms moved into “Moms’ House” and have begun to restore stability to their families and the West Oakland community.¹¹²

PART III

Moms4Housing sparked several new policy initiatives at the state and local level to curb speculation and bring greater housing justice to California. The movement upped the urgency to rethink how we provide housing to our communities. This next section will discuss the Moms’ policy proposals and other possible solutions; it will address both their potential benefits and the major challenges they face in successful implementation.

A. Land Trusts

Fife and Moms4Housing found a natural partner to help preserve Moms’ House in the Oakland Community Land Trust (OakCLT).¹¹³ The model of the land trust is to directly counteract the laws and economic forces that tilt against communities of color in Oakland.¹¹⁴ A land trust uses public and private funds to buy properties and then separates ownership of the land from ownership of the house. The land trust, usually a community-based non-profit, then leases the land on a long-term (usually 99-year) lease, while the home itself is sold to an income-qualifying resident at an affordable rate. As part of the agreement to purchase, the buyer must qualify for certain conditions. These often include being below a certain income and agreeing to sell the house for only a small percentage more

enforcement against blighting happens far less in Black neighborhoods. Swati Prakash, *Racial Dimensions of Property Value Protection Under the Fair Housing Act*, 101 Cal. L. Rev. 1437, 1497 (2013).

112. Colorado, Melissa, NBC Bay Area, *Oakland House Ready to Serve as Transitional Home for Homeless Families*, (January 28, 2022), <https://www.nbcbayarea.com/news/local/oakland-house-ready-to-serve-as-transitional-home-for-homeless-families/2793080/>.

113. Their stated mission is “to expand and preserve housing and economic development opportunities for Black, Indigenous, other communities of color, and low-income residents of Oakland. In practice, we acquire housing, land, and other critical community-serving real estate and steward them in trust to ensure that they remain affordable forever. We create innovative shared-equity ownership structures that balance the needs of individuals and families to build wealth with the long-term goal of permanently preserving affordability.” Oakland Community Land Trust, *Mission*, (2021), <https://oakclt.org/about/missionvalues/>.

114. “A market-based logic still dominates in disinvested communities today. Cities devastated by a racially and economically motivated policy and private lending practices — from redlining to subprime mortgages — search for ways to attract investment, often by giving away land. Today, unlike the 1980s, there has been a rising reliance on land banks in cities like Detroit, as opposed to tax foreclosure auctions which are rigged heavily toward developers, to more thoughtfully channel the redistribution of public land. But most continue to focus on transferring land to professional developers or promoting homeownership with time-limited affordability requirements.” Oksana Mironova, *How Community Land Trusts Can Help Address the Affordable Housing Crisis*, (July 6, 2019). <https://www.jacobinmag.com/2019/07/community-land-trusts-affordable-housing>.

than originally purchased for to preserve affordability. The buyer also agrees to end their lease of the land when they sell the home. The mission of the land trust is a direct acknowledgement that individual autonomy over real property ownership is not sufficient to protect Black communities and avoid exploitation of the poor. OakCLT considers themselves stewards of “land so that it permanently serves a community-defined purpose.” They also seek to develop resident leadership so that control of the land and housing stays in the community.¹¹⁵

The Moms4Housing story shows the danger of what happens when ownership is very removed from the community. Wedgewood responds to economic incentives only, nothing related to community or human well-being. Each home is just a tiny percentage of a huge portfolio for Wedgewood, but in aggregate their activities in West Oakland have huge implications for the Black communities that live there.¹¹⁶ Land trusts have had success fighting against these most exploitative market practices.¹¹⁷

One issue with CLTs is that they rely on funding from public-private partnerships, which can be inconsistent. In addition, the private sources may not be mission-aligned with the long-term interests of the CLT. The story of the purchase and renovation of Moms’ House is telling of both the economic and legal challenges. Wedgewood initially balked when two Oakland council members, allied with the Moms, pushed them to sell to OakCLT. Instead, they offered to pay to move the Moms and their kids into a shelter for two months.¹¹⁸ Fife shared with organizers that Oakland Mayor Libby Schaaf and Governor Gavin Newsom were initially reluctant to support the sale. Schaaf was opposed to publicly supporting the Moms out of fear of antagonizing real estate. Internally, before public support for the Moms altered her political assessment, she even tried to block the deal. Eventually, a team mostly composed of Fife, supportive council members, and Schaaf (now finally working in approval of the Moms’ action) reached an agreement. In the face of mounting pressure, Wedgewood agreed to sell the property to OakCLT. With political operators and the public lined up against them, Wedgewood was pushed so far that they even agreed to give “right of first refusal”¹¹⁹ to the City or OakCLT on all of its over

115. Oakland Community Land Trust, *supra* note 113.

116. See Maya Abood, *Securitizing Suburbia: The Financialization of Single-Family Rental Housing and the Need to Redefine “Risk”*, DSpace@MIT, (2021).

