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Subcommittee on Housing and Community Opportunity

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INTRODUCTION

Good morning, Congresswoman Waters, Ranking Member Capito and Members of the Subcommittee. My name is Leslie M. Proll. I am the Director of the Washington Office of the NAACP Legal Defense & Educational Fund, Inc. (LDF), the nation's oldest civil rights law firm. I am also the Co-Chair of the Housing Task Force of the Leadership Conference on Civil Rights. Prior to coming to Washington, I spent nearly a decade litigating fair housing cases throughout Alabama. I have brought cases involving discrimination in the rental of apartments, including tax credit properties; discrimination in real estate sales; racial harassment and intimidation in connection with housing; lending discrimination; discrimination in municipal zoning; and discrimination against African-American real estate agents who sought to provide equal housing opportunities for their customers. I helped to establish the first private fair housing organizations in Alabama, have represented such organizations in fair housing cases, and have litigated several fair housing cases which included evidence of testing.

We are pleased today to testify in support of H.R. 476, which would widely expand proven and effective measures for detecting and redressing housing discrimination. Housing issues remain at the core of our nation's structural inequality. We are keenly aware of the need for strengthened enforcement of fair housing laws. There is also a real sense of urgency for creative ideas and solutions for promoting a more integrated society at all levels. In our opinion, Congress should be doing everything within its power to increase authorization for the Fair Housing Initiatives Program, ensure that testing programs are fully funded and widely available as primary

enforcement tools for battling the entrenched problem of discrimination, and advance research around the causes and effects of housing discrimination and segregation.

THE NEED FOR ENHANCED FAIR HOUSING ENFORCEMENT

Last year, we celebrated the 40th Anniversary of the passage of Title VIII of the Civil Rights Act of 1968 (the “Fair Housing Act”). Unfortunately, our nation still remains largely segregated by race, leading many to call the Fair Housing Act the broadest civil rights statute and the most underutilized. African Americans still experience the highest degree of residential segregation. As of 2000, the dissimilarity index in the average metropolitan area for African Americans and whites was .65. In other words, 65% of the African-American population would have to move in order to become fully integrated in a metropolitan area.¹

The most recent national Housing Discrimination Study, sponsored by HUD and conducted by the Urban Institute, discovered high rates of housing discrimination nationwide in the rental and sale of housing. Nationwide, the study found discrimination in 20.3% of the instances in which an African American tried to rent an apartment and in 16.8% of the instances in which an African American attempted to purchase a home. Hispanics experienced discrimination 23.4% of the time in attempted rentals and 18.3% of the time in home sales. For Asians and Pacific Islanders, the report uncovered discrimination 21.5% of the time in rentals and 20.4% of the time in home sales.

¹ E.Glaeser & J. Vigdor, RACIAL SEGREGATION IN THE 2000 CENSUS (2001). The Brookings Institution Survey Series. The Brookings Institute, Center on Urban and Metropolitan Policy, *available at* <http://www.brookings.edu/es/urban/census/glaeser.pdf>.

Discrimination at these rates—over one in five instances for rentals across racial groups—is deeply troubling, especially given that such actions have been illegal for decades.²

The devastating impact of housing segregation and discrimination on our communities and social structures cannot be overstated. Persistent segregation is closely linked to the harms associated with racial isolation and concentrated poverty. It was over sixty years ago that the Supreme Court struck down racially restrictive covenants in *Shelley v. Kraemer*.³ In a companion case, LDF founder Charles Hamilton Houston explained the impact of housing discrimination in language that still resonates today:

[Racially restrictive covenants] have been a direct and major cause of enormous overcrowding into slums, with consequent substantial disorganization of family and community life. These effects have not been, and cannot be, in our fluid society, confined to the intended victims of the restrictions; they permeate the community and exert a baneful influence upon the economic, social, moral, and physical well-being of all persons, white and black, young and old, rich and poor. They are incompatible with the foundations of our republic and their judicial approbation may well imperil our form of government and our unity and strength as a nation.⁴

In recognition of the continued pervasiveness of housing segregation and discrimination, last year LDF—in partnership with the National Fair Housing Alliance, the Lawyers’ Committee for Civil Rights, and the Leadership Conference on Civil Rights—established the National Commission on Fair Housing and Equal Opportunity to create and implement a vision for bringing about a more integrated residential America. The Commission was chaired by former Secretaries of Housing and Urban Development,

² Jeffrey Dillman, *Symposium: New Strategies in Fair Housing: New Strategies for Old Problems: The Fair Housing Act at 40*, 57 *Clev. St. L. Rev.* 197, 201-202 (2009).

