

**MAKING AMENDS: LOCALIZING AND
IMPLEMENTING HOUSING REPARATION PROGRAMS
FOR AFRICAN AMERICANS AFFECTED BY
DISCRIMINATORY HOUSING POLICIES**

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ABSTRACT

In Philadelphia, there is a significant gap in African American home ownership that has contributed to many of the problems that African American residents face today. Decreased industrialization, high poverty rates, crime, and loss in property values are direct consequences of housing discrimination by state and private actors. This Note constructs a framework for state and local reparations for the economic deprivation of African American communities.¹ While this Note focuses on the history and laws that affect African Americans in Philadelphia, Pennsylvania, it conceptualizes a general framework that can be used to analyze and address other forms of discrimination through reparation initiatives at the local and state level.

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1. This Note uses the narrowing term “African American” intentionally. Historically, people visibly of African descent faced similar housing challenges regardless of citizenship; however, this Note focuses on African Americans because of the shared experiences amongst the majority. Reparations stem from the enslavement of Africans through the trans-Atlantic slave trade. While housing discrimination against Black people is an independent problem, the ideologies behind it originate from enslaved Africans’ second-class citizenship. Furthermore, reparations to African countries for the harms originating from discrimination and the slave trade is a separate, complex issue that requires a full, in-depth discussion.

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INTRODUCTION

Housing discrimination can take many forms. For instance, in 1912, Los Angeles residents Charles and Willa Bruce purchased two beachfront lots for \$1,225 and eventually added additional lots to create a private resort for African Americans.² The Bruces faced constant harassment and racism until the city condemned the property using its taking powers, known as eminent domain.³ Though the city claimed it used eminent domain to

2. Ronald J. Stephens, *Bruce's Beach, Manhattan Beach, California (1920-)*, BLACKPAST (Feb. 18, 2014), <https://www.blackpast.org/african-american-history/bruce-s-beach-manhattan-beach-california-1920/>.

3. Stefanie Dazio, *Reparations Milestone: California Returns Land to Black Family*, THE CHRISTIAN SCI. MONITOR (Oct. 1, 2021), <https://www.csmonitor.com/USA/2021/1001/>

convert the property into a park, the “land [remained] unused for years until it was transferred to the state.”⁴ The state then reinstated ownership to Los Angeles County to be used as a beach.⁵ Eventually, in what has been called a “reparations milestone,” the state of California returned the property to descendants of the original owners.⁶

A larger problem exists in home loans and mortgage lending, illustrated by Beatrice Barker’s situation in Pennsylvania in the 1990s.⁷ Beatrice Barker needed a \$10,000 loan for home improvements.⁸ After contacting a credit agency, she ended up with a loan for \$19,500 with a 10% total loan amount fee, a balloon note, and a mortgage refinance that took her original 9% interest rate and nearly doubled it.⁹ To further aggravate the injury, Barker was not authorized to receive more than \$1,950 in cash for her home improvements.¹⁰

The examples of housing discrimination described above, and many similar instances, contribute to the wealth gap between African Americans and whites.¹¹ Furthermore, “[g]aps in wealth between Black and white households reveal the effects of accumulated inequality and discrimination, as well as differences in power and opportunity.”¹² “Reparations” is defined as making amends for a wrong done, either by paying

Reparations-milestone-California-returns-land-to-Black-family; see also *Eminent Domain Overview*, FINDLAW, <https://www.findlaw.com/realestate/land-use-laws/eminant-domain-overview.html> (Nov. 22, 2021) (discussing the government’s power under the Takings Clause).

4. Dazio, *supra* note 3.

5. *Id.*

6. *Id.*

7. See *Barker v. Altegra Credit Co.*, (*In re Barker*), 251 B.R. 250, 254–57 (E.D. Pa. 2000).

8. *Id.* at 255.

9. *Id.* at 255–56.

10. *Id.* at 256.

11. See Rashawn Ray, Andre M. Perry, David Harshbarger, Samantha Elizondo & Alexandra Gibbons, *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, BROOKINGS INST. (Sept. 1, 2021), <https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/>.

12. Kriston McIntosh, Emily Moss, Ryan Nunn & Jay Shambaugh, *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

money or otherwise helping those who have been wronged.¹³ It can come in many shapes and forms, and often seeks to address a harm done to an individual or community.¹⁴ More importantly, reparations “are meant to give assurance to survivors that the injustices they have endured ‘will not be repeated in the future.’”¹⁵ Reparations require accountability, acknowledgement, and assurance that perpetuated harms will stop and be rectified.¹⁶ Simply put, reparations address systematic harms that stem from human rights violations.¹⁷ They entail a guarantee of non-repetition, restitution and repatriation, compensation, satisfaction, and rehabilitation.¹⁸

African Americans are entitled to reparations because the United States’ rise in power, status, and wealth was largely gained by the exploitation of enslaved African labor.¹⁹ The exportation of cotton and tobacco created substantial wealth for the States, but enslaved Africans were brutalized, exploited, and commoditized like animals in return.²⁰ It is estimated that

13. *Reparation*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/reparation> (last visited Dec. 29, 2022). The National Coalition of Blacks for Reparations in America defines reparations as “[a] process of repairing, healing and restoring a people injured because of their group identity and in violation of their fundamental human rights by governments, corporations, institutions and families.” ANDREA RITCHIE, DEIRDRE SMITH, JANETTA JOHNSON, JUMOKE IFETAYO, MARBRE STAHLY-BUTTS, MARIAME KABA, MONTAGUE SIMMONS, NKECHI TAIFA, RACHEL HERZING, RICHARD WALLACE & TALIBA OBUYA, MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT 25 (2019), <https://communityresourcehub.org/wp-content/uploads/2019/08/Reparations-Now-Toolkit-compressed.pdf>.

14. See *infra* note 24 and accompanying text.

15. Jordan Brewington, Note, *Dismantling the Master’s House: Reparations on the American Plantation*, 130 YALE L.J. 2160, 2162 (2021).

16. RITCHIE ET AL., *supra* note 13, at 18.

17. Apologies and financial compensation, while still perpetuating the harms of racism and institutional discrimination, are not considered reparations. Financial wealth is continuously stripped from predominately African American communities; simply writing a check to Black community members or institutions does not rectify the power imbalance between Black and white individuals. *Id.* at 28.

18. *Id.* at 26.

19. See Daniel P. Suitor, *Winning What’s Owed: A Litigative Approach to Reparations*, 105 MINN. L. REV. 391, 391–92 (2021); see also David Brion Davis, *Foreward* to DAVID ELTIS & DAVID RICHARDSON, *ATLAS OF THE TRANSATLANTIC SLAVE TRADE*, at xviii (2010).

20. See generally FREDERICK DOUGLASS, *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE* (1845) (detailing the life of Frederick Douglass, a man born into slavery in

between 1776 and 1865, “uncompensated labor totaled between USD \$5.9 and \$14.2 trillion in current dollars.”²¹ Following slavery and the Civil War, Jim Crow laws, structural discrimination, and “exclusion from employment, housing, institutions, and communities [which] continues to this day” targeted African Americans.²²

This Note joins a group of scholars who argue that the wealth gap between African Americans and white Americans can be remedied, in part, by legislation aimed at repairing the economic harm done to African American communities.²³ It does so by focusing on a specific city—Philadelphia, Pennsylvania—that exemplifies the results of discriminatory housing practices. Analyzing the issues and benefits of a reparations initiative in Evanston, Illinois’s Restorative Housing Program and applying it to Philadelphia helps conceptualize the benefits and challenges for reparations in other jurisdictions while providing a framework for a national program. While this Note focuses on reparations for discriminatory housing practices that contribute to the African American-white wealth gap on the municipal level, state initiatives can provide additional assistance to extend the reach of harms that reparations can address.

A few cities and institutions have implemented or encouraged some type of reparations program in response to

Maryland who escaped and became an abolitionist, orator, and author); LINDA BRENT, INCIDENTS IN THE LIFE OF A SLAVE GIRL (L. Maria Child ed., 1861) (detailing the experiences of enslaved African Americans during the eighteenth and nineteenth centuries).

21. Joe R. Feagin, *The Case for African American Reparations, Explained*, TEXAS A&M TODAY (Apr. 24, 2019), <https://today.tamu.edu/2019/04/24/the-case-for-african-american-reparations-explained/>; see also Joe R. Feagin, *Documenting the Costs of Slavery, Segregation, and Contemporary Racism: Why Reparations Are in Order for African Americans*, 20 HARV. BLACKLETTER L.J. 49, 53 (2004) (“Updating these 1983 estimates to today would place the current value of the diverted income from black labor, plus interest, into many trillions of United States dollars.”).

22. RITCHIE ET AL., *supra* note 13, at 16.

23. See Christopher Burton, *3/5ths to 1/10th, How to Make Black America Whole: Exploring Congressional Act H.R. 40 – Commission to Study and Develop Reparation Proposals for African-Americans Act*, 54 UIC J. MARSHALL L. REV. 530, 535 (2021) (“Time-and-time again the court system has concluded that the legislature, not the judiciary, is better suited to handle [economic disenfranchisement] claims.”).

multiple laws aimed at disparaging African American communities post-slavery.²⁴ Cities in Illinois, North Carolina, and California have all instituted reparations programs aimed at repairing the substantial harm to African American communities.²⁵ This Note argues that Philadelphia should develop and implement reparation programs, available to past and current Philadelphia residents who were affected by discriminatory housing practices that hindered economic progress in African American communities.²⁶

Philadelphia is a helpful model because it has a large African American population and an extensive history of housing discrimination.²⁷ Philadelphia consistently ranks as one of the poorest cities in the country, and the COVID-19 pandemic exposed how detrimental the housing crisis is on African American residents.²⁸ Philadelphia's housing crisis stems from segregation and Jim Crow laws and has yet to be sufficiently

24. Peter Dixon, *U.S. Cities and States are Discussing Reparations for Black Americans. Here's What's Key.*, WASH. POST (Aug. 24, 2020, 6:00 AM), <https://www.washingtonpost.com/politics/2020/08/24/us-cities-states-are-discussing-reparations-black-americans-heres-whats-key/>.

25. See *North Carolina City Commits \$2.1M for Reparations*, AP NEWS (June 9, 2021), <https://apnews.com/article/north-carolina-racial-injustice-business-race-and-ethnicity-d9190175bb260ba2882954fd731f9e92>; The Associated Press, *Evanston, Illinois, Becomes First U.S. City to Pay Reparations to Black Residents*, NBC NEWS (Mar. 23, 2021, 7:11 AM), <https://www.nbcnews.com/news/us-news/evanston-illinois-becomes-first-u-s-city-pay-reparations-blacks-n1261791>; Nicole Charky, *LA County Takes Next Steps to Return Bruce's Beach to Descendants*, PATCH (Oct. 5, 2021, 4:11 PM), <https://patch.com/california/manhattanbeach/la-county-takes-next-steps-return-bruce-s-beach-descendants>.

26. See *infra* Section II.B.4.

27. See LARRY SANTUCCI, FED. RSRV. BANK OF PHILA., HOW PREVALENT WERE RACIALLY RESTRICTIVE COVENANTS IN 20TH CENTURY PHILADELPHIA? A NEW SPATIAL DATA SET PROVIDES ANSWERS 1, 15–20, 26–33 (2019) (presenting data on deeds that contained racial covenants in Philadelphia between 1920-1932); Yiming MA, *Vacant Houses in Philadelphia*, ARCGIS STORYMAPS (Aug. 27, 2020), <https://storymaps.arcgis.com/stories/3d7ddbaf378e46d894ed7d51363ba93b> (describing the “policies and practices [that] have created racialized patterns of disinvestment in city centers” and led to Philadelphia’s current vacant houses problem).

28. See JACOB WHITON, THERESA SINGLETON & LEI DING, FED. RSRV. BANK PHILA., SUPPORTING PHILADELPHIA’S BLACK HOMEOWNERS IN THE AFTERMATH OF THE COVID-19 CRISIS 1, 3–5 (2021); Darryl C. Murphy, *Poverty Still Plaguing Philadelphia, Poorest Big City in the Country*, WHY (Sept. 14, 2018), <https://why.org/articles/poverty-still-plaguing-philadelphia-poorest-big-city-in-the-country/>.

acknowledged or remedied.²⁹ Part I outlines why local jurisdictions are an ideal forum to institute reparations, the history of redlining, and other discriminatory lending practices. Part I also discusses the laws that were drafted to outlaw these practices, and how lenders were able to continue discriminating against minority communities notwithstanding those laws. Part I concludes by describing why Philadelphia should consider reparations for housing discrimination as a remedy to the wealth gap between its Black and white residents. Part II describes how reparations can remedy some of the problems embedded within many African American communities and then focuses on various local and state efforts to provide reparations. Specifically, this Part focuses on legislation passed in other states that attempt to rectify specific acts of injustice or implement reparative programs to redistribute wealth into African American communities. Finally, this Note concludes by acknowledging the potential challenges and benefits of reparative programs in Philadelphia while acknowledging the potential for federal reparations in the future.

