

## NOTES

### CARROTS OR STICKS?: ANTI-GENTRIFICATION MECHANISMS IN ATLANTA, GEORGIA AND BERLIN, GERMANY

*Bailey Meyne\**

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\*J.D. & Master of Social Work, University of Georgia School of Law, 2021. B.A. in English Language & Literature, University of Georgia, 2014.

## I. INTRODUCTION

Over half of the world's population now lives in urban areas, increasing pressure on city governments to implement sustainable and equitable growth strategies.<sup>1</sup> Now more than ever, urban sprawl rears its head in environmental, social, and fiscal issues, and local governments are on the frontlines.<sup>2</sup> However, cities must balance the costs of urban growth against the benefits of adding new residents.<sup>3</sup> Some local governments already implement policies to address urban growth, and there is much to learn from their endeavors.<sup>4</sup>

Many cities embrace growth because it generates significant fiscal advantages for their jurisdiction.<sup>5</sup> To attract new residents, local governments invest in revitalizing their downtown centers and update zoning to permit higher density housing.<sup>6</sup> If governments successfully attract new residents, the city benefits in a variety of ways: Primarily, increasing the number of residents expands a city's tax base, freeing up more resources to invest in local infrastructure, schools, and public transportation.<sup>7</sup> Increased populations can also attract new grocery stores and health care centers to areas that lack convenient access to fresh food or quality healthcare.<sup>8</sup> Finally, increased housing density and improved public

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<sup>1</sup> Richard Florida, *Just How Much of the World is Urban?*, CITY LAB (Dec. 6, 2018), <https://www.bloomberg.com/news/articles/2018-12-06/how-urban-is-the-world-s-population-experts-disagree>.

<sup>2</sup> *What is Urban Sprawl?*, CONSERVE ENERGY FUTURE, <https://www.conserve-energy-future.com/causes-and-effects-of-urban-sprawl.php> (last visited Dec. 1, 2019).

<sup>3</sup> See Angela Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 777 (2020) (comparing the benefits of gentrification against the costs of growth).

<sup>4</sup> See, e.g., LUKE HERRINE ET AL., GENTRIFICATION RESPONSE: A SURVEY OF STRATEGIES TO MAINTAIN NEIGHBORHOOD ECONOMIC DIVERSITY 121–23 (2016) (discussing policy strategies adopted by different cities across the United States).

<sup>5</sup> See Robert W. Wassmer Marlon G. Boarnet, *The Benefits of Growth* 1 (Urban Land Inst., Working Paper, 2002) (discussing the fiscal benefits of growth).

<sup>6</sup> Justin Graham, Comment, *Playing "Fair" with Urban Redevelopment: A Defense of Gentrification Under the Fair Housing Act's Disparate Impact Test*, 45 ARIZ. ST. L.J. 1719, 1735 (2013); see SMART GROWTH AMERICA, (RE)BUILDING DOWNTOWN: A GUIDEBOOK FOR REVITALIZATION 16–18 (2015), available at <https://smartgrowthamerica.org/wp-content/uploads/2016/08/rebuilding-downtown-1.pdf> (discussing examples of how local governments can attract new residents).

<sup>7</sup> See Graham, *supra* note 6, at 1735, 1743 (discussing improved public services in conjunction with growth of the tax base).

<sup>8</sup> Joseph Gibbons et al., *Evaluating Gentrification's Relation to Neighborhood and City Health*, 13(11) PLOS ONE 1, 2–3 (2018).

transportation can reduce local traffic, resulting in lower carbon emissions, less pollution, and better air quality.<sup>9</sup>

Despite the many benefits of urban growth, progress comes at a cost.<sup>10</sup> Economic development projects can raise the local cost of living, which risks pricing out<sup>11</sup> low-income residents.<sup>12</sup> The most vulnerable residents live in areas labeled as “low-value,”<sup>13</sup> “up and coming,” or “opportunity zones”:<sup>14</sup> These labels are often used to describe “underserved” urban neighborhoods where real estate developers can buy cheap land and, in some cases, receive tax abatements for doing so.<sup>15</sup> This type of property speculation often foreshadows the onset of new businesses and homes built to attract more wealthy residents.<sup>16</sup> Once wealthier residents move into the revitalized neighborhood, businesses and property owners raise prices in response to increased demand for goods and housing in the area.<sup>17</sup> However, the increased cost of living pressures local, low-income residents to move away to more affordable neighborhoods.<sup>18</sup>

The effects of speculative investment in urban neighborhoods highlight the racial, socioeconomic,<sup>19</sup> and cultural<sup>20</sup> factors that complicate city revitalization.

<sup>9</sup> Jeff Turrentine, *When Public Transportation Leads to Gentrification*, NRDC (June 1, 2018), <https://www.nrdc.org/onearth/when-public-transportation-leads-gentrification>.

<sup>10</sup> See Angela Harris & Aysha Pamukcu, *supra* note 3 (discussing the benefits and drawbacks of gentrification).

<sup>11</sup> Richard Florida, *The Complicated Link Between Gentrification and Displacement*, CITY LAB (Sept. 8, 2015), <https://www.bloomberg.com/news/articles/2015-09-08/the-complex-relationship-between-gentrification-and-displacement>.

<sup>12</sup> See Ashley J. Qiang et al., *Displacement and the Consequences of Gentrification* 1, 2 (Duke Univ., Working Paper, 2020), available at [https://sites.duke.edu/wen-wang/files/2020/01/Gentrification\\_and\\_Displacement\\_Working\\_Paper.pdf](https://sites.duke.edu/wen-wang/files/2020/01/Gentrification_and_Displacement_Working_Paper.pdf) (discussing the connection between gentrification and increased costs of living on low-income incumbent residents).

<sup>13</sup> Angela Harris & Aysha Pamukcu, *supra* note 3.

<sup>14</sup> Andrew Khouri, *Can California Boost Home Building Without Super Charging Gentrification?*, L.A. TIMES (Apr. 23, 2019), <https://www.latimes.com/business/la-fi-housing-affordability-gentrification-20190423-story.html> (associating the “up and coming” label with the potential for gentrification); Jason Richardson et al., *Shifting Neighborhoods: Gentrification and Cultural Displacement in American Cities*, NAT’L CMTY. REINVESTMENT COAL. (Mar. 19, 2019), <https://ncrc.org/gentrification/> (see the “Discussion & Conclusion” section).

<sup>15</sup> William Fulton, *Opportunity Zones: Gentrification on Steroids?*, KINDER INST. FOR URB. RSCH. (Feb. 20, 2019), <https://kinder.rice.edu/urbanedge/2019/02/20/opportunity-zones-gentrification-steroids>.

<sup>16</sup> *Gentrification Explained*, URB. DISPLACEMENT PROJECT, <https://www.urbandisplacement.org/gentrification-explained> (last visited Dec. 12, 2020) (noting that gentrification can appear as “[r]eal estate speculation, with investors flipping properties for large profits, as well as high-end development, and landlords looking for higher-paying tenants”).