³ 334 U.S. 1 (1948).

⁴ Consolidated Brief for Petitioners at 8, *Hurd v. Hodge*, 334 U.S. 24 (1948) (Nos. 290, 291).

Henry Cisneros and the late Jack Kemp. The Commission held a series of hearings around the country for purposes of collecting testimony about the nature and extent of housing segregation and discrimination as well as proposals and recommendations for building and sustaining a more inclusive society. A final 85-page report was issued in December 2008, which called for better enforcement, improved education and most importantly, systemic change.⁵ Among the recommendations made by the Commission were to create an independent fair housing enforcement agency, revive the President's Fair Housing Council, and undertake a series of steps to ensure that the relevant enforcement agencies were in full compliance with their statutory and regulatory obligations under the Fair Housing Act and related statutes.⁶

THE IMPORTANCE OF THE FAIR HOUSING INITIATIVES PROGRAM

LDF applauds the provision in H.R. 476, which increases the authorization for the Fair Housing Initiatives Program (FHIP). In fact, we recommend that the authorization be increased to an even higher amount than that provided for in the legislation.

In our opinion, private fair housing organizations are the mainstay of the fair housing movement. Established in communities all over the nation, these organizations are often the only entities in a particular area equipped to identify and redress housing discrimination. The Civil Rights Division of the Department of Justice, national civil rights organizations, and private attorneys can only litigate a certain number of cases at

⁵ The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity, NAACP Legal Defense & Educational Fund, Inc.; National Fair Housing Alliance; Lawyers' Committee for Civil Rights; Leadership Conference on Civil Rights, *available at* http://www.naacpldf.org/content/pdf/housing_discrimination/fair_housing_report.pdf.

⁶ *Id.* at Executive Summary, III – VIII.

once. Fair housing organizations are on the ground, collecting information over time, and monitoring housing patterns in their own communities. Their local leadership, continuity, and familiarity with the local housing industry ensure that incidents of housing discrimination, systemic issues, and problematic trends are identified and redressed. Frankly, their onsite capacity for civil rights monitoring and enforcement is unparalleled in the civil rights field. As others will testify today, their very existence is dependent upon funding from HUD. It is incumbent upon Congress to ensure that the valuable services they provide in eradicating discrimination in housing continue.

It is also appropriate that HUD funding be restricted to those organizations which are “qualified private nonprofit fair housing enforcement organizations.” This provision ensures that federal funds are directed to only those organizations with the structure and experience necessary to carry out effective enforcement efforts.

TESTING AS A POWERFUL ENFORCEMENT TOOL

LDF strongly supports the provision set forth in H.R. 476 to advance the role of testing in fair housing enforcement. A fully funded program for nationwide enforcement testing could help to overcome the formidable obstacles to equal housing opportunity.

Testing has long been viewed—by both advocates and courts—as a powerful tool for detecting and addressing discrimination in housing. Because applications for housing are generally more transitory in nature, it is often difficult to discern comparison treatment; hence, persons who are discriminated against are not likely ever to know that the discrimination occurred. More than twenty-five years ago, the Seventh Circuit noted

in *Richardson v. Howard*, “It is frequently difficult to develop proof in discrimination cases and the evidence provided by testers is frequently valuable, if not indispensable.”⁷

The use of testers to collect evidence regarding the practices, policies, and procedures of agents, brokers, and managers for the purpose of ascertaining their compliance with fair housing laws has long been endorsed by the Supreme Court and other federal courts. In 1982, the Supreme Court issued its seminal decision in *Havens Realty Corp. v. Coleman*, which granted testers standing to sue for injuries under the Fair Housing Act, describing testers as “individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collective evidence of [unlawful practices].”⁸

Since that time, numerous courts have recognized that testing plays a pivotal role in ensuring compliance with the Fair Housing Act. *See, e.g., Kukui Gardens Ass'n. v. Jackson* (“Courts have opined that the [Havens] decision may have been a recognition that testing may be the only effective method of enforcing the fair housing laws.”);⁹ *Indep. Living Res. v. Oregon Arena Corp.*, (“Testing was the most effective method-and perhaps the only effective method-of enforcing the FHA. If the [testing] organization lacked standing, then the Act likely would go unenforced, the illegal practice would continue, and the defendant would not be held accountable for its conduct.”).¹⁰

⁷ 712 F.2d 319, 321 (7th Cir. 1983).