I. HISTORICAL OVERVIEW OF DISCRIMINATORY HOUSING PRACTICES

Officials must understand the importance and purpose of reparations to craft meaningful legislation. For centuries, African Americans and their descendants faced violence and discrimination at the hands of private and state actors.³⁰ Reparations should seek to address and repair past harms that effect African American communities today, and ensure the practices that perpetuated these harms will never be repeated.³¹ Reparations is crucial for correcting past and present harmdoing, and its construction will challenge officials to focus

29. See Rema Bhat, *Philly's Housing Crisis & the Black Community: The Case for Penn to Step in*, 34TH ST. (Aug. 24, 2021, 7:37 PM), <https://www.34st.com/article/2021/08/upenn-housing-initiative-rent-eviction-crisis-zoning-racist-segregation-redlining-home-ownership>.

30. See *infra* Sections I.A–B; see also RITCHIE ET AL., *supra* note 13, at 12–15.

31. See RITCHIE ET AL., *supra* note 13, at 18, 25.

on the policies and practices that led to the gap in homeownership for African Americans.³²

This Part focuses on who should implement reparations and why it is important. African Americans share quite similar historical experiences regarding racism and discrimination in the United States. Part I breaks down the historical significance of housing discrimination and how it led to the wealth gap that exists today. Specifically, this Note addresses why local governments are currently the best option for reparations legislation, the forms of racial discrimination that many African Americans experienced and how that affected their housing rights, discrimination in mortgage and loan lending, and how all these practices effected African American Philadelphia residents.

A. *Why Local Governments are the Chosen Forum*

African Americans were systematically disadvantaged by local and state governments.³³ Black residents often fell victim to discrimination in two ways: (1) government actors carrying out laws discriminatorily, and (2) inaction regarding harms inflicted by private citizens.³⁴ The Associated Press launched an

32. See Brooke Simone, Note, *Municipal Reparations: Considerations and Constitutionality*, 120 MICH. L. REV. 345, 349 (2021); see generally Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (describing the history of racism and the need for reparations to “accept[] . . . our collective biography and its consequences”).

33. See Danyelle Solomon, Connor Maxwell & Abril Castro, *Systemic Inequality: Displacement, Exclusion, and Segregation*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/>; see, e.g., DAREN BAKST, JOHN LOCKE FOUND., NORTH CAROLINA’S FORCED-STERILIZATION PROGRAM: A CASE FOR COMPENSATING THE LIVING VICTIMS 6–7 (2011) (describing the disproportionate impact North Carolina’s forced-sterilization program had on Black people); Stephens, *supra* note 2 (describing how the city of Los Angeles condemned Bruce’s Beach, land owned and used by African American vacationers, that was eventually seized by the government through eminent domain).

34. See RITCHIE ET AL., *supra* note 13, at 13–15. While courts have determined the Fourteenth Amendment’s Due Process clause does not confer an affirmative duty to protect individuals from harm, many governmental actors participated in and benefited from racial discrimination. For instance, “in August 1920, in Oklahoma City, an eighteen-year-old Black [resident], Claude

investigation that found a pattern of African Americans having their land taken by trickery or violence, often with the assistance of government officials.³⁵ This harm permeated all levels of government, so the call for atonement is not solely within the federal government.³⁶ Municipal and state reparations do not lack limitations in bridging the wealth gap.³⁷ Scholars, such as A. Kirsten Mullen and economist William A. Darity Jr., noted local governments lack the requisite funding to achieve substantial reparations, stating “the population would ultimately require an expenditure of \$14 trillion. Collectively, the sum of the annual budgets of *all* state and local governments is \$3.1 trillion.”³⁸

In the nineteenth century, community and civil rights activists pushed for atonement for periods of injustice.³⁹ African Americans have petitioned numerous times for reparations for

Chandler, was lynched by a mob that featured the future mayor of Oklahoma City, O. A. Cargill.” Kweku Larry Crowe & Thabiti Lewis, *The 1921 Tulsa Massacre: What Happened to Black Wall Street*, HUMANS., Winter 2021, <https://www.neh.gov/article/1921-tulsa-massacre>.

35. Todd Lewan & Dolores Barclay, ‘When They Steal Your Land, They Steal Your Future’, L.A. TIMES (Dec. 2, 2001, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2001-dec-02-mn-10514-story.html>.

36. Simone, *supra* note 32, at 350.

37. See A. Kirsten Mullen & William A. Darity Jr., *Evanston, Ill., Approved ‘Reparations.’ Except it Isn’t Reparations.*, WASH. POST (Mar. 28, 2021, 9:00 AM), <https://www.washingtonpost.com/opinions/2021/03/28/evanston-ill-approved-reparations-housing-program-except-it-isnt-reparations/> (“Individually, local municipalities such as Evanston generally do not have the resources to pay Black reparations in a meaningful way.”). Although several political leaders advocated for reparations, no initiative has passed through Congress. This is the case even though former U.S. Representative John Conyers proposed a reparation bill every session of Congress from 1989 until October 2019. Simone, *supra* note 32, at 350.

38. Mullen & Darity Jr., *supra* note 37; see also *State and Local Backgrounders*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-expenditures> (last visited Dec. 29, 2022) (providing information on state and local governments revenues and expenditures).

39. This movement continued well into the new millennium. Several prominent scholars and leaders like Audley Moore and Martin Luther King Jr. advocated for reparations to remedy the stolen wages of African Americans. RITCHIE ET AL., *supra* note 13, at 54–56.

slavery,⁴⁰ Jim Crow laws,⁴¹ and institutionalized racism⁴² for centuries, often to no avail.⁴³ In fact, most attempts at repairing the damage done to African American communities were thwarted by government intervention.⁴⁴ As a result, methods of enacting injustice—including eminent domain, violence, and deceptive lending practices—left African American

40. The enslavement of over four million Africans and their descendants allowed the United States to secure its position as one of the most prosperous countries in the world. It took the House of Representatives over three decades to pass H.R. 40, a bill establishing a federal commission to study the legacy and ongoing harm of slavery in the United States. See Commission to Study and Develop Reparation Proposals for African Americans Act, H.R. 40, 117th Cong. (1st Sess. 2021); Erin B. Logan, *In a Year of Reckoning, Slavery Reparations Bill Moves Forward in the House*, L.A. TIMES (Apr. 14, 2021, 9:04 PM), <https://www.latimes.com/politics/story/2021-04-14/slavery-reparations-bill-moves-forward-in-congress>; Cong. John Conyers, *My Reparations Bill — HR 40*, INST. OF THE BLACK WORLD 21ST CENTURY (Oct. 3, 2013), <https://ibw21.org/commentary/my-reparations-bill-hr-40/>; *supra* note 19 and accompanying text.

41. Jim Crow laws, also known as Black codes, imposed racial restrictions on the new-found freedom of African Americans. For instance, “states passed laws that restricted African American’s access to schools, restaurants, hospitals and public places.” *Jim Crow Laws*, IOWA DEP’T OF HUM. RTS., <https://humanrights.iowa.gov/cas/saa/african-american-culture-history/jim-crow-laws> (last visited Dec. 29, 2022).

42. Institutional racism, also referred to as systemic racism, refers to the discriminatory mistreatment of a group of individuals by society and its institutions collectively. Christine Michel Carter, *Institutional Racism: What it Is, Why it Persists, and What You Can Do About it*, HEALTH (Mar. 16, 2021), <https://www.health.com/mind-body/health-diversity-inclusion/institutional-racism>. It existed in all facets of life for African Americans. *Id.* For example, voting is considered a fundamental right in a democratic republic; for African Americans, it was a privilege that many were forbidden to exercise. The Iowa Department of Human Rights notes “[l]iteracy tests and poll taxes, administered with informal loopholes and trick questions, barred nearly all blacks from voting. Though more than 130,000 blacks were registered to vote in Louisiana in 1896, only 1,342 were on the roles in 1904.” *Jim Crow Laws*, *supra* note 41; see also REBECCA RHYNHART, OFF. OF THE CONTROLLER, MAPPING THE IMPACT OF STRUCTURAL RACISM IN PHILADELPHIA 4–6 (2020), https://controller.phila.gov/wp-content/uploads/2020/01/redlining_report-1.pdf (describing how historic practices of redlining have continued to disadvantage communities in Philadelphia).

43. See Luke Kenton, *Time to Give Back: Push for Reparations for Descendants of Black Slaves as Thousands Call on City to Vote This Fall*, THE SUN, <https://www.the-sun.com/news/us-news/3087473/reparations-african-americans-slavery-thousands-call-vote/> (June 15, 2021, 1:01 PM).

44. “William Sherman, a Union Army general during the Civil War, ordered that land confiscated from Confederate landowners be divided up into portions and handed out to newly emancipated African-Americans. However, after President Abraham Lincoln’s assassination, the order was rescinded by his successor President Andrew Johnson.” *Id.*; see, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 477–79, 510–11 (1989) (holding an ordinance that addressed generalized past instances of discrimination against African Americans and other historically disadvantaged minorities unconstitutional).

communities impoverished while white communities flourished from the wealth and labor of African Americans.⁴⁵

Local cities and towns participated in, and benefitted from, discrimination, which created a need for individualized policies aimed at issues affecting the particular jurisdiction.⁴⁶ Local governments have more flexibility in the types of programs they can implement to address the harms of systemic racism and are able to consider community needs more holistically than the federal or state initiatives.⁴⁷ Additionally, the courts' limited scope make reparations more attainable through local efforts because there are fewer procedural barriers.⁴⁸ Specifically, the *In re African-American Slave Descendants Litigation* court found that legislatures are better suited to provide reparations for racial abuses because courts are constrained "by judicial doctrine and precedent."⁴⁹ Local governments were witnesses and participants to the housing and racial discrimination African Americans faced.⁵⁰ For instance, officials did little to nothing during the Tulsa Massacre, which turned a thriving African American

45. See Feagin, *supra* note 21; Solomon et al., *supra* note 33.

46.

[T]here is a political will for reparations present in municipalities that is absent at the gridlocked state and federal level: "It's really local activists and local actors, members of city councils . . . who are empowered in ways in their small communities to do things and to act outside of what the state would do and even the nation would do."

Simone, *supra* note 32, at 350; see also Deborah Barfield Berry & Nicquel Terry Ellis, 'The Timing Is Right for Reparations': Cities Propose Reparations Amid Nationwide Unrest, USA TODAY, <https://www.usatoday.com/story/news/nation/2020/07/21/asheville-and-other-cities-consider-reparations-address-slavery/5453184002> (July 22, 2020, 3:44 PM).

47. The Evanston, Illinois reparations initiative is one example of how local governments can solicit community input to address harms specific to its residents. See *infra* Section II.B.1.

48. Historically, lawsuits demanding reparations for the harms of slavery and systemic racism have been dismissed for lack of standing or sovereign immunity. Simone, *supra* note 32, at 351; see, e.g., *In re African-American Slave Descendants Litig.*, 471 F.3d 754, 763 (7th Cir. 2006) (holding that the litigants lacked standing to bring injury claims related to slavery and the statute of limitations precluded relief on claims brought by representatives of their estates).

49. *In re African-American Slave Descendants Litig.*, 375 F. Supp. 2d at 736; see also Simone, *supra* note 32, at 352; Hannon v. Lynch, No. 2:15-CV-0718, 2016 U.S. Dist. LEXIS 15618, at *4 (S.D. Ohio Feb. 9, 2016) ("This Court agrees that the Constitution commits to the representative branches of the federal government the issue of reparations for slavery.").

50. RITCHIE ET AL., *supra* note 13, at 14.

community into ashes as thirty-five blocks were burned to the ground—leaving the surviving residents homeless with no means of reimbursement.⁵¹ Although Oklahoma can assist in its own efforts in instituting reparations, local governments offer individualized attention that the federal government cannot.

B. *Forms of Racial Discrimination*

Discriminatory lending and housing practices reinforce a racial hierarchy and expand the homeownership gap between Black and white Americans. Eminent domain, for example, allows a government or governmental entity to take property from owners.⁵² The Fifth Amendment requires that property can only be condemned for a “public use.”⁵³ However, in the 1930s, “states adopted laws . . . allowing the condemnation of ‘blighted’ property for transfer to private parties . . . to alleviate ‘slum-like’ conditions.”⁵⁴ Though seemingly racially neutral, the use of eminent domain to evict African Americans post-World War II was so common that “slum clearance” was referred to as “negro clearance.”⁵⁵ “[This] disproportionate impact on African-Americans was not merely an accidental byproduct of efforts to ‘clean up’ bad neighborhoods. It was deliberately intended by local officials.”⁵⁶ Eminent domain did not fade with the Bruces and is still used to deprive Black landowners of their rights.⁵⁷ For example, Joseph Owens owned

51. Yuliya Parshina-Kottas, Anjali Singhvi, Audra D.S. Burch, Troy Griggs, Mika Gröndahl, Lingdong Huang, Tim Wallace, Jeremy White & Josh Williams, *What the Tulsa Race Massacre Destroyed*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html>.