117. Land trusts take properties completely out of the profiteering market system and guarantee long-term preservation of affordability and cultural character of a neighborhood. Burlington, Vermont has the largest portion of its housing in a land trust (around 8%), and as a result home values took far less of a hit after the 2008 crisis than other similar cities. There is a very different racial and socioeconomic make-up in Burlington than the Bay Area, so a different set of political challenges exist to bringing this about. Mironova, *supra* note 86.

118. Cowan & Dougherty, *supra* note 83.

119. Confusingly, this means the right to nix another buyer’s potential purchase of a home in favor of your own purchase, if you are able to present a viable offer. The challenge, of course, is acquiring funding to make that viable offer. It remains to be seen whether the city will provide the

100 properties in Oakland.¹²⁰ The details of this back and forth are still not fully reported on and will likely remain a messy story of political deal-making.

However, regardless of who was on what side and when, we can learn three important takeaways from the process. First and foremost, the wellbeing of poor Black mothers became tokenized as a political concern weighed against private property interests. The eventual positive result for the Moms was merely a political calculation for the City and Wedgewood. Second, it showed the power of community engagement and organizing; activism turned the tide of public perception that forced the hand of the parties who were opposed or hesitant to see such a sale go through. Without months of organizing and intense activism, it's unlikely the result would have been the same. Finally, the sale of this one home took a tremendous amount of work, relied on the prioritization of funds for a uniquely high-profile case, and still nearly did not go through. This reveals the difficulties of repeating the land trust model at scale.

There are other difficulties of moving away from our current real estate model. For CLTs specifically, the funding structure must still exist within the neoliberal non-profit model. A skeptical critical race perspective may suggest that a reliance on foundation and government funding will tie CLTs to neoliberal agendas, wealthy white interests, and political whims. All of these factors limit transformational change. Further on scalability, OakCLT currently owns just 39 properties, and each purchase requires new funding from the city or foundation grants. Clearly, their operation is nowhere near a place where it could significantly affect the housing market in the Bay Area. Additionally, in fast moving markets, there are simply logistical challenges for a non-profit to make competitive offers; they have to operate in a system that was built for entities very different than them.

A local government committing a large amount of funding to CLTs is one way scale could increase. However, existing conservative jurisprudence at the state and federal level protect private property rights stringently, and would make any regulation to help CLTs efficiently purchase homes susceptible to takings challenges.¹²¹ Regardless, it is important to value CLTs as a model of social housing because they present a direct challenge to our current exploitative

financial backing to make this provision have a real effect on who purchases Wedgewood's Oakland properties.

120. Erin Baldassari & Molly Solomon, *How Moms 4 Housing Changed Laws and Inspired a Movement*, (Oct. 19, 2020), <https://www.kqed.org/news/11842392/how-moms-4-housing-changed-laws-and-inspired-a-movement>.

121. Takings doctrine is murky, but *Penn Central Transportation Co. v. New York City* allows for government regulation as long as all economic value is not stripped from a property and the government action is about limiting a harm. See *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124-25 (1978). Regulations governing sales of properties should stand under this doctrine, and the deference courts give to regulation that is attempting to limit a harm could allow for room for more cases to chip away at absolute private property rights, even if not under this particular Supreme Court. *Penn Coal* also gives deference to the government in their ability to regulate. See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922).

practices around land values and private property ownership. CLTs are an important disruption that shows activists, organizers, and legal professionals a path towards racially equitable solutions.

B. Public Housing

The most promising solution in terms of scalability and political possibility is public housing. Because the existing market is so stratified across race, any type of social housing will need to be targeted directly towards Black communities with large investments. There are legal challenges to any race affirmative program, but with housing, most states' programs could be targeted along the basis of income and have the same correlative effect.¹²² Public housing decommodifies housing, so it would not be subject to the racial hierarchy of the market and the property laws that uphold it. Further, it prevents profit seeking from real estate developers and speculators driving exorbitant rents and home costs. Instead of rent money flying out of West Oakland's Black community and into the hands of white speculators, rents for public housing go back into the preservation of the housing itself. Finally, in sheer numbers, public housing could just give us a whole lot more affordable units.

