Printed in U.S.A.
Vol. 112, No. 6

"OUR TAXES ARE TOO DAMN HIGH": INSTITUTIONAL RACISM, PROPERTY TAX ASSESSMENTS, AND THE FAIR HOUSING ACT

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ABSTRACT—To prevent inflated property tax bills, the Michigan Constitution prohibits property tax assessments from exceeding 50% of a property's market value. Between 2009 and 2015, the City of Detroit assessed 55%–85% of its residential properties in violation of the Michigan Constitution, and these unconstitutional assessments have had dire consequences. Between 2011 and 2015, one in four Detroit properties have been foreclosed upon for nonpayment of illegally inflated property taxes. In addition to Detroit, the other two cities in Michigan's Wayne County where African-Americans comprise 70% or more of the population—Highland Park and Inkster—have similarly experienced systemic unconstitutional assessments and unprecedented property tax foreclosure rates. This Essay explores whether property tax administration policies in Wayne County disparately impact African-Americans in violation of the Fair Housing Act. I find that unconstitutional assessments and property tax foreclosures occur at a significantly higher rate in Wayne County's predominately African-American cities than in its predominately white ones. More importantly, the county's property tax equalization policy has failed to correct these disparities, leading to a violation of the Fair Housing Act. Unjust property tax administration was frequently used to dispossess African-Americans of their lands and other property during the Jim Crow era. Although the motives may be different, this deplorable form of institutional racism is resurgent in Michigan.

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provided exceptional research assistance. The National Science Foundation funded this research.

INTRODUCTION

Mrs. B is an African-American woman with a short, sassy haircut and a feisty disposition to match. She was born and raised in Detroit, Michigan, where she and her husband are now raising their seven children. Many Detroit residents have fled to surrounding suburbs as a result of Detroit's slow economic decline, which began with the dramatic loss of manufacturing jobs in America's auto industry and concluded with the largest municipal bankruptcy in U.S. history. Undeterred, Mrs. B, her family, and many others like them stayed and braced themselves through the hard times because they did not want to leave their beloved city. But, now that the city is experiencing economic resurgence, city officials are kicking people like Mrs. B out of their homes.

In 2012, Mrs. B and her family were finally able to savor their very own sumptuous slice of the American Dream. After battling economic insecurity for decades, Mrs. B and her husband saved enough money to purchase their first home for $20,000 through a land contract from a company called Dream Homes Ventures.[1] They put $5,000 down and made monthly payments of

[1] In a land contract, the seller finances the sale instead of the bank, and buyers pay monthly installments, similar to rent. Unlike a traditional rental contract, buyers give the sellers a down payment, assume responsibility for all repairs, and are not safeguarded by the warranty of habitability or any other

$500. According to the land contract, property taxes and water were included in the monthly payment,[2] but Dream Home Ventures did not, in fact, pay the taxes. In 2014, Mrs. B received a letter from the Wayne County Treasurer stating that they owed $9,000 in taxes accrued from 2010 to 2014.

To make matters worse, the property tax bill was illegally high. Michigan's constitution, legislation, and supporting case law clearly state that local authorities cannot assess properties at more than 50% of their market value.[3] The Detroit assessor claimed Mrs. B's home was worth about $46,000,[4] although she purchased it for $20,000 in an open market transaction and other homes in her neighborhood sold for approximately that much money. The overinflated property tax assessments led to illegally high property tax bills.[5] Although Mrs. B repeatedly said that, in Detroit, "our taxes are too damn high," she did not know that she could appeal her taxes to gain relief. She was unable to pay the inflated property tax bill, so in 2015,

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legal doctrine that protects consumers from low-quality housing unfit for habitation. Michigan law does not require land contract sellers to have homes appraised or to disclose debts or liens on the property, and this lack of regulation leaves Detroiters vulnerable to predatory sellers who target low information, first-time homebuyers. *See* Joel Kurth, *Loose Regulations Make Land Contracts a Tool to Exploit Low-Income Homeowners*, CRAIN'S DETROIT BUS. (published May 20, 2017, 10:13 PM; updated May 24, 2017), http://www.crainsdetroit.com/article/20170521/NEWS/170529985/loose-regulations-make-land-contracts-a-tool-to-exploit-low-income [https://perma.cc/B2JJ-U73A] (noting absence of any Michigan law requiring land contract sellers to disclose debts and liens or have homes appraised before sales).

[2] Research shows that people pay more attention to their property taxes and are more likely to protest inequality when they pay their taxes directly to the state as opposed to a bank paying the property taxes on their behalf through an escrow account or some other mechanism. *See* Andrew T. Hayahsi, *The Legal Salience of Taxation*, 81 U. CHI. L. REV. 1443, 1443 (2014) ("I find that reducing property tax salience makes homeowners less likely to appeal their property-value assessments, making it more likely that homeowners will remain overassessed and overtaxed. These overtaxed homeowners never perceive—are never able to 'name'—their injury and consequently never obtain the relief to which they might be entitled. Moreover, I show that the selective use of appeals caused by legal salience shifts the tax burden to racial minorities, immigrants, and working families with children.").

[3] MICH. CONST. art. IX, § 3; MICH. COMP. LAWS § 211.27a(1) (2018); C.A.F. Inv. Co. v. Mich. State Tax Comm'n, 221 N.W.2d 588, 591–92 (Mich. 1974); *see also* Great Lakes Div. of Nat'l Steel Corp. v. City of Ecorse, 576 N.W.2d 667, 672 (Mich. Ct. App. 1998) ("True cash value is synonymous with fair market value."). To determine the market value of residential properties, the local assessor analyzes recent sales of comparable properties. *See* INT'L ASSOC. OF ASSESSING OFFICERS, STANDARD ON MASS APPRAISAL OF REAL PROPERTY 9 (2013), https://www.iaao.org/media/standards/MARP_2013.pdf [https://perma.cc/HCW9-SX82].

[4] Which in 2015 amounted to a State Equalized Value (SEV) of $22,838. *See* MICH. COMP. LAWS § 211.27a(1) (2018).

[5] Michigan authorities calculate property tax bills by multiplying the assessed value of a property (minus any exemptions) by the property tax rate. *See* MICH. LEGISLATURE, MICHIGAN TAXPAYER'S GUIDE 2016: REFERENCE FOR THE 2015 TAX YEAR 1–4 (2016), http://www.legislature.mi.gov/publications/TaxpayerGuide2015.pdf [https://perma.cc/BL8X-23QD] [hereinafter MICHIGAN TAXPAYER'S GUIDE] (describing method for calculating tax and some exemptions). If the assessed values of homes are too high, then the resulting property tax bills will also be inflated.

Wayne County foreclosed, gained title to Mrs. B's home, and sold it at auction for $500.

The most heartbreaking part of the story is that Mrs. B and her family live under the federal poverty threshold and hence qualify for the Poverty Tax Exemption, which means that they were not supposed to be paying the property taxes that led to their eviction in the first place. But, due to poor advertising and several unnecessary hurdles erected by the City of Detroit, Mrs. B and her husband were not aware of the exemption.[6]

In prior work, I investigated property tax injustice in the City of Detroit, which is located in Michigan's Wayne County.[7] I found that, between 2009 and 2015, the City of Detroit assessed 55%–85% of its residential properties at over 50% of their market values in violation of the Michigan Constitution.[8] Due to the resulting illegally inflated property tax bills that Mrs. B and many other Detroit homeowners could not afford to pay, between 2011 and 2015, the Wayne County treasurer foreclosed upon one in four of all homes in Detroit for nonpayment of property taxes.[9] One of the last times that Americans witnessed this accelerated rate of property tax foreclosures was during the Great Depression.[10]

There have been several attempts to hold authorities accountable for this monumental property tax injustice, including a class action lawsuit filed on July 13, 2016 by the American Civil Liberties Union (ACLU) of Michigan along with the NAACP Legal Defense & Educational Fund, Inc., and the law firm of Covington & Burling.[11] In *Morningside Community v. Sabree*, one of the plaintiffs' allegations is that Wayne County's property tax foreclosure practices violate the Fair Housing Act (FHA) because they disparately impact African-Americans homeowners, causing them to "lose their homes through tax foreclosure at a higher rate than non-African-

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[6] *See* Complaint ¶¶ 2, 8, Morningside Cmty. Org. v. Sabree, No. 16-008807-CH (Mich. Cir. Ct. July 13, 2016).

[7] *See* Bernadette Atuahene & Timothy R. Hodge, *Stategraft*, 91 S. CAL. L. REV. 263 (2018).

[8] *Id.*, at 13.

[9] *See generally* Alex Alsup, *A Recent History of Tax Foreclosure*, LOVELAND BLOG (Nov. 9, 2015), https://makeloveland.com/blog/a-recent-history-of-tax-foreclosure [https://perma.cc/FXF9-XYZ3] (describing Detroit's foreclosure crisis); *Archival Tax Foreclosures in Detroit, 2002–2013*, DATA DRIVEN DETROIT, http://bit.ly/2bpFd8A [https://perma.cc/AQ99-ZQHR] (identifying properties in Detroit that were listed in a tax foreclosure auction between 2002 and 2013). The city's published file on their open data portal has 382,051 records. *See Parcel Map*, CITY OF DETROIT (published Feb. 4, 2015; updated Jan. 2, 2018), https://data.detroitmi.gov/Property-Parcels/Parcel-Map/fxkw-udwf [https://perma.cc/5BEQ-RJDY] (enter "table view" to see number of property records maintained by city).

[10] *See* David C. Wheelock, *The Federal Response to Home Mortgage Distress: Lessons from the Great Depression*, 90 FED. RESERVE BANK OF ST. LOUIS REV. 133, 138–39 (2008).

[11] *See* Complaint, *supra* note 6, at ¶¶ 252–59.

American homeowners in Wayne County."[12] The plaintiffs brought the case in the Wayne County Circuit Court, but Judge Robert Colombo dismissed the FHA claim, ruling that it should have been brought in the Michigan Tax Tribunal.[13] On September 21, 2017, the Michigan Court of Appeals affirmed the lower court's finding of improper jurisdiction.[14] On November 1, 2017, plaintiffs asked the Michigan Supreme Court to hear an appeal, which the court dismissed for lack of subject matter jurisdiction on January 24, 2018.[15] Although this challenge was not successful, this Essay builds on my initial study of unconstitutional property tax assessments in Detroit to explore whether unconstitutional tax assessments and the resulting tax foreclosures in Wayne County violate the FHA in the hope that a future court might take it up.

The *Morningside* plaintiffs' FHA claim relied on the disparate impact theory of equal protection, which is dead in constitutional jurisprudence, but alive and well in the areas of the law where the legislature intervened, such as the FHA.[16] Disparate treatment requires plaintiffs to show that the discriminatory act was intentional, while disparate impact analysis bypasses intent-based queries to focus instead on the policy's discriminatory effect.[17]

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[12] *Id.* ¶ 256.

[13] Morningside Cmty. Org.v. Wayne Cty Treasurer, No. 336430, 2017 WL 4182985, at *3 (Mich. Ct. App. Sept. 21, 2017) (per curiam) (explaining the trial court's reasoning); *see also* Mackenzie Walz, *Morningside Community Organization v. Sabree*, CIVIL RIGHTS LITIGATION CLEARINGHOUSE (Mar. 6, 2018), https://www.clearinghouse.net/detail.php?id=15427 [https://perma.cc/UC7Z-4FNX].

[14] *Morningside Cmty. Org.*, 2017 WL 4182985, at *1.

[15] Morningside Cmty Org. v. Wayne Cty. Treasurer, 905 N.W.2d 597, 598 (Mich. 2018).

[16] Prior to 1976, the disparate impact theory of equal protection required plaintiffs to prove that a law, policy, or practice had a discriminatory effect on a protected class. In 1976, the Supreme Court sidelined the disparate impact theory and ruled in *Washington v. Davis* that a violation of the Constitution's Equal Protection Clause necessitates a showing of disparate treatment, requiring plaintiffs to prove that the decision in question was motivated by a discriminatory purpose or intent. Disparate impact now only comes into play when a discriminatory purpose motivates the decision. *See generally* Richard A. Primus, *Equal Protection and Disparate Impact: Round Three*, 117 HARV. L. REV. 493 (2003) (examining whether equal protection affirmatively forbids the use of statutory disparate impact standards); Stacy E. Seicshnaydre, *Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act*, 63 AM. U. L. REV. 357 (2013) (discussing the history of disparate impact claims in recent FHA cases).

[17] *See* Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977) ("When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference [to decisions of legislative and administrative bodies] is no longer justified."); Washington v. Davis, 426 U.S. 229, 247–48 (1976) ("[Title VII] involves a more probing judicial review of, and less deference to, the seemingly reasonable acts of administrators and executives than is appropriate under the Constitution where special racial impact, without discriminatory purpose, is claimed. We are not disposed to adopt this more rigorous standard for the purposes of applying the Fifth and the Fourteenth Amendments in cases such as this."). *See also McCleskey v. Kemp*, 481 U.S. 279 (1987), for an application of this doctrine to capital punishment sentences. Plaintiffs presented the court with the Baldus study, which used 2,000 murder sentencings delivered between 1973 and 1979 to investigate whether a victim's race affected Georgia prosecutors' and juries' decisions to seek and impose

This Essay marshals social science evidence to make an actionable claim of racial discrimination based upon a theory of disparate impact. In Part I, I explain the property tax assessment and foreclosure processes in the City of Detroit and Wayne County. Part II explores whether the FHA applies to property tax administration and, more specifically, to unconstitutional tax assessments and the resulting property tax foreclosures in Wayne County. I explain the methodology used in Part III. Part IV analyzes assessment and foreclosure data, which show clearly that Wayne County's predominately African-American cities experience unconstitutional property tax assessments and tax foreclosures at a far greater rate than its predominately white cities. The final section concludes.

Most importantly, this Essay shows that the property tax malfeasance occurring in Wayne County is a quintessential example of institutional racism, which is when the laws, policies, or practices of any institution or group of institutions intentionally or unintentionally results in race-based inequities or discrimination.[18] As opposed to individual racism—where people discriminate based on the conscious or unconscious belief that one race is superior to another—the perpetrators of the harm are not readily identifiable individuals who society can resolutely condemn. The perpetrators instead are an institution or assortment of institutions. The Detroit Assessment Division, the Wayne County Equalization Division, and the Wayne County Treasurer are the government agencies directly at fault. But, there are also several other actors implicated in the malfeasance. The State of Michigan, for example, under-funded its cities,[19] leaving many cities

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the death penalty. The study found that—even when controlling for thirty-nine nonracial variables that play a role in capital punishment sentences—a death sentence was 4.3 times more likely for defendants who killed whites than those who killed African-Americans. Assuming the evidence of racial disparity was correct, the court nonetheless ruled that there was no constitutional violation because the plaintiff failed to prove that the officials who produced McCleskey's sentence intended to discriminate based on race. *Id.* at 319.

[18] Ian F. Haney Lopez, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717, 1723 (2000) (attempting to define institutional racism as a process that is created "through the operation of various mental processes. [sic] frequently repeated patterns of activity relatively quickly take on an unexamined, rule-like status such that they are spontaneously followed and disrupted only with difficulty"); Sharon Elizabeth Rush, *Sharing Space: Why Racial Goodwill Isn't Enough*, 32 CONN. L. REV. 1, 22 (1999) ("[Institutional racism, contrasted to individual racism,] is less overt, far more subtle, less identifiable in terms of *specific* individuals committing the acts. But it is no less destructive of human life. The second type originates in the operation of established and respected forces in the society . . . ."); Brian J. Sutherland, Comment, *Killing Jim Crow and the Undead Nondelegation Doctrine with Privately Enforceable Federal Regulations*, 29 SEATTLE U. L. REV. 917, 921 (2006) ("Institutional racism is racial discrimination perpetrated whether intentionally or not within the policies, practices, procedures, laws, rules, or regulations of any public or private institution. It is the legacy of American slavery and a lingering obstacle to true racial equality in this country.").

[19] Christina Hall, *14 Cities Sue Michigan, Say Revenue-Sharing Math Isn't Right*, DETROIT FREE PRESS (published Sept. 9, 2016, 12:28 PM; updated Sept. 9, 2016, 3:25 PM), https://www.freep.com/

financially vulnerable and predisposed to predatory, covert revenue-raising tactics such as illegally inflated property tax assessments. Also, Detroit experienced the largest municipal bankruptcy in American history, restructuring over eighteen billion dollars in debt and long-term liabilities.[20] During the city's financial crisis, the governor-appointed emergency manager, Kevyn Orr, imposed austerity measures upon the City of Detroit, which further crippled its ability to invest in the bureaucratic infrastructure necessary to ensure property tax assessments were in line with the Michigan Constitution.[21] In addition, Detroit's Assessment Division did not have the capacity to deal with the steep 2008 drop in home values precipitated by the predatory lending practices of banks and the resulting subprime mortgage crisis.[22] Given the complex reasons behind the property tax malfeasance, the perpetrators of the harm are dispersed, fractionated, and thus invisible—hidden in plain sight. But, African-American homeowners suffered disproportionately from the malfeasance, so the victims are manifest and unmistakable, making this a casebook example of institutional racism.

I. PROPERTY TAX ADMINISTRATION IN WAYNE COUNTY[23]

A. A Primer on Property Tax Calculations in Michigan

Michigan officials are legally required to assess all properties annually.[24] Assessments in Michigan involve three distinct calculations:

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story/news/local/michigan/2016/09/09/revenue-sharing-michigan-eastpointe-lawsuit/90118136/ [https://perma.cc/7YX9-3SZG].

[20] *See* In re City of Detroit, 504 B.R. 97, 113 (Bankr. E.D. Mich. 2013); James Spiotto, *Detroit's Bankruptcy Is the Nation's Largest*, N.Y. TIMES (July 18, 2013), http://www.nytimes.com/interactive/2013/07/18/us/detroit-bankruptcy-is-the-largest-in-nation.html [https://perma.cc/Y8A3-XNAE] (reporting that the city's bankruptcy is the largest municipal bankruptcy in U.S. history in terms of debt).

[21] *See generally* MICH. COMP. LAWS §§ 141.1541–.1575 (2018) ("An emergency manager shall develop and may amend a written financial and operating plan for the local government.").

[22] *See generally* Douglas S. Massey et al., *Riding the Stagecoach to Hell: A Qualitative Analysis of Racial Discrimination in Mortgage Lending*, 15 CITY & COMMUNITY 118 (2016) (quantitatively and qualitatively demonstrating how racialized mechanisms worked to produce cumulative disadvantage for African-Americans during U.S. housing boom and bust cycles); Jacob S. Rugh et al., *Race, Space, and Cumulative Disadvantage: A Case Study of the Subprime Lending Collapse*, 62 SOC. PROBS. 186 (2015) (describing how residential segregation and racial inequality generate racialized patterns of subprime lending that led to financial hardship among black borrowers).

[23] For a more in-depth description of the practices, see Bernadette Atuahene & Christopher Berry, Taxed Out: Illegal Property Tax Assessments and the Epidemic of Tax Foreclosures in Detroit (Mar. 7, 2018) (manuscript with publication schedule forthcoming) (on file with *Northwestern University Law Review*).

[24] MICH. COMP. LAWS § 211.10(1) (2018); WM. T. DUST, MANUAL OF THE COMMON COUNCIL AND OF THE MUNICIPAL GOVERNMENT OF THE CITY OF DETROIT 29–30 (1886) (stating that the Board of Assessors has a duty to assess the true cash value of all real and personal property each fiscal year).

Assessed Value (AV), State Equalized Value (SEV), and Taxable Value (TV).[25]

The first calculation is the AV. Each local assessor is required to conduct sales or appraisal studies to determine the market value of each property within her jurisdiction.[26] The industry standard for appraisals of residential housing is the market approach,[27] which requires assessors to determine the market value of a property based on the sale price of comparable properties, taking into consideration factors such as the property's size, age, condition, location, existing use, zoning, natural assets, and present economic income.[28] The assessors then set the AV not to exceed the constitutionally permitted limit of 50% of the property's determined market value. That is, according to the Michigan Constitution, for each taxable property: AV≤Market Value/2.