52. Carrington J. Tatum, *Eminent Domain Lets Pipeline Developers Take Land, Pay Little, Say Black Property Owners*, INSIDE CLIMATE NEWS (Jan. 25, 2021), <https://insideclimatenews.org/news/25012021/eminent-domain-lets-pipeline-developers-take-land-pay-little-say-black-property-owners/>.

53. U.S. CONST. amend. V; *see also* ILYA SOMIN, THE CIVIL RIGHTS IMPLICATIONS OF EMINENT DOMAIN ABUSE 2 (2011), https://www.law.gmu.edu/assets/files/faculty/Somin_USCCR-aug2011.pdf.

54. SOMIN, *supra* note 53, at 5.

55. *Id.* at 6.

56. *Id.*

57. Dazio, *supra* note 3; *see, e.g.*, Tatum, *supra* note 52.

an acre of land that was acquired by his family in the 1940s.⁵⁸ In 2021, after denying multiple offers for an easement on his property by an oil pipeline company, he was sued for the easement and had to settle out of court due to lack of resources to fight the suit.⁵⁹ Community leaders have urged eminent domain reform, noting its use “extensively . . . take[s] land from Black communities, which contributes to Black land loss and the racial wealth gap.”⁶⁰

Racial violence was a common tactic used by private and state actors to control Black property ownership, delay wealth accumulation, and hinder the quality of life for communities. For instance, Georgia state officials turned Oscarville, a thriving predominately Black city in Georgia, into Lake Lanier in 1956 after white private citizens acquired Black homeowner deeds through violence and theft.⁶¹ A group of terrorists called the “Night Riders” were known for running Black residents out of Oscarville.⁶² Eventually, Black residents’ “property deeds found their way into the hands of white neighbors without any bill of sale or transfer. . . . More than 1,100 blacks would lose their livelihood, and in little time, the once functioning African-American town of Oscarville would be a ghost town.”⁶³ Additionally, Lake Martin in Kowaliga, Alabama, and Central Park in New York are other examples of thriving Black towns ransacked by racial hatred, decimating the entire community.⁶⁴

58. Tatum, *supra* note 52.

59. It is not uncommon for Black landowners to continuously lose portions, or the entirety, of their properties due to lack of resources. Owens is one of eight South Memphis landowners who lost a portion of their property rights through eminent domain lawsuits filed by big oil companies. *Id.*

60. Leanna First-Arai & Carrington Tatum, *Pipeline Tells Black Memphis Landowners: Sell Us the Rights to Your Land or Get Sued*, THE GUARDIAN (Apr. 22, 2021, 5:00 AM), <https://www.theguardian.com/us-news/2021/apr/22/byhalia-pipeline-memphis-black-landowners>; see Tatum, *supra* note 52.

61. See Bilal G. Morris, *The Haunting of Lake Lanier and the Black City Buried Underneath*, NEWSONE (Aug. 21, 2021), <https://newsone.com/4185919/lake-lanier-black-city-oscarville/>.

62. See *id.*

63. *Id.*

64. See Briona Lamback, *Lakes Were Built on Top of These Former Black Towns*, PUSHBLACK NOW (July 23, 2021), <https://www.pushblack.us/news/lakes-were-built-top-these-former-black-towns>.

These states turned a blind eye to private actors utilizing legal loopholes to profit from violating Black landowners' property rights for its own interests.⁶⁵ Other examples of housing discrimination include the deceptive lending practices experienced by Beatrice Barker described in the introduction of this Note, and the redlining of African American neighborhoods described below.⁶⁶

Several jurisdictions enacted laws post-World War II that systematically excluded persons of African descent, further devastating the economic state of African American communities.⁶⁷ Although state and federal fair lending laws were enacted and amended from the 1940s through the 1970s to curb predatory lending schemes,⁶⁸ the statutes have done little to remedy the wealth gap that resulted from these discriminatory schemes.⁶⁹

Post-slavery, a series of discriminatory laws were imposed to target Black communities.⁷⁰ To maintain the racial hierarchy between Black and white Americans, predatory lending practices were adopted to segregate communities and maintain

65. See *id.*; see generally SOMIN, *supra* note 53, at 43–49 (detailing the potential civil rights abuses caused by using the eminent domain power to take land from ethnic and racial minorities).

66. See *infra* Section I.C.

67. See Amanda Tillotson, *Race, Risk and Real Estate: The Federal Housing Administration and Black Homeownership in the Post World War II Home Ownership State*, 8 DEPAUL J. SOC. JUST. 25, 27–29 (2014); Robert Levinson, *Many Black World War II Veterans Were Denied Their GI Bill Benefits. Time to Fix That.*, WAR ON THE ROCKS (Sept. 11, 2020), <https://warontherocks.com/2020/09/many-black-world-war-ii-veterans-were-denied-their-gi-bill-benefits-time-to-fix-that/> (discussing how Black veterans were denied home loans they were entitled to through the GI Bill).

68. See *Fair Lending*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.treas.gov/topics/consumers-and-communities/consumer-protection/fair-lending/index-fair-lending.html> (last visited Dec. 29, 2022).

69. See Angela Hanks, Danyelle Solomon & Christian E. Weller, *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS (Feb. 21, 2018), <https://www.americanprogress.org/article/systematic-inequality/>.

70. Jim Crow laws imposed curfews, segregated schools and establishments, prevented employment in certain professions, and instituted convict-leasing, all strictly based on race. See RITCHIE ET AL., *supra* note 13, at 16–17, 103; see also Calvin Schermerhorn, *Why the Racial Wealth Gap Persists, More Than 150 Years After Emancipation*, WASH. POST (June 19, 2019, 6:00 AM), www.washingtonpost.com/outlook/2019/06/19/why-racial-wealth-gap-persists-more-than-years-after-emancipation/.

economic exclusivity of wealth within white neighborhoods.⁷¹ Predatory lending practices are “the fraudulent, deceptive, and unfair tactics” used to: (1) outright deny mortgage loans and home purchases to qualified prospective buyers largely due to race; or (2) intentionally target vulnerable consumers to unknowingly make adverse financial decisions.⁷² One of the most prevalent and harmful practices to emerge was redlining, which is the “systematic denial of credit, insurance, or loans to particular communities on a discriminatory basis”⁷³ The term “redline” is used because “lenders would literally draw a red line on a map around the neighborhoods they would not invest in based on demographics alone.”⁷⁴

Home equity is a large percentage of most American families’ wealth, but, in Pennsylvania, the African American homeownership rate is at 43.2% compared to the white homeownership at rate around 74.5%.⁷⁵ In Philadelphia, African American communities have significantly lower incomes, are disadvantaged by a lack of financial resources, and have lower rates of home ownership.⁷⁶ This disparity prompts

71. See, e.g., *City of Phila. v. Wells Fargo & Co.*, No. 17-2203, 2018 U.S. Dist. LEXIS 6443, at *2, 16 (E.D. Pa. Jan. 16, 2018) (denying Wells Fargo’s motion to dismiss the City of Philadelphia’s complaint that accused it of engaging in discriminatory mortgage-lending practices against African Americans and Latinos); see also MORRIS ROBINSON, JR. & JENNY THOMPSON, EVANSTON POLICIES AND PRACTICES DIRECTLY AFFECTING THE AFRICAN AMERICAN COMMUNITY 31, 37 (2021), <https://www.cityofevanston.org/home/showpublisheddocument/67191/637715545144570000>.

72. *Predatory Lending*, U.S. DEP’T OF JUST.: U.S. ATT’Y’S OFF. E. DIST. OF PA., <https://www.justice.gov/usao-edpa/divisions/civil-division/predatory-lending> (Apr. 16, 2015); LISA RICE, NAT’L FAIR HOUS. ALL., AN EXAMINATION OF CIVIL RIGHTS ISSUES WITH RESPECT TO THE MORTGAGE CRISIS: THE EFFECTS OF PREDATORY LENDING ON THE MORTGAGE CRISIS (2009), <https://nationalfairhousing.org/wp-content/uploads/2017/04/US-Commission-on-Civil-Rights-Statement-of-LR-on-Predatory-Lending-Final...-1.pdf>.

73. RITCHIE ET AL., *supra* note 13, at 11.

74. *Id.*

75. See John L. Micek, *Report: Pa. Has 17th Lowest Minority Homeownership Rate*, PA. CAPITAL-STAR (Mar. 1, 2021, 7:05 AM), <https://www.penncapital-star.com/commentary/report-pa-has-17th-lowest-minority-homeownership-rate-monday-morning-coffee>; see also Elissa Suh, *Black Homeownership in the U.S.*, POLICYGENIUS (Dec. 1, 2020), <https://www.policygenius.com/mortgages/black-homeownership-rates/>.

76. See Micek, *supra* note 75; PA. HOUS. FIN. AGENCY, RACE AND HOUSING IN PENNSYLVANIA (2007), https://www.phfa.org/forms/housing_study/2007/race_and_hsg_in_pa.pdf.

the question: what caused discriminatory lending in the first place?

C. *Discrimination in Loan Lending*

In 1929, the stock market crashed, causing the Great Depression.⁷⁷ After numerous unsuccessful attempts at revitalizing the United States' economy, President Roosevelt's administration enacted the New Deal.⁷⁸ This legislation included programs "focused on relief for the poor, the recovery of the U.S. economy, and a reform of the U.S. financial system."⁷⁹ One of the many goals of the New Deal was a push for American homeownership, and the federal government established multiple programs to help facilitate that process.⁸⁰ The Homeowners Loan Corporation ("HOLC") "purchased properties and existing home mortgages from banks to allow people to pay their home loans back to the government at lower interest rates."⁸¹ From 1933 to 1935, the HOLC "supplied over three billion dollars for over one million refinancing loans [and] . . . introduced standardized appraisals of . . . properties and communities for both individual and group loans."⁸² Although the HOLC was helpful for poor white Americans, African Americans were excluded from these benefits.

The HOLC established a color-coded rating system as part of its appraisal process and "systematically includ[ed] in the procedures an evaluation of the racial integration or potential racial integration of the community."⁸³ Category A was coded green and "described as 'new . . . and 'in demand as residential locations . . .'"⁸⁴ Category B was coded blue and described as

77. Kimberly Amadeo, *The Great Depression: What Happened, What Caused it, and How it Ended*, THE BALANCE, <https://www.thebalancemoney.com/the-great-depression-of-1929-3306033> (Apr. 5, 2022).

78. See Burton, *supra* note 23, at 538–39.

79. *Id.*

80. See *id.* at 539.

81. *Id.*

82. Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 621 (1999).

83. *Id.* at 622.

84. *Id.*

peak status but still desirable and “could be expected to remain stable.”⁸⁵ Category C was coded yellow and described neighborhoods as “definitely declining.”⁸⁶ Lastly, Category D was coded red and described as declined or invaluable.⁸⁷ It comes as no surprise that predominantly African American communities were coded as red, hence the term redlining.⁸⁸ Private institutions and banks adopted the HOLC’s coding system in rendering mortgage and home loan decisions, thus, “institutionalizing . . . the practice of racial redlining.”⁸⁹

This barrier made it nearly impossible for African Americans to build and retain wealth. “Real estate professionals and developers acted hand-in-glove with racist lending policies, . . . [s]ince housing equity makes up about two-thirds of median household wealth, excluding [African] Americans from establishing equity during a time of unprecedented rises in home values locked in and exacerbated wealth disparities.”⁹⁰ The HOLC created a way for white Americans to become homeowners through lower interest rates and increased loan duration by 300%.⁹¹ However, these resources were not available for Black Americans because redlined districts were deemed ineligible for credit, and, thus, “the government would not guarantee the loans.”⁹²

During the 1950s and 1960s, civil rights legislation emerged, which aimed to target and break down structural discrimination.⁹³ Before Congress enacted the Fair Housing Act,

85. *Id.*

86. *Id.* (quoting KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 197 (1987)).

87. *See id.*

88. *Id.* at 622–23.

89. *Id.* at 624.

90. Schermerhorn, *supra* note 70.

91. Burton, *supra* note 23, at 540–41.

92. Schermerhorn, *supra* note 70; *see also* Alex Gano, *Disparate Impact and Mortgage Lending: A Beginner’s Guide*, 88 U. COLO. L. REV. 1109, 1118 (2017).

93. *See The Civil Rights Movement and The Second Reconstruction, 1945–1968*, U.S. HOUSE OF REPRESENTATIVES: HIST. ART & ARCHIVES, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil-Rights-Movement/> (last visited Dec. 29, 2022).

