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## The Disparate Impact of Shuttered Schools

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## THE DISPARATE IMPACT OF SHUTTERED SCHOOLS\*

COURTNEY LAUREN ANDERSON\*\*

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A study comparing the budgets of school districts from 2008 to 2014 shows that the majority of states have decreased the amount of funds spent

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\* HUD Discrimination in Terms, Conditions and Privileges and in Services and Facilities, 24 C.F.R. § 100.65(b)(4) (2014) (“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.”); HUD Other Prohibited Sale & Rental Conduct, 24 C.F.R. § 100.70(d)(4) (2014) (“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.”).

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per student in this time period.<sup>1</sup> Attempts to distribute scarce resources among public schools have caused school officials to implement redistricting initiatives. These redistricting initiatives inevitably mean that certain schools will be selected for closure, and reports show that schools selected for closure are located in the poorest communities, comprised mostly of racial and ethnic minorities, with the most distressed real estate markets.<sup>2</sup> For illustrative purposes, note that the Chicago Board of Education voted to close forty-nine public schools in the spring of 2013.<sup>3</sup> The schools selected for possible closure had a percentage of Black students that exceeded the average for the district.<sup>4</sup> These closed schools are in addition to the twenty-four shuttered schools on the Chicago market as of 2012.<sup>5</sup> The main factor to which school officials attribute these closures is the \$1 billion shortfall in the public school system's budget<sup>6</sup> as a result of over 200,000 residents leaving the city in the past ten years.<sup>7</sup> This flight reduced the property tax base, which is the main financing source for

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1. See generally Michael LEACHMAN & CHRIS MAI, CTR. ON BUDGET & POLICY PRIORITIES, MOST STATES FUNDING SCHOOLS LESS THAN BEFORE THE RECESSION 4-5 (2014), available at <http://www.cbpp.org/files/9-12-13sfp.pdf>.

2. See *The Color of School Closures*, NAT'L OPPORTUNITY TO LEARN CAMPAIGN (Apr. 23, 2013), <http://www.otlcampaign.org/blog/2013/04/05/color-school-closures>.

3. Noreen S. Ahmad-Ullah et al., *CPS Approves Largest School Closure in Chicago's History*, CHI. TRIB. (May 23, 2013), [http://articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522\\_1\\_chicago-teachers-union-byrd-bennett-one-high-school-program](http://articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522_1_chicago-teachers-union-byrd-bennett-one-high-school-program).

4. Lauren Fitzpatrick & Art Golab, *Black Students Most Likely to Have Their School on CPS Closure List*, CHI. SUN-TIMES (Apr. 8, 2013), <http://www.suntimes.com/news/education/18626817-418/black-students-far-more-likely-to-see-their-cps-school-closed-than-others-sun-times-analysis.html#.U683bmHD-Rw>.

5. See THE PEW CHARITABLE TR., SHUTTERED PUBLIC SCHOOLS: THE STRUGGLE TO BRING OLD BUILDINGS NEW LIFE 4 (2013), available at <http://www.ewa.org/sites/main/files/file-attachments/philadelphia-school-closings.pdf>.

6. See Barbara Byrd-Bennett, *Chicago Public Schools Fiscal Year 2014 Budget*, CHI. PUB. SCH. (Aug. 14, 2014), <http://cps.edu/finance/FY14Budget/Pages/Budget.aspx>.

7. See Joy Resmovits & Kim Bellware, *Chicago School Closings: District Plans to Shutter 54 Schools*, HUFFINGTON POST (Mar. 21, 2013), [http://www.huffingtonpost.com/2013/03/21/chicago-school-closings-2013\\_n\\_2927419.html](http://www.huffingtonpost.com/2013/03/21/chicago-school-closings-2013_n_2927419.html) ("Chicago district officials have argued that dwindling population in some predominantly Black neighborhoods has created an 'underutilization crisis' where schools are operating way below their capacity . . . [T]he closures could save \$500,000 to \$800,000 per school."); see also William Mullen & Vikki Ortiz-Healy, *Chicago's Population Drops 200,000*, CHI. TRIB. (Feb. 15, 2011), [http://articles.chicagotribune.com/2011-02-15/news/ct-met-2010-census-20110215\\_1\\_census-data-collar-counties-population](http://articles.chicagotribune.com/2011-02-15/news/ct-met-2010-census-20110215_1_census-data-collar-counties-population).

school districts.<sup>8</sup>

Pursuant to deconcentration of poverty efforts, several major cities razed public housing units comprised mostly of Blacks and other minorities.<sup>9</sup> Residents dispersed, lowering the student population in low-income and minority communities, as these communities are where most cities built public housing units.<sup>10</sup> Any population decrease lowers the tax base, since there are fewer residents and homeowners in the area paying taxes. The under enrollment of students and the underfunding of schools in impoverished areas are major reasons why these schools are closed when school districts commence redistricting.<sup>11</sup> For example, in Atlanta, some schools are overcrowded while others, in low-income neighborhoods, are twenty percent full.<sup>12</sup> This disparity was a driving force for the redistricting plan announced in Atlanta in 2012 that resulted in closing schools, the vast majority of which were located in poor Black communities.<sup>13</sup> As described in Part II, the longer these properties sit idle, the more harm they cause.

*Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, a case in which a disproportionately high percentage of African American and Hispanic residents were displaced as a result of razing a blighted public housing development, settled in November 2013 just prior to the date on

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8. See *Background & Analysis*, FED. EDUC. BUDGET PROJECT (Apr. 21, 2014, 10:59 PM), <http://febp.newamerica.net/background-analysis/school-finance>.

9. See *Demolition/Disposition*, DEP'T OF HOUSING & URB. DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/centers/sac/demo\\_dispo](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/centers/sac/demo_dispo) (last visited Aug. 11, 2014) (“Although demolition/disposition activity has always been permitted, HUD and its business partners have begun to actively pursue it as a management strategy option in the last ten years.”).

10. See *Facts About Public Housing*, COUNCIL OF LARGE PUB. HOUSING AUTHORITIES, [http://www.clpha.org/facts\\_about\\_public\\_housing#\\_edn9](http://www.clpha.org/facts_about_public_housing#_edn9) (last visited Aug. 11, 2014).

11. See, e.g., ATLANTA PUB. SCH., SUPERINTENDENT’S FINAL REDISTRICTING AND CLOSURE RECOMMENDATIONS 2 (2012), available at <http://www.atlantapublicschools.us/cms/lib/GA01000924/Centricity/Domain/45/Final%20-%20Version%20Posted%20May%207.pdf> (discussing the adverse effects of “[s]parsely populated, inadequately supported schools” on the district).

12. See Ernie Suggs, *Parents Again Voice Concerns About Atlanta School Redistricting Effort*, ATLANTA JOURNAL-CONSTITUTION (Feb. 6, 2012, 10:22 PM), <http://www.ajc.com/news/news/local/parents-again-voice-concerns-about-atlanta-schools/nQQ52/>.

13. See Dan Whisenhunt, *School Redistricting Plan Underscores Divide Between North and South Atlanta*, REP. NEWSPAPERS (Mar. 13, 2012), <http://www.reporternewspapers.net/2012/03/13/school-redistricting-plan-underscores-divide-between-north-and-south-atlanta/>.

which oral arguments before the Supreme Court were scheduled.<sup>14</sup> Although the settlement precludes the Court from deciding whether disparate impact is a cognizable claim under the Fair Housing Act (FHA),<sup>15</sup> precedent and rules from appellate courts and the Office of Housing and Urban Development (HUD) support the validity of disparate impact claims.<sup>16</sup> However, a recent lawsuit challenges the FHA's authority to prevent practices that have a disparate impact on protected classes absent evidence of intentional discrimination.<sup>17</sup> Despite the fact that this question remains open, FHA disparate impact claims, as articulated in lower courts, establish a legal framework for evaluating the impact of vacant and abandoned schools.

Most of these schools are located in low-income and minority neighborhoods and are the unfortunate result of the redistricting of public school attendance zones. Shuttered schools and other vacant buildings are magnets for illegal activity.<sup>18</sup> In addition to increasing instances of criminal activity, these structures lower property values and reduce the likelihood of investment in the area.<sup>19</sup> These factors create a self-perpetuating cycle of population decline and diminished property tax revenue, in turn raising the likelihood that schools in and around these neighborhoods will continue to be closed in the event redistricting takes place again in the future. The property element of shuttered schools partially explains why they are generally in the blind spot of school officials during the redistricting process, who are not well-versed in real estate matters. Further, the public education element of shuttered schools leaves these buildings ignored by blight laws because these laws are focused on privately-owned structures rather than government-owned

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14. 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, 384 (2013).

15. *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 199-200 (2003); *Town of Huntington v. NAACP*, 488 U.S. 15, 18 (1988).

16. NAT'L FAIR HOUS. ALLIANCE, *DISPARATE IMPACT UNDER THE FAIR HOUSING ACT: A PROPOSED APPROACH* 8 (2009), available at <http://www.nationalfairhousing.org/Portals/33/DISPARATE%20IMPACT%20ANALYSIS%20FINAL.pdf>.