⁸ 455 U.S. 363, 373 (1982).

⁹ No. 06-00534, 2007 WL 128857, *6 (D. Haw. Jan. 11, 2007) (unpublished).

¹⁰ 982 F.Supp. 698, 761 n.86 (D. Or. 1997).

As housing discrimination has become more subtle and sophisticated, reliance on testing methodology has become even more critical. As early as 1975, courts recognized the unique ability of testing to detect subtle discrimination:

The evidence resulting from the experience of testers is admissible to show discriminatory conduct on the part of the defendants. The Fair Housing Act of 1968 was intended to make unlawful simpleminded as well as sophisticated and subtle modes of discrimination. It is the rare case today where the defendant either admits his illegal conduct or where he sufficiently publicizes it so as to make testers unnecessary. For this reason, evidence gathered by a tester may, in many cases, be the only competent evidence available to prove that the defendant has engaged in unlawful conduct.”¹¹

Fortunately today, there are relatively fewer instances of overt examples of discrimination—“smoking guns” or statements laced with expressly racist overtones. Discrimination today is more subtle, more sophisticated and therefore not immediately detectable. As the Third Circuit noted recently in the employment context:

Anti-discrimination laws and lawsuits have “educated” would-be violators such that extreme manifestations of discrimination are thankfully rare. Though they still happen, the instances in which employers and employees openly use derogatory epithets to refer to fellow employees appear to be declining. Regrettably, however, this in no way suggests that discrimination based upon an individual’s race, gender, or age is near an end. Discrimination continues to pollute the social and economic mainstream of American life, and is often simply masked in more subtle forms. It has become easier to coat various forms of discrimination with the appearance of propriety, or to ascribe some other less odious intention to what is in reality discriminatory behavior. In other words, while discriminatory conduct persists, violators have learned not to leave the proverbial “smoking gun” behind. As one court has recognized, “[d]efendants of even minimal sophistication will neither admit discriminatory animus or leave a paper trail demonstrating it.”¹²

¹¹ *Zuch v. Hussey*, 394 F. Supp. 1028, 1051 (E.D. Mich. 1975).

¹² *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1081-82 (3d Cir. 1996) (quoting *Riordan v. Kempiners*, 831 F.2d 690, 697 (7th Cir.1987)).

Thus, in order to address vigorously housing discrimination in its 21st Century form, testing has actually increased in value as an enforcement tool.

Today, testing evidence is routinely admitted in Fair Housing Act cases, as it can often be “highly probative” in determining whether discrimination occurred. *Inland Mediation Bd. v. City of Pomona*.¹³ Accordingly, courts commonly rely on testing evidence when adjudicating various types of cases brought under the Fair Housing Act. *See, e.g., Paschal v. Flagstar Bank* (lending discrimination);¹⁴ *United States v. Balistrieri* (rental discrimination);¹⁵ *City of Chicago v. Matchmaker Real Estate Sales Center* (sales discrimination).¹⁶ At times, courts have even determined the liability of defendant real estate companies and agents solely on the basis of testing evidence. *See, e.g., Cabrera v. Jakobovitz*.¹⁷

TESTING AS AN INVESTMENT IN ENFORCEMENT

Given the successes associated with the use of testing as a tool for investigating and redressing housing discrimination, it makes perfect sense for Congress to consider enhanced means by which to promote the use of testing. In our opinion, allowing the Department of Housing and Urban Development (HUD) to undertake a nationwide enforcement testing program to detect patterns of discrimination is an extremely worthy use of federal resources.

¹³ 158 F.Supp.2d 1120, 1133 n.9 (C.D. Ca. 2001).

¹⁴ 295 F.3d 565, 578-79, 583-84 (6th Cir. 2002).

¹⁵ 981 F.2d 916, 929 (7th Cir. 1992).

¹⁶ 982 F.2d 1086, 1095 (7th Cir. 1992).

¹⁷ 24 F.3d 372 (2d Cir. 1994).

