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## The Impact of Municipal Fiscal Crisis on Equitable Development

Christopher J. Tyson

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# THE IMPACT OF MUNICIPAL FISCAL CRISIS ON EQUITABLE DEVELOPMENT

*Christopher J. Tyson\**

Introduction .....	883
I. Redevelopment Authorities and Land Banks.....	888
A. History .....	890
B. Redevelopment Authorities and Land Banks Today	896
II. Redevelopment’s Vulnerability to Municipal Fiscal Crisis..	907
III. The Role of Federal Policy .....	912
Conclusion.....	917

## INTRODUCTION

President Trump’s Opportunity Zone program, Jay-Z’s “Buy the Block” mantra, and Black Lives Matter’s rallying cry to “defund the police” all have something in common: they reflect the growing concerns around how best to generate the capital necessary to revitalize inner-city neighborhoods. If these neighborhoods are to be revitalized in ways that benefit the people who live there, much more is required than offering tax credits for the wealthy or even Black entrepreneurship. If local governments are to redirect resources, there must be specificity about where those resources should go and their purposes. All of this must happen in accord with the principles of equitable development. This requires, among other things, new

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approaches to old institutional models. Redevelopment authorities and land banks offer a pathway forward.

Equitable development refers to an approach to community economic development that ensures everyone participates in and benefits from the spatial and economic transformation of communities — especially low-income residents; Black, Latinx, and immigrant communities; and others historically at risk of discrimination, exploitation, and being left behind.<sup>1</sup> This approach intentionally focuses on both eliminating inequities and making accountable, catalytic investments to ensure that historically marginalized residents can “live in healthy, safe, opportunity-rich neighborhoods that reflect [and affirm] their culture,” prevent their displacement, “connect to economic and ownership opportunities,” and provide them with influence in “the decisions that shape their neighborhoods” and lives.<sup>2</sup> Equitable development has emerged as an oft-used shorthand for redeveloping disinvested communities<sup>3</sup> and is part of a growing and expansive discourse concerned with affordable housing, gentrification and anti-displacement policies, environmental justice, placemaking,

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1. For a discussion of equitable development, see Kalima Rose, *Combating Gentrification Through Equitable Development*, 9 RACE POVERTY & ENV'T 5, 5–8 (2002). Community economic development refers to the organized efforts of government, nonprofits, and others to direct investment into historically disinvested communities to bring about a number of economic, social, and spatial transformations, including business growth, affordable housing and vacant land development, blight elimination, an increase in social capacity through organizing and expanded social services, and a re-integration of marginalized communities into the mainstream of metropolitan life. For more on community economic development, see Michele Alexandre, Patience A. Crowder & Audrey McFarlane, *Calling for a Community Economic Development Code of Ethics*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 219, 219–20 (2019) (citing Roger A. Clay, Jr. & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 257 (2009)); Etienne C. Toussaint, *Dismantling the Master's House: Toward a Justice-Based Theory of Community Economic Development*, 53 U. MICH. J.L. REFORM 337 (2019).

2. SARAH TREUHAFT, POLICYLINK, EQUITABLE DEVELOPMENT: THE PATH TO AN ALL-IN PITTSBURGH 4 (2016), [https://www.policylink.org/sites/default/files/report\\_pittsburgh\\_FINAL\\_PDF\\_0.pdf](https://www.policylink.org/sites/default/files/report_pittsburgh_FINAL_PDF_0.pdf) [<https://perma.cc/FXY5-H2ZL>].

3. The term “disinvested communities” refers to communities that were intentionally and systematically left out of the mechanisms of urban investment, infrastructure development, and housing finance in U.S. cities, specifically throughout the twentieth-century deployment of federal, state, and local government investment to spur private development in cities through racist and exclusionary policies. For a discussion of this history, see RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); Christopher J. Tyson, *From Ferguson to Flint: In Search of an Antisubordination Principle for Local Government Law*, 34 HARV. J. RACIAL & ETHNIC JUST. 1, 7–22 (2018) [hereinafter Tyson, *Ferguson to Flint*].

spatial inequality, and the persistence of structural white supremacy. It is related to the growing academic and public interest in cities, urban revitalization, and urban policy.