<sup>17</sup> Richardson et al., *supra* note 14 (see “Literature Review” section).

<sup>18</sup> *Id.*

<sup>19</sup> Angela Harris & Aysha Pamukcu, *supra* note 3.

<sup>20</sup> Richardson et al., *supra* note 14 (see “Discussion and Review” section) (explaining the results of a study showing how gentrification causes cultural displacement).

These effects fall under the umbrella term “gentrification,” defined as “a process in which portions of cities are transformed from areas that service low-income populations towards spaces that, by servicing higher-income populations, generate more capital for investors.”<sup>21</sup> Gentrification is also described as “the middle- and upper-class remake of the central city—not just a residential phenomenon, but one that affects commercial and retail areas as well.”<sup>22</sup>

To successfully curb gentrification, stakeholders in the public and private sector must work together.<sup>23</sup> Local governments are key to successful partnerships, as they contribute the force of law to anti-gentrification policies.<sup>24</sup> Local representatives should participate to ensure their constituencies’ interests are represented. Lawyers are also needed to design policies that will withstand legal challenge. In other words, public and private sector collaboration is essential to limiting gentrification’s negative effects.

Major cities across the world experience gentrification<sup>25</sup> and many enact policies to curb rapid development and prevent displacement of low-income residents.<sup>26</sup> Atlanta, Georgia and Berlin, Germany specifically adopted promising tools to eliminate the negative effects of gentrification. While Atlanta and Berlin’s governments have much to learn from each other, their differences also show that fighting gentrification requires a multi-faceted set of legal tools.

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<sup>21</sup> Miles Walser, *Putting the Brakes on Rent Increases: How the United States Could Implement German Anti-Gentrification Laws Without Running Afoul of the Takings Clause*, 36 WIS. INT’L L.J. 186, 187 (2018) (citing PETER MOSKOWIT, *HOW TO KILL A CITY: GENTRIFICATION, INEQUALITY, AND THE FIGHT FOR THE NEIGHBORHOOD* (2017); DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS* (2016)).

<sup>22</sup> Diane K. Levy et al., *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 16 J. AFFORDABLE HOUS. & COMTY. DEV. L. 238, 240 (2007).

<sup>23</sup> Anne Marie Pippin, Note, *Community Involvement in Brownfield Redevelopment Makes Cents: A Study of Brownfield Redevelopment Initiatives in the United States and Central and Eastern Europe*, 37 GA. J. INT’L & COMP. L. 589, 592 (2009) (discussing New Jersey’s strategic choice to include various stakeholders in a redevelopment project); see also Angela Harris & Aysha Pamukcu, *supra* note 3 (noting that gentrification is usually caused by the combined actions of public and private economic investment).

<sup>24</sup> See, e.g., Mitchell Crispell, *How’d They Do It? A Look at Three Places That Avoided Gentrification*, URB. DISPLACEMENT PROJECT (Apr. 7, 2016), <https://www.urbandisplacement.org/blog/how-d-they-do-it-look-three-places-avoided-gentrification> (discussing cities which successfully slowed gentrification through laws instead of voluntary policies).

<sup>25</sup> See, e.g., Anne B. Shlay & John Balzarini, *Urban Sociology*, in INT’L ENCYCLOPEDIA OF THE SOC. & BEHAV. SCI. 926, 931 (James D. Wright et al., 2015); Wendie N. Choudary, *Mitigating Gentrification; see also How Several Sun Belt Cities Are Responding*, RICE KINDER INST. FOR URB. RES. (Dec. 13, 2018), <https://kinder.rice.edu/2018/12/12/mitigating-gentrification-how-several-sun-belt-cities-are-responding>.

<sup>26</sup> See, e.g., Herrine et al., *supra* note 4.

*A. Displacement*

The core issue with gentrification is that it often displaces low-income original<sup>27</sup> residents.<sup>28</sup> Displacement occurs when residents can no longer afford to live in their neighborhood because local development raises the cost of living.<sup>29</sup> Displacement disproportionately affects low-income residents, forcing them to leave behind support networks and community cultural capital.<sup>30</sup> Gentrification often displaces low-income Black and Latinx families first, preventing many BIPOC residents from reaping the economic benefits gentrification brings to their neighborhood.<sup>31</sup> If cities allow gentrification to progress without restraint, gentrification will eventually displace both low-income and middle-class residents from urban cores, exacerbating socioeconomic and racial segregation within cities.<sup>32</sup>

While a variety of factors cause displacement, they can be grouped into three main categories: direct, exclusionary, and pressure displacement.<sup>33</sup> Direct displacement occurs “when residents are forced to move because of rent increases and/or building renovations.”<sup>34</sup> Exclusionary displacement happens when the influx of wealthy residents reduces housing options for incumbent low-income families, forcing them to seek housing in different neighborhoods.<sup>35</sup> Finally, displacement pressures describe the challenges that low-income residents face “when supports and services that [they] rely on disappear from the neighborhood.”<sup>36</sup> The various causes of displacement highlight the need for policy solutions which are broad enough to address the complex causes of displacement, yet effective enough to enact change.

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<sup>27</sup> In this paper, “original residents” refers to individuals who lived in an area pre-gentrification.

<sup>28</sup> Richardson et al., *supra* note 14 (see “Executive Summary” section).

<sup>29</sup> Levy et al., *supra* note 22, at 240.

<sup>30</sup> Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 *FORDHAM L. REV.* 1189, 1189 (2016); see Richardson et al., *supra* note 14.

<sup>31</sup> Richardson et al., *supra* note 14 (see “Executive Summary” section); Angela Harris & Aysha Pamukcu, *supra* note 3.

<sup>32</sup> See Li, *supra* note 30, at 1192, 1199 (discussing the consequences of resegregation caused by gentrification).

<sup>33</sup> *Gentrification and Neighborhood Revitalization: What’s the Difference?*, NAT’L LOW INCOME HOUS. COAL. (Apr. 5, 2019), <https://nlihc.org/resource/gentrification-and-neighborhood-revitalization-whats-difference>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

### B. Relevance

This topic merits legal attention because housing, tax, and land use laws are significant drivers of gentrification. To illustrate, state and local governments can encourage gentrification “through tax exemptions for large real-estate developments, providing necessary infrastructure and adjusting legal and planning regulations in accordance with the objectives of the real estate industry . . . .”<sup>37</sup> If laws can promote gentrification, they can also limit it.<sup>38</sup> Therefore, public authorities should promulgate laws that respect market forces and encourage economic development, but also include protections for communities most vulnerable to displacement.<sup>39</sup>

## II. ATLANTA AND BERLIN: ANTI-GENTRIFICATION MECHANISMS

Two cities stand out in the fight against gentrification: Atlanta, Georgia and Berlin, Germany. Atlanta and Berlin exemplify two common ways local and state governments fight gentrification, and their successes and failures offer important lessons. Commentators frequently cite Atlanta as an example of gentrification’s positive and negative effects.<sup>40</sup> Atlanta’s gentrification problem exposes the city’s unique racial dynamics as white residents continue to buy up property in “a city historically described as a ‘black mecca.’”<sup>41</sup> Atlanta’s government made the city distinctly vulnerable to gentrification when it tore down all of the city’s

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<sup>37</sup> Hisham Ashkar, *The Role of Laws and Regulations in Shaping Gentrification*, 22 CITY 341, 343 (2018).