First, it is critical that the testing is devoted, in large measure, to addressing systemic discrimination. While individual instances of discrimination certainly should be detected and redressed wherever possible, the new testing program contemplated by H.R. 476 is consistent with the federal government's longstanding tradition of focusing on eradication of large-scale forms of discrimination that otherwise will likely not be redressed. Identification of systemic discrimination is more costly, complicated and protracted than that involving individual cases of discrimination, but this is precisely the type of investigation in which the federal government should bring to bear its extraordinary resources. Moreover, discrimination that adversely impacts a particular racial group is also actionable under the fair housing law. By establishing a nationwide testing program, the government heightens the possibility of uncovering far-reaching discrimination in a manner that simply cannot be accomplished with the budgets and resources of fair housing organizations, civil rights organizations or private attorneys.

Undoubtedly, the nationwide testing program can have a deterrent impact on members of the housing industry. Apartment owners, real estate companies, and mortgage lenders can use this opportunity to take affirmative steps to improve compliance with fair housing laws on the part of their managers, employees and agents so as to avoid enforcement problems that may be detected through a nationwide testing program. As many local fair housing advocates appreciate, even the prospect of testing in any given geographic area can help to increase awareness on the part of agents, managers and other real estate actors on fair housing rights and responsibilities.

The inception of a nationwide testing program is now more necessary than ever, given the recent diminished federal enforcement of the fair housing laws. Unfortunately, in the last decade, the Justice Department was often subject to politicization of its enforcement agenda.¹⁸ As a result, the Civil Rights Division filed only approximately seven cases per year addressing housing discrimination on the basis of race.¹⁹ Moreover, most of these cases involved discrimination in the rental market, and not the sales, lending or insurance markets where cases tend to be more complex and resource-intensive.

Regrettably, the Civil Rights Division's own testing program, established in 1991, remained virtually dormant for most of the past decade. From 2001 through 2008, the Division brought only 16 cases based on testing for discrimination against all four of the protected classes that are the subject of the testing program – race, national origin, disability or familial status.²⁰ In sharp contrast, the Division appears to have filed 69 cases based on evidence generated by the testing program in the years from 1991 until 2000.²¹

¹⁸ *Civil Rights Division Oversight, Hearing Before the S. Judiciary Comm.*, 110th Cong., 1st Sess. (June 21, 2007); *Oversight of the Civil Rights Division: Hearing Before the S. Judiciary Comm.*, 109th Cong., 2d Sess. (Nov. 16, 2006); *Oversight Hearing on the Voting Section of the Civil Rights Division, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H. Judiciary Comm.*, 110th Cong., 1st Sess. (Oct. 30, 2007); *Oversight Hearing on the Employment Section of the Civil Rights Division, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H. Judiciary Comm.*, 110th Cong., 1st Sess. (Sept. 25, 2007); *Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice, Hearing Before the Subcomm. on the Constitution, Civil Rights & Civil Liberties, H. Judiciary Comm.*, 110th Cong., 1st Sess. (Mar. 22, 2007).

¹⁹ Hous. & Civil Enforcement Section, Civil Rights Div., U.S. Dep't of Justice, Complaints Filed, available at <http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm>.

²⁰ Fair Hous. Testing Program, Civil Rights Div., U.S. Dep't of Justice, available at <http://www.usdoj.gov/crt/housing/fairhousing/testing.htm>.

²¹ *Id.*

This low number proves even more disappointing given the effort by the Civil Rights Division to enhance its testing in this area as part of its “Operation Home Sweet Home” initiative in 2006. According to testimony by Deputy Assistant Attorney General for Civil Rights Jessie Liu before the Judiciary Committee of the U.S. House of Representatives, the Division “committed additional resources to [the] fair testing program and enhanced [its] targeting.”²² Although the Division apparently conducted more than 500 paired tests in fiscal year 2007, the testing program produced only three race or national origin cases.²³

In our opinion, it is entirely appropriate that the new testing contemplated by H.R. 476 be conducted by qualified fair housing enforcement organizations. As noted above, private fair housing groups have proven essential to enforcement efforts across the country. These organizations are at the forefront in identifying, testing and litigating fair housing complaints in the local community. Armed with information and experience, they can design and implement tests in ways which can maximize the use of federal funds and resources.

There is no question that private fair housing organizations are best equipped to conduct the testing envisioned under H.R. 476. These organizations have conducted rental, sales, lending and insurance testing for decades, with much success. The Fair Housing Center of Metropolitan Detroit, with the assistance and support of the National Fair Housing Alliance (NFHA), publishes annually a summary of discrimination lawsuits

²² *Hearing Before the Judiciary Comm., U.S. House of Representatives, Enforcement of the Fair Housing Act of 1968*, 110th Cong., 2d Sess. (June 12, 2008) (testimony of Jessie Liu, Dep. Assist. Att’y Gen., Civil Rights Div., U.S. Dep’t of Justice).