Disinvested communities not only reflect the resource maldistributions undergirding racial and spatial stratification in cities, but they also represent the spatial dimensions of the United States' racial caste system.<sup>4</sup> The deeply entrenched nature of our nation's racialized urbanism renders equitable development much easier to define than to actualize. Transforming neighborhoods that were intentionally and systematically disinvested over decades in ways that include existing residents and improve their life chances continues to bedevil the most well-intentioned and well-resourced urban development efforts. The prospects for truly equitable development are challenged by the ongoing displacement of Black, Latinx, and other historically marginalized residents from gentrifying urban spaces, the affordable housing crisis, and the acceleration of inequality wrought by the COVID-19 pandemic.

Concurrently with the growing conversation around equitable development is the rise of social impact investing and new tax credit policies to incentivize investment in marginalized and disinvested communities.<sup>5</sup> While there is cause for optimism, scholars have highlighted the limits of these approaches and their market-based orientations for producing lasting and systemic disruptions of the cycles of marginalization and disinvestment.<sup>6</sup> The reality is that private resources or firms alone cannot bring about a transformation of the

4. *See generally* ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* (2020).

5. Impact investing includes efforts by socially minded financial investors who prioritize social impact alongside financial return. Federal policies like the Opportunity Zone tax credit, passed by Congress as part of the Tax Cuts and Jobs Act of 2017, provide tax incentives for those who invest in low-income census tracts. For more information on impact investing and anticipated trends under President Biden's Administration, see Jason Bisnoff, *Why Socially Responsible Investing Is Likely to Gain Momentum Under Biden*, FORBES (Dec. 14, 2020, 6:30 AM), <https://www.forbes.com/sites/jasonbisnoff/2020/12/14/esg-investing-a-sizzling-sector-that-will-get-even-hotter-under-president-biden/?sh=4c47c9473302> [https://perma.cc/GKU5-ZFAA]; Lorie Konish, *Biden's Presidency Could Be a Game Changer for Impact Investing. Here's What Experts Are Watching*, CNBC (Dec. 8, 2020, 10:05 AM), <https://www.cnbc.com/2020/12/08/heres-how-bidens-presidency-could-be-a-boost-for-impact-investing.html> [https://perma.cc/CM2X-MDLZ]. For information on Opportunity Zones, see *Opportunity Zones Frequently Asked Questions*, INTERNAL REVENUE SERV., <https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions> [https://perma.cc/WZ2Z-7NB5] (last visited Feb. 14, 2021).

6. *See, e.g.*, Toussaint, *supra* note 1, at 340–41.

economic, social, and spatial conditions of disinvested neighborhoods in ways that are equitable. Moreover, the transactional nature of private-led efforts rarely strengthens the institutional or community capacity necessary to create sustainable, long-term, positive impacts on the lives of the individuals and families most affected. It was federal, state, and local government policies that created the disinvestment and spatial injustice in the first place. Therefore equitable development requires considerable financial support and regulatory direction from federal, state, and local levels of government and robust, ongoing engagement with people who live in disinvested communities.

Some cities have existing institutional infrastructures that can be powered to advance equitable development aims. City-led blight remediation efforts, federally funded and city-administered home rehabilitation programs, and other redevelopment projects, public housing management, and land value capture efforts are some of the common approaches, but they often fall short of remedying root causes of disinvestment and can sometimes result in the management of disinvestment rather than its eradication. Redevelopment authorities and land banks (RALBs) provide opportunities for community-led, equitable, and well-resourced neighborhood-scale transformation and are therefore best positioned to lead and facilitate equitable development efforts.<sup>7</sup> Their urban and neighborhood-scale focus provides the most intense engagement with the social, economic, and spatial dynamics which drive persistent disinvestment. These entities often have close ties to local government and local communities. As governmental entities, they can leverage their governmental authority and statutory power to support cooperative efforts among communities, capital, and government.

