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**ABSENTEE LANDLORDS, RENT CONTROL AND HEALTHY GENTRIFICATION:
A POLICY PROPOSAL TO DE-CONCENTRATE THE POOR IN URBAN AMERICA**

Jorge O. Elorza *

ABSTRACT

Empirical data overwhelmingly suggests that the presence of middle- and working-class homeowners is beneficial for inner city communities. Yet, absentee landlords have a systematic financial advantage over resident landlords when it comes to purchasing homes in blighted neighborhoods. This advantage has disastrous effects for inner-cities as the communities with the greatest need for the stabilizing presence of middle- and working-class homeowners are the ones least likely to attract them. The lack of in-moving homeowners and the resulting increase in poverty, cause declining neighborhoods to fall deeper into downward spirals.

In this Article, I propose a rent control plan designed to attract middle- and working-class homeowners to blighted neighborhoods and I argue that many positive outcomes will result. By designing this plan, I hope to breathe new life into the rent control debate by challenging the conventional wisdom that rent control has only one legitimate purpose, reducing tenants' rents, and by calling attention to the externalities caused by the absentee landlord industry. Second, I provide a legal and economic model for inner cities to de-concentrate poverty and to better integrate the poor into mainstream society. Third, I develop a model for healthy gentrification whereby vicious cycles of poverty are transformed into virtuous cycles of stability.

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INTRODUCTION

Until recently, rent control has been almost unanimously condemned by economists. While rent control has been effective as a short-term tool for reducing tenants' housing costs, its long-term, adverse consequences have been commonly believed to outweigh its benefits.¹ While I do not confront the volumes of criticisms of traditional rent control, I challenge the conventional wisdom to the extent that it assumes rent control can have only one legitimate purpose, the reduction of tenant's housing costs. In this Article, I hope to breathe new life into the debate by developing a rent control plan with an entirely different goal: de-concentrating poverty by encouraging an influx of middle- and working-class homeowners into blighted neighborhoods.²

The rent control scheme I propose has been entirely overlooked by legal and economic scholars. There are a myriad of different shapes that a rent control ordinance can take and each scheme will have different legal, economic, and political

¹ See Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. R. 517, 555 (1984) ("The popularity of rent control is puzzling in view of the virtual unanimity among professional economists that rent control is, in the long run, bad for all concerned – tenants as well as landlords."); ANTHONY DOWNS, A REEVALUATION OF RESIDENTIAL RENT CONTROLS 45-74 (1996) (arguing that rent control deters new rental construction, encourages undermaintenance, reduces tenant mobility, and produces many inefficiencies); Richard Arnott, *Rent Control: The International Experience*, reprinted in PERSPECTIVES ON PROPERTY LAW 415 (1988) (arguing that rent control reduces maintenance of the rental units, incites gentrification and abandonment by landlords, and ultimately does not make the units more affordable due to key money issues and black market transactions); Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741, 767 (1988) (arguing that rent control deters new construction not only by making the rental housing market less profitable in rent controlled zones but also by sending a chilling message that non-rent controlled zones may soon become regulated); Robert C. Ellickson, *Rent Control: A Comment on Olsen*, 67 CHI.-KENT. L. REV. 947, 948 (1991) (stating that rent control forces landlords and tenants into uncooperative relationships).

² With a long and unified opposition to rent control, it has not been until recently that economists and legal scholars have begun, on a limited basis, to challenge the conventional wisdom. Commentators have examined whether a fine-tuned rent control ordinance, often referred to as "second-generation" rent control, can partly accomplish the goal of reducing rents without producing the harmful results of "first-generation" rent control. Often times, this analysis is not motivated by a normative claim that "second-generation" rent control is desirable but rather that "second-generation" laws are not as bad as "first generation" laws. See, Richard Arnott, *supra* note 1, at 415 ("In recent years, ...there has been a wave, or at least a swell, of revisionism among housing economists and policy analysts. Most experts of the subject, while not advocating controls, are now considerably more guarded and qualified in their opposition, and some believe that a well-designed rent control program can, on balance, be beneficial.").

consequences. Depending on the needs of the local community, rent control may be designed to address an array of different goals. Much of the literature has missed these points and has declared broad pronouncements on the desirability of rent control without considering its infinite permutations.³

This rent control plan is intended to introduce the stabilizing presence of middle- and working-class homeowners into blighted neighborhoods.⁴ I argue that this plan can prevent the creation and perpetuation of concentrated poverty and will help increase the neighborhood-level contact of the poor with the middle- and working-class. If properly designed to suit the local needs, rent control can transform decaying slums into healthy and stable neighborhoods without triggering the unhealthy kind of gentrification that displaces the poor.

By placing a rent ceiling only on absentee landlords,⁵ I argue that the market will encourage resident landlords⁶ to move into rent controlled zones. Replacing absentee landlords with resident landlords will produce both subtle and dramatic improvements in a neighborhood's livability as resident landlords enhance the community's aesthetic, social, economic, and political composition. These in-moving middle- and working-class homeowners will not only have strong incentives to improve the long-term health and

³ Dennis Keating, et al., RENT CONTROL: REGULATION AND THE RENTAL HOUSING MARKET (HEREINAFTER RENT CONTROL) 204 (noting that “[t]he varying degrees of success of rent control programs underscore the need to consider carefully the type of rent regulation enacted, the way it is implemented, and, to the extent know, its actual impact rather than hypothetical speculation about its results.”); Arnott, *supra* note 2, at 416 (“the effects of a rent control program are sensitive to the details of its provisions.”).

⁴ In fact, this rent control proposal may, in the long run, actually increase rental rates.

⁵ Absentee Landlord: the owner of a multi-unit residential building who does not use one of the apartments as her principal place of residence. Absentee landlords own homes that are considered non-owner-occupied.

⁶ Resident Landlord: the owner of a multi-unit residential building who uses one of the apartments as her principal place of residence. Resident landlords live in homes that are considered owner-occupied.

stability of the neighborhood and its institutions⁷ but will also play a vital socializing role.⁸

Part I of this Article develops a conceptual framework for understanding neighborhood instability. I chart a brief history of the middle class's departure from the inner city and the forces that lead to concentrated poverty. I also call attention to the hazardous results of an increased rate of absentee landlords and the expected benefits that an increased middle- and working-class homeowner presence will have on a neighborhood. Part II lays out the proposed rent control scheme in detail and discusses the desirability of promoting healthy gentrification. Part III then takes a critical look at the proposal and considers the economic, political and legal obstacles to enacting the rent control plan.

I. UNDERSTANDING URBAN INSTABILITY

⁷ Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?*, Chicago Working Paper in Law and Economics 2-3 (“because of high transaction costs associated with homeownership, homeowners tend to be considerably less mobile than renters. Increased length of tenure in a community should also encourage investments in community, since homeowners will consume the benefits of community over a longer time period.”); The lower incentives for tenants to improve property pre-date modern landlord-tenant relationships. Richard A. Posner, *ECONOMIC ANALYSIS OF LAW* 82 (5th ed. 1998) (Most farmers were tenants; and it might seem that a tenant would have little incentive to improve the land because any improvement that outlasted the period of the lease would confer an uncompensated benefit on the landlord under the doctrine of fixture.”).

⁸ Edward G. Goetz, *CLEARING THE WAY: DECONCENTRATING THE POOR IN URBAN AMERICA* 27 (2003) (“... greater economic diversity in a neighborhood will benefit all residents, including the poor. Research evidence shows substantial support for this proposition. High school graduation rates, child cognitive development, and rates of teenage childbearing can be sensitive to neighborhood effects... Living in areas of concentrated poverty has been shown to have an adverse effect on a range of life experiences, from isolating youth from employment opportunities to consigning them to inferior education, dangerous neighborhood conditions, and harmful environmental conditions. Studies have shown that neighborhood affects employment prospects, exposure to toxic wastes, and criminal behavior. These neighborhood effects are produced through the creation of a ‘ghetto culture’ that stresses short-term goals; through a lack of role models and stabilizing institutions; or through underfunded schools and reduced access to new jobs in suburban areas. While some analysts object to the concept of the underclass..., there is general consensus regarding the set of behavioral pathologies associated with concentrated poverty.”) (internal citations omitted).

Blighted, inner-city neighborhoods are afflicted with a number of social problems ranging from low education levels to high crime rates. In his classic work, *The Truly Disadvantaged*,⁹ William Julius Wilson identifies a number of structural factors responsible for concentrated poverty and the social dislocation it produces.¹⁰ According to Wilson, racial, economic, migratory, and demographic factors have caused a disproportionate number of the most disadvantaged people to live in urban slums. Faced with a combination of a lack of access to quality jobs and little or no neighborhood-level contact with middle- and working-class households, the residents of these communities become progressively isolated from mainstream society.¹¹ This isolation in turn causes “concentration effects” whereby various indicators of social dislocation such as high crime, teenage pregnancy, joblessness, and underachieving schools rise to exponentially high levels.¹² With time, these conditions become the norm to which residents (the

⁹ William Julius Wilson, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1990).

¹⁰ *Id.* at 30-62 (Wilson credits the source of inner city problems to a complex web of factors entailing the effect of historic and contemporary discrimination, the impact of structural changes in the urban economy, the flow of migrants, and a change in the age structure of urban communities.).

¹¹ *Id.* at 58.

¹² *Id.* at 58 (“If I had to use one term to capture the differences in the experiences of low-income families who live in inner-city areas from the experiences of those who live in other areas in the central city today, that term would be *concentration effects*. The social transformation of the inner city has resulted in a disproportionate concentration of the most disadvantaged segments of the urban black population, creating a social milieu significantly different from the environment that existed in these communities several decades ago.”) (emphasis original); 61 (“The concentration effects include the constraints and opportunities in neighborhoods in which the population is overwhelmingly socially disadvantaged – constraints and opportunities that include the kids of ecological niches that the residents of these neighborhood occupy in terms of access to jobs and job networks, availability of marriageable partners, involvement in quality schools, and exposure to conventional role models.”); See also Goetz, *supra* note 8, at 237 (2003) (“...being poor in a community of concentrated poverty heaps additional burdens upon people. These communities often receive inferior public services, and therefore are home to, for example, the most troubled and poorest-performing public schools. Furthermore, these communities are often remote from areas enjoying the most robust job creation and expansion, making it physically difficult for the poor to access new jobs. Such communities limit the type of “bridging” social capital that residents need to improve their situations. Some experts even argue that these communities foster an oppositional culture that values and rewards “anti-social” behaviors and substitutes a set of behavioral norms different from those held in American society at large. These norms, while perhaps adaptive to the extreme conditions existing in neighborhoods of concentrated poverty, only serve to further isolate those who adopt them from society as a whole.”) (internal citations omitted).

underclass) become accustomed and they thereby languish in this state by failing to develop the language, attitude, education, and job-related skills required for success in the mainstream.¹³ Since its release, Wilson's book has framed the terms of debate on urban poverty, it has triggered 15 years worth of scholarly and policy discourse, and his "concentration effects" thesis has received virtually universal empirical support.¹⁴

In this article, I propose a rent control plan that will introduce a middle- and working-class presence into central city neighborhoods where the underclass currently lives. By preventing concentrated poverty from developing, I argue that the "concentration effects" and the social dislocation it produces will also be avoided. Furthermore, I argue that by reducing the "concentration effects," society will save great sums in terms of subsidies and other costs associated with the underclass.

It is important to give a brief historical account to explain how private housing choices and public housing policies have shaped the demographic of urban neighborhoods. Specifically, I will explain how zoning ordinances, racial discrimination, and federal housing policy have contributed to concentrations of poverty in inner city neighborhoods.

¹³ Wilson, *supra* note 9, at 57. ("The development of cognitive, linguistic, and other educational and job-related skills necessary for the world of work in the mainstream economy is thereby adversely affected.")

¹⁴ Goetz, *supra* note 8, at 21 ("Publication of William Julius Wilson's *The Truly Disadvantaged* in 1987 triggered more than a decade of scholarly and policy discourse about the dynamics of poverty in urban America. Wilson documented the extreme living conditions of the urban underclass and argued that their systematic marginalization from mainstream social, economic, and political life produced an adaptive set of behavioral norms."); 3 ("[L]ittle argument exists about the results of this extreme concentration of poverty. It produces a range of social problems whose whole is greater than the sum of its parts. For example, school delinquency, school dropout, teenage pregnancy, out-of-wedlock childbirth, violent crime, and drug abuse rates are all greater in these communities than would be predicted by a linear extrapolation of poverty effects. Something about the extreme concentration of disadvantage begets even more community and individual dysfunction."); Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA L. REV. 1285, 1290 (1995) ("Wilson's concentrations effect hypothesis has received almost universal empirical confirmation.").

A. CONCENTRATED POVERTY AND THE ABSENCE OF THE MIDDLE CLASS

1. American Ideal & Exclusionary Zoning

The forces that contribute to high concentrations of poverty have their genesis in rational decision-making by common, middle class homeowners. Since the turn of the 20th century, a commonly recognized American ideal has been to achieve middle class status and move to the suburbs on the perimeter of the inner city.¹⁵ For those who could afford to make the move,¹⁶ the early suburbs offered greater open space and more comfortable living conditions than those found in the central city slums.¹⁷ As second- and third-generation European immigrants attained middle class status, they fled the ethnic slums of the central city and moved to the early suburbs, thus beginning the modern trend of the middle-class's flight from the inner city and its segregation from the lower-class.

By the 1920's however, the greater financial wherewithal of the middle class was insufficient to insulate it from the low-income, shanty communities of the inner city. Booming industrial economies caused central cities to grow and rapidly expanded their borders. The cities' expansions soon began to encroach upon and eventually consumed

¹⁵ SAM BASS WARNER, *STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900* 162 (stating that the "rural ideal... had encouraged middle class families to seek escape from the conditions of modern industrial life into an isolated family environment").

¹⁶ The cost of living in the suburbs was not limited to the cost of housing. A great expense came by way of transportation costs. As public transportation was relatively limited and private coaches and cars were very expensive, living within walking distance of the factories demanded that the poor reside in inner city neighborhoods. However, as public transportation improved, housing options expanded for the working class as they could now commute from farther distances. *See Warner, supra* note 15, for a thorough discussion on the great influence of transportation in housing patterns during the first half of the 20th century.

¹⁷ JOHN H. MOLLENKOPF, *THE CONTESTED CITY* 36 (1983) ("In its study *Our Cities*, released in 1937 the National Resources Committee... characterized [cities] as 'the dusty and sometimes smoldering and reddened arena of industrial conflict.'").

the early suburbs on the periphery of the central cities.¹⁸ Within a short time, once peaceful, single-family-home suburbs were transformed into noisy and crowded ones with subdivided old homes and multi-family new ones. Suburbs that were located further away from the central city witnessed the consumption of the inner-suburbs by the expanding city and adopted zoning ordinances to prevent their communities from suffering the same fates.¹⁹ By setting minimum lot sizes and restricting the number of residential units on a lot, the suburbs were able to restrict the construction of low income housing within their borders and thus prevent the “invasion” of low income families.²⁰

The effect of zoning ordinances on the poor was to erect a virtual barricade to living in the suburbs. Without viable housing options in the suburbs, the poor were relegated to the shanty neighborhoods of the inner city. Whereas free market forces

¹⁸ Warner, *supra* note 15, at 56 (“Throughout the last third of the nineteenth century those areas just beyond the periphery of the old walking city enjoyed the most rapid growth. Here lower middle class construction filled all the farms, estates, and vacant lots... The lots were so small and the pattern of living so dense that the rural setting was lost altogether.”); 161 (stating that low income groups came to occupy the suburbs but only “by destroying much of what the suburb had achieved”).

¹⁹ Andrew J. Cappel, *A Walk Along Willow: Patterns of Land Use Coordination in Pre-Zoning New Haven (1870-1926)*, 101 YALE L. J. 617, 634 (1991) (“Initial interest in zoning appears to have arisen as the result of anxieties associated with the rapid pace of urban growth in the years after 1870.”); *see also*, Mollenkopf, *supra* note 17, at 37 (arguing that exclusionary practices originate from, among other factors, “suburban residents seeking to avoid paying for services to the less affluent.”).

²⁰ *Ambler Realty Co. v. Village of Euclid*, 297 F. 307, 316 (D.C. Ohio 1924) *overruled by* *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (“The purpose to be accomplished is really to regulate the mode of living of persons who may hereafter inhabit it... [T]he result to be accomplished is to classify the population and segregate them according to their income or situation in life. The true reason why some persons live in a mansion and others in a shack, why some live in a single-family dwelling and others in a double-family dwelling, why some live in a two-family dwelling and others in an apartment, or why some live in a well-kept apartment and others in a tenement, is primarily economic. It is a matter of income and wealth, plus the labor and difficulty of procuring adequate domestic service. Aside from contributing to these results and furthering such class tendencies, the ordinance has also an esthetic purpose; that is to say, to make this village develop into a city along lines now conceived by the village council to be attractive and beautiful.”); *see also* Sheryll Cashin, *THE FAILURE OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 104-106 (2004) (arguing that zoning ordinance were primarily intended to exclude the people who would live in the prohibited apartment buildings and duplexes); *Southern Burlington County, NAACP v. Township of Mount Laurel*, 336 A.2d 713, 723 (N.J. 1975) (“Almost every [developing municipality] acts solely in its own selfish and parochial interest and in effect builds a wall around itself to keep out those people or entities not adding favorably to the tax base...”).

would have converted the suburbs into low-income housing,²¹ zoning ordinances prevented this from occurring. Economic advantage first allowed the middle class to flee from its lower-class neighbors and zoning ordinances later allowed it to insulate itself from them. Thus began the concentration of the poor within the inner city.²²

2. Federal Housing Policy & Racial Discrimination

Federal housing policy and racial discrimination encouraged the flight of middle-income households from the inner city and at the same time constrained low-income households' mobility. From the mid-1930s to the mid-1970s, the Federal Housing Administration (FHA) provided \$119 billion in home mortgage insurance and allowed many Americans to become first-time homebuyers.²³ However, the benefits of the FHA program were extended primarily to the suburbs and their White residents as the FHA displayed an "antiurban" and anti-Black bias.²⁴

Potential homebuyers in the inner cities found it difficult to obtain loans under the FHA program and when they did, it was on less favorable terms than suburban homebuyers.²⁵ Prospective inner city homebuyers, who were disproportionately Black, found that the "federal government displayed an intense color consciousness and insisted

²¹ Many homeowners opposed zoning ordinances because it prevented them from converting their properties to the most profitable use. To many homeowners, building an apartment house with many rental units would have been more profitable than building a single family home. *See e.g.* Downs, *supra* note 1, at 97 (stating that multi-family apartment buildings are the most economic built form of rental housing).

²² Another factor that cannot be underestimated is the effect of building the interstate highways. This federally funded program contributed to the separation of the middle class from the inner-city poor by subsidizing the cost of building the suburbs. *See* Cashin, *supra* note 20, at 113-115 (discussing the racial and class division subsidized by the federal highway program).

²³ ARNOLD R. HIRSCH, WITH OR WITHOUT JIM CROW: BLACK RESIDENTIAL SEGREGATION IN THE UNITED STATES 86 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993) (discussing the ways federal policies contributed to racial segregation and helped create urban ghettos); Cashin, *supra* note 20, at 110-111.

²⁴ Hirsch, at 86; Schill & Wachter, *supra* note 14, 1309-1310.

²⁵ Hirsch, at 86-87 ("Narrow lots, multifamily dwellings, rental units, and rehabilitation projects all had great difficulty acquiring FHA insurance, and managed to do so only infrequently, if at all, on terms less favorable than those granted to single detached homes in the suburbs.").

on discriminatory practices” by “virtually demand[ing] the use of racially restrictive covenants as a precondition before granting loan guarantees.”²⁶ As federal assistance subsidized the building of suburban homes, inner city residents were either shut out or spurned from participating in one of the greatest wealth building schemes in American history, homeownership.²⁷ In fact, the benefits of the FHA mortgage insurance program scarcely reached the inner city.²⁸ In this way, as Hirsch notes, “the federal government invited and underwrote the outward migration of the white middle class and eroded the economic viability of the inner city.”²⁹ The results were devastating for generations of inner city residents to come.

At the same time that middle-income households were using the FHA insurance program to flee the inner cities, Blacks began a massive population shift from southern rural towns to northern and midwestern industrial cities. As cotton picking became increasingly mechanized in the 1940s and 50s and the demand for unskilled labor in the South plummeted,³⁰ black farm workers migrated to the north and Midwest as economic opportunity lured yet greater numbers of blacks.³¹

The housing vacancies left in inner cities by middle-income, suburb-bound Whites were quickly filled by lower-income, in-moving Blacks as “[t]he twentieth-

²⁶ Hirsch, *supra* note 23, at 85.

²⁷ Cashin, *supra* note, 113 (“by withholding FHA insurance for loans in racially integrated or predominately black areas, FHA also greatly limited the home ownership options available to people of color. It prevented African Americans from participating in one of the largest wealth-producing programs in the history of our country.”).