<sup>38</sup> See *id.* at 342–43; see Sanda Feder, *Stanford Professor’s Study Finds Gentrification Disproportionately Affects Minorities*, STAN. NEWS (Dec. 1, 2020), <https://news.stanford.edu/2020/12/01/gentrification-disproportionately-affects-minorities/> (proposing solutions to gentrification in the form of residential stability policies for lower-income residents in gentrifying communities).

<sup>39</sup> See *How American Cities are Handling Neighborhood Change, Gentrification and Displacement*, RICE KINDER INST. FOR URB. RES. (Sept. 23, 2019), <https://kinder.rice.edu/urbanedge/2019/09/23/how-american-cities-are-handling-neighborhood-change-gentrification-and-displacement> (highlighting strategies to prevent displacement).

<sup>40</sup> See, e.g., Christopher Quinn, *Atlanta Ranked Fourth-Fastest Gentrifying City in U.S.*, ATLANTA J. CONST. (July 19, 2019), <https://www.ajc.com/news/breaking-news/atlanta-ranked-fourth-fastest-gentrifying-city/E74wz9VxF5TxWcsUinKRmK/>.

<sup>41</sup> Jamiles Lartey, *Nowhere for People to Go: Who Will Survive the Gentrification of Atlanta?*, GUARDIAN (Oct. 23, 2018), <https://www.theguardian.com/cities/2018/oct/23/nowhere-for-people-to-go-who-will-survive-the-gentrification-of-atlanta>.

public housing projects,<sup>42</sup> leaving nearly all of “its housing subject to the invisible hand of market forces.”<sup>43</sup> Berlin, on the other hand, has strong legal protections for low-income residents but still encourages beneficial economic development.<sup>44</sup> Like Atlanta, Berlin’s gentrification occurs within a unique historical context, as its economic development is closely tied to the fall of the Berlin Wall in 1989.<sup>45</sup> Atlanta and Berlin’s approach to curbing gentrification offers invaluable insight and lessons for cities facing similar challenges.

#### A. Atlanta

Atlanta, Georgia is rapidly gentrifying.<sup>46</sup> Between 2000 and 2017, Atlanta’s median rent increased by 70%, the median income increased by 48%, and the median home value increased by 46%.<sup>47</sup> In 2019, a Federal Reserve Bank of Philadelphia study concluded that “Atlanta has the fourth largest share of gentrifying neighborhoods . . . .”<sup>48</sup> Admittedly, Atlanta’s redevelopment projects bring substantial benefits to the city. Neighborhood revitalization projects generated higher property tax revenues,<sup>49</sup> developers repurposed abandoned historic buildings,<sup>50</sup> and Atlanta organizations commenced construction of the Beltline.<sup>51</sup> However, it is unclear whether the benefits conferred upon Atlanta outweigh the issues caused by the rapid increase in development.<sup>52</sup> These revitalization

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

<sup>43</sup> *Id.*

<sup>44</sup> Kate Connolly, ‘No Bling in the Hood . . .’ Does Berlin’s Anti-Gentrification Law Really Work?, *GUARDIAN* (Oct. 4, 2016), <https://www.theguardian.com/cities/2016/oct/04/does-berlin-anti-gentrification-law-really-work-neukolln>.

<sup>45</sup> Elisabeth Zerofsky, *The Causes and Consequences of Berlin’s Rapid Gentrification*, *NEW YORKER* (July 12, 2019), <https://www.newyorker.com/news/dispatch/the-causes-and-consequences-of-berlins-rapid-gentrification>.

<sup>46</sup> See Lartey, *supra* note 41 (explaining that 46% of Atlanta’s census tracts are currently gentrifying); see also Quinn, *supra* note 40.

<sup>47</sup> ONE ATLANTA: HOUSING AFFORDABILITY ACTION PLAN 1, 6 (2019), available at <https://www.atlantaga.gov/home/showdocument?id=42220>.

<sup>48</sup> Jason Braverman, *Atlanta is Nation’s Fourth Fastest Gentrifying City, Study Says*, *11ALIVE* (2019), [https://www.11alive.com/article/money/business/atlanta-is-nations-fourth-fastest-gentrifying-city-study-says/85-36381375-80da-4b41-a83d-439c9f99d40f?fbclid=IwAR3mqQn53\\_nRTO3sDUEIRD5uUGiVHL33z\\_T3xUmdBk4vvZfnt4-piSTY-MA](https://www.11alive.com/article/money/business/atlanta-is-nations-fourth-fastest-gentrifying-city-study-says/85-36381375-80da-4b41-a83d-439c9f99d40f?fbclid=IwAR3mqQn53_nRTO3sDUEIRD5uUGiVHL33z_T3xUmdBk4vvZfnt4-piSTY-MA).

<sup>49</sup> Graham, *supra* note 6, at 1734.

<sup>50</sup> Josh Green, ‘Urban Reclamation’ meets Atlanta’s Old Fourth Ward, *CURBED ATLANTA* (Sept. 19, 2018, 10:17 AM), <https://atlanta.curbed.com/atlanta-development/2018/9/19/17861216/ponce-city-market-atlanta-old-fourth-ward>.

<sup>51</sup> Graham, *supra* note 6, at 1744–45; Lartey, *supra* note 41.

<sup>52</sup> Mara Shalhoup, *It’s the Best Time to be an Atlantan. It Might also be the Worst*, *ATLANTA MAG.* (2020), <https://www.atlantamagazine.com/news-culture-articles/its-the-best->

projects attracted a wave of wealthy families to Atlanta, which in turn raised rents and property taxes beyond what many low-income Atlantans could afford.<sup>53</sup>

To combat the negative externalities of gentrification, Atlanta implements a variety of legal strategies. First, the city works with the federal Department of Housing and Urban Development (HUD), to implement the Section 8 program.<sup>54</sup> The Section 8 program was created by the U.S. Housing Act of 1937 (Act).<sup>55</sup> This Act allows low-income families to use “vouchers” to pay for private housing;<sup>56</sup> the government then “pays the landlord the difference between 30 percent of the household’s adjusted income and the unit’s rent.”<sup>57</sup> The Section 8 program does not require landlords to accept vouchers, but does forbid landlords from charging the government a price higher than the fair market rate for the unit.<sup>58</sup>

Section 8 programs can be administered in multiple ways,<sup>59</sup> but Atlanta only uses Section 8 funding for its Moderate Rehabilitation Program (Mod Rehab).<sup>60</sup> Mod Rehab was created by amendment in 1978 and “expanded Section 8 rental assistance to projects that were in need of repairs costing at least \$1,000 per unit to make the housing decent, safe, and sanitary.”<sup>61</sup> HUD requires that Atlanta’s Mod Rehab program provides rental subsidies for “low and moderately low-income individuals and families” who make below thirty percent of the Atlanta Area Median Income.<sup>62</sup> However, the program does not fully alleviate gentrification’s effect on affordable housing availability, as landlords in low-poverty areas are more likely to reject Section 8 vouchers than landlords in high-poverty

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time-to-be-an-atlantian-it-might-also-be-the-worst/ (arguing that the benefits of Atlanta revitalization projects are unequally distributed).