RALBs already coordinate with many of the vehicles most associated with community economic development. Community land trusts, affordable housing policy and project development, social impact investing, tax credit entities, and other devices are most effective when part of a coordinated redevelopment strategy executed through a local agency, which is focused on and empowered to address land, economic, and community development in a comprehensive, coordinated manner. RALBs deliver that focus where they exist. But not all cities and regions have such entities, and the powers of public finance authority, distressed property management, code enforcement

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7. See Frank S. Alexander, *Neighborhood Stabilization & Land Banking*, CMTYS. & BANKING, Summer 2009, at 3 [hereinafter Alexander, *Neighborhood Stabilization & Land Banking*].

and blight elimination, and the resources necessary to do urban planning, community engagement, and law and policy reform may often be spread amongst various local government agencies and nonprofit entities that are not always coordinated, aligned, or adequately resourced.

While many RALBs are supported by dedicated funding sources that may be insulated from episodic financial crises, this is not always the case. Many rely heavily on the general fund of city governments and are therefore especially vulnerable to the current municipal fiscal crisis.<sup>8</sup> This threatens the prospects for RALB-led equitable development efforts as RALBs may be less of a priority for cash-strapped local governments than the traditional approaches to urban disinvestment — namely policing and incarceration. These approaches are entrenched in the operational logic of local governments and are usually prioritized in local government budgeting processes in a way that redevelopment is not. The budget priority afforded to policing and incarceration is understandable and to some degree necessary and inevitable. But extensive data verifies the limits of law enforcement to stabilize disinvested communities and the greater efficacy of building up those communities through equitable development approaches.<sup>9</sup>

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8. See, e.g., Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 132–36 (2020) (discussing local governments' vulnerability to federal and state funding cuts using Michigan as an example); Sara Hinkley, *Structurally Adjusting: Narratives of Fiscal Crisis in Four US Cities*, 54 URB. STUD. 2123, 2124 (2017) (“Although the US recession officially ended in 2009, American cities saw revenues decline for six straight years, with the worst effects of the recession hitting only in 2012. Persistent unemployment, stagnant wages and collapsing property values are fuelling budget shortages even as struggling residents rely on government support in growing numbers. While federal and state budgets have also been affected by falling tax revenues, many scholars have convincingly argued that the U.S. federal system, decades of devolution, and the particular constraints on city fiscal policy, have meant that the politics of post-2007 austerity have been most deeply felt by cities and their residents.” (internal citations omitted)); Samir D. Parikh & Zhaochen He, *Failing Cities and the Red Queen Phenomenon*, 58 B.C. L. REV. 599, 606–11 (2017) (overviewing how a critical mass of municipalities are suffering from rising costs and declining revenues, undermining basic service delivery). See generally Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118 (2014).

9. See, e.g., Scottie Andrew, *There's a Growing Call to Defund the Police. Here's What It Means*, CNN (June 17, 2020, 10:32 AM), <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html> [https://perma.cc/P3DC-KYKN]; Jemima McEvoy, *Austin to Use Money Cut from Police Budget to Buy Hotel for Homeless Population*, FORBES (Jan. 28, 2021, 9:45 AM), <https://www.forbes.com/sites/jemimamcevoy/2021/01/28/austin-to-use-money-cut-from-police-budget-to-buy-hotel-for-homeless-population/?sh=8dac58146129> [https://perma.cc/M6RL-X2LU].

As calls for decarceration and policing alternatives grow,<sup>10</sup> RALBs must be elevated in the fiscal priorities of local governments.