The second calculation is the SEV. The point of the SEV is to ensure that the AV is uniform at the city, county, and state levels as mandated by the Michigan Constitution.[29] Calculating the SEV is a two-step process. In the first step, the county conducts an annual equalization study, which determines the assessment-to-market ratio in each of its taxing jurisdictions for each class of property.[30] The goal of county equalization is to bring the total valuation of each class of property *within the county* as close to the 50% constitutional limit as possible.[31] If uniformity is not present, then each

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[25] MICHIGAN TAXPAYER'S GUIDE, *supra* note 5, at 1.

[26] Fairplains Twp. v. Montcalm Cty. Bd. of Comm'rs, 542 N.W.2d 897, 898–99 (Mich. Ct. App. 1995).

[27] INT'L ASSOC. OF ASSESSING OFFICERS, *supra* note 3, at 9.

[28] *See* Meadowlanes Ltd. Dividend Hous. Ass'n v. City of Holland, 473 N.W.2d 636, 642, 651 (Mich. 1991) (noting that "the appraiser should adjust the sales price of comparables for differences in size, age, condition, location, and other value influences"); *see also* MICH. COMP. LAWS § 211.27(1) (2018) (describing various factors an assessor should consider in determining "true cash value"); Antisdale v. City of Galesburg, 362 N.W.2d 632, 638 (Mich. 1984) ("The market approach to value has the capacity to cure this deficiency because evidence of the sales prices of a number of comparable properties, if sufficiently similar, supports the conclusion that factors extrinsic to the properties have not entered into the value placed on the properties by the parties."); Great Lakes Div. of Nat'l Steel Corp. v. City of Ecorse, 576 N.W.2d 667, 674, 678–79 (Mich. Ct. App. 1998).

[29] *See* MICH. CONST. art. IX, § 3 (stating that true cash value is the proportion at which property shall be uniformly assessed); MICH. COMP. LAWS § 211.34 (2018) (tasking county commissioners "in the matter of equalization of assessments" in accordance with the Michigan Constitution); DETROIT, MICH. CODE OF ORDINANCES, Part IV (2017) (citing duties under MICH. CONST. art. IX, § 3).

[30] MICHIGAN STATE TAX COMM'N, BULLETIN NO. 11 OF 2011, EQUALIZATION PROCESS FOR 2012, at 1 (2014), https://www.michigan.gov/documents/treasury/Bulletin11of2011_367617_7.pdf [https://perma.cc/48XQ-3VJ3].

[31] MICH. COMP. LAWS § 211.27a (2018); Sch. Dist. No. 9 v. Bd. of Supervisors of Washtenaw Cty., 67 N.W.2d 165, 172 (Mich. 1954) (noting that the purpose of equalization is not only to provide basis for apportionment of property taxes, but also to "carry out the provisions relating to uniformity of taxation"

county's board of commissioners can equalize the AV for any class of property by applying an adjustment factor (also called equalization factor).[32] For instance, if the county finds that the average AV for all commercial properties in one of its cities is well below 50% of the average market value of all commercial properties in that city, then it can apply a factor to increase the AV for the entire class of commercial properties. In the second step, the county sends its equalized values to the state because equalization must also happen at the state level to ensure that all counties within the state are paying their fair share of taxes.[33] If uniformity is not present, then the State Tax Commission can apply an adjustment factor to equalize the assessments of all counties within the state.[34] This double-tiered process yields the SEV.

The third calculation is the TV, which is the capped SEV. To prevent sharp increases in an owner's property tax bill, the Michigan Constitution (Proposal A) caps the annual increase in a property's TV so long as it is owned by the same person.[35] Consequently, if a property's market value escalates substantially over the years, then TV will be less than SEV. But, when the owner transfers her property, Proposal A eliminates the cap and SEV=TV.[36] Most critically, the assessor multiplies the TV by the authorized

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contained in the constitution); MICH. ADMIN. CODE r. 209.41(6) (2009); MICHIGAN TAXPAYER'S GUIDE, *supra* note 5, at 1.

[32] *See* MICHIGAN TAXPAYER'S GUIDE, *supra* note 5, at 1 (stating the board of commissioners in every county can apply an equalization factor to assessed values to ensure that property owners pay their fair share of taxes). Taxpayers can file suit if they believe that the county equalization process is legally flawed. *See* Brittany Park Apartments v. Twp. of Harrison, 304 N.W.2d 488, 490 (Mich. Ct. App. 1981) (alleging that the equalized value exceeded 50% of true cash value, in violation of Art. 9, § 3 of the Michigan Constitution).

[33] MICHIGAN STATE TAX COMM'N, *supra* note 30.

[34] *See* Ann Arbor Twp. v. State Tax Comm'n, 227 N.W.2d 784, 787 (Mich. 1975) (noting that previous courts have "said that the 'process of equalization is designed to enhance the goal of uniformity.' That goal is achieved by both intra- and inter-county equalization, by uniformity within and between the counties") (footnotes omitted).

[35] MICH. CONST. art. IX, § 3 ("For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value.").

[36] *See* MICH. CONST. art. IX, § 3; *see also* MICH. COMP. LAWS § 211.27a(3) ("[T]he property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."); MICHIGAN STATE TAX COMM'N, GUIDE TO BASIC ASSESSING 48 (2018), https://www.michigan.gov/documents/treasury/Guide_to_Basic_Assessing_1-16_511508_7.pdf [https://perma.cc/R52B-65QB] (stating that the following transfers are not considered transfers of ownership: spouse to spouse, tenancy by entireties, life lease, foreclosure/forfeiture, redemption—forfeited land for non-payment of taxes, conveyance to trust when beneficiary is same as settlor, court order, joint tenancy, security interest; affiliated group, normal public trading, common control, tax free reorganization, and relationship by first degree of blood or affinity to the first degree).

millage rate to determine the amount of property taxes homeowners owe annually.[37]

B. From Assessment to Foreclosure: The Underpinnings of the Property Tax Foreclosure Crisis in Detroit

Detroit's Assessments Division determines the assessed, taxable, and capped values for all classes of property (residential, commercial, personal, and industrial) with the assistance of computer software.[38] Between 2002 and 2003, the Assessments Division decided to switch computer software systems—from the legacy mainframe system to the Equalizer system—but the changeover was not done properly. A senior assessment official said, "the conversion should have happened over several years with officials going into the field and verifying the information. But, in 2002 things began going south in Detroit and we did not have the manpower or funding to do the switch properly."[39] Consequently, significant data were lost because the Assessments Division only transferred building values to the new Equalizer system without the underlying data on which the numbers were based.[40] After the Assessments Division bungled the conversion, property descriptions, property valuations, and other records were inaccurate and incomplete.[41]

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[37] *See generally* MICHIGAN TAXPAYER'S GUIDE, *supra* note 5, at 3–4.

[38] DETROIT OFFICE OF THE AUDITOR GENERAL, PERFORMANCE AUDIT OF THE FINANCE DEPARTMENT ASSESSMENTS DIVISION JULY 2008–JUNE 2011, at 3 (Sept. 10, 2012), http://bit.ly/2hu2XJK [https://perma.cc/XYQ8-D3FV] [hereinafter PERFORMANCE AUDIT] ("The Assessments Division handles the assessments of all 387,000 parcels of residential, commercial, personal, and industrial properties in the City of Detroit. They are responsible to discover, identify, record, and annually determine the assessed, taxable, and capped values for the purpose of levying taxes that generate substantial revenue for the City.").

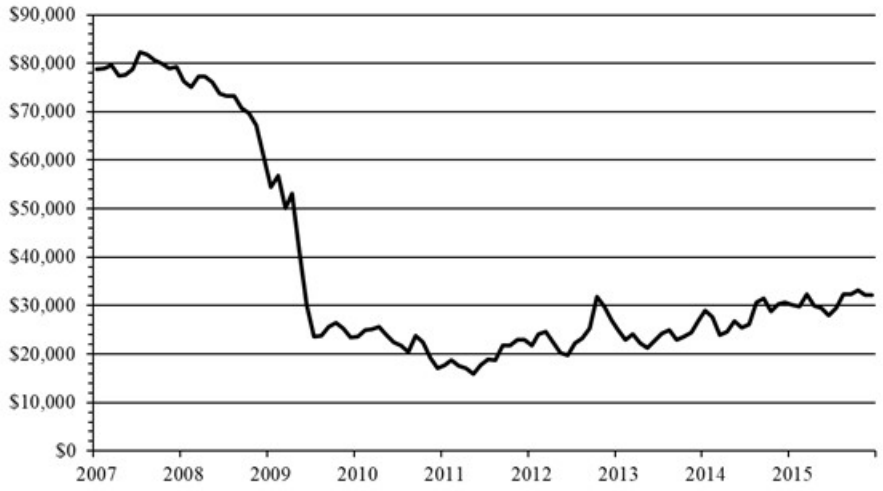
[39] Interview with Senior Assessment Official, in Detroit, Mich. (June 15, 2017).

[40] *Id.*; *see also* PERFORMANCE AUDIT, *supra* note 38, at 9 ("The Assessments Division maintains assessment information on manual property record cards and electronically in Equalizer. Several issues were associated with converting data from the manual property record cards, to IPDS, and subsequently to Equalizer. Information on property record cards did not match information in the system, or the actual physical property. Management acknowledged that they have accuracy issues with property information because of the conversion, economic conditions, and changing property valuations. The result is inaccurate or incomplete information and errors in property descriptions and valuations in the Equalizer.").

[41] *See* PERFORMANCE AUDIT, *supra* note 38, at 10, 17 ("Many exceptions were found during our review of sales and acquisitions of city-owned property handled by the Planning and Development Department (P&DD): A majority (or 37 out of 48) of P&DD sales of city-owned property were not accurately reflected in Equalizer."); *id.* at 9–10 ("Prior to the conversion a property listed three commercial buildings, however, after the conversion the property listed one store, and two apartment buildings; A vacant lot which still included the original building [and] assessed values were not updated appropriately; A property that was improperly listed as tax exempt, and the apartment building only had a base rate of $5 per square feet. The error rate for accuracy of property information on property record cards (the manual assessing system), as well as information in Equalizer, was greater than 5%, which is not a passing score according to the Michigan State Tax Commission (STC) . . . . The results of site visits

Consequently, most properties in the Equalizer system were in override, which in Detroit meant that the assessments were not based on systematically calculated market values.[42] Instead, the assessments were based on incremental, ad hoc adjustments to existing property values.[43]

FIGURE 1: MEDIAN SALE PRICE OF SINGLE FAMILY HOMES IN DETROIT (2007–2016)[44]



SOURCE: ZILLOW, DETROIT, MI HOME VALUE INDEX (SINGLE FAMILY HOMES)[45]

When property values plummeted in 2008 (see Figure 1), this makeshift system became sorely unworkable. The City of Detroit was systematically assessing properties in violation of the Michigan Constitution because it lacked the personnel to update the market value of properties in its taxing

by the OAG, revealed that for five of the 22 (22.7%) residential properties audited, the actual condition of the building or property did not match its condition in Equalizer.").

[42] *Id*. at 9 ("In the City's electronic assessing system known as 'Equalizer', a property is in an 'override status' when its assessed value is input as a total amount, versus the system method of calculating a value based on physical property attributes and other assessment criteria. The property's assessed value is 'disconnected' in the system. Assessed values in Equalizer are historical aggregate amounts, which were transferred from the previous assessing system known as 'IPDS' (Integrated Physical Data Systems): Of the 42 properties audited, 28 (66.7%) remain in override status; A representative in the Assessments Division estimated that 92% of the City's parcels 387,000 remain in override status in Equalizer.").

[43] *See generally* Atuahene & Berry, *supra* note 23.

[44] This figure first appeared in Atuahene & Hodge, *supra* note 7, and is reprinted with permission from the *Southern California Law Review*.

[45] *See Detroit Home Prices & Values*, ZILLOW (last updated Feb. 28, 2018), http://www.zillow.com/detroit-mi/home-values [https://perma.cc/J23W-ZUSJ].

jurisdiction as required by law.[46] In 2012, Detroit's auditor general scrutinized the Assessments Division and found that the average number of parcels per appraiser was 6,911, which is nearly double the recommended ratio.[47] The personnel shortage also meant that the Assessments Division could not carry out state-mandated site visits designed to update property characteristics and values.[48] The auditor general found that

> [t]he Division does not comply with state requirements or its internal metric to conduct site visits for 30% of properties annually. Instead, based on our sample, the average number of years since the last recorded site visits is 22.8 years for commercial and industrial properties and 30.0 years for residential properties.[49]

Without annual site visits, both the property records and the assessments derived from them are inaccurate.[50] The situation worsened in 2013 when Detroit's historic bankruptcy left the city even more cash-strapped and without sufficient resources to conduct basic city services such as fixing streetlights, hiring police officers, and staffing its Assessments Division.[51]

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[46] The Assessments Division was underfunded. *See* PERFORMANCE AUDIT, *supra* note 38, at 50 ("During the budget hearings, City Council questioned the Assessments Division's proposed 2010–2011 budget noting that in spite of the Division 'confronting an increasing caseload of work . . . the Finance Department asked for fewer resources in terms of full time equivalent (FTE) and dollars than the Mayor's recommended budget.'") (omission in original).

[47] *Id.* ("The Michigan's State Assessors Board (MSAB) recommends as a general rule, 'that an effective assessment system requires one full-time employee, including clericals per 1,500 to 3,500 parcels'. In fiscal year 2010-2011, the Assessments Division had a staff of 52 employees (including one contractor) versus the approved budget of 56 positions.").

[48] *Id.* at 11 ("Division Management stated that while their goal is to conduct site reviews of 30% of all properties annually - it is a goal and not based on actual performance. It was stated that they do not have staff to routinely do site visits."). In 2010, the Michigan State Tax Commission sent all municipal tax assessors a memorandum entitled Property Inspection: "The purpose of this Bulletin is to provide assessing officers with guidance regarding the inspection of property. As a guideline, the State Tax Commission recommends that assessors inspect 20% of properties in their local unit annually. Of primary importance is that assessors have a documented inspection plan that provides for consistent review of all properties within the local unit over a specified period of time." MICHIGAN STATE TAX COMM'N, BULLETIN NO. 2 OF 2014, PROPERTY INSPECTION 1 (2014), https://www.michigan.gov/documents/treasury/Bulletin2014-2PropertyInspection_447098_7.pdf [https://perma.cc/ZH9K-JYDW].

[49] *See* PERFORMANCE AUDIT, *supra* note 38, at 9.

[50] *See id*. at 11 ("The effect of not conducting the required annual site visits results in detailed property records (including data in Equalizer), assessments, and the City's tax rolls that are not accurate. Assessments can only be as accurate as the property data on which they are based. Understated assessments results in lost revenues for the City, while overstatements increase revenues at the expense of property owners."); *see also id.* at 36 ("[A]nnual sales studies which are used to determine assessment ratios and ultimately, assessed values would be adversely affected if data relating to sales is missing or not accurate.").

[51] Matt Helms et al., *9 Ways Detroit Is Changing After Bankruptcy*, DETROIT FREE PRESS (published Nov. 9, 2014, 12:00 AM; updated Nov. 9, 2014, 1:38 AM), http://www.freep.com/story/news/local/detroit-bankruptcy/2014/11/09/detroit-city-services-bankruptcy/18716557 [https://perma.cc/H6U7-6CZB] ("Average police response times clocked in at almost an hour. Tens of thousands of broken streetlights meant entire streets go dark at nightfall. And though Detroit has more than 200 municipal

In 2014, in response to the damning exposé report written by Detroit's own auditor general, the Michigan State Tax Commission took control of Detroit's Assessments Division because of "widespread over-assessments and rampant tax delinquencies."[52] In addition, in 2015, the Michigan State Tax Commission created the Audit of the Minimum Assessing Requirements (AMAR), which is its mechanism for ensuring that local assessing units are following Michigan laws and devising corrective action plans to address any discovered deficiencies.[53] With the exception of Detroit, all local units in Wayne County went through the AMAR in 2015.[54]

In addition to the state tax commission's efforts to ensure accuracy, if taxpayers believe that the local assessor has overassessed them, they have a right to appeal. In Detroit, homeowners must first submit an appeal with the Board of Assessors between February 1 and February 15 of each tax year.[55] If the homeowner is not satisfied with the Board of Assessors' decision, then she can appeal to the Board of Review, which conducts hearings in March.[56] If she is still not satisfied, the homeowner can file an appeal with

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parks, the city could only afford to keep about a quarter of them open."). Although some funding of public services in some neighborhoods may have been restored, other neighborhoods have yet to see this type of attention. *See* Quinn Klinefelter, *Post-Bankruptcy, a Booming Detroit Is Still Fragile*, NPR (Dec. 12, 2015, 5:06 PM), http://www.npr.org/2015/12/12/459192004/post-bankruptcy-a-booming-detroit-is-still-fragile [https://perma.cc/GV3S-C2WS].

[52] *See* Christine Ferretti, *State Lifts Oversight of Detroit Property Assessments*, DETROIT NEWS (Aug. 30, 2017, 6:23 PM), http://www.detroitnews.com/story/news/local/detroit-city/2017/08/30/state-lifts-oversight-detroit-property-assessments/105130886 [https://perma.cc/ZWF9-FEJY].

[53] *See* MICHIGAN STATE TAX COMM'N, AUDIT OF MINIMUM ASSESSING REQUIREMENTS AMAR REVIEW SHEET (2017), http://www.michigan.gov/documents/treasury/AMAR_Adopted_9-18-17_with_Hyperlinks_601914_7.pdf [https://perma.cc/P6C6-38EX].

[54] An AMAR report in Detroit would have been duplicative because, as part of the city's corrective action plan, the STC mandated a complete reappraisal of properties in its jurisdiction and regular progress reports. To review all AMAR reports for Wayne County, see *Local Audit and Finance Division* – Document Search, MICH. DEP'T OF TREASURY, (2015), https://treas-secure.state.mi.us/LAFDocSearch [https://perma.cc/ZWF9-FEJY] (search county field for "Wayne").

[55] DETROIT, MICH., CODE OF ORDINANCES § 18-9-3 (1964) ("The period for the review by the board of assessors shall be February first (1st) to February fifteenth (15th), inclusive, each year."). Notwithstanding, in past years, the City of Detroit has lengthened the assessor's review period from January 25 to February 18. *See* Joe Guillen, *Detroit Extends Time to Appeal Property Valuation*, DETROIT FREE PRESS (published Feb. 13, 2017, 1:15 PM; updated Feb. 13, 2017, 7:21 PM), http://www.freep.com/story/news/local/michigan/detroit/2017/02/13/detroit-extends-time-appeal-property-valuation/97850946 [https://perma.cc/97HP-GB5V] (due to late property assessment determinations, the city extended the assessment review period to allow for same two-week opportunity to challenge property valuation). Property classified as commercial, industrial, or utility can appeal directly to the Michigan Tax Tribunal. MICH. COMP. LAWS § 205.735a(4)(a) (2008).

[56] *See* DETROIT, MICH., CODE OF ORDINANCES § 18-9-7 (1964); *see also* MICH. COMP. LAWS §§ 211.28–30 (2018) (the entire membership of the board of review is responsible for reviewing the assessment roll to ensure the assessments are equitable and the capped and taxable valuations are properly calculated).

the Michigan Tax Tribunal by July 30 of the tax year under protest.[57] Only if the Tax Tribunal has committed "fraud, error of law, or the adoption of wrong principles," can taxpayers appeal to the Michigan Court of Appeals and then the state supreme court.[58]

Although an appeal process exists, for poor and working-class families who have limited time, low information, and insufficient monetary resources to hire an advocate, the appeal process can be inaccessible, opaque, and onerous. Consequently, only a small fraction of homeowners appeal their property taxes. Instead, the majority of taxpayers in Detroit and other Wayne County municipalities have paid inflated property tax bills based upon unconstitutional assessments, and when they cannot afford to pay, they face foreclosure.

In a recent study, Christopher Berry and I measure the impact of unconstitutional property tax assessments on tax foreclosure rates in Detroit.[59] Controlling for purchase price, location, and time-of-sale, we demonstrate that properties assessed at higher rates were more likely to experience a subsequent tax foreclosure. We estimate that 10% of all tax foreclosures were caused by unconstitutional tax assessments. Moreover, since lower-priced homes were over-assessed at a greater frequency and magnitude than higher-priced homes, we estimate that 25% of tax foreclosures among homes less than $8,000 in sale price were due to unconstitutional property tax assessments. There is an undeniable link between illegally inflated tax assessments and tax foreclosures.