<sup>53</sup> See Lartey, *supra* note 41 (discussing Cheryl Henderson’s story of rising rent costs in Atlanta, especially near the Beltline); see also Ernie Suggs, *Atlanta’s Gentrification Wave Washes over Historic Old Fourth Ward*, AJC (2019), <https://www.ajc.com/business/economy/atlanta-gentrification-wave-washes-over-historic-old-fourth-ward/667fp9edFYZOPE89QOwrTP/> (discussing ways that Ponce City Market affects local property taxes).

<sup>54</sup> Section 8, CITY ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/section-8> (last visited Sept. 2, 2020).

<sup>55</sup> Section 8 Rental Certificate Program, HUD.GOV, <https://www.hud.gov/programdescription/cert8> (last visited Sept. 2, 2020).

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

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

<sup>58</sup> *Id.*; Glenn Thrush, *With Market Hot, Landlords Slam the Door on Section 8 Tenants*, N.Y. TIMES (Oct. 12, 2018), <https://www.nytimes.com/2018/10/12/us/politics/section-8-housing-vouchers-landlords.html>.

<sup>59</sup> CONG. RSCH. SERV., RL32284, AN OVERVIEW OF THE SECTION 8 HOUSING PROGRAMS: HOUSING CHOICE VOUCHERS AND PROJECT-BASED RENTAL ASSISTANCE 5 (2014).

<sup>60</sup> Section 8, *supra* note 54.

<sup>61</sup> CONG. RESEARCH SERV., RL32284, AN OVERVIEW OF THE SECTION 8 HOUSING PROGRAMS: HOUSING CHOICE VOUCHERS AND PROJECT-BASED RENTAL ASSISTANCE 4-5 (2014).

<sup>62</sup> Section 8, *supra* note 54.



areas.<sup>63</sup> If a family wants to secure affordable housing in a gentrifying neighborhood, it can thus be difficult to find landlords who will accept their vouchers.<sup>64</sup> The program's effectiveness is also limited because the federal government stopped funding new projects in 1989.<sup>65</sup>

Atlanta also partners with HUD to "provide[] financing for low-income rental housing within the Atlanta City limits."<sup>66</sup> The program utilizes funds made available through the federal Home Investment Partnership Program (HOME) by providing low-interest loans to developers who build low-income rental housing.<sup>67</sup> The Cranston-Gonzalez National Affordable Housing Act of 1990 authorized the HOME program.<sup>68</sup> The Act ensured "that every American family [can] afford a decent home in a suitable environment."<sup>69</sup> The Act requires HUD to strengthen the federal government's partnership with public and private institutions that can provide "housing affordable to low-income and moderate-income families."<sup>70</sup> However, the program is subject to similar limitations as Atlanta's Section 8 program: Developers are unlikely to participate in the program if building luxury housing will be more profitable than accepting public funds.<sup>71</sup>

In addition to the Mod Rehab and HOME Program, Atlanta acted under the federal Housing and Economic Recovery Act (HERA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to create the Neighborhood Stabilization Program (NSP).<sup>72</sup> HERA provides funds for local

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<sup>63</sup> See Sonam Vashi, *Atlanta's Section 8 Tenants Have Trouble Finding Good Housing*, SAPORTA REP. (Jan. 7, 2019, 6:10 PM), <https://saportareport.com/atlantas-section-8-tenants-have-trouble-finding-good-housing/> (describing the challenges Atlanta residents face in finding landlords who will accept Section 8 vouchers).

<sup>64</sup> *See id.*

<sup>65</sup> CONG. RESEARCH SERV., RL32284, AN OVERVIEW OF THE SECTION 8 HOUSING PROGRAMS: HOUSING CHOICE VOUCHERS AND PROJECT-BASED RENTAL ASSISTANCE 4-5 (2014).

<sup>66</sup> *Multifamily Housing Program*, CITY ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/multifamily-housing-program> (last visited Aug. 30, 2020).

<sup>67</sup> *Id.*

<sup>68</sup> CONG. RSCH. SERV., RL 40118, AN OVERVIEW OF THE HOME INVESTMENT PARTNERSHIP PROGRAM 1 (2014).

<sup>69</sup> 42 U.S.C.A. § 12701 (West 1990).

<sup>70</sup> *Id.*

<sup>71</sup> See Teresa Wiltz, *Getting a Section 8 Voucher Is Hard. Finding a Landlord Willing to Accept It Is Harder*, PEW (Aug. 31, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/08/31/getting-a-section-8-voucher-is-hard-finding-a-landlord-willing-to-accept-it-is-harder> ("The goal of the Section 8 program is to give low-income families the opportunity to escape high-poverty neighborhoods. Nevertheless, most voucher recipients fail to do so, in large part because the HUD vouchers aren't enough to cover the rents in higher-income neighborhoods."); see also Vashi, *supra* note 63 (illustrating difficulties Section 8 tenants have in finding landlords to accept their vouchers).

<sup>72</sup> *Neighborhood Stabilization Program 1 (NSP1)*, CITY ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community->

governments to “purchase and redevelop foreclosed properties” to create more housing for low-income residents or fund other activities that benefit low- and moderate-income residents.<sup>73</sup> The Dodd-Frank Act requires cities to use their funds to stabilize and develop housing in areas hit hardest by the 2008 recession.<sup>74</sup> The Act also requires that at least twenty-five percent of the funds be spent on stable housing for households below fifty percent of the Atlanta Area Median Income.<sup>75</sup> Atlanta’s NSP utilizes funds from HERA and the Dodd-Frank Act “to acquire and redevelop abandoned or foreclosed properties that might otherwise become sources of . . . blight.”<sup>76</sup>

To supplement its federally funded programs, Atlanta enacted a variety of local laws to curb gentrification. In 2018, Atlanta adopted an Inclusionary Zoning (IZ) ordinance;<sup>77</sup> the IZ ordinance aims to “promote affordable housing for Atlantans who live and work in the City of Atlanta and is designed to keep Atlanta rents relatively affordable for working individuals and households within the income range of police, firefighters, teachers, City and County employees, and young professionals.”<sup>78</sup> The IZ ordinance applies to “all new multifamily rental developments, whether standalone or mixed-used multi-unit buildings, with at least 10 units” located within a rapidly gentrifying Atlanta neighborhood.<sup>79</sup> Each developer in the area has the option to set aside ten to fifteen percent of their units for moderate- to low-income renters or to pay a one-time “opt out” fee to be “used for developing, rehabilitating, and/or reconstructing additional affordable housing units.”<sup>80</sup> While some celebrate the IZ ordinance for making anti-gentrification efforts mandatory, others criticize the ordinance as chilling development in Atlanta.<sup>81</sup> However, the City of Atlanta’s 2020 study found that the ordinance did not cause a decline in requests for multi-family development

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development/neighborhood-stabilization-program-nsp/neighborhood-stabilization-program (last visited Sept. 4, 2020); *Neighborhood Stabilization Program 3 (NSP3)*, CITY OF ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/neighborhood-stabilization-program-nsp/neighborhood-stabilization-program-825> (last visited Sept. 4, 2020).