One compelling policy platform – the “Homes Guarantee” – calls for 12 million new units built,¹²³ particularly in hot markets like Oakland.¹²⁴ The platform suggests mechanisms for local governments to build-in community control, centered around those most marginalized by the current housing system.¹²⁵ Under this plan, the Black community of West Oakland could have more community control over what their housing looks like and where it is built. While distribution, construction, and qualification for public housing (among other aspects) is sure to be politicized, it still gives the best chance for representation of marginalized groups in structural decision making. In the current market system, these groups are exploited and left out of decision making entirely.

One major challenge is that increasing funding for the United States Department of Housing and Urban Development (HUD) in a manner that increases the overall number of public housing units is currently prohibited by

122. Les Dunseith, *Black, Latino Renters Far More Likely to Be Facing Housing Displacement During Pandemic*, (Aug. 10, 2020), <https://newsroom.ucla.edu/releases/blacks-latinos-more-likely-to-face-housing-displacement>. (This piece also importantly notes that Black and Latino renters face racial discrimination that goes beyond their lower incomes. Thus, income as a proxy for race is helpful but incomplete.)

123. The platform was adopted and reintroduced as a bill to Congress shortly after the pandemic hit by Rep. Ilhan Omar. Homes For All Act of 2019, H.R. 5244, 116th Congress, (2019); see People's Action, *A National Homes Guarantee Brief Book*, (Sept. 5, 2019) <https://homesguarantee.com/wp-content/uploads/Homes-Guarantee--Briefing-Book.pdf>.

124. People's Action, *supra* note 123 at 6.

125. *Id.* at 13.

the Faircloth Amendment.¹²⁶ That would need to be repealed.¹²⁷ Additionally, some HUD rules would have to be changed to allow Congress to make spending consistent and sustainable.¹²⁸ However, there are no obvious constitutional challenges to large-scale funding of public housing, and the bipartisan distaste for public housing may finally be shifting in the wake of the failures of the private market during the coronavirus pandemic.

Public housing does not have to resemble a stereotypical idea of a project.¹²⁹ A good model for sustainable public housing can be found in Vienna, Austria.¹³⁰ In the Vienna model, the government purchases the land and the property, and then either a non-profit, a heavily regulated management company, or the government itself manages the property. Basic housing all the way up to luxury is included, and the higher rents subsidize the lower rents and maintenance.¹³¹ Vienna does not face the same levels of racial and economic inequality as Oakland, but the challenges to implementation of such a system are more political than anything else. This political hurdle again relates back to the need for activism and education that could move the needle of public support on these issues. The Vienna model also avoids the problem of exclusion via hyper-local control, something that has led to a lot of issues with zoning (e.g. NIMBYism) similar to what the Moms faced at the neighborhood meeting. Because a state-level board would oversee this housing, exclusion by local preference in majority white communities would be more difficult.

C. Regulatory Action

In addition to creating new policies, we will need to address the existing laws that allow corporate real estate to engage in their current practices. During and after the occupation, the Moms proposed a number of regulatory solutions. Later, other good ideas emerged from allied groups in response to the action. Encouragingly, Rob Bonta, who proposed the “Housing is a Human Right”

126. “The Faircloth Amendment states that the Department cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units the [Public Housing Authority] owned, assisted or operated as of October 1, 1999.” United States Department of Housing and Urban Development, *Guidance on Complying With the Maximum Number of Units Eligible for Operating Subsidy Pursuant to Section 9(g)(3)(A) of the Housing Act of 1937 (aka the Faircloth Limit)*, <https://www.hud.gov/sites/documents/FRCLTH-LMT.PDF>.

127. Rep. Alexandria Ocasio-Cortez introduced a bill to repeal the Amendment in 2021. Repeal the Faircloth Amendment Act of 2021, H.R. 659, 117th Congress, (2019).