Wayne County's tax foreclosure process is fairly straightforward. According to the Delinquent Property Tax Foreclosure Public Act (1999), delinquent properties are forfeited to the Wayne County treasurer in their second year of delinquency, and the foreclosure process begins if the property taxes remain unpaid on March 31 in their third year of delinquency.[60] The Wayne County treasurer can sell the property to the state, county, or city government for the cost of all unpaid taxes, interest, and fees

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[57] *See*, *Property Assessment Appeal Information*, CITY OF DETROIT, http://www.detroitmi.gov/How-Do-I/Appeal/Property-Assessment-Appeal-Information [https://perma.cc/3F74-JM86].

[58] *See* MICH. CONST. art. VI, § 28 ("In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.").

[59] Atuahene & Berry, *supra* note 23.

[60] MICH. COMP. LAWS § 211.78g (2015). Also, Wayne County can choose to accelerate the foreclosure process for abandoned properties. MICH. COMP. LAWS § 211.963 (1999) ("Therefore, the local unit of government hereby notifies residents and owners of property within the local unit of government that abandoned tax delinquent property will be identified and inspected and may be certified as certified abandoned property under the certification of abandoned property for accelerated forfeiture act and subject to accelerated forfeiture and foreclosure under the general property tax act.").

owed to other governmental entities.[61] The unsold properties go first to the Wayne County auction, where the minimum bid is all unpaid taxes, interest, and fees.[62] The unsold properties from the first auction then go to the second one, where the opening bid is $500.[63] Unsold properties from the second auction are owned by the Wayne County Treasurer, unless the city accepts them.[64]

In sum, this Section documents the process from a property's assessment to its foreclosure, highlighting the origins of unconstitutional property tax assessments and their outsized role in Detroit's unprecedented tax foreclosure rates. The next Part discusses the FHA and its applicability to property tax administration in Wayne County.

II. FAIR HOUSING ACT (FHA)

Housing discrimination ails America's democracy, and the Fair Housing Act (FHA) is the federal government's primary legislative cure.[65] The FHA was enacted as Title VIII of the Civil Rights Act of 1968, and stands as one of the Civil Rights Movement's crowning achievements.[66] The FHA's initial goal was to end discrimination based on race, color, religion, and national origin in the sale, rental, and financing of dwellings.[67] In 1974,

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[61] MICH. COMP. LAWS § 211.78m(1) (2015).

[62] *Id.* § 211.78m(2).

[63] *See id.* § 211.78m(5) (allowing county to establish a reasonable opening bid to recover cost of sale); Margaret Dewar et al., *Disinvesting in the City: The Role of Tax Foreclosure in Detroit*, 51 URB. AFF. REV. 587, 591 (2015) (noting that Wayne County has set $500 as cost recovery amount).

[64] MICH. COMP. LAWS § 211.78m(6).

[65] *See generally* Jean Eberhart Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149 (1969) (describing the legislative history of Title VIII); Joshua L. Farrell, *The FHA's Origins: How Its Valuation Method Fostered Racial Segregation and Suburban Sprawl*, 11 J. AFFORDABLE HOUS. & CMTY. DEV. L. 374 (2002) (discussing FHA's history); Charles McCurdy Mathias, Jr. & Marion Morris, *Fair Housing Legislation: Not an Easy Row to Hoe*, 4 CITYSCAPE 21 (1999) (discussing the history of the passage of the FHA); Jonathan Zasloff, *The Secret History of the Fair Housing Act*, 53 HARV. J. ON LEGIS. 247 (2016) (discussing the political deal-making surrounding the drafting and passage of the FHA).

[66] *See generally* Charles M. Lamb, *Congress, the Courts, and Civil Rights: The Fair Housing Act of 1968 Revisited*, 27 VILL. L. REV. 1115 (1982) (discussing the history of the drafting and passage of FHA in relation to the Civil Rights Movement); Wilhelmina A. Leigh, *Civil Rights Legislation and the Housing Status of Black Americans: An Overview*, 19 REV. BLACK POL. ECON. 5 (1991) (discussing the state of discrimination and racial segregation in housing during and after the Civil Rights Movement and the impact of the FHA).

[67] *See* Fair Housing Act of 1968, 42 U.S.C. § 3604 (1970) (prior to 1988 amendment) ("[I]t shall be unlawful—(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin."); *see also id.* § 3605 (prior to 1988 amendment) ("[I]t shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing,

Congress added sex to the list of protected categories.[68] In 1988, Congress enacted further amendments to the FHA, ratcheting up the federal government's efforts to eradicate housing discrimination.[69] The amendments strengthened enforcement of the FHA, added handicap and familial status to the list of protected categories, provided monetary damages for victims of discriminatory housing practices, and extended the FHA's reach beyond financing to all residential real estate-related transactions.[70] More importantly, the amendments explicitly authorize the Secretary of the U.S. Department of Housing and Urban Development (HUD) to create regulations for the implementation of the FHA.[71] So long as HUD's regulations reflect a reasonable construction of the law, courts are required to give them "great weight."[72]

But, in spite of the FHA, housing discrimination has continued, especially for African-Americans. The average white person in metropolitan American lives in a neighborhood that is 75% white, whereas a typical African-American lives in a neighborhood that is only 35% white and as much as 45% black, which is not much different from the situation in 1940.[73]

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constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance . . . .").

[68] *See* Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808, 88 Stat. 633, 728–29 (1974) (codified as 42 U.S.C. §§ 3605, 3606, 3631).

[69] *See* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

[70] *See* James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1092–98 (1989).

[71] *See* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 13(b), 102 Stat. 1636 (1988) ("In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the enactment of this Act . . . , issue rules to implement Title VIII . . . as amended by this Act . . . ."); Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3232, 3283 (Jan. 23, 1989) ("This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions."). S*ee generally* 24 C.F.R. §§ 0–93 (2017) (HUD regulations regarding housing).

[72] Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 210 (1972); *see also* Meyer v. Holley, 537 U.S. 280, 287–88 (2003) (holding that the court will rely on HUD regulations in determining the extent to which the FHA provides for vicarious liability); Griggs v. Duke Power Co., 401 U.S. 424, 433–34 (1971) ("The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § 703(h) to permit only the use of job-related tests. The administrative interpretation of the Act by the enforcing agency is entitled to *great deference* . . . . Since the Act and its legislative history support the Commission's construction, this affords good reason to treat the guidelines as expressing the will of Congress." (emphasis added) (footnote omitted) (citations omitted)); NAACP v. Am. Family Mut. Ins. Co., 978 F.2d 287, 300 (7th Cir. 1992).

[73] *See* JOHN R. LOGAN & BRIAN J. STULTS, US2010 PROJECT, THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS 2 (2011), https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report2.pdf [https://perma.cc/KPC8-ACM6] (analyzing data from 1940–2010 to determine changes and trends in racial residential segregation over the past several decades)*; see*

African-Americans still live segregated away from whites even fifty years after the passage of the FHA due, in part, to housing discrimination, which has evolved throughout the years. Initially, race was often an explicit reason for exclusion. For example, in one case reaching the Supreme Court, a community in Virginia prohibited an African-American family from using the community park and playground facilities to which their residence granted them access simply because of their race.[74] In 1969, the Court ruled that this blunt form of racism was a clear violation of the FHA.[75]

As the decades progressed, the denial of housing opportunities was usually no longer overtly based on race, but instead based on the more complex intersection of race, gender, and class.[76] The FHA, however, is capacious enough to address racial discrimination that is both overt and covert. For instance, in 1974, the town of Black Jack, Missouri passed an ordinance preventing the construction of an affordable housing complex called Park View Heights in a middle-class suburb of St. Louis that was 99% white.[77] The Eighth Circuit ruled that this action disparately impacted low-income African-Americans' access to suburban housing in violation of the FHA.[78] Likewise, lawmakers in Huntington, New York restricted private multifamily housing projects to the two areas of the town occupied primarily by minorities, denying low-income minorities access to predominately white areas.[79] In 1988, the Second Circuit ruled that the ordinance had a disparate impact on minorities and thus was a violation of the FHA.[80]

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also Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 ANN. REV. SOC. 167 (2003); Douglas E. Mitchell et al., *The Contributions of School Desegregation to Housing Integration: Case Studies in Two Large Urban Areas*, 45 URB. EDUC. 166 (2010) (discussing resistance to residential desegregation after the civil rights era, resulting in limited desegregation in some cities).

[74] *See* Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 234–35 (1969).

[75] *See id.* at 236 ("What we have here is a device functionally comparable to a racially restrictive covenant, the judicial enforcement of which was struck down in *Shelley v. Kraemer* . . . .").

[76] Intersectionality is a social justice theory advancing the idea that gender, race, and class are interconnected and operate in society as "intersecting oppressions." *See generally* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) (outlining the framework of intersectionality); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1245–46 (1991) (stating the struggles created by poverty are often exacerbated by racial discrimination in housing policies).

[77] United States v. City of Black Jack, 508 F.2d 1179, 1181–83 (8th Cir. 1974).

[78] *Id*. at 1188.

[79] *See* Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988), *aff'd*, 488 U.S. 15 (1988) (examining how exclusionary zoning that prevents construction of multifamily units in predominately white areas promotes housing segregation by isolating minorities and low-income residences from areas with white residents and their higher-valued properties).

[80] *See id.* at 938–39 (finding the city's zoning policy caused disproportionate harm to black residents, perpetuated racial segregation for the entire community, and its aims could have been achieved using less discriminatory means)*; see also* Mhany Mgt., Inc. v. County of Nassau, 819 F.3d 581, 606–16 (2d Cir.

In this Part, I explore how litigators can use the FHA to address the property tax foreclosure crisis in Wayne County. Section A reviews existing case law to determine whether the FHA applies to property tax administration. Section B investigates if systemic unconstitutional property tax assessments and the resulting foreclosures can withstand the stringent disparate impact analysis required by the FHA. Section C explains how discriminatory property tax administration in Wayne County violates FHA §§ 3404 and 3405. Finally, Section D discusses which courts litigators can approach to file a FHA claim.

A. FHA's Applicability to Property Tax Administration

1. Does Case Law Indicate that Property Tax Administration Is Covered by the FHA?

There are only a few cases that explicitly discuss whether the FHA applies to property tax administration. In 1999, a New York trial court's decision in *Coleman v. Seldin* stated that the FHA does apply.[81] Nassau County's policy was to assess homes based on the cost to build the home in 1938 rather than based on its current market value.[82] This policy disparately impacted poor and minority homeowners because market values for houses in affluent (mostly white) areas increased markedly, resulting in drastic underassessment, while market values in low-income (mostly black) areas remained stable or declined, resulting in overassessment.[83] The court declared that since the FHA is a broad, antidiscrimination statute, there is no valid distinction between assessment practices and other practices that courts have consistently ruled fall within the FHA's purview, such as zoning policies.[84] Consequently, the court denied the defendant's motion to dismiss the FHA claim. Shortly before the trial was to begin, the parties entered into a consent decree which required Nassau County to adopt a new system for assessing property that was nondiscriminatory and based on fair market

2016) (deciding that the abandonment of multi-family residential zoning in favor of residential townhouse zoning was driven by racial animus and thus violated the disparate treatment component of the Fair Housing Act).

[81] *See* 687 N.Y.S.2d 240, 250 (Sup. Ct. 1999) ("This Court concludes that the FHA applies to the real property assessment policies, procedures and conditions practiced and imposed by the defendants herein.").

[82] *See id.* at 252.

[83] *See id.* at 247–48.

[84] *See id.* at 250 ("The Court can discern no substantive distinction in the application of the broad national anti-discrimination policy, as embodied in the FHA, between zoning policies and real property assessment policies effecting the fair provision of housing.").

value.[85] Now, *Coleman* stands for the proposition that the FHA does, in fact, apply to property tax administration.

More recently, in 2016, a New York trial court revisited the question of whether the FHA applies to property tax administration.[86] In *Robinson v. City of New York*, plaintiffs alleged that New York City's property tax classification system violated the FHA because it disparately impacted African-American and Hispanic residents.[87] The city divided its real property into four classifications. African-Americans and Hispanics were twice as likely to reside in Class 2 (all other residential properties), while whites primarily resided in Class 1 properties (one- to three- family homes).[88] Although Class 1 properties had market values twice that of Class 2 properties, Class 1 properties paid 15.5% of the city's real property tax, while Class 2 paid 37%.[89] Most importantly, plaintiffs claimed that apartment owners in Class 2 passed this mark-up along to their tenants, and so the city's facially neutral property tax scheme had a racially discriminatory effect.[90] The trial court dismissed the case, ruling that plaintiffs had no standing because—even though they claimed that landlords pass the elevated taxes along to tenants—plaintiffs presented no evidence to support this claim, rendering their injury conjectural.[91] Also, the court reasoned that plaintiffs presented no evidence that the property tax classification system had a disparate impact on African-Americans and Hispanics.[92] Since the lack of evidence and standing dominated the court's decision in *Robinson*, it never

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[85] *See* O'Shea v. Bd. of Assessors of Nassau Cty., 864 N.E.2d 1261, 1264–65 (N.Y. 2007) (noting the *Coleman* consent decree caps home value assessment increases at a maximum of 6% in any one year or 20% over a five-year period).

[86] *See* Robinson v. City of New York, No. 151679/2014, 2015 WL 3367799, at *1 (N.Y. Sup. Ct. Apr. 20, 2015), *aff'd* 40 N.Y.S.3d 381, 383 (App. Div. 2016).

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.* at *1–2.

[91] *Robinson*, 40 N.Y.S.3d at 383. ("Moreover, plaintiffs are not property owners and thus, they do not directly bear the costs of the property tax burden placed on larger buildings. The argument that plaintiffs nonetheless have standing, as they have been injured by the tax scheme, resulting in higher rents which would be reduced were real property taxes to be shared equitably among the different classes of real property, is speculative. At this juncture, plaintiffs' allegations as to injury are nothing more than conjectural.").

[92] *Id.* at 383–84 ("Plaintiffs failed to identify where they live, other than being in apartment buildings in the Bronx and Queens; how much rent they pay; and, what portion, if any, of their rent is attributable to their landlord's property tax obligation. Additionally, plaintiffs failed to allege that they in fact paid a higher rent rate than they would have had their landlords received a more favorable property tax rate . . . . Plaintiffs' section 1983 claim, which alleges a violation of federal Equal Protection Clause (US CONST., amend. XIV, § 1), and their corresponding state law claim (N.Y. CONST., art. I, § 11) fail in the absence of proof of racially discriminatory intent or purpose." (citing Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977); Esler v. Walters, 437 N.E.2d 1090, 1094 (N.Y. 1982))).

reached the question of whether the FHA applies to property tax administration when there is, in fact, sufficient evidence and standing.

The FHA's applicability to property tax administration was also addressed in the case of *Drayton v. McIntosh County*, filed in 2016.[93] Plaintiffs (joined by the U.S. Attorney General and the District Attorney for the Southern District of Georgia) alleged that state defendants—McIntosh County and the State of Georgia—discriminated against the Gullah Geechee population on Sapelo Island through the unequal and racially discriminatory provision of housing and housing-related services.[94] One of the plaintiffs' claims was that, due to discriminatory appraisals, many plaintiffs witnessed unprecedented increases in the assessed value of their homes.[95] For instance, the assessed value of Benjamin Hall's home skyrocketed by 3,059% in one year, increasing from $10,500 in 2011 to $331,650 in 2012.[96] Plaintiffs alleged that because of these discriminatory appraisals and the soaring property tax bills that resulted, several people are at risk of losing their homes to property tax foreclosure or being forced to preemptively sell their land.[97] The court has yet to make a final ruling in *Drayton*.

As mentioned in the introduction of this Essay, there is also the case of *Morningside Community v. Sabree*, where plaintiffs sued the City of Detroit and Wayne County, alleging that inequitable property tax assessments violate the Fair Housing Act.[98] Beyond *Coleman*, *Robinson*, *Drayton*, and *Morningside*, I am not aware of any other cases that apply the FHA to property tax assessments, making this fairly uncharted terrain. Since the Supreme Court has stated that the FHA's language is "broad and inclusive,"[99] there is a strong case that it does apply to property tax administration.

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[93] Complaint for Damages and Declaratory and Injunctive Relief, Drayton v. McIntosh Cty., No. 2:16-CV-00053, 2016 WL 3443919 (S.D. Ga. June 17, 2016).

[94] *See id.* at ¶ 27. Plaintiffs contend that post-acquisition claims are cognizable under the FHA, as supported by HUD's implementing regulations. *See* 24 C.F.R. § 100.65(b)(4) (2017) ("Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her."); 24 C.F.R. § 100.70(d)(4) ("Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.").

[95] *See* Complaint for Damages and Declaratory and Injunctive Relief, *supra* note 94, at ¶¶ 305–07.

[96] *Id.* ¶ 307.

[97] *See id.* ¶ 321.

[98] Complaint, *supra* note 6, at ¶ 1.

[99] *See* Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209 (1972) (cited by Metro. Hous. Dev. Corp. v. Village of Arlington Heights, 616 F.2d 1006, 1011 (7th Cir. 1979)) ("The language of the Fair Housing Act is 'broad and inclusive'"); *see also* Lopez v. City of Dallas, No. 3:03-CV-2223-M, 2004 WL 2026804, at *9 (N.D. Tex. Sept. 9, 2004) (noting that the language of § 3604 regarding making housing unavailable should be interpreted as broadly as possible).

Coleman is the only case to directly rule on the matter, and that court decided that the FHA does indeed apply.

2. Does the FHA Protect Housing Post-Acquisition?

Property tax assessments and foreclosure occur after the homeowner has acquired the home. So if the FHA does not apply to housing post-acquisition, then inequitable property tax administration would not fall under the FHA's penumbra. Some cases have held that the FHA protects plaintiffs even after they have acquired their housing, but other cases have ruled it does not.[100]

In 1984, the Seventh Circuit decided *Southend Neighborhood Improvement Ass'n v. County of St. Clair*, which involved the discriminatory provision of municipal services.[101] The court found that, for municipal services to fall under § 3604(a), they must have a direct impact on plaintiffs' ability as potential homebuyers or renters to locate in a particular area or on their ability to secure housing.[102] Several lower courts followed the Seventh Circuit holding in *Southend*, rejecting § 3604(a) claims involving the discriminatory provision of municipal services if it did not adversely affect access.[103] For example, in *Clifton Terrace Associates, Ltd. v. United Technicians Corp.*, the court relied on *Southend* to reject a § 3604(a) claim, alleging discrimination by an elevator repair company that refused to repair an elevator for an apartment building because of the race of the residents.[104] The court stated that this was an issue of a service resulting in inhabitability of housing, but not the unavailability of housing as required under § 3604(a).[105]

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[100] *See generally* ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 14:3, at 14-21 to 14-25 & nn.32–42 (2017) (discussing many cases and the different legal theories used under § 3604); *infra* note 121 and accompanying text.

[101] 743 F.2d 1207 (7th Cir. 1984).

[102] *Id.* at 1210 (first appellate case focused on FHA coverage of discrimination in municipal services, where the court found § 3604(a) did not apply to failure to maintain properties because impact on property value is not equivalent to making housing unavailable).

[103] *See, e.g.*, Jersey Heights Neighborhood Ass'n v. Glendening, 174 F.3d 180, 192 (4th Cir. 1999) (holding that highway-siting decision is not housing-related and noting that "[c]ountless private and official decisions may affect housing in some remote and indirect manner, but the Fair Housing Act requires a closer causal link between housing and the disputed action"); *Lopez*, 2004 WL 2026804, at *3 (applying *Southend* to reject § 3604(a) claim that industrial zoning, industrial pollution, and lack of flood protection rendered property unavailable); Gourlay v. Forest Lake Estates Civic Ass'n, 276 F. Supp. 2d 1222, 1229–31 (M.D. Fla. 2003) (noting that courts have interpreted § 3604(a) claims to apply to government actions that impact the availability of housing for minorities), *vacated*, No. 8:02-CV-1955T30TGW, 2003 WL 22149660, at *1 (M.D. Fla. Sept. 16, 2003) (settlement).