<sup>73</sup> *Neighborhood Stabilization Program 1 (NSP1)*, *supra* note 72.

<sup>74</sup> *Neighborhood Stabilization Program 3 (NSP3)*, *supra* note 72.

<sup>75</sup> *Id.*

<sup>76</sup> *Neighborhood Stabilization Program (NSP)*, CITY ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/neighborhood-stabilization-program-nsp/> (last visited Sept. 4, 2020).

<sup>77</sup> *Inclusionary Zoning Policy*, CITY ATLANTA, GA, <https://www.atlantaga.gov/government/departments/city-planning/office-of-housing-community-development/inclusionary-zoning-policy> (last visited Sept. 4, 2020).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Stephannie Stokes, *A Year In, Atlanta’s Inclusionary Zoning Does Little for Affordable Housing*, WABE (Mar. 6, 2019), <https://www.wabe.org/a-year-in-atlantas-inclusionary-zoning-does-little-for-affordable-housing/>.

permits in Atlanta.<sup>82</sup> In fact, there was a 68% increase in multifamily building permits issued after Atlanta adopted the ordinance.<sup>83</sup> Most importantly, the ordinance led to the construction of 362 new affordable units for low-income families between 2018–2020.<sup>84</sup>

Atlanta also utilizes land use laws to incentivize developers to provide affordable housing.<sup>85</sup> To illustrate, the Georgia Legislature authorized Atlanta to pass the Atlanta Urban Enterprise Zone Act (the UEZ Act) in 1983.<sup>86</sup> The UEZ Act empowers Atlanta to designate economically depressed areas that have high speculative value as Urban Enterprise Zones (UEZ).<sup>87</sup> Atlanta offers developers of UEZ housing properties a ten-year tax abatement if they dedicate 20% of new units for affordable housing and implement additional measures to prevent displacement of low-income residents.<sup>88</sup> As of 2018, Atlanta's fifteen UEZ properties had created 539 affordable units for residents who fall below 60% of the Atlanta Median Income.<sup>89</sup>

Despite the UEZ program's relative success, some advocates believe that Atlanta needs to expand the size of UEZ's to effectively prevent displacement.<sup>90</sup> A study by the Housing Justice League and Research Action Cooperative concluded that Atlanta's UEZ program is underused by developers and that the demand for affordable housing far exceeds what is available in UEZ developments.<sup>91</sup> For example, a 2015 city planning document predicted that Atlanta would gain 15,700 new housing units between 2015 and 2017, but only 2,800 of those units would be affordable.<sup>92</sup> As of 2017, Atlanta still had over 32,000 residents on the waiting list for public housing.<sup>93</sup> In sum, although Atlanta

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<sup>82</sup> DEP'T OF CITY PLANNING, INCLUSIONARY ZONING REPORT 1, 15 (2021), *available at* <https://www.atlantaga.gov/Home/ShowDocument?id=49832>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 9.

<sup>85</sup> Wendie N. Choudary, *supra* note 25.

<sup>86</sup> *Guide to the City of Atlanta's Urban Enterprise Zone Program*, CITY ATLANTA, GA, <https://www.atlantaga.gov/Home/ShowDocument?id=9844> (last visited Sept. 4, 2020).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 2, 7.

<sup>89</sup> *Guide to the City of Atlanta's Urban Enterprise Zone Program*, *supra* note 86, at 5; OFFICE OF HOUS. & COMMUNITY DEV., URBAN ENTERPRISE ZONES 1, 5 (2018), *available at* <https://www.atlantaga.gov/home/showpublisheddocument?id=40351>.

<sup>90</sup> HOUS. JUST. LEAGUE & RES. ACTION COOPERATIVE, BELTLINING: GENTRIFICATION, BROKEN PROMISES, AND HOPE ON ATLANTA'S SOUTHSIDE 47 (2017), <https://static1.square-space.com/static/59da49b712abd904963589b6/t/59dedb75f7e0ab47a08224b5/150777424592/Beltlining+Report+-+HJL+and+RA+Oct+9.pdf>.

<sup>91</sup> *Id.* at 20.

<sup>92</sup> *Id.* at 19.

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

implements promising tools to curb displacement, data suggests that the city must expand current programs or adopt new tactics to make a sizable impact.<sup>94</sup>

### *B. Berlin*

Gentrification in Berlin tells a different story. When the Berlin Wall fell in 1989, the German government began selling off property in East Berlin.<sup>95</sup> The government's efforts successfully revitalized the economically depressed East, as new owners converted derelict properties into clubs and art galleries.<sup>96</sup> East Berlin eventually "became the hip part of town with cultural capital that attracted young professionals with financial capital, and its gentrification radiated . . . slowly outward."<sup>97</sup> However, the sale of East Berlin real estate triggered more economic development than Berliners could have imagined.<sup>98</sup> With limited housing supply and rapidly increasing demand, Berlin's home purchase prices increased by 70% between 2009 and 2014.<sup>99</sup>

Berlin's housing policies also caused a steep increase in rent prices.<sup>100</sup> Since 2000, the city cut all government-sponsored subsidies for building and property renovations.<sup>101</sup> Subsequently, Berlin's building activities significantly decreased while population and housing demand continued to grow.<sup>102</sup> In addition to cutting subsidies, Berlin sold half of its public housing to alleviate pressure on the city budget.<sup>103</sup> Berlin's gentrification thus quickly progressed from positive economic development to triggering a dramatic increase in housing costs.<sup>104</sup>

Since 2004, Berlin's property prices more than doubled; between 2009 and 2014, property prices rose by 70%.<sup>105</sup> In 2017 alone, property prices increased by 20.5%.<sup>106</sup> Over that span of five years, rents rose 56%.<sup>107</sup> Berlin residents, outraged that their government let gentrification spiral out of control, regularly

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<sup>94</sup> *Id.* at 20 (suggesting that expanded programs could include rent control while expanding programs like public housing).

<sup>95</sup> Zerofsky, *supra* note 45.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *See id.* (mentioning a local Berlin protest whose message was "[o]ur neighborhood, not your profit!").

<sup>99</sup> *Id.*

<sup>100</sup> Andrej Holm, *Berlin's Gentrification Mainstream*, in *THE BERLIN READER: A COMPENDIUM ON URBAN CHANGE AND ACTIVISM 174–75* (Britta Grell et al. eds., 2013).

<sup>101</sup> *Id.* at 174.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 172.

<sup>104</sup> *See* Zerofsky, *supra* note 45 (discussing price increases between 2009–2014).