²³ *Id.*

assisted by the efforts of the fair housing organizations that are members of NFHA. The most recent report, issued in June 2009, helps to demonstrate the significant positive impact that private fair housing organizations have had:

- * Between 1990 and 2008, NFHA member organizations have helped recover over \$275,000,000 for victims of housing discrimination.
- * The total number of member-assisted lawsuits filed and/or open between January 1, 2000 and December 31, 2008 was 1605. Of those cases, 1165 had a disclosed financial recovery.
- * Nearly half of all lawsuits filed (47.7%) and successfully concluding in a disclosed financial settlement (49.1%) between 2000 and 2008 included testing evidence. In that time period, testing evidence helped to garner more than \$55 million for plaintiffs. This demonstrates how important testing remains in the investigation process and for the resolution of housing discrimination complaints.
- * The number of successfully concluded lawsuits (including cases with disclosed and non-disclosed settlements, and court or jury decisions for the plaintiffs) was 1298, or 94% of all closed lawsuits.²⁴

Indeed, private fair housing organizations have long provided the vast majority of testing evidence used in housing discrimination litigation.²⁵ Without such evidence, it is unlikely that many of the meritorious claims filed over the past decade could have succeeded.

Finally, we believe that it is imperative that the nationwide testing program provide for testing across the housing industry. A program devoted exclusively to testing in the rental market will not successfully identify and redress the myriad types of housing

²⁴ Fair Housing Ctr. Of Metro. Detroit, *\$275,000,000 and Counting: A Summary of Housing Discrimination Lawsuits That Have Been Assisted By the Efforts of Private, Non-Profit Fair Housing Organizational Members of the National Fair Housing Alliance*, on file with the author of this testimony, 16-19 (2009).

²⁵ See *id.*; Clifford C. Schrupp and Michael Olshan, *Symposium: An Assessment of How Local, Private, Non-profit Fair Housing Organizations and Private Attorneys Can Successfully Cooperate for the Enforcement of Fair Housing Laws*, Wayne L. Rev. 1541, 1544-45 (2005).

discrimination that continue to plague our cities and suburbs. Sales testing, for example, has long been a part of the testing protocol in fair housing law. *See, e.g., Chicago v. Matchmaker Real Estate Sales Ctr.*, (upholding steering claims by the City of Chicago and others against real estate agents);²⁶ *Heights Cmty. Cong. v. Hilltop Realty* (racial steering proven through use of “checkers” contracted by City of Cleveland Heights for audit).²⁷ However, the only testing cases filed by the Civil Rights Division from 2000 to 2008 addressed rental discrimination. The more complex, resource-intensive sales cases were not prosecuted despite the fact that the charter of the Division’s testing program expressly states that it is designed to challenge discriminatory practices in the sale of housing.²⁸ It is critical that this new program under H.R. 476 devote the time and resources necessary to conduct testing in the real estate market, which can uncover a host of problems including but not limited to racial steering and failure to negotiate.

It is incumbent upon the federal government to develop effective measures for conducting testing in the lending and insurance industry. One of our strongest criticisms of the government’s enforcement efforts over the past decade arises in the area of lending discrimination against homebuyers. During the eight years of the Bush Administration, the Civil Rights Division brought only five home mortgage discrimination cases on behalf of persons in a minority group.²⁹ All of the cases involved redlining claims and

²⁶ 982 F.2d 1086 (7th Cir. 1992).

²⁷ 774 F.2d 135 (6th Cir. 1985).

²⁸ Fair Hous. Testing Program, Civil Rights Div., U.S. Dep’t of Justice, *available at* <http://www.usdoj.gov/crt/housing/fairhousing/testing.htm>.

²⁹ Hous. & Civil Enforcement Section, Civil Rights Div., U.S. Dep’t of Justice, Fair Lending Enforcement, *available at* <http://www.usdoj.gov/crt/housing/fairhousing/caseslist.htm#lending>. The Division filed six other cases under the Equal Credit Opportunity Act, alleging discrimination on the basis of gender, marital status, race or national origin in the provision of consumer loans.

likely represented only a fraction of the cases that could have been filed under a more aggressive enforcement approach.³⁰ Most importantly, the cases did not address the pernicious practices—increasingly common over the past decade—involving predatory lending and reverse redlining, which have now gripped our financial system.