²⁸ Hirsch, *supra* note 23, at 91 (“less than two percent of the housing constructed with federally insured mortgages between 1946 and 1959 was made available to blacks.”).

²⁹ *Id.*, at 87.

³⁰ DANIEL R. FUSFELD & TIMOTHY BATES, POLITICAL ECONOMY OF THE URBAN GHETTO 61-62 (1984) (“Mechanization reduced the need for agricultural workers, and those who were employed in the remaining labor intensive phases of crop production were able to find work a much smaller number of days each year, relative to the pre-mechanization phase of farming.”).

³¹ *Id.*, at 65. (describing the decrease and increase of the Black population in the South and North, respectively).

century movement of blacks from the farms into American cities coincided with a white exodus out of the city to the suburbs.”³² This migration resulted in a lasting pattern of residential segregation, on both racial and economic grounds, whereby Whites moved to the suburbs and created a ring around the central, black core.³³

Moreover, the slum clearance and public housing programs further contributed to the isolation and concentration of the poor. Public housing developments were often built in areas with an already high degree of poverty as communities with stronger political power were successfully able to stave off attempts to build projects within their borders.³⁴ As the slums were cleared of older, dilapidated housing, many people not accommodated by the newly constructed public housing units were forced to move to transitional and low-quality housing in other parts of the inner city.³⁵ Public housing ultimately had the effect of simply resegregating the poor (in particular, the Black poor) in areas with already high population densities.³⁶ In this way, concentrated poverty reached a size and scope that had never been witnessed before in the United States.

³² Hirsch, *supra* note 23, at 67. See also Mollenkopf, *supra* note 17, at 28. (the vacuum left by the departure of the White middle and professional class “was not negative for everyone... because it fostered a substantial migration of blacks and other minorities into the central cities.”); and Hirsch, at 70 (“The overwhelming majority of black southern migrants... was poor, and the brute facts of economic life greatly restricted the housing opportunities available to them.” Therefore, for many blacks, their only housing options were in the shanty slums of the inner cities.).

³³ Hirsch, 87 (Public policy... gravely affect[ed] the pace and nature of that outward movement; the sudden appearance of white suburbs ringing increasingly black-core cities must be viewed in the context of federal management and support.”).

³⁴ Alastair Smith, *Mixed Income Housing Developments: Promise and Reality*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY 8 (2002) (“Many high-density, multifamily public-housing developments were sited in neighborhoods that already had high levels of poverty, and created an influx of very-low-income tenants. Often this was due to the objections of higher-income neighborhoods to siting the developments there, making low-income neighborhoods the only politically feasible sites to build the housing.”).

³⁵ Hirsch, *supra* note 23, at 89.

³⁶ Hirsch, *supra* note 23, at 89. (“Public housing, frequently used simply to free inner-city land for private development, became increasingly identified as a “black” program, used high-rise construction, and resegregated its tenants in already densely populated core areas.”); Schill & Wachter, *supra* note 14, at 1293 (“After ensuring that most public housing would be built in central cities, Congress also used statutory admissions requirements to fill public housing with extremely poor residents.”).

Housing policies and racial discrimination have had a profound effect on the makeup and structure of inner cities. “[T]hey facilitated the massive postwar suburban boom, helped strip older towns of their middle classes, and practically assured that thousands of the poorest blacks would remain locked in economically weakened central cities.”³⁷ The middle class’s flight from the inner city only served to precipitate yet greater middle class flight as neighborhoods’ tax bases declined and crime rates rose.³⁸ The legacy of these public and private forces has shaped the composition of modern-day blighted and high-poverty neighborhoods and has contributed greatly to the social pathologies within them.³⁹

B. BENEFITS OF THE PROPOSED RENT CONTROL PLAN

1. Middle- and Working-Class Presence

³⁷ Hirsch, at 86.

³⁸ OSCAR NEWMAN, COMMUNITY OF INTEREST 83 (1981) (“In the early 1960s municipalities which were unconcerned with what they read as a small decline in their middle-income populations were surprised to see how quickly the combination of increasing crime and a declining tax base mushroomed into a crisis which sent wave after wave of middle-income residents scurrying to the suburbs. Some municipalities experienced a turnover in their populations within five years that no urban renewal program could redress in twenty. The circumstances in St. Louis, Detroit, Newark, Cleveland, and Washington bear witness to the uniformity of the malaise and the inevitability of the results. Municipalities which were not able to maintain a majority of middle-income residents entered into a declining spiral in which their initial descent only served to accelerate their further fall. In such circumstances it was not uncommon for middle-income residents to become critical actors in a self-fulfilling prophesy: their fears as to what would happen to their property values if they did not leave their neighborhoods quickly were realized – partly as a result of their own attitudes and hurried departures.”).

³⁹ A final and crucial piece of the puzzle is the structural change in the urban economy. Wilson states that the inner city’s transformation from a manufacturing- to a service-based economy has created a mismatch between the jobs the inner-city poor are qualified for and the jobs that are available. Specifically, the growth in jobs requiring a higher education has not benefited the urban poor who have lower educational attainment rates. Additionally, since many of the manufacturing jobs have moved from the inner-city to the suburbs, there is a spatial mismatch between the location of available jobs and the neighborhoods in which the poor reside. See Wilson, *supra* note 9, at 39-46.

While finding a solution to the lack of jobs available to inner city residents is crucial for de-concentrating poverty, I exclude this from my analysis because the proposed rent control scheme will not have a significant effect in creating new jobs. In this article, I limit my discussion of inner city employment to Wilson’s “social buffer” thesis, the positive socializing presence of employed individuals, and the ability of employed individuals to connect the unemployed to job networks. See Wilson, *supra* note 9, at 56-57.

Much of the distress experienced in blighted, high-poverty communities is due to the out-migration of middle-income households from the central city to the suburbs and the concentrations of poverty it produces.⁴⁰ In turn, concentrated poverty negatively impacts school performance, causes crime rates to mushroom, and increases family fragmentation, substance abuse, and teenage pregnancy.⁴¹ Without a middle- and working-class presence, the social and fiscal stability of cities is substantially undermined.⁴²

By introducing a middle- and working-class presence into inner cities, rent control is expected to produce substantial social benefits. It is widely believed that “neighborhood characteristics influence collective socialization processes by shaping the

⁴⁰ Roberto G. Quercia & George C. Galster, *Threshold Effects and the Expected Benefits of Attracting Middle-Income Households to the Central City*, 8 HOUSING POL’Y DEBATE 409 (1997) (“Over the past four decades, the transformation of large cities has been characterized by the suburbanization of America’s middle-income households. During the same period, deteriorating inner-city areas have experienced ever greater fiscal and social distress.”); See also Mark L. Joseph, *Is Mixed-Income Development an Antidote to Urban Poverty?* (2006), 17 HOUSING POL’Y DEBATE 209, 213-16 (2006) (assessing the potential of mixed-income developments for lifting families out of poverty); Tama Leventhal & Jeanne Brooks-Gunn, *The Neighborhoods They Live in: The Effects of Neighborhood Residence on Child and Adolescent Outcomes*, 126 PSYCHOL. BULL. 309 (2000) (reporting that individuals living in neighborhoods with low socioeconomic status have a relatively high rate of behavioral and emotional problems), and Audrey G. McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power*, 8 U. PA. J. CONST. L. 1, 7-9 (2006).

⁴¹ Smith, *supra* note 34, at 7-8; See also Yili Xu, Mora L. Fiedler & Karl H. Flaming, *Discovering the Impact of Community Policing: The Broken Windows Thesis, Collective Efficacy, and Citizens’ Judgment*, 42 J. RES. CRIME & DELINQ. 147, 167 (2005) (“At the community level, urban decay, manifested by devastating disorder and crime, and collapsed moral standards, is the ideal soil for propagation of crime. It alienates people, weakens the informal social control, provides the safe haven for criminals, and makes citizens more vulnerable to crime. In general, deteriorating communities produce more criminals and victims.”).

⁴² Quercia & Galster, *supra* note 40, at 410 (arguing that “the out-migration of upper-income households has had a double impact on inner-city residents: fiscal and social. Fiscally, the loss of middle- and upper-income households has affected central cities in two ways. It has decreased the demand for housing, thus reducing its value and the city’s tax base. Also, this loss has left inner-city residents with weakened political power to attract public resources from state legislatures to their neighborhoods. Socially, the loss of middle- and upper-income households has weakened basic institutions and left high concentrations of low-income inner-city residents with no middle-class role models to emulate and with few means of learning about employment opportunities often located in the metropolitan periphery.”).

type of role models youth are exposed to outside the home.”⁴³ As the middle class leaves the inner city, mutually reinforcing social institutions and networks break down. Whereas children living in neighborhoods where most adults are steadily employed develop “behaviors and attitudes that are conducive to success in both school and work,”⁴⁴ children from the underclass have few employed role models and develop behaviors and attitudes that are increasingly distant from the wider society.⁴⁵ Overall, the absence of middle income households has left the inner city poor socially isolated from those who can provide a model for the attitudes and behaviors conducive to success in mainstream society.⁴⁶

The presence of higher income households in a neighborhood is expected to help reduce crime⁴⁷ and improve neighborhood schools.⁴⁸ These results are particularly

⁴³ James W. Ainsworth, *Why Does it Take a Village?: The Mediation of Neighborhood Effects on Educational Achievement*, 81 SOC. FORCES 117, 119 (2002) citing Wilson, *supra* note 9.

⁴⁴ *Id.*

⁴⁵ DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 165-166 (1993) (“In response to the harsh and isolated conditions of ghetto life, a segment of the urban black population has evolved a set of behaviors, attitudes, and values that are increasingly at variance with those held in the wider society. Although these adaptations represent rational accommodations to social and economic conditions within the ghetto, they are not widely accepted or understood outside of it, and in fact are negatively evaluated by most of American society.”) *See also* Quercia & Galster, *supra* note 40, 411 (“the loss of middle- and upper-income households has weakened basic institutions and left high concentrations of low income inner-city residents with no middle-class role models to emulate and with few means of learning about employment opportunities often located in the metropolitan periphery.”).

⁴⁶ Wilson, *supra* note 9, at 57 (“The net effect is that joblessness, as a way of life, takes on a different social meaning; the relationship between schooling and postschool employment takes on a different meaning. The development of cognitive, linguistic, and other educational and job-related skills necessary for the world of work in the mainstream economy is thereby adversely affected.”); *See also* OWEN FISS, *WHAT SHOULD BE DONE FOR THOSE WHO HAVE BEEN LEFT BEHIND?* 14 (2003) (stating that the plight of blighted inner city neighborhoods is due to “the weakening of social institutions and networks that results from the exodus of those who made it. The community is left to turn on itself, exposing those in the ghetto to a heightened risk of crime and violence, which degrades the quality of life in the community and creates further incentives for individual families and local businesses to flee. The sense of isolation increases as the quality of life spirals downward.”).

⁴⁷ *See* Newman, *supra* note 38, at 82-83 (speculating a number of reasons for the crime resistive capacity of middle-income communities. Among the factors are: a stronger tax base, fewer children, higher rate of two-parent households, and universally shared expectations about publicly acceptable behavior.)

appealing because an improvement of either would likely benefit all of the neighborhood's residents. Commentators have noted that middle income households have a lower tolerance for crime and have a strong demand and support for police services which deter crime.⁴⁹ It is therefore expected that poor adults and their children will engage in less criminal behavior if higher income families are present.⁵⁰

Social scientists also suggest that children's educational outcomes are severely hindered by the absence of middle income households.

Specifically, with fewer positive role models in their neighborhood, children may be less likely to learn important behaviors and attitudes that lead to success in school (e.g., high education expectations or effort), both because of a lack of exposure to them and because they have no direct evidence that these attitudes and behaviors are useful or desirable.⁵¹

It is further suggested that introducing a middle-income presence will provide better monitoring of deviant behavior so as to prevent the development of anti-school attitudes.⁵² It will also provide greater resources and opportunities that prove to be educationally beneficial by improving students' perceptions of job opportunities and by generally improving the schools students attend.⁵³ A 2002 study concluded that

⁴⁸ Smith, *supra* note 34, at 10 (stating that higher income households will have an impact on reducing crime and improving neighborhood schools) *citing* Elvyn K. Wyly & Daniel J. Hammel, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUSING POL'Y DEBATE 711 (1999).

⁴⁹ *Id.*; See also Newman, *supra* note 38, at 82 (arguing that middle-income communities have "a more universally shared set of expectations about what constitutes acceptable behavior in public streets and parks and are adamant about seeing to it that these rules are kept and, in their breach, demand, receive, and support police intervention.").

⁵⁰ Newman, at 83 (stating that the flight of middle-class households increases crime in 5 ways: 1) lower-income people are both more vulnerable to crime and have "youth with a greater proclivity toward engaging in criminal activity," 2) lower-income people live in subdivided homes with common entryways, leaving families more vulnerable, 3) it creates a higher density population, 4) it lowers the tax base, and 5) "it removes a population with a low tolerance for crime, a strong demand for police presence, and a support of police activities which deter crime.") See also, Alastair, *Mixed Income*, p.9 ("Very poor adults and their children may be less likely to engage in negative behavior if higher-income families are present.")

⁵¹ Ainsworth, *supra* note 43, at 119-120.

⁵² *Id.*, at 117-121 (describing the various theories that explain how neighborhood characteristics affect educational outcomes. Namely, the author discusses collective socialization, social control, social capital, differential occupational opportunity, and institutional characteristics.).

⁵³ *Id.*

“[c]learly, the presence of high-status residents in the neighborhood plays a statistically important role in students’ academic achievement.”⁵⁴

Introducing a middle- and working-class presence is expected to produce fiscal benefits as well. Neighborhoods with low demand for housing reduce the value of the city’s tax base, the primary source of revenue for American cities.⁵⁵ With a diminished tax base, central cities are increasingly unable to provide essential government services to their residents. But if there is a greater presence of middle income households, the aggregate assessed value of homes will increase and allow for greater tax revenue collections.⁵⁶ To boot, the introduction and retention of middle- and working-class families is expected to forestall abandonment, a condition that entirely removes properties from the local tax rolls.⁵⁷

Aside from the increased tax base, Quercia and Galster argue that a middle- and working-class presence may help inner cities leverage political power into a larger share of state resources.⁵⁸ As the middle class left the inner city, they left behind poorer residents “with weakened political power to attract public resources from state legislatures to their neighborhoods”⁵⁹ and thus “the balance of power in state legislatures shifted in favor of suburbs.”⁶⁰ By attracting and retaining the stable and emerging middle class, cities can begin to reverse the trend and shift the balance of power back to central

⁵⁴ *Id.*, at 131.

⁵⁵ Quercia & Galster, *supra* note 40, at 410 - 412.

⁵⁶ *Id.*, at 412. (“[T]he unambiguous net effect [of having a greater middle income presence] will be to raise the aggregate assessed values of residences in the central-city jurisdiction, thereby permitting greater tax revenue collections from any given effective property tax rate.”)

⁵⁷ *Id.*, 412. (“Middle-income resettlement in the central city is expected to have a direct effect on property tax revenues by increasing the demand for middle-quality housing, thus raising housing prices in this submarket and forestalling abandonment in the lower-quality submarket.”)

⁵⁸ *Id.*, at 414 (“Bringing back or retaining middle-income households is expected to reverse the trend and somewhat shift the balance of power back to the cities, resulting in greater state transfers to cities.”)

⁵⁹ *Id.*, at 411

⁶⁰ *Id.*, at 414.

cities. This could ultimately result in a greater share of state resources going back to the cities.

The absence of middle income households has contributed to the concentration of poverty and has negatively impacted the social, fiscal and political structure of inner city life. Initial research on mixed income communities has “[lent] support to the importance of healthy neighborhoods in breaking the cycle of poverty”⁶¹ and “many policy makers have concluded that these concentrations [of poverty] must be broken up at all costs.”⁶² By reintroducing and retaining middle income families in inner cities, it is expected that the concentration effects and the dislocation it produces (such as declining school performance, high rates of criminal activity, family fragmentation, substance abuse, and teenage pregnancy) will decline while the revenue base and social networks will improve. Middle-income households, therefore, are vital to the stability and overall health of inner city communities.

2. Higher Rate of Homeowners

Not only are blighted, inner city neighborhoods plagued by an absence of middle- and working-class residents but they also suffer from high rates of absentee landlords.⁶³

⁶¹ Smith, *supra* note 34, at 9; *See also* Ainsworth, *supra* note 43, at 118 (“Increasing concentrations of poverty in urban areas over the last thirty years has renewed interest in the effects of neighborhood-level conditions on the well-being of residents.”).

⁶² Smith, *supra* note 34, at 8; *See also* Owen Fiss, *supra* note 46, at 28 (“It is a social structure that concentrates and isolates the most disadvantaged and creates its own distinctive culture, and thus is integral to the perpetuation of the underclass. It is the paramount mechanism through which a historically subordinated group continues to be kept far beneath others in terms of wealth, power, and living standards. Accordingly, we need strategies that promise to dismantle that structure—to tear down the walls of the ghetto.”)

⁶³ The impact of absentee landlords on neighborhoods has been significantly under-researched. Many authors lament the dearth of information in this area. Donald R. Haurin, et al., *The Impact of Neighborhood Homeownership Rates: A Review of the Theoretical and Empirical Literature*, 13 J. HOUSING RES. 119, 143 (2003) (“Given the small amount of research on neighborhood homeownership effects, it is too early to know the nature of the relationship between neighborhood homeownership rates

This effectively deprives these communities of the benefits associated with high rates of homeownership, benefits that are quite substantial. By producing a greater presence of homeowners, as opposed to tenants, rent control can produce a number of direct and indirect benefits to all of the members in the community.

High homeownership rates increase property values and establish stability and cohesion within a neighborhood. It is estimated that a 1% increase in the homeownership rate will increase the value of each home in the area by an average of \$800 and a 10% increase in the homeownership rate will produce an average increase of \$8,000.⁶⁴ Also, a number of empirical studies show that neighborhoods are stabilized by homeownership because of decreased turnover and greater upkeep and maintenance.⁶⁵ Additionally, homeowners are more likely to be involved civically, to be a part of an organization, and participate in collective political action,⁶⁶ all of which promote greater neighborhood cohesion.

and net social benefits.”); *See also* Joseph Harkness & Sandra Newman, *Homeownership for the Poor in Distressed Neighborhoods: Does This Make Sense?*, 13 HOUSING POL’Y DEBATE 597, 599 (“Another critical neighborhood feature may be the homeownership rate, which has been largely ignored in the sizable and growing body of research on the effects of distressed neighborhoods on the life chances of children.”).

⁶⁴ William Rohe & Leslie Stewart, *Homeownership and Neighborhood Stability*, 7 HOUSING POL’Y DEBATE 37, 66 (1996) (exploring how homeownership rates affect neighborhood stability) (study performed on single family homes, but authors suggest that the increase in property value is not limited to single-family homes).

⁶⁵ *Id.*, at 47-49 (1996) (reviewing literature on the relation between homeownership and repairs and maintenance); at 51-52 (reviewing the literature on the relation between homeownership and residential mobility); Denise DiPasquale & Edward Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?*, 45 J. URB. ECON. 354, 355 (1999) (“[B]ecause of the high transaction costs associated with homeownership, homeowners tend to be considerably less mobile than renters. Increased length of tenure in a community should also encourage investments in community, since homeowners will consume the benefits of community over a longer time period.”).

⁶⁶ Rohe and Stewart, *supra* note 64, at 46 (“The empirical evidence indicates that homeowners are indeed more likely than renters to participate in local organizations, even after controlling for income, education, and other socioeconomic characteristics.”); DiPasquale & Glaeser, *supra* note 65, at 356 (“Homeowners are 15% more likely to vote in local elections [*sic*] and 6% more likely to work to solve local problems”); William M. Rohe & Michael A. Stegman, *The Impact of Homeownership on the Social and Political Involvement of Low-Income People*, 30 URB. AFF. Q., 152 (1994) (finding that low income homeowners are more likely to be involved civically than renters).

Homeownership also affects the children of homeowners and has been found to positively impact education, crime and teenage pregnancy within a neighborhood. Homeownership, as opposed to renting, produces a higher quality home environment⁶⁷ which then translates into positive outcomes for children. Regarding education, “child’s cognitive outcomes are up to nine percent higher in math achievement and seven percent higher in reading achievement for children living in owned homes, *ceteris paribus*”⁶⁸ and they are less likely to drop out of high school or to have children as teenagers.⁶⁹ This last indicator, having children during adolescence, is particularly worth noting because teenage pregnancy is highly correlated with welfare dependency.⁷⁰

With respect to crime, the absence of high rates of homeownership is once again important because homeowners’ children have been found to have fewer behavioral problems. Overall, “these youth’s greater cognitive abilities and fewer behavioral problems will result in higher educational attainment, greater future earnings, and a reduced tendency to engage in deviant behavior.”⁷¹ The positive effects of

⁶⁷ Donald R. Haurin, et al., *The Impact of Homeownership on Child Outcomes*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY 15 (Low-Income Homeownership Working Paper Series, LIHO-01.14, October 2001) available at <http://www.jchs.harvard.edu/publications/homeownership/liho01-14.pdf> (“Owning a home compared with renting leads to a higher quality home environment.”).