RALBs — the public institutions best suited to address the problems of urban disinvestment — are leading change in many places and their expansion into other metropolitan areas is an under-appreciated but vital component to ensuring equitable development. The growing municipal fiscal crisis threatens the funding sources for existing RALBs and, by extension, the achievability of equitable development. Part I of this Article explores the history of RALBs and the vital role they can play in implementing equitable development. Part II addresses how RALBs are especially vulnerable to municipal fiscal distress given the investment and coordination necessary to bring about meaningful, impactful equitable development require a level of resource deployment most local governments cannot support at scale. Part III explores how federal policy and resources can support RALBs, ensure their financial stability, and thereby increase the opportunities for equitable development over the long term.

### I. REDEVELOPMENT AUTHORITIES AND LAND BANKS

The American Planning Association (APA) has defined redevelopment as “one or more public actions that are undertaken to stimulate activity when the private market is not providing sufficient capital and economic activity to achieve the desired level of improvement.”<sup>11</sup> Redevelopment authorities are organized under state law and authorized to acquire, assemble, and dispose of property in a specific urban area where disinvestment has occurred or is occurring.<sup>12</sup> They marry real estate development with governmental

10. See Fola Akinnibi, Sarah Holder & Christopher Cannon, *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise.*, BLOOMBERG CITYLAB (Jan. 12, 2021), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding/> [https://perma.cc/3CLL-QJ75]. These calls are reflected in the “Defund the Police” movement, a rallying cry and grassroots advocacy effort to shift local government funding away from police and incarceration and towards activities such as small business assistance, homelessness, and affordable housing. See, e.g., Andrew, *supra* note 9; McEvoy, *supra* note 9.

11. APA *Policy Guide on Public Redevelopment*, AM. PLAN. ASS’N (2004) [hereinafter *APA Policy Guide*], <https://www.planning.org/policy/guides/adopted/redevelopment.htm> [https://perma.cc/6F35-NSE9].

12. See, e.g., CAL. HEALTH & SAFETY CODE § 33020(a) (West 2004) (defining redevelopment as “the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general

powers, such as the ability to create special taxing districts, issue municipal bonds, lead and coordinate comprehensive urban planning efforts, and, in some cases, exercise eminent domain powers. They develop the vision and assemble the land, capital, and partnerships necessary for major project development. The APA has identified redevelopment authorities as critical to refocusing resources towards regional growth within centralized “cities, urbanized areas, inner suburbs, and other areas that are already served by infrastructure and supported by urban services.”<sup>13</sup>

Land banks are governmental or non-governmental entities that acquire, hold, manage, and develop problem properties — such as vacant lots, abandoned buildings, or foreclosures — and transition them to productive uses such as affordable housing developments, community-focused commercial buildings, community gardens, or green spaces.<sup>14</sup> Land banks rarely act as developers and typically lack the public finance expertise featured in redevelopment authorities. Rather, they are focused on reducing the harms of problem properties and facilitating the transfer of properties acquired by the municipality through tax foreclosure to purchasers who will return the properties to the tax rolls in ways that enhance the surrounding community. In many cases, land banks have strong ties to the people and local organizations that drive community economic development in a particular place. They are often connected to the small community developers who strive to revive neighborhoods lot by lot, block by block.

The definitions of redevelopment authorities and land banks say little about the historical contexts that gave rise to these entities. That history provides both additional texture and character to their potential as well as their necessary role in any equitable development vision.

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welfare, including recreational and other facilities incidental or appurtenant to them and payments to school and community college districts”).

13. *APA Policy Guide*, *supra* note 11.

14. See FRANK S. ALEXANDER, *CTR. FOR CMTY. PROGRESS, LAND BANKS AND LAND BANKING* 10 (2d ed. 2015) [hereinafter ALEXANDER, *LAND BANKS AND LAND BANKING*]; see also *Land Banks*, *LOC. HOUS. SOLS.*, <https://www.localhousingsolutions.org/act/housing-policy-library/land-banks-overview/land-banks/> [https://perma.cc/PKX4-DVQE] (last visited Mar. 18, 2021) (“Land banks are public authorities or non-profit organizations created to acquire, hold, manage, and sometimes redevelop property in order to return these properties to productive use to meet community goals, such as increasing affordable housing or stabilizing property values.”).