17. See Greg Storch, *Supreme Court to Hear 'Disparate Impact' Housing Case*, INS. J. (Oct. 3, 2014), <http://www.insurancejournal.com/news/national/2014/10/03/342556.htm>.

18. NAT'L VACANT PROPS. CAMPAIGN, *VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES* 3-4 (2005), available at <http://www.smartgrowthamerica.org/documents/true-costs.pdf>.

19. See Jeffery Fraser, *The Cost of Blight*, PITT. Q., Fall 2011, at 84.

structures.<sup>20</sup> The problem of this duality has excluded shuttered schools from the reach of laws one would instinctively consult to address the problem. Although the hybrid nature of shuttered schools complicates the mitigation of their adverse effects through clear legal solutions, it also creates an opportunity to innovatively examine vacant and abandoned schools through the lens of the FHA.

The purpose of this Article is not to debate the decision to commence redistricting, but rather to set forth a legal framework for evaluating the disparate impact of shuttered schools on low income and minority communities. This Article is the first to analyze the shuttered schools phenomenon as a byproduct of redistricting from a legal perspective. It uses the process of determining liability under the FHA for disparate impact claims to evaluate the impact of these structures. This legal framework will fill the gap left open by the school disposition process and other laws by creating solutions for repurposing these schools in a way that benefits low-income and minority communities.

Part I asserts that redistricting is the most common genesis of shuttered schools and discusses causes of redistricting that are rooted in government housing policy and socioeconomic inequality. Part II analyzes the adverse consequences of these abandoned buildings. These consequences include quantifiable and unquantifiable harm to poor and minority communities created and exacerbated by these structures, although the lack of data on the topic complicates the process of fully comprehending the impact. Part III provides an overview and critique of existing legal mechanisms that are available to mitigate the negative ramifications of shuttered schools, concluding that these bodies of law are insufficient to remedy the impact. Part IV details the legal framework of bringing a disparate impact claim under the Fair Housing Act and asserts that the connection between housing and education underscores the relevance of using this Act to evaluate this problem. The potential for this framework to expand the dialogue regarding redistricting shuttered schools, as well as specific administrative and redevelopment mechanisms that may be utilized in understanding the consequences of and solutions to the problems that shuttered schools create, are detailed in Part V.

#### THE CAUSES AND EFFECTS OF REDISTRICTING

Most state constitutions mandate the right to an adequate education,<sup>21</sup>

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20. See generally URBAN BLIGHT: AN ANALYSIS OF STATE BLIGHT STATUTES AND THEIR IMPLICATIONS FOR EMINENT DOMAIN REFORM (2007), available at <http://www.ocpa-oh.org/Foreclosures%20and%20Crime/Urban%20Blight%20-%20An%20Analysis.pdf>.

21. Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*,

and the delivery of this education is typically the responsibility of local school districts.<sup>22</sup> These districts are units of local government and are segmented from one another by geographical boundaries determined by school board members.<sup>23</sup> Each of the approximately 15,000 school districts in the United States is responsible for providing a public education to each student in its district and is funded primarily by the property taxes in its district.<sup>24</sup> When funds or student populations are low, these boundaries often change to strive for a more even distribution of students and resources. The adjustments often result in the shuttering of certain public schools. Part I examines why redistricting, accompanied by the near inevitability of shuttered schools, is likely to take place in low-income and minority communities.

Despite criticisms of the use of property taxes to fund public schools,<sup>25</sup> the largest percentage of school districts' budgets, this financing mechanism remains in place in the majority of states.<sup>26</sup> As a result, schools located in neighborhoods with lower property values receive less money. Therefore, children living in poor neighborhoods, where property values are lower and where there are fewer occupied homes and other properties contributing to the tax base, live closer to schools that receive less resources.<sup>27</sup> The lack of financial resources and political capital in low-income and minority communities increases the likelihood that schools in these areas will be selected for closure, as opposed to schools in areas with higher incomes.<sup>28</sup>

Approximately forty-four percent of school districts' revenue comes from local governments.<sup>29</sup> These revenues have declined sharply in recent years due in large part to the drop in property tax revenue.<sup>30</sup> Foreclosures

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81 GEO. WASH. L. REV. 92, 96 (2013).

22. Peter J. Hammer, *The Fate of the Detroit Public Schools: Governance, Finance and Competition*, 13 J.L. SOC'Y 111, 121 (2011).

23. See Aaron J. Saiger, *The School District Boundary Problem*, 42 URB. LAW. 496, 496 (2010).

24. Friedman & Solow, *supra* note 13 at 96; *Background & Analysis*, *supra* note 10.

25. See Thomas A. Stubbs, *After Rodriguez: Recent Developments in School Finance*, 44 TAX LAW 313, 313-14 (1990).

26. Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 101 (1995).

27. Bret D. Asbury & Kevin Woodson, *On the Need for Public Boarding Schools*, 47 GA. L. REV. 113, 142 (2012).

28. See Kristi L. Bowman, *Before School Districts Go Broke: A Proposal for Federal Reform*, 79 U. CIN. L. REV. 895, 909-10 (2011).

29. *Id.* at 902; *Background & Analysis*, *supra* note 8.

30. Bowman, *supra* note 28, at 903 n.32.

and decreased home values are important factors in this decline.<sup>31</sup>

The tax dollars used for school districts are a percentage of the property values within the district, creating financial inequality among the districts.<sup>32</sup> The reliance on property taxes as the main school district funding source has resulted in the location of schools with better teachers, more learning resources, smaller classroom sizes, and diverse curriculums in wealthier neighborhoods.<sup>33</sup> A disproportionately high number of Black individuals are poor, illustrating the compounding impact of race and income on this education issue.<sup>34</sup> Further, parents with the financial capacity to do so can move away from a school with fewer resources in order to send their children to a public school that gives them a better opportunity for academic success.

More school districts have undertaken redistricting efforts in recent years due to budget cuts.<sup>35</sup> A Pew Study on school closures flags population decline as the primary reason for decisions that lead to closing schools.<sup>36</sup> A decrease in the general neighborhood population clearly results in less revenue for the school districts and a drop in the student population. The number of school-age children fell in many major cities from 2000-2010, in some cities plummeting over fifteen percent.<sup>37</sup> In addition to public school enrollment decreasing due to this decline, additional students transitioned out of public schools and into charter schools and private schools.<sup>38</sup> In fact, the number of students enrolled in charter schools tripled during this same time period.<sup>39</sup>

Government housing policy has also contributed to the decline of affordable housing and the resulting population decline in underserved neighborhoods. The U.S. Department of Housing and Urban Development estimated that government housing policies displaced at least 500,000 poor families. These policies include eminent domain and the elimination of public housing projects and other government subsidized housing programs. The latter is the one that most significantly impacted low-income families.

The Housing Act of 1937 allocated government subsidies to housing

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31. *Id.*

32. Saiger, *supra* note 23, at 502.

33. *See id.*

34. *See id.* at 504.

35. THE PEW CHARITABLE TR., *supra* note 7, at 16.

36. *Id.* at 3.

37. *Id.*

38. *Id.*

39. *Id.* at 12.



authorities in order to build and maintain housing for low-income families.<sup>40</sup> Over time, public housing units became primarily inhabited by minority tenants and were located in high poverty neighborhoods.<sup>41</sup> Although the federal government began efforts to disperse these housing units in neighborhoods of various income levels, these units remained heavily concentrated in low-income and minority communities.<sup>42</sup> As these developments became notorious for high rates of drug activity, violence, and other crimes, government officials questioned the value of these structures.<sup>43</sup> Further, critics cast doubt on the strategy to concentrate individuals of low socio-economic status in public housing structures. The publication of William Julius Wilson's *The Truly Disadvantaged* in 1987 initiated policies and mobilization efforts against public housing developments in light of the book's conclusions that segregation of racial minorities and economically disadvantaged individuals results in fewer job and educational opportunities and higher incidences of physical and mental illnesses among these groups.<sup>44</sup> The separation of these populations from necessary public and social services and amenities that are likely to increase quality of life likely contributed to Wilson's findings.<sup>45</sup> This anti-social isolation theory of public housing became the driving force of efforts to de-concentrate poverty that resulted in the razing of public housing in Atlanta, the first city to erect these structures.<sup>46</sup> Many other major cities followed suit, and soon residents were forced to move from their homes, causing significant population declines in low-income, urban areas that were heavily populated by minorities.<sup>47</sup> The fluctuating population

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40. Amy Ellen Schwartz et al., *Public Schools, Public Housing: The Education of Children Living in Public Housing*, 46 URB. AFF. REV. 68, 70 (2010).

41. *Id.* at 71 (citing a 1997 study conducted by Newman and Schnare reporting that "over half of public housing units nationwide are in neighborhoods with over fifty percent minority residents and over one-third of public housing units are located in neighborhoods with poverty rates greater than forty percent").

42. *Id.* at 69.