98% of government-supported mortgages were afforded to white Americans.⁹⁴ After noticing a major housing concern, President Lyndon B. Johnson called for a federal fair housing reform, which led to the creation of the Fair Housing Act of 1968.⁹⁵ The Fair Housing Act (“FHA”), with its 1974 amendments, prohibits “discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of race or color[,] religion[,] sex[,] national origin[,] familial status, or disability.”⁹⁶ Though the FHA was enacted to provide a cause of action for victims of discriminatory housing laws, the 1968 provision created several loopholes for lenders. Under the provision, aggrieved persons filed complaints with the Department of Housing and Urban Development (“HUD”) to investigate alleged instances of discriminatory housing practices.⁹⁷ In order for the legislation to pass, “sponsors of the bill were forced to deny HUD a mechanism for enforcing the law’s antidiscrimination provisions relating to the sale or rental of housing.”⁹⁸ This compromise reduced HUD’s power to only “mediate disputes between a landlord or seller and individuals who believed that they had suffered discrimination.”⁹⁹ The Department of Justice also lacked adequate means to enforce the FHA because “[u]nder the original law, [it] could bring suit

94. Gano, *supra* note 92, at 1118.

95. See Fred McGhee, *The Most Important Housing Law Passed in 1968 Wasn’t the Fair Housing Act*, SHELTERFORCE (Sept. 5, 2018), <https://shelterforce.org/2018/09/05/the-most-important-housing-law-passed-in-1968-wasnt-the-fair-housing-act/>.

96. *The Fair Housing Act*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/fair-housing-act-1> (May 31, 2022); 42 U.S.C. §§ 3601–3631; see also Willy E. Rice, *Race, Gender, “Redlining,” and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 SAN DIEGO L. REV. 583, 600–01 (1996).

97. See Fair Housing Act of 1968, Pub. L. No. 90-284, § 810, 82 Stat. 73, 85 (repealed 1988); see also Arlene S. Kanter, *A Home of One’s Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities*, 43 AM. U. L. REV. 925, 936 (1994).

98. Kanter, *supra* note 97, at 936.

99. *Id.* at 936–37.

only to remedy an established pattern or practice of discrimination.”¹⁰⁰ Under the original provisions, “transactions relating to the sale of single-family homes that did not involve a broker or commercial advertising, . . . noncommercial housing operated by religious groups, and owner-occupied rental housing containing four or fewer units”¹⁰¹ were not covered, which left opportunities for housing discrimination.¹⁰²

To achieve its mission of providing fair housing to all Americans, “the Fair Housing Act includ[ed] Sections 3604 and 3605, which are applicable to mortgage lending discrimination and racial redlining, [and] declared unlawful a wide range of discriminatory practices in the housing and real estate industries.”¹⁰³ Though the FHA was enacted to combat discriminatory housing laws, specifically redlining, it did very little to prevent new forms of discriminatory lending that arose after its enactment.

The Equal Credit Opportunity Act of 1974 (“ECOA”) was enacted in response to the shortcomings of the FHA.¹⁰⁴ The FHA did not forbid discrimination against a person’s age or type of income.¹⁰⁵ However, the act forbade discrimination the following ways:

- (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
- (2) because all or part of the applicant’s income derives from any public assistance program; or
- (3) because the

100. *Id.* at 937.

101. *Id.* at 937–38.

102. Though the Fair Housing Act was a step in the right direction for victims of racial discrimination, the Act failed to fully address challenges to fair housing. This is evidenced by the racial disparity in homeownership that existed since the Act’s inception and continues into the present. *Fair Housing Act Overview and Challenges*, NAT’L LOW INCOME HOUS. COAL. (Oct. 23, 2018), <https://nlihc.org/resource/fair-housing-act-overview-and-challenges>.

103. Nier, *supra* note 82, at 631–32; *see* 42 U.S.C. §§ 3604–3605.

104. 15 U.S.C. §§ 1691–1691(f).

105. *The Fair Housing Act*, *supra* note 96.

applicant has in good faith exercised any right under this chapter.¹⁰⁶

The ECOA was created to be a cause of action for victims of discriminatory housing practices because lenders and sellers practiced more discrete forms of discrimination against African Americans after the FHA's enactment.¹⁰⁷ The ECOA was Congress' way of ensuring that lending institutions only consider factors that attest to an individual's creditworthiness as a potential borrower.¹⁰⁸

To generate reliable information for consumers and federal officials determining lending practices, Congress enacted the Home Mortgage Disclosure Act of 1975 ("HMDA").¹⁰⁹ Congress found that "some depository institutions [failed] . . . to provide adequate home financing to qualified applicants on reasonable terms and conditions."¹¹⁰ The HMDA does not create any new causes of action for individuals or violations for lenders; additionally, it does not expand upon any "access-to-capital" rights.¹¹¹ Thus, the HMDA was solely meant to generate reliable information on mortgage lending for federal officials to study and make recommendations.

Finally, in 1977, Congress enacted the Community Reinvestment Act ("CRA"), which sought to discontinue redlining practices "through regular Fair Lending

106. 15 U.S.C. § 1691(a).

107. See *The Fair Housing Act*, *supra* note 96 ("The majority of the Justice Department's pattern or practice cases involve claims of race discrimination. Sometimes, housing providers try to disguise their discrimination by giving false information about availability of housing, either saying that nothing was available or steering homeseekers to certain areas based on race."). For example, in a class action suit against a lender "between 2004 and 2008, the lender discriminated by charging more than 200,000 Hispanic and African-American borrowers in more than 180 geographic markets in 41 states and the District of Columbia higher fees and rates than non-Hispanic white borrowers because of their race or national origin rather than the borrowers' creditworthiness or other objective criteria related to borrower risk." Marjorie A. Shields, Annotation, *Discrimination Against Credit Applicant on Basis of Race or National Origin Under Equal Credit Opportunity Act*, 15 U.S.C.A. §§ 1691 *et seq.*, 13 A.L.R. Fed. 3d 9. (2016).

108. See Julia Kagan, *Equal Credit Opportunity Act (ECOA)*, INVESTOPEDIA (Oct. 2, 2022), <https://www.investopedia.com/terms/e/ecoa.asp>.

109. See Rice, *supra* note 96, at 603–04.

110. *Id.* at 603 (quoting 12 U.S.C. § 2801(a)).

111. *Id.* at 604.

Examinations.”¹¹² Unlike the HMDA, the CRA provides administrative enforcement through four federal supervisory agencies: (1) The Office of Comptroller of Currency; (2) the Board of Governors of the Federal Reserve System; (3) the Federal Reserve System; and (4) the Federal Deposit Insurance Corporation.¹¹³ Under 12 U.S.C. § 2901(b), “each appropriate Federal financial supervisory agency [must] use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.”¹¹⁴

D. Lack of Enforcement and Continued Housing Discrimination

During the era of fair lending legislations, and arguably during the four decades that followed, enforcement under these acts were rare and sporadic.¹¹⁵ Though Congress enacted fair lending legislation to safeguard individual rights, lenders utilized covert means of practicing discriminatory lending policies.¹¹⁶ The federal institutions tasked with enforcing anti-housing discriminatory statutes seemingly turned a blind eye to lenders ignoring federal laws and continuing to redline for discriminatory reasonings.¹¹⁷ For instance, after the passage of the FHA in 1968, “[t]he DOJ did not file a single mortgage discrimination case until 1991”¹¹⁸ Criticism of the fair lending laws, primarily the FHA and ECOA, focused on its lack of enforcement.¹¹⁹ Private actions against lenders were rare and nearly impossible to win mainly because of evidentiary

112. Gano, *supra* note 92, at 1120.

113. See Rice, *supra* note 96, at 606; see also 12 U.S.C. §§ 2902(1)(A)–(C) (1994).

114. 12 U.S.C. § 2901(b).

115. See Equal Credit Opportunity Act of 1974, 15 U.S.C. §§ 1691–1691f (2012); Community Reinvestment Act of 1977, 12 U.S.C. §§ 2801–2810 (2012); Gano, *supra* note 92, at 1120.

116. See Michael Barbella, *Redlining Making a Comeback, But in Reverse*, N.J. STATE BAR FOUND. (Feb. 26, 2021), <https://njsbf.org/2021/02/26/redlining-making-a-comeback-but-in-reverse/>.

117. See Gano, *supra* note 92, at 1120.

118. *Id.*; see Kanter, *supra* note 97, at 937.

119. See Gano, *supra* note 92, at 1120.

problems.¹²⁰ Additionally, “legal uncertainty surrounding the cognizability of disparate impact liability under the FHA chilled governmental enforcement efforts.”¹²¹

Three types of mortgage lending discrimination continued to occur: (1) underwriting discrimination, “where . . . lender[s] denied credit outright to a prospective minority borrower”; (2) traditional redlining; and (3) reverse redlining, “where . . . lender[s] charged higher interest rates or fees to a non-white borrower”¹²² These lending schemes continued to create economic instability in minority neighborhoods while allowing white wealth to grow exponentially. Case studies and research on the racial wealth gap conclude that non-white minorities in the United States have one tenth of the wealth of white American families.¹²³ For example,

Philadelphia was one of the largest cities in America where African Americans were disproportionately turned away when they tried to buy a home. African Americans and non-Hispanic whites make up a similar share of [Philadelphia’s] population . . . , but the data showed whites received [ten] times as many conventional mortgage loans in 2015 and 2016.¹²⁴

A new approach is needed to ensure fair housing to all individuals. The wealth gap between African Americans and whites is a byproduct of centuries of minority subjugation,

120. *Id.*

121. *Id.*

122. *See id.* at 1120–21.

123. *See* Aaron Glantz & Emmanuel Martinez, *Modern-Day Redlining: How Banks Block People of Color from Homeownership*, CHI. TRIB. (Feb. 17, 2018, 2:30 PM), <https://www.chicagotribune.com/business/ct-biz-modern-day-redlining-20180215-story.html>. *But see* Lora Shinn, *Addressing the Racial Homeownership Gap in America: How Gaps in Home Equity Reveal Larger Disparities*, THE BALANCE, <https://www.thebalance.com/how-home-equity-drives-the-racial-wealth-gap-4178236> (May 24, 2022) (“The net worth of a typical White family is eight times greater than that of a Black family by one measure.”); Kimberly Amadeo, *Racial Wealth Gap in the United States: Is There a Way to Close it and Fill the Divide?*, THE BALANCE, <https://www.thebalancemoney.com/racial-wealth-gap-in-united-states-4169678> (Jan. 20, 2022).

124. Glantz & Martinez, *supra* note 123.

therefore, harms must specifically be addressed on a local and national scale.

E. *Predatory Housing Practices in Philadelphia*

Predatory lending is a broad term that encompasses a range of deceptive and prejudicial tactics that either impose unfair loan terms on a borrower or disqualify an otherwise qualified borrower based on race or geographic locations.¹²⁵ In general, predatory lending occurs when a lender “extends to a consumer a loan with unfavorable terms that are structured to strip the equity from the home.”¹²⁶ Subprime home equity or refinanced loans secured by the borrower’s residence can be predatory because the borrower risks foreclosure and loss of other assets if they default.¹²⁷ A subprime loan “refers to credit extended to borrowers who do not qualify for . . . prime rate loans” due to a perceived heightened credit risk.¹²⁸

Former Pennsylvania Attorney General and current Governor Josh Shapiro introduced three examples of predatory lending.¹²⁹ First, “[a] real estate agent routinely requires African American potential buyers to be pre-qualified for a mortgage prior to providing listings or conducting home tours, but does not require the same of others.”¹³⁰ Second, a “mortgage lender has a pattern of avoiding or making home loans in certain neighborhoods because” Black people are heavily concentrated in the area.¹³¹ Third, “[a] real estate agent has a practice of

125. See Bill Fay, *What is Predatory Lending?*, DEBT.ORG, <https://www.debt.org/credit/predatory-lending> (last visited Dec. 29, 2022); Kimm Tynan, *Pennsylvania Welcomes Predatory Lenders: Pennsylvania’s Act 55 Preempts Philadelphia’s Tough Ordinance but Provides Little Protection for Vulnerable Borrowers*, 34 RUTGERS L.J. 837, 839–40 (2003).

126. Jonathan L. Entin & Shadya Y. Yazback, *City Governments and Predatory Lending*, 34 FORDHAM URB. L.J. 757, 761 (2007).

127. See Tynan, *supra* note 125, at 839.

128. *Id.* at 840. Types of subprime loans include interest-only, fixed-rate, adjustable rate, and dignity loans. *Subprime Loan*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/credit/subprime-loan/> (Oct. 14, 2022).

129. *Fair Housing and Lending*, OFF. OF ATT’Y GEN. JOSH SHAPIRO, <https://www.attorneygeneral.gov/protect-yourself/civil-rights/fair-housing-and-lending/> (last visited Dec. 29, 2022).