⁶⁸ *Id.*, at 15.

⁶⁹ Richard K. Green & Michelle J. White, *Measuring the Benefits of Homeowning: Effects on Children*, 41 J. URB. ECON. 441, 457 (1994) (authors conclude that “homeowning by parents benefits their children, who are less likely than children of renters to drop out of high school or to have children as teenagers. Both effects are largest for children of low-income households.”).

⁷⁰ Chong-Bum An, et al., *Teen out-of-wedlock births and welfare receipt: The Role of the Childhood Events and Economic Circumstances*, 2 REV. ECON. & STAT. 195, 195 (1993) (“[T]hree out of four recipients of AFDC [welfare] benefits who are under age 30 first gave birth as a teenager, in most cases out of wedlock.” As of 1993, about \$20 billion was paid a year to teenage mothers through welfare benefits, food stamps, and Medicaid); G. Duncan & S. Hoffman, *Welfare Benefits, Economic Opportunities and the Incidence of out-of-wedlock Births among Black Teenage Girls*, 27 DEMOGRAPHY 519, 519 (1990) (Extensive welfare dependence and poverty are especially common among [families that consist of teenage mothers bearing out-of-wedlock children].).

⁷¹ Haurin, *supra* note 67, at 15.

homeownership hold true even when controlling for numerous parental economic demographic, and social characteristics.⁷²

The neighborhood-level effects of low homeownership (high absentee landlord) rates go beyond decreased educational outcomes and increased crime. Increasing the homeownership rate is also expected to improve the physical structure of a neighborhood's housing stock.⁷³ Research has shown that resident landlords maintain their properties at higher levels than absentee landlords and that homeowners are better prepared to pay for the upkeep and maintenance of their properties, even when other socioeconomic factors are controlled for.⁷⁴ In a conclusion that drives home the importance of increasing a neighborhood's homeownership rate, Galster states:

If nontrivial numbers of previously rented dwellings are converted to owner-occupancy in a given neighborhood, one can predict that the overall levels of upkeep in that area will be enhanced greatly. The expected impact likely is of a much larger degree than would ensue even from dramatic increases in resident socioeconomic status, optimistic neighborhood expectation, or neighborhood cohesiveness.... Indeed, expanding the number of homeowners appears to be the single most potent means for encouraging the upkeep of dwellings in a neighborhood. And the differences are even more dramatic when considering low-income occupants.⁷⁵

High levels of absentee landlords prevent the neighborhood benefits of homeownership from accruing to blighted, inner city neighborhoods. As a result, increased instability, high crime, underperforming schools, civic disengagement, high teenage pregnancy rates, and deteriorating physical structure continue to plague these

⁷² Haurin, *supra* note 67, at 15.

⁷³ Rohe & Stewart, *supra* note 64, at 48 (“Research consistently shows that homeowners are more likely than renters to undertake repairs and that they spend more on them... Some studies also indicate that resident landlords maintain their properties at higher levels than absentee landlords.”); George C. Galster, HOMEOWNERS AND NEIGHBORHOOD REINVESTMENT 296 (1987) (indicating the “strong evidence that owner-occupants are better maintainers of single-family homes than are absentee-owners, even when controlling for differences in occupants, structure type and age, and surrounding neighborhood.”); Richard N. Spivack, THE DETERMINANTS OF HOUSING MAINTENANCE AND UPKEEP: A CASE STUDY OF PROVIDENCE, RHODE ISLAND, 23 *Applied Econ.* 643 (1991) (after a ten-year study, author concludes that “the ‘absentee landlord’ variable is *the* most important factor in determining residential maintenance and upkeep decisions....”)(emphasis added).

⁷⁴ *Id.*

⁷⁵ Galster, *supra* note 73, at 296.

communities. These conditions in turn cause blighted neighborhoods to not only foster, but to also maintain and reproduce, the underclass culture.

C. ABSENTEE LANDLORDS AND THE SELF-PERPETUATING CYCLE OF BLIGHT

Local housing markets, and the incentives they provide, make it so that the neighborhoods most in need of the stabilizing presence of middle- and working-class homeowners are the ones least likely to attract them. Blighted, inner city neighborhoods with high poverty rates attract more absentee landlords and at the same time repel potential resident landlords. The result is a downward spiral whereby the neighborhood's decline assures its further descent.

I set out to answer the question of why there are so many absentee landlords in blighted neighborhoods.⁷⁶ It makes intuitive sense to think that people with enough purchasing power to buy a house would choose to live in a healthy and stable neighborhood rather than in one with high poverty rates and high levels of crime. So initially, it makes sense to think that poor and unstable neighborhoods would have low

⁷⁶ Alemayehu Bishaw, *Areas With Concentrated Poverty: 1999*, UNITED STATES CENSUS BUREAU, CENSR-16 (July 2005), Census data shows the following household homeownership rates for the following four categories: Category I (0%-12.3% Poverty Rate), Category II (12.4%-19.9% Poverty Rate), Category III (20%-39.9% Poverty Rate), Category IV (Over 40% Poverty Rate).

Category	Homeowning Households	Renting Households	Number of Households
Category I	73.9%	26.1%	66,932,648
Category II	60.6%	39.4%	20,501,789
Category III (High Poverty)	46.8%	53.2%	15,520,169
Category IV (Extreme Poverty)	27.2%	72.8%	2,525,495

A partial explanation for the high rental rates in High and Extreme Poverty neighborhoods is the concentration of subsidized and public housing units in these neighborhoods. However, the 1.3 million households living in Public Housing and the 3.5 million households living in subsidized housing cannot account for the over 18 million households living in either High or Extreme Poverty neighborhoods. This would be true even if all public and subsidized units were located in these neighborhoods. However, subsidized housing developments are not as concentrated in High and Extreme Poverty neighborhoods as public housing developments.

homeownership rates. However, when pressed further, this explanation is not entirely satisfactory.

Basic economics tells us that if demand is low, values will be low as well. Imagine a world without absentee landlords where all homeowners reside on their property. One would expect that if there is such a great aversion to living in a blighted neighborhood, the value of the homes in these neighborhoods would correspondingly decline to reflect the lower demand.⁷⁷ As home values decline, they will eventually attract willing purchasers. While some people would undoubtedly say, “You couldn’t pay me to live there!,” others would inevitably conclude, “At such a low price, buying a house in this neighborhood is a good investment.” Faced with the prospect of prohibitively expensive neighborhoods, emerging middle class homebuyers may find homeownership in poor communities an acceptable option.

Additionally, given the attractiveness of owning a home and the ever increasing cost of rent, I suspect that many emerging middle class families would prefer to purchase a house in a poor neighborhood as opposed to remaining tenants. From an investment standpoint, owning rather than renting is tremendously more attractive.⁷⁸ Particularly for

⁷⁷ This is already partly true as home values tend to be lower in blighted neighborhoods. Joseph Harkness & Sandra J. Newman, *Homeownership for the Poor in Distressed Neighborhoods: Does This Make Sense?*, 13 HOUSING POL’Y DEBATE 597, 598-599 (2002) (noting policy recommendations that include a warning that “efforts to stabilize distressed neighborhoods by encouraging low-income families to purchase homes there may carry significant risks for the ‘pioneers,’ the first homeowners in a distressed area.” Moving to a neighborhood with a low rate of homeownership “may bear considerable costs, such as low property values, high crime rates, poor schools, [etc.]”).

⁷⁸ National Association of Home Builders, *Special Report: Buying a New Home: A Solid Investment* (1998) (finding that if two identical families invested \$16,800, one in a home and the other in the stock market, the home owner would realize a net return more than 2 times that of the renter.); Edward Scanlon, *Homeownership and its Impacts: Implications for Housing Policy For Low-Income Families*, CENTER FOR SOCIAL DEVELOPMENT, WASHINGTON UNIVERSITY 5 (Working Paper No. 96-2, 1996) (“homeowner median net wealth in the United States is \$78,400 while for renters it is \$2,300”); *but see* Nicolas P. Retsinas & Belsky, eds., *LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL 9* (2002) (stating that housing has a lower historical return than stocks and bonds. However, the authors note that homeownership in effect force owners to save whereas otherwise they would be hard-pressed.).

families on the cusp of affording their first home, if home values in blighted neighborhoods truly reflected the conditions of the surrounding community, prices would be low enough to allow many tenants to become homeowners.

However, the emerging-middle class's prospect of purchasing a relatively inexpensive home in a blighted neighborhood is thwarted by the operation of the absentee landlord industry. Since absentee landlords, by definition, do not live on the property, they are not factoring in the aversion to living in the blighted neighborhood when they are valuing the home. Instead, the value of the home to the absentee landlord will be determined by the neighborhood's demand for low quality housing and the resultant fair market value of rent. Since low-income tenants have few housing options (principally limited to inner city slum neighborhoods), their rent payments may remain high even as the quality of the neighborhood declines.

In a blighted neighborhood with high concentrations of poverty and thus high demand for low quality housing, the financial advantage of purchasing a home is skewed in favor of the absentee landlord. Consider a multi-family house with three residential apartments of comparable quality. Two people are considering purchasing the house, one person intends on residing there (a potential "resident landlord") and the other intends on residing elsewhere (a potential "absentee landlord"). As reflected in Table 1, the absentee landlord would view the home as a more valuable investment than would the resident landlord because the resident landlord would have to factor in her aversion to living in the neighborhood.

Table 1: Monthly Rental Value

Description	Monthly Rental Value
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	Absentee Landlord	Resident Landlord
Unit 1	\$800	\$500
Unit 2	\$800	\$800
Unit 3	\$800	\$800
Total	\$2400	\$2100

The \$800 amount reflects the fair market value of the apartment units. The \$500 amount for the resident landlord under “Unit 1” reflects the value that she would assign to the unit given that she must live in the blighted neighborhood. The reduced amount reflects the aversion that the owner, who has the ability to live in a more comfortable and stable neighborhood, would have to living amongst the high concentration of poverty and the social problems it produces.

In Table 1, the difference of \$300 in the monthly value would capitalize into a roughly \$36,000 difference in the value of the home.⁷⁹ The different values would yield double demand curves causing the absentee landlord’s demand, D_{Abs} , to be above and to the right of the resident landlord’s, D_{Res} . (See Figure 1)

⁷⁹ $\$300 \times 12 \text{ months} = \$3,600 \text{ per year}$; $\$3,600/10\% = \$36,000$ A similar computation is discussed by Stephen E. Barton, *The Success and Failure of Rent Control in Berkeley, California* in RENT CONTROL, *supra* note 3, at 95 citing Thomas S. Nesslein, *The Effects of Rent Control: An Analytical Reassessment and the Experiences of Berkeley and Santa Monica, California, 1980-1990*, Ph.D. Dissertation, University of Washington (1992).

Figure 1

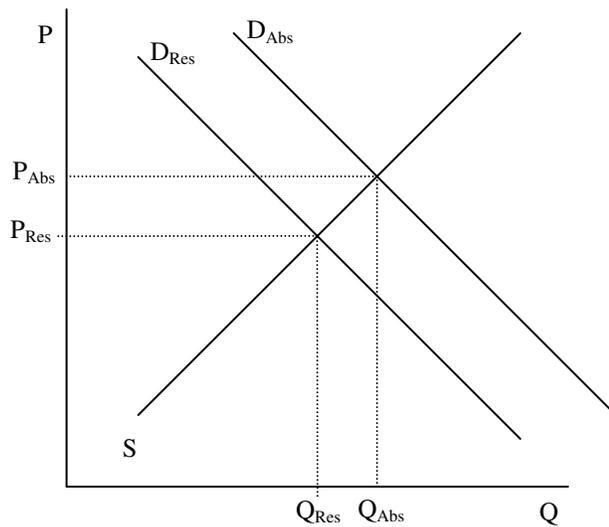


Figure 1⁸⁰

All things being equal, the absentee landlord would value the home at level P_{Abs} , which is \$36,000 above the prospective resident landlord's value, P_{Res} .⁸¹ This gives absentee landlords a sizeable advantage which they will use to systematically outbid prospective resident landlords for the home.⁸²

To drive home the point for the importance of intervening in order to attract more resident landlords, consider the outlook for declining neighborhoods without the proposed rent control scheme. If the number of low income people living in the neighborhood increases, the home becomes progressively more valuable to the absentee

⁸⁰ In this and the following figures, the slope of the resident and absentee landlords' demand curves will be assumed to be identical. However, because absentee landlords represent more of an investor class whereas resident landlords represent a first-time homebuyer, lower-middle class household, it can be expected that prospective resident landlords' demand will be more sensitive to home prices. In other words, in a more sophisticated model, resident landlords' demand curves will be flatter relative to absentee landlords' demand curves.

⁸¹ $\$300 \times 12 \text{ months} = \$3,600$ per year; $\$3,600/10\% = \$36,000$. See *supra* note 79.

⁸² Many other factors might contribute to absentee landlords' financial advantage. These include greater access to capital, greater expertise in the housing market, and heightened skills for repairs and maintenance.

landlord. For instance, if there are more poor people in the neighborhood, demand for low quality rental units may increase. The increased demand would push rents higher and make the investment more attractive to the absentee landlord. Simply put, the more poor people in the neighborhood, the more the absentee landlord can charge in rent. Since absentee landlords need not live amongst the “concentration effects” and the social dislocation that accompany high poverty rates, the absentee landlord only stands to gain by the increase in poverty.⁸³

However, under the same scenario, the home becomes progressively less valuable to the resident landlord. She would be surrounded by more and more poor people and as crime increases, the schools get worse, and the homes fall into disrepair, her aversion to living in the neighborhood would increase and cause her to assign a lower value to the home. The result would be that resident landlords would assign yet a lower value to the same home as would an absentee landlord and increase the distance between points P_{Abs} and P_{Res} in Figure 1. Whenever the home goes on the market, the absentee landlord will likely purchase the home and the neighborhood will be deprived of the stabilizing presence of a higher income homeowner. Repeated over a number of transactions, this dynamic will result in an ever-increasing number of absentee landlords and will cause the

⁸³ The obvious response to this line of reasoning is that absentee landlords do in fact care about the conditions of the neighborhood. If the neighborhood falls into a downward tailspin, the absentee landlord can lose rental revenue by diminished demand for her rental units. Therefore, the argument would go, the absentee landlord would care very deeply about the conditions of the neighborhood and would therefore have the incentive to invest in the maintenance and stability of the neighborhood. For a persuasive refutation of this argument, see Duncan Kennedy, *The Effects of the Warranty of Habitability on Low Income Housing: ‘Milking’ and Class Violence*, 15 FLA. ST. U. L. REV. 485 (1987) (arguing that it may be rational for homeowners to under-maintain their rental buildings in declining, slum neighborhoods); Daniel R. Mandelker, ed., HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 188 (2d ed. 1979) (application of the game theory prisoners’ dilemma suggests that neighborhood homeowners “have a strong incentive not to rehabilitate”).

neighborhood to progressively destabilize as the number of poor people grows. This is precisely what may be called a downward spiral.

A neighborhood with high absentee landlord rates, high concentrations of poverty, high crime, underperforming school, and deteriorating homes is extremely expensive for society.⁸⁴ “The lower the average income of a city’s residents, the more needy that community is for funds to provide its residents with welfare services and police protection – but the less able it is to generate these funds from its own resources.”⁸⁵ These costly, yet essential, government services are subsidized by net tax payers living within and beyond the neighborhood’s borders. Housing, welfare, and medical subsidies must be paid by the public, along with expenses associated with police protection and the criminal justice system.⁸⁶ Additionally, the human cost of reducing someone’s dreams of success in life to a distant probability must also be factored in.⁸⁷ In terms of current costs, it is without question that high poverty neighborhoods are expensive for society but when one considers the propensity of these neighborhoods to reproduce themselves, they

⁸⁴ See Goetz, *supra* note 8, at 29 (“Neighborhoods of highly concentrated poverty produce negative community-level effects for cities. Obviously, high-poverty neighborhoods suffer from lack of private capital investment. At the same time, they create high service burdens for core governments. These two effects mutually reinforce each other, since disinvestment reduces property values, in turn reducing revenue for city government. Pack suggests that the increased social problems brought on by concentrated poverty in central-city neighborhoods lead to increased public costs. Her study of large American cities shows that those with high poverty levels have higher per capita expenditures for most municipal functions.”) (internal citations omitted).

⁸⁵ Newman, *supra* note 38, at 82.

⁸⁶ See U.S. Census Bureau, *Finances of County Governments: 2002*, 4 GOV’T. FIN. 9 (Feb. 2005) (Between 2001-2002, U.S. government agencies spent approximately \$33 billion on public welfare, including \$7.4 million on cash and assistance, and \$1.2 million on medical vendor payments); see also Laurie E. Felland et al., Issue Brief, *Health Care Access for Low-Income People: Significant Safety Net Gaps Remain*, CENTER FOR STUDYING HEALTH SYSTEM CHANGE (No. 84 June 2004), available at <http://www.hschange.com/CONTENT/682/682.pdf> (By 2002, 29 states had to reduce their funding for mental health agencies and Medicare mental health services due to the financial strains it was putting on the states’ budgets).

⁸⁷ Michael R. Greenberg, *Improving Neighborhood Quality: A Hierarchy of Needs*, 10 HOUSING POL’Y DEBATE 601, 602 (1999) (“To live in a blighted environment is dispiriting, demeaning, and profoundly dehumanizing. Ugliness spreads, . . . people flee before it, leaving wasteland behind them.”).

are certain to saddle society with long term costs that will only increase as high poverty neighborhoods continue to grow.⁸⁸ As a policy matter, it appears to make economic sense to intervene in the low-income housing market in order to decrease the costs associated with high poverty rates.

The proposed rent control scheme seeks to improve neighborhoods, increase home values, decrease poverty, and lower social costs by introducing more resident landlords to currently blighted neighborhoods. It is specifically designed to offset the systematic financial advantage that absentee landlords enjoy over prospective resident landlords. By increasing the resident landlord rate, the neighborhood is expected to improve and reduce people's aversion to living there. If designed properly, rent control can cause a "cumulative upward movement"⁸⁹ in people's living standards and over the long term, de-concentrate poverty and convert blighted neighborhoods into healthy and stable ones.

II: A PROPOSED RENT CONTROL PLAN TO ENCOURAGE AN INFLUX OF RESIDENT LANDLORDS

Rent control can be used as a tool to introduce a middle-income homeowner presence into blighted, inner city neighborhoods with high rates of poverty. With time, rent control may even eliminate the existence of blighted neighborhoods by preventing the concentration of poor people and the concentration effects that it produces. In short,

⁸⁸ Jason C. Booza et al., *Where Did They Go?: The Decline of Middle-Income Neighborhoods in Metropolitan America*, THE BROOKINGS INSTITUTE (Living Cities Census Series, June 2006) (finding that middle-income neighborhoods as a proportion of all metropolitan neighborhoods have declined from 1970 to 2000 while low-income and high-income neighborhoods have increased during that same period).

⁸⁹ Gunnar Myrdal, *AN APPROACH TO THE ASIAN DRAMA: METHODICAL AND THEORETICAL 1846* (1970) (describing "cumulative upward movement" as the dynamic under which a person has acquired the capacity to produce ever-increasing benefits for himself).

rent control can transform blighted, urban neighborhoods into healthy and prosperous ones.

To this end, I propose the following rent control scheme that maximizes the benefits of rent control while limiting, and in some cases preventing, the drawbacks associated with traditional rent control.

A. THE BASICS OF THE PROPOSED RENT CONTROL PLAN

In this section, I will consider the effects on the local housing market of applying a rent ceiling only to absentee landlords. In my analysis, I will assume that the locality's implementation plan will make rent ceilings immediately applicable to absentee landlords' homes.⁹⁰ I predict that this rent control plan will lead to more home-buying by prospective resident landlords.

Consider the same multi-family house from the previous section. Now, however, under a rent control regime that imposes a rent ceiling on the absentee landlord, the financial advantage shifts in favor of the resident landlord. If the rent ceiling is set at, say, \$500 for the absentee landlord and the resident landlord is able to charge market rents of \$800, the monthly rental income stream for each potential purchaser will be reflected by Table 2.

Table 2: Monthly Rental Income

Description	Monthly Rental Income
--------------------	------------------------------

⁹⁰ An alternative to this would be to make rent ceilings applicable to absentee landlords' homes only after a home is sold. This would ensure that *whenever the home goes on the market*, a resident landlord will be the likely purchaser. However, this implementation plan would not entice/push existing absentee landlords to place their homes on the market because their investments, in terms of monthly rental income, would not be affected. Because of this, it would have very different consequences than a plan which makes the rent ceilings immediately applicable to existing absentee landlord homes, causing them to immediately realize a lower monthly rental income.