43. See, e.g., ATLANTA HOUS. AUTH., FISCAL YEAR 2013 ANNUAL REPORT 3 (2013), available at [http://www.atlantahousing.org/pdfs/AHA%202013%20MTW%20Annual%20Report\\_FINAL-Web\\_20131230.pdf](http://www.atlantahousing.org/pdfs/AHA%202013%20MTW%20Annual%20Report_FINAL-Web_20131230.pdf).

44. See Donald P. Judges, *Bayonets for the Wounded: Constitutional Paradigms and Disadvantaged Neighborhoods*, 19 HASTINGS CONST. L.Q. 599, 683 nn.347-352 (1992).

45. Schwartz et al., *supra* note 40, at 71.

46. See *Atlanta Razes Last Large Project*, HOUSING FIN. (July 1, 2009), <http://www.housingfinance.com/affordable-housing/atlanta-razes-last-large-project.aspx>.

47. See, e.g., MARY K. CUNNINGHAM ET AL., DE FACTO SHELTERS: HOMELESS LIVING IN VACANT PUBLIC HOUSING UNITS 5 (2005), available at

distribution further creates a population imbalance within school districts, with schools located in areas where there are not enough students and a dearth of schools located in heavily populated areas.<sup>48</sup>

Additionally, poorer communities are prime targets for school closures when a school district decides to redistrict because community engagement and organized political power play a significant role when elected officials decide which schools to close.<sup>49</sup> Without a strong financial base, communities have difficulty wielding much political influence, and other demands on their time and resources can be obstacles to meaningful advocacy. The state takeover of the public schools and city budget despite protest from residents illustrates this lack of local political power.<sup>50</sup> Over 20,000 people turned out in Chicago to participate in the school closure hearings.<sup>51</sup> In 2012, Atlanta residents successfully organized to effect change in the first redistricting plan set forth by the city. The original plan was to close seventeen schools, but ended with the superintendent recommending that only ten be closed.<sup>52</sup> The challenge is to not add to the cost or time of repurposing vacant schools, while being mindful that mandated community participation does not equate meaningful participation.

School districts have very few options to assist them with their fiscal crises.<sup>53</sup> Bankruptcy, receivership, and the takeover of the public school system by the state are the most readily available alternatives that school districts pursue to assist with financial crises.<sup>54</sup> A district may file for municipal bankruptcy, but they must qualify as “insolvent” which is a higher standard than the insolvency standard that private entities must meet.<sup>55</sup> To be classified as insolvent, municipalities must be close to lacking funds to meet all of their financial obligations.<sup>56</sup> Even if a school

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[http://www.urban.org/UploadedPDF/411144\\_defacto\\_shelters.pdf](http://www.urban.org/UploadedPDF/411144_defacto_shelters.pdf) (explaining that Chicago’s *Plan for Transformation*, which involves demolition of high rise public housing relocates a substantial number of families).

48. See, e.g., Becky Vevea, *No Simple Answers for Chicago’s Severely Overcrowded Schools*, WBEZ91.5 (June 12, 2013), <http://www.wbez.org/news/no-simple-answers-chicagos-severely-overcrowded-schools-107651>.

49. Bowman, *supra* note 28, at 909-10.

50. *Id.* at 929 n.193.

51. Becky Vevea, *CPS Board Votes to Close 50 Schools*, WBEZ91.5 (May 22, 2013), <http://www.wbez.org/news/cps-board-votes-close-50-schools-107294>.

52. ATLANTA PUB. SCH., *supra* note 11, at 1.

53. Bowman, *supra* note 28, at 917.

54. See generally *id.* at 966.

55. *Id.* at 918.

56. *Id.*

district could be categorized as insolvent, municipal bankruptcy proceedings do not allow municipalities to liquidate their assets because the purpose is to restructure debt and expenditures and not to eliminate debt.<sup>57</sup> Therefore, this rule would not permit school districts to transfer ownership of their shuttered schools. Although a bankruptcy stay would allow a school district to continue to provide education and pay its employees, the costs of the bankruptcy proceedings can be substantial.<sup>58</sup> Since financial issues usually create the need to examine options such as bankruptcy, pursuing a costly remedy is generally prohibitive. Municipal bankruptcy will also not directly address the reason for school districts' financial crises. In particular, the problems with low tax revenue and population decline, the leading predictors of school repurposing, cannot be rectified through this channel.<sup>59</sup> These disadvantages account for why school districts rarely use municipal bankruptcy.<sup>60</sup>

School districts may also use receivership to address fiscal shortfalls, but receivership contains pitfalls similar to municipal bankruptcy.<sup>61</sup> Additionally, many states do not recognize receivership.<sup>62</sup> Despite these pitfalls, the practice of appointing an agent to manage the municipality's finances has the benefit of bringing in an outside perspective. Ideally, this third party would be an education expert with the ability to provide valuable insight, but receivership is still a costly process and heavily dependent on a single person.<sup>63</sup> Finally, many state governments have the authority to take over school districts due to academic or fiscal crises.<sup>64</sup> Although state takeovers have proven to be a generally effective way to restore fiscal stability, the district's resistance to the takeover is often substantial.<sup>65</sup> Also, the takeover's success in improving the academic achievement of students is dubious.<sup>66</sup>

Given the lack of comprehensive legal mechanisms available to directly assist with the financial shortfalls and the inefficiency of operating numerous schools that are under enrolled, districts often decide that consolidation is the most effective and efficient method of redistributing

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57. *Id.*

58. *Id.* at 921.

59. *Id.* at 922.

60. *Id.* at 919 n.127.

61. *Id.* at 924.

62. *Id.* at 923 n.159.

63. *Id.* at 924 nn.165 & 166.

64. *Id.* at 925.

65. *Id.* at 928.

66. *Id.*

scarce financial and human resources.<sup>67</sup> Although districts may achieve the goal of redrawing district lines in a manner that results in an even distribution of students among schools, unintended harms are inherently linked to this objective.<sup>68</sup>

Redistricting is the process of recreating school districts. The stated policy of redistricting is usually related to achieving a more even balance of students and resources among public schools in the district.<sup>69</sup> School boards typically have the power to vote on redistricting and closing schools, though the rules governing this authority vary among states.<sup>70</sup> States like New Hampshire and Missouri impose restrictions on the closing of schools. New Hampshire law forbids a school district from unilaterally discontinuing any high school<sup>71</sup> and Missouri law allows schools to be closed only if the remaining schools in the district are adequate. These states are in the minority, as usually the authority is completely vested in school districts, with differences existing primarily in the procedure for closing schools. In some states the board can close a school without a vote, others require elections and public hearings. Hearings tend to favor those residents with the ability to wield the most political power, which is another reason why research has shown that many shuttered schools are located in low-income and minority neighborhoods.<sup>72</sup>

#### THE HIGH COST OF SHUTTERED SCHOOLS

The limited information on the prevalence of shuttered schools constrains the ability to fully extract and analyze their consequences. Therefore, Part II will provide information on the effects of shuttered schools, based on abandoned school data as well as data in the broader category of vacant properties. A small number of jurisdictions maintain databases<sup>73</sup> on the number and status of shuttered schools, but the lack of a centralized process and clearinghouse for this information makes it difficult

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67. *Id.* at 906.

68. *Id.* at 947.

69. *What is Redistricting*, REDISTRICTING CAL., <http://www.redistrictingca.org/what-is-redistricting/> (last visited Nov. 17 2014).

70. *Id.*

71. *See* Sch. Dist. No. 3 in *Lisbon v. Sch. Dist. No. 1 in Lisbon*, 75 A.2d 409, 412 (N.H. 1950).

72. *See* Bob Simpson, *Chicagoans Go to Court to Stop Racist School Closings*, DAILY KOS (July 15, 2013, 6:28 AM), <http://www.dailykos.com/story/2013/07/15/1223699/-Chicagoans-go-to-court-to-stop-racist-school-closings#> (noting that Chicago Public Schools removed schools in predominantly white areas from the closing list after the first round of hearings).

73. THE PEW CHARITABLE TR., *supra* note 7, at 17.

to ascertain the gravity of the issue. The lack of information on shuttered schools led the Pew Charitable Trust to conduct a study on the topic that was published in February 2013.<sup>74</sup> The study surveyed 12 major cities<sup>75</sup> in the United States, and found that these cities contained 301 shuttered schools.<sup>76</sup> As stated in Part I, housing policies and flight from low-income and minority neighborhoods create a dearth of students and tax dollars to adequately populate and fund public schools in these areas. Additionally, these communities report higher incidences of illegal activity and typically lack the retail space, green space, access to transportation, and other features that raise the quality of life in residential areas.

Shuttered schools impose a number of costs on society that are disproportionately borne by residents of the low-income and minority communities where the buildings are more likely to exist.<sup>77</sup> First, the schools prevent the land from being used in a productive manner. In lieu of a tax-generating vehicle, there exists an unused building that is typically larger than 50,000 square feet.<sup>78</sup> Second, the vacant properties attract violence, crime and illegal activity.<sup>79</sup> Not only do these undesirable elements have negative effects for the residents in the community, but they also drive away potential investors and reduce surrounding property values. Third, the buildings' dilapidated nature jeopardizes the health of the surrounding community, by posing health risks including increased danger of fires.<sup>80</sup> Finally, the school district must invest resources in maintaining and securing these schools.