<sup>105</sup> *Id.*

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

<sup>107</sup> *Id.* (describing rent price increases between from 2009 to 2014).

took to the streets in protest.<sup>108</sup> Many residents joined grassroots movements, arguing that affordable rent is a birthright.<sup>109</sup>

In response to citizens' demands, the Berlin government adopted a number of laws to curb gentrification. Berlin's government is authorized to take positive action against gentrification because the German Constitution (the Basic Law) governs the country as a *Sozialstaat* (social welfare state).<sup>110</sup> As a social welfare state, "it is not enough to protect citizens from [harm] . . . the government must also affirmatively promote the public good . . . [and] create legislation that actively promotes the public good."<sup>111</sup> In the context of displacement caused by gentrification, the Basic Law places an affirmative duty on Berlin's government to provide "state aid in order to ensure a [basic] subsistence level. This is where [Germany's] social housing policy finds its origins and legitimization."<sup>112</sup>

Article 14 and Article 20 of the Basic Law require the Berlin legislature to balance the right to adequate housing<sup>113</sup> against landowners' right to control their property.<sup>114</sup> Article 14 mandates that the right to property is not absolute and "[i]ts use shall also serve the public good."<sup>115</sup> In combination with Article 20's mandate that the State must "ensure the provision of adequate housing for the population," the Basic Law lays the legal foundation upon which the Berlin government can regulate property.<sup>116</sup> The Basic Law also mandates that constitutional courts "review whether lawmakers have adequately considered and weighed the right to property against the principles of human dignity, personality, and equality along with the principles of proportionality, rule of law, and the

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<sup>108</sup> E.g., Erik Kirschbaum, *Gentrification Is Changing Berlin. Officials Are Banning Rent Hikes for 5 Years*, L.A. TIMES (June 20, 2019), <https://www.latimes.com/world/europe/la-fg-germany-berlin-rent-increases-outlawed-20190620-story.html>.

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

<sup>110</sup> Walser, *supra* note 21, at 189–90.

<sup>111</sup> *Id.* at 190.

<sup>112</sup> See JULIA CORNELIUS & JOANNA RZEZNIK, NATIONAL REPORT FOR GERMANY 1, 40 (n.d.), available at <http://www.iut.nu/wp-content/uploads/2017/03/National-Report-for-Germany.pdf> (discussing the German Federal Constitutional Court's defining "subsistence" as "cover[ing] the need to secure physical existence, thus the accommodation").

<sup>113</sup> CONTRIBUTION BY THE FEDERAL REPUBLIC OF GERMANY TO THE REPORT OF THE SPECIAL RAPporteur ON THE RESPONSIBILITIES OF SUB-NATIONAL GOVERNMENTS WITH RESPECT TO THE RIGHT TO ADEQUATE HOUSING 1, 3 (n.d.), available at <https://www.ohchr.org/Documents/Issues/Housing/sub-nationalgovernments/Germany.pdf> (describing the right to adequate housing under German law).

<sup>114</sup> Grundgesetz [GG] [Basic Law], art. 14, translation at [http://www.gesetze-im-internet.de/english\\_gg/index/html](http://www.gesetze-im-internet.de/english_gg/index/html).

<sup>115</sup> *Id.*

<sup>116</sup> Fabian Thiel, "Property Entails Obligations": *Land and Property Law in Germany – Past, Present, and Future*, 1 EUR. ASIAN J. L. COM. 75, 82 (2011) (discussing Article 14); CONTRIBUTION BY THE FEDERAL REPUBLIC OF GERMANY TO THE REPORT OF THE SPECIAL RAPporteur ON THE RESPONSIBILITIES OF SUB-NATIONAL GOVERNMENTS WITH RESPECT TO THE RIGHT TO ADEQUATE HOUSING, *supra* note 113 (discussing Article 20).

social welfare state.”<sup>117</sup> Germany has thus created various legislative, judicial, and administrative mechanisms to empower governments to balance the right to own and profit off property against the right to adequate and affordable housing.

As authorized by Article 14 and Article 20,<sup>118</sup> the Berlin government implemented a number of laws to combat gentrification.<sup>119</sup> First, Berlin adopted a law called the *Mietpreisbremse*;<sup>120</sup> the law acts as “a rental brake that regulates how steeply property owners can increase rents” and prevents residential landlords in designated areas from increasing rent beyond 10% of the typical rental rate for five years.<sup>121</sup> *Mietpreisbremse* includes an escape hatch by exempting leases for new housing which was completed after October 1, 2014 and for the first lease term of homes having undergone substantial renovations.<sup>122</sup>

The *Mietpreisbremse* is subject to numerous criticisms.<sup>123</sup> Some residents criticize the law for its loopholes, specifically that “the tenant is only eligible for a refund on their overpaid rent from the date of their first complaint, not from the date they first began paying an illegally high rent.”<sup>124</sup> Because Berlin’s housing supply is so limited, many tenants are not willing to incur the cost of suing their landlord and others would rather pay a price premium than have to find alternative housing.<sup>125</sup> Finally, despite the Basic Law’s mandate that German legislatures must balance the right to property against considerations of human rights and equity, German courts have issued conflicting rulings on the constitutionality of the *Mietpreisbremse* law.<sup>126</sup>

In addition to the *Mietpreisbremse*, Berlin passed the *Milieuschutz* laws; these laws “require owners to obtain special permission before renovating rental properties or converting them into owner-occupied condominiums.”<sup>127</sup> These laws aim to prevent renter displacement by regulating the pace of development in up-

<sup>117</sup> Walser, *supra* note 21, at 191.

<sup>118</sup> Grundgesetz art. 14, *supra* note 114; Grundgesetz [GG] [Basic Law], art. 20, translation at [http://www.gesetze-im-internet.de/english\\_gg/index/html](http://www.gesetze-im-internet.de/english_gg/index/html).

<sup>119</sup> See generally Connolly, *supra* note 44 (explaining how the local Neukölln government in Berlin passed a law preventing building renovations that would force out residents in its most urgent areas).

<sup>120</sup> Walser, *supra* note 21, at 194.

<sup>121</sup> BURGERLICHES GESETZBUCH [BGB] [CIVIL CODE], § 556d, translation at [http://www.gesetze-im-internet.de/englisch\\_bgb/index.html](http://www.gesetze-im-internet.de/englisch_bgb/index.html); Feargus O’Sullivan, *Berlin’s New Rent-Control Law Probably Isn’t Working After All*, CITY LAB (Feb. 1, 2016), <https://www.citylab.com/equity/2016/02/berlin-rent-control-cbre-report/458700/>.

<sup>122</sup> O’Sullivan, *supra* note 121.

<sup>123</sup> See, e.g., *Rent Cap 2.0?*, DELOITTE, <https://www2.deloitte.com/dl/en/pages/legal/articles/mietpreisbremse.html> (discussing critics’ issues with the law).

<sup>124</sup> Walser, *supra* note 21, at 195–96 (footnote omitted).

<sup>125</sup> See O’Sullivan, *supra* note 121 (discussing reasons why tenants are not willing to sue their landlords to enforce the laws).