	Absentee Landlord	Resident Landlord
Unit 1	\$500	\$500 ⁹¹
Unit 2	\$500	\$800
Unit 3	\$500	\$800
Total	\$1500	\$2100

Given these hypothetical figures, the rent ceiling causes the absentee landlord's monthly rental income to be \$600 below the resident landlord's, and this \$600 difference capitalizes into a quite substantial \$72,000 difference in the value of the home.⁹²

Under this scenario, the different income streams would again produce a double demand curve for the same property. However, this time, the absentee landlord's demand curve, D_{Abs} , has slid below and to the left of the resident landlord's, D_{Res} . See Figure 2.

Additionally, within a relatively short time span, a neighborhood with rent control may be transformed from one with a bleak outlook to one with renewed interest given its higher rate of resident landlords. This not only may improve the residents' perceptions of the neighborhood⁹³ but each new resident landlord will likely increase the value of the other properties in the area.⁹⁴ Therefore, it is possible that the prospect of having a community filled with resident landlords would entice more prospective home-buyers to consider purchasing a home in the neighborhood.⁹⁵ If people believe that an increased

⁹¹ This figure reflects the value the homeowner would assign to the unit given that she intends on living in the home. The reduced amount reflects the aversion this homebuyer would feel towards living in the home being purchased.

⁹² $\$600 \times 12 \text{ months} = \$7,200 \text{ per year}; \$7,200/10\% = \$72,000$. See *supra* note 79.

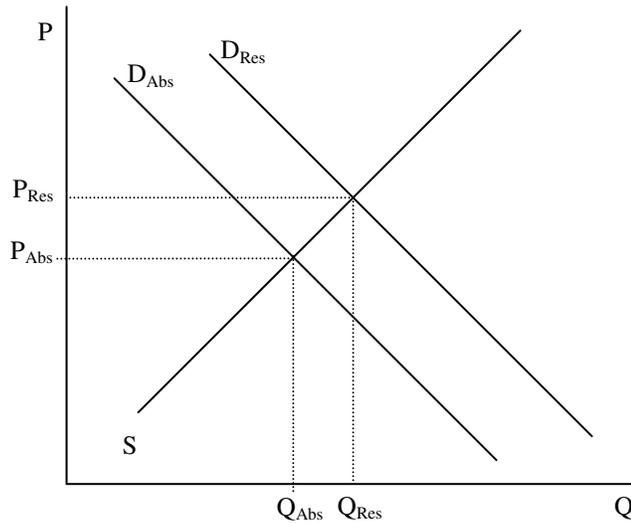
⁹³ Rolf Goetze, UNDERSTANDING NEIGHBORHOOD CHANGE: THE ROLE OF EXPECTATIONS IN URBAN REVITALIZATION 31-33 (1979) (stating that perceptions of a neighborhood are as important as household income and housing conditions for predicting neighborhood investment).

⁹⁴ See Rohe & Stewart, *supra* note 64.

⁹⁵ If the marginal cost of purchasing a home in a higher quality neighborhood is greater than the marginal value of living in that better neighborhood, people would forgo their purchasing options there and decide to purchase in the blighted neighborhood, of which residents and potential purchasers may have an improved perception (due to an increase in the homeownership rate). See *infra* note 97. Additionally, if the proposed rent control scheme reduces the value of the homes, it may allow families who were formerly on the cusp of affording a home to now become homeowners in this neighborhood. In these ways, middle-income and emerging middle-income households can be induced to move into formerly blighted, slum neighborhoods

homeownership rate will improve the neighborhood, the demand curve for prospective resident landlords, D_{Res} , could shift upwards and to the right.⁹⁶ See Figure 2.

Figure 2



After the shift, resident landlords now demand a higher quantity of homes in the rent control neighborhood and will pay a higher price than absentee landlords. This creates a systematic financial advantage for prospective resident landlords to purchase the homes whenever they are put up for sale.

1. Setting the Rent Ceiling

The critical question that each locality must answer when it enacts this rent control scheme is “At what amount should the rent ceiling be set?” The answer to this

rather than follow the traditional path towards the suburbs or a better neighborhood. If potential resident landlords believe that they will be followed into the neighborhood by other resident landlords, purchasing a home in a blighted neighborhood might also be their most attractive long-term investment strategy.

⁹⁶ This would occur by an increase to the value assigned to the unit which the resident landlord will move into. If prospective resident landlords have a more positive outlook for neighborhood because of the increase in resident landlords, there will be less aversion to living there. Therefore, the \$500 amount from the “Resident Landlord” column in Table 2 would increase to, say, \$600.

question has two components: what is the minimum departure from fair market value and what is the maximum departure?

Before determining the maximum and minimum departure from fair market rent, the expected demand from prospective resident landlords must be firmly established and the location of the demand curve, D_{Res} , drawn. Once local demand is determined, this demand curve will provide a basis for the rest of the analysis.

Minimum Departure from Fair Market Value

The rent control scheme should, at minimum, decrease rents to the point where they offset prospective resident landlords' aversions to living in a given neighborhood. As shown in Tables 1 and 2, a resident landlord's aversion to living in a blighted neighborhood reduces the value they assign to a home. The rent ceiling applied to absentee landlords should be sufficiently below fair market value to force them to internalize the neighborhood conditions into the value of the home in the same way that a prospective resident landlord does.

But the departure from fair market rents must go even further. Additional factors such as greater access to capital, greater expertise in the housing market, and heightened skills for repairs and maintenance, also give absentee landlords an advantage over resident landlords, who would likely be first-time homebuyers.⁹⁷ Because of this, the rent ceiling would have to depart even further from fair market value than would be required

⁹⁷ It may be countered that federal, state and local governments already provide substantial subsidies for first-time homebuyers. These subsidies, it would be argued, provide resident landlords with financial advantages that absentee landlords do not qualify for, such as tax deductions. I would not argue against this point. However, the proposed rent control scheme does not lose any of its urgency because the existing "subsidies" for resident landlords do not require them purchase homes in blighted neighborhoods. Rather, prospective resident homeowners qualify for these "subsidies" wherever they purchase their homes. The goal of the proposed rent control plan is to give prospective resident landlords incentives to purchase homes in into neighborhoods they would ordinarily bypass.

to merely counterbalance resident landlords' aversion. Last, the financial advantage for resident landlords must be sufficient to cover transaction costs.

If the rent ceilings for absentee landlords are too close to fair market value, it is possible that absentee landlords' demand curve (D_{Abs}) will be above the resident landlords' demand curve (D_{Res}). If this is the case, the rent control scheme will be ineffective because absentee landlords will still have a systematic financial advantage over resident landlords.⁹⁸

Maximum Departure from Fair Market Value

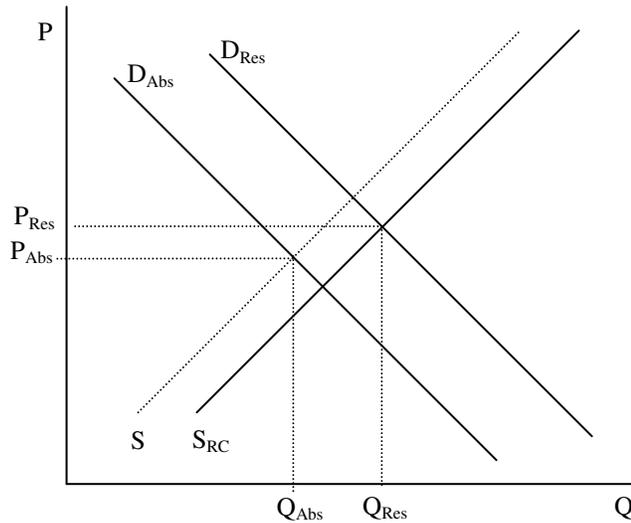
As for the maximum departure from fair market values, the answer depends on the number of homes that will go on the market after rent control is enacted. There are two ways that this can be controlled: 1) setting the rent ceiling at a moderate level and 2) limiting the number of homes subject to rent control.

Once absentee landlords are subject to rent ceilings, the value of their investments will fall. The ones who purchased their homes at the highest prices will suffer operating losses whereby their costs, such as mortgage payments, debt service, and regular maintenance, are higher than the controlled rental income. Facing a small or negative return on their investment, these absentee landlords will place their homes on the market, particularly since prospective resident landlords will still place a relatively high value on the home (because they have the ability to charge market rents). The absentee landlord-

⁹⁸ If the rent ceilings are not sufficiently below fair market value, there would be little or no incentive for absentee landlords to sell their properties. This is a key result to avoid because the effect would be comparable to traditional rent control: landlords will be less profitable and will therefore reduce expenditures on repairs and maintenance. This would likely cause more harm than good.

owned homes on the market may cause a sudden spike in the supply of homes for sale within the neighborhood. The increased supply of homes for sale is depicted in Figure 3.

Figure 3



Under rent control, the original supply curve will shift to the right, now depicted as S_{RC} . This shift will change the quantity (Q_{Res}) of homes resident landlords demand and the price (P_{Res}) they will pay. Using the new equilibrium point for resident landlords, the values assigned to the home by resident and absentee landlords can be compared. So long as P_{Res} remains above P_{Abs} , the rent control scheme will be effective.⁹⁹

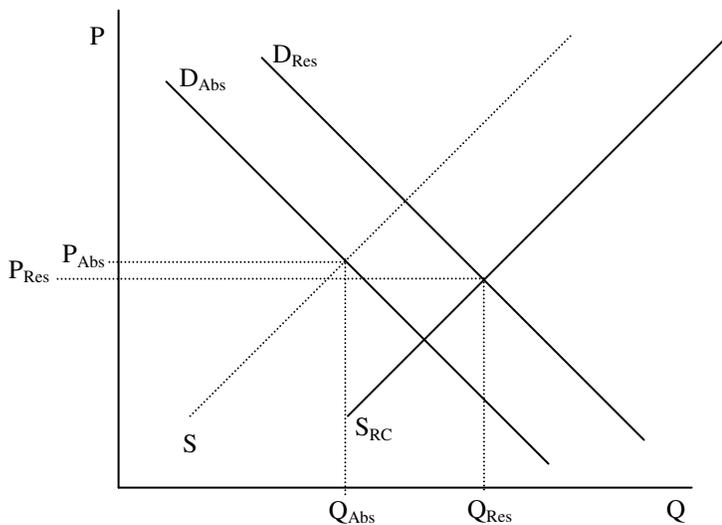
Notice that in Figure 3, the pre-rent control supply curve, S , is used to determine the absentee landlord's value. Regardless of the supply of homes available on the market, the home will retain a minimum value to the absentee landlord based on the expected rental income stream; this point is represented by the intersection of D_{Abs} and

⁹⁹ Note that the value to the resident landlord (P_{Res}) must be sufficiently above the value to absentee landlords (P_{Abs}) to cover transaction costs. Cooter defines "transaction costs" as "the cost of communications among the parties (including the value of time used up in sending messages), making side payments (the cost of the transaction, not the value of what is exchanged), and the cost of excluding people from sharing in the benefits exchanged by the parties." See Robert Cooter, *The Cost of Coase*, 11 J. LEGAL STUD. 1, 14-20 (1982).

the original supply curve, S . In other words, the expected rental income will entirely determine the minimum value an absentee landlord assigns to a home. Because of this, the value to the absentee owner will not fall below the P_{Abs} point in Figure 3.¹⁰⁰

It is crucial that the price to resident landlords (P_{Res}) remain above the price to absentee landlords (P_{Abs}), otherwise the homes will either not be sold or will be sold to another absentee landlord. If the rent ceilings are too severe, being an absentee landlord will become unprofitable across the board and will cause all absentee landlords to place their homes on the market. In this situation, absentee landlord-owned homes will flood the market and cause the supply curve to shift far to the right. Once the supply of homes on the market passes a certain point, the resident landlord's equilibrium point would produce a price (P_{Res}) below that of absentee landlords (P_{Abs}). See Figure 4.

Figure 4



¹⁰⁰ This should be true unless the absentee landlord has to sell the home for other reasons. If the absentee landlord already plans on putting the home on the market, then the value that he will receive will depend on the supply of homes available. However, where the absentee landlord truly has the option of remaining in the absentee landlord business, it would not maximize his profits to sell the home to someone who values it below P_{Abs} .

In Figure 4, the supply of homes for sale has increased so much that resident landlords now value the home *below* absentee landlords. This result would prevent sales to resident landlords and may produce a further destabilization of the neighborhood. If the rent ceilings are set too low, potentially all of the absentee landlord-owned homes in the neighborhood will go on sale and the number of homes on sale may be greater than the number of willing and able purchasers. Any unsold absentee landlord-owned homes would likely fall into disrepair as rental income would not cover regular repairs and maintenance. Since ownership would not change hands from absentee landlords to resident landlords, the only result would be to reduce the rent burden of tenants. In other words, the practical effect of this scheme would be similar to traditional rent control laws and should therefore be avoided.¹⁰¹

Policymakers can readily avoid too many homes being placed on the market by either setting the rent ceiling at a moderate level or by limiting the number of homes subject to rent control. As shown in the preceding paragraphs, setting the rent ceiling too low or too high is fraught with negative consequences. Therefore, policymakers should strive to find the appropriate moderate rent ceiling that provides sufficient incentives for absentee landlords to sell and gives prospective resident landlords the sufficient financial advantage to purchase the property.

The second method of restricting the supply of homes on the market is to limit the number of homes covered by rent control. Instead of applying rent control throughout an

¹⁰¹ This result would essentially make this rent control plan similar to all other rent control laws. By reducing rents and doing nothing else, the housing market would become less profitable. When this happens, fewer resources are dedicated to maintaining existing units and to producing new ones. Over the long term, the reduced supply of residential units will increase rental costs and may eventually hurt the very people it was intended to benefit. On these points, I very much agree with the critics of rent control. See Richard A. Epstein, *supra* note 1, at 767; and G. Samuel Zucker, *Insurance for Eviction Without Cause: A Middle Path for Tenant Tenure Rights and a New Remedy for Retaliatory Eviction*, 28 URB. LAWYER 113, 118 (1996).

entire neighborhood, it can be limited to a few streets or blocks. This would undoubtedly lower the number of homes placed on the market and should not significantly affect the demand for homes within the neighborhood.¹⁰² This would ensure that the supply curve did not shift too far to the right and cause P_{Res} to fall below P_{Abs} . Although this approach may not produce the desired results of introducing middle-class, homeowners throughout the neighborhood, it may make sense for cities to initially limit the scope of the rent control scheme to a small area. By proceeding slowly at first, municipalities can develop a competence for setting the rent ceiling at the appropriate level and forecasting the resultant demand and supply. By starting on a small scale, I imagine that localities will develop a learning curve that will eventually allow them to extend rent control and enact it on a larger scale.

2. Targeted to Blighted Neighborhoods

Rent control should be enacted in a city's most blighted neighborhoods. Throughout the existing literature on rent control, commentators appear to assume that rent control must be adopted at the city- or town-wide level. The traditional argument in favor of rent control is to "protect low-income households from rent increases" and thereby alleviate poverty.¹⁰³ With this goal in mind, it is logical to confer the benefits of rent control upon all of the poor within the political boundary. However, this rent control scheme has an entirely different goal. The goal here is to revitalize a neighborhood by introducing a middle- and working-class, homeowner presence. Therefore, rent control

¹⁰² However, it may cause a slight reduction in demand due to the fewer number of resident landlords expected to move into the neighborhood. Therefore, it would nullify whatever boost to demand was provided by prospective resident landlords' belief that they would be followed into the neighborhood by other resident landlords.

¹⁰³ Downs, *supra* note 1, at 15.

will be most effective when targeted to communities particularly in need of revitalization rather than to the entire city or town.

A “blighted” neighborhood, as I define it, is characterized by high poverty rates, relatively high crime rates, underachieving public schools, and most importantly, high absentee landlord rates. Residents in these neighborhoods tend to have the lowest levels of education¹⁰⁴ and political participation¹⁰⁵ and are therefore typically unable to engage the local political institutions to work to their advantage. Being mostly relegated to the status of “renters” as opposed to “homeowners”, they do not build equity in their home, they move relatively frequently, and they thus never acquire the incentives to invest time, energy and money into improving the long-term outlook of the neighborhood. The result is a vicious cycle of poverty that is exceedingly difficult for a neighborhood to break because each generation is progressively less equipped to garner the resources, be they educational, social, or economic, to break free.

The task of determining which neighborhoods need rent control the most will fall upon local legislative bodies or the administrative body to whom they delegate the responsibility. Each local decision-making body must determine which neighborhood will benefit the most by the introduction of a middle- and working-class homeowner presence. Duncan Kennedy has identified four types of neighborhood change that occur

¹⁰⁴ Bishaw, *supra* note 76, at 5 (Education levels increase as neighborhood poverty declines. In neighborhoods with the following poverty rates, “over 40%”, “less than 40%”, “less than 20%”, and “less than 12.3%”, the percentage of residents with college or higher education is 8.6%, 11.6%, 15.4%, and 27.5%, respectively.); Lawrence O. Picus, *Current Issues in Public Urban Education*, 7 HOUSING POL’Y DEBATE 715, 715-716 (1996) (“The dropout rate is often considerably higher in central city districts. Many of these districts have higher concentrations of disabled students who require access to specialized, and hence extensive, services. These and other factors often lead to lower student achievement in these [central city, high-poverty] districts”).

¹⁰⁵ Robert D. Dietz, HOMEOWNERSHIP ALLIANCE, THE SOCIAL CONSEQUENCES OF HOMEOWNERSHIP 6 (2003) *available at* http://www.newtowncdc.org/pdf/social_consequences_study.pdf (“One consistent finding concerning homeownership is that homeowners tend to vote more often...the homeowner voter rate is 69%, while the renter voting rate is 44%. This is consistent with the notion that homeowners are more concerned with local affairs and national policy than renters due to their stakeholder status as owners.”).

in urban housing markets: upward filtering, downward tailspin, upgrading in place, and gentrification.¹⁰⁶ The key for policymakers is to identify neighborhoods that are undergoing “upward filtering” or “downward tailspin” and convert them into ones that are “upgrading in place.” Specifically, neighborhoods that are experiencing a loss of higher income households and/or an influx of lower income households should be the targets of rent control. By encouraging the emerging middle class to invest in these neighborhoods, while at the same time avoiding displacement of the existing low income tenants, rent control can give a neighborhood the most desirable change dynamic: “upgrading in place”, in which the neighborhood improves and poor people gain.

Although I believe that the proposed rent control scheme would offer the greatest benefits to blighted neighborhoods, the proposed plan may also be used to prevent neighborhoods from falling into “blighted” status. If vigilant local policymakers notice a steady climb in the number of absentee landlords on a given street, block, neighborhood, or district, rent control can be used to reverse the trend. In this way, rent control can be used to prevent a “downward tailspin.”

3. Targeted to Neighborhoods With a High Rate of 2-4 Unit Homes

The proposed rent control plan will work in neighborhoods in which a high rate of resident homeowners would have a significant impact on neighbors, but not every

¹⁰⁶ Duncan Kennedy, *Legal Economics of U.S. Low Income Housing Markets in Light of ‘Informality’ Analysis*, 4 J. L. SOC’Y 71, 74 (2002) (“Upward Filtering”: low income people are moving in and higher income people are moving out, values are unstable, and density is increasing; “Downward Tailspin”: Many higher income people are moving out and the remaining population is becoming homogeneously lower income, values are declining, and density is decreasing; “Upgrading in Place”: there is “new investment by low or lower middle income owners, without displacement of low income tenants, along with new construction for higher income in-movers”, values are increasing, and density is increasing; “Gentrification”: “higher income people move in, owners rehab existing structures, and lower income people are displaced”, neighborhood is becoming homogeneously upper income, values are increasing, and density is decreasing.).

neighborhood has the housing stock that would allow this to be the case. For instance, families living in large apartment buildings with dozens of units (typical in Manhattan, New York City) will not benefit as much by the presence of resident landlords as would a family in a two-family home. If the average building in a blighted neighborhood has 20 residential units, one of which is occupied by the owner and the rest by low income tenants, there will be a 5% rate of (presumably) middle income households.¹⁰⁷ If the average building in a blighted neighborhood has 2 residential units, one of which is occupied by the owner and the rest by low income tenants, there will be a 50% rate of (presumably) middle income households. It is unknown what rate or critical mass of resident landlords is required to produce the expected benefits discussed in Part I but it is likely that the benefits derived by the interaction and close proximity of poor people with middle income households will not materialize if the middle income presence is exceedingly small.¹⁰⁸

For this reason, I propose that rent control be enacted only in neighborhoods with a high percentage of two-, three-, and four-family homes. Virtually every state in the Northeast and Midwest, along with numerous others across the country, have blighted

¹⁰⁷ This analysis ignores the fact that the homeowners of the larger buildings would likely belong to a higher socioeconomic class than the homeowners of the smaller buildings. If this factor were considered, I speculate that it would provide another argument against applying rent control to the larger buildings. The larger landlords would be more likely to be professional landlords who do not hold a traditional job with steady hours and are less likely to be a model of “behaviors and attitudes that are conducive to success in both school and work”. Ainsworth, *supra* note 43, at 119. Thus, one of the greatest benefits of attracting higher income households to the neighborhood would not materialize. In addition, if the larger landlord is significantly better off than the rest of the neighborhood’s residents there could be a sentiment of hostility and resentment against the landlord. Not only would this create an un-neighborly environment but it may significantly discourage these homeowners from residing on the premises. This would have a significant chilling effect and may deter the production of large rental buildings even in areas without rent control.