[104] 929 F.2d 714, 719 (D.C. Cir. 1991).

[105] *Id*.

In *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, the Seventh Circuit also used this inhabitability versus unavailability dichotomy and argued that plaintiffs' claim failed because they "are complaining not about being prevented from acquiring property but about being harassed by other property owners."[106] Although several courts have adopted the dichotomy found in *Halprin*,[107] in *Bloch v. Frischholz*, the Seventh Circuit sitting en banc changed its position:

> We highlight the word "after" because based on a prior opinion from this court, *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), the district court concluded that condo owners couldn't rely on the FHA to safeguard their rights from any post-acquisition discrimination. We took this case to the full court to consider this important question. Upon careful review of the FHA and our prior opinion in *Halprin,* we conclude that in some circumstances homeowners have an FHA cause of action for discrimination that occurred after they moved in.[108]

Halprin has been cited by several courts,[109] but they often discount the portion of the Seventh Circuit's en banc decision that declares the FHA can

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[106] 388 F.3d 327, 329 (7th Cir. 2004).

[107] *See, e.g.*, Cox v. City of Dallas, 430 F.3d 734, 741 (5th Cir. 2005); *Jersey Heights*, 174 F.3d at 192 (4th Cir. 1999); Jackson v. Okaloosa Cty., 21 F.3d 1531, 1536–38, 1542 (11th Cir. 1994); Clifton Terrace Assocs. v. United Techs. Corp., 929 F.2d 714, 720 (D.C. Cir. 1991); Woods–Drake v. Lundy, 667 F.2d 1198, 1201 (5th Cir. 1982); King v. Metcalf 56 Homes Ass'n, No. 04-2192-JWL, 2004 WL 2538379, at *2 (D. Kan. Nov. 8, 2004) ("The plain language of the statute . . . limits the scope of § 3604(b) to discrimination in connection with the sale or rental of housing. . . . [D]istrict courts have widely held that § 3604(b) extends only to discrimination that impacts the accessibility and availability of housing, not to claims of discriminatory conduct relating to the use and enjoyment of previously acquired housing." (citation omitted)); Lawrence v. Courtyards at Deerwood Ass'n, 318 F. Supp. 2d 1133, 1141–43 (S.D. Fla. 2004) (stating that § 3604(b) is limited to actions related to the acquisition or sale and rental of housing); Walton v. Claybridge Homeowners Ass'n., No. 1:03-CV-69-LJM-WTL, 2004 WL 192106, at *4 (S.D. Ind. 2004); *Gourlay*, 276 F. Supp. 2d at 1233 ("The context of the use of the phrase 'in connection therewith' clearly limits claims for discriminatory provision of services to the provision of those services in connection with a sale, because the preceding sentence mentions only the sale or rental of a dwelling."), *vacated*, 2003 WL 22149660, at *1 (settlement); Miller v. City of Dallas, No. 3:98–CV–2955–D, 2002 WL 230834, at *12–13 (N.D. Tex. Feb. 14, 2002) (granting summary judgment on Section 3604(a) claim for similar reasons); Hall v. Lowder Realty Co., 160 F. Supp. 2d 1299, 1319–20 (M.D. Ala. 2001) (granting summary judgment against FHA plaintiff because that plaintiff had not shown that the alleged discriminatory conduct affected the availability of housing); United States v. Weisz, 914 F. Supp. 1050, 1054 (S.D.N.Y. 1996); Laramore v. Ill. Sports Facilities Auth., 722 F. Supp. 443, 452 (N.D. Ill. 1989) .

[108] 587 F.3d 771, 772, 776 (7th Cir. 2009) ("Prohibiting discrimination at the point of sale or rental but not at the moment of eviction would only go halfway toward ensuring availability of housing. A landlord would be required to rent to an African–American but then, the day after he moves in, could change all the locks and put up signs that said, 'No blacks allowed.' That clearly could not be what Congress had in mind when it sought to create 'truly integrated and balanced living patterns.'").

[109] *See, e.g.*, Hidden Vill., LLC v. City of Lakewood, 734 F.3d 519, 529 (6th Cir. 2013); Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 712–13 (9th Cir. 2009); AHF Cmty. Dev., LLC v. City of Dallas, 633 F. Supp. 2d 287, 298–99 (N.D. Tex. 2009).

"reach post-acquisition discriminatory conduct that makes a dwelling unavailable to the owner or tenant, somewhat like a constructive eviction."[110] Additionally, the Seventh Circuit acknowledged that other courts have construed post-sale practices—such as redlining, racial steering, exclusionary zoning, and other actions—as denying housing in violation of 3404(a).[111]

The Eighth Circuit also questioned the reasoning in *Halprin*, holding instead that the FHA applies to housing post-acquisition—further discrediting the inhabitability versus unavailability dichotomy.[112] In addition, the Eleventh Circuit has consistently applied the FHA to acts of housing discrimination that occur after the acquisition of housing,[113] as have several other courts.[114] Moreover, courts have consistently ruled that there is a

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[110] *Bloch*, 587 F.3d at 776; *see also Halprin*, 388 F.3d at 328–29.

[111] *Id.* at 777 (quoting Southend Neighborhood, Improvement Ass'n v. County of St. Clair, 743 F.2d 1207, 1209 & n.3 (7th Cir. 1984)).

[112] Neudecker v. Boisclair Corp., 351 F.3d 361, 364 (8th Cir. 2003).

[113] *See, e.g.*, Hunt v. Aimco Props., L.P., 814 F.3d 1213, 1222–24 (11th Cir. 2016) (permitting claim by current tenants based on landlord's threatening conduct); Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277 (11th Cir. 2014) (allowing current owner to bring a § 3604(f) claim against condominium association); Dixon v. Hallmark Cos., 627 F.3d 849 (11th Cir. 2010) (authorizing current tenant to bring a FHA claim under § 3604(b)); Hawn v. Shoreline Towers Phase 1 Condo. Ass'n, 347 F. App'x 464 (11th Cir. 2009) (permitting current owner to bring a § 3604(f) claim); Massaro v. Mainlands Section 1 & 2 Civic Ass'n, 3 F.3d 1472 (11th Cir. 1993) (allowing current resident to bring a § 3604(a) claim based on discriminatory interference with the continuing use and enjoyment of their dwelling).

[114] *See, e.g.*, Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 713 (9th Cir. 2009) ("There are few 'services or facilities' provided at the moment of sale, but there are many 'services or facilities' provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired possession of the dwelling."); Evans v. Tubbe, 657 F.2d 661, 662–63, 663 n.3 (5th Cir. 1981) (enabling a homeowner to bring a claim against his neighbors under § 3604(a)); Schwarz v. Vills. Charter Sch., Inc., 165 F. Supp. 3d 1153, 1187–88 (M.D. Fla. 2016) (post-acquisition claim based on § 3604(f)); McHale v. Water's Edge Ass'n, No. 1:14-cv-23381-UU, 2014 WL 7883602, at *3–4 (S.D. Fla. Dec. 1, 2014) (post-acquisition claim based on § 3604(f)); Smith v. Zacco, No. 5:10-cv-360-TJC-JRK, 2011 WL 12450317, at *6–7 (M.D. Fla. Mar. 8, 2011) (upholding a post-acquisition claim against developer and homeowners' association under §§ 3604(a) and (b)); Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban Dev., 723 F. Supp. 2d 14, 21–23 (D.D.C. 2010) (allowing current homeowners to make a claim under § 3604(a) for disparities in the distribution of post-hurricane recovery funds); Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n, 456 F. Supp. 2d 1223, 1230 (S.D. Fla. 2005) ("Accordingly, part and parcel of the purchase of a home within a planned community are the rights and privileges associated with membership within the community. It would appear, therefore, that in the context of planned communities, where association members have rights to use designated common areas as an incident of their ownership, discriminatory conduct which deprives them of exercising those rights would be actionable under the FHA."); Richards v. Bono, No. 5:04CV484-OC-10GRJ, 2005 WL 1065141, at *3–4 (M.D. Fla. May 2, 2005) (indicating Eleventh Circuit district courts have found that § 3604(b) claims apply to post-acquisition conduct for renters); U.S. v. Koch, 352 F. Supp. 2d 970, 976 (D. Neb. 2004) (rejecting *Halprin*); Landesman v. Keys Condo. Owners Ass'n, No. C 04-2685 PJH, 2004 WL 2370638, at *4 (N.D. Cal. Oct. 19, 2004) (allowing

violation of § 3617 of the FHA—which prohibits coercion, intimidation, threats, or interference with an individual's exercise of rights protected under the FHA—when sexual harassment causes a hostile environment after residents acquire their housing.[115] Most importantly, since HUD's 1989 regulations require deference,[116] FHA protections extend to issues arising after a residence's acquisition because HUD's regulations require this.[117] Localities provide privileges, services, and facilities post-acquisition and HUD's regulations prohibit "[l]imiting the use of privileges, services or facilities associated with a dwelling" to any protected class.[118]

The evidence suggesting that the FHA applies post-acquisition is overwhelming. The classic slippery slope argument explains why many jurists are nevertheless reluctant to apply the FHA to issues beyond the initial sale or rental of housing. According to the Fifth Circuit in *Cox v. City of Dallas*, "[a]lthough the FHA is meant to have a broad reach, unmooring the 'services' language from the 'sale or rental' language pushes the FHA into a general anti-discrimination pose, creating rights for any discriminatory act which impacts property values."[119] But, the FHA ensures that all Americans—irrespective of their racial, gender, religious, or ethnic identities—have fair access to housing, so this slippery slope argument should not prevent its protections from extending post-acquisition.

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families with children to challenge condominium association facilities' rules as unlawfully discriminatory under the FHA).

[115] *See, e.g.*, *Richards*, 2005 WL 1065141, at *3–4 (FHA applies to post-acquisition sexual harassment); Williams v. Poretsky Mgmt., Inc., 955 F. Supp. 490, 494–95 (D. Md. 1996) (sexual harassment falls into FHA prohibition of sexual discrimination). *But see* DiCenso v. Cisneros, 96 F.3d 1004, 1008–09 (7th Cir. 1996) (holding that in this case, one instance of unwanted contact did not rise to level of objectively hostile housing environment); Honce v. Vigil, 1 F.3d 1085, 1088–90 (10th Cir. 1993) (holding that poor treatment of residents not solely directed at women was not actionable).

[116] Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 843–44 (1984) ("The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress . . . Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." (internal citations and quotation marks omitted) (quoting Morton v. Ruiz, 415 U.S. 199, 231 (1974))).

[117] 24 C.F.R. § 100.400(c)(2) (2017) ("Conduct made unlawful under [section 3617] includes . . . [t]hreatening, intimidating or interfering with persons *in their enjoyment of a dwelling* because of the race, color, religion, sex, handicap, familial status, or national origin of such persons . . . .") (emphasis added); *id.* § 100.65(b)(2) ("Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.").

[118] *Id.* § 100.65(b)(4).

[119] 430 F.3d 734, 746 (5th Cir. 2005).

3. Which Municipal Services Are Covered by the FHA?

Cities and towns provide municipal services post-acquisition. The FHA prohibits discrimination in the provision of services related to a dwelling, and courts have read this to include services traditionally provided by municipalities.[120] A key question for the present inquiry is whether property tax administration is one of these "services" covered by the FHA. Neither the text of the FHA nor HUD's regulations provide details about exactly which municipal services are covered under Section 3604, but a review of case law shines light on this important question.[121] In order to fall under the FHA's umbrella, property tax administration must be a municipal service that affects an individual's ability to acquire and maintain housing.

In his treatise, *Housing Discrimination: Law & Litigation*, Robert Schwemm provides a comprehensive listing of all the cases where courts have ruled that the discriminatory provision of municipal services is actionable under § 3604(b) and when it is not.[122] The relevant case law suggests that the municipal services included are garbage collection, fire protection, police protection, street paving, street lighting, sanitary sewers, surface water drainage, water mains, fire hydrants, and traffic controls signs.[123]

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[120] 24 C.F.R. § 100.70(d)(4) (2017) ("Prohibited actions relating to dwellings under paragraph (b) of this section include, but are not limited to: . . . Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin."). *See generally* Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 HARV. C.R.–C.L.L. REV. 1, 9 (2008) ("In decisions dating back to 1974, courts have addressed the issue of whether § 3604(b) should apply to a situation in which, for example, a county or municipality provides inferior water, trash, or snow-clearing services to the majority-minority areas of town."); Robert G. Schwemm, Cox*,* Halprin*, and Discriminatory Municipal Services Under the Fair Housing Act*, 41 IND. L. REV. 717, 742 (2008) ("Although the Seventh Circuit ruled against the particular § 3604(b) claim there, the court's dicta that this provision 'applies to services generally provided by governmental units such as police and fire protection or garbage collection' became the foundation for numerous subsequent decisions that recognized § 3604(b) as covering discriminatory municipal services." (citing Southend Neighborhood Improvement Ass'n v. County of St. Clair, 743 F.2d 1207, 1210 (7th Cir. 1984))).

[121] In his article about discriminatory municipal services under the FHA, Professor Schwemm has carefully unearthed all the relevant cases. Schwemm, *supra* note 120, at 742; *see also* SCHWEMM, *supra* note 100 § 14:3, at 14-21 to 14-25 & nn.32–42 .

[122] *See* SCHWEMM, *supra* note 100, at § 14:1 to §14:3.

[123] Ammons v. Dade City, 783 F.2d 982, 983–84 (11th Cir. 1986) (inferior street paving and related services and storm water drainage facilities to black neighborhoods); Baker v. City of Kissimmee, 645 F. Supp. 571, 573, 590 (M.D. Fla. 1986) (inferior street paving and related services to black neighborhoods); Bryant v. City of Marianna, 532 F. Supp. 133, 135 (N.D. Fla. 1982) (discrimination in providing inferior street paving and maintenance, water and sewer services, drainage facilities, fire protection, parks and recreation facilities, and street lighting to black neighborhoods); Johnson v. City of Arcadia, 450 F. Supp. 1363, 1376–79 (M.D. Fla. 1978) (inferior street paving, parks and recreation facilities, and water service to black neighborhoods); Selmont Improvement Ass'n v. Dallas Cty. Comm'n, 339 F. Supp. 477, 481 (S.D. Ala. 1972) (discrimination in providing inferior street paving to black neighborhoods); *see also*

The case law, however, is not consistent. In *Southend Neighborhood Improvement v. County of St. Clair*, the Seventh Circuit ruled that the County's poor maintenance of tax delinquent properties was not a municipal service subject to the FHA.[124] In this 1984 opinion, however, the dicta states that § 3604(b) of the FHA applies to "services generally provided by governmental units such as police and fire protection or garbage collection."[125] But, more recently, in 2013, a district court denied New York City's motion for summary judgment on plaintiff's FHA claim, which alleged that there was discriminatory provision of police services in New York City Housing Authority (NYCHA) buildings.[126]

When the case law about which municipal services are covered by the FHA is unclear, HUD's regulations can shed light and clarify. For example, in 1984, the plaintiffs in *Mackey v. Nationwide Insurance Cos*. sought relief because insurance companies did not extend homeowners insurance to residents based on their race, or the race of the majority of homeowners in the area—a phenomenon otherwise known as insurance redlining.[127] In the dicta of *Mackey*, the Fourth Circuit made clear that the prohibition of discriminatory housing services "encompasses such things as garbage collection and other services of the kind usually provided by municipalities."[128] The court, however, ruled that the FHA did not outlaw discrimination in homeowner's insurance because it does not qualify as the provision of services connected with dwellings under § 3604(a).[129] In 1992, the Seventh Circuit contradicted *Mackey* in *NAACP v. American Family Mutual Insurance Co.*, when it held that the FHA does apply to insurance

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Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 421 F.3d 170, 176 (3d Cir. 2005) ("By its express terms, [§ 3604] applies to 'the provision of services or facilities' to a dwelling, such as a sewer service."); Good Shepherd Manor Found., Inc. v. City of Momence, 323 F.3d 557, 565 (7th Cir. 2003) (discriminatory denial of water); Campbell v. Bowlin, 724 F.2d 484, 489–90 (5th Cir. 1984) (per curiam) (denial of water and sewer facilities to plaintiff's land in a predominantly black neighborhood based on intentional discrimination); Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.2d 108, 114 (2d Cir. 1970) (ruling that a predominately white city's refusal to connect a minority housing project to the existing sewer system was a violation of the FHA); Davis v. City of New York, 959 F. Supp. 2d 324, 367–68 (S.D.N.Y. 2013) (discriminatory provision of police services); Kennedy v. City of Zanesville, 505 F. Supp. 2d 456, 495–97 (S.D. Ohio 2007) (discriminatory denial of sewer services).

[124] 743 F.2d 1207 (1984).

[125] *Id.* at 1210.

[126] *Davis*, 959 F. Supp. 2d at 367–68; Davis v. City of New York, 902 F. Supp. 2d 405, 435–37 (S.D.N.Y. 2012). *But see* Vercher v. Harrisburg Hous. Auth., 454 F. Supp. 423, 424 (M.D. Pa. 1978) (holding that § 3604(b) did not extend to police protection).

[127] 724 F.2d 419, 420 (4th Cir. 1984).

[128] *Id*. at 424.

[129] *Id*. at 424–25 (arguing discrimination in homeowner's insurance does not qualify as making housing unavailable under § 3604(a) and does not qualify as the provision of services in connection with a dwelling under § 3604(b)).

redlining.[130] The court reasoned that § 3604 is written in general terms and does not apply to certain people or industries; therefore, there is no basis to imply an exemption for insurance providers.[131] In 2000, HUD's regulations explicitly outlawed discrimination in the provision of "property or hazard insurance for dwellings," providing the definitive last word on the matter.[132]

From the existing case law, it is unclear whether the FHA covers property tax administration. Since the FHA is a civil rights act dealing specifically with the fair acquisition and maintenance of housing, it is crucial that the municipal services covered directly impact these goals. Property taxes discriminatorily applied can prevent protected groups from accessing housing, or it can lead individuals and families unable to afford unfairly assessed property taxes to forfeit their homes, as witnessed in Detroit. Since property tax administration is a municipal service that affects an individual's ability to acquire and maintain housing, there is a strong argument that it falls under the FHA's umbrella. In addition, historically, property taxes were commonly used to unjustly dispossess African-Americans of their property,[133] so there is also a strong argument that the FHA covers property tax administration because it was designed to counteract historical patterns of racial discrimination in housing.[134] HUD can and should provide clarity.

B. FHA's Disparate Impact Analysis

Once the court determines that the FHA applies to property tax administration, then the next step is to examine whether Wayne County has a policy or practice that causes unconstitutional tax assessments and tax foreclosure to disparately impact African-Americans. In *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, the Supreme Court validated HUD's interpretation of the requirements for proving a disparate impact claim under the FHA.[135] According to HUD's regulations, "[a] practice has a discriminatory effect where it actually or

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[130] 978 F.2d 287, 297–300 (7th Cir. 1992).

[131] *See id.* at 299–300.

[132] 24 C.F.R. § 100.70(d)(4) (2000).

[133] *See* Andrew W. Kahrl, *Capitalizing on the Urban Fiscal Crisis: Predatory Tax Buyers in 1970s Chicago*, 2015 J. URBAN HIST. 1, 1 (2015); Andrew W. Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 J. S. HIST. 579, 582 (2016).

[134] 42 U.S.C. § 3601 (2012) ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."); Jones v. Alfred H. Mayer Co., 392 U.S. 409, 442–43 (1968) ("[W]hen racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.").

[135] 135 S. Ct. 2507 (2015); Robert G. Schwemm, *Fair Housing Litigation After* Inclusive Communities*: What's New and What's Not*, 115 COLUM. L. REV. SIDEBAR 106, 107 (2015) (arguing that the Supreme Court's standards for FHA impact cases are similar to those set forth in the HUD regulation but not identical).

predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin."[136] To prove that there has been a disparate impact in violation of the FHA, I first identify Wayne County's equalization policy as the neutral policy causing the statistical disparity. Then, I use the three-part burden-shifting framework to show that Wayne County's equalization policy causes a disparate impact in violation of the FHA.