### A. History

The history of redevelopment authorities and land banks is a history of twentieth-century land use and urban development, the spatial implications of institutionalized and structural white supremacy, and the ever-evolving preferences for public- and private-sector partnerships for developing urban space, specifically with regard to affordable housing and metropolitan transportation planning. From about 1940 to 1970, redevelopment authorities led efforts that resulted in vast areas being demolished and replaced by freeways and expressways, housing projects, and vacant lots. This history is known as “urban renewal,” a period of federal policy directives implemented at the state and local level in a time of rigid white supremacy and the widespread and deeply ingrained belief that spatial proximity to Black communities presents a potent threat to social status, property values, and life chances.<sup>15</sup> It is also a period of increasing automobile usage and an urban planning zeitgeist, which prioritized automobile transport in the design of cities and metropolitan areas.<sup>16</sup>

Black urban marginalization became one of the dominant organizing principles of urban and metropolitan development in the decades after the Civil War and the Industrial Revolution. Discriminatory actions against Black city residents and other disfavored groups were pervasive across the nation, and disputes over the racial dimensions of urban space led to crucial rulings by the U.S. Supreme Court in the first half of the twentieth century. In 1917, the Court ruled that explicit, government-ordered racial segregation was unconstitutional in *Buchanan v. Warley*,<sup>17</sup> but effectively upheld racial covenants nine years later in *Corrigan v. Buckley*.<sup>18</sup> Racial covenants were finally ruled unconstitutional in the Court’s 1948 decision in

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15. See Tyson, *Ferguson to Flint*, *supra* note 3, at 30–37. See generally Amy Lavine, *Urban Renewal and the Story of Berman v. Parker*, 42 URB. LAW. 423 (2010).

16. The federal prerogatives embedded in transportation policy operated in tandem with federal housing policy to encourage automobile use. See Lee R. Epstein, *Where Yards Are Wide: Have Land Use Planning and Law Gone Astray?*, 21 WM. & MARY ENV’T L. & POL’Y REV. 345, 354–55 (1997). From the 1930s to the 1960s, the Federal Housing Administration enacted policy that included an anti-urban approach, which made residential development cheaper in the suburbs, and sometimes the only option. See Jeremy R. Meredith, Note, *Sprawl and the New Urbanist Solution*, 89 VA. L. REV. 447, 476 (2003). For a discussion of the linkages between federal highway construction and racial oppression, see generally Deborah N. Archer, “*White Men’s Roads Through Black Men’s Homes*”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259 (2020) (describing the role of federal highway development and construction in Black urban subordination).

17. 245 U.S. 60, 82 (1917).

18. 271 U.S. 323, 331–32 (1926).

*Shelley v. Kraemer*,<sup>19</sup> but many remained enforced until the Civil Rights Act of 1968.<sup>20</sup>

While the history of residential segregation is the dominant frame for understanding the history and operation of race in cities, the full scope of racial urbanism requires an analysis of the New Deal period and its lasting impact on U.S. housing development and finance. The Housing Act of 1934<sup>21</sup> established the Federal Housing Authority and required mortgage lenders to prioritize white neighborhoods and penalize Black neighborhoods, a process known as redlining.<sup>22</sup> The Housing Act of 1949<sup>23</sup> created the U.S. Housing Agency and the nation's first public housing program, which advanced segregation in public housing. The Housing Act of 1949 marked a major move towards the wholesale demolition of urban slums.<sup>24</sup> It provided funding for slum clearance, and, consequently, entire neighborhoods were torn down and replaced by highways and new industrial zones. In 1956, the Federal Aid Highway Act<sup>25</sup> gave state and local governments near-complete control over the siting of new highways, which were almost always routed directly through Black neighborhoods. In addition to federal policy, states and local governments engaged in a wide variety of policies and informal practices that amounted to architectural exclusion, including the design of street grids, limitations on public transit, and other regulations on the design of the built environment.<sup>26</sup> Segregation increased as Blacks and other non-whites were crowded into substandard public housing while whites moved to the suburbs in ever-greater numbers. James Baldwin famously dubbed urban renewal "Negro removal."<sup>27</sup>

19. 334 U.S. 1, 23 (1948).