¹⁰⁸ Determining the optimal homeowner percentage is beyond the scope of this article. However, sociologists and empirical researchers may be helpful in addressing this question. Unfortunately, only a limited amount of research has been directed to this area; I am hopeful that this article along with the growing body of literature on the impact of homeownership rates on neighborhoods will help generate greater interest in this topic.

neighborhoods with this kind of housing stock.¹⁰⁹ Cities such as Chicago, Cleveland, Hartford, Newark, Oakland, Providence, St. Louis and many others would be ideally suited.

Admittedly, this proposal is not designed to address the extreme forms of concentrated poverty experienced in large public housing developments. However, residential neighborhoods surrounding public housing developments would likely benefit from rent control. Whatever radiating influence public housing units may have on a surrounding community, they can certainly be suppressed by a stable neighborhood filled with middle- and working-class homeowners.

B. GENTRIFICATION AND DISPLACEMENT

Up until this point, the only changes to traditional rent control laws that have been discussed are the exemption for resident landlords and the application only to blighted neighborhoods with a high percentage of two-, three-, and four-family homes. These features are expected to encourage absentee landlords to sell their homes in blighted neighborhoods to middle- and working-class households. By decreasing the rate of absentee landlords and replacing them with households with greater incentives to

¹⁰⁹ According to the 2000 Census, the following large cities were comprised of a housing stock where over 20% of the homes were 2- 4 unit homes and they had poverty rates over 20%: Hartford and New Haven, CT, Fort Pierce, FL, Chicago, IL, New Orleans, LA, Lawrence and Springfield, MA, St. Louis, MO, Newark, New Brunswick, and Patterson, NJ, Albany, Buffalo, Newburgh, New York City, Rochester, and Syracuse, NY, Cincinnati and Cleveland, OH, Lancaster, PA, Providence, RI, College Station, TX, and Milwaukee, WI. Analysis of 2000 Census Data (on file with author).

Additionally, the following cities' have housing stocks whereby at least 15% of the homes are 2-4 unit homes: Oakland and San Francisco, CA, Fort Lauderdale, FL, Louisville, KY, Worcester, MA, Minneapolis, MN, Atlantic City, Jersey City, and Long Branch, NJ, Columbus, OH, Allentown, Harrisburg and Pittsburgh, PA, Charleston and Columbia, NC, San Marcos, TX, Salt Lake City, UT, Norfolk, VA, and Kenosha, WI.

The foregoing data relate to a cities housing stock and poverty rate as a whole. However, the proposed rent control plan need not be applied to an entire city. As pockets of poverty develop, rent control may be applied to specific neighborhoods or blocks within a city.

maintain and improve their homes, it is expected that these neighborhoods will improve and cause rent levels to rise. Poor tenants will face the “option” of paying more for higher quality housing or moving to neighborhoods with lower quality housing and lower rents. Undoubtedly, many tenants will move, either as a matter of choice or as a matter of force and will be replaced by higher income tenants.¹¹⁰ This could usher in a wave of gentrification that could place pressure on the longtime tenants to move. In order to avoid the displacement of the existing poor tenants, local legislatures have the option of adopting tenant protections applicable to the in-moving resident landlords.

Gentrification caused by the proposed rent control scheme can lead to the displacement of a blighted neighborhood’s residents in three distinct ways: 1) displacement of homeowners by higher income homebuyers, 2) displacement of low-income tenants by in-moving resident landlords, 3) direct and indirect displacement of low-income tenants by higher income tenants. Before I discuss each gentrifying pressure that causes displacement, I will give a brief introduction to the traditional process of gentrification and the kinds of homeowners I predict will purchase the homes from the absentee landlords. Understanding how gentrification happens and the expected composition of the neighborhood’s homeowners will help predict the impact that the proposed rent control scheme will have and what kinds of provisions will help reduce displacement.

1. Traditional Process of Gentrification

¹¹⁰ See e.g. Wallace Smith, *Filtering and Neighborhood Change* (1964), reprinted in *HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES*, (R. Montgomery, D. Mandelker, eds. 2nd ed. 1979) (stating that higher income tenants have greater housing intensive preferences for higher quality housing and the purchasing power to pay the resulting premium).

There is no consensual definition of gentrification but there are certain dimensions that appear consistent among the different definitions.¹¹¹ Peter Marcuse provides a clinical definition that draws particular attention to the social class aspect of gentrification:

“Gentrification occurs when new residents – who disproportionately are young, white, professional, technical, and managerial workers with higher education and income levels – replace older residents – who disproportionately are low-income, working-class and poor, minority and ethnic group members, and elderly – from older and previously deteriorated inner-city housing in a spatially concentrated manner, that is, to a degree differing substantially from the general level of change in the community or region as a whole.”¹¹²

The process of gentrification is usually slow at first, consisting of a few urban pioneers moving into a community where both housing quality and rent levels are low. These early gentrifiers, predominantly tenants and often artists,¹¹³ are termed “risk-oblivious” as they are willing to chance their personal safety in high crime neighborhoods and below standard buildings.¹¹⁴ The depressed neighborhood generally attracts progressively more pioneers until it eventually reach a tipping point at which time gentrification accelerates. Once a sufficient number of pioneers have entered the neighborhood and established neighborhood institutions (like bars, cafes or restaurants), stabilize the neighborhood, and change its perception, the “risk-averse” middle class then

¹¹¹ Lance Freeman, *Displacement or Succession: Residential Mobility in Gentrifying Neighborhoods*, 40 URB. AFF. REV. 463, 469-470 (2005) (Freeman highlights the common dimensions of the disparate definitions of gentrification. These characteristics include “(1) central city neighborhoods, (2) populated by low-income households that have previously experienced (3)disinvestment.” This causes an “(4) influx of the relatively affluent or gentry, and (5) an increase in investment.”).

¹¹² Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 20 J. URB. & CONTEMP. L. 198 (1985).

¹¹³ Freeman, *supra* note 110, at 474 (“Renters whose income may or may not be rising concomitantly with rental increases may be especially vulnerable to displacement under these circumstances.”); at 471 (“young artists and professionals who have relatively low incomes often pioneer gentrification”).

¹¹⁴ See Kerstein, *Stage Model of Gentrification, An Examination* (1990), 25 URB. AFF. Q. 620, 620-624 (1990).

overcomes its initial aversion and begins to move into the neighborhood.¹¹⁵ Once this occurs, the pace of gentrification accelerates as the previous, poorer residents are unable to financially compete with the higher income gentrifiers. As more poor people leave the neighborhood, it becomes progressively more attractive to risk-averse middle class individuals and the process of gentrification prevents low income tenants from finding affordable housing options within the neighborhood. Eventually, the median socioeconomic status of the residents increases and the class character of the neighborhood is transformed.

2. Likely Class Composition of Rent Controlled Home Purchasers

After rent control is enacted, a resident landlord will value any particular home more than an absentee landlord. Prospective resident landlords will outbid absentee landlords for the homes and will eventually come to own most, if not all, of the homes in the rent control zone.¹¹⁶ However, the kinds of resident landlords that can be expected to purchase these homes will not come from a random sample of homebuyers. Rather, I expect that that the purchasers will be the ones with the least aversion to moving into the blighted neighborhoods. Very likely, they will be emerging middle class households living in the same, similar, or nearby communities, as opposed to stable middle class

¹¹⁵ *Id.*, 621 (The risk-averse middle class “settle[s] in the neighborhood only after many other professional and managerial households have already located there and rehabilitated their homes substantially.”).

¹¹⁶ The rate at which homeownership changes hands from the absentee landlords to the resident landlords is completely within the discretion of the local legislature. If the rent ceiling for absentee landlords is slightly below the market rent level, it will only provide a slight incentive for absentee landlords to sell and the cost of the house may not be reduced enough for lower-middle class households to afford. In this case, the change from absentee landlord ownership to resident landlord ownership is expected to be very slow. However, if the rent ceiling for absentee landlords is set significantly below the market rent level, there will be a high incentive for landlords to sell as they would seek to avoid monthly operating losses. A basic tenet of efficiency analysis dictates that ownership of a resource should lie with the person who values it the most. After rent control is adopted, resident landlords across the board will value the property more than will absentee landlords.

households living in more peaceful and comfortable suburban settings.¹¹⁷ Since it is expected that middle class households will have the greatest aversion to moving into the neighborhood, they will value the home less than a household who already lives in the same or similar neighborhood.¹¹⁸ Although the empirical data does not exist, I speculate that the middle class's additional purchasing power (which would allow them to pay a higher price for the home) would not be sufficient to compensate for the decreased value they would assign to having to live in these homes. The homes will still be located within a *blighted* neighborhood and I expect that risk-averse middle class gentrifiers will be reticent about moving into this neighborhood before it is has been sufficiently "stabilized."¹¹⁹ As a result, I predict that emerging middle- and working-class households will place a greater value on the home and will not be out-bid by potential gentrifiers.

3. Displacement of Homeowners by Higher Income Homebuyers

After rent control is enacted and the resident landlord rate increases, it will take some time before the neighborhood significantly improves. But if rent control is successful at improving the perception, as well as the health and stability, of the blighted neighborhood, it is expected that demand for homes will increase, even among the risk-averse middle class.

¹¹⁷ Kerstein, *supra* note 113, at 622 (in his study, author finds a "steady increase in the percentage of in-movers from suburban [communities]." He states that "increasing proportions of in-movers will be from the suburbs than from other neighborhoods within the city.").

¹¹⁸ Kerstein, *supra* note 113, at 622 (stating that "financially better-off families, more so than individuals and couples, tend to avoid neighborhoods that they perceive as risky.").

¹¹⁹ This prediction is consistent with the analysis of proponents of the Stage Theory of gentrification. See Kerstein, 622 (suggesting that stable, middle-class households will not move into the gentrifying neighborhood until it has been sufficiently "suburbanized").

If there is a high percentage of resident landlords in the neighborhood, it will be very difficult for gentrification to displace the residents. The displacement of homeowners as a result of gentrification is very different than that of tenants.¹²⁰ Regarding homeownership, as the neighborhood improves and becomes more appealing to potential gentrifiers, it will also become more appealing to the resident homeowners and may induce them to remain in the neighborhood.¹²¹ In fact, there is evidence suggesting that rather than causing displacement, gentrification causes households to remain in the neighborhood for longer periods of time so as to take advantage of the improved conditions.¹²²

The existing homeowners who have invested significant time and energy into maintaining and improving their homes and thereby stabilizing the neighborhood will have developed an attachment to both the particular house and the neighborhood as a whole. In traditional instances of gentrification, potential middle class in-movers need not overcome the strong resistance that would result from high resident homeowner rates. Instead, it is relatively easy for them to purchase homes or condominiums from developers who have in turn purchased the homes from absentee landlords or from the city via tax sales. When homes are held solely as investment properties, it is much easier and cheaper to negotiate a purchase because the owners have not developed a household

¹²⁰ Freeman, *supra* note 110, at 476. (“renters would probably be more susceptible to displacement pressure, because they have much less control over their unit than owners.”).

¹²¹ It may be argued that in a gentrifying neighborhood, the increased real estate taxes caused by higher home values will displace homeowners who cannot afford the increase. However, given the housing stock required for this kind of rent control, any increase in real estate taxes will likely be offset by an increased rent that resident landlords can charge.

¹²² Freeman, *supra* note 110 (author’s study based on empirical data compiled in a neighborhood subject to traditional rent control. As a caveat, the existence of rent control, and not the gentrifying conditions, may be the primary cause of the longer resident tenures.).

interest in the home.¹²³ As the neighborhood improves and attracts more gentrifiers, the remaining homeowners will have an even greater incentive to stay so as to enjoy the benefits of the upgraded neighborhood.¹²⁴ Therefore, it is unlikely that gentrification in the form of homeownership will displace the existing resident landlords.

4. Displacement of Low-Income Tenants by In-Moving Resident Landlords

Displacement for the neighborhood's poor tenants, however, is a very legitimate concern. The most direct way in which low-income tenants will be displaced is with respect to the in-moving resident landlords. When the homes are purchased from the absentee landlords, the new homeowners will need to occupy one of the apartments to establish themselves as resident landlords, the prerequisite for charging higher rents. This will cause the new owner to evict at least one of the current tenants and move into the apartment they vacate. The displacement of the households who will be replaced by the new homeowners is an unfortunate yet unavoidable consequence of the proposed rent control scheme. In order to achieve the de-concentration of poverty, some of the poor residents must be forced to move. Without building more rental units, in order to increase the number of resident landlords, the number of tenants must decrease.

This presents a problem for advocates and communities concerned about the displacement of the poor. Since the neighborhoods to which the proposed rent control scheme is applied would be the poorest and most blighted areas, the rents of the outgoing

¹²³ See Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982) (arguing that certain property, such as a wedding ring, a portrait, or a house, have a value beyond what the tradition market will determine. "These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world." If these items are lost, there is perhaps no amount of money that can replace them.).

¹²⁴ Freeman, *supra* note 110.

tenants would tend to be relatively inexpensive. It is unlikely that these tenants will be able to find apartments of comparable quality at equal or lower rents in other neighborhoods. With the poor already spending a high percentage of their income on housing, even a slight increase in rent could have a significant impact on their economic stability.

Depending on the level of concern on the part of the community and the local lawmakers, the rent control scheme could include a provision for a modest subsidy to the dislocated poor. For instance, the ordinance could require a one-time payment to the tenants replaced by the incoming homeowners. The cost of this one-time payment can be capitalized into the cost of the house and paid directly to the tenant by the new homeowner. Additionally, the community can work towards enabling some of the neighborhood's tenants to purchase the homes.

An interesting dynamic will play itself out when the incoming landlords replace the outgoing tenants. It is likely that the incoming homeowners will be moving from many different parts of the town, city and state. However, it is certain that all of the outgoing tenants will be moving from the same neighborhood. These outgoing tenants will not necessarily fill the vacancies left by the incoming homeowners in their old neighborhoods. Since the new homeowners will be slightly wealthier and have higher or more stable incomes, they will have higher housing-specific preferences¹²⁵ that the poorer tenants cannot afford. This will trigger the filtering process as the vacancies created by the new homeowners will be filled by the class of tenants with housing-specific preferences one notch below them. In turn, each vacancy in higher quality housing will

¹²⁵ This means that higher income individuals will prefer and seek out higher value homes and rental units. *See supra* note 109.

be filled by tenants from a lower income class who will filter up and upgrade their housing conditions. Through this upward filtering process, the vacancies left by the new homeowners in their old neighborhoods will trickle down and eventually result in an upgrade in housing quality for poorer tenants.

As the poor filter up into better quality housing, they will become dispersed among more stable neighborhoods with higher rates of resident homeowners. But to the extent that the poor are simply re-concentrating in another part of the city, rent control should be applied to that new neighborhood. At a meta-level, if this policy is employed by all cities and towns, the poor will become dispersed throughout society. The neighborhood-level interactions between the poor and higher income households will prevent concentrations of poverty from materializing and can produce a wide range of positive social results such as reduced crime, enhanced maintenance, and improved educational outcomes.

This process may have an additional benefit. Displacement in traditional gentrification entails the replacement of existing community residents by in-movers from wealthier communities and may lead to tension and hostility between the older, poorer residents and the newer, wealthier ones. However, as mentioned above, it is unlikely that the proposed rent control scheme will encourage a sudden flurry of in-movers from wealthier communities into the blighted neighborhood because the risk-adverse, middle class individuals would not normally be willing to move into the neighborhood until it has been substantially stabilized by the pioneers. A rapid change in the socioeconomic class composition of a neighborhood might lead to tensions that have been referred to as

“class warfare.”¹²⁶ However, a change in homeownership by a class of landlords whose cultural and socioeconomic makeup is relatively similar to that of the existing tenants will allow for a smoother, healthier transition.

5. Displacement of Low-Income Tenants by Higher Income Tenants

If the neighborhood improves as a result of an increased homeownership rate, demand for rental units will likely increase, not only among the young, middle class but among the poor as well. The desire to live in a healthy and stable neighborhood will push prices upward especially since supply will likely not keep pace with the increased demand.¹²⁷ The higher potential rents will cause landlords to prefer tenants willing to pay the highest premium for the better conditions. Not only do wealthier people have a higher initial preference for housing but they are also financially able to outbid their less wealthy counterparts.¹²⁸ This will exert a not too subtle pressure that over time will push the poorest families out and change the character of the neighborhood.

Similarly, as the neighborhood improves, the resident landlords may come to view the remaining tenants from the pre-rent control era as incompatible with the new neighborhood makeup. The activities that were tolerated under an absentee landlord, such as late night noise, criminal activity, or drug use, may be at odds under the more watchful eye of a resident landlord. Put more offensively, the new emerging middle class

¹²⁶ Ian Donnis, *Class Warfare in Olneyville: The Strains of a Worsening Statewide Housing Crisis Erupt on Providence's West Side*, THE PROVIDENCE PHOENIX, May 26-June 1, 2006, at 4; *See also*, Nicole Stelle Garnette, *Review: Save the Cities, Stop the Suburbs?*, 116 YALE L. J. 598, 611 (2006) (“Many inner-city residents would be happy not to have new neighbors, new barriers to their views, and new competitors for parking spaces.”).

¹²⁷ Andrejs Skaburskis & Michael B. Teitz, *The Economics of Rent Regulation*, in RENT CONTROL, *supra* note 3, at 58 (noting the inability to of the housing market to meet the large spikes in demand for low-priced housing in the short term).

¹²⁸ *See* Smith, *supra* note 109.

homeowners may view the characteristics and activities of the poor with fear and hostility. This will also exert pressure to push the poorest families out of the neighborhood.

Depending on the view the local legislature takes of the poor, it can either be content that rent control will push the “nefarious” element out of the neighborhood or it can enact a more comprehensive rent control scheme that protects the most “vulnerable” element from displacement. If the locality chooses to enact additional tenant protections, they will have to guard against indirect displacement caused by increases in rent and against direct displacement caused by evictions.

The challenge of discouraging and preventing the displacement of the poor is in finding the right balance of power between the landlord and tenant. If landlords are able to arbitrarily increase the monthly rent or if they are able to freely evict the tenants, too much power will rest on the shoulders of landlords and the low income tenants may be replaced by higher income ones. On the other hand, if landlords are not able to increase the rent or if they cannot evict the tenants, the balance of power may swing too far in favor of tenants by converting them into virtual life tenants. The key is in finding a workable balance of power between each group, a balance that traditional rent control has had difficulty finding.

To settle the balance of power between landlords and tenants, many jurisdictions have adopted the “good cause” requirement. This requirement has been adopted by the federal government (public housing¹²⁹) and many jurisdictions (traditional rent control¹³⁰)

¹²⁹ 42 U.S.C. § 1437d(l) (“Each public housing agency shall utilize leases which... require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause”).

to purposefully make it difficult for landlords to carry out evictions. Under “good cause” provisions, evictions are only allowed when the tenant has breached a provision in his lease. However, this swings the balance of power far onto the side of the tenant, a result that is equally undesirable as it makes it extremely difficult to ever evict a tenant.¹³¹

To address this conundrum, one possible solution is that the in-moving resident landlords be subject to a gradually increasing rent ceiling.¹³² When the resident landlord purchases the home from the absentee landlord, the resident landlord should be able to charge market rents for each rented unit. However, once there is turnover in any one of the units, the graduated rent scheme should go into effect. For instance, the rent ceiling could be set at a progressively higher level commensurate with the tenant’s length of tenure. If the ceiling in Year 1 is \$600, the ceiling in Year 2 should be, say, \$650, in Year 3, \$700, and so on. When the current tenant vacates the apartment and a new tenant moves in, the landlord must however return to the Year 1 ceiling. This will bring the bargaining leverage of landlords and tenants to a tolerable balance in which they both

¹³⁰ Cities that have tenant protections built into their rent control laws commonly include “good cause” eviction provisions. *See e.g.* CITY OF PALO ALTO, CA, RENT STABILIZATION ORDINANCE § 13 (April 1988) (prohibiting eviction of tenants in rent stabilized units unless a specifically enumerated condition is met).

¹³¹ “Good cause” evictions are extremely difficult to carry out. In order to evict under these conditions, the landlord must allege and prove a lease violation on the part of the tenant. In practice, this turns out to be a lot more difficult than expected. The court process is much more complicated for “good cause” evictions than for non-payment of rent cases. A landlord seeking to carry out the eviction on his own will find it extremely difficult to handle potential discovery requests, motions for summary judgment, the rules of civil procedure, the rules of evidence, and then, they must overcome their burden of proof. A task difficult in its own right but more so if the tenants manages to find legal representation.