Any future investigations into housing discrimination undertaken by the federal government must necessarily include measures for addressing the discriminatory causes and effects of the foreclosure crisis. We are pleased by the announcement last week by the Civil Rights Division of an aggressive new campaign against reverse redlining by the lending industry.³¹ The government's efforts should include the development of measures for undertaking testing in the mortgage lending industry. It is imperative that fair housing and fair lending principles are included in all remedial legislation and policy initiatives adopted to address the financial crisis. It is also important to collect race and ethnicity data when implementing foreclosure relief programs and to ensure such data is publicly available so that programs can be monitored for compliance with fair housing laws.

THE IMPACT OF HOUSING DISCRIMINATION ON EQUAL EDUCATIONAL OPPORTUNITY

We applaud the provision in H.R. 476 which provides grants to non-profits to study the causes of housing discrimination and segregation and evaluate their effects on education, poverty and economic development. In order to combat entrenched problems

³⁰ According to Shanna Smith, private fair housing organizations processed 1,245 lending complaints in 2007. *Hearing Before the Judiciary Comm., U.S. House of Representatives, Enforcement of the Fair Housing Act of 1968*, 110th Cong., 2d. Sess. (June 12, 2008) (testimony of Shanna Smith, Pres. and Chief Executive Officer, Nat'l Fair Hous. Alliance).

³¹ Savage, *Justice Dep't Fights Bias in Lending*, NY TIMES, (Jan. 14, 2010).

associated with race discrimination and segregation, it is increasingly necessary to adopt a multi-disciplinary approach.

We are particularly encouraged by the devotion of resources to studying the intersection of housing and education. At LDF, we recognize the deep structural role that residential segregation plays in perpetuating inequality in our nation's schools. The Caucus for Structural Equality has found that "[t]he racial makeup of residential neighborhoods is the most important determinant of the racial composition of the schools within them,"³² and the strong link between housing discrimination and increased school segregation has been acknowledged by the Supreme Court. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 21 (1971).

We now live in an America where 44% of our public school children are minorities, and the two largest minority populations, African Americans and Latinos, are more segregated than they have been since the death of Martin Luther King, Jr. more than forty years ago.³³ Due in large part to housing discrimination and segregation, nearly 40% of African-American students attend schools where 90% or more of the student body is non-white.³⁴ These numbers are similar for Latino students.

At the height of desegregation in 1988, the average African-American student attended a school that was one-third white and only one-third of African-American

³² Brief of the Caucus for Structural Equity as Amicus Curiae Supporting Respondents at 17, *Parents Involved in Cmty. Schools v. Seattle Sch. Dist. No. 1*, 127 S.Ct. 2738 (2007) (Nos. 05-908, 05-915) (emphasis added). The brief also notes that "[s]egregated housing patterns fuel segregated classrooms and disparate educational outcomes. In turn, low quality public schools reinforce segregated housing patterns due to the strong correlation between housing prices and public school quality . . . In short, school segregation is both an important outcome and a crucial source of residential segregation." *Id.* at 26.

³³ Gary Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge*, available at http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf, 7 (2009).

³⁴ *Id.* at 12.

students attended intensely segregated schools with 90 percent or more minority students.³⁵ Similarly, Latino students attended schools with average enrollments of one-third white, and one-third of Latinos were in intensely segregated schools.

Today, the average African-American or Latino student attends a school that is almost three-fourths minority students.³⁶ Forty percent of African-American and Latino students attend schools where 70-100% of the children are poor; this is true for only one-thirtieth of white students. As schools continue to resegregate, educational outcomes for minority students have and may continue to worsen.³⁷

School segregation is rooted in housing patterns. With the increasing rarity of court-ordered desegregation and the judicial limitations of voluntary integration programs, students' educational fate is dependent upon where they live. When children go to school on a neighborhood basis, existing residential segregation assures segregated educational opportunities by race and class. This is particularly troubling considering that the "segregation of schools is almost never just by race."³⁸ Racial segregation is typically compounded by economic segregation.³⁹ Racially isolated schools are likely to host impoverished student populations and be located in high poverty areas.⁴⁰

³⁵ *Id.* at 13.

³⁶ *Id.*

³⁷ *Id.* at 6.