<sup>126</sup> Walser, *supra* note 21, at 191, 196–97.

<sup>127</sup> *Id.* at 186.

and-coming neighborhoods.<sup>128</sup> The *Milieuschutz* laws allow renters to financially prepare for increased rents because prices will increase more predictably and at a slower rate.<sup>129</sup> However, the *Milieuschutz* laws are also subject to criticism, primarily from tenants who claim that the “toothless” *Milieuschutz* laws lack effective enforcement mechanisms, allowing many landlords to escape liability.<sup>130</sup>

In October 2019, the Berlin government adopted a law freezing all rents at a prescribed rate between June 2019 and June 2022 and imposed a cap on all rental rates.<sup>131</sup> The cap provides an absolute rent limit and a reference point for rent reductions.<sup>132</sup> Notably, the Senate of Berlin included exemptions for “newly constructed buildings that were ready for occupancy on or after 1 January 2014, publicly subsidized apartments as well as dormitories and apartments operated by recognised welfare organisations.”<sup>133</sup> Due to accusations made by *Mietendeckel*’s opposers, implementation is currently stalled while the German federal government and courts determine the constitutionality of the *Mietendeckel* laws.<sup>134</sup> Thus, the *Mietendeckel*’s effectiveness has yet to be determined.<sup>135</sup>

### III. ATLANTA VERSUS BERLIN

Atlanta and Berlin utilize different legal mechanisms to fight displacement of racially and socioeconomically marginalized populations.<sup>136</sup> Berlin takes a more punitive approach to limiting gentrification.<sup>137</sup> Atlanta relies more so on developer and landlord tax incentives.<sup>138</sup> However, each city has much to learn from

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<sup>128</sup> *Id.* at 191 (“The aim of the law is to protect against tenant displacement by slowing the rapid development of neighborhoods.”).

<sup>129</sup> *Id.* at 191–92.

<sup>130</sup> *Id.* at 193.

<sup>131</sup> See generally Dr. Christian Schede et al., *Update: “Berlin Rent Price Cap” (Mietendeckel) – Draft Bill of the Berlin Senate of 22 October 2019*, GREENBERG TRAUIG (Oct. 25, 2019), <https://www.gtlaw.com/en/insights/2019/10/update-berlin-rent-price-cap-october> (analyzing the text and effects of the new Berlin rent freezes and caps law).

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

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> See Schede et al., *supra* note 131.

<sup>136</sup> See, e.g., Section 8, *supra* note 54; *Multifamily Housing Program*, *supra* note 66; *Neighborhood Stabilization Program 1*, *supra* note 72; Connolly, *supra* note 44.

<sup>137</sup> See Connolly, *supra* note 44 (discussing the *milieuschutz* law in Berlin that prevents “owners’ attempts to renovate and modernise [real estate] to the extent that existing residents could be forced out.”).

<sup>138</sup> See *supra* Section II(A); see also Tasnim Shamma, *Atlanta Passes Ordinance For More Affordable Housing*, WABE 90.1 FM (May 3, 2016), <https://www.wabe.org/atlanta-passes-ordinance-more-affordable-housing> (reporting that the Atlanta City Council passed an ordinance that “requires any developer receiving subsidies from a development authority to set

one another. This Note proposes ways that Atlanta can adopt anti-gentrification policies similar to Berlin's, and vice-versa, to more effectively curb displacement caused by gentrification.

The main difference between Atlanta and Berlin's approach to displacement lies in Berlin's restrictive and punitive anti-gentrification laws.<sup>139</sup> Berlin enforces its laws by imposing heavy fines.<sup>140</sup> Atlanta could benefit from adopting a more punitive approach because developers are unlikely to opt into incentives programs when they could make more profits on the open housing market.<sup>141</sup> Even with Inclusionary Zoning, one of Atlanta's mandatory programs, developers can avoid liability by paying a one-time fee into an affordable housing trust fund.<sup>142</sup> In reality, market forces and potential for profit risk outweighing incentives to preserve affordable housing in Atlanta's new developments.<sup>143</sup> For these reasons, Atlanta's current policies have yet to slow gentrification's momentum and prevent displacement of low-income Atlantans.<sup>144</sup>

However, one must consider barriers the City of Atlanta would face in implementing Berlin's mandatory and punitive laws. To begin, the United States is not a social welfare state.<sup>145</sup> The German Constitution, on the other hand, recognizes the individual as part of a larger community and requires the German government "to look after its citizens and intervene in the market and social order if required to maintain equality."<sup>146</sup> The German and United States governments approach property regulation from fundamentally different legal frameworks, which affects the tools each can use to curb gentrification.<sup>147</sup>

Unlike Germany's Basic Law, the U.S. Constitution does not require individuals to use their property for the public good,<sup>148</sup> if anything, the Constitution strictly protects the right to use, buy, or sell property to further the owner's individual benefit.<sup>149</sup> The Constitution only allows the government to regulate

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aside 15 % of units for individuals who make 80 % of the area median income or 10 % of units for lower-income residents").

<sup>139</sup> See Connolly, *supra* note 44 (discussing Berlin's *Milieuschutz* law, which prevents renovations that would increase rent for current residents, rent control laws, and the right of authorities to block sales of apartment buildings).

<sup>140</sup> See Kirschbaum, *supra* note 108 (reporting that Berlin officials can fine violators as much as \$550,000).

<sup>141</sup> Levy et al., *supra* note 22, at 7.

<sup>142</sup> *Inclusionary Zoning Policy*, *supra* note 77.

<sup>143</sup> Levy et al., *supra* note 22, at 7.

<sup>144</sup> See Quinn, *supra* note 40.

<sup>145</sup> See Walser, *supra* note 21, at 198–99 (explaining that the U.S. Constitution is structured as a charter of negative liberties (i.e., protection against state government oppression) rather than positive liberties (i.e., grant of basic governmental services)).

<sup>146</sup> *Id.* at 207.

<sup>147</sup> *Id.* at 198–99.

<sup>148</sup> *Id.* at 207–08.

<sup>149</sup> *Id.* at 208.



property without compensating the owner if necessary to protect public health, welfare, safety, and morals and if it would not deprive the owner of all economically viable use of their property.<sup>150</sup>

The United States' absolute commitment to negative rights limits local governments' ability to regulate exploding real estate markets.<sup>151</sup> To resolve this issue, United States courts could adjust their interpretation of negative rights in the context of housing and property rights. Adjustments are necessary because the difference between negative and positive government action becomes much more ambiguous when applied to affordable housing policies.<sup>152</sup> To illustrate, a government's refusal to adopt constitutional rent controls or other anti-gentrification laws may be a positive action within itself.<sup>153</sup> Government inaction arguably protects the property rights of speculators and those who can pay inflated property prices.<sup>154</sup> Government inaction fails to protect—and may even violate—the rights of those who are forced to give up their property because they can no longer afford to live in gentrifying areas.<sup>155</sup> In sum, gentrification complicates the application of negative liberties and property rights in the United States. If federal courts refuse to adjust traditional interpretations of negative property rights, state and local governments will need to design anti-gentrification laws that can withstand constitutional challenge.