1. A Neutral Policy Must Cause a Statistical Disparity

The Supreme Court stated the first step in an FHA claim is that plaintiffs must isolate the policy that caused the disparity.[137]

> [A] disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement ensures that "[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact" and thus protects defendants from being held liable for racial disparities they did not create.[138]

The Court also noted that a one-time adverse decision does not constitute a policy.[139] Courts have ruled that policies in violation of the FHA include: a zoning ordinance that disallowed apartments and required one acre lot sizes, a policy that granted tax credits only in primarily African-American neighborhoods, an ordinance prohibiting the rental or occupancy of a single family dwelling to someone other than a blood relative if the occupant did not first obtain a permissive use permit, and an ordinance placing a temporary moratorium on construction of multi-family dwellings.[140]

In this case, the relevant policy is Wayne County's equalization policy, which disparately impacts the county's predominately African-American cities. While it is solely the local assessor's responsibility to determine the

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[136] 24 C.F.R. § 100.500(a) (2017); *see also* Ricci v. DeStefano, 557 U.S. 557, 577–78 (2009) (arguing that disparate impact doctrine prohibits facially neutral practices with discriminatory effects on protected classes if the defendant cannot show a legitimate interest in pursuing the practice).

[137] *Inclusive Cmtys.*, 135 S. Ct. at 2523.

[138] *Id*. (quoting Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 653 (1989)).

[139] *Id.*

[140] *See, e.g.*, *id*. at 2515–26 (state policy of granting tax credits in urban, primarily African-American areas is evidence of disparate impact); Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Par., 641 F. Supp. 2d 563, 577 (E.D. La. 2009) (finding St. Bernard Parish's twelve-month moratorium on construction of multi-family dwellings was a violation of the FHA); Dews v. Town of Sunnyvale, 109 F. Supp. 2d 526, 565–66 (N.D. Tex. 2000) (zoning ordinance that prohibited apartments and required one-acre lot sizes was racially discriminatory). For more information about the litigation in St. Bernard Parish, see Editorial, *Time Runs Out for St. Bernard Parish*, N.Y. TIMES (Mar. 29, 2011), http://www.nytimes.com/2011/03/30/opinion/30wed3.html [https://perma.cc/E5SK-6BAZ].

assessed value of each residential property,[141] using its own sales or appraisal studies, the county must review and verify assessed values to ensure no class of property is unconstitutionally assessed.[142] If there is inequity, then the equalization department "shall" apply a county equalization factor to ensure no class of property exceeds the constitutional limit: 50% of true cash value.[143] According to Section 211.34(2) of the Michigan General Property Tax Act:

> The county board of commissioners shall examine the assessment rolls of the townships or cities and ascertain whether the real and personal property in the respective townships or cities has been equally and uniformly assessed at true cash value. If, on the examination, the county board of commissioners considers the assessments to be relatively unequal, it *shall equalize the assessments* by adding to or deducting from the valuation of the taxable property in a township or city an amount which in the judgment of the county board of commissioners will produce a sum which represents the true cash value of that property . . . .[144]

If one city assesses its residential properties at a different level than another city in the county, then equalization is intended to rectify this difference and achieve uniformity.[145] In Wayne County, assessors in certain local units were indeed assessing at a different level than assessors in other units, but the equalization process did not fix this disparity. As discussed below in Part IV, the data analysis conducted in this study demonstrates that residential properties in Wayne County's predominately African-American cities were less likely to be assessed in line with the Michigan Constitution than residential properties in its predominately white cities.[146] The county had three nonexclusive options for rectifying these disparities: 1) work with the cities to ensure that the cumulative assessed values for all residential properties did not exceed 50% of the cumulative market value, 2) apply a factor that would categorically reduce the assessed values of all residential

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[141] MICH. COMP. LAWS § 211.10(1) (1994).

[142] Fairplains Twp. v. Montcalm Cty. Bd. Of Comm'rs, 542 N.W.2d 897, 899 (Mich. Ct. App. 1995) ("A sales-ratio study compares the sales prices of recent typical sales within a given property classification with the prior year's assessed values for those same parcels. An appraisal study is similar, but is used in situations where there is an insufficient number of recent sales. Appraisal studies compare actual appraisals of a sampling of properties to the previous year's assessments.").

[143] *See* MICH. CONST. art. IX, § 3; MICHIGAN TAXPAYER'S GUIDE, *supra* note 5, at 1 (stating the board of commissioners in every county can apply an equalization factor to assessed values to ensure that property owners pay their fair share of taxes).

[144] MICH. COMP. LAWS § 211.34(2) (2018) (emphasis added).

[145] *Fairplains Twp.*, 542 N.W.2d at 899 (stating that "[e]qualization is based on a theory that an assessor will assess uniformly within the district but may assess at a level different from those of assessors in other districts.").

[146] *See* MICH. CONST. art. IX, § 3. Through a FOIA request, the author has secured all of Wayne County's sales and appraisal studies from 2011–2016 (on file with author).

properties, or 3) report the offending cities to the state tax commission, which—under the authority of MICH. COMP. LAWS § 211.10f—can assume jurisdiction of its assessment roll until the local unit is in compliance.

Under the first option, once a county identifies inequalities through its own sales or appraisals studies, it can help the local unit to ensure the assessment roles are equally and uniformly assessed. Section 211.23(a) of Michigan's General Property Tax Act allows the county to "employ an independent appraisal firm" to help local assessors determine the market value of properties and to equalize assessments.[147] The county can also use its authority under Section 211.34(3) of the General Property Tax Act to assist local assessors with the "the development and maintenance of accurate property descriptions, the discovery, listing, and valuation of properties for tax purposes, and the development and use of uniform valuation standards and techniques for the assessment of property."[148] The goal of providing this assistance is to ensure that the cumulative assessed values for all residential properties (or any other class of property) do not exceed 50% of the cumulative market value for the category.

But, until Detroit's Assessments Division completed a citywide re-assessment in January 2017, this was a futile exercise for Detroit (Wayne County's largest city) because it did not have an accurate record of the cumulative market value for all residential homes. To determine a property's market value, Michigan law requires assessors to estimate the land value and add to that the value of improvements less depreciation, using the most updated cost estimates found in the *Michigan Residential Assessor's Manual*.[149] Due to the botched switch in 2002 from the Assessments

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[147] MICH. COMP. LAWS § 211.23(a).

[148] *Id.* § 211.34(3).

[149] In reality, the land value is not usually based on an actual sale price. *See id.* § 211.27(1). Instead, it is a flat value determined by an individual based either on a variety of unstated factors or pure conjecture. *See id.* There is nominal assurance that the property's override value is equivalent to the property's market. *See id.* Consequently, in order for an equalization department to correctly ascertain the total market value for any class of property, the assessors in the local units must follow the cost estimates in the manual, and a significant number of properties should not be in override. *See id.* § 211.10(e) ("All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments."); *see also* APPRAISAL STANDARDS BD., UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE: 2018-2019 EDITION 40 (2018), https://nrpab-appraiserce.ne.gov/appraiser/public/USPAP_current.pdf [https://perma.cc/SB6Z-UYNV] (supporting documentation must be maintained and presented for mass appraisals, including "extraordinary assumptions and hypothetical conditions," indicating that properties in override must be accounted for). *See generally* STATE OF MICH., MICHIGAN RESIDENTIAL ASSESSOR'S MANUAL (2003),

Division's legacy mainframe system to the new Equalizer system, the data in the system was inaccurate,[150] and this was no secret to the Wayne County Equalization Department.

Since equalization is not possible if there is no accurate record of the total market value for any category of real property, Wayne County could only perform what I call "quasi-equalization" in jurisdictions with faulty records. This quasi-equalization was particularly harmful to cities where unconstitutional tax assessments were rampant, and thus a bona fide equalization process was vital. Wayne County's predominately African-American cities are unconstitutionally assessed at significantly higher rates than its predominantly white cities, so Wayne County's failure to properly monitor and equalize the assessments had a disparate impact on African-Americans in violation of the FHA.

Under the second remediation option, once Wayne County discovered inequities that it could not properly resolve, it should have applied a factor to the entire class of residential properties. Counties in the State of Michigan apply factors very infrequently.[151] When they do apply them, the factor is usually greater than one, meaning that the cumulative assessed value for the class of property will increase. But, in this case, a factor less than one was required because—since property values had declined so precipitously in 2008—an across-the-board decrease in assessed values for all residential properties in taxing jurisdictions with a precipitous drop in housing values was required. In other words, Wayne County's facially neutral policy of quasi-equalization was insufficient and disparately impacted African-American cities, which experienced sharper declines in value and hence were more likely to be over assessed in violation of the Michigan Constitution. The purpose of equalization is to achieve uniformity among the various taxing units in the county,[152] so categorically cutting the assessed value for all residential property in cities where unconstitutional tax assessments became the norm would have helped them achieve uniformity with cities where assessed values did not systematically violate the Michigan Constitution.

Utilizing the third remediation option, Wayne County reported Detroit's Assessments Division to the State Tax Commission, which has the

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https://www.michigan.gov/documents/Vol1-02GeneralInstructions-PricingExamples_120864_7.pdf [https://perma.cc/V8UL-9GKC].

[150] *See* PERFORMANCE AUDIT, *supra* note 38, at 10.

[151] Interview with Lori Parr, Field Operations Section Staff Member, Michigan State Tax Commission, Property Services Division (October 4, 2017).

[152] Conroy v. City of Battle Creek, 22 N.W.2d 275, 280 (Mich. 1946); O'Reilly v. Wayne Cty., 323 N.W.2d 493, 498 (Mich. Ct. App. 1982).

power to assume jurisdiction over the assessment role of a troubled local unit until it can come back into compliance with the law.[153] As discussed earlier in this Essay, Detroit's Auditor General examined the Assessments Division and produced a report that laid bare the intense mismanagement that caused systematic unconstitutional property tax assessments and rife tax delinquency.[154] In 2014, the state tax commission's response was to assume jurisdiction over Detroit's Assessments Division and put a corrective action plan in place.[155] It was not until August of 2017 that Detroit was released from the tax commission's oversight because it completed a citywide re-appraisal.[156] After this, assessments were finally based on market values, as required by law.

In sum, prior to the 2017 citywide re-appraisal, Wayne County should have applied a factor in cities that were habitually overassessing its residents or it should have helped these cities to perform a citywide reassessment, but it did not. This discrete and facially neutral equalization policy unduly burdened predominantly African-American cities. In the next Section, I go through the FHA's required three-prong burden-shifting framework, and conclude that Wayne County's equalization policy had a disparate impact on African-Americans in violation of the FHA.

2. *Three-Part Burden Shifting Framework for Proving a Disparate Impact Claim*

Disparate impact analysis entails a three-part burden-shifting framework outlined in Subpart G of HUD's regulations and accepted by the Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.[157] First, to establish a prima facie case of disparate impact, the plaintiff must identify a facially neutral policy or practice that has a discriminatory effect on one of the groups protected under the FHA.[158] A successful claim requires a comparative analysis that uses

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[153] MICH. COMP. LAWS § 211.152(3) ("Whenever a local assessing district fails to have an assessment roll prepared as required in this act and it becomes necessary for the commission to assess the properties in the district either by its own staff or the county equalization department under direction of the commission, the local assessing district shall bear the cost of such assessment and shall reimburse the state or county.").

[154] *See* PERFORMANCE AUDIT, *supra* note 38, at 2.

[155] Christine Ferretti, *supra* note 52.

[156] *Id*.

[157] 135 S. Ct. 2507, 2514–15 (2015); *see also* Mhany Mgmt., Inc. v. County of Nassau, 819 F.3d 581, 617–19 (2d Cir. 2016) (finding an obligation to defer to HUD's disparate impact framework); 24 C.F.R. § 100.500(c) (2017) (discussing the burden-shifting framework).

[158] *See* Watson v. Fort Worth Bank & Tr., 487 U.S. 977, 994 (1988) ("[A] plaintiff must begin by identifying the specific . . . practice that is challenged."); HDC, LLC. v. City of Ann Arbor, 675 F.3d 608, 613 (6th Cir. 2012) ("[P]laintiff must demonstrate that a facially neutral policy or practice has the effect of discriminating against a protected class of which the plaintiff is a member." (quoting Graoch Assocs.

statistical evidence to show the policy adversely or disproportionately impacts a protected group, but does not likewise impact a second control group.[159] The plaintiff has the burden of proving that the "challenged practice caused or predictably will cause a discriminatory effect."[160]

Second, even if plaintiffs successfully establish a prima facie case, the discriminatory policy may still be lawful if it is supported by a legally sufficient justification.[161] According to HUD's regulations, this justification exists when "the challenged practice . . . [i]s necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent . . . [and] [t]hose interests could not be served by another practice that has a less discriminatory effect."[162] At this second stage, defendants have the burden of proof and must provide evidence to demonstrate that their justification is not merely speculative or hypothetical.[163]

Third, if defendants satisfy their burden of proving that there is a legally sufficient justification, then plaintiffs can still prevail so long as they prove that "the substantial, legitimate, nondiscriminatory interests supporting the

33, L.P. v. Louisville/Jefferson Cty. Metro Human Relations Comm'n, 508 F.3d 366, 371 (6th Cir.2007))); *see also Inclusive Cmtys.*, 135 S. Ct. at 2523 ("[A] disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement ensures that '[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact' and thus protects defendants from being held liable for racial disparities they did not create." (quoting Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 653 (1989))); *Mhany Mgmt.*, 819 F.3d at 617.

[159] *See* Tsombanidis v. W. Haven Fire Dep't, 352 F.3d 565, 575 (2d Cir. 2003) ("[A] successful disparate impact claim involves a comparison between two groups—those affected and those unaffected by the facially neutral policy."); *see also Graoch Assocs.*, 508 F.3d at 371–72 (noting that every housing practice that has a disparate impact is not necessarily illegal therefore plaintiff must produce statistical evidence to show the landlord's action had a disparate impact); Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 937–38 (2d Cir. 1988), *aff'd in part* , 488 U.S. 15 (1988) (per curiam) (stating that statistical analysis supports disparate impact claims); Saint-Jean v. Emigrant Mortg. Co., 50 F. Supp. 3d 300, 319 (E.D.N.Y. 2014) (citing Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7 (D.D.C. 2000)) (noting that *Hargraves* held that "allegations of predatory lending concentrated in minority census tracts, supported by statistical evidence, adequately plead disparate impact without favorable loans outside protected class.").

[160] 24 C.F.R. § 100.500(c)(1) (2017).

[161] *See id.* § 100.500(c)(3).

[162] *Id.* § 100.500(b)(1)(i)–(ii).

[163] *See id.* § 100.500(b)(2) ("A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative."). *See generally* Charleston Hous. Auth. v. U.S. Dep't of Agric., 419 F.3d 729, 742 (8th Cir. 2005) (finding there was nominal evidence to support Housing Authority's claim that the high crime rate justified discriminatory housing practices); Greater New Orleans Fair Hous. Action Ctr. v. Saint Bernard Par., 641 F. Supp. 2d 563, 574–78 (E.D. La. 2009) (defendant did not present enough evidence to show there were discriminatory housing policies that restricted development of affordable housing in predominately white areas).

challenged practice could be served by another practice that has a less discriminatory effect."[164]

The three-part burden-shifting framework is required to investigate whether Wayne County's equalization practices violate the FHA. In the first step, Wayne County's equalization practices are facially neutral and constitute a cognizable policy rather than a one-time decision.[165] To prove that this neutral policy disparately impacts African-Americans, plaintiffs can offer statistical evidence.[166] Indeed, Part IV of this Essay provides strong empirical evidence that predominantly African-American cities in Wayne County experience unconstitutional tax assessments and tax foreclosure at a much greater rate than predominantly white cities. Due to unreliable property valuations, Wayne County failed to properly equalize tax assessments and this policy of quasi-equalization affected the cities that needed equalization the most—those subjecting their residents to systemic unconstitutional assessments.

Once plaintiffs submit evidence establishing that discriminatory assessment and equalization practices exist, the analysis moves to the second step: the defendant now has the burden of proving that the practices are nonetheless lawful because they are supported by a legally sufficient justification.[167] Wayne County will likely argue that given the poor market data available when a significant number of properties in a jurisdiction are not calculated according to the state's standard rules (i.e., they are in override), quasi-equalization was the best it could do under these less than ideal circumstances. Hence, the policy of quasi-equalization was not an artificial, arbitrary, and unnecessary barrier.[168] Rather, quasi-equalization was necessary to achieve a semblance of uniformity in light of information-

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[164] 24 C.F.R. § 100.500(c)(3) ("If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect."); *see also* Ricci v. DeStefano, 557 U.S. 557, 578 (2009) (noting that before rejecting a business justification—or a governmental entity's analogous public interest—a court must determine that a plaintiff has shown that there is "an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs").

[165] *See* Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2523 (2015) ("For instance, a plaintiff challenging the decision of a private developer to construct a new building in one location rather than another will not easily be able to show this is a policy causing a disparate impact because such a one-time decision may not be a policy at all.").

[166] *See* Graoch Assocs. #33, L.P. v. Louisville/Jefferson Cty. Metro Human Relations Comm'n, 508 F.3d 366, 371–72 (6th Cir. 2007) (explaining that to establish a prima facie case of discrimination under the FHA a plaintiff must offer statistical evidence of the alleged adverse effect).

[167] 24 C.F.R. § 100.500(c)(2) (2013).

[168] *Inclusive Cmtys.*, 135 S. Ct. at 2524 ("Governmental or private policies are not contrary to the disparate-impact requirement unless they are 'artificial, arbitrary, and unnecessary barriers.'" (quoting Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971))).

based resource constraints.[169] Wayne County will be able to prove that this justification is not merely speculative or hypothetical.[170] Wayne County may also argue that its policy of quasi-equalization would not have had a racially disparate impact if taxpayers exercised their legal right to appeal when their property tax assessments exceeded 50% of their property's market value.

The burden-shifting analysis would then progress to the third and final part, which is when plaintiffs provide evidence that the legitimate interests underpinning the challenged practice could be served by another practice that has a less discriminatory effect. In this case, plaintiffs have the burden of proving that applying a factor less than one to all residential properties and decreasing the assessed values for the entire class would have a less discriminatory effect than the policy of quasi-equalization.

Plaintiffs would do well to allege that Wayne County's own sales studies showed year after year that certain local units were consistently assessing their residents in violation of the Michigan Constitution.[171] Without accurate data, property equalization was impossible. So, the one thing that Wayne County could have done was reduce assessed values for the entire class of residential property in local units where unconstitutional assessments were rampant. This would have promoted uniformity, made property tax bills more affordable, and prevented many people from forfeiting their homes through tax foreclosure.[172] Even though Detroit's mayor openly admitted on several occasions that the city was over-assessing Detroit residents and subjecting them to inflated property taxes, Wayne County did not apply the factor.[173] Applying a factor is not a perfect solution, but it may have had a substantially less discriminatory effect than its policy of quasi-equalization. Without the factor, between 2011 and 2015, about 30% of Detroit homes completed the tax foreclosure process. This was not only deeply unjust, but also arguably a violation of the FHA. The next Section provides the explicit statutory basis of the FHA violation.

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[169] *See* 24 C.F.R. § 100.500(b)(1)–(2) (2017).

[170] *See id.* § 100.500(b)(2).

[171] For records for 2014–2015, see *Detroit Open Data*, CITY OF DETROIT, https://data.detroitmi.gov [https://perma.cc/2W3B-ALMZ] (search "Property and follow "Wayne County Tax Auction" results) (data currently unavailable is on file with author). The city's published file on their open data portal has 382,051 records. For additional information, see *Parcel Map*, *supra* note 9.

[172] *See* Atuahene & Berry, *supra* note 23.

[173] Christine Ferretti, *Property Taxes Going Down for over Half of Detroiters*, DETROIT NEWS (published Jan. 23, 2017, 11:05 AM; updated Jan. 24, 2017, 9:31 AM), http://www.detroitnews.com/story/news/local/detroit-city/2017/01/23/detroit-property-assessments/96946512 [https://perma.cc/KW7G-4HLD].