Vacant properties have negative financial effects on surrounding properties as well. Emory University Law School Professor Frank Alexander summarizes the adverse effects of vacant properties on tax revenues by stating, "[the] failure of cities to collect even two to four percent of property taxes because of delinquencies and abandonment

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74. *See id.* at 3.

75. *Id.*

76. *Id.* at 4 (noting that each of these cities has a significant number school properties on the market as of 2012: Detroit (124), Washington (6), Cincinnati (5), Cleveland (26), Atlanta (17), St. Louis (13), Chicago (24), Milwaukee (21), Pittsburgh (25), Philadelphia (6), Kansas City, MO (26), and Tulsa (8)). It is important to note that the 301 figure does not reflect the facilities that are unused, but are not on the market. *Id.* The practice of "mothballing" occurs when districts close schools, but do not attempt to lease or sell the properties in order to have space to meet potential class enrollment increases. *Id.*

77. *Id.* at 5.

78. *Id.*

79. *Id.* at 7

80. NAT'L VACANT PROPS. CAMPAIGN, *supra* note 18, at 4.

translates into \$3 billion to \$6 billion in lost revenues to local governments and school districts annually.”<sup>81</sup> The mere presence of a vacant building depresses the value of homes and businesses in the surrounding community by thousands of dollars.<sup>82</sup> Properties near vacant buildings are likely to experience higher insurance premiums and higher rates of insurance policy cancellations than other properties.<sup>83</sup> The underwriting process takes the presence of these properties into account and these properties can influence the pricing and renewals of insurance policies.<sup>84</sup>

Studies show that areas with vacant buildings have higher incidences of crime than areas without these structures.<sup>85</sup> Crimes such as drug dealing, property crimes and prostitution were found to take place within the confines of over 80% of buildings surveyed in certain areas.<sup>86</sup> These buildings also cause crime in the surrounding neighborhood to increase.<sup>87</sup> George Kelling and James Q. Wilson were the first to advance “The Broken Windows Theory,” which holds that one broken window leads to several others as the apathy and lack of concern for property grows.<sup>88</sup> Property crimes escalate into more serious crimes that spread throughout the community.<sup>89</sup> Businesses may choose to leave areas where shuttered schools, and other vacant properties, are located due concerns about criminal activity.

Another dangerous characteristic of shuttered schools is their susceptibility to fires caused by accident or arson.<sup>90</sup> Over 12,000 fires in vacant buildings are reported annually.<sup>91</sup> These fires are responsible for approximately \$73 million in property damage and the injury of over 6,000 firefighters.<sup>92</sup> Health and safety concerns due to abandoned structures are not limited to fires.<sup>93</sup> Cities commonly spend millions of dollars attempting to prevent or contain the rodent infestation, toxic waste proliferation, asbestos, and other ills that are likely to be found in these

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81. *Id.* at 7.

82. *Id.* at 9.

83. *Id.* at 11.

84. *Id.*

85. *Id.* at 3.

86. *Id.*

87. *Id.* at 4.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 5.

buildings.<sup>94</sup> Environmental hazards are more likely to be located in low-income minority neighborhoods.<sup>95</sup> Even if the cheapest remedy is demolition, demolition can still be very costly.<sup>96</sup> Also, demolition does not guarantee the elimination of costs associated with vacant properties.<sup>97</sup> Vacant lots still have to be maintained, an expense that cost cities like Philadelphia close to \$50 million in a twenty year time period.<sup>98</sup> Security services and utilities are two significant financial burdens that governments have to spend on shuttered schools.<sup>99</sup> These burdens lower the savings gained by school closure, which usually amount to less than \$1 million.<sup>100</sup> In addition to these direct costs, the management and upkeep of vacant public buildings diverts resources from a city's legal, real estate, health, and tax departments.<sup>101</sup>

These measurable costs cause undue harm to neighborhoods, and the intangible costs of shuttered schools can have similar pervasive effects. Schools are symbols of education and investment in the future. They provide an environment akin to a second home for many children. Students in low-income communities rely on schools for meals<sup>102</sup> and social and behavioral development services that they do not receive in their homes. Abandoned buildings, in general, are aesthetic eyesores.<sup>103</sup> The adverse

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94. *Id.*

95. See Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 *DENV. U.L. REV.* 1, 77 (1998) (documenting land use regulatory patterns in seven cities and concluding that “[l]ow-income, minority communities have a greater share not only of [locally unwanted land uses], but also of industrial and commercial zoning, than do high-income white communities”); see also Swati Prakash, *Racial Dimensions of Property Value Protection Under the Fair Housing Act*, 101 *CALIF. L. REV.* 1437, 1455 nn.89-91 (2013).

96. NAT'L VACANT PROPS. CAMPAIGN, *supra* note 18, at 5.

97. *Id.* at 6.

98. *Id.*

99. *Study: Abandoned Schools Glutting Market*, CHOICE MEDIA (Mar. 4, 2013), <http://choicemedia.tv/2013/03/04/study-abandoned-urban-schools-glutting-the-market-2/>; see THE PEW CHARITABLE TR., *supra* note 5, at 5.

100. THE PEW CHARITABLE TR., *supra* note 5, at 5.

101. NAT'L VACANT PROPS. CAMPAIGN, *supra* note 18, at 3.

102. ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE U.S. IN 2012, 28 (2013), *available at* <http://www.ers.usda.gov/ersDownloadHandler.ashx?file=/media/1183208/err-155.pdf> (reporting that 15.9 million children lived in food insecure households in 2012); *National School Lunch Program*, FOOD RES. & ACTION CTR., <http://frac.org/federal-foodnutrition-programs/national-school-lunch-program/> (last visited Aug. 11, 2014) (reporting that 21.5 million children received free or reduced-price school lunch in the 2012-2013 school year).

103. NAT'L VACANT PROPS. CAMPAIGN, *supra* note 18, at 11.

neighborhood effects resulting from shuttered schools reverberate to educational outcomes experienced by students.<sup>104</sup> Residing in an impoverished neighborhood increases the exposure of children from poor families to crime and violence<sup>105</sup>, which hinders their academic achievement.<sup>106</sup>

The pervasive harms of shuttered schools dwarf the legal remedies traditionally employed to mitigate them. A review of the current laws that should provide guidance for developing these community assets in a way that benefits those affected by the closures, shows why a legal framework is needed to understand the gravity of the problem and encourage such development to be an integral part of the school redistricting process.

#### THE AVAILABILITY AND INSUFFICIENCY OF LAWS COMMONLY USED TO ADDRESS SHUTTERED SCHOOLS

Redistricting is a result of declining school budgets, and schools selected for closure are those that have fewer students, which frequently stems from the destruction of public housing. This chain of events illustrates the intersection of education law and property law. Legal remedies available to mitigate the occurrence, persistence, and negative consequences of shuttered schools fall within these two categories. After describing the three main bodies of law that provide guidance in addressing this problem, Part III concludes by asserting that these laws fail to comprehensively mitigate the consequences of shuttered schools. The three main bodies of law that will be analyzed are those that relate to repurposing, public school disposition, and blight.

##### *Repurposing*

Repurposing is the use of closed schools for a purpose other than public education. Few districts have formalized procedures for repurposing their schools; only one out of the twelve school districts studied by The Pew Charitable Trust had a formal guideline for repurposing closed schools<sup>107</sup> However, some school districts must follow state laws for repurposing closed schools, such as in Georgia, Ohio, and D.C. which give purchasing priority of shuttered schools to charter school operators.<sup>108</sup> Charter schools can easily assume occupancy of the shuttered schools given the unique structure of school buildings.<sup>109</sup> However, this phenomenon generates

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104. Asbury & Woodson, *supra* note 27, at 131.

105. *Id.* at 140.

106. *Id.* at 140, 142.

107. THE PEW CHARITABLE TR., *supra* note 5, at 8.

108. *Id.*

109. *Id.* at 12.



further redistricting and school closing because, after population decline, school officials cite student transition to charter schools as the next most popular reason for initiating redistricting policies that result in school closures.<sup>110</sup> In fact, the Pew study shows that forty-two percent of shuttered schools are sold to charter schools, which is the most common use of repurposed schools.<sup>111</sup> The charter student population from 2005 to 2011 in the 12 cities that were the subject of the Pew study increased by sixty-nine percent.<sup>112</sup> In addition to fueling the reduction of the student population in public schools, which results in redistricting and inevitably the more incidences of shuttered schools, charter schools in certain jurisdictions receive government resources that support their acquisition of buildings.<sup>113</sup> The District of Columbia provides funds to charter schools earmarked for capital projects, and Georgia requires that surplus properties be offered to charter schools without requiring the charter schools to pay a rental fee.<sup>114</sup> Charter schools in a number of states receive government funds in the forms of bond proceeds, tax-exempt bonds, or reduced mortgage and rental rates.<sup>115</sup>

#### *Disposition of Schools*

Philadelphia Superintendent Hite responded to criticism of his city's handling of vacant schools and numerous school closures<sup>116</sup> by stating: "Our business is education. It is not economic development or moving real estate."<sup>117</sup> Contrary to this statement, most states directly grant school boards the right to buy and sell property.<sup>118</sup> Disposition processes in most states are lengthy and do not provide an opportunity for residents to participate.<sup>119</sup> Some legislatures institute bidding procedures before the

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110. *Id.* at 9.