The landlords of course have the option of hiring an attorney. However, it is the author’s personal experience that these cases are often burdensome for the attorney and therefore costly for the landlord. If the case eventually goes to trial, securing all of the witnesses and evidentiary material proves to be a tall order for landlords and their attorneys and often, the evictions do not succeed. Therefore, providing a “good cause” provision to protect tenants from displacement would swing the balance of power too far in favor of tenants by making it extremely difficult for landlords to evict.

¹³² Many localities allow landlords to increase controlled rents to keep pace with inflation. This current recommendation is independent of these yearly adjustments for cost of living increases.

have incentives to create a long-term peaceable living arrangement, a condition that is vitally important for enhancing a neighborhood's stability.

Landlords will have a financial incentive to have their tenants live in the apartment for long periods of time because as time goes by, the landlord will be able to charge progressively higher rents. However, after enough time passes and the landlord is able to charge market rents or higher, it can be expected that the landlord will elect to charge rent slightly below the prevailing market level.¹³³ This would be for the purpose of encouraging tenants to remain in the apartment because he would wish to avoid the tenant vacating and having to return to the Year 1 base rent level.

Landlords would however, have the all-important ability to evict tenants, even without needing "good cause." Since landlords will have to live alongside their potentially unwelcome, or even unruly, tenants, it is important to give landlords the power to evict. However, the thought of reverting back to the Year 1 rent ceiling will militate against the landlord capriciously and arbitrarily evicting the tenants.

Tenants would similarly benefit by the graduated rent scheme. Principally, since landlords would financially benefit by having their tenants remain in the apartment for long spans, they would offer incentives in the form of either higher quality services or lower rents for the tenants to stay. Not only would this improve the maintenance and physical conditions of the apartments but it would induce tenants to remain in the neighborhood for longer periods. Over time, tenants can be expected to invest greater

¹³³ Tenants may acquire a personal attachment to the apartment and may be willing to pay fair market value rent for the unit. However, this personal preference (which cannot be expected to apply to all tenants with the same force) will be balanced with the landlord's risk of dropping down to the Year 1 base rent. On average, it can be expected that rent levels in the rent controlled neighborhood will be slightly lower than those in other, non-controlled neighborhoods.

energy towards building social relations in the neighborhood and to invest more time into improving the long term health of the neighborhood and its institutions.¹³⁴

The final method in which the existing poor tenants may find themselves displaced is through eviction notices from either the absentee landlord or the in-moving resident landlord. It is plausible that many risk-averse middle class members will foresee the change that a neighborhood will experience under rent control and thereby purchase homes in a blighted area. The potential gentrifiers would reason that if there is enough demand for these homes by fellow middle class members, they could all purchase the homes, evict the residents, and change the character of the area virtually overnight. Even more realistic however is the prospect that absentee landlord will perceive a greater value if the home is sold free of any tenants. Perhaps the absentee landlord can command a higher price by attracting resident landlords who prefer to fill the house with their own tenants. The additional purchasing power of the stable middle class may allow them to pressure absentee landlords to clear the area of poor tenants as a precondition of purchase.

¹³⁴ For this scheme to work properly, the local lawmakers must be careful to set the Year 1 rent ceiling for in-moving resident landlords at an appropriate level and be intentional about the yearly rent increases. The Year 1 rent ceiling should be sufficiently lower than the market rents to provide an adequate level of deterrence against arbitrary evictions. If the Year 1 rent ceiling is too close to actual market rents, the new landlords will have a great deal of bargaining leverage because reverting back to the Year 1 rent level will not be a significant burden. However, the Year 1 rent ceiling cannot be too much lower than the fair market rent level because it will either give too much power to the tenants or cause the landlords to suffer operating losses.

Next, the yearly, gradual rent increases should also be carefully considered by the local lawmakers. The pace at which the rent ceilings will reach market rent levels will determine how much the new landlords will be deterred from evicting tenants and how much bargaining leverage the tenants will have. The Year 1 rent ceiling and the gradual, yearly increases will also determine the level of rent charged to long term residents. Even when the rent ceiling exceeds the fair market rent level, landlords will likely charge slightly below this amount in order to encourage their tenants to stay. The amount charged below the fair market value will be determined by how strongly the landlord will seek to avoid dropping to the Year 1 rent level.

Last, this scheme should also include an exception for tenants who are evicted for good cause. If the tenant breaches his or her lease, it would be unfair and counterproductive to make the landlord return to the Year 1 base level.

There would then be a serious risk that the new resident landlords would prefer to forego the initially high rent ceiling and evict the current tenants, never minding the fact that they would have to fall to the lower rent ceiling, Year 1 level, required for new tenants. If the potential gentrifiers have sufficiently high incomes, they would be able to absorb the decreased rental income and pay a higher percentage of the mortgage payment from their own non-rental income. Similarly, existing absentee landlords who foresee this process may find it profitable to evict all of the tenants and sell the empty home to the middle class in-moving homebuyers who will fill the home with higher income tenants of their choice.

To avoid rapid and wide-scale neighborhood displacement, the rent control scheme may also include an additional, initial protection for tenants. For instance, there may be a penalty imposed on any landlord who evicts a tenant within, say, one year of purchasing or selling the home (assuming that the tenant was not evicted for “good cause”). This will provide additional deterrence against sellers evicting all tenants before the home is sold or higher income homebuyers evicting their tenants once the home is purchased.

For healthy gentrification to occur, local legislatures should adopt provisions that ensure that the rent control plan also benefits the tenants who actually live in these neighborhoods. This will be best accomplished by encouraging that the homes be purchased by individuals who not only commit to live in the neighborhood but also commit to live amongst the current residents.

6. Healthy Gentrification

The proposed rent control scheme has the goal of transforming blighted communities into healthy and stable living environments through the introduction of middle- and working-class homeowners. However, the end goal is not merely to improve the neighborhood but rather to de-concentrate the poor and bring them in closer contact with mainstream society. If the poor are displaced and they resettle in other neighborhoods of low-quality housing and high poverty, the problem will not be solve but merely shifted. This is unequivocally not the goal of this plan!

In an effort to transform a “vicious cycle” of poverty and dependence into a “virtuous cycle” of stability and independence, local legislatures should adopt laws that *develop* people’s abilities to contribute to society. Blighted inner city neighborhoods are riddled with personal, social, and economic underdevelopment in a myriad of different forms. People fail to develop the education and expertise required to advance in society, communities fail to develop supportive, close-knit social relations, and local economies fail to develop businesses that are capable of sustaining real growth.

Gunnar Myrdal explains the process of underdevelopment by describing the phenomenon of “circular causation” and applying it to the problem of underdevelopment in Southeast Asia.¹³⁵ Drawing from Rangar Nurkse’s theory of the “vicious cycle of poverty,”¹³⁶ Myrdal reasons that the cause of a country’s state of poverty is its own state of poverty. The circular reasoning goes as follows:

a poor man may be weak; being physically weak, his working capacity may be low which means that he is poor, which in turn means that he will not have enough to eat; and so on. A situation of this sort, relating to a country as a whole, can be summed up in the trite proposition: ‘a country is poor because it is poor.’¹³⁷

¹³⁵ Myrdal, *supra* note 89, at 1844.

¹³⁶ Rangar Nurkse, PROBLEMS OF CAPITAL FORMATION IN UNDERDEVELOPED COUNTRIES 4 (1953).

¹³⁷ Myrdal, *supra* note 89, at 1844.

The same can be said about local American communities. Without high homeownership rates, residents of blighted neighborhoods are surrounded by higher rates of poor households. With high poverty rates, social problems increase dramatically and without a strong middle- and working-class presence, residents are further isolated from the mainstream. This prevents residents from acquiring the education and skills required to overcome poverty and only serves to deter prospective homebuyers from moving into the neighborhood. Thus, fewer homeowners are attracted to the neighborhood and poverty increases. The downward spiral continues!

The ultimate goal for policy advocates is to intervene at a given point in the “vicious cycle” and convert it into a virtuous one that creates “cumulative upward movement” in the living conditions of the poor.¹³⁸ It is important to single out the many links in the chain of causation that compose and perpetuate the cycle of poverty and determine the benefits and costs of intervening at any particular point. Special consideration must be given to the interventions that positively influence many other links down the chain of causation.

Advocates for the poor have long sought to address the persistent underdevelopment in American low income communities by focusing on a number of local strategies. These strategies have included providing greater resources for education, making funds available for economic development, and subsidizing the cost of housing. Each of these strategies has had generally positive results in terms of improving the immediate condition of the poor but have had mixed levels of positive and negative results in addressing the long-term fundamental causes of poverty. These policy interventions have not addressed the root causes because they have failed to develop the

¹³⁸ Myrdal, *supra* note 89, at 1844-47.

poor's capacity to *determine their own fate* at the local neighborhood level.¹³⁹ Without this kind of effect, the “vicious cycle” will never be converted into a “virtuous” one.

As I argue in Part I, reintroducing middle- and working-class households into blighted neighborhoods, will not only improve the regular maintenance and structural integrity of the homes but it will also socialize the poor by helping them develop language, attitude, education, and job-related skills required to succeed in mainstream society. I speculate that this will occur in an infinite number of ways; I will discuss a few brief and tangible examples. First, resident landlords tend to reside in the same unit five (5) times longer than tenants¹⁴⁰ and will generally maintain their homes in better conditions than absentee landlords.¹⁴¹ Their personal and economic interests in the home and the neighborhood, along with their longer tenure and better maintenance, also makes homeowners better able to monitor and sanction deviant behavior of neighborhood children.¹⁴² These homeowners will have a lower tolerance for people who show a destructive disregard for the aesthetic quality of the neighborhood and will refuse to permit littering and graffiti on their property. They will be generally able to keep a more watchful eye than absentee landlords. The cumulative effect of an entire neighborhood of homeowners displaying the same intolerance will help socialize others to the antisocial

¹³⁹ Kennedy, *supra* note 106, at 74 (“Although we are mainly preoccupied with the welfare outcome for the particular subcategory of poor tenants, we need to recognize at the outset that this group plays a distinctly subordinate role in generating the neighborhood changes that largely determine its fate.”)

¹⁴⁰ NATIONAL ASSOCIATION OF REALTORS, SOCIAL BENEFITS OF HOMEOWNERSHIP AND STABLE HOUSING 7-8 (January 2006) available at <http://www.columbusrealtors.com/Img/pdf/2455.pdf> (Although the report cites other possible explanations for the increased mobility rate among renters, such as relative youth and marital status, the report nonetheless concludes that homeownership has a statistically significant impact on lowering the mover rate. Additionally, the mover rate is enhanced twofold for households living in poverty.); see also William M. Rohe, et al., *The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY 21(October 2001).

¹⁴¹ See *supra* note 77.

¹⁴² Dietz, *supra* note 105, at 4 (“[D]ue to the financial stake in community conditions, homeowners are more likely to monitor and correct socially deviant behavior of children, and perhaps more importantly, adolescents.”).

nature of this activity and will deter future occurrences. Such care and maintenance exhibited by resident landlords will establish the neighborhood's norm and will place social pressure on neighbors to conform.

Also, middle- and working-class households provide models of traditional and successful employment habits.¹⁴³ The effects on the youth of being surrounded by a community full of employed adults is immensely difficult to measure. However, if routine work for the majority of the neighborhood's adults develops into the norm to which the youth become accustomed, it will be a model for them to pursue as they consider whether, when, and how to enter the workforce.¹⁴⁴ This does not necessarily mean that they will pursue or find stable jobs, but it does mean that they will be introduced to a model that reflects a mainstream goal.¹⁴⁵ As Scanlon notes, "the presence of stable working households will provide role models to central-city residents that are expected to reinforce mainstream values and behavioral norms regarding education, employment, and family structure."¹⁴⁶ Additionally, and perhaps most importantly, the

¹⁴³ See *supra* note 46.

¹⁴⁴ Wilson, *supra* note 9, at 60-61 ("In neighborhoods in which nearly every family has at least one person who is steadily employed, the norms and behavior patterns that emanate from a life of regularized employment become part of the community gestalt.").

¹⁴⁵ Schill & Wachter, *supra* note 14, at 1289 ("...children growing up in neighborhoods with few employed role models develop weak attachments to the labor force. Lacking employment opportunities and the appropriate socialization to seek work, youths frequently engage in deviant or illegal activities to earn income and gain status, thereby further distancing themselves from middle-class norms. These behaviors are reinforced by peer groups. Activities that are likely to assist them in obtaining employment and social mobility, such as graduating from high school, are stigmatized rather than valued.").

¹⁴⁶ Quercia & Galster, *supra* note 40, at 417. See also, Wilson, *supra* note 9, at 60-61 ("Inner-city social isolation also generates behavior not conducive to good work histories... [T]he less frequent the regular contact with those who have steady and full-time employment (that is, the greater the degree of social isolation), the more likely that initial job performance will be characterized by tardiness, absenteeism, and, thereby low retention.").

presence of employed individuals helps connect the unemployed to job opportunities that are advertised primarily by word of mouth.¹⁴⁷

Last, the improvement of education outcomes is ultimately what will determine whether residents of blighted neighborhoods ever break the chains of persistent poverty. It is believed that children are the main beneficiaries of mixed income housing arrangements as their interactions in the playground or elsewhere will help them develop social ties with children from other social classes.¹⁴⁸ The presence of middle income households is expected to provide an anchor that deters a culture of ignorance from developing whereby success in school is looked down upon.¹⁴⁹ Additionally, for the emerging-middle class families who decide to send their children to public schools, the greater public resources that this voting group can leverage can produce benefits that will benefit all children.

While many inner city reform measures focus on the need to directly improve the performance of public schools or to jump-start economic development, it is important to remember the central idea of Wilson's "concentration effects" thesis. To Wilson, the structural transformation of the social, economic, and demographic composition of the inner city leaves the poor isolated from the mainstream of society¹⁵⁰ and this isolation prevents the "development of cognitive, linguistic, and other educational and job-related

¹⁴⁷ Quercia & Galster, *supra* note 40, at 417 (stating that adults with stable jobs may also provide information about employment opportunities to their neighbors); Wilson, *supra* note 9, at 60 ("Inner-city isolation makes it much more difficult for those who are looking for jobs to be tied into the job network. Even in those situations where job vacancies become available in an industry near or within an inner-city neighborhood, workers who live outside the inner city may find out about these vacancies sooner than those who live near the industry because the latter are not tied into the job network.").

¹⁴⁸ Smith, *supra* note 34, at 10 ("Because interaction between children [in mixed income developments] is more likely than between adult residents, there is a greater chance of significant interaction and positive benefits for children.").

¹⁴⁹ Schill & Wachter, *supra* note 14.

¹⁵⁰ Wilson, *supra* note 9, at 20-62.

skills necessary for the world of work.”¹⁵¹ If the poor are socially integrated at the neighborhood-level with middle- and working-class groups, they will develop the skill and attributes that will allow them to determine their own fates. And once the poor genuinely have this ability, it will positively impact many links down the chain of causation. This is precisely what is called a “virtuous cycle” and this is precisely what I call “healthy gentrification.”¹⁵²

Protecting the poor from displacement will allow them to directly benefit from whatever neighborhood improvements are realized as a result of the proposed rent control scheme. Even without the additional protection, the poor would receive a benefit through the reduction of concentrations of poverty; however, I imagine that this process will take some time to realize and many poor people would be hurt by displacement in the interim. The poor’s displacement, aside from that caused by in-moving homeowners, should and can be minimized by local lawmakers. The proposed tenant protections align landlords’ and tenants’ incentives so that each party’s rational, selfish decisions will produce a healthy and stable neighborhood.

C. OTHER PROVISIONS

The proposed rent control plan may include a number of provisions that have been effectively employed by other rent control ordinances. It is advisable that the rent ceiling applied to absentee landlords provide for a workable way to allow yearly rent adjustments, in case an absentee landlord chooses to retain ownership of her property.

¹⁵¹ *Id.*, at 57.

¹⁵² Under the proposed plan, perhaps liberal and conservative interest can converge. For liberals, the poor will be better able to develop the attitudes and expectations that allow them to more fully participate in the broader society. For conservatives, the poor may become less reliant on public support and better able to provide for themselves.

This would help avoid the legal challenges encountered by other localities to their rent control ordinances.¹⁵³ Also, all large housing developments, including public and federally subsidized housing units, should be excluded.¹⁵⁴ This will prevent owners of these buildings from suffering a disproportionate impact, given their large number of units, and will quell the chilling effect this may have on the construction of new, large housing developments.

The local legislature may also consider adopting condominium conversion laws that restrict owners' abilities to take an apartment off the rental market by convert it into a condominium. On the one hand, condominium conversions may reduce the supply of available rental units but on the other hand, they may attract middle-income homeowners (condo-owners). Each locality should assess whether this provision and its anticipated consequences would help further its goals.

Also, localities may wish to exclude all new construction of residential units. The biggest criticism and, accordingly, the biggest drawback to traditional rent control is that it limits the supply of residential units produced by the market. Since traditional rent control laws make the rental market less profitable, they deter the construction of new units.¹⁵⁵ Additionally, since traditional rent control ordinances are usually adopted to

¹⁵³ See *Birkenfield v. City of Berkeley*, 550 P.2d 1001 (1976); see also *Barton*, *supra* note 79, at 92 (explaining the legal challenges that delayed the implementation of rent control in Berkeley, CA.).

¹⁵⁴ For example, COLLEGE PARK, MD, RENT STABILIZATION ORDINANCE, § 127-3, specifically excludes all "Apartment Buildings," defined as: "A building containing three or more dwelling units, each of which contain one or more rooms suitable for occupancy as a residence and that contain a kitchen and bathroom facilities. It does not include a single-family residence, or a duplex, triplex or quadraplex...."

¹⁵⁵ This happens to be one of the strongest criticisms against rent control. See *Downs*, *supra* note 1, at 45-52; *Epstein*, *supra* note 1, at 767; Timothy P. Terrell, ed., *Edited Transcript of Proceedings of the Liberty Fund Inc. Seminar on the Common Law History of Landlord-Tenant Law*, 69 CORNELL L. REV. 623, 677 ("From an empirical point of view, the one bit of evidence that I have seen, which is very compelling, is a series of building permits issued in Washington, D. C., right before and after rent control--something like three to four thousand down to one or two hundred."); However, many authors have concluded that empirical evidence shows very little support for the huge deterrence of new construction by rent control. See e.g., Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101

address a shortage of affordable housing,¹⁵⁶ a policy that deters construction will only exacerbate the existing shortage. If the locality believes that applying rent control to newly constructed homes will deter construction, this provision should also be considered.

Another potential provision entails the enforcement of the implied warranty of habitability or the minimum housing code.¹⁵⁷ If the locality wishes to aggressively ensure that each home within the rent control zone will comply with minimum housing quality standards, it may give code enforcement priority to these homes. Since homes in this neighborhood would tend to be of the lowest quality, many of their apartments may not meet minimum housing code standards. Including this provision would allow potential purchasers to capitalize the expected maintenance expense into the value paid for the home.¹⁵⁸

If the proposed rent control plan is successful at reintroducing a middle- and working-class homeowner presence in blighted neighborhoods and thus de-concentrating the poor, it can be applied to new neighborhoods as pockets of poverty develop. Potentially, the poorest residents will be displaced by the proposed rent control scheme

HARV. L. REV. 1835, 1844-45 (1988); W. Dennis Keating, *Commentary on Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 1223, 1229 (1989); Kenneth K. Baar, *Would the Abolition of Rent Controls Restore a Free Market?*, 54 BROOK. L. REV. 1231, 1232 (1989); Guy McPherson, *It's the End of the World as We Know It (And I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 FORDHAM L. REV. 1125, 1160-61 (2004).

¹⁵⁶ See e.g., Rent Stabilization Ordinance of the City of Los Angeles, Chapter 15, §151.01 (“There is a shortage of decent, safe and sanitary housing in the City of Los Angeles resulting in a critically low vacancy factor.”).

¹⁵⁷ See Note, *Reassessing Rent Control*, *supra* note 154 (arguing that enforcement of the warranty of habitability will deter landlords in gentrifying markets from under-maintaining units).

¹⁵⁸ Localities should consider the effect this would have on their ability to attract resident landlords. If the local decision makers believe that this would significantly discourage people from purchasing these homes, then this provision should be left out.

and will seek apartments in other, nearby low-income neighborhoods.¹⁵⁹ As local policy makers notice a neighborhood either “filtering up” or experiencing a “downward tailspin” either as a result of or independent of the rent control plan in another neighborhood, rent control could then be applied to this new neighborhood. The goal is to eradicate concentrations of poverty wherever they may have been present and wherever they may spring into existence.