C. Analyzing Unconstitutional Tax Assessments Under §§ 3604 and 3605 of the FHA

To assess whether unconstitutional tax assessments and quasi-equalization in Detroit and other predominantly African-American cities in Wayne County violated the FHA, § 3604 and § 3605 of the Act are determinative. Section 3604 addresses discrimination in the sale or rental of housing and other prohibited practices, while § 3605 pertains to discrimination in other residential real estate-related transactions.[174] More directly, § 3604(a) prohibits municipalities from providing services differently such that persons are denied dwellings, § 3604(b) prohibits discrimination that involves limiting access to municipal services related to the sale or rental of a dwelling, and § 3605(a) prohibits discrimination based on the availability or performance of appraisals.[175]

A violation of § 3604 and § 3605 can occur due to disparate treatment or disparate impact.[176] Disparate treatment requires plaintiffs to show that the discriminatory act was not accidental or neutral, but rather intentional.[177] In contrast, a disparate impact analysis bypasses intent-based queries to focus instead on the policy's discriminatory effect.[178] Although the disparate

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[174] *See* 42 U.S.C. § 3604 (2012) (prohibiting discrimination in the sale or rental of housing, and prohibiting discrimination against any person because of race, color, religion, sex, familial status, or national origin); *id.* § 3605 (prohibiting discrimination in transactions related to residential real estate because of race, color, religion, sex, handicap, familial status, or national origin).

[175] *See supra* note 174 and accompanying text.

[176] *See* 24 C.F.R. § 100.5 (2017) ("The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500."); *see also* M & T Mortg. Corp. v. White, 736 F. Supp. 2d 538, 574 (E.D.N.Y. 2010) ("FHA and ECOA claims may be prosecuted on the basis of (i) disparate treatment, i.e., that plaintiffs were treated differently because of their membership in a protected class, or on the basis of (ii) disparate impact, i.e., that the defendant's practices have a proportionally greater negative impact on minority populations."); William F. Fuller, Note, *What's HUD Got to Do with It?: How HUD's Disparate Impact Rule May Save the Fair Housing Act's Disparate Impact Standard*, 83 FORDHAM L. REV. 2047, 2058 (2015) (discussing the difference between purposeful discrimination and neutral acts with a discriminatory effect).

[177] *See supra* note 16 and accompanying text.

[178] *See* Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2513 (2015) (noting that disparate impact analysis "challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale" (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009))); *see also Ricci*, 557 U.S. at 577; 24 C.F.R. § 100.500 ("Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent.").

treatment and impact doctrines apply to both sections,[179] this Essay's aim is to provide evidence solely of disparate impact.[180]

Section II.C.1 below argues that Wayne County's unconstitutional property tax assessments and the associated foreclosures disparately impact African-Americans in violation of FHA § 3604(a), which prohibits the denial of a dwelling on account of race. Next, Section II.C.2 argues a violation of FHA §§ 3604(b) and 3605(a) occurred because local assessors did not annually appraise properties, and Wayne County failed to correct the results of this misstep through the equalization process.

1. Dwelling Denied Under § 3604(a)

Since unconstitutional property tax assessments and property tax foreclosures disparately impacted Wayne County's predominately African-American cities, Wayne County violated FHA § 3604(a), which states that

> [I]t shall be unlawful . . . to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise *make unavailable or deny, a dwelling to any person* because of race, color, religion, sex, familial status, or national origin.[181]

Subpart B of HUD's regulations provides a thicker description of what constitutes unlawful housing discrimination under § 3604.[182] According to HUD, § 3604(a) makes it unlawful to "engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons."[183] HUD has stated that prohibited activities include, but are not limited to,

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[179] *See generally* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (codified at 24 C.F.R. pt. 100) (stating that disparate treatment was the primary form of discrimination the act protected against, but HUD formally recognized disparate impact liability, which was later codified under FHA § 3604(a) Discrimination in Sale or Rental of Housing and Other Prohibited Practices and § 3605(a) Discrimination in Residential Real Estate-Related Transactions).

[180] Because § 3617 of the FHA—dealing with interference, coercion, or intimidation—requires disparate treatment, it is not included in this analysis. *See* 42 U.S.C. § 3617 (2012) ("It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title."); *see also* East-Miller v. Lake Cty. Highway Dep't, 421 F.3d 558, 563–64 (7th Cir. 2005) ("[T]o prevail on a § 3617 claim, a plaintiff must show that (1) [s]he is a protected individual under the FHA[], (2) [s]he was engaged in the exercise or enjoyment of [her] fair housing rights . . . , (3) Defendants were motivated in part by an intent to discriminate, or their conduct produced a disparate impact, and (4) Defendants coerced, threatened, intimidated, or interfered with the Plaintiff on account of [her] protected activity under the FHA[]." (alterations in original)).

[181] *See* 42 U.S.C. § 3604(a) (2012) (emphasis added).

[182] *See* 24 C.F.R. §§ 100.50–.90 (2017).

[183] *Id.* § 100.70(b).

discriminatorily providing municipal services or hazard insurance or failure to provide these services at all to members of a protected category.[184] Case law shows that § 3604(a) reaches both governmental and private conduct involving the denial or unavailability of housing.[185]

Through the equalization process, Wayne County is legally mandated to ensure that each class of "real and personal property in the respective townships or cities has been equally and uniformly assessed at true cash value."[186] If the county finds there are inequalities, then it "must equalize to produce a sum which represents the true cash value of the property."[187] Equalization is a municipal service related to housing, and Wayne County's failure to do it properly has adversely affected cities where unconstitutional tax assessments are pervasive. This study finds that predominantly African-American cities are subject to unconstitutional tax assessments and foreclosure at a greater rate than predominantly white cities. In addition, in a forthcoming paper that I coauthored with Professor Christopher Berry, we estimate that 10% of all tax foreclosures were caused by illegally inflated tax assessments.[188] As a result, Wayne County has violated § 3604(a) because residents of predominantly African-American cities are disproportionately denied dwellings due to the county's policy of quasi-equalization, which did not correct unconstitutional tax assessments in the residential property class.[189]

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[184] *See id.* § 100.70(d)(4) ("Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.").

[185] *See, e.g.*, Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 421 F.3d 170, 176 (3d Cir. 2005) (discrimination in charging sewer service rates); Good Shepherd Manor Found. Inc. v. City of Momence, 323 F.3d 557, 565 (7th Cir. 2003) (discriminatory denial of water); Smith & Lee Assocs., Inc. v. City of Taylor, 102 F.3d 781, 799–800 (6th Cir. 1996) (discriminatory enforcement of zoning laws can make housing unavailable in violation of the FHA); United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach, 493 F.2d 799, 801 (5th Cir. 1974) (denial of water and sewage services, as well as exposure to pollutants); Davis v. City of New York, 959 F. Supp. 2d 324, 367–68 (S.D.N.Y. 2013) (discriminatory provision of police services); Greater New Orleans Fair Hous. Action Ctr. v. U.S. Dep't of Hous. & Urban Dev., 723 F. Supp. 2d 14, 21–23 (D.D.C. 2010) (applying § 3604(a) to disparities in the allocation of post-hurricane recovery funds to current property owners); Kennedy v. City of Zanesville, 505 F. Supp. 2d 456, 463 (S.D. Ohio 2007) (discriminatory denial of sewer services).

[186] MICH. COMP. LAWS § 211.34 (1986); *see also* MICH. ADMIN. CODE r. 209.41(6) (2009).

[187] Allied Supermarkets, Inc v. City of Detroit, 216 N.W.2d 755, 757 (Mich. 1974) (quoting MICH. COMP. LAWS § 211.34).

[188] *See* Atuahene & Berry, *supra* note 23.

[189] *See* Morningside Cmty. Org. v. Wayne Cty. Treasurer, No. 336430, 2017 WL 4182985 (Mich. Ct. App. Sept. 21, 2017) (per curiam) (discussing the Plaintiff's assertions of disparate impact of Wayne County's foreclosure process on African-Americans), *appeal denied* 905 N.W.2d 597 (Mich. 2018). In *Morningside v. Sabree*, plaintiffs challenged the foreclosures rather than the county's failure to comply with its equalization duty. *See* Complaint, *supra* note 6, ¶ 6.

2. Discriminatory Appraisals Under § 3604(b) and § 3605(a)

While both § 3604(a) and (b) of the FHA deal with the discriminatory provision of services, the primary difference between them is that § 3604(a) is concerned with plaintiffs who are denied dwellings, while § 3604(b) focuses on the terms of the sale or rental, and the provision of housing related services, but does not necessarily involve the denial of a dwelling.[190] This Section argues that a violation of § 3604(b) and § 3605(a) of the FHA occurred because local assessors have failed to annually appraise properties, and Wayne County has failed to use the equalization process to correct the results of this misstep for the residential property class.

As discussed above, the Michigan Constitution clearly states that a property's assessed value is not to exceed 50% of the property's market value.[191] Each Assessments Division in Michigan is advised to assess properties annually and "inspect 20% of properties in their local unit annually."[192] The primary cause of unconstitutional tax assessments in Wayne County is the local Assessments Division's failure to properly appraise properties annually, as required by law.[193] For properties that have dropped significantly in value over the years, updated appraisals are even more essential.[194]

Section 3604(b) states that it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."[195] HUD has interpreted this provision to mean that it is unlawful "to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling."[196]

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[190] *See* 42 U.S.C. § 3604 (2012) ("[I]t shall be unlawful—(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.").

[191] *See* MICH. COMP. LAWS § 211.27(a)(1).

[192] MICHIGAN STATE TAX COMM'N, *supra* note 48, at 1 ("As a guideline, the State Tax Commission recommends that assessors inspect 20% of properties in their local unit annually."); *see* MICH. COMP. LAWS § 211.10 (1994).

[193] *See* Atuahene & Hodge, *supra* note 7.

[194] *See id.* at 27 ("Detroit's assessors are illegally assessing lower-valued properties by a substantial margin, while the assessment ratios for higher-valued property are at or even below the constitutionally permitted limit of 0.5.").

[195] 42 U.S.C. § 3604(b).

[196] 24 C.F.R. § 100.65(a) (2017); *see also id.* § 100.65(b)(4).

Critics would argue that the appraisals at issue are not performed in connection with the sale or rental of a dwelling. But, to determine whether a home is affordable, homeowners must know their property tax liability prior to initial purchase and occupancy. So, the appraisal behind the property tax calculation is directly connected to home sales. Additionally, appraisals are indeed a service provided in connection with the sale of a dwelling because both Wayne County and its assessment divisions appraise properties by analyzing recent sales of comparable properties.[197] Wayne County violated § 3604(b) if its own sales studies or appraisals showed unconstitutional assessments were rife in predominately African-American cities, but it failed to use the equalization process to correct this for the residential property class.

In addition, § 3605(a)—discussing discrimination in residential real estate-related transactions beyond sale or rental—states that:

> [i]t shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.[198]

The term "residential real estate-related transaction" includes "selling, brokering, or appraising" residential real estate.[199] HUD's authoritative interpretation of § 3605(a) states that it is unlawful for agencies to discriminate either in making appraisals available or in the performance of appraisal services.[200] HUD defines "appraisal" as an "estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction."[201] Given the centrality of appraisal services to the property tax assessment and equalization processes, the question for a § 3605(a) analysis becomes whether Wayne County's equalization department is an "entity whose business includes engaging in residential real estate-related transactions."[202]

In prior cases, this classification has entailed both quasi-public and private agencies, including mortgage lenders, insurance providers, bankers,

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[197] *See, e.g.*, Antisdale v. City of Galesburg, 362 N.W.2d 632, 636–37 (Mich. 1984); INT'L ASS'N OF ASSESSING OFFICERS, *supra* note 3, at 9.

[198] 42 U.S.C. § 3605(a).

[199] *Id.* § 3605(b).

[200] 24 C.F.R.§ 100.135(a). *See generally* SCHWEMM, *supra* note 100, § 18.7–.8, at 18-32 to 18-39.

[201] 24 C.F.R.§ § 100.135(b).

[202] 42 U.S.C. § 3605(a).

and a quasi-public agency empowered to issue tax-exempt bonds.[203] In *Eva v. Midwest National Mortgage Bank, Inc.*, a federal district court decided a business that charged a fee for servicing a home loan qualified as an entity whose business includes engaging in residential real estate-related transactions, even though the entity was not directly involved in "the selling, brokering, or appraising of residential real property."[204] If a business indirectly involved in providing home loans qualifies, then surely a public entity that is directly involved in appraising properties will also qualify. Although I am aware of no case that examines specifically whether a county equalization department or a city's assessment division qualifies as an entity whose business includes engaging in residential real estate-related transactions, the connection is clear.

In sum, there is a violation of § 3605(a) and § 3604(b) because African-Americans are disparately impacted by the failure of certain assessment divisions to provide proper appraisal services as required by law, and the failure of Wayne County to correct this through the equalization process.

D. Litigating Unconstitutional Property Tax Assessments Under the FHA

Lawyers must decide which court to litigate a FHA violation based upon discriminatory property tax administration. Due to the Tax Injunction Act, plaintiffs cannot litigate an FHA claim in federal courts because they are not allowed to "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."[205] For instance, in *United States v. County of Nassau*, the court granted the defendant's motion to dismiss because the Act prohibited the United States from challenging the county's discriminatory residential property tax assessment scheme under the FHA.[206] While it is clear that the Tax Injunction Act requires that

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[203] *See* Nat'l Cmty. Reinvestment Coal. v. Accredited Home Lenders Holding Co., 573 F. Supp. 2d 70 (D.D.C. 2008) (memorandum); Nevels v. W. World Ins. Co., 359 F. Supp. 2d 1110 (W.D. Wash. 2004); Nat'l Fair Hous. All., Inc. v. Prudential Ins. Co. of Am., 208 F. Supp. 2d 46 (D.D.C. 2002); Eva v. Midwest Nat'l Mortg. Banc, Inc., 143 F. Supp. 2d 862, 889 (N.D. Ohio 2001) ("The plain language of the statute does not, as Defendant USMR contends, require a defendant to be a mortgage lender, banker, mortgage arranger or creditor. (Doc. # 38 at 12) To the contrary, the plain language of § 3605 merely requires that the entity conduct business which '*includes* engaging in residential real estate-related transactions.' 42 U.S.C. § 3605 (emphasis added). Thus, the entity need not be specifically existing for the purpose of engaging in real estate-related transactions; such activity need only be 'included' as one portion of its overall functioning."); United States v. Mass. Indus. Fin. Agency, 910 F. Supp. 21 (D. Mass. 1996); *see also* SCHWEMM, *supra* note 100, § 18:1, at 18-3 n.9 and accompanying text.

[204] *See* 143 F. Supp. 2d at 881, 89–90 (quoting 42 U.S.C. § 3605(b)).

[205] 28 U.S.C. § 1341 (2012).

[206] 79 F. Supp. 2d 190, 197 (E.D.N.Y. 2000) ("Therefore, the Court concludes that the instant action is not subject to any of the exceptions to the Tax Injunction Act.").

plaintiffs litigate these types of FHA claims in state court, the question in the litigation against Detroit and Wayne County is which Michigan court: the Michigan Tax Tribunal or Michigan trial court?

In *Morningside*, the plaintiffs made a claim against the City of Detroit for administering the poverty tax exemption without due process, but the trial court dismissed the FHA claim against Wayne County, stating that the claim should have been brought to the Michigan Tax Tribunal. Plaintiffs argued that the Tax Tribunal was not a court and the FHA states that "[a]n aggrieved person may commence a civil action in an appropriate United States district court or *State court*."[207] Even though the Tax Tribunal is not a court, the Michigan Court of Appeals nevertheless affirmed the judgment of the trial court.[208] Now that the *Morningside* plaintiffs' appeal to the Michigan Supreme Court has failed, they can refile their case in the Tax Tribunal. This, however, presents three important limitations.

First, the Michigan courts have long recognized that "the rules of the Tax Tribunal do not provide for class actions."[209] While a class action affords an opportunity to address the structural shortcomings of the assessment and equalization processes, the Tax Tribunal only provides relief to individuals. Second, the FHA expressly provides that aggrieved persons have one year to file a claim with HUD.[210] But, under the Tax Tribunal's procedures, a homeowner has just a few weeks to file a claim during the Assessor's Review and then the March Board of Review, which are prerequisites to the Tribunal acquiring jurisdiction.[211] Third, in *Wikman v. City of Novi*, the Michigan Supreme Court held that "the Tax Tribunal lacks the power to issue an injunction" because this is an exercise of judicial power, which the legislature cannot transfer to an administrative agency.[212] But, the FHA authorizes private persons to commence a civil action, and if the court finds that discriminatory housing practices have occurred, then the potential remedies include actual and punitive damages, a permanent or temporary injunction, a temporary restraining order, an order of affirmative action, and reasonable attorney's fees and costs.[213] So, although the FHA permits

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[207] *See* 42 U.S.C. § 3613(a)(1)(A) (2012) (emphasis added). *See generally id.* §§ 3612–14 (stating that there are three entities with the power to enforce a FHA claim: the Secretary of HUD, the U.S. Attorney General, and private persons).

[208] Morningside Cmty. Org. v. Wayne Cty. Treasurer, No. 336430, 2017 WL 4182985, at *1 (Mich. Ct. App. Sept. 21, 2017) (per curiam).

[209] Perry v. Vernon Twp., 404 N.W.2d 755, 757 (Mich. Ct. App. 1987) (citing Romulus City Treasurer v. Wayne Cty. Drain Comm'r, 322 N.W.2d 152, 168 (Mich. 1982) (Levin, J., concurring)).

[210] 42 U.S.C. § 3610(a)(1).

[211] *See* MICH. COMP. LAWS § 211.30 (2013).

[212] 322 N.W.2d 103, 114 (Mich. 1982).

[213] 42 U.S.C. § 3613(c).

injunctive relief and punitive damages,[214] the Tax Tribunal has no power to grant this type of relief, leaving plaintiffs at a severe disadvantage.[215]

Although the Michigan Court of Appeals decision has the three stated downsides, it also may be a blessing in disguise for plaintiffs by giving them a way into federal court, which has historically been more sympathetic to antidiscrimination claims than Michigan courts.[216] The Tax Injunction Act will allow a state tax case into federal courts under a few narrow exceptions: one being no "plain, speedy and efficient remedy may be had in the courts of such State."[217] By mandating all tax assessment-related cases go to the Michigan Tax Tribunal—which cannot hear class actions—plaintiffs can only file individual cases. There is no remedy in Michigan courts for addressing property tax injustice that is pervasive and routinized.

In sum, Part II has articulated a comprehensive legal theory supporting the claim that Wayne County's racially discriminatory property tax administration is a violation of the FHA. The remainder of the paper empirically demonstrates that Wayne County's tax assessment and foreclosure practices disparately impact African-Americans.

III. METHODOLOGY

Data on property tax assessments, home sales, and race is required to empirically investigate the racial impacts of unconstitutional tax assessments in Wayne County. While significant data is available, some data are missing. For instance, it is possible that both Detroit and Wayne County are violating § 3604 and § 3605 of the FHA. But, to investigate whether unconstitutional tax assessments are disparately impacting African-Americans in the City of Detroit, I would need to compare assessment ratios for African-Americans with those of Whites in the City. This, however, would require data on the race of each homeowner in Detroit linked to assessment data, which does not exist. What I do have is census data, which provides a full sample of race at the block level every ten years, and a smaller sample at the tract level every year since 2005.[218] But, since over 80% of Detroit's population is African-

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[214] *Id*.

[215] Morningside Cmty. Org. v. Wayne Cty. Treasurer, No. 336430, 2017 WL 4182985, at *3 (Mich. Ct. App. Sept. 21, 2017) (per curiam) (noting that even though the Michigan Tax Tribunal lacked the ability to issue injunctions, the remedy sought by the plaintiff, it did not limit the tribunal from having exclusive jurisdiction over plaintiff's claims regarding the validity of property assessments).

[216] Barry Friedman, *A Revisionist Theory of Abstention*, 88 MICH. L. REV. 530, 531, 537 (1989) (discussing the preference of federal courts by plaintiffs in federal rights cases).

[217] 28 U.S.C. § 1341 (2012).