Georgia state law also restrains Atlanta's anti-gentrification efforts.<sup>156</sup> Currently, Atlanta cannot implement Berlin's laws or anything similar because rent control laws are illegal in Georgia.<sup>157</sup> Thus, Atlanta can only utilize incentive-based programs and weaker zoning laws to enact change. However, many of these programs do not sufficiently appeal to developers' self-interests.<sup>158</sup>

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

<sup>151</sup> *See id.* at 203 (noting that state or local laws can protect affordable housing but must withstand constitutional challenge under the Takings Clause).

<sup>152</sup> *See* Jorge M. Farinacci-Fernós, *Looking Beyond the Negative-Positive Rights Distinction: Analyzing Constitutional Rights According to Their Nature, Effect, and Reach*, 41 HASTINGS INT'L & COMP. L. REV. 31, 45–46 (2018) (“[S]ome scholars believe that ‘the difference between negative and positive rights has been overemphasized.’ They point to the fact that some negative rights have ‘complementary positive duties.’ If this is true, then there is hope that *all* constitutional rights, independent of their nature and effect, are capable of being judicially enforced, even if using different standards of review.”) (footnotes omitted); *see* Seth F. Kreimer, *Allocational Sanctions: The Problem of Negative Rights in a Positive State*, 132 U. PA. L. REV. 1293, 1326 (1984) (discussing the government's ability “to deal mortal blows to the exercise of rights by simply ceasing to intervene”); *see* Walser, *supra* note 21, at 203.

<sup>153</sup> *See* Kreimer, *supra* note 152, at 1326; Farinacci-Fernós, *supra* note 152, at 45.

<sup>154</sup> *See* Kreimer, *supra* note 152, at 1326.

<sup>155</sup> *See id.*

<sup>156</sup> HOUS. JUST. LEAGUE & RES. ACTION COOPERATIVE, *supra* note 90, at 20.

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

<sup>158</sup> *See, e.g.,* Stokes, *supra* note 81 (explaining how some Atlanta developers are skeptical about investors funding construction in the Inclusionary Zone); *see* Vashi, *supra* note 63

Fortunately, Georgia's rent control ban is not insurmountable. Some advocates argue that the Atlanta government should request the law's repeal or petition the legislature to waive the law's applicability to Atlanta.<sup>159</sup> Even if the legislature placed strict limitations on the degree to which Atlanta could restrict rents, rent controls would still preserve stable housing for many low-income residents.<sup>160</sup> Alternatively, Atlanta could control rents by passing a temporary rental rate freeze. While this would still likely require permission of the legislature, the temporary freeze could slow gentrification long enough for the city to restructure its anti-displacement programs.

Berlin, on the other hand, could also benefit from adopting parts of Atlanta's anti-gentrification mechanisms. The Berlin government fails to consistently enforce its rent control laws, which reduces incentives for compliance;<sup>161</sup> if enforcement is unlikely, landlords may find it worth the risk to renovate housing and raise rent prices. To combat gaps in enforcement, Berlin should take a page from Atlanta's book by offering incentives that capitalize on developer and landlords' self-interest and that encourage compliance with the *Mietpreisbremse* and *Milieuschutz* laws. The German Constitutional already authorizes the government to take positive action to ensure citizens have adequate housing.<sup>162</sup> Under this grant of authority, Berlin could guarantee significant tax breaks to developers who set aside a certain percentage of their units for affordable housing or demonstrate long-term compliance with the *Mietpreisbremse* and *Milieuschutz* laws.

#### IV. CONCLUSION

While gentrification generates significant benefits for cities, its negative externalities cannot be justified. Displacement has unacceptable cultural, social, and health effects.<sup>163</sup> It prevents low-income families from accessing "educational and employment opportunities" and pushes affordable housing into areas

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(noting that a recent HUD study found that many landlords do not accept section 8 housing vouchers).

<sup>159</sup> HOUS. JUST. LEAGUE & RES. ACTION COOPERATIVE, *supra* note 90, at 48.

<sup>160</sup> Miriam Zuk, *Rent Control: The Key to Neighborhood Stabilization?*, URB. DISPLACEMENT PROJECT (Sept. 9, 2015), <https://www.urbandisplacement.org/blog/rent-control-key-neighborhood-stabilization> (discussing the positive effects that rent control laws had on gentrifying areas).

<sup>161</sup> See O'Sullivan, *supra* note 121; Walser, *supra* note 21, at 193 (noting that many Berlin tenants believe it is too easy for landlords to circumvent the laws).

<sup>162</sup> Grundgesetz art. 14, *supra* note 114; Grundgesetz art. 20, *supra* note 114.

<sup>163</sup> See Qiang et al., *supra* note 12, at 2 (discussing gentrification's social and cultural effects).

with polluted environments and scarce healthcare resources.<sup>164</sup> Thus, it is imperative that local, state, and federal governments collaborate to implement equitable and effective legal mechanisms to curb gentrification.

Gentrification cannot be solved by simply passing the right laws or adopting the right incentives. Surrounding Atlanta and Berlin's fight against gentrification is the larger question of what role the government plays in regulating interactions between the haves and have-nots, the rich and the poor, the marginalized and the celebrated.<sup>165</sup> How can and should governments, regardless of social-welfare or capitalistic orientations, actively protect property rights of low-income citizens? Should this power instead be entrusted to non-governmental groups? Should low-income Americans be empowered to demand economic justice, and not just bureaucratic mercy?<sup>166</sup> Regardless of who leads the battle against gentrification, government support is essential.<sup>167</sup> Thus, Atlanta and Berlin must rise to the challenge and fight for their residents' ability to choose their neighborhood and home.

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<sup>164</sup> See Harris & Aysha Pamukcu, *supra* note 3 ("Today, some public health researchers conclude that 'racial residential segregation is the cornerstone on which Black-white disparities in health have been built in the U.S.' Despite the end of de jure segregation, public and private land use decisions have ensured that place-based factors, from access to educational and employment opportunities, to exposures to pollution and toxic substances like lead paint, continue to geographically distribute health outcomes.").

<sup>165</sup> See generally Farinacci-Fernós, *supra* note 152 (noting that legal perspectives on positive and negative rights impact government's role in society).

<sup>166</sup> Barbara Stark, *ARTICLE: Urban Despair and Nietzsche's "Eternal Return:" From the Municipal Rhetoric of Economic Justice to the International Law of Economic Rights*, 28 VAND. J. TRANSNAT'L L. 185, 237 ("My clients were glad to have someone in a suit on their side, but to our shared dismay, they rarely had any rights—cognizable claims to justice rather than to mercy. Indeed, the only 'category of rights . . . relevant . . . was the somewhat dubious one . . . of formal bureaucratic procedural rationality.'").

<sup>167</sup> See, e.g., Crispell, *supra* note 24 (citing government policies as helping gentrification in the Bay Area's Chinatown and East Palo Alto).