128. People’s Action, *supra* note 123 at 8.

129. This idea is also heavily racialized in a way that limits our imagination of what good public housing can be.

130. Some have proposed a similar model could be adopted in California. “The state will create a new agency, the California Housing Authority, to develop both mixed-income rental and owner-occupied housing with affordability standards, using models such as limited equity cooperatives or long-term leaseholds, where the owner has the right to use the apartment for forty to ninety-nine years.” Galen Herz, *Social Housing Is Becoming a Mainstream Policy Goal in the US*, (Feb. 21, 2021), <https://jacobinmag.com/2021/02/social-housing-public-affordable-california->

131. *Id.*

amendment, is now state Attorney General. This could signal the turn to a more friendly position on these policies from the state. Support for Bonta's amendment became a rallying cry for progressive candidates in California during the 2020 and 2021 state elections. As discussed above, if passed, the amendment could compel sweeping changes in how state and local governments provide housing, enforce regulations on real estate, and subsidize low-income housing. Bonta's amendment was proposed in honor of the Moms' activism, and he often highlighted their story to illustrate the need for the amendment. The settlement against Wedgewood enforced by Bonta is another positive sign.

The Moms heavily pushed cities and the state to adopt the Tenant Opportunity to Purchase Act. When a rental home is put on the market by sale or foreclosure, the Act would give current tenants the opportunity to make the first offer on the home, and if the owner received a higher offer, the tenants would be allowed to match it. However, as Misty Cross's encounter with her neighbors at the West Oakland community meeting reveals, TOPA will face similar NIMBY challenges to stigmatized public housing. White progressive communities often support the idea of fair and accessible housing, but when new policy could actually affect their neighborhood, most are opposed.¹³²

Additionally, there are some questions about the effectiveness of this law. Versions of it would grant funding to nonprofits for financial assistance to tenants hoping to make the steep down payments required to purchase a home in the Bay Area. Still, the unfortunate reality is that rent-burdened tenants are nowhere near an income level required to purchase a home in the most expensive market in the country. Tenants would have to rely exclusively on non-profit or CLT assistance, and without a massive influx of funding from the government, TOPA faces the same funding issues as land trusts. Further, the law would likely draw a Fifth Amendment takings challenge in court. California has given local governments broad authority to regulate housing.¹³³ These matters are generally left to state court and the state constitution, but advocates already fear any of the proposals in this section making their way to the current Supreme Court.

Many other positive regulatory ideas were pushed forward by the Moms4Housing movement. In 2020, Governor Newsom signed into law SB 1079, known as the "Homes for Homeowners, Not Corporations," Bill. Sen. Nancy Skinner proposed the bill in honor of the Moms. The law prevents corporations from buying multiple foreclosed homes at once to give smaller buyers a fair shot. Now during foreclosure sales, tenants, families, and local

132. Revealing research shows little difference between Democratic and Republican white homeowners in their opposition to high-density housing. Democrats expressed the same racially coded fears around high crime, worsening schools, and lowering property values (property values, after all, usually make up the most important factor in local government land use decisions due to public pressure). Jessica Trounstine, *What Trump Misunderstands About Suburban Voters*, (Sept. 9, 2020), <https://www.theatlantic.com/ideas/archive/2020/09/nimby-homeowners-dont-need-trumps-help/616195/>.

133. See *Birkenfeld v. City of Berkeley*, 17 Cal.3d 129 (Cal. 1976); see also *Fisher v. City of Berkeley*, 37 Cal.3d 644 (Cal. 1984).

government and nonprofit partnerships have an opportunity to match the highest bid. Additionally, it makes blight fines much more severe. The idea is to strip away the profitability of vacant homes purchased by private equity.¹³⁴

The Homes Guarantee platform suggests other regulatory measures that could combat speculation. The platform builds on ideas which have been successfully implemented in other states. For example, in the 1970s, before the policy came under conservative attack, Washington D.C. had a 70% tax on speculation profits.¹³⁵ Another policy discussed in California is the “land value uplift tax.” This would tax landlords on the difference in price from when they bought a property to when they sold it if they did not live in the home or make improvements on it.¹³⁶ A “flipping tax” does a similar thing but taxes properties sold less than five years from purchase to discourage speculation as an investment technique, and pushes more developers into making rental units instead of condos and luxury units which would incur a higher tax.¹³⁷

Another measure that already found political popularity in New York City (whose market is comparable to the Bay Area), is the “out of state transaction tax.” This policy puts a sales tax on any purchase of a property zoned residential to a buyer (including corporations) who resides outside of the state the property is located in.¹³⁸ Finally, working off the blight measure in SB 1079 and Oakland’s own existing ordinance, cities should strengthen blight enforcement and pass a “vacancy tax.” Such a tax would at least double property taxes when owners leave buildings empty for long periods of time. There is precedent in major cities for nearly all of these proposals. In California, all of them clearly fall within the regulatory police powers of municipalities, which should bar legal challenges.¹³⁹