20. Pub. L. No. 90-284, 82 Stat. 73 (1968).

21. Pub. L. No. 73-479, 48 Stat. 1246 (1934).

22. See Pub. L. No. 75-412, 50 Stat. 888 (1937).

23. Pub. L. No. 81-171, 63 Stat. 413 (1949).

24. See Lavine, *supra* note 15, at 442.

25. Pub. L. No. 84-627, 70 Stat. 374 (1956).

26. See generally Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934 (2015).

27. See Vince Graham, *Urban Renewal . . . Means Negro Removal. ~ James Baldwin (1963)*, YOUTUBE (June 3, 2015), <https://www.youtube.com/watch?v=T8Abhj17kYU> [<https://perma.cc/VF4B-ZAHD>]. For more information on urban renewal, see THOMAS H. O'CONNOR, *BUILDING A NEW BOSTON: POLITICS AND URBAN RENEWAL 1950-1970* (1995); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305 (2004); Tyson, *Ferguson to Flint*, *supra* note 3, at 30-37; Christopher J. Tyson, *Municipal Identity as Property*, 118 PENN ST. L. REV. 647, 662-64 (2014) [hereinafter Tyson, *Municipal Identity*].

Few cases capture the perils of urban renewal better than *Berman v. Parker*.<sup>28</sup> In 1945, Congress, as the legislative body for Washington, D.C., passed the District of Columbia Redevelopment Act (the Act),<sup>29</sup> which designated certain areas as injurious to public health and provided funding for the revitalization of those areas.<sup>30</sup> The Act created the District of Columbia Redevelopment Land Agency (the Agency) and granted it the power to “acquire and assemble, by eminent domain and otherwise, real property for ‘the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight.’”<sup>31</sup> It also directed the National Capital Planning Commission to develop a comprehensive plan for redevelopment.<sup>32</sup> The Agency proceeded to use eminent domain to acquire land in the city’s Southwest Waterfront neighborhood.<sup>33</sup> At the time, the area had an estimated population of over 5,000 residents, over 97% of whom were Black.<sup>34</sup> Despite opposition to the redevelopment plans by the Southwest Civic Association and others for the lack of affordable housing, the modernist, upscale redevelopment plans were widely supported.<sup>35</sup>

In *Berman*, a commercial property owner brought suit to contest the redevelopment plan on the grounds that, while his property was within the redevelopment plan’s boundaries, it was not blighted and, consequently, the Agency’s use of eminent domain to acquire property for private development violated the public use requirement of the Takings Clause of the U.S. Constitution.<sup>36</sup> The Court held that the District’s comprehensive redevelopment plan constituted a legitimate public purpose for the exercise of the takings power and that the owner(s) of non-blighted property located within a comprehensive plan area developed to address the predominance of blight could not overcome a taking of their property as the redevelopment plans

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28. 348 U.S. 26 (1954).

29. 60 Stat. 790 (1946).

30. See *Berman*, 348 U.S. at 28.

31. *Id.* at 29 (quoting D.C. CODE § 5-704 (1951)); see also D.C. CODE §§ 5-701–5-719.

32. See *Berman*, 348 U.S. at 29.

33. See *id.* at 28–32.

34. See *id.* at 30.

35. See Francesca Russello Ammon, *Commemoration Amid Criticism: The Mixed Legacy of Urban Renewal in Southwest Washington, D.C.*, 8 J. PLAN. HIST. 175, 176 (2009); Lavine, *supra* note 15, at 447.