130. *Id.*

131. *Id.*

steering white potential buyers toward neighborhoods with lower percentages of minorities, and steering minority potential buyers toward neighborhoods with higher percentages of minorities.”¹³²

The Department of Banking’s statement of policy published under the Mortgage Bankers and Brokers and Consumer Equity Protection Act identifies other examples.¹³³ First, “a mortgage broker discloses to [a] consumer that the mortgage broker’s fee for [a] transaction will be \$1,000, although the mortgage broker knows that his fee will be much higher.”¹³⁴ Then, “the consumer appears at the loan closing and discovers when reviewing the HUD-1 settlement sheet that the mortgage broker’s fee is \$3,000.”¹³⁵ Second, “[a] consumer seeks a \$30,000 fixed-rate home equity loan from a mortgage broker on a house that the consumer has advised the mortgage broker he intends to remain in permanently.”¹³⁶ Even though “the mortgage broker [can] provide the requested loan, the mortgage broker ‘steers’ the consumer to variable-rate products with balloon payment features for which the mortgage broker will receive higher compensation than with a traditional fixed-rate home equity loan.”¹³⁷

Discriminatory lending and housing practices reinforce a racial hierarchy and expand the homeownership gap between Black and white Americans. In Philadelphia, for instance, despite the FHA’s enactment over fifty years ago, reverse redlining¹³⁸ and similarly outlawed practices have continued

132. *Id.*

133. 36 Pa. Bull. 7622–24 (Dec. 16, 2006).

134. *Id.* at 7623.

135. *Id.*

136. *Id.*

137. *Id.*

138. Reverse redlining is the practice of selling services at higher prices than it would to white residents similarly situated. The goal was to offer loans or mortgages to African Americans on terms that were nearly impossible to satisfy. See *Reverse Redlining*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/reverse%20redlining> (last visited Dec. 29, 2022).

well into the twenty-first century.¹³⁹ Specifically, African Americans in parts of North and West Philadelphia still feel the effect of racial discrimination in obtaining mortgages.¹⁴⁰ This is because “[h]ousing stock had deteriorated because loans for home repair or home purchase were so hard to come by. That led to a predatory rental market, where rents were jacked up for those who struggled to move elsewhere.”¹⁴¹ As recently as 2018, Philadelphia was found to be one of forty-eight cities where “African Americans were 2.7 times as likely as whites to be denied a conventional mortgage.”¹⁴²

In 1937, Philadelphia adopted the HOLC’s method of redlining which financially segregated Black and white communities.¹⁴³ In a study on the impact of structural racism, Philadelphia City Controller Rebecca Rhynhart noted, “minority populations in Philadelphia were forced to reside in neighborhoods condemned by the federal government as unworthy of investment. This denial of opportunity has compounded in the decades since, leading to unequal outcomes across Philadelphia’s segregated neighborhoods nearly a century later.”¹⁴⁴ As a result, previous redlined areas of Philadelphia still experience “disproportionate amounts of poverty, poor health outcomes, limited educational attainment, unemployment, and violent crime compared to other neighborhoods in the city.”¹⁴⁵

139. See *Attorney General Shapiro Puts Spotlight on Redlining*, OFF. OF ATT’Y GEN. JOSH SHAPIRO (Oct. 22, 2018), <https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-puts-spotlight-on-redlining/>; see also Glantz & Martinez, *supra* note 123 (highlighting Philadelphia and forty-eight other cities that have a pattern of discriminatory lending practices).

140. See Glantz & Martinez, *supra* note 123; Aaron Moselle, *Report: Black People are 3 Times More Likely to be Rejected for a Mortgage in Philadelphia*, WHYY (Dec. 13, 2021), <https://whyy.org/articles/report-black-people-are-3-times-more-likely-to-be-rejected-for-a-mortgage-in-philadelphia/> (noting that mortgage rejection rates are 20% or more in Southwest, West, North, and Northwest Philadelphia).

141. Jake Blumgart, *How Redlining Segregated Philadelphia*, WHYY (Dec. 10, 2017), <https://whyy.org/segments/redlining-segregated-philadelphia/>.

142. Glantz & Martinez, *supra* note 123.

143. See RHYNHART, *supra* note 42, at 3–4.

144. *Id.* at 4.

145. *Id.* at 4–5.

Subprime lending is not predatory on its own, but it is commonly used in combination with “unfair, deceptive, or discriminatory terms, conditions, or conduct” and disproportionately impacts African American and low-income populations.¹⁴⁶ Characteristics of these practices include inadequate disclosure,¹⁴⁷ balloon mortgages,¹⁴⁸ loan packing,¹⁴⁹ loan flipping,¹⁵⁰ asset-based lending,¹⁵¹ reverse redlining,¹⁵² negative amortization,¹⁵³ and all contribute to “taking advantage of vulnerable or unsophisticated borrowers.”¹⁵⁴ The social consequences of these lending practices are felt heaviest upon African American communities. At the height of the housing market crisis in 2009, foreclosure filings were at a high of 8,330 a year.¹⁵⁵ This trend continued in Philadelphia, evidenced by a 2017 suit filed by the City against Wells Fargo Bank.¹⁵⁶ The complaint noted “at least 1,067 discriminatory high-cost or high-risk loans [were] issued to minority borrowers by Wells Fargo” from 2004 to 2014.¹⁵⁷ Furthermore, analyses of loan data showed “23.3% of loans from Wells Fargo

146. Tynan, *supra* note 125, at 843; see Entin & Yazback, *supra* note 126, at 759.

147. Tynan, *supra* note 125, at 854–57.

148. *Id.* at 850–51.

149. *Id.* at 848.

150. *Id.* at 852.

151. *Id.* at 847.

152. See *id.* at 846–47; *Reverse Redlining, Discrimination, and For-Profit Education*, NAT'L CONSUMER L. CTR. (Aug. 19, 2011), <https://www.studentloanborrowerassistance.org/reverse-redlining-discrimination-and-for-profit-education/> (“Redlining is the practice of denying credit to particular neighborhoods on a discriminatory basis. The flip side is reverse redlining, the practice of targeting these same communities or protected classes for predatory lending. The creditor may not even offer better terms to other borrowers, but the key element of reverse redlining is the targeting of protected racial groups, elders, and others for unusually bad credit terms.”).

153. Tynan, *supra* note 125, at 850.

154. *Id.* at 843.

155. Editorial Bd., Opinion, *Round up the Real Redlining Culprits in Philadelphia's Ills*, PHILA. INQUIRER, <https://www.inquirer.com/opinion/editorials/wells-fargo-redlining-discrimantory-loans-predatory-philadlephia-editorial-20191227.html> (Dec. 27, 2019).

156. See *City of Philadelphia v. Wells Fargo & Co.*, No. 17-2203, 2018 U.S. Dist. LEXIS 6443, at *2, *16 (E.D. Pa. 2018) (denying Wells Fargo's motion to dismiss the City of Philadelphia's complaint accusing it of engaging in discriminatory mortgage-lending practices against African Americans and Latinos).

157. *Id.* at *2.

to minority customers in Philadelphia were high-cost or high-risk, while only 7.6% of loans made to white customers were high-cost or high-risk.”¹⁵⁸ This is one example of how easy it is for lenders to target and execute predatory loans on vulnerable populations.

Across the nation, African American communities are disproportionately impacted by state and federal practices, not necessarily because actors *intend* to discriminate based on race, but because the historical deprivation of Black communities has never been sufficiently remedied.¹⁵⁹ The socioeconomic impacts of unremedied harms are felt most heavily in African American communities.¹⁶⁰ Predatory lending often leads to foreclosed homes and bankruptcy proceedings for borrowers.¹⁶¹ These foreclosed homes often “remain vacant and poorly maintained for extended periods, contributing to blight, depressed property values, crime, and deterioration of neighborhoods.”¹⁶² Furthermore,

[a] study by the Association of Community Organizations for Reform Now (ACORN) found that 52% of African Americans in Philadelphia and the surrounding suburbs receive subprime loans when refinancing a mortgage, as compared with 11% of whites. Within Philadelphia, 20% of African Americans received subprime loans for home purchases, compared with 2% of whites.¹⁶³

158. Press Release, Off. of the Mayor, *City Files Lawsuit Against Wells Fargo*, CITY OF PHILA. (May 15, 2017), <https://www.phila.gov/press-releases/mayor/city-files-lawsuit-against-wells-fargo/>.

159. *Id.*; *The Harmful Impacts of Implicit Bias and Systemic Racism*, NEIGHBORHOOD HOUSE, <https://neighb.org/harmful-impacts-implicit-bias-systemic-racism/> (last visited Dec. 29, 2022) (describing how implicit bias plays a role in systemic racism which cannot be remedied until implicit biases are acknowledged).

160. See *The Harmful Impacts of Implicit Bias and Systemic Racism*, *supra* note 159.

161. See MA, *supra* note 27; *Predatory Lending*, *supra* note 72; Javier Simon, *What is Predatory Lending? Warning Signs to Watch for When You Take Out a Mortgage*, PHILA. INQUIRER, <https://www.inquirer.com/real-estate/warning-signs-predatory-lending-home-mortgage-20200606.html> (June 13, 2020).

162. Tynan, *supra* note 125, at 858.

163. *Id.* at 872 (footnotes omitted).

In Philadelphia, there are over 130,000 abandoned homes, contributing not only to blight and decreased property values, but crime as well.¹⁶⁴ This problem stems from decades of systematic racism.¹⁶⁵ For instance, Kensington, a neighborhood of Philadelphia, was deindustrialized in the 1950s, leading to a “significant population loss, high unemployment, economic decline, and the abandoning of homes in the neighborhood.”¹⁶⁶ Today, Kensington is one of the areas in Philadelphia where, because of lack of resources and community investments, high poverty rates created a high crime area.¹⁶⁷ It is no coincidence that African Americans are still fighting through the systematic disadvantages imposed mere decades ago.¹⁶⁸ Philadelphia has one of the highest poverty and homicide rates in the country.¹⁶⁹ “A 2001 study in Philadelphia found that houses within 150 feet of a vacant or abandoned property experienced a net loss of \$7,627 in value.”¹⁷⁰

In the face of staggering foreclosure rates,¹⁷¹ Philadelphia adopted the Prohibition Against Predatory Lending Practices by a 16-0 vote.¹⁷² Largely regarded as one of the toughest anti-predatory lending measures, its purpose was to collect and

164. MA, *supra* note 27.

165. RHYNHART, *supra* note 42, at 5 (“Philadelphia neighborhoods experiencing the highest levels of present-day violence are the same neighborhoods characterized as ‘hazardous’ or ‘declining’ in the HOLC map. In fact, [75%] of all homicides in 2019 occurred in regions graded as ‘C’ (declining) or ‘D’ (hazardous) by the HOLC.”).

166. MA, *supra* note 27.

167. *See id.*

168. *See* RHYNHART, *supra* note 42, at 2.

169. Mike Shields, *The Changing Distribution of Poverty in Philadelphia*, ECON. LEAGUE (Dec. 16, 2020), <https://economyleague.org/providing-insight/leadingindicators/2020/12/16/phlpov19>; *Philadelphia Has Highest Murder Rate per Capita Among Country's 10 Largest Cities*, CBS NEWS PHILA. (July 23, 2021, 5:15 AM), <https://www.cbsnews.com/philadelphia/news/philadelphia-highest-murder-rate-per-capita-countrys-10-largest-cities/>.

170. MA, *supra* note 27.

171. Philadelphia experienced an increase in foreclosures, leading to the enactment of the Prohibition Against Predatory Lending Practices ordinance. *See* Tynan, *supra* note 125, at 872–73.

172. *Id.* at 873; PHILA., PA., CODE §§ 9-2400–2401 (2001); *see Philadelphia's New “Predatory Lending” Law: What Every Lender Must Know*, REED SMITH (May 1, 2001), <https://www.reed-smith.com/en/perspectives/2001/05/philadelphias-new-predatory-lending-law--what-ever>.

publicly distribute necessary data from financial institutions for residents to have access to, prevent lenders and referral services from engaging in predatory lending practices, and prevent them from taking advantage of state programs that encourage home ownership and repair.¹⁷³ The ordinance addressed the issue of predatory lending in four ways: (1) prohibiting loans identified as predatory; (2) prohibiting business relationships between Philadelphia and lenders; (3) restricting “the permissible terms and conditions of loans identified as ‘high cost’ or ‘threshold’;” and (4) collecting and distributing data related to predatory lending activities.¹⁷⁴

The ordinance “mandates pre-loan home counseling for certain loans and requires that lenders record a certification of compliance for each loan attesting that it is not ‘predatory,’” prohibited equity stripping by not allowing lenders to originate “threshold” and “high cost” loans when the lender had little certainty, based on a borrower’s financial history, that loan repayment was feasible, and changed the procedures of how lenders could provide home improvement financing.¹⁷⁵ Violators are subject to monetary fines and penalties affecting the lender’s ability to receive certain state deposits, contracts, investments, and licensing privileges.¹⁷⁶ Put simply, most types of predatory loans were prohibited.¹⁷⁷ The ordinance was designed to be tough on predatory lenders, but it still provided flexibility to allow corrective action on behalf of violators.¹⁷⁸

Officials and lending industry lobbyists successfully preempted the Philadelphia ordinance with Pennsylvania’s

173. See PHILA., PA., CODE §§ 9-2400, 2401(2) (2001); *Philadelphia’s New “Predatory Lending” Law: What Every Lender Must Know*, *supra* note 172.