³⁸ *Still Separate and Unequal: A Public Hearing on The State of Fair Housing in America: Hearing Before the Nat. Comm. on Fair Housing and Equal Opportunity* (2008) [hereinafter *Hearing*] (statement of Gary Orfield, Dir., The Civil Rights Project), available at http://www.prrac.org/projects/fair_housing_commission/los_angeles/orfield.pdf.

³⁹ *Hearing*, *supra* note 38 (statement of Deborah McKoy, Exec. Dir., Ctr. For Cities and Schools)

⁴⁰ Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality*, http://bsdweb.bsdsvt.org/district/EquityExcellence/Research/Why_Segreg_Matters.pdf, 5 (2005).

There are strong links between this dual segregation and educational achievement. Studies show that students attending racially isolated and poverty-concentrated schools are far more likely to drop out and far less likely to attend college than their affluent white counterparts.⁴¹ Segregated, minority schools struggle to attract and retain qualified teachers, have larger class sizes, and have less access to needed education resources.⁴² The overall result is a “bifurcated educational system of ‘good’ suburban schools and ‘failing’ city schools.”⁴³ That picture is further complicated by the increasing number of racially segregated, high poverty suburban communities.

Racial segregation in education is clearly a pressing problem today. Because we know that residential segregation often results in segregation from educational and other critical opportunities, it is incumbent upon all of us to focus on housing policy and enforcement of fair housing laws as a means to promote integration in education and in the workforce, as well as in residential patterns themselves. We are encouraged by the government’s renewed interest in the intersection of education and housing policy, and we urge Congress to fund research that will shed light on the pernicious effects of segregation and discrimination throughout our social institutions.

AFFIRMATIVELY FURTHERING FAIR HOUSING

LDF strongly supports the language in H.R. 476 providing that it is the sense of Congress that the Secretary of HUD promulgate regulations clarifying and reinforcing the

⁴¹ *Hearings, supra* note 38 (statement of McKoy).

⁴² *Id.*

⁴³ *Id.*

obligations of recipients of federal housing funds to affirmatively further fair housing. These regulations are long overdue, and we hope that they will be issued promptly.

In our opinion, HUD should create stronger enforcement mechanisms to ensure that HUD programs as well as recipients of HUD funding live up to their statutory obligation under the Fair Housing Act to affirmatively furthering fair housing. *See* 42 U.S.C. § 3608.

HUD should engage in an internal review of its own programs to evaluate the extent to which programs are encouraging or tolerating racial segregation. Across the country, HUD's own actions have too often perpetuated or exacerbated housing segregation. For instance, in *Thompson v. HUD*, a case that LDF has litigated along with the ACLU of Maryland and private law firms, U.S. District Court Judge Marvin Garbis issued one of the most significant fair housing liability rulings of the past decade. In January 2005, the court held that HUD had violated the Fair Housing Act by failing to take affirmative steps to implement an effective regional strategy for desegregation in the Baltimore metropolitan region. Finding that HUD policies had unfairly concentrated African-American public-housing residents in the most impoverished, segregated areas of Baltimore, the court faulted HUD for treating Baltimore as “an island reservation for use as a container for all of the poor of a contiguous region.”⁴⁴

In addition, HUD has often failed to make use of the federal government's authority to exert leverage over local grantees to make sure they comply with their own obligations to affirmatively further fair housing. A significant indication of the current

⁴⁴ *Thompson v. HUD*, 348 F.Supp.2d 398, 408 (D.Md. 2005).

administration's new approach in this context is HUD's recent settlement of fair housing litigation in Westchester County, New York. The settlement requires local municipal governments receiving HUD funds to allow production of affordable housing units. In announcing the Westchester settlement, HUD Secretary Shaun Donovan indicated that "[t]his agreement signals a new commitment by HUD to ensure that housing opportunities be available to all, and not just to some."⁴⁵

CONCLUSION

Forty-plus years after the passage of the Fair Housing Act, our nation still struggles with entrenched housing segregation that imposes high societal costs. The future of our democracy and a more integrated America depend on our ability to aggressively identify, remedy, and eliminate discrimination in the housing market while making housing opportunities available to all. Congress should do everything within its power to ensure that the federal fair housing laws are enforced as strongly and as successfully as possible. H.R. 476 provides an effective vehicle for enhancing ongoing enforcement efforts and identifying and deploying more creative methods for combating discrimination in housing.

⁴⁵ *HUD and Justice Department Announce Landmark Civil Rights Agreement in Westchester County*, HUD News Release, Aug. 10, 2009.