111. *Id.* at 11.

112. *Id.* at 12.

113. *Id.* at 13.

114. *Id.*

115. *Id.*

116. Kristen A. Graham, *Philadelphia School Closures a Radical Approach*, PITT. POST-GAZETTE (Dec. 15, 2012, 12:00 AM), <http://www.post-gazette.com/news/education/2012/12/15/Philadelphia-school-closures-a-radical-approach/stories/2012>.

117. THE PEW CHARITABLE TR., *supra* note 5, at 5 n.3.

118. See CTR. FOR PUB. EDUC., ALL IN FAVOR: CAST YOUR VOTE FOR STUDENT SUCCESS, available at <http://www.centerforpubliceducation.org/Libraries/Document-Library/State-School-Boards/Georgia-School-Boards-Association-brochure.PDF> (last visited Nov. 17, 2014).

119. THE PEW CHARITABLE TR., *supra* note 5, at 11.

school board can convey the property.<sup>120</sup> Others have carved out exceptions to these required procedures for transfers to other governmental agencies.<sup>121</sup>

Disposing of shuttered schools is difficult in large part due to the size of the buildings.<sup>122</sup> In some states, statutes incentivize and even require schools to be a certain size. For instance, the Georgia State Board of Education is responsible for setting uniform rules for educational facility construction.<sup>123</sup> The Georgia Department of Education mandates that high schools consist of at least twenty acres, plus an additional one acre per 100 students.<sup>124</sup> The Department has the power to grant exceptions to these size requirements, however, the Department emphasizes that “large acreages are highly desirable.”<sup>125</sup>

When a school district is able to transfer ownership of a shuttered school, the selling price generally falls below what was expected.<sup>126</sup> Further, the mere act of transferring ownership is difficult due to the difficulties associated with repurposing structures of such a unique size and configuration.<sup>127</sup> Since the typical shuttered school is more than sixty years old, the cost to ensure that the building is in compliance with the American Disabilities Act can be a deterrent to prospective purchasers.<sup>128</sup> The large hallways and open spaces make it difficult to maximize leasable square footage and envision uses that would fit the atypical floor plans.<sup>129</sup> These issues support the involvement of residents in the repurposing and school disposition process because these individuals are likely to approve a use that benefits the community.<sup>130</sup> Despite the fact that this route may result in a public purpose use, rather than a use that is profit-maximizing, the

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120. *Id.* at 9.

121. *Id.* at 8.

122. *Id.* at 6.

123. *See* GA. CODE ANN. § 20-2-260(c) (2014).

124. GA. DEP’T EDUC., GUIDELINE FOR EDUCATIONAL FACILITY SITE SELECTION 2 (2012), available at <http://www.gadoe.org/Finance-and-Business-Operations/Facilities-Services/Documents/6.%20Guideline%20for%20Educational%20Facility%20Site%20Selection%20051012.pdf>.

125. *Id.*

126. *Study: Abandoned Schools Glutting Market*, *supra* note 107 (“[In] Cincinnati . . . the district auctioned off a package of school properties that the county auditor valued at over \$30 million. Instead, they sold for \$3.5 million.”); THE PEW CHARITABLE TR., *supra* note 7, at 16.

127. THE PEW CHARITABLE TR., *supra* note 5, at 5-6.

128. *Id.*

129. *Id.* at 6.

130. *Id.* at 10.

likelihood of achieving a financial windfall from the sale of a shuttered school is already minimal.

### *Blight laws*

Although the majority of shuttered schools would be properly categorized as blight<sup>131</sup> under the appropriate ordinances, blight laws have not been helpful in replacing these structures with more valuable space or buildings.<sup>132</sup> States and cities require owners of blighted buildings to demolish or otherwise secure these structures.<sup>133</sup> However, as described above with respect to school disposition and repurposing laws, such requirements are not sufficient to address the problems of shuttered schools.

### *Insufficiency of Legal Remedies*

Laws in the areas of blight, school disposition, and school repurposing fail to provide clear requirements for the redevelopment of shuttered schools. These laws neither encourage the collection of data on the issue, nor do they facilitate the inclusion of methods that would be more likely to result in the development of the land for purposes that benefit the residents of low-income communities and incorporate input from these residents.

Blight laws, which assess fines against dilapidated structures and provide guidelines for the maintenance and care for vacant structures, are almost exclusively used for government-approved demolition or for exercising eminent domain.<sup>134</sup> The focus is on tax delinquent residences and commercial buildings, so penalties are rarely assessed against school districts or any building that was used for a government or public purpose, or owned by a government entity.<sup>135</sup>

The vast majority of laws presently governing the repurposing and

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131. See Kristen Erickson, Note, *Protecting Low Income Residents During Tax Increment Financing Redevelopment*, 36 WASH. U. J.L. & POL'Y 203, 209-10 (2011) (“[A] substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; . . . insanitary or unsafe conditions; . . . the existence of conditions which endanger life or property by fire and other causes; . . . constitutes an economic or social liability and is a menace to the public health, safety, or welfare.”).

132. *Id.* at 210.

133. NAT'L VACANT PROPS. CAMPAIGN, *supra* note 18, at 5.

134. Erickson, *supra* note 131, at 212.

135. See Solomon Jones, *Blighted and Cited*, AXIS PHILLY (Aug. 26, 2013), <http://axisphilly.org/article/nearly-1900-government-owned-properties-cited-for-blight/> (discussing the nearly 1900 government or quasi-government owned properties in the city of Philadelphia that were cited under blight laws, but were never forced to pay fines).

disposition of shuttered schools fail to provide a mechanism to rectify the disparate impact of shuttered schools on low-income and minority communities. The school disposition process is extremely lengthy, and does not require input from community members. Further, the inadequacy of information regarding the number and location of shuttered schools makes it difficult to decide on the best use for these properties, or market them to prospective developers. No centralized database or information collecting system exists to document the number, status, and details on the reason for the school closure. This lack of knowledge makes it near impossible for legal interventions to effectively mitigate the impact of shuttered schools.

Most school districts have no formal structure for collecting or considering resident input in deciding which schools to close, or how to repurpose the schools. For example, Ohio law emphasizes that school districts should sell the property to the highest bidder.<sup>136</sup> Although this process quickens the disposition, it often excludes community members from having control or input with respect to the new use.<sup>137</sup> There have been instances where community support has resulted in projects that are met with less resistance from residents who live near the buildings, and involve uses that are more tailored to the needs of the community.<sup>138</sup> Kansas City organizes interaction between individuals interested in redeveloping the shuttered schools and the general public.<sup>139</sup> The incorporation of community feedback resulted in the addition of a health clinic to the project.<sup>140</sup> As discussed in more detail in Part V of this Article, tax increment financing and land banking are development mechanisms that incorporate the needs of the community members, particularly those of whom tend to be marginalized from development processes, and may therefore serve the community interests better than blight, school disposition, and school repurposing laws.

#### THE FAIR HOUSING ACT AND THE DISPARATE IMPACT OF SHUTTERED SCHOOLS

Although there are many different types of vacant government buildings in various states of disrepair, shuttered schools are of particular interest because of the difficulty in finding an appropriate set of laws for guidance on how to approach or solve the problem.

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136. THE PEW CHARITABLE TR., *supra* note 5, at 9.

137. *Id.*

138. *Id.* at 11.

139. *Id.*

140. *Id.*

A useful legal framework for evaluating the impact of shuttered schools is the disparate impact claim process under the Fair Housing Act (the “FHA”). The history and intent of the FHA, as well as the effects of housing policies on education, illustrate why this framework is relevant for considering the community impact of school closures.

The FHA prohibits practices that have been proven to have a disparate impact, practices that embody discriminatory intent, or both.<sup>141</sup> This article focuses on disparate impact, rather than disparate treatment because disparate impact claims are appropriate when the challenged practice is neutral with respect to a protected class, but the practice has a disproportionately severe and adverse effect on members of a protected class.<sup>142</sup> The redistricting process is not “isolated and targeted” in a way that would warrant a disparate treatment claim.<sup>143</sup>

#### *A. The History and Intent of the FHA*

The lack of amenities and other negative aspects of low-income communities drive away residents who can afford a higher cost of living, leaving behind vacant homes, and residents who are not able to engage in this upward mobility. As previously stated, this depopulation is a primary driver of redistricting decisions, resulting in shuttered schools in these underserved communities. Shuttered schools perpetuate this cycle of crime and diminished tax revenue. The correlative relationship between race and income<sup>144</sup> means that the disparate impact of shuttered schools perpetuates racial segregation; what the Fair Housing Act intended to prevent. The purpose of the FHA is to replace segregated housing with “truly integrated and balanced living patterns.”<sup>145</sup> The FHA recognizes that despite the unconstitutionality of racial zoning,<sup>146</sup> additional efforts must be undertaken in order to achieve residential integration.