174. Tynan, *supra* note 125, at 874; see PHILA., PA., CODE §§ 9-2400–2403 (2001).

175. *Philadelphia’s New “Predatory Lending” Law: What Every Lender Must Know*, *supra* note 172.

176. *Id.*

177. *Id.*

178. “Several corrective action vehicles are available to lenders under the Ordinance. The Ordinance provides lenders with both a 30-day corrective action mechanism and a 60-day bona fide error mechanism to make ‘restitution’ and amend the loan so that it will no longer be ‘predatory.’” *Id.*

Consumer Equity Protection Act, an amendment to the Mortgage Bankers and Brokers Act.¹⁷⁹ Instead of re-examining the criteria lenders use to execute subprime loans, Pennsylvania enacted legislation to preempt the legality of Philadelphia's ordinance by prohibiting municipalities from enacting laws that regulate lending institutions or their activities.¹⁸⁰ The title of the Act implies the law's purpose is to protect vulnerable consumers from predatory lending, when instead it offered "few new protections or remedies to Pennsylvania consumers."¹⁸¹ Because the effects of discriminatory housing is concentrated in predominately African American communities, the question becomes how African American property owners in these communities retain wealth when predatory lending directly affects the value of their assets.

II. DEVELOPING REPARATIONS

To consider reparations, legislators must choose the form of compensation they plan to provide.¹⁸² While reparations come in many forms, it is worth reiterating that any form of reparations must include acknowledgement of harms and "efforts to leverage power, influence, and resources to ensure cessation and non-repetition."¹⁸³ Conversations surrounding reparations for African Americans have generally centered around federal initiatives.¹⁸⁴ For instance, H.R. 40 was introduced "to establish a commission to study and consider a

179. 63 PA STAT. AND CONS. STAT. ANN. §§ 456.501–456.524 (West) (effective June 25, 2002) (collectively the consumer equity protection act); *see also* Tynan, *supra* note 125, at 879; Entin & Yazback, *supra* note 126, at 771 n.80.

180. *See* Tynan, *supra* note 125, at 873.

181. *Id.*

182. RITCHIE ET AL., *supra* note 13, at 26. Reparations must include some form of compensation to not only rectify previous harms but atone for the injustice that the recipients faced. Essentially, compensation stands as an assurance that the government pledges to cease perpetuating harms and should be "proportional to the gravity of the violation." *Id.*

183. *Id.* at 28.

184. "[T]he purpose of the bill is to acknowledge the injustices done to Black Americans during legal enslavement and the periods of state-sponsored terror that followed." Burton, *supra* note 23, at 536–37.

national apology and proposal for reparations” for various human rights violations, including—but not limited to—“slavery . . . racial and economic discrimination against African Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies.”¹⁸⁵ Massachusetts Representative Seth Moulton petitioned to amend Title 38 of the United States Code to extend eligibility for housing loans, educational programs, and other benefits to Black WWII veterans, their spouses, and their descendants because they were historically excluded from receiving those benefits.¹⁸⁶ The Congressional findings showed that the G.I. Bill, though race-neutral on its face, discriminatorily applied federal benefits against African Americans.¹⁸⁷ H.R. 5905 seeks to remedy the indisputable fact that Black Americans were systemically disadvantaged by intentional housing and educational discrimination by including direct language that guarantees housing loan assistance for Black veterans.¹⁸⁸

While the federal government is slowly beginning to address the harms of systemic racism, states should do their part to initiate commissions to consider why reparations are important and how they can begin to craft legislation. To assist this effort, states should analyze the potential successes and failures of both established and proposed initiatives to “allow communities to prioritize and plan intentionally for reparations initiatives and focus intensely on outcomes.”¹⁸⁹

185. H.R. 40, 117th Cong. (1st Sess. 2021). Significant constitutional challenges stand in the way of successfully implementing reparations for de facto discrimination against African Americans. See Simone, *supra* note 32, at 378–79; *infra* Section II.A.

186. H.R. 5905, 117th Cong. (1st Sess. 2021); Seth Moulton, <https://moulton.house.gov/> (last visited Dec. 29, 2022).

187. H.R. 5905 § 2(6) (“In administering its housing guaranty program, the Veterans Administration adopted the Federal Housing Administration’s racial exclusion programs, also known as redlining, which excluded a significant number of African Americans from taking full advantage of the housing guaranty program.”).

188. See H.R. 5905.

189. Brewington, *supra* note 15, at 2183 (citing Mary Gavin, *Sharper Focus on Local Reparations at Second Reparations Town Hall Meeting*, EVANSTON ROUNDTABLE (May 26, 2020),

A. Constitutional Legality of Reparation Programs

Crafting reparation programs is a difficult task because the Fourteenth Amendment places limitations on race-based legislation.¹⁹⁰ Legislators must consider the constitutional limits of reparations programs in order for them to be implemented.¹⁹¹ To withstand a constitutional violation, courts must find these programs consistent with the Fourteenth Amendment's Equal Protection Clause.¹⁹² The Fourteenth Amendment confirmed the rights of African Americans and conferred enforcement powers to Congress to prevent state-sanctioned racial oppression.¹⁹³ Although the Equal Protection Clause only protects citizens from state oppression, courts use the Fifth Amendment's Due Process Clause to apply the same principles to federal actors.¹⁹⁴ The Supreme Court established an anti-classification view of the Equal Protection Clause, which means classifications based on certain characteristics are inherently divisive and require a strict standard of review.¹⁹⁵

The legal standard for reparation programs turns on whether the classification is race-neutral or race-conscious.¹⁹⁶ Courts

<https://evanstonroundtable.com/2020/05/26/sharper-focus-on-local-reparations-at-second-reparations-town-hall-meeting/>).

190. See Simone, *supra* note 32, at 377–78.

191. See *id.* at 377.

192. See *id.* at 378. This Note does not focus on state laws, but they are also relevant considerations for reparation programs.

193. See U.S. CONST. amend. XIV, §§ 1, 5; see also *Washington v. Davis*, 426 U.S. 229, 239 (1976) (finding the purpose of the Fourteenth Amendment is to prevent discrimination on the basis of race); *United States v. Cruikshank*, 92 U.S. 542, 554–55 (1875) (holding the Fourteenth Amendment prohibits Congress from interfering with actions conducted by private individuals).

194. See, e.g., *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954); *United States v. Carolene Products Co.*, 304 U.S. 144, 147–48, 154 (1938) (holding the Act at issue did not infringe the Fifth Amendment's Due Process clause).

195. See, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995); *Johnson v. California*, 543 U.S. 499, 506 (2005) (“We therefore apply strict scrutiny to *all* racial classifications to “smoke out” illegitimate uses of race”); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 741–42 (2007) (holding all racial classifications must withstand strict scrutiny, regardless of the benign nature or legislative intent of the classification).

196. See Simone, *supra* note 32, at 378.

apply a “rational basis” review for race-neutral classifications and the higher standard of “strict scrutiny” for suspect classifications.¹⁹⁷ Under rational basis review, courts uphold a law so long as it is rationally related to a legitimate government interest.¹⁹⁸ Under this standard, the law or legislation is presumed to be valid, and the petitioner bears the burden of proving otherwise.¹⁹⁹ On the contrary, strict scrutiny is the most restrictive standard of review and requires the government to prove a law is narrowly tailored to a compelling governmental interest.²⁰⁰ In *Parents Involved in Community Schools v. Seattle School District No. 1*, the Court held that remedying de facto discrimination (discrimination in fact) does not constitute a compelling interest under this standard; in contrast, de jure discrimination (discrimination in the law) is a compelling interest.²⁰¹ Put another way, the government may only remedy discrimination caused by discriminatory laws—it may not remedy discrimination caused by society or social morality. Thus, states and localities must essentially make a case against themselves, show that the race-neutral alternatives were insufficient, and narrowly tailor the race-conscious legislation to remedy the specific issue(s) identified.²⁰² In *Missouri v. Jenkins*, Justice O’Connor noted “it is not true that strict scrutiny is ‘strict in theory, but fatal in fact,’”²⁰³ and, in the context of reparations, race-conscious remedies are an uphill battle that must be carefully studied and designed to avoid invalidation.

197. *Id.*

198. See, e.g., *Carolene Products Co.*, 304 U.S. at 151–52 (“Whether in such circumstance the public would be adequately protected by the prohibition of false labels and false branding imposed by the Pure Food and Drugs Act, or whether it was necessary to go farther . . . was a matter for the legislative judgment and not that of courts.”) (citation omitted).

199. See *FCC v. Beach Commc’ns*, 508 U.S. 307, 313–15 (1993); see, e.g., *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 109–10 (1949).

200. See, e.g., *Johnson*, 543 U.S. at 509–12; *Parents Involved*, 551 U.S. at 720.

201. *Parents Involved*, 551 U.S. at 794–96.

202. See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498–500, 507 (1989) (ruling a city may not enact a plan to provide race-based programs to promote minority businesses without specific evidence of race-based discrimination).

203. *Missouri v. Jenkins*, 515 U.S. 70, 112 (1995) (O’Connor, J., concurring) (citing *Fullilove v. Klutznick*, 448 U.S. 448, 519 (1980) (Marshall, J., concurring)).

In all, legislators must craft reparations legislation that can withstand strict scrutiny if the law is challenged under the Fourteenth Amendment.

B. *The Significance of State Reparation Laws: Looking to Evanston, Illinois as an Example*

The conversation surrounding reparative remedies does not stop at the federal level. The demand for reparative measures should be addressed by states and private institutions. On September 30, 2021, California Governor Gavin Newsom signed SB 796 which authorized Los Angeles County to return land it had seized to the Bruce family.²⁰⁴ Los Angeles County Supervisor Janice Hahn noted that “[t]he seizure of Bruce’s Beach nearly a century ago was an injustice inflicted upon not just Willa and Charles Bruce but generations of their descendants who almost certainly would have been millionaires[.]”²⁰⁵ Once the Bruce family acquired its land back from Los Angeles County, they were able to rectify the harm to their family and sell the beach back to the State for nearly \$20 million dollars.²⁰⁶ Similarly, the city of Evanston, Illinois enacted one of the first housing reparation initiatives to address past wrongs inflicted upon its African American

204. In 1912, Charles and Willa Bruce purchased the lots that would later become Bruce’s Beach; however, due to the increased affordability of lands along the coast of California and the uptick in the African American population within these regions, “white opposition in the white community and resentment towards the [B]lack beachfront” became inevitable. Stephens, *supra* note 2; *Moving to Right Historical Wrong, Governor Newsom Signs Legislation to Return Bruce’s Beach to Black Descendants*, OFF. OF GOVERNOR GAVIN NEWSOM (Sept. 30, 2021), <https://www.gov.ca.gov/2021/09/30/moving-to-right-historical-wrong-governor-newsom-signs-legislation-to-return-bruces-beach-to-black-descendants/>. The city, along with help from the Ku Klux Klan, condemned Bruce’s Beach and forced African American property owners to sell their land at prices below the fair market value. Stephens, *supra* note 2. Manhattan Beach officials ultimately seized the Bruce’s property through eminent domain in 1924 after years of racial harassment and violence. See *Moving to Right Historical Wrong, Governor Newsom Signs Legislation to Return Bruce’s Beach to Black Descendants*, *supra*.

205. See City News Service, *After Winning Legal Battle, Family Selling Bruce’s Beach Back to LA County for \$20M*, ABC7 (Jan. 3, 2023), <https://abc7.com/bruces-beach-manhattan-la-county-coastal-property/12647127/>.

206. See *id.*

communities.²⁰⁷ Evanston, like Philadelphia and many other cities in the United States, discriminated against its fast-growing Black population in many ways.²⁰⁸ Regarding housing, both cities denied its African American residents access to equal housing, forced them into certain areas of the city by adopting the HOLC's redlining method, and enacted laws aimed at stripping Black individuals of their homes and property.²⁰⁹

1. *Evanston's housing program and how reparations can be executed in various jurisdictions*

Though Evanston has its own unique history with its relation to systematic oppression, many of the injustices African Americans faced in Philadelphia, described above, also occurred in Evanston. Like Philadelphia, Evanston today is "known for its diversity, liberal residents, and progressive politics."²¹⁰ But also like Philadelphia, zoning and redlining in Evanston severely restricted access to housing for otherwise eligible African Americans.²¹¹ Specifically, Evanston enacted legislation that re-zoned a predominately Black residential district to commercial use to remove the Black families that lived there and hinder the city's fast-growing Black

207. Robin Snyderman & Robin Rue Simmons, *The Reparations Work Underway in Evanston, IL: Promoting an Affirmative and Accountable Government*, 30 J. AFFORDABLE HOUS. 151, 152 (2021).