[218] *2010 Census*, U.S. CENSUS BUREAU, http://www.census.gov/2010census [https://perma.cc/TG33-NU8D]; U.S. CENSUS BUREAU, *Community Facts,* AM. FACTFINDER, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml [https://perma.cc/WB5W-

American,[219] there are very few majority white blocks that I can reliably compare with majority black blocks.[220] Even in the few affluent areas of Detroit, Whites live alongside middle and upper-class African-Americans. As a result, I cannot accurately examine whether Detroit's Assessments Division is unconstitutionally assessing African-American homeowners in Detroit at a greater rate than white homeowners, given the limitations of the data.

But, at the county level, it is possible to differentiate between majority African-American and majority white cities because Wayne County—composed of forty-three municipalities—is starkly stratified by race (see Appendix Table 1A). African-Americans constitute the largest racial group in Detroit, Inkster, Highland Park, Harper Woods, and River Rouge and form a super majority (over 70% of the population) in Detroit, Inkster, and Highland Park.[221] In contrast, there are thirty-eight municipalities where whites compose a majority and thirty-three where they constitute a supermajority. There are only four municipalities where African-Americans and whites live together in approximately equal numbers (meaning there is a population difference of less than 10% between the two groups): River Rouge, Harper Woods, Romulus, and Ecorse. For these reasons, this study is able to analyze whether Wayne County has violated the FHA by failing to use the equalization process to correct pervasive unconstitutional assessments that adversely impact predominately African-American cities and towns at a significantly greater rate than predominately white ones.

To determine if assessments in Wayne County violate the FHA, I conducted an assessment ratio study (also known as sales ratio study or ratio study) because this is the primary mechanism that taxpayers, assessors, appeal boards, and taxing authorities use to determine if assessments satisfy

4ADS] (for tract data from 2010, search for Detroit City, Michigan, select Race and Hispanic Origin from menu on left, then choose Compare Census Tracts for Race and Hispanic or Latino).

[219] Race and other demographic information were obtained from the U.S. CENSUS BUREAU, *2015 American Community Survey 5-Year Estimates*, AM. FACTFINDER, https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml [https://perma.cc/267N-QYL2] (select American Community Survey "get data" hyperlink, and then within the Advanced Search function, input "Wayne County, Michigan" and "select results from "2015" to obtain the 2015 ACS 5-year estimates).

[220] *See generally* Suzanne B. Goldberg, *Discrimination by Comparison*, 120 YALE L.J. 728 (2011) (discussing judicial reliance and preference on quantitative analysis in determining discrimination); Charles A. Sullivan, *The Phoenix from the* Ash*: Proving Discrimination by Comparators*, 60 ALA. L. REV. 191 (2009) (discussing judicial trend of preference for near-identical comparators in discrimination cases).

[221] *See* U.S. CENSUS BUREAU, *supra* note 219.

the legal requirements of a jurisdiction.[222] An assessment ratio study is "a form of applied statistics, because the analyst draws conclusions about the appraisal of the population (the entire jurisdiction) of properties based only on those that have sold during the given time period."[223] If the unsold parcels are appraised in the same manner as the sold ones, then it is valid to use the statistics derived from the sales ratio study to infer appraisal performance for unsold parcels. The evidence shows that homes selling during the period under study are comparable to homes that did not sell. For example, average year built for all residential properties in Wayne County is 1948, and the comparable figure for this study's sample is 1956. Average building square footage for all residential properties in Wayne County is 1,409, and the comparable figure for this sample is 1,488.

Given Michigan's constitutional requirement that assessments cannot exceed 50% of a property's market value, the overall assessment ratio—which is a property's assessed value divided by its market value—should have a mean and median no higher than 0.5.[224] If the ratios derived are consistently higher than 0.5, then this is reliable evidence that, on average, assessments are violating the Michigan Constitution. For reasons articulated in the prior section, a violation of § 3604 and § 3605 of the FHA has occurred if the data show that Wayne County's predominantly African-American cities experience unconstitutional tax assessments and property tax foreclosure at a greater rate than its predominately white cities.

Since assessments in Michigan are calculated annually and are based on property values from the previous year, I divided assessed values with prior year sales information to produce assessment ratios. More specifically, I calculated the annual median assessment ratios for each municipality based on residential sale transactions occurring between January 1, 2012, and August 27, 2015, and annual records of property assessments for 2013 through 2016. I secured these data from RealtyTrac—a well-known vendor of foreclosure and real-estate transaction records. For properties that were sold multiple times in the same calendar year, I took the last sale in a year as the determinant of the property's value. The full dataset includes 272,569 residential property transactions (I exclude empty lots and nontaxable properties). The breakdown of data by year can be viewed in column (1) of Table 1.

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[222] INT'L ASS'N OF ASSESSING OFFICERS, STANDARD ON RATIO STUDIES 7 (2013), http://www.iaao.org/media/standards/Standard_on_Ratio_Studies.pdf [https://perma.cc/GZQ3-FUSW] [hereinafter STANDARD ON RATIO STUDIES].

[223] *Id.* at 8.

[224] MICH. CONST. art. IX, § 3.

TABLE 1: NUMBER OF OBSERVATIONS BY YEAR OF SALE

Year	All Sales	Arm's-Length Sales	Trimmed Arm's-Length Sales	% Trimmed
	(1)	(2)	(3)	(4)
2012	82,834	10,524	9,826	6.63%
2013	79,362	11,926	11,474	3.79%
2014	70,463	6,248	6,078	2.79%
2015	39,910	6,641	6,433	3.13%
Total	**272,569**	**35,339**	**33,811**	**4.32%**

To ensure the most accurate estimates, I restricted the data used in the analysis in several ways. First, as required by law, I limited the data examined to "arm's-length transactions," which exclude transfers between related parties, auction sales, and other similar nonmarket transactions.[225] Second, I only included sales using warranty deeds, which is the typical deed of transfer for arm's-length transactions.[226] Although the law states that only arm's-length transactions should be examined, there is an exception if nonarm's-length transactions (distressed sales) "have become a common method of acquisition in the jurisdiction for the class of property being valued."[227] Given that only about 13% of sales from 2012 to 2015 were arm's-length transactions (see Table 1), there is a strong argument that distressed sales are, in fact, the common method of acquisition for residential properties in certain Wayne County cities and towns. Nevertheless, I include only arm's length transactions in the analysis so that the resulting estimates provide the most conservative measure of unconstitutionality. Scholars who include distressed sales in their analysis will only find unconstitutionality that is markedly more pronounced. Third, I excluded bundled properties—different parcels with identical sellers, sale dates, and sale prices—because it is impossible to determine the price of any single property within the bundle. Fourth, I excluded properties that had a sale price of zero because it is unlikely that these were arm's-length transactions. I also excluded properties with an assessed value equal to zero because these are likely to be nontaxable properties.

[225] RealtyTrac has a proprietary algorithm for identifying arm's length transactions.

[226] RICHARD R. POWELL, 14 POWELL ON REAL PROPERTY § 81A.03[1](b)(i), at 81A–27 (Michael Allan Wolf ed., 2017).

[227] MICH. COMP. LAWS § 211.27(1) (2013).

In total, I excluded 87% of the total observations, which may seem extreme, but this is a result of the auctions and other non-arm's-length transactions that have proliferated in the distressed real estate markets of several of Wayne County's cities and towns. In addition, I further trimmed the data in accordance with International Association of Assessing Officers' (IAAO) nationally recognized standards, which recommend trimming the sample of statistical outliers because very low or high ratios can severely distort the analysis.[228] I show the total observations after trimming in column (3) of Table 1, and the percentage of trimmed observations in column (4). The number of observations I excluded from the sample due to outlier trimming is below the IAAO's recommended limit of 10%.[229]

IV. DATA ANALYSIS

The data convincingly show that property tax administration in Wayne County has led predominately African-American cities and towns to experience property tax foreclosures and unconstitutional tax assessments at a greater rate than predominately white ones. To demonstrate this, I pose two specific research questions:

The first question is whether the facially neutral property tax foreclosure practices in Wayne County have led predominately African-American cities and towns to experience property tax foreclosures at a greater rate than predominately white ones. As shown in Appendix Table 2A, there are six cities with a property tax foreclosure rate that exceeds 10 per 1,000 properties: Highland Park (235), Detroit (153), Inkster (46), Ecorse (39), River Rouge (16), Hamtramck (13). From this list, Hamtramck is the only city where African-Americans do not constitute a significant portion of the population—they account for only 13% of residents.[230] In the other cities,

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[228] STANDARD ON RATIO STUDIES, *supra* note 222, at 53. The IAAO defines an outlier as an assessment ratio below the first quartile or above the third quartile by 1.5 times the interquartile range (IQR), where the IQR is the difference between the first and third quartiles. The first quartile is the median value of the lower half of the data and the third quartile is the median value of the upper half of the data (the second quartile is the median of the entire dataset). The IAAO also recognizes that ratio distributions are often skewed to the right (i.e., a greater number of high ratios may be present), so to prevent dropping a disproportionate number of high ratios, the IAAO suggests taking the logarithm of each assessment ratio prior to trimming the outliers. *Id.* at 41, 53. Steps I took for trimming outliers: 1) Locate the first quartile (i.e., median value of the lower half of the data), 2) Locate the third quartile (i.e., median value of the upper half of the data), 3) Compute the interquartile range (IQR) and multiply by 1.5 = (Step 2 – Step 1) x 1.5, 4) Establish the Lower Boundary = (Step 1 – Step 3), and 5) Establish the Upper boundary = (Step 2 + Step 3).

[229] *Id.* at 54.

[230] It is important to understand that while Hamtramck's residents are classified as white in the census, it is a community dominated by Arab immigrants, many of whom are economically and socially vulnerable. Sarah Pulliam Bailey, *In the First Majority-Muslim U.S. City, Residents Tense About Its Future*, WASH. POST (Nov. 21, 2015), https://www.washingtonpost.com/national/for-the-first-majority-

anywhere between 45% to 92% of the population is African-American (see Appendix Table 1A). As such, the data clearly show that Wayne County's predominately African-American cities are disparately impacted by property tax foreclosures.[231]

The second question is whether Wayne County's failure to properly equalize the assessments has caused predominately African-American cities and towns to experience unconstitutional tax assessments at a greater rate than predominately white ones. According to the Michigan Constitution, the assessment ratio for each property cannot exceed 0.50;[232] so when the median assessment ratio for any municipality is 0.60 and above, it is certain that the assessed values in that jurisdiction are systematically violating the Michigan Constitution by a significant margin. That is, there is no debate as to whether unconstitutional assessments dominate a jurisdiction when the average assessment ratio is 0.60.

As shown in Appendix Table 3A, there are eight municipalities that fall within this category (listed in descending order of assessment ratio): Ecorse, River Rouge, Inkster, Hamtramck, Detroit, Dearborn, Highland Park, and Lincoln Park. Wayne County residents are subject to severely unconstitutional assessments in all three municipalities with a supermajority of African-Americans and four of the five municipalities where African-Americans are the majority. Of the thirty-three municipalities where Whites compose a supermajority, only two (Dearborn and Lincoln Park) are among the municipalities subjecting its residents to routine and severe unconstitutional assessments; and only four of the thirty-eight municipalities where whites constitute a majority.

muslim-us-city-residents-tense-about-its-future/2015/11/21/45d0ea96-8a24-11e5-be39-0034bb576eee_story.html [https://perma.cc/Z9XM-R57C].

[231] Most significantly, my forthcoming study with Professor Berry estimates that 10% of all tax foreclosures were caused by illegally inflated tax assessments. *See* Atuahene & Berry, *supra* note 23. Moreover, since lower priced homes were overassessed at a greater frequency and magnitude than higher priced homes, we estimate that 25% of tax foreclosures among homes less than $8,000 in sale price were due to unconstitutional property tax assessments. *Id.*

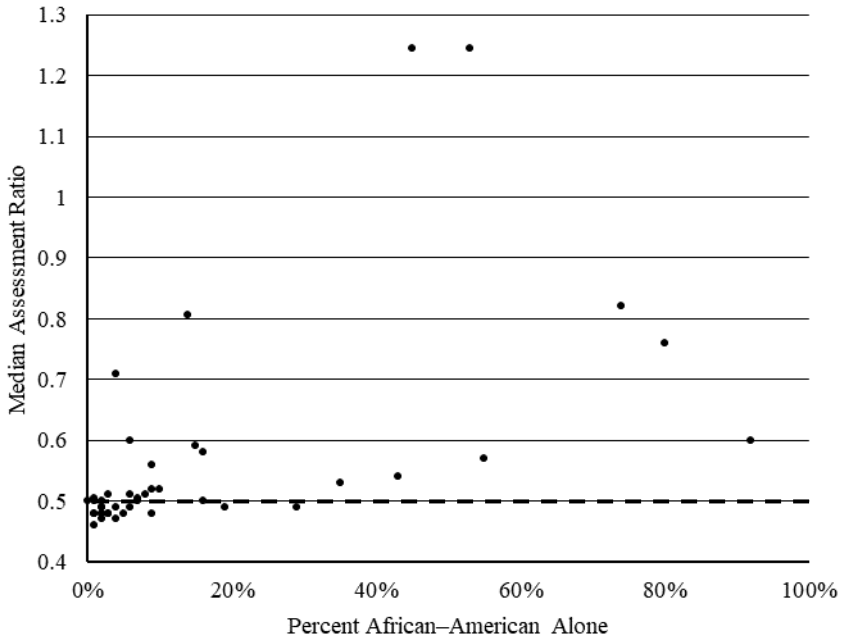
[232] MICH. CONST. art. IX, § 3.

TABLE 2: ASSESSMENT RATIOS BY RACIAL POPULATION OF WAYNE COUNTY MUNICIPALITIES[233]

Percentage Black in Municipality	Ratio .5 and below	Ratio above .5 and below .6	Ratio .6 and above	Total
0–33% Black	24	8	3	35
34–66% Black	0	3	2	5
67–100% Black	0	0	3	3
Total	**24**	**11**	**8**	**43**

As shown in Table 2, there are twenty-four municipalities where the median assessment ratio is 0.50 or below and every one of these jurisdictions is majority white. Again, the evidence is clear: African-Americans are disparately impacted by unconstitutional tax assessments occurring in Wayne County.

FIGURE 2: ASSESSMENT RATIOS BY RACIAL POPULATION OF WAYNE COUNTY MUNICIPALITIES



[233] For more information on the assessment ratios for each municipality in Wayne County stratified by racial population, see *infra* Appendix Table 4A.

Based on Figure 2, it is clear that there is a correlation between jurisdictions that severely unconstitutionally assess their residents and the race of those residents. But, there may be factors other than race driving these correlations. For instance, counties may be more likely to endure unconstitutional assessments if they experience a precipitous drop in housing values because their assessment division did not have the capacity to adjust market valuations in a timely manner. Consequently, the next step is to determine whether the correlation between race and unconstitutional assessments persists even after accounting for severe declines in home values. To do this, I sorted municipalities into two categories: those that had the most severe home price declines between 2005 and 2013 (i.e., they were in the bottom quartile) and those that did not.[234] During this period, the bottom quartile consists of properties that declined 53% or more.

The municipalities in the bottom quartile, where the decline in home prices was particularly severe include: Ecorse, River Rouge, Inkster, Hamtramck, Detroit, Lincoln Park, Wayne, Melvindale, Harper Woods, Redford, and Taylor. This list includes four of the thirty-three supermajority white municipalities; two of the three supermajority African-American municipalities; six of the thirty-eight predominately white municipalities; and four of the five predominately African-American municipalities. These data show that predominately African-American municipalities were disparately impacted by severe declines in housing values. In addition, with the exception of two (Redford and Taylor, both predominantly white), all municipalities that experienced significant declines in housing values had median assessment ratios of 0.55 or above.

But, as shown in Table 3, among the eleven municipalities that experienced significant declines in their housing values, only six were subject to assessments that substantially violated the Michigan Constitution (0.60 or above): River Rouge, Ecorse, Inkster, Hamtramck, Detroit, and Lincoln Park. Among the six are two of the three municipalities with a supermajority of African-Americans, but only one of the thirty-three municipalities where whites constitute a supermajority. Also, only two among the six municipalities (Hamtramck and Lincoln Park) have a population that is less than 40% African-American.

[234] Using all arm's-length transactions for each municipality, I calculated the change in the median home sale price from 2005 to 2013.

TABLE 3: UNCONSTITUTIONAL ASSESSMENTS AMONG MUNICIPALITIES WHERE THERE WAS A >50% CHANGE IN HOME SALE PRICES

City	Median Ratio	Median Home Price	% White	% Black	% Price Change
Population Predominantly Black					
River Rouge city	1.25	15,000	40%	53%	-75%
Inkster city	0.82	26,000	21%	74%	-73%
Harper Woods city	0.57	36,100	40%	55%	-69%
Detroit city	0.76	24,000	13%	80%	-64%
Population Predominantly White					
Ecorse city	1.25	15,000	47%	45%	-77%
Redford charter township	0.53	50,000	61%	35%	-63%
Melvindale city	0.58	41,000	73%	16%	-62%
Hamtramck city	0.81	20,500	55%	14%	-62%
Wayne city	0.59	53,003	81%	15%	-59%
Lincoln Park city	0.60	46,000	85%	6%	-57%
Taylor city	0.50	65,000	77%	16%	-54%

In addition, research shows that assessment divisions are more likely to incorrectly appraise lower-valued homes, so home value is another factor that is correlated with unconstitutional assessments. Accordingly, it is possible that instead of race, low home values explain the concentration of unconstitutional assessments in certain municipalities. In order to determine whether unconstitutional assessments persisted after accounting for home prices, I sorted municipalities into two categories: homes valued at or below $51,501 (i.e., homes in the bottom quartile of median home sale prices) and homes valued above $51,501. In order to simplify the presentation of the data, however, I used $50,000 as the threshold for categorizing municipalities with low home prices.[235]

[235] The results were no different when I used $51,501 versus $50,000.

TABLE 4: UNCONSTITUTIONAL ASSESSMENTS AMONG MUNICIPALITIES WHERE MEDIAN HOME PRICE LEVEL IS IN THE BOTTOM QUARTILE

City	Median Ratio	Median Home $	% White	% Black
Population Predominantly Black				
River Rouge city	1.25	15,000	40%	53%
Inkster city	0.82	26,000	21%	74%
Detroit city	0.76	24,000	13%	80%
Highland Park city	0.60	25,748	4%	92%
Harper Woods city	0.57	36,100	40%	55%
Population Predominantly White				
Ecorse city	1.25	15,000	47%	45%
Hamtramck city	0.81	20,500	55%	14%
Lincoln Park city	0.60	46,000	85%	6%
Melvindale city	0.58	41,000	73%	16%

The full list of municipalities that have median home prices below $50,000 includes nine municipalities: Ecorse, River Rouge, Inkster, Hamtramck, Detroit, Highland Park, Lincoln Park, Melvindale, and Harper Woods. This list includes five of the five predominately African-American municipalities; three of the three municipalities with a supermajority of African-Americans; four of the thirty-eight predominately white municipalities, and two of the thirty-three municipalities with a supermajority of whites (see Table 4). In sum, cities and towns where African-Americans predominate are more likely to have median home sale prices below $50,000. Also, there is a correlation between cities that have a low median home price and unconstitutional assessments because none of the nine municipalities with a median home price of $50,000 or below has an assessment ratio below 0.55; and seven of nine have a ratio of 0.60 or above. Of the seven municipalities that have low median home prices and are severely unconstitutionally assessing its residents, only two have a population that is below 45% African-American.

In sum, I have presented strong evidence that cities with a population that is predominantly African-American suffer from unconstitutional property tax assessments and tax foreclosures at a higher rate than cities that are predominately white. But, more than majority-white cities, predominately African-American cities have experienced sharp declines in

housing values and low homes prices—two factors that are highly correlated with an increased incidence of unconstitutional property tax assessments. That is, while a statistical disparity between predominately white and black cities exists without question, race is not the *only* factor causing the discrepancy. As a consequence, this Essay has not established causation, but rather it has established a strong correlation between unconstitutional assessments, foreclosure, and race.