The FHA, Title VIII under the Civil Rights Act of 1968, prohibits discrimination in the advertising, sale, rental and financing of dwellings based on race, color, religion, national origin, familial status, or disability.<sup>147</sup> The FHA was enacted to end the discrimination against

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141. NAT’L FAIR HOUS. ALLIANCE, *supra* note 16, at 14; *see, e.g.*, 2922 Sherman Ave. Tenants’ Ass’n v. District of Columbia, 444 F.3d 673, 678-85 (D.C. Cir. 2006).

142. Seicshnaydre, *supra* note 14, at 388-89.

143. *Id.* at 389.

144. *Id.*

145. Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013) [hereinafter Final Rule] (citing 114 Cong. Rec. 3422 (Feb. 20, 1968) (statement of Senator Walter Mondale)).

146. Prakash, *supra* note 95, at 1448.

147. *See* 42 U.S.C. § 3604 (2013).

members in the aforementioned protected classes in housing accommodation practices, and also explicitly stated a second purpose of the Act, which mandates all executive departments and agencies<sup>148</sup> “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the FHA].”<sup>149</sup> Courts have interpreted this to mean that the FHA seeks to achieve the goal of creating integrated neighborhoods.<sup>150</sup>

Based on statutory text, legislative history and purpose, subsequent Congressional activity, and administrative construction, the Supreme Court determines whether a civil rights statute contains an impact standard, in addition to an intent standard.<sup>151</sup> While the prohibition against discriminatory intent is clear in the statutory language,<sup>152</sup> the cognizability of disparate impact claims under the FHA is not explicit in the text. Despite the apparent ambiguity, HUD has consistently interpreted the FHA to provide remedy for disparate impact claims in formal adjudications.<sup>153</sup> Additionally, federal appellate courts that have addressed disparate impact under the FHA have recognized it as a cognizable claim since 1974.<sup>154</sup> Further, courts have held that the FHA’s anti-discrimination language is “broad and inclusive.”<sup>155</sup> One category of decisions in which housing policies have been found to create a disparate impact recognized that a practice was discriminatory because it resulted in “a greater adverse impact on one racial group than on another.”<sup>156</sup> The second category found

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148. Austin W. King, *Affirmatively Further: Reviving the Fair Housing Act’s Integrationist Purpose*, 88 N.Y.U. L. REV. 2182, 2190 (2013).

149. *Id.* at 2189-90.

150. *Id.* at 2184.

151. NAT’L FAIR HOUS. ALLIANCE, *supra* note 16, at 4; *see, e.g.*, *Smith v. City of Jackson*, 544 U.S. 228, 232-43 (2005); *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-36 (1971).

152. Andrew L. Sandler & Kirk D. Jensen, *Disparate Impact in Fair Lending: A Theory Without a Basis and the Law of Unintended Consequences*, 2 AM. BANKING FIN. SERVICE POL’Y REP. 18, 21-22 (2014) (“In general. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person. . . . The ordinary meaning of “discriminate” refers to the *intentional* treatment of one person differently than another.”) (emphasis added).

153. *See* Final Rule, 78 Fed. Reg. 11,460, 11,461 (Feb. 15, 2013).

154. *See, e.g.*, *United Farm Workers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 808-11 (5th Cir. 1974); NAT’L FAIR HOUS. ALLIANCE, *supra* note 18, at 6-7.

155. *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972).

156. Seicshnaydre, *supra* note 14, at 365.

practices to produce discriminatory effects when they “perpetuate segregation and thereby prevent interracial association. . .independently of the extent to which it produces a disparate effect on different racial groups.”<sup>157</sup>

Legislative history of the FHA indicates that Congress intended to counteract the difficulties of proving discriminatory intent.<sup>158</sup> For example, Senator Baker proposed an amendment that would have limited the FHA to proven instances of discriminatory intent by suggesting language that would not have made homeowners liable if their real estate agent did not “[indicate] any preference, limitation or discrimination based on race. . . , or an intention to make any such preference, limitation, or discrimination.”<sup>159</sup> However, this amendment was defeated.<sup>160</sup> Similarly, the House of Representatives rejected an amendment that stated, “ a zoning decision is not a violation of the Fair Housing Act unless the decision was made with the intent to discriminate on the basis of race or other prohibited criteria under the Act.”<sup>161</sup>

In addition to the case law that supports the assertion that the FHA intend to prohibit practices that have a disparate impact,<sup>162</sup> administrative agencies clearly support these claims.<sup>163</sup> In 2013, HUD formalized its legislative intent to include disparate impact in FHA claims by issuing a Final Rule, attaching liability if a practice has a discriminatory effect on a protected class under FHA.<sup>164</sup> Section 100.500 of the Fair Housing Act as revised by this Final Rule reads:

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 may still be lawful if support by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.<sup>165</sup>

HUD clearly states in the Final Rule, that this rule does not create a new law or legal standard.<sup>166</sup> Revisions to the law include an addition to

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157. *Id.*

158. NAT’L FAIR HOUS. ALLIANCE, *supra* note 16, at 11.

159. *Id.*

160. *Id.* at 11.

161. *Id.* at 13 (citing H.R. REP. NO. 100-711, at 89 (1988)).

162. Seicshnaydre, *supra* note 14, at 359.

163. NAT’L FAIR HOUS. ALLIANCE, *supra* note 18, at 16.

164. Final Rule, 78 Fed. Reg. 11,460, 11,482 (Feb. 15, 2013).

165. *Id.*

166. Seicshnaydre, *supra* note 14, at 404.

paragraph (b) of Section 100.5 clarifying that disparate impact claims are cognizable under the FHA.<sup>167</sup> This additional sentence reads: “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 section 100.500.”<sup>168</sup> HUD stated that this action was permissible pursuant to established precedent that the Fair Housing Act prohibits practices that result in discrimination “regardless of whether there was an intent to discriminate.”<sup>169</sup> This Final Rule has the additional purpose of standardizing the use of the three-part burden shifting test for proving liability for claims against practices that are facially neutral, but nevertheless violate the FHA.<sup>170</sup>

A revision to subpart G in 24 CFR part 100 that is set forth in the Final Rule supports the use of housing law in the context of evaluating the impact of shuttered schools on low-income and minority neighborhoods.<sup>171</sup> The revisions now set forth by the Final Rule create an updated section 100.500(a) which states, “[a] practice has a discriminatory effect where it actually or 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.”<sup>172</sup> This change from the term “housing practice” to the term “practice” conveys that subpart G’s rules are not solely those practices that are defined by subpart B’s “Discriminatory Housing Practices.”<sup>173</sup> Rather, any action that violates the FHA under an effects theory would be subject to liability.<sup>174</sup> Although the change is small, it broadens the scope of the FHA beyond housing cases, which supports its use in the educational context.

The history and purpose of FHA aligns with the need to reduce the pervasiveness of shuttered schools, and the steps in establishing a disparate impact claim under FHA provide an outline for evaluating the impact of shuttered schools and expanding the dialogue on both housing and education

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167. Final Rule, 78 Fed. Reg. at 11,464.

168. *Id.*

169. Christie Thompson, *Disparate Impact & Fair Housing: Seven Cases You Should Know*, PROPUBLICA (Feb. 12, 2013, 8:00 AM), <http://www.propublica.org/article/disparate-impact-and-fair-housing-seven-cases-you-should-know>; *see also* Final Rule, 78 Fed. Reg at 11,460.

170. Final Rule, 78 Fed. Reg at 11,460.

171. *Id.* at 11,463.

172. *Id.*

173. *Id.*

174. *Id.* at 11,468.



inequities to include these vacant structures.<sup>175</sup> Finally, the burden-shifting test under the FHA supports the collection and analysis of data on shuttered schools, as well as the exploration of development methods that are inclusive of the needs and values of community members.

*The Burden-Shifting Test of the FHA*

The first part of the three-part burden-shifting test mandates that the plaintiff establish a prima facie case by showing that the practice in question disproportionately impacts members of a protected class in an adverse way.<sup>176</sup> The plaintiff must show that the practice “caused or predictably will cause a discriminatory effect.”<sup>177</sup> A “discriminatory effect” is a practice that “actually or 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.”<sup>178</sup> Courts differ on how substantial the impact has to be, and how the impact can be proven, but the use of statistics is generally accepted.<sup>179</sup> The Final Rule purposefully avoids strict guidelines for the use of statistics in meeting this burden due to the breadth of practices and entities covered by the FHA.<sup>180</sup> The plaintiff must also show that the specific practice being challenged caused the disproportionate adverse impact,<sup>181</sup> which requires more than statistical evidence. This can be accomplished by establishing that the defendant’s decision-making process, taken as a whole, has caused a disparate impact.<sup>182</sup> Courts also require that the disparate impact be substantial in order for the practice to be prohibited by the FHA, which is determined on a case-by-case basis, and not through the application of a general test.<sup>183</sup>

The second step shifts the burden to the defendant to prove that the practice in question has a nondiscriminatory purpose.<sup>184</sup> Courts are not in consensus with respect to the exact burden placed on the defendant at this

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175. See Prakash, *supra* note 95 at 1483.