Fife made it clear that our advocacy for these policies must challenge our norms around the lawfulness of speculation head on. Speaking on the legality of the private equity model she stated,

“That’s what’s criminal about this housing crisis. There are actually places where people can live. But because they’re private, they’re privately owned, it makes it difficult to even crack into what a solution could be, because the private industry doesn’t have to be held accountable. And that is what we’re saying is criminal. It should not be legal for anyone that owns property, particularly corporations.”¹⁴⁰

The political challenges discussed above remain, but organizers like Moms4Housing are making progress. There’s been an influx of activism all over

134. Baldassari & Solomon, *supra* note 120.

135. People’s Action, *supra* note 123 at 16.

136. *Id.*

137. *Id.*

138. *Id.* at 17.

139. Although none of these regulations are explicitly race affirmative, they all slow speculation. As discussed above, speculation harms Black neighborhoods and tenants the worst, so the policies should hold a race affirmative impact.

140. Democracy Now!, *supra* note 60.

California inspired by the Moms. This will need to continue to keep the pressure on lawmakers and the real estate industry. In 2020, across the Bay in San Francisco, unhoused women occupied a vacant home. In Los Angeles, a new wave of radical housing justice activism set off, including several unhoused families occupying a CalTrans building. Another group pressured the city to use eminent domain to take over buildings and provide more housing. Tenant organizers in each case cited the Moms, with one organizer saying, “we saw what the moms did and that’s how we knew we could win eminent domain. They inspired us. We said, ‘If they can do it, we can do it, too.’”¹⁴¹ In Kansas City, organizers with one of the most dynamic tenant groups in the country began shutting down eviction courts and quickly reached out to ACCE and Moms4Housing to build connections on how to stage occupations and organize together.¹⁴²

PART IV

All of the solutions presented in Part III are now realistically feasible in California because of a bold act of civil disobedience, good organizing, and the elevation of the struggle of housing-insecure activists. Despite the political hurdles these policies face, the Moms cemented their solutions in the state’s housing justice discussion. Oakland and Berkeley will both consider TOPA and other speculation regulations this year.¹⁴³ Carroll Fife carried the momentum from the Moms4Housing movement into a successful run for West Oakland’s City Council seat. She recruited many of the same volunteers to partake in an unprecedented large grassroots canvassing effort, ran on a “housing for all platform,” and unseated an established incumbent in a landslide. Fife said she hoped to build the operation into a “permanent organizing structure where the people are consistently giving their voices for what should be the agenda for the council member.”¹⁴⁴ Her election represented a significant shift in Oakland city politics. Fife’s resounding victory gave her platform a mandate. It also coincided with the promotion of the two most progressive sitting council members, both early and vocal supporters of the Moms, to Vice Mayor and Council President. Transformative progressive housing policy change in Oakland no longer feels like a pipe dream.

It is important that attorneys, advocates, legal scholars, and any members of the legal community take note of the Moms’ success. When looking for solutions to California’s housing crisis, legal scholars and policy thinkers at all levels should heed a central tenet of Critical Race Theory – to uplift the voices

141. Baldassari & Solomon, *supra* note 120.

142. As a disclaimer, I have also worked with KC Tenants.

143. Baldassari & Solomon, *supra* note 120.

144. Luz Pena, *‘They didn’t see me coming’: Oakland community organizer defeats two-term city councilwoman*, (Nov. 11 2020), <https://abc7news.com/oakland-election-results-2020-carroll-fife-city-council/7846957/>.

of the most marginalized groups and of those doing activism and organizing work on the ground.¹⁴⁵

When we actively empower marginalized perspectives in the mainstream discussion, we can imagine entirely new political possibilities. Oakland, with its mix of progressive young professionals, a large population of people of color, and even a consistently left voting older white population, may merely seem like an outlier that cannot project onto the state level or beyond. But it's worth remembering that just a few years ago, under the leadership of Mayor Schaaf and a council that rarely challenged her, Oakland felt stuck in a decades-long neoliberal rut. The type of policies the Moms pushed could never have seen the light of day.