CONCLUSION

Wayne County's failure to properly equalize property tax assessments between its local taxing units most acutely affects localities where assessments are systematically in violation of the Michigan Constitution and thus most in need of correction. The evidence presented shows that predominately African-American cities in Wayne County experience unconstitutional tax assessments and tax foreclosure at a far greater rate than predominately white cities. Consequently, Wayne County's equalization policy disparately impacts African-Americans in violation of § 3604 and § 3605 of the FHA.

I opened this Essay with Mrs. B's story. Investors purchased her home from the Wayne County Property Tax Auction for $500 and have recently evicted Mrs. B. So, even if the FHA class action lawsuit had been successful, she would not have gotten her house back.[236] If, however, a future lawsuit forces Wayne County to properly monitor and prevent unconstitutional assessments in its taxing jurisdictions, then the real potential winners are homeowners in Wayne County's predominately African-American cities who are still in their homes, but vulnerable to tax injustice and foreclosure. There should never be anyone who is unconstitutionally assessed and foreclosed upon because they were subject to inflated property tax bills that they could not afford to pay. What happened to Mrs. B and so many other African-Americans in Wayne County should never happen again.

[236] *See* 42 U.S.C. § 3613(c) (2012).

APPENDIX

TABLE 1A: SELECTED POPULATION AND HOUSING CHARACTERISTICS FOR WAYNE COUNTY MUNICIPALITIES, 2015

KEY		
1: % White alone	2: % Black alone	3: Median household income
4: Per capita income	5: Poverty rate	6: Unemployment rate
7: Owner-occupancy rate	8: Housing vacancy rate	9: Median value owner-occupied housing
Source: 2015 American Community Survey 5-year estimates[237]		

Place	1	2	3	4	5	6	7	8	9
Allen Park city	93.9	2.0	63007	29066	6.8	7.7	85.2	6.7	95500
Belleville city	91.7	6.7	45452	24968	16.3	7.7	57.6	12.2	107900
Brownstown charter township	83.8	7.1	70095	29945	8.7	6.5	77.9	7.6	155900
Canton charter township	71.7	9.2	83943	35646	5.5	6.6	75.8	5.4	196200
Dearborn city	90.1	3.7	47375	21535	28.9	9.9	67.3	9.7	105800
Dearborn Heights city	84.3	8.6	44620	21671	20.1	11.4	74.1	7.3	82500
Detroit city	13.4	80.1	25764	15038	40.3	24.9	49.4	30.0	42300
Ecorse city	46.9	44.8	28131	15449	33.1	24.6	57.6	24.0	40400
Flat Rock city	90.0	7.6	56700	26296	12.7	8.6	74.8	9.5	110100
Garden City city	94.3	2.3	49862	23560	10.9	9.0	81.5	7.6	80500
Gibraltar city	95.4	2.2	66477	27539	11.9	10.7	79.4	15.6	99400
Grosse Ile township	95.7	0.6	93114	45512	3.1	4.3	88.3	5.7	243600
Grosse Pointe city	92.3	1.0	98578	59949	2.8	6.5	79.2	8.5	263200
Grosse Pointe Farms city	94.8	2.7	115918	53485	3.8	5.1	97.4	6.3	268500
Grosse Pointe Park city	85.9	10.2	95179	53249	6.1	5.4	73.8	10.1	291000
Grosse Pointe Woods city	90.8	4.9	92014	42524	4.6	5.7	87.3	6.2	188300

[237] *See* U.S. CENSUS BUREAU, *supra* note 219.

Hamtramck city	55.2	14.4	23759	10557	47.3	17.4	48.3	23.4	41900
Harper Woods city	39.9	54.7	48820	21694	13.5	12.2	62.1	13.6	64800
Highland Park city	4.0	92.1	17250	14437	49.3	32.0	36.0	33.9	36000
Huron charter township	92.9	2.9	73000	29323	10.4	9.3	88.1	4.9	163000
Inkster city	20.7	74.3	30210	15843	34.9	16.8	51.7	16.9	49100
Lincoln Park city	84.8	6.2	41090	20105	19.9	12.0	69.9	10.5	58700
Livonia city	91.7	3.6	70125	33082	5.8	6.4	84.4	5.2	156100
Melvindale city	72.8	15.7	33081	17149	27.1	11.6	60.1	9.0	54300
Northville city	93.0	0.7	86397	64841	9.1	9.3	60.7	9.7	313000
Northville township	78.8	3.3	102964	54552	3.2	4.2	76.4	5.6	341800
Plymouth city	92.8	2.1	75949	43316	5.9	4.7	60.9	7.6	224300
Plymouth charter township	91.7	2.0	77248	42184	4.8	4.9	81.5	4.4	249400
Redford charter township	60.8	34.5	49816	22887	16.5	12.9	76.8	8.6	63600
River Rouge city	40.1	53.0	26230	14360	41.4	26.0	57.1	27.6	34100
Riverview city	91.1	5.7	49796	26078	13.4	7.1	62.7	6.8	117200
Rockwood city	93.7	0.3	51250	28078	9.5	7.5	69.0	8.2	112600
Romulus city	49.3	42.6	42681	19270	20.5	15.3	64.6	9.1	69400
Southgate city	87.6	5.5	50280	26042	11.1	9.2	63.9	7.0	84900
Sumpter township	87.7	9.2	53153	26015	22.0	7.9	88.5	12.3	123800
Taylor city	76.7	16.5	40545	20351	21.9	14.4	65.5	8.4	72500
Trenton city	95.5	2.1	55218	29098	8.0	5.7	79.0	4.7	118000
Van Buren charter township	65.2	28.7	55309	28652	11.3	8.7	65.1	9.7	124400
Village of Grosse Pointe Shores city	94.3	1.1	139954	86153	1.4	4.6	92.5	5.4	410300
Wayne city	80.6	15.3	39352	20030	22.8	10.1	56.6	10.9	64700
Westland city	73.5	18.9	44641	24831	15.8	9.2	59.6	8.3	90900
Woodhaven city	90.7	4.4	55266	30201	6.5	8.4	70.7	6.0	131000
Wyandotte city	95.2	1.1	51237	27219	11.1	10.3	73.1	9.6	84800

TABLE 2A: RESIDENTIAL PROPERTY TAX FORECLOSURE RATE BY WAYNE COUNTY MUNICIPALITY, 2013–2016

Place	Tax Foreclosures	Residential Properties	Foreclosure Rate (per 1,000 properties)
Allen Park city	4	11,420	0.35
Belleville city	1	920	1.09
Brownstown charter township	2	9,313	0.21
Dearborn Heights city	41	21,805	1.88
Detroit city	34,470	224,940	153.24
Ecorse city	123	3,141	39.16
Garden City city	17	10,757	1.58
Gibraltar city	1	1,443	0.69
Grosse Pointe Woods city	4	6,468	0.62
Hamtramck city	11	824	13.35
Harper Woods city	8	3,469	2.31
Highland Park city	668	2,840	235.21
Huron charter township	1	3,465	0.29
Inkster city	208	4,557	45.64
Lincoln Park city	106	14,042	7.55
Livonia city	8	34,323	0.23
Melvindale city	19	3,637	5.22
Plymouth charter township	1	9,547	0.10
Redford charter township	39	19,576	1.99
River Rouge city	35	2,196	15.94
Riverview city	3	3,637	0.82
Romulus city	27	6,820	3.96
Southgate city	13	10,036	1.30
Sumpter township	3	2,486	1.21
Taylor city	5	1,546	3.23
Trenton city	2	5,932	0.34
Van Buren charter township	3	6,533	0.46
Wayne city	17	5,288	3.21
Westland city	43	25,728	1.67
Wyandotte city	3	3,654	0.82

TABLE 3A: ASSESSMENT RATIO DESCRIPTIVE STATISTICS BY WAYNE COUNTY MUNICIPALITY AND YEAR

Place	Year	Median Ratio	Median Sale Price	% > 0.50	N
Allen Park city	2013	0.51	75,000	0.50	252
	2014	0.47	85,950	0.36	332
	2015	0.47	95,030	0.39	186
	2016	0.45	102,500	0.31	183
	Overall	0.48	87,900	0.39	953
Belleville city	2013	0.49	113,900	0.47	17
	2014	0.55	114,750	0.62	24
	2015	0.53	149,000	0.60	15
	2016	0.48	121,500	0.35	26
	Overall	0.50	116,500	0.50	82
Brownstown charter township	2013	0.50	155,000	0.46	197
	2014	0.50	169,500	0.34	193
	2015	0.50	169,000	0.49	111
	2016	0.50	171,250	0.32	118
	Overall	0.50	165,000	0.40	619
Canton charter township	2013	0.49	199,900	0.38	617
	2014	0.46	219,000	0.21	751
	2015	0.47	220,000	0.26	355
	2016	0.49	224,700	0.40	395
	Overall	0.48	215,000	0.30	2,118
Dearborn Heights city	2013	0.67	63,050	0.84	600
	2014	0.56	74,250	0.64	711
	2015	0.50	85,500	0.50	357
	2016	0.52	83,500	0.54	410
	Overall	0.56	73,000	0.65	2,078
Dearborn city	2013	0.86	42,500	0.89	18
	2014	0.62	75,000	0.83	12
	2015	0.68	58,500	1.00	6
	2016	0.71	50,000	0.80	5
	Overall	0.71	50,000	0.88	41
Detroit city	2013	1.07	18,000	0.83	3,015

	2014	0.80	25,000	0.76	3,248
	2015	0.57	26,000	0.55	1,861
	2016	0.51	29,000	0.50	1,608
	Overall	0.76	24,000	0.70	9,732
Ecorse city	2013	1.90	12,000	0.96	27
	2014	1.67	12,200	1.00	27
	2015	0.92	15,900	0.81	16
	2016	0.68	20,000	0.58	24
	Overall	1.25	15,000	0.85	94
Flat Rock city	2013	0.54	145,000	0.60	53
	2014	0.51	107,465	0.52	67
	2015	0.51	117,750	0.54	46
	2016	0.48	140,500	0.40	30
	Overall	0.51	120,000	0.53	196
Garden City city	2013	0.58	56,750	0.64	238
	2014	0.50	70,317	0.49	283
	2015	0.48	79,250	0.41	132
	2016	0.47	84,000	0.39	187
	Overall	0.50	70,500	0.50	840
Gibraltar city	2013	0.47	170,000	0.40	25
	2014	0.51	170,000	0.51	35
	2015	0.50	101,200	0.45	20
	2016	0.49	140,717	0.48	23
	Overall	0.49	140,717	0.47	103
Grosse Ile township	2013	0.53	212,000	0.55	115
	2014	0.50	223,500	0.48	126
	2015	0.49	235,750	0.42	84
	2016	0.49	232,500	0.35	77
	Overall	0.50	228,000	0.46	402
Grosse Pointe Farms city	2013	0.50	207,500	0.49	151
	2014	0.45	260,000	0.32	185
	2015	0.45	280,000	0.30	91
	2016	0.48	305,000	0.41	100
	Overall	0.48	255,000	0.38	527
Grosse Pointe Park city	2013	0.54	259,000	0.66	131

	2014	0.50	230,000	0.47	161
	2015	0.51	267,500	0.51	82
	2016	0.49	260,000	0.45	89
	Overall	0.52	250,000	0.53	463
Grosse Pointe Woods city	2013	0.51	149,500	0.54	200
	2014	0.45	165,000	0.30	230
	2015	0.48	172,750	0.39	124
	2016	0.49	187,250	0.45	133
	Overall	0.48	165,000	0.41	687
Grosse Pointe city	2013	0.49	207,000	0.46	71
	2014	0.46	265,000	0.38	76
	2015	0.50	283,750	0.42	52
	2016	0.49	237,000	0.41	37
	Overall	0.48	237,450	0.42	236
Hamtramck city	2013	1.23	14,500	0.85	20
	2014	0.80	20,000	0.95	21
	2015	0.73	29,900	0.69	13
	2016	0.74	27,000	0.75	12
	Overall	0.80	20,500	0.83	66
Harper Woods city	2013	0.67	28,750	0.76	124
	2014	0.59	34,750	0.66	148
	2015	0.53	45,000	0.57	83
	2016	0.52	42,000	0.55	119
	Overall	0.57	36,100	0.64	474
Highland Park city	2013	2.60	6,950	0.86	14
	2014	0.45	45,000	0.43	37
	2015	0.36	49,900	0.25	8
	2016	0.53	46,500	0.57	7
	Overall	0.60	25,748	0.52	66
Huron charter township	2013	0.52	151,000	0.63	43
	2014	0.48	145,000	0.44	71
	2015	0.49	165,000	0.44	25
	2016	0.51	159,950	0.53	38
	Overall	0.51	155,000	0.50	177
Inkster city	2013	1.60	18,000	0.96	79

	2014	0.95	24,000	0.91	95
	2015	0.65	31,500	0.70	86
	2016	0.36	47,250	0.33	79
	Overall	0.82	26,000	0.73	339
Lincoln Park city	2013	0.79	37,000	0.88	252
	2014	0.59	46,100	0.67	297
	2015	0.56	49,000	0.61	176
	2016	0.48	58,000	0.45	219
	Overall	0.60	46,000	0.66	944
Livonia city	2013	0.49	133,250	0.37	726
	2014	0.48	145,500	0.24	873
	2015	0.48	152,000	0.33	397
	2016	0.49	165,000	0.37	508
	Overall	0.49	148,000	0.32	2,504
Melvindale city	2013	0.76	31,500	0.88	60
	2014	0.57	38,000	0.61	61
	2015	0.53	45,000	0.55	33
	2016	0.48	50,700	0.44	52
	Overall	0.58	41,000	0.64	206
Northville city	2013	0.47	225,000	0.30	44
	2014	0.44	262,500	0.32	38
	2015	0.46	309,500	0.31	16
	2016	0.49	387,500	0.46	26
	Overall	0.46	289,500	0.34	124
Northville township	2013	0.49	436,000	0.33	252
	2014	0.48	450,000	0.27	285
	2015	0.48	525,500	0.28	105
	2016	0.50	447,950	0.43	124
	Overall	0.48	450,000	0.31	766
Plymouth charter township	2013	0.48	215,000	0.37	277
	2014	0.46	280,000	0.22	349
	2015	0.49	295,500	0.39	180
	2016	0.50	250,000	0.48	187
	Overall	0.48	252,500	0.34	993
Plymouth city	2013	0.48	170,000	0.38	127

	2014	0.46	220,000	0.29	159
	2015	0.47	222,500	0.34	71
	2016	0.50	259,900	0.42	73
	Overall	0.47	215,000	0.35	430
Redford charter township	2013	0.63	40,000	0.72	562
	2014	0.53	48,000	0.56	657
	2015	0.49	56,000	0.47	357
	2016	0.46	63,750	0.39	371
	Overall	0.53	50,000	0.56	1,947
River Rouge city	2013	1.87	9,300	1.00	20
	2014	1.16	15,000	0.90	20
	2015	0.94	16,500	0.93	14
	2016	0.41	37,125	0.40	10
	Overall	1.25	15,000	0.86	64
Riverview city	2013	0.53	100,000	0.59	75
	2014	0.45	138,500	0.30	88
	2015	0.52	146,000	0.62	34
	2016	0.49	118,500	0.46	50
	Overall	0.49	120,000	0.46	247
Rockwood city	2013	0.52	82,600	0.56	27
	2014	0.48	97,500	0.41	22
	2015	0.48	113,000	0.42	12
	2016	0.50	102,500	0.44	9
	Overall	0.50	97,000	0.47	70
Romulus city	2013	0.62	59,450	0.75	114
	2014	0.55	61,000	0.58	133
	2015	0.51	72,500	0.51	77
	2016	0.50	73,000	0.47	90
	Overall	0.54	65,000	0.59	414
Southgate city	2013	0.55	69,900	0.59	208
	2014	0.51	78,050	0.54	294
	2015	0.50	82,500	0.49	134
	2016	0.49	84,550	0.46	158
	Overall	0.51	78,700	0.53	794
Sumpter township	2013	0.54	110,000	0.58	31

	2014	0.52	129,375	0.56	43
	2015	0.53	155,000	0.71	14
	2016	0.45	167,500	0.40	15
	Overall	0.52	137,000	0.56	103
Taylor city	2013	0.58	60,000	0.62	26
	2014	0.55	62,000	0.55	40
	2015	0.48	84,750	0.38	24
	2016	0.46	84,500	0.35	26
	Overall	0.50	65,000	0.48	116
Trenton city	2013	0.54	110,000	0.65	107
	2014	0.47	125,000	0.32	146
	2015	0.47	134,950	0.33	72
	2016	0.51	127,250	0.53	106
	Overall	0.49	123,500	0.46	431
Van Buren charter township	2013	0.51	155,000	0.54	126
	2014	0.46	170,500	0.33	148
	2015	0.49	193,000	0.35	77
	2016	0.51	180,500	0.51	80
	Overall	0.49	173,450	0.43	431
Village of Grosse Pointe Shores city	2013	0.50	380,000	0.48	29
	2014	0.47	380,000	0.37	35
	2015	0.47	432,000	0.47	17
	2016	0.48	432,500	0.42	19
	Overall	0.48	395,000	0.43	100
Wayne city	2013	0.83	39,000	0.90	93
	2014	0.62	49,950	0.69	132
	2015	0.56	59,250	0.61	70
	2016	0.46	64,000	0.37	79
	Overall	0.59	53,003	0.66	374
Westland city	2013	0.54	69,000	0.61	516
	2014	0.48	84,000	0.41	628
	2015	0.48	87,700	0.40	349
	2016	0.48	103,400	0.38	421
	Overall	0.49	83,500	0.46	1,914
Woodhaven city	2013	0.47	129,900	0.30	60

	2014	0.46	134,000	0.33	75
	2015	0.47	147,500	0.30	44
	2016	0.48	150,000	0.33	55
	Overall	0.47	139,700	0.32	234
Wyandotte city	2013	0.53	66,000	0.61	87
	2014	0.51	82,200	0.52	118
	2015	0.46	76,500	0.38	52
	2016	0.48	94,000	0.40	55
	Overall	0.50	76,500	0.50	312

TABLE 4A: ASSESSMENT RATIO AND RACIAL POPULATION FOR WAYNE COUNTY MUNICIPALITIES

Place	**% White**	**% Black**	**Ratio**
Allen Park city	93.9	2.0	.48
Belleville city	91.7	6.7	.5
Brownstown charter township	83.8	7.1	.5
Canton charter township	71.7	9.2	.48
Dearborn city	90.1	3.7	.56
Dearborn Heights city	84.3	8.6	.71
Detroit city	13.4	80.1	.76
Ecorse city	46.9	44.8	1.25
Flat Rock city	90.0	7.6	.51
Garden City city	94.3	2.3	.5
Gibraltar city	95.4	2.2	.49
Grosse Ile township	95.7	0.6	.5
Grosse Pointe city	92.3	1.0	.48
Grosse Pointe Farms city	94.8	2.7	.48
Grosse Pointe Park city	85.9	10.2	.52
Grosse Pointe Woods city	90.8	4.9	.48
Hamtramck city	55.2	14.4	.8
Harper Woods city	39.9	54.7	.57
Highland Park city	4.0	92.1	.6
Huron charter township	92.9	2.9	.51
Inkster city	20.7	74.3	.82

Lincoln Park city	84.8	6.2	.6
Livonia city	91.7	3.6	.49
Melvindale city	72.8	15.7	.58
Northville city	93.0	0.7	.46
Northville township	78.8	3.3	.48
Plymouth city	92.8	2.1	.48
Plymouth charter township	91.7	2.0	.47
Redford charter township	60.8	34.5	.53
River Rouge city	40.1	53.0	1.25
Riverview city	91.1	5.7	.49
Rockwood city	93.7	0.3	.5
Romulus city	49.3	42.6	.54
Southgate city	87.6	5.5	.51
Sumpter township	87.7	9.2	.52
Taylor city	76.7	16.5	.5
Trenton city	95.5	2.1	.49
Van Buren charter township	65.2	28.7	.49
Village of Grosse Pointe Shores city	94.3	1.1	.48
Wayne city	80.6	15.3	.59
Westland city	73.5	18.9	.49
Woodhaven city	90.7	4.4	.47
Wyandotte city	95.2	1.1	.50