Poor people’s myriad problems will not be solved through the proposed rent control scheme, but they may certainly be alleviated. Over time, if rent control is applied to pockets of poverty as they develop, it can have the effect of dispersing the poor throughout well-maintained neighborhoods with middle income homeowners rather than packed and concentrated within crumbling neighborhoods of predominantly poor tenants and absentee landlords. Dispersing the poor throughout society can help collectively socialize and better integrate them into the fabric of mainstream American life and at the same time, reduce the social costs created by concentration effects.

III: POTENTIAL BARRIERS AND ADVERSE CONSEQUENCES

There are a number of serious questions and potential barriers that the proposed rent control scheme must overcome. In this section, I will confront criticisms particular to the proposed rent control scheme as well as the classic criticisms leveled at traditional rent control.

¹⁵⁹ See Hirsch, *supra* note 23, at 92. (“The evidence is overwhelming that people conduct their housing searches in limited areas; that they are most aware of the housing available near their current residences; and that their existing location is the single most critical factor in determining their new location – and each of these findings seems to hold with even greater force for low-income households, renters and minorities than others.”).

A. ECONOMIC CRITIQUES AND BARRIERS

1. Deterred New Construction and Decreased Supply of Rental Housing

The biggest criticism to traditional rent control schemes has been that over the long term they actually hurt the people they are intended to help.¹⁶⁰ They do this by creating disincentives for people to invest in the construction of new housing units. To address this concern, previously-enacted rent control schemes have generally exempted newly constructed rental units and at least one has excluded substantially rehabilitated units.¹⁶¹ The justification for these exemptions is that an ordinance that makes investment in housing construction less profitable will deter investors from engaging in this activity.¹⁶² And since traditional rent control schemes are usually adopted to address a shortage of affordable housing,¹⁶³ a policy that reduces the rate of new construction will only exacerbate the existing shortage.

Although I suggest that all newly constructed units be excluded from rent control, upon a closer examination, it may not make a significant difference over the long term to exclude them or not. The main impact of the proposed rent control scheme will be to cause a shift in ownership from absentee to resident landlords. No change in the quantity of housing units would necessarily occur as a result of this change. Although it is reasonable to predict that the value of homes will slightly decrease, it is unlikely that it will have a noticeable effect on the production of new units.

¹⁶⁰ See *supra* Note 1.

¹⁶¹ BERKLEY, CA., BERKLEY MUNICIPAL CODE (RENT STABILIZATION AND EVICTION FOR GOOD CAUSE ORDINANCE) §13.76.050(I) (2007); EAST PALO ALTO, CA., (RENT STABILIZATION) ORDINANCE 076, §(5)(E) (2007); OAKLAND, CAL., NEW CONSTRUCTION ORDINANCE NO. 12538, §§8.22.030(A)(5)-(6) (2007).

¹⁶² See *supra* note 1.

¹⁶³ See *e.g.*, *supra* note 155.

Since rent control will limit those who find purchasing rental property financially attractive to only prospective *resident* landlords, demand for these homes may decrease as a result of the smaller pool of potential purchasers and their lower anticipated purchasing power. If this were the only effect, it would cause the value of homes, both new and old, to decrease and would thereby deter new construction. However, it is reasonable to believe that the decreased demand from absentee landlords will be offset by the increased demand by resident landlords. If raising the resident landlord rate, and therefore the middle income homeowner presence in a neighborhood, will have positive effects on the community, it will cause an increase in the people willing to live in the neighborhood. The increased demand from prospective resident landlords will mitigate or offset the decreased demand from prospective absentee landlords. There will be little or no decrease in the value of the home and thus little or no deterrence from constructing new units.

Furthermore, since rent control should only be adopted in the most blighted neighborhoods, it is unlikely that it will deter construction because there is very little private construction occurring in these neighborhoods to begin with.¹⁶⁴ Without costly government subsidies, it is not cost-effective to construct housing for the poor.¹⁶⁵ Therefore, very little, if any, new construction in blighted neighborhoods will be deterred. Rather, over the long-term, improved maintenance, and a better outlook for the

¹⁶⁴ *Smith, supra* note 111; *see also*, REPORT OF THE HOUSING CRISIS TASK FORCE FOR THE LOS ANGELES CITY COUNCIL 14 (2000) available at <http://housingcrisisla.ucla.edu/Recommendations/Findings.pdf> (last viewed on July 16, 2006) (“...land and building costs are so expensive that market-rate developers can’t construct new rental housing with rents under \$1,000 per month.”).

¹⁶⁵ Note, *Reassessing Rent Control, supra* note 154, at 1836 (1988); Phillip Weitzman, *Economics and Rent Regulation: A Call for a New Perspective*, 13 REV. L. & SOC. CHANGE 975, 981 (1984-85).

neighborhood brought about by a greater middle- and working-class homeowner presence will likely increase demand for new construction in these neighborhoods.

Under traditional rent control, the effects on neighboring communities must also be considered as it may affect housing production in areas that have not yet been subject to rent control. If developers fear that rent control will be extended to other neighborhoods, it may have a chilling effect on housing construction in those neighborhoods.¹⁶⁶ However, this fear should not have an appreciable effect under the proposed scheme for the same reasons offered above. Namely, since rent control should be targeted only to blighted neighborhoods, little if any new construction will be deterred; in fact, it may even increase demand and encourage more new construction.

2. Inefficiencies Caused By Over- and Under-Consumption of Housing

Another criticism of traditional rent control is that it leads to inefficiencies because it encourages tenants to both over- and under-consume housing.¹⁶⁷ Tenants in traditional rent controlled apartments are said to over-consume housing in the sense that they may live in apartments beyond their means. Traditional rent control reduces rent levels to the point where tenants live in apartments whose demand, and therefore price, is higher than the tenant can bear under normal market conditions. The rent ceiling allows

¹⁶⁶ Epstein, *supra* note 1, at 767 (“Even if new construction is exempt from the statute, existing rent control laws give a loud and clear signal that old policies may be reversed so that future units may be subject to similar restrictions. That prospect is, moreover, far from negligible because once those units are occupied, their residents add a new class of voters to the rolls whose interests can no longer be ignored in the political calculus. All rent control statutes thus depress the future total return of any investment. Reduced returns mean reduced investments, so that rent control statutes only exacerbate the housing shortages they are said to alleviate.”).

¹⁶⁷ Edward L. Glaeser & Erzo F. P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 AM. ECON. REV. 1027, 1030, 1044 (1999) (“[W]e find that approximately 20 percent of apartments [in a rent control area in New York City] are in the wrong hands under the conservative assumption of efficient sorting on unobservable characteristics within demographic subgroups”); see also David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. URB. ECON. 129, 150 (2007); D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 287 (2006).

tenants to live in apartments whose quality is beyond their means and may lead to a reduced supply of housing. For instance, if rent control allows a tenant to live in an apartment too large for her actual purchasing power, she may be occupying an apartment that would normally be occupied by a larger family. This inefficiency may prevent the apartment from being possessed by the tenant who values it the most¹⁶⁸ and therefore leads to an inefficient allocation of housing resources and ultimately to a decrease in the supply of housing.

On the other hand, rent control is said to also encourage tenants to under-consume housing.¹⁶⁹ As a rent control tenant's income rises, she is deterred from moving to a higher quality apartment commensurate with her purchasing power. Since the marginal increase in housing quality will be less than the marginal increase in rent expense, the tenant will opt to remain in the lower quality, rent controlled apartment. Traditional rent control is said to encourage residents of controlled units to remain in their apartments longer than they normally would in order to reap the benefits of lower rents.¹⁷⁰ This also causes a decrease in the supply of available apartments as tenants are less likely to move.

These legitimate criticisms would function differently under the proposed rent control scheme and I expect that they will not present a significant problem. Since rent for tenants in resident landlord property will not be significantly lower than the market rent, the incentive to over- and under-consume will be slight. Additionally, many

¹⁶⁸ Measured by a person's willingness and ability to pay.

¹⁶⁹ Sims, *supra* note 165; Barros, *supra* note 165.

¹⁷⁰ *Id.*; Ellickson, *supra* note 1, at 948.

housing scholars have questioned the extent to which rents for low income tenants are the product of free market economics or the product of restrictive land use controls.¹⁷¹

To the extent that that restrictive land use controls (ie. zoning ordinances) limit the production of housing units, rent control may correct the fair market value of rents rather than distort them. If a zoning ordinance prevents the construction of additional housing units, the housing supply will be lower than it would be without government regulation. Basic economics dictates that the diminished housing supply will increase the cost of housing, including the cost of rent.¹⁷² This unearned “economic rent” that accrues to landlords, along with monopoly powers, imperfect information, and the prevalence of externalities, form the basis and justification for rent control.¹⁷³

Rent control can correct the imperfections of the housing market. Just as the federal minimum wage is viewed as a control to militate against the market imperfections caused by the drive to avoid starvation,¹⁷⁴ so too can rent ceilings be viewed as a control to militate the market imperfections caused by the drive to avoid homelessness. The severe consequence of becoming homeless, much like that of starving, allows landlords to exploit their control of this primary, physiological need and extract economic rents

¹⁷¹ Note, *Reassessing Rent Control*, *supra* note 154, at 1850 (“Wealthy suburbs have avoided internalizing the adverse costs associated with development and poorer inhabitants by excluding lower-income families through single-family housing, and large-lot and minimum floor requirements. Government-created distortions such as these make it unlikely that existing housing prices efficiently allocate housing resources.”).

¹⁷² Barton, *supra* note 79, at 89 (“The forces that increase land values are generally joined by restrictive land-use controls that limit additional housing supply.”).

¹⁷³ *See*, Skaburskis & Teitz, *supra* note 126, at 47-56.

¹⁷⁴ Julie E. Cohen, *Lochner in Cyberspace: The New Economic Orthodoxy of “Rights Management”*, 97 MICH. L. REV. 462, 513 (1998) (“Where the harsher consequences of commodification are unacceptable, society attempts to introduce stabilizing measures—for example, minimum wage laws and/or welfare grants to mitigate the starvation that serves as incentive to labor; rent control laws to lessen the impact of the laws of supply and demand on the housing market...”).

from tenants.¹⁷⁵ The resulting increase in rent levels causes people to under-consume by not being able to afford housing of sufficient quality. It also causes people to over-consume by making people spend a higher percentage of their income on housing than they would in a perfect market. Viewed in this light, the inefficiencies caused by the over- and under-consumption of housing are not created by rent control but actually diminished by it.

Regardless of whether optimal efficiency is achieved in the rental housing market, most commentators have failed to consider the externalities caused by existing market conditions. By eliminating the conditions under which costly “concentration effects” take hold, namely high poverty rates and the absence of resident landlords, rent control may produce a result that is more efficient than the present state. In other words, even if rent control sets rent ceilings at an “inefficient” level, society’s long term savings, in terms of preventing “concentration effects” and reducing subsidies for the poor, may have the effect of reducing aggregate social costs.

3. Under-Maintenance of Rental Units

Under traditional rent control, landlords who own rental property at the moment the ordinance goes into effect must choose to either continue operating their properties in the same way they did before or reduce maintenance to offset their revenue losses.¹⁷⁶

Economists argue that landlords will choose to under-maintain their units and whatever

¹⁷⁵ See *Southern Burlington County, NAACP v. Township of Mount Laurel*, 336 A.2d 713, 727 (N.J. 1975) (“There cannot be the slightest doubt that shelter, along with food, are the most basic human needs.”).

¹⁷⁶ C. Peter Rydell & Kevin Neels, *Direct Effects of Undermaintenance and Deterioration* in *THE RENT CONTROL DEBATE* 91-92 (Paul L. Niebanck, ed. 1985) (discussing the impact of rent control on maintenance expenditures).

short-term gains the tenants receive from reduced rents will be offset by long-term losses caused by the reduction in the quality of housing.¹⁷⁷

This argument however, is not without challenge. It has been argued that maintenance outlays are only a small part of a landlord's business plans as they "form only a minor part of the landlord's outlays, far less than mortgage interest payments, insurance payments, and, in some jurisdictions, water charges and property taxes."¹⁷⁸

Another commentators states that

the greater part of the category of physical deterioration seems to consist of those minor incidents of wear and tear and of the elements which, summed together, form a fairly regular and substantial component of annual housing costs: flaking paint, broken windows, cracked or warped siding, leaky roofs, clogged plumbing or drains, worn-out screens, scuffed floors or linoleum, etc. The point is that with adequate maintenance the house need not depreciate in these respects.¹⁷⁹

Even under traditional rent control it is questionable whether the decreased rents will lead to a substantially reduced quality of housing.

Under the proposed rent control plan however, the under-maintenance of the housing stock should not be an issue. Under traditional rent control, under-maintenance becomes a concern because homeowners are prevented from recouping their repairs and maintenance expenditures by increasing the rent. However, assuming that absentee landlords are induced to sell their homes, under the proposed plan, the purchasing resident landlords will be fully aware of the restrictions placed upon them by rent control. As stated above, the reduced expected rental income will be capitalized into the price paid for the home and will not impact the homeowner's expected profit. Whatever

¹⁷⁷ *Id.* ("Reacting to revenue reductions by reducing maintenance expenditures, their behavior would gradually eliminate the initial price reduction benefits. Insofar as this behavior holds, rent control may be found to have transferred the social benefits associated with housing to some households in the short run, at the expense of other households in the long run.").

¹⁷⁸ Skaburskis & Teitz, *supra* note 126, at 46.

¹⁷⁹ Ira S. Lowry, *Filtering and Housing Standards: A Conceptual Analysis*, 36 LAND ECON. 362(4), 365 (1960).

maintenance expenditures the homeowner expects to make must already be factored into the price paid for the home. The application of rent control therefore will not affect the amount of funds available for repairs and maintenance.

The proposed rent control scheme may actually increase the maintenance of the rental units. Studies have shown that even when controlling for a number of socio-economic factors, “resident landlords maintain their properties at higher levels than absentee landlords.”¹⁸⁰ In a conclusion that not only substantiates the notion of greater maintenance by resident landlords but also supports the core of this paper’s thesis, Galster explains that “...expanding the number of homeowners appears to be the single most potent means for encouraging the upkeep of dwellings in a neighborhood. And the differences are even more dramatic when considering low-income occupants.”¹⁸¹ Therefore, rather than reducing maintenance, the proposed rent control scheme will likely encourage resident landlords to engage in higher levels of it.

4. Risk of Underestimating High Tenancy Turnover

A potential drawback of the proposed rent control scheme is the risk that the in-moving resident landlords will overestimate the expected rental income from the apartments. Overestimating the rental income will cause a homebuyer to overvalue the house and thus pay too much for it. If the rental income is lower than expected, many of the homebuyers may not be able to make the monthly mortgage payments and will eventually default on their loans. Moreover, since it is expected that the in-moving

¹⁸⁰ Rohe & Stewart, *supra* note 73, at 48.

¹⁸¹ Galster, *supra* note 75, at 296.

resident landlords will be emerging-middle class and working-class households, even a slight decrease in rental income may prevent them from making their mortgage payments.

Computing the expected rental income is inherently fraught with uncertainty in every home-buying situation but it is magnified under the proposed rent control scheme. Under the graduated rent ceilings for resident landlords, the monthly rental income will depend on the tenants' length of tenure; the longer the tenants live in the apartment, the closer their rent will be to fair market value.¹⁸² It will be difficult to determine how much rental income will be generated in the short or long term because it will be highly dependant on the landlord's ability to select "good" tenants (ie. tenants who will remain in the apartment for a long time).

There is a risk that they will systematically underestimate the tenancy turnover rate and thus overestimate the monthly rental income. The uncertainty of the rental income stream will cause a tug of war between increases and decreases in house prices. The risk of perpetually letting to "bad" tenants will decrease the price of homes while the belief that short term tenants can be effectively screened out will increase the prices. Eventually, real estate appraisers will set the price of homes at a level that presumes an average short- and long-term rental income stream. This leads to its own set of problems.

There may be good reason to doubt that real estate appraisers will set the value of the home at the appropriate level. A level that assumes an average rental income stream

¹⁸² Note that this will not give incentives for rent control tenants to leave the apartment as the rents approach market levels. The graduated rent ceiling is a mechanism to protect low income tenants from increased rents caused by high demand and low supply. If rent control is applied to limited areas, it is unlikely that tenants will be able to find another rent controlled apartment. Thus, tenants acting as rational market actors will opt to stay in the rent controlled apartment even as rents rise so as to take advantage of the improved neighborhood and the slightly below-market rents.

would be appropriate but there is reason to believe that appraisers will assume an above-average rental income stream. The role of the real estate appraiser is to give an independent valuation of the home so that the mortgagor (ie. bank) has the appropriate amount of collateral against its loan. However, since appraisers earn their fee on a per engagement basis and they are usually selected by the real estate broker, they have an incentive to, within reason, appraise the home at a level suitable to the real estate broker. This ensures that the real estate broker, who has a great demand for home appraisals, becomes a return customer for the appraisal company. And since the real estate broker earns a commission as a percentage of the total loan amount, the real estate broker will prefer appraisers who systematically, but not beyond a given level of tolerance, overvalue the homes.¹⁸³

This problem is particularly present in refinancing situations. For mortgage refinances, there is no “buyer” to exert downward pressure on the valuation of the property. Without this downward pressure, everyone benefits by pushing the value of the house higher. The homeowner has a more valuable asset and can qualify for a lower mortgage rate. The broker gets a higher commission and the appraiser has a happy customer that will request his services again.

This dilemma is not specific to rent controlled homes but the added uncertainty involved in computing the expected rental income and the added discretion afforded to

¹⁸³ Under the current system of home purchases and mortgage applications, mortgagors/banks must rely on appraisers being truly independent parties. If the mortgagor industry loses the trust in appraisers’ independence, a new system will have to be devised that shuts out these “independent” appraisers. Therefore, there is reason to believe that the appraisals will approximate the true market values. However, the administrative cost involved prohibits each bank (sometimes national banks) from either having a local monitoring group or having their own local appraisal services. Banks’ inability to micromanage the appraisal process will cause home values to be systematically overvalued. *See also Note, Reassessing Rent Control, supra* note 154, at 1840 (stating that “experts, particularly real estate brokers, have incentives to create expectations of future increases in order to make greater profits”); at 1850 (arguing that real estate brokers “have an incentive to increase commissions by inflating prices”).

appraisers could lead to an overvaluation of homes and ultimately to foreclosures. This potential drawback must be anticipated and addressed by the local legislature, preferably in conjunction with the local lending industry. With proper control mechanisms and sufficient education, homebuyers can be aware of the risks involved and factor it in to the offer price for the home.

For this reason, I suggest that the local lawmakers set the Year 1 base rent amount relatively close to the fair market rent level. Too much of a discount will only magnify the risk involved in the investment. Since the expected homebuyers will be lower middle income and emerging middle income households, a sensible strategy will be to minimize the economic risk that they incur by not setting the Year 1 base rent level too low. If it is set too low, these households may be stripped of precisely what they seek: economic security.

B. POLITICAL CRITIQUES AND BARRIERS

1. More Effective Alternatives

It may be argued that the same result (creating a financial advantage for prospective resident landlords) may be achieved through tax deductions, without the need to enact this novel form of rent control. Under this logic, tax deductions would be preferable because the cost of the plan will be borne by all of the tax payers rather than fall squarely on the shoulders of absentee landlords. Furthermore, it would be argued that tax deductions would be more desirable because rent control laws present substantial concerns about implementation and informal markets that arise.¹⁸⁴

¹⁸⁴ See Epstein, *supra* note 1, at 741 (recounting his personal experience with a building superintendent who “needed to have his palm smear”).

With respect to the desirability of tax deductions, I believe that rent control offers at least two significant advantages. First, tax deductions would diminish the in-moving homeowner's equity by making the purchase price more expensive. Whereas rent control will lower absentee landlords' demand and allow prospective resident landlords to purchase the home at a lower price,¹⁸⁵ tax deductions will do the opposite. Tax deductions will increase resident landlords' demand and thus increase the home's sale price. This allows sellers to realize a larger profit from the sale and consequently strips more of the equity from the home. This is a precarious position for in-moving homeowners because the lack of equity exposes them to heightened risk by diminishing the "safety net" that equity provides.¹⁸⁶ Moreover, if resident landlords have a larger mortgage to pay, the higher payments will likely be recouped through increased rents, decreased maintenance, or both,¹⁸⁷ a result that is unfavorable for homeowners, tenants, and the community.

Second, tax deductions would effectively be a public subsidy for prospective resident landlords that must be borne by the locality via lower tax revenue. If the tax deductions are extended to a significant number of homes, the subsidy will amount to a fairly substantial cost to the public. I find it highly unlikely that any locality will be able to absorb the lower tax revenue, not to mention that it would make the plan less politically feasible. Alternatively, rent control places the burden of the subsidy on absentee landlords, the parties substantially responsible for the neighborhood's

¹⁸⁵ See Figure 2, *supra*, at 31.

¹⁸⁶ Equity in a home is equivalent to a savings account or a "safety net." If a major expense arises, either associated with the home or not, equity gives homeowners access to capital through a second mortgage. This may make the difference between a homeowner riding out a financial storm or losing the home to foreclosure.