208. See generally ROBINSON & THOMPSON, *supra* note 71, at 5; *supra* Section I.E.

209. See ROBINSON & THOMPSON, *supra* note 71, at 5, 36–38, 43, 69–70; *supra* Section I.E.

210. Snyderman & Simmons, *supra* note 207, at 152–53; *Politics & Voting in Philadelphia, Pennsylvania*, BEST PLACES, <https://www.bestplaces.net/voting/city/pennsylvania/philadelphia> (last visited Dec. 29, 2022); Chris Brennan & Sean Collins Walsh, *Progressives Have Scored Big in Philly Politics. Here Comes the Establishment Pushback*, PHILA. INQUIRER, <https://www.inquirer.com/politics/clout/philadelphia-mayor-council-super-pacs-2023-elections-20220318.html> (Mar. 18, 2022); *Race, Diversity, and Ethnicity in Philadelphia, PA*, BEST NEIGHBORHOOD, <https://bestneighborhood.org/race-in-philadelphia-pa/> (last visited Dec. 29, 2022).

211. See ROBINSON & THOMPSON, *supra* note 71, at 34–40; *supra* Section I.E.; see generally *Evanston Local Reparations*, CITY OF EVANSTON, <https://www.cityofevanston.org/government/city-council/reparations> (last visited Dec. 29, 2022) (providing reports about zoning and redlining in Evanston).

population.²¹² “The zoning ordinance essentially codified the process of limiting where Black residents could live, and ensured . . . that Black residents would not find ‘open’ to them any of the [other] areas”²¹³ By the 1940s, Evanston had the largest Black suburban population in the state, but its ever-growing population was restricted to certain sections of the city that the government deemed appropriate for them.²¹⁴ “[I]n many ways, the 1940s can be seen as the second wave of housing segregation in Evanston.”²¹⁵ Black residents in Evanston often were denied housing outside of the appropriate areas of the city, which made them targets of predatory lending.²¹⁶

African Americans in Evanston and Philadelphia were restricted by racial covenants; this practice constrained the availability of housing for both cities’ African American populations.²¹⁷ Though outlawed in 1948, “[w]hite homeowners

212. See Snyderman & Simmons, *supra* note 207, at 154–55; ROBINSON & THOMPSON, *supra* note 71, at 37 (“[I]t must be understood that Evanston’s 1921 zoning ordinance imposed restrictions upon a city that was already, to some degree, unofficially zoned since a majority-Black neighborhood had already been established.”).

213. ROBINSON & THOMPSON, *supra* note 71, at 37.

214. *Id.* at 31. Because of the Great Migration of Black Americans from the rural South to the North, the Black population in Evanston grew from 737 in 1900 to 6,026 by 1940. *Id.* at 66.

215. *Id.* at 40.

216. *Id.* at 31. “Also by 1940, Black families were reportedly paying higher rents for comparable properties rented by white tenants [W]hite bankers and mortgage lenders financed the mortgages of many Black-owned homes through discriminatory terms” *Id.* at 33.

217. “[O]ur search has yielded more than 3,800 distinct properties with racial covenants, spanning the period 1920–1932.” SANTUCCI, *supra* note 27, at 12. More specifically,

the largest number of covenants were found in Ward 22, an area of northwest Philadelphia with a population that was [7.8%] African American in 1920 The next largest shares of covenanted properties were found in Wards 34 and 42, with 593 and 434 covenants, respectively. Taken together, Wards 22, 34, and 42 contained nearly [50%] of all covenants in the sample.

Id. at 15. Moreover, in Evanston,

[a]fter the passage of the 1921 zoning ordinance, segregation had been upheld through various practices. Some white landlords continued to restrict access to housing in the city through “racially restrictive covenants” that provided that homes “shall not be conveyed, leased to, or occupied by anyone not a Caucasian (servants excepted).”

ROBINSON & THOMPSON, *supra* note 71, at 39.

... recorded racially restrictive covenants that provided that their homes 'shall not be conveyed, leased to, or occupied by anyone not a Caucasian.'"²¹⁸ These covenants were enforced against Black prospective homeowners and renters until Title VIII of the 1968 Civil Rights Act made racial covenants illegal.²¹⁹ Consequently, when Evanston and Philadelphia engaged in housing discrimination, both cities' Black communities faced overcrowding, inadequate housing, and displacement.²²⁰

2. Important factors that Evanston's model addresses

Reparations is a complex and cumbersome process, but it is a necessary step to begin to repair the physical, structural, and financial damage racism caused to Black communities. In 2019, the Evanston City Council enacted Resolution 126-R-19, establishing the City of Evanston Reparations Fund and Reparations Subcommittee to start addressing the deeply entrenched problems caused by racism and white supremacy.²²¹ These problems are widespread, and other municipalities should follow Evanston's lead by starting to chip away at this huge, complex, and difficult project.²²² Philadelphia shares many characteristics with Evanston,²²³ which is why Evanston is a sufficient model to apply to Philadelphia. More broadly, though, the project is bigger than any one city and, indeed, needs the support of states and the federal government too.

218. ROBINSON & THOMPSON, *supra* note 71, at 67; see SANTUCCI, *supra* note 27, at 10 ("In *Shelley v. Kraemer*, the U.S. Supreme Court ruled that any court that enforced a racial covenant violated the equal protection clause of the 14th Amendment The . . . decision meant that enforcing a racial covenant through the court system was akin to the state taking action against citizens, violating their 14th Amendment rights. Still, [it] did not prevent racial covenants from being written into deeds.") (citation omitted); see also *Shelley v. Kraemer*, 334 U.S. 1, 4 (1948).

219. SANTUCCI, *supra* note 27, at 10; see ROBINSON & THOMPSON, *supra* note 71, at 47.

220. See ROBINSON & THOMPSON, *supra* note 71, at 41–42, 44–45; see generally RHYNHART, *supra* note 42.

221. *Evanston Local Reparations*, *supra* note 211. Like H.R. 40, Resolution 126-R-19 established a committee to study the viability and feasibility of reparations for African American residents. EVANSTON, ILL., RES. 126-R-19 (2019). It specifically called for recommendations for housing assistance and economic development programs. *Id.*

222. See Snyderman & Simmons, *supra* note 207, at 152.

223. See *supra* Sections I.E., II.B.1.

Evanston's Restorative Housing Program ("Program") seeks to repair the harms identified and caused by the city to its African American population.²²⁴ The Program should be a model for other states to use and modify to address its own participation in systematic discrimination. To address the city's increasing homeless population and lack of affordable housing, the 80th City Council put together a formal committee and allowed for public input on what forms of reparations would be most beneficial to the community at large.²²⁵ Community leaders strongly responded with housing-related resources like grants.²²⁶ Evanston Mayor Daniel Biss articulated the main principle of reparation initiatives, stating

Reparations is a huge, difficult, and complex project that seeks to address the damage done by white supremacy It will not be "solved" on the first try. On the contrary, we will have to try many different approaches, listen with an open mind to learn from what works and what needs to be changed, and adjust our strategy on an ongoing basis.²²⁷

Evanston addressed four issues that all jurisdictions will face in forming its reparative initiatives: the purpose, eligibility, funding, and benefit allocation. To address purpose and eligibility, the city looked to its history to decipher the harms it caused to its African American community members because of discriminatory housing policies, practices, and inaction on behalf of the city.²²⁸ It determined that the purpose of the

224. See *Evanston Local Reparations*, *supra* note 211.

225. Snyderman & Simmons, *supra* note 207, at 155.

226. *Id.*

227. Mayor-Elect Daniel Biss' Statement Today About Evanston's Reparations Restorative Housing Program, DEAR EVANSTON (Mar. 20, 2021), <https://www.dearevanston.org/post/mayor-elect-daniel-biss-statement-today-about-evanston-s-reparations-restorative-housing-program-1>.

228. See *Evanston Local Reparations*, *supra* note 211; see generally ROBINSON & THOMPSON, *supra* note 71, at 3 (describing "historic and contemporary instances where the City of Evanston might have facilitated, participated in, enacted, or stood neutral in the wake of acts of segregative and discriminatory practices").

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Program would be to: (1) “[r]evitalize, preserve and stabilize Black/African owner-occupied homes in Evanston”; (2) “[i]ncrease homeownership and build the wealth of Black/African-American residents”; (3) “[b]uild intergenerational equity amongst Black/African-American residents”; and (4) “[i]mprove the retention rate of Black/African-American homeowners in the City of Evanston.”²²⁹ After extensive research, Evanston determined that from 1919 to 1969, it either engaged in, or turned a blind eye to, discriminatory housing policies that directly and/or indirectly impacted African Americans and its housing market.²³⁰ Thus, to be eligible for the Program, Black recipients must show proof of residency or ancestry between 1919 and 1969.²³¹

It is important to note that Evanston officials are being flexible and cautious with the proceeds for its reparations initiatives. In fact, only 4% of the Program budget was allocated so far because the city will continue holding public forums for community leaders to voice their suggestions on where funds would best serve the community.²³² For its reparations initiatives, it approved a new marijuana tax where ten million dollars of the revenue would be used to re-stabilize Evanston’s Black community through housing, educational, and economic development initiatives.²³³ The revenue for the Program is derived from donations and profits from the marijuana tax.²³⁴ The first 400,000 dollars from the marijuana tax will provide Program participants up to \$25,000 for home repairs,

229. *Evanston Local Reparations*, *supra* note 211.

230. *See id.*

231. Snyderman & Simmons, *supra* note 207, at 155.

232. *See id.* at 156.

233. *Id.* at 155; see Teo Armus, *A Chicago Suburb Wants to Give Reparations to Black Residents. Its Funding Source? A Tax on Marijuana.*, WASH. POST (Dec. 2, 2019, 7:25 AM), <https://www.washingtonpost.com/nation/2019/12/02/evanston-illinois-reparations-plan-african-americans-is-marijuana-tax/>.

234. Armus, *supra* note 233.

homeownership, and mortgage assistance.²³⁵ As of 2022, sixteen recipients were selected to receive Program assistance.²³⁶

3. Criticisms of Evanston's reparations program

Evanston's reparations initiatives are not without major criticisms. The Restorative Housing Program faced backlash from residents who believe the program was not structured around community input.²³⁷ Evanston community members advocated for cash payments, but instead the city instituted the Restorative Housing Program to address the concerns voiced.²³⁸ Although some community members were disappointed that cash payments were not included in the Program, there are significant constitutional barriers for providing direct payments from the government to specific groups based on race.²³⁹ Moreover, if the city of Evanston's goal for the Program is to eradicate the harms associated with housing discrimination there must be guidelines in place to ensure benefits distributed to recipients are used for that purpose.²⁴⁰

235. The Home Ownership initiative provides down payment/closing cost assistance to purchase real property located within the City . . . [t]he Home Improvement initiative provides funds to repair, improve, or modernize real property located within the City . . . [and the] Mortgage Assistance initiatives provide funds to pay down mortgage principal, interest, and/or late penalties for real property located within the City. *Evanston Local Reparations*, *supra* note 211; *see Snyderman & Simmons*, *supra* note 207, at 155–56. It is important to note that the city of Evanston is not stopping at housing-related reparations, as the city formed a reparations committee in May where “future reparations initiatives will be developed through additional community outreach.” *Evanston Local Reparations*, *supra* note 211.

236. Will Jones, *Evanston Reparations: 16 Recipients Selected to Receive \$25,000 for Housing*, ABC NEWS (Jan. 13, 2022), <https://abc7chicago.com/evanston-reparations-program-illinois-il/11465347/>.

237. Jeroslyn JoVonn, *Black Residents Reject Reparations Program in Evanston, IL*, BLACK ENTER. (June 3, 2021), <https://www.blackenterprise.com/black-residents-reject-reparations-program-in-evanston-il/> (mentioning how an Evanston resident, eligible for the restorative program, refuses to apply or address the program as “reparations”).

238. *Id.*

239. *See supra* Section II.A.