176. 24 C.F.R. § 100.500(c) (2014); see also Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 70,921, 70,925 (Feb. 15, 2013) [hereinafter Proposed Rule].

177. Seicshnaydre, *supra* note 14, at 404.

178. *Id.* at 404, 406-07.

179. *Id.* at 388.

180. Final Rule, 78 Fed. Reg. 11,460, 11,468 (Feb. 15, 2013).

181. *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 656 (1989).

182. NAT’L FAIR HOUS. ALLIANCE, *supra* note 16, at 20.

183. *Id.*

184. *Id.* at 21.

phase.<sup>185</sup> Certain courts require that the defendant prove that the practice has a manifest relationship to the housing in question.<sup>186</sup> Others require that there is a business necessity for the practice, and yet another contingent requires a showing that the practice furthers a bona fide interest.<sup>187</sup> The lack of uniformity among courts on this issue makes it difficult to proactively implement practices that do not have a discriminatory effect. Additionally, this ambiguity creates an imbalance in determining the discriminatory nature of practices if and when they are challenged. HUD has attempted to bring clarity to this issue with its Final Rule. The Final Rule provides guidance on what a “legally sufficient justification” in section 100.500(b),<sup>188</sup> which is the second step in this burden-shifting test. The revised language is as follows:

(1) A legally sufficient justification exists where the challenged practice: (i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614 and (ii) Those interests could not be served by another practice that has a less discriminatory effect. (2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.<sup>189</sup>

Assuming this yields an acceptable response, in the third and final step, the defendant –this has usually been the role of the defendant in the past 20 years–must also produce evidence showing that there is not a less discriminatory alternative.<sup>190</sup>

Adopting this framework would provide significant guidance in the shuttered school issue. The reliance on statistics in establishing a prima facie case illustrates the importance of having a database and keeping track of the location of the properties and also the demographics of the neighborhoods where they are located.

Committing to repurposing or reusing schools marked for closure is not typically ingrained in the redistricting discussion. The FHA burden-shifting test, while not specifically designed for the shuttered school issue, can illuminate the need to efficiently redevelop shuttered schools for a use that benefits the community. Such uses are not often pursued, and the application of this test provides guidance for incorporating legal methods

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185. *Id.*

186. *Id.* at 23.

187. *Id.*

188. Final Rule, 78 Fed. Reg. at 11,463.

189. *Id.* at 11,482.

190. NAT’L FAIR HOUS. ALLIANCE, *supra* note 16, at 25.

of implementing reuses so they are palatable for policy makers and valuable to community members. Advancing the school redistricting dialogue to include the detrimental health and land use effects of the physical structures by applying the burden-shifting test to the problems of shuttered schools will encourage the creation of a uniform data collection policy on shuttered schools and their surrounding neighborhoods. Evaluating the impact of the shuttered schools through the FHA lens will also support laws that expedite the school disposition processes when there is a proposed repurposing of a school through mechanisms that involve community input, such as tax increment financing or land banking.

#### APPLYING THE BURDEN-SHIFTING TEST TO SHUTTERED SCHOOLS

##### *Prima Facie and The Need for Shuttered School Data*

Local laws should mandate publishing the status of vacant schools. These laws will assist with, among other things, understanding where these structures are located, so that the extent of the disparity can be adequately explored and documented. Support for increasing efforts to collect and analyze data on the location, size, effect and number of shuttered schools is evidenced by an amendment to Subchapter II of Chapter 5 of Title 40 of the United States Code providing for a similar database.<sup>191</sup> This amendment calls for the establishment of a property database that provides relevant information on all federal real property. Information to be included in the database shall be the square footage, relevancy, use, operational cost, replacement value, and the designation of each property as excess, surplus, underutilized or unutilized.<sup>192</sup> This proposed database would be available to the public at no cost.<sup>193</sup> Data collection has the added benefit of allowing school districts to measure and monitor progress made toward repurposing shuttered schools. Similar arguments have been made with respect to housing agencies collecting information on FHA-related activities.<sup>194</sup>

Without a database, it may be difficult to substantiate disparate impact claims with regard to shuttered schools. In *Armendariz v. Penman*, plaintiffs failed to successfully challenge the City of San Bernadino's housing code enforcement scheme that they claimed negatively impacted minorities residing in low-income housing.<sup>195</sup> Among other things, the

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191. Excess Federal Building and Property Disposal Act of 2013, H.R. 328, 113th Cong. § 7(a) (2013), available at <http://beta.congress.gov/113/bills/hr328/BILLS-113hr328ih.pdf>.

192. *Id.* § 7(b).

193. *Id.* § 7(c)(2).

194. King, *supra* note 156, at 2202.

195. Seicshnaydre, *supra* note 14, at 387.

court found the plaintiffs' failure to present information regarding the racial composition of neighborhoods outside of those targeted for the aggressive code enforcement necessitated a summary judgment dismissing the FHA claim in favor of the defendant.<sup>196</sup> Unfortunately, requiring the plaintiff to provide data to prove a prima facie case against the government incentivizes the government to avoid data collection.

*Tax Increment Financing and Land Banks as Less Discriminatory Alternatives*

Evaluating alternatives to a school district's redistricting process, pursuant to the third step of the burden-shifting test, should include adjustments to the school disposition process. A practical method that can mitigate the pervasiveness of shuttered schools is enacting school disposition statutes that permit the circumvention of lengthy bidding and auction processes for entities that present development plans that utilize tax increment financing or land banking. Increasing flexibility in the disposition process by carving out exceptions to the lengthy bidding procedures for transfers to entities with a community-approved repurposing plan for the shuttered school will assist in expediting the dispositions.

A defendant's primary assertion of non-discriminatory purpose under the second part of the burden-shifting analysis would likely be that leaving a school abandoned and vacant cannot be divorced from the legitimate function of school redistricting which is necessary to efficiently use limited resources and provide the best education to students. A defendant arguing that no less discriminatory alternative exists would assert that financial resources hinder a school district's ability to repurpose the school. To illustrate, in *Mount Holly*, the township asserted that rehabilitation was not an appropriate less discriminatory alternative because the costs of rehabilitation made that option cost-prohibitive.<sup>197</sup> If the courts were to resolve the factual question as to whether this satisfied the burden of showing there were no less discriminatory alternatives prior to the settlement of the case.<sup>198</sup> The financial limitations of school districts are well-documented. However, the 'third step in the burden-shifting framework in the evaluation of school redistricting would allow for the analysis of school finances to include costs related to closing schools that are frequently omitted from the decision-making process. These costs include the financial impact of a vacant school that requires expenditures of tax dollars in addition to the devaluation of the health, safety, and property

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196. *Id.*

197. *Id.* at 383.

198. *Id.* at 384.

values of the homes in the neighborhood around the shuttered school. Contextualizing shuttered schools in the FHA framework would also require the examination of feasible alternatives to school repurposing processes that would promote efficiently reusing closed schools. Alternatives should also include amendments to existing legislation eliminating architectural design requirements of many public schools that serve as obstacles to repurposing. To this end, the legal framework of bringing disparate claims under the FHA allows for exploring financing mechanisms that are not popular for redeveloping and repurposing shuttered schools, and supports efforts to reform existing legislation and policies that retard the school disposition process. It also illustrates the need for collecting and synthesizing information regarding shuttered schools and their effects. Two financing mechanisms that would be useful are tax increment financing (“TIF”) and the use of land banks.

TIF is a method to use future gains in taxes to subsidize current improvements projected to increase the value of surrounding real estate.<sup>199</sup> The future gains in taxes are based on the assumption that the redevelopment of land will cause the tax base to increase.<sup>200</sup> In essence, the redevelopment project is borrowing money that it will eventually repay through property taxes upon completion of the redevelopment.<sup>201</sup> California was a leader in implementing TIF with its 1952 statute,<sup>202</sup> and the majority of states have followed suit.<sup>203</sup> The original purpose of tax increment financing was to promote redevelopment in impoverished neighborhoods, primarily by improving the housing inventory.<sup>204</sup> Over time, the purpose of TIF has expanded to include projects that local officials believe will increase economic development in an area.<sup>205</sup>

In order for TIF to be permitted in areas, many states require they be blighted,<sup>206</sup> and states may have the additional or alternative requirement that the redevelopment pass a “but for” test.<sup>207</sup> The “but for” test requires that but for the TIF mechanism, the area would not undergo redevelopment.<sup>208</sup> Despite these restrictions, it is rare that a developer

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199. Erickson, *supra* note 131, at 208.

200. *Id.*

201. *Id.*

202. *Id.* at 212.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.* at 209.

207. *Id.* at 210.