¹⁸⁷ Rolf Goetze, et al., *Stabilizing Neighborhoods*, reprinted in *HOUSING IN AMERICA*, *supra* note 83.

downward trajectory.¹⁸⁸ Because of the additional equity for in-moving homebuyers and the imposition of the cost on the parties responsible, I believe that rent control is considerably more appealing.

Also, I do not dispute that traditional rent control laws raise significant concerns regarding implementation and informal market but I seriously question their magnitude under the proposed scheme. Since I do not suggest that the proposed plan be implemented on a city- or town-wide level, the number of homes to be regulated will be severely reduced, making it much easier for a locality to regulate the rent controlled homes. More importantly however, if rent control accomplishes its goal, there will be little need for regulation and oversight. If absentee landlords sell their homes to resident landlords, most of the concern disappears because resident landlords will not be subject to the strict rent ceilings.¹⁸⁹ The locality can focus its regulatory efforts on the limited number of absentee landlords who remain in the rent control zone.

Last, the significant price ceilings in traditional rent control laws induce landlords and tenants to engage in illegal agreements whereby the tenant pays a “key money” or “side payment” to the landlord in exchange for living in the rent controlled unit.¹⁹⁰ If localities enact provisions to extend additional protections to existing tenants, resident landlords would only be subject to the *slight* rent reductions caused by the Year 1 base rent level. Since these rent ceilings are intended to be relatively minimal departures from fair market values, tenants would have relatively little to gain from “key money” and

¹⁸⁸ See *supra* Part I(C).

¹⁸⁹ If localities extend additional protections to existing tenants, resident landlords would only be subject to the Year 1 base rent level discussed in Part II. These base rent levels are specifically designed to *slightly* reduce rents. Since there is relatively little to gain for tenants living in rent controlled apartments, this will significantly diminish the incentives for landlords and tenants to engage in “key money” or “side payment” transactions.

¹⁹⁰ See Arnott, *supra* note 158.

“side payments” transactions because they will not result in significant reductions in rent. Thus, the implementation and informal market concerns present under traditional rent control are either eliminated or greatly reduced under the proposed plan.

2. Government Bureaucracy and Corruption

A very threatening aspect of the proposed rent control scheme is the risk of government corruption, particularly in the choice of neighborhoods to which it will be applied. Since absentee landlords face the risk of having to sell their investments, it is likely that there will be a strong lobbying campaign on behalf of absentee landlords to prevent rent control from applying to their homes.¹⁹¹ The lobbying effort will come in two forms. First, absentee landlords as a group will lobby against rent control being enacted and then against it being applied to certain neighborhoods. Second, after rent control is applied to the neighborhood in which their property lies, individual lobbyists will urge that the boundaries of the neighborhood be drawn so that their particular properties lie outside of the rent control zone.

To prevent this political hazard, each locality should include clear guidelines for the kind of neighborhood to which rent control should be applied. Many cities already do this as they designate areas as revitalization zones, tax incremental financing zones, and blighted zones.¹⁹² By setting clear standards for the neighborhoods to be covered by rent control, advocates can prevent the neediest neighborhoods from being bypassed.

¹⁹¹ This goes without mentioning the fact that there would likely be a strong public campaign to lobby against enactment of rent control in *any* neighborhood.

¹⁹² See, e.g., ARIZ. REV. STAT. ANN. §36-1471(2) (Lexis 2006); CAL. HEALTH & SAFETY CODE §33030 (Lexis 2006); COLO. REV. STAT. ANN. §31-25-103(2) (Lexis 2006); MD. ANN. CODE art. 41, §14-803 (Lexis 2006); MINN. STAT. § 469.002 (Lexis 2005); OHIO REV. CODE ANN. §1728.01 (Lexis 2006); R.I. GEN. LAWS §45-31-8 (Lexis 2006).

Even after the decision is made to apply rent control to a particular neighborhood, another contentious debate will revolve around where to draw the boundary line of the rent control zone. It will be impossible to act with utmost fairness to each homeowner because the process of line-drawing will necessarily lead to two homes sitting next to each other yet one subject to rent control and the other one not. To compound the difficulty, very often, a neighborhood will span beyond a local political boundary. Even though it may make more sense to apply rent control to the entire neighborhood, a local legislator may vote against it reaching into her political district. Therefore, it is important to assign this line-drawing task to non-political actors. The extent to which this process is depoliticized will determine whether rent control reaches the right homes.

3. Government's Woeful Track Record

Another source of criticism is the government's woeful track record of intervening in the housing market. In fact, many commentators blame the federal and local governments for the growth and expansion of highly concentrated poverty neighborhoods.¹⁹³ Traditional rent control can also be cited as a government intervention that produced destructive unintended consequences. In sum, commentators argue that the market is the best allocator of scarce resources and government intervention merely distorts its efficient operation.

However, it must be admitted that there is no such thing as a free market in housing. Zoning laws, mortgage rate subsidies, housing subsidies, minimum housing

¹⁹³ See Schill & Wachter, *supra* note 14 (arguing that federal public housing policy has greatly contributed to concentrated urban poverty) and Cashin, *supra* note 20 (arguing that zoning ordinances, the federal mortgage insurance program, urban renewal programs, and a host of private biases contributed to the creation of urban ghettos).

codes, and an uncountable number of other laws, policies, and tax deductions significantly burden the free operation of the housing market. Unless someone wishes to eradicate all forms of housing regulations, I argue that the proposed rent control scheme can play an important role alongside the regulations that now exist.

Although I readily concede my suspicions of government's ability to produce efficient results, I believe there is an area where government is particularly competent. The government, at all levels, is particularly adept at setting the background rules by which everyone plays. In fact, I would argue that this is the *purpose* of government. The proposed rent control plan is intended to lay down the rules of engagement whereby private parties' incentives align in the right direction. Unlike section 8 vouchers or the public housing program, the proposed plan does not require the government, with its attendant bureaucracies and inefficiencies, to become a market participant. Rather, it proposes that government play the role it is institutionally established to perform. Much like zoning ordinances, after rent control is passed, government should have very little involvement outside of policing activities. Because of this, rent control cannot be dismissed on simple "free market" grounds. Although government does have a woeful track record in housing interventions, this proposal only demands that it perform the foundational, yet limited, purpose of setting the background rules.

C. LEGAL BARRIERS

In this section I will examine the legality of the proposed rent control scheme under the Substantive Due Process clause of the Constitution. Understanding that a

thorough constitutional analysis would require an article of equal or greater length as this, I venture to make the analysis brief and concise.

1. Substantive Due Process – Takings Clause

The Fifth Amendment of the U.S. Constitution guarantees that “private property [shall not] be taken for public use, without just compensation.”¹⁹⁴ Of interest to this analysis is not whether the land is being put to “public use” but rather whether compensation should be paid to those burdened by the plan.¹⁹⁵ The court has recognized broad principles implicit in the 5th Amendment’s guarantee but it has been unable to provide specific guidance as to what constitutes a taking and what does not, particularly when the alleged taking arises out of a government regulation that merely reduces the value of a person’s property. Aside from three clear rules which do not apply here,¹⁹⁶ the court has not been able to craft a clear doctrinal approach for takings analysis. Instead, it has relied on an ad hoc factual inquiry to determine when “justice and fairness” demand that a taking be found.¹⁹⁷

Current takings doctrine has its genesis in Justice Oliver Wendell Holmes’ opinion in *Pennsylvania Coal v. Mahon*¹⁹⁸ stating that a regulation will be considered a

¹⁹⁴ U.S. CONST. amend. V.

¹⁹⁵ See *Kelo v. City of New London*, 545 U.S. 469 (2005) (Dealing solely with the question of whether the City of New London’s redevelopment plan served a ‘public purpose’.).

¹⁹⁶ Rent control does not fall into any one of the three clear rules adopted by the Supreme Court. It does not “prohibit all economically beneficial use of land.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992). It does not impose upon a landowner a “permanent physical occupation” by the government. *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419, 426 (1982). Nor does it entail a government exaction. See *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

¹⁹⁷ *Penn Central Transportation Company v. New York City*, 438 U.S. 104, 124-25 (1978).

¹⁹⁸ 260 U.S. 393 (1922).

taking if it “goes too far.”¹⁹⁹ Rather than articulating a “set formula” for what constitutes a taking, the court’s decisions on takings cases ultimately come down to a matter of “justice and fairness” to determine whether a taking has occurred. As the court in *Hodel v. Virginia Surface Mining* writes:

[T]his Court has generally ‘been unable to develop any “set formula” for determining when “justice and fairness” require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons.’ Rather, [this court] has examined the ‘taking’ question by engaging in essentially ad hoc, factual inquiries that have identified several factors—such as *the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the government action*—that have particular significance.²⁰⁰ (emphasis added)

Each of these “particularly significant” factors will be analyzed in turn to determine if the proposed rent control scheme “goes too far” and constitutes a taking.²⁰¹

The economic impact that the proposed rent control scheme will have depends on the steepness of the rent ceiling for absentee landlords. The lower the rent ceiling, the greater the economic impact on the absentee landlord. (Note that the provisions applicable to resident landlords should not affect the constitutional analysis. Since rent control should only apply to new resident landlords, the discounted rental amount, if any, would already be capitalized into the amount paid for the home.)

It is unlikely that the proposed rent control plan would fail under the economic impact factor. The Supreme Court has stated that a “diminution in property value”²⁰²

¹⁹⁹ *Id.* at 415.

²⁰⁰ *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 264, 295 (1981), quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979).

²⁰¹ It is important to point out that the property owners, or their agents, have the burden of proof in establishing that a taking has occurred. Since the proposed rent control scheme is expected to have only a slight short-term impact on property values, it will be difficult, and probably impossible, to argue that the law is unconstitutional on its face. For the complainants to meet their burden of proof, they will have to provide evidence of an actual and, most likely, substantial loss in property value.

²⁰² *Penn Central*, 438 U.S. at 131.

alone is not sufficient to sustain a takings action.²⁰³ In fact, the Penn Central court cites two cases, *Euclid v. Ambler Realty*²⁰⁴ (zoning ordinance prohibited land being put to industrial use) and *Hadacheck v. Sebastian*,²⁰⁵ (law prohibited operation of brickyard in residential neighborhood) in which property owners suffered a 75% and an 87½% diminution in value, respectively, because of a local regulation; in each of these cases, the court held that no taking had occurred.²⁰⁶

Under the proposed rent control scheme, absentee landlords will experience a “diminution” in their property values, but not a 75% or and 87½% reduction. Although the homes will be worth less to an absentee landlord, they will retain a high value to prospective resident landlords who can charge higher rents. The absentee landlords will be able to sell their investment properties to the prospective resident landlords for an amount close to the pre-rent control fair market value. It is extremely unlikely therefore, that the economic impact will approximate that in *Euclid* and *Hadacheck*.

In conjunction with the “economic impact” prong of the Penn Central test, courts must also look at the “extent to which the regulation interfere[s] with distinct investment-backed expectations.”²⁰⁷ This factor has “become an increasingly important issue in regulatory takings jurisprudence, while [economic impact and the character of the government action] are now of questionable relevance.”²⁰⁸ Therefore, determining

²⁰³ See Max Gibbons, Comment, *Of Windfalls and Property Rights: Palazzolo and the Regulatory Takings Debate*, 50 UCLA L. REV. 1259, 1266 (2003) (“[T]he Penn Central Court quickly noted that ‘diminution in property value’ by a regulation ‘reasonably related to the promotion of the general welfare’ does not, by itself, constitute a taking.”).

²⁰⁴ 272 U.S. 365 (1926).

²⁰⁵ 239 U.S. 394 (1915).

²⁰⁶ Penn Central, 438 U.S. at 131.

²⁰⁷ *Id.*, at 124.

²⁰⁸ Max Gibbons, *supra* note 225, at 1270.

whether the proposed rent control scheme interferes with distinct (reasonable) investment backed expectations will be crucial for determining its constitutionality.

Absentee owners would have a seemingly strong argument in alleging that their investment-backed expectations have been seriously frustrated. Chief Justice Rehnquist's dissenting opinion in Penn Central proclaims that "[t]he Court has frequently held that... the inability of the owner to make a reasonable return on his property requires compensation under the Fifth Amendment."²⁰⁹ Once rent control goes into effect, absentee landlords would argue, the rent ceiling applied to their rental units will undoubtedly affect their ability to earn a reasonable return on their investment and thus constitute a taking.

However, the "reasonable return" test is fraught with a number of conceptual problems. As Justice Rehnquist himself notes, the court must first define what a reasonable return would be for various types of property and then, it must define the particular property unit to be examined.²¹⁰ In other words, the court must determine the numerator and denominator of the calculation. It must define a mandatory minimum return (the numerator) as well as the basis for determining the reasonable return rate (the denominator).

In deciding the denominator issue, the court would have to decide what the underlying value of the disputed land should be. Under the proposed rent control scheme, would the court use the value of the home at the time rent control went into effect, or would it use another value? Perhaps the original purchase price would be more appropriate? Without providing a clear answer to this question, this test is especially

²⁰⁹ Penn Central, 438 U.S. at 149 (Rehnquist, J., dissenting).

²¹⁰ *Id.*, at 149 n.13.

troublesome as it would require an individualized assessment of the ordinance's constitutionality for each and every absentee landlord. Similarly, the numerator issue would have to be resolved. What is a reasonable rate of return for absentee landlords and what level of monthly rent would allow it to be realized? Given the heterogeneous nature of the housing stock, this question would also require an individualized analysis for each absentee landlord. Because of the conceptual problems, the reasonable rate of return standard is entirely unworkable and cannot form the basis for a takings claim.²¹¹

Even assuming *arguendo*, that the proposed rent control plan would deny absentee landlords a reasonable rate of return if they remained in the landlord business, the constitutional analysis would not be over. Since the homes would nonetheless retain a high value for prospective resident landlords, absentee landlords would be able to sell their homes and in many cases earn a reasonable return on their investment. No case or statute has ever declared being an absentee landlord as a protected right. So long as the home can be sold to an in-moving resident landlord, the rent control plan should not make absentee landlords suffer severe losses. Therefore, the plan should not offend absentee landlords' investment backed expectations.

With respect to the "character of the government action," the court explains that "[a] 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, then when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good."²¹² Although the importance of this factor has been called into

²¹¹ See *id.*; see also Lucas, 505 U.S. at 1015 n.7 ("[The] uncertainty regarding the composition of the denominator in our 'deprivation' fraction has produced inconsistent pronouncements by the court.").

²¹² Penn Central, 438 U.S. at 124 (internal citations omitted).

question,²¹³ the court has established that a forced, permanent physical invasion will trigger a per se rule of unconstitutionality.²¹⁴ No such physical invasion is compelled by the proposed rent control scheme however, and thus the per se rule will not apply.

With this prong of the balancing test, the proposed rent control plan is very similar to the regulation upheld in *Penn Central* wherein the three factor balancing test was born. When New York City decided to enact its landmark preservation law, it did so with the belief that it would “enhance the quality of life” for all of its residents.²¹⁵ Accordingly, the city chose to burden the owners of landmark properties to further its goal of fostering civic pride, protecting and enhancing the city’s attraction for tourists and visitors, supporting and stimulating business and industry, strengthening the economy, and promoting the use of historic landmarks for the education, pleasure and welfare of the people of the city.²¹⁶ After having two building plans rejected by the city, the owners of Penn Central Terminal sued to invalidate the historic preservation law on the grounds that it constituted a taking. The court rejected the owner’s argument and alluded to a clause in the ordinance that allowed the owner to sell his building rights to adjacent parcels. Under this provision, the owner would be able to recover some of the value he claimed to lose as a result of the ordinance.

The purposes of the New York City ordinance in *Penn Central* are highly comparable to the expected results of rent control, such as fostering a healthier living environment, providing more stable communities, enhancing the city’s tax base,

²¹³ See Lucas, 505 U.S. at 1027-29; Loveladies Harbor v. United States, 28 F.3d 1171, 1179 (Fed. Cir. 1994) (“The effect...of Lucas was to dramatically change the third criterion [of the *Penn Central* balancing test], from one in which courts...were called upon to make *ad hoc* balancing decisions, balancing private property rights against state regulatory policy, to one in which state property law, incorporating common law nuisance doctrine, controls.”).

²¹⁴ See Loretto, 458 U.S. 419.

²¹⁵ *Penn Central*, 438 U.S. at 108.

²¹⁶ *Id.* at 109.

supporting and stimulating investment, strengthening the local economy, and improving the welfare of the residents. Similarly, the proposed rent control plan would burden absentee landlords with the cost of improving blighted neighborhoods but will allow them to offset some of the lost value of their properties by selling the homes to prospective resident landlords. Thus, this prong would not appear to particularly aid absentee landlords in their attempts to invalidate the proposed rent control plan.

Ultimately, the takings analysis is reduced to a test of fairness. The three factors considered above should be considered in the aggregate to determine whether “justice and fairness” require that the economic injuries be compensated by the government.²¹⁷ It is important to stress that the only aspect of this proposal that raises legitimate constitutional concerns is that which applies to absentee landlords.²¹⁸ Furthermore, it must be noted that their properties are held as pure investments, similar to stocks, bonds, and commodities. Cries of unfairness on their part therefore, must be considered in the context of other investment opportunities and the role of government regulation in those areas.

In *Loretto v. Teleprompter Manhattan CATV Corp.*,²¹⁹ the majority stated that “[t]his Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.”²²⁰ The court went on in *Pennell v. City of San Jose*²²¹ to “recognize[e] that government may intervene in the

²¹⁷ Hodel, 452 U.S. at 295.

²¹⁸ Resident landlords will presumably purchase the property subject to and fully on notice of the restriction.

²¹⁹ 458 U.S. 419 (1982).

²²⁰ *Id.*, at 440.

²²¹ 485 U.S. 1 (1988)

marketplace to regulate rates or prices that are artificially inflated as a result of a monopoly or near monopoly or a discrepancy between supply and demand in the market for a certain product.”²²² The *Pennell* court faced a rent control ordinance that had a potentially greater impact on the value of homeowners’ properties than the current plan yet the court explicitly refused to reconsider the constitutionality of rent control.²²³

The proposed rent control scheme will not perpetrate an injustice upon absentee landlords. Their investments in rental property, just as all other kinds of investments, are fraught with the inherent risk of adverse government regulation. As Bruce Ackerman states in a famous housing law article, “[t]here can be little doubt that our economic organization is no longer permeated with a bias towards laissez faire in general; nor is there a particular prejudice against affirmative governmental action in matters relating to land use control – if anything, interventionism is even more common here than elsewhere.”²²⁴ The proposed rent control scheme is no different than a zoning ordinance (in fact, I argue that it *is* a zoning ordinance) that regulates the manner in which a property owner uses her property. The scheme merely “adjust[s] the benefits and burdens of economic life to promote the common good” and thus, under the current takings jurisprudence, should not be found to be unconstitutional.²²⁵

²²² *Id.*, at 11-12 (internal citations omitted).

²²³ 485 U.S. 12 n. 6.

²²⁴ Bruce Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies, and Income Redistribution Policy*, 80 YALE L.J. 1093, 1163 (1971).

²²⁵ I added the caveat of “under the current takings jurisprudence” to call attention to the fact that takings law may change given the changing composition of the court’s justices. The Supreme Court justices have each shown a consistent disposition to uphold or strike down local government regulations that affect economic interests. In the important takings cases of *Nollan*, *Lucas*, *Dolan*, and *Kelo*, Justices Scalia, Rehnquist, Thomas and O’Connor voted to strike down the local statute in 15 out of 15 possible votes (Justice Thomas was not on the court for the *Nollan* decision). Similarly, for the same cases, Justices Breyer, Stevens, Souter, and Ginsburg voted to uphold the local statute in 9 out of 9 possible votes. The only “wild card” in these cases was Justice Kennedy who voted to strike down the statute in *Lucas* and *Dolan* but voted to uphold the statute in *Kelo*.

CONCLUSION

Rent control should be used only as one of the many housing strategies aimed at revitalizing decaying neighborhoods, encouraging mixed income living arrangements, and promoting higher homeownership rates in inner cities. Housing experts across the country are experimenting with a number of different policies and laws that employ private enterprise's ingenuity and resourcefulness while at the same time providing stable housing options for the poor. With middle class neighborhood disappearing and society becoming increasingly stratified by social class,²²⁶ now more than ever is it important to adopt policies that encourage mixed income living arrangements in general and particularly ones that de-concentrate the poor.

By enlisting the spirited and still underutilized determination of potential homeowners, along with their positive socializing and stabilizing presence, blighted communities may be transformed into healthy and stable places to live. The result could be to bring the marginalized poor into the mainstream fabric of society and to prevent unhealthy neighborhood conditions from producing the costly "concentration effects" that benefit no one.

This level of consistency among the court's conservative and liberal justices suggests a political predisposition to uphold or strike down local government actions that burden property interests. As the composition of the court changes, it is possible that takings jurisprudence will tend towards the political disposition of the faction with the majority of justices.

²²⁶ See *Supra* note 92.