240. *See supra* Section II.A.; RITCHIE ET AL., *supra* note 13, at 28; *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 506 (1989) (“If a 30% set-aside was ‘narrowly tailored’ to compensate black contractors for past discrimination, one may legitimately ask why they are forced to share this ‘remedial relief’ with an Aleut citizen who moves to Richmond tomorrow? The gross

Another criticism is scholars and reparations advocates classify Evanston's program as community investments instead of true reparations.²⁴¹ Evanston residents allege that banks and lenders involved in the distribution of mortgages, real estate, and home loans for the Program have a long history of engaging in the harms the city is trying to repair.²⁴² This criticism is rooted in the foundation of reparations, which is to "leverage power, influence, and resources to ensure cessation and non-repetition."²⁴³ Evanston residents rightfully inquire into the labeling of the Program as "reparations" because of the lack of assurance that these institutions—who may have historically participated in housing discrimination—will not repeat or reestablish new forms of discrimination against African American residents.²⁴⁴ This is a deeper and more complex concern with two viable solutions: (1) a federal initiative to restructure mortgage lending laws or (2) states and municipalities can institute greater restrictions to protect vulnerable consumers. The National Consumer Law Center recommends states tighten its lending laws and offers thirteen recommendations on how to do so, including: limiting balloon payments, prohibiting loan fees, and capping interest rates for loan installments and open-ended credit.²⁴⁵ This solution offers states and local jurisdictions the ability to work within the scope of their powers, while demonstrating its commitment to rectifying the harms of discriminatory housing practices. When considering the feasibility of reparations, Philadelphia should re-examine its consumer lending laws with an effort to

overinclusiveness of Richmond's racial preference strongly impugns the city's claim of remedial motivation.").

241. See JoVonn, *supra* note 237.

242. See ROBINSON & THOMSON, *supra* note 71, at 35; Snyderman & Simmons, *supra* note 207, at 155.

243. RITCHIE ET AL., *supra* note 13, at 28.

244. See JoVonn, *supra* note 237.

245. CAROLYN CARTER, LAUREN SAUNDERS & MARGOT SAUNDERS, NAT'L CONSUMER L. CTR., PREDATORY INSTALLMENT LENDING IN THE STATES: 2020, at 4 (2020), <https://www.nclc.org/images/pdf/rpt-InstallmentLoans-feb-2020.pdf>.

redistribute the power and resources that these institutions gained from discriminatory housing practices.

Lastly, residents want a reparations plan that would benefit the entire African American community in Evanston.²⁴⁶ According to residents, the problem with the Restorative Housing Program is that renters are not eligible because the Program only benefits current and future homeowners.²⁴⁷ Although critics of Evanston's Program raise legitimate concerns over the under-inclusiveness of its eligibility standards and how funding can be used, it is important to note that legislators must narrowly tailor reparations to address *compelling* governmental interests.²⁴⁸ To give residents direct payments to use outside of housing contexts would likely not survive constitutional scrutiny, because the interest in remedying state-sanctioned housing discrimination could not be satisfied if residents used the money for other causes.²⁴⁹

4. *Benefits and limitations of reparation initiatives in Philadelphia*

Philadelphia should expand on the Evanston model to implement a restorative housing program for residents that were impacted by discriminatory housing policies. Like Evanston, Philadelphia adopted the HOLC's redlining method, which systematically discriminated against Black prospective

246. JoVonn, *supra* note 237.

247. Tomas Kassahun, *Black Residents in Evanston, Illinois Voice Concerns About the City's Reparation Program*, BLAVITY (June 5, 2021, 6:46 PM), <https://blavity.com/s1ccprok9u?category=1=news>; see Mullen & Darity Jr., *supra* note 37 ("By constraining the use of the funds for homeownership, the Evanston plan ignores deficits in other asset categories that beset Black Americans, such as nonresidential real estate, business equity, retirement accounts, savings, and stocks and bonds.").

248. See *Johnson v. California*, 543 U.S. 499, 505–06 (2005).

249. Evanston officials addressed why the Program does not issue cash payments for reparations, noting "the City does not have authority to exempt direct payments from either state or federal income taxes. As a result, a recipient would be liable for the tax burden associated with the award." *Evanston Local Reparations*, *supra* note 211; see, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 471 (1989) (noting the City of Richmond's set-aside plan was not narrowly tailored to accomplish a remedial purpose).

renters and homeowners.²⁵⁰ The denial of housing opportunities for Black residents has led “to unequal outcomes across Philadelphia’s segregated neighborhoods nearly a century later. Historically redlined areas of Philadelphia continue to experience disproportionate amounts of poverty, poor health outcomes, limited educational attainment, unemployment, and violent crime compared to other neighborhoods in the city.”²⁵¹ Traditional means of government assistance, like subsidized housing, are not enough to curb the growing wealth gap between African American and white citizens because of the extent of systematic discrimination against African Americans.²⁵² The Federal Reserve Bank of Philadelphia published a report finding the lack of access to mortgage credit and accountability for historical and structural discrimination in homeownership as key barriers to narrowing the wealth gap between Black and white Americans.²⁵³

To begin implementing reparations, Philadelphia must determine how it plans to address the impact of housing discrimination. Philadelphia should have two main focuses: eligibility and benefit allocation. First, the plan for reparations must carefully construe eligibility to not be cumbersome to fulfill, while establishing barriers to protect those most in need. Eligible recipients should have proof that either themselves or at least one ancestor resided in Philadelphia between a predetermined time-period that the city should set based on its findings of when Black residents were likely to be discriminated

250. See Blumgart, *supra* note 141; RHYNHART, *supra* note 42, at 2–4; ROBINSON & THOMPSON, *supra* note 71, at 69–72.

251. RHYNHART, *supra* note 42, at 4–5.

252. See RITCHIE ET AL., *supra* note 13, at 15 (“As a direct result of redlining and other forms of systemic discrimination, white families on average possess six times the wealth of Black families, a disparity which has worsened over time.”).

253. See JACOB WHITON, THERESA SINGLETON & LEI DING, FED. RSRV. BANK OF PHILA., *WHAT’S BEHIND THE RACIAL HOMEOWNERSHIP GAP IN PHILADELPHIA?* 4–5 (2021) [hereinafter *WHAT’S BEHIND THE RACIAL HOMEOWNERSHIP GAP IN PHILADELPHIA?*], <https://www.philadelphiafed.org/-/media/frbp/assets/community-development/briefs/cdro-brief-homeownership2-final.pdf>.

against.²⁵⁴ These individuals were most likely impacted by segregated housing and discriminatory lending and should be fairly compensated for the equity lost because of racism.²⁵⁵

Second, “any true reparations plan must erase the [city’s] . . . Black-White wealth gap.”²⁵⁶ Over the last thirty years, Black homeownership in Philadelphia has steadily declined, which is likely a by-product of racial bias in mortgage lending, redlining, and displacement.²⁵⁷ For Philadelphia to enact meaningful reparations, it should look to re-examine its banks and mortgage lending process.²⁵⁸ A big problem with Evanston’s model is it allows banks and private lenders, who are part of the problem, to benefit through the Restorative Housing Program.²⁵⁹ This caveat is a key reason why opposers claim Evanston mislabeled their program as reparations for residents.²⁶⁰ One alternative Philadelphia officials could consider is restricting lenders who participated in predatory housing practices from being included in any Housing Reparation programs. Another option to consider is capping interest rates on mortgages and loans for Program participants,

254. Evanston determined that from 1919 to 1969, the city allowed its Black residents to be excluded from fair and adequate housing, thus residents need to show proof of residency or ancestry between 1919-1969 to be eligible. See CITY OF EVANSTON, LOCAL REPARATIONS: RESTORATIVE HOUSING PROGRAM OFFICIAL PROGRAM GUIDELINES 3–5 (2021) [hereinafter CITY OF EVANSTON, LOCAL REPARATIONS]; *Evanston Local Reparations*, *supra* note 211; see also Snyderman & Simmons, *supra* note 207, at 155. Evanston officials have broad guidelines for submitting proof which includes, but is not limited to, school yearbook photos, mail, paystubs, and contracts to purchase or rent homes in Evanston. See CITY OF EVANSTON, LOCAL REPARATIONS, *supra*, at 5.

255. See *supra* Section I.E.

256. Mullen & Darity Jr., *supra* note 37.

257. Maggie Mancini, *Philly’s Black Homeownership Has Been Steadily Declining, Solutions to Structural Barriers Could Help*, PHILLY VOICE (Dec. 14, 2021), <https://www.phillyvoice.com/report-black-white-homeownership-gap-philadelphia-federal-reserve/>; see WHAT’S BEHIND THE RACIAL HOMEOWNERSHIP GAP IN PHILADELPHIA?, *supra* note 253, at 2–5.

258. This is where the state of Pennsylvania would need to support Philadelphia’s efforts for constructing reparations because the Pennsylvania Consumer Equity Protection Act prohibits municipalities from enacting laws that regulate lending institutions or their activities. See Tynan, *supra* note 125, at 872–73; *supra* notes 179–81 and accompanying text.

259. While residents are awarded compensation to go towards mortgage or home repair payments, the real benefit goes to banks and mortgage lenders who will ultimately receive compensation for decades of discriminatory lending practices. See Kassahun, *supra* note 247.

260. See *supra* notes 239–42 and accompanying text.

which would reduce the profits lenders receive in these transactions.

Reparations in Philadelphia are not without challenges. While Philadelphia can use Evanston's Restorative Housing Program as a formulaic backdrop to establish its own reparations program(s), it will have to determine where funding will come from and how the benefits will be distributed. Like Evanston, Philadelphia could devote a new tax to fund housing reparations.²⁶¹ For instance, Cannabidiol, otherwise known as CBD, is newly regulated under Pennsylvania law;²⁶² Philadelphia could consider redistributing tax funds from CBD purchases towards housing reparation programs for African Americans. While this decision presents some funding uncertainty, it would be a step in the right direction for Philadelphia legislators. Another solution posed would be establishing a reparations congressional committee. This is not a novel idea. For example, in 2019 Pennsylvania Representative Christopher Rabb asked fellow house members to support a bill to study the viability of reparations for African Americans residents.²⁶³ The bill would consist of four parts: (1) "a commission to determine . . . the financial impact of past and current laws, court decisions, government programs and practices that" perpetuate harm against African Americans; (2) "a [codified] formal apology from the Pennsylvania General Assembly for the complicity of Pennsylvania's . . . government in white supremac[y]"; (3) "acknowledge[ment] that chronic poverty and other inequities are [a result] of racist public policy"; and (4) a "significant financial redress to

261. See *supra* notes 231–33 and accompanying text.

262. *Taxation of CBD and Hemp Products*, PA. DEP'T OF REVENUE, <https://www.revenue.pa.gov/TaxTypes/SUT/Pages/CBD-and-Hemp.aspx> (last visited Dec. 29, 2022).

263. See Memorandum from Rep. Christopher M. Rabb, Pa. H. Rep., to All H. Reps. (Aug. 25, 2019); Stephen Caruso, *This Philly Lawmaker Wants Pennsylvania to Offer Reparations to its Black Residents*, INST. OF THE BLACK WORLD 21ST CENTURY (Sept. 3, 2019), <https://ibw21.org/reparations/this-philly-lawmaker-wants-pennsylvania-to-offer-reparations-to-its-black-residents/>.

African-American residents of Pennsylvania.”²⁶⁴ Philadelphia would benefit from a bill like this one because it would acknowledge and attempt to rectify the city’s complicity in harms that economically disadvantaged African American residents and potentially garner attention from other cities and states. A commission to study reparations is especially important because it will identify potential solutions to challenges like funding, eligibility, constitutionality, and oversee the purpose, structure, and distribution of benefits.²⁶⁵

CONCLUSION

There are many limitations and challenges that can arise with providing reparations on a local and national scale.²⁶⁶ As Evanston’s Mayor pointed out, reparations will be a complex and constantly changing issue that must be addressed.²⁶⁷ It is an overwhelming challenge because systematic oppression continued well after the end of slavery, so the impact is much greater and affects multiple generations of African Americans.²⁶⁸ However, the longer the United States waits to act, the more daunting reparations will be. States and localities should look to and expand upon Evanston’s Restorative Housing Program to begin remedying the impact of systematic discrimination in housing markets.²⁶⁹ The wealth gap between African and white Americans continues to grow because of the harms that were done to African American communities, especially in homeownership.²⁷⁰ There is no one-size-fits-all solution to reparations, and jurisdictions must be flexible and open to community input. Because discrimination in housing

264. Memorandum from Rep. Christopher M. Rabb to All H. Reps., *supra* note 263; Caruso, *supra* note 263.

265. See, e.g., *Evanston Local Reparations*, *supra* note 211.

266. See *supra* Section II.A; see also *Kassahun*, *supra* note 247.

267. See *Mayor-Elect Daniel Biss’ Statement Today About Evanston’s Reparations Restorative Housing Program*, *supra* note 227.

268. See Feagin, *supra* note 21; RITCHIE ET AL., *supra* note 13, at 13–15.

269. See *supra* Section II.B.

270. See *supra* Part I.

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happened at all levels of government, reparations is not solely a national issue.²⁷¹ Just as the federal government must address its complicity in white supremacy, states and localities must aid in remedying the harms it allowed upon its African American residents.

271. See *supra* Section I.A; RITCHIE ET AL., *supra* note 13, at 14.