In Oakland, there was a frustrating gap between rhetoric and action that we now see at the state level. Ask nearly any government official even moderately left of center and they will tell you that providing safe and affordable housing is a priority for the state. And yet the policies listed in Part III do not find full support in the controlling Democratic Party, especially among leadership. Most proposed solutions are aimed at increasing housing supply generally, something that anti-tenant big developers actively support.¹⁴⁶ Because the narrative was always about simply building more housing, corporate real estate and private equity firms remained somewhat untouched as culprits in the housing discourse.¹⁴⁷ But now, since the Moms4Housing occupation, public officials commonly talk about the regulatory laws and power dynamics that have led to our current racialized crisis of affordability. The Moms showed that if we listen to the voices on the ground and organize around their experiences, we can flip the narrative and start to make more transformative policies feasible.

The Moms and their allies powerfully demonstrate how corporate real estate and private equity exploit a system that harms Black mothers and Black communities for profit. Too often, academic papers gloss over the fundamental experiences of these grassroots leaders. Instead, they focus on minute complexities of a potential policy solution that is not close to within current

145. Mari Matsuda's piece on including marginalized voices in the legal discourse represents a cornerstone idea of Critical Race Theory. However, in the years since it was published, we have learned ways to go beyond the perspective she presents. To fully embrace her ideas, we should look to not just share the voices of the marginalized but uplift them into powerful decision-making positions. It is not enough to just write about their struggles and include their quotes in papers; scholars in the elite legal academy must actively work to undo the hierarchal structures that gatekeep their voices from impactful discourses and actively work to exclude the people of marginalized communities themselves from positions of power. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 346-348 (1987).

146. Sen. Scott Weiner is responsible for many of these efforts. See *Planning and Zoning: Affordable Housing: Streamlined Approval Process*, SB-35, (2017-2018); See *Planning and Zoning: Affordable Housing: Streamlined Approval Process: Incentives*, SB-50, (2019-2020).

147. It is important to mention that this is a complex system, and we likely need real estate and developers to strategically increase housing supply in some geographic areas. Solutions such as state Sen. Scott Weiner's bill should be part of the conversation and could be helpful. We simply need these solutions to exist alongside the solutions developed by activists close the problem.

political reach. Ironically, these papers often dismiss activist voices as just unrealistic dreaming of a distant vision. On the contrary, it is these voices that most often speak with a profound clarity that can only come from having lived experiences with these complex systems. The most marginalized communities also bring the organizing power to actually make change.

Many of these activists, like the Moms, never sought political work. Rather, they were thrust into it by the necessities of their lives. They do not have the broad view of a professor who spends their career researching all the various actors and actions across the field of housing. But what they lack in that, they more than make up for with their own truth. Activists from marginalized communities hold knowledge gained from experiencing the actual effects of these companies' practices on their lives every day. These organizers know that the same system that lets private equity companies like Wedgewood operate a tremendous marginal profit also makes it impossible for community members to live safely and affordably with their family in Oakland, California. Black activists also know that white families in California are not violently pushed out of their neighborhoods. Listening to activists like the Moms not only helps us get to the heart of the problem of racialized housing, but it helps us get to a more direct solution.

The actions of the Moms, and the Sheriff's militarized response, reveal that our system is built to protect white property at the cost of endangering Black mothers. Understanding this, we see that corporate real estate speculators are highly complicit in racial injustice. Their profit model operates under a veil of economic legality that our courts still seek to protect. Thus, in our solutions we must directly address these practices as part of the structural racism in our country. We must seek solutions that force these companies to stop rent profiteering in Black neighborhoods.

The answer may be to build more public housing, it might be to offer support to Black homeowners, it may lie in tenant law, or it may be some combination of many of these proposals. But no matter what strategy we take, we must seek to dismantle the idea of whiteness as property within our real estate system, and not allow the pain of Black mothers to be used for profit. Further, any solution must come from the voices of activists who are most affected, like the Moms. On the power of activism shifting the political narrative, Fife said:

“Because this country has conditioned people to believe that property rights are more important than human rights, it's definitely going to be a fight. But I think this step towards a victory with Moms' House is an example that can be duplicated, not only in the Bay Area, but across the country, which is why we're fighting to expand the right to housing throughout the state of California with an amendment to the Constitution. So, it's going to take all hands on deck, all grassroots, people-powered organizations, to get on board and help us with this fight.”¹⁴⁸

148. Democracy Now!, *supra* note 103.

What may feel like an idealized vision of our housing future to scholars in the academy and politicians in Sacramento feels very real to the poor Black women organizing in West Oakland. They feel the pain and potential of our need for change and believe they see a path to victory. Just ask the Moms.