208. *Id.* at 210-11.

would not be able to clear both of these hurdles when beginning a TIF project.<sup>209</sup> As a result of local officials expanding the use of TIF to include projects that result in general economic progression, TIF districts have been designated in middle-income and upper-income neighborhoods, with projects ranging from housing to commercial development.<sup>210</sup>

After an area is designated as a TIF district,<sup>211</sup> a negotiation commences between a local public agency and either a real estate developer, or an entity or individual who will ultimately hold title to the property.<sup>212</sup> In a majority of states, the TIF program commits the incremental property tax revenues to developers that would have gone to school districts. Critics argue that TIF financing has moved from its original purpose of revitalizing communities negatively affected by blight, to subsidizing projects in wealthier communities. The reason that TIF has not been utilized as often in extremely distressed neighborhoods is that these areas are not attractive for private investors who wish to realize profitable returns on their investments.<sup>213</sup> Allowing redevelopment plans that utilize the TIF financing scheme to move through the disposition process in an expedited fashion provides an opportunity for TIF to be used pursuant to its original goal.

Critics of TIF cite the forced relocation of poor residents due to the replacement of “blighted” low-income housing with more expensive homes or commercial development as a major failure the original goal of TIF.<sup>214</sup> This phenomenon perpetuates the disproportionately high location of shuttered schools in low-income areas. The destruction of affordable housing without equal replacement, coupled with the grouping of low-income families in areas of high poverty due to the redevelopment, increases segregation of wealthier families from poorer families. When drawing upon the tax base for financing schools, there will be disproportionate funding. Poorer school districts are left with insufficient funds to stave off school closures, and the poorer residents lack the social and political capital to counter the redistricting measures. Permitting entities that will repurpose shuttered schools with a use that benefits the residents of low-income communities will likely avoid this displacement. The students in these schools are subjected to the undesirable psychological effects of involuntary moves,<sup>215</sup> which affect their performance in

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209. *Id.*

210. *Id.* at 213.

211. *Id.* at 208.

212. George Lefcoe, *Competing for the Next Hundred Million Americans: The Uses and Abuses of Tax Increment Financing*, 43 URB. LAW. 427, 437 (2011).

213. *Id.* at 443.

214. Erickson, *supra* note 131, at 214.

215. *Id.* at 215.

school.<sup>216</sup> Inability to meet academic standards will also increase the likelihood that a school will be targeted for closure.

It may be difficult for entities to redevelop shuttered schools for purposes that will cause an increase in the tax base that is comparable to a large-scale commercial development if the chosen use is for green space, or social services. However, an increase is still likely to occur because the removal of a large vacant structure in the area and the resulting positive neighborhood and human externalities that accompany this change will reduce flight and lessen the reluctance of subsequent developers to invest in the neighborhood. Further, the use of TIF to repurpose these structures aligns with the original purpose of TIF for economic development.<sup>217</sup> Repurposing shuttered schools through TIF conforms to some of the protections states have enacted to shield low-income residents from the negative consequences of TIF. Some states have incorporated requirements that these residents participate in the TIF process.<sup>218</sup> Other statutes mandate that certain portions of the tax increase be allocated to school districts.<sup>219</sup>

TIF projects have improved certain areas through poverty and crime alleviation.<sup>220</sup> Health benefits have also been realized.<sup>221</sup> Rather than disposing of a mechanism that has successfully replaced vacant land and deteriorated buildings with positive development, this article advocates for rethinking how low-income individuals, the original intended beneficiaries of TIF, can participate in the economic elevation of such projects.

A land bank or trust is a governmental or nongovernmental entity established to manage and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging redevelopment of the property.<sup>222</sup> Land banks are committed to providing housing to low and moderate-income individuals.<sup>223</sup> Community land trusts purchase vacant land or buildings, and include homeowners and community residents in their governance and redevelopment.<sup>224</sup> Land trusts are also less frequently

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216. *Id.* at 224.

217. See Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 78-79 (2010).

218. Erickson, *supra* note 131, at 221.

219. *Id.* at 221-22.

220. *Id.* at 225-26.

221. *Id.*

222. See Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 112 (2011).

223. James J. Kelly, Jr., *Land Trusts that Conserve Communities*, 59 DEPAUL L. REV. 69, 88 (2009).

224. Steil, *supra* note 222, at 112.

delinquent on the financial obligations.<sup>225</sup>

When Congress passed the Housing and Economic Recovery Act of 2008, land banking was recognized for the first time in federal legislation, and billions of dollars have been allocated to support this mission through what is now known as the Neighborhood Stabilization Program (“NSP”).<sup>226</sup> NSP provides funds to governments for the purpose of purchasing and redeveloping foreclosed homes in order to stabilize neighborhoods by reducing blight.<sup>227</sup>

The inclusiveness of low-income residents is inherent in the organizational structure of a community land trust. The land trust residents are automatically members of the land trust, and these individuals elect one third of the governing board.<sup>228</sup>

Community land trusts are able to provide affordable housing and develop land in poor neighborhoods by using a democratic process that leverages subsidies, grants, and other funding sources.<sup>229</sup> Land trusts achieve their goal of keeping homes affordable by requiring the homeowners to covenant that they occupy their houses and utilize them as their primary residence.<sup>230</sup> Homeowners also pledge that if and when they sell their home, it will be at an affordable price to a buyer that meets specified requirements.<sup>231</sup> Community land trusts have also found success in creating environmentally friendly community spaces.<sup>232</sup> Allowing the land acquisition and development to be routed through a community land trust gives residents the opportunity to control the projects.<sup>233</sup> Vacant schools could be included in the land that these trusts acquire at a reduced price, which would shorten the disposition process and also provide a beneficial use of the vacant school to the community.

The use of TIF and land banks could accomplish the same goals by redeveloping shuttered schools for uses that would not promote gentrification. Potential reuses for shuttered schools financed through TIF or land banks can eliminate the cyclical effect of shuttered schools, characterized by their propensity to further weaken the financial, human and social capital of low-income communities by discouraging investment,

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225. *Id.*

226. *See id.* at 103.

227. *Id.*

228. Kelly, *supra* note 223, at 86.

229. *Id.* at 79.

230. *Id.* at 81.

231. Erickson, *supra* note 131, at 216.

232. Kelly, *supra* note 223, at 83-84.

233. *Id.* at 85.



and imposing economic and lost opportunity costs in these neighborhoods. Rather than reinforcing the cycle of poverty in underserved areas, shuttered schools can be redeveloped into affordable housing units. The Pew Study found that twenty-six housing developments replaced shuttered schools in the twelve cities that were surveyed.<sup>234</sup> The conversion of the Garfield School in St. Louis is proof that redevelopment projects that are, like public schools, viewed as a community asset can successfully replace vacant and abandoned school buildings.<sup>235</sup> After the Garfield School was closed, twenty-five apartments for the chronically homeless were built in its place.<sup>236</sup> Affordable housing is a positive social service for the city, and rehabilitation of abandoned buildings is generally a more cost-effective option as opposed to demolition or persistent vacancy.<sup>237</sup>

#### CONCLUSION

I stood with David, the president of the neighborhood association in a low-income and minority community located in Southwest Atlanta. He gestured behind him to the rundown school with boarded-up windows partially hidden behind tall weeds. “It’s been like this for 15 years. We wanted a park; we’ve been asking for a place for the kids to play. But the people came to the meeting yesterday and told us they’re going to turn it into a bus depot for all the public school buses in the whole city.”

“The people” were local school district officials and city council members who decided to locate a bus depot down the street from industrial plants, Atlanta’s subway depot, and a closed landfill that sits atop a hill that would otherwise have scenic panoramic views of the city. The narrow two lane street, which lacks a sidewalk, leading to the forthcoming depot can barely accommodate passing sports utility vehicles, making it treacherous to travel on with the city’s fleet of school buses regularly occupying the road. No environmental impact assessments were completed prior to the determination that this former elementary school would be repurposed for a use that would likely bring in pollution and reduce the walkability of the community. Even if residents were consulted prior to the repurposing decision, they would not have the requisite information to meaningfully participate in the process. If legal counsel were a feasible option, the residents would likely be advised that the intersecting education and property elements of the issue complicate the ability to seek and receive an equitable remedy.

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234. THE PEW CHARITABLE TR., *supra* note 5, at 14.

235. *See id.*

236. *Id.*

237. NAT’L VACANT PROPS. CAMPAIGN, *supra* note 18, at 6.

Using property taxes as the primary funding source for school district is an established practice that is unlikely to change. Population shifts out of low-income and minority neighborhoods will continue as long as poor families involuntarily leave their homes or capitalize on opportunities to live in communities that facilitate a higher quality of life.

The FHA burden-shifting test requires evidence to be presented that less discriminatory alternatives do not exist. This requirement opens the door for the exploration of such alternatives, and in the context of shuttered schools, tax increment financing, land banks, and administrative remedies are all alternatives that can reduce the instance and adverse consequences of shuttered schools.

Applying this burden-shifting test when engaging in redistricting allows districts to contemplate the adverse consequences of closing schools. Using this test also permits the introduction of less discriminatory alternatives into the discussion.

TIF and land banks improve the quality of the neighborhood, which will encourage investment and further economic progression, while permitting low-income residents to remain in the community. These alternatives to the persistence of shuttered schools in low-income communities will result in decreased poverty concentration and racial isolation due to the attraction of residents from various socioeconomic backgrounds because of the opportunities and amenities that will be present in these neighborhoods.