36. See *Berman*, 348 U.S. at 31.

represented a valid public use.<sup>37</sup> The property owner lost his property, and the almost entirely Black and low-income neighborhood on Washington, D.C.'s waterfront was destroyed and replaced by an interstate and more modern, upscale development.<sup>38</sup>

The slum conditions animating the *Berman* controversy were not unique to Washington, D.C. By the 1960s, major cities in the nation's metropolitan areas were beginning to feel the effects of the first wave of suburbanization. The process of white flight — the exodus of middle-class whites from cities — was an embrace of “free” highways and exclusionary zoning policies that allowed suburban jurisdictions to resist the mandates of racial integration not only socially but spatially as well.<sup>39</sup> It also left a glut of vacant and abandoned properties in inner cities. While President Johnson's Great Society and War on Poverty programs were structured to provide resources for community initiatives, the specter of civil rights activism and social uprisings in response to state repression of that activism accelerated white flight, hollowing out major cities and creating new urban development issues that continue to plague cities to this day.<sup>40</sup>

As Johnson's Great Society programs attempted to address the growing challenges of urban Black neighborhoods amidst a tide of white suburban flight, some cities also attempted to address the fallout from their long histories of racialized land use policy and practice. Land banks were created in response to growing inventories of properties subject to property tax foreclosure laws, which, in many ways, incentivize tax delinquent property owners to abandon their property when accumulated taxes exceed the fair market value of the property.<sup>41</sup> In 1971, the St. Louis land bank was formed, followed by

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37. *See id.* at 32–36. For an examination of the broader historical and sociological context of the case, see Lavine, *supra* note 15, at 423–24.

38. *See* Lavine, *supra* note 15, at 423.

39. For a discussion of how the underpricing of highways spurred urban sprawl, suburbanization, and the dominance of auto-centric land use planning, see Rachel Weinberger, *The High Cost of Free Highways*, 43 *IDAHO L. REV.* 475, 496–99 (2007).

40. President Johnson enacted the Housing and Urban Development Act of 1965, establishing the Department of Housing and Urban Development (HUD) as a cabinet level agency. HUD's programs along with other Great Society programs, such as Community Action and Headstart, attempted to alleviate urban poverty through direct federal action. For a discussion of Great Society programs, see JOHN A. ANDREW, *LYNDON JOHNSON AND THE GREAT SOCIETY* (1998). For a discussion on suburbanization, white flight, and the creation of Black ghettos, see ANDREW R. HIGSMITH, *DEMOLITION MEANS PROGRESS: FLINT, MICHIGAN, AND THE FATE OF THE AMERICAN METROPOLIS* (2015).

41. *See* ALEXANDER, *LAND BANKS AND LAND BANKING*, *supra* note 14, at 19.

the passage of state enabling legislation in Ohio in 1976.<sup>42</sup> Because of the wide variances in state constitutional law, state and local allocations of authority, and local government structure and cultures of governance, there were both substantial overlap and differences among the initial land banks.<sup>43</sup> In the first generation of land banks, the residual inventory of tax foreclosed properties was the primary acquisition target.<sup>44</sup> This continues to be the case as state and local governments typically support land banks “by allowing low or no cost purchases of tax foreclosures, assisting with title clearance and/or forgiving back taxes, holding land tax free, or negotiating property transfers that address community needs.”<sup>45</sup>

As local government officials and urban planners came to realize the considerable impact of vacant properties on public safety, the quality of place in neighborhoods, and the market value of adjacent property, they sought to create land banks as an administrative solution to the management and disposition of these problem properties.<sup>46</sup> This approach grew in popularity, and land bank formation increased throughout the 1980s and 1990s. As of May 2019, 25 states have land banks and 11 states have comprehensive legislation that supports land banks.<sup>47</sup> In systemically disinvested neighborhoods, land banks have been shown to improve communities by turning vacant properties back into commerce bearing properties.<sup>48</sup>

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42. *See id.*

43. *See id.*

44. *See id.*

45. *Land Banking*, CNTY. HEALTH RANKINGS & ROADMAPS (July 31, 2019), <https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/land-banking> [<https://perma.cc/QG59-FKQW>]. For a history of land banking in the United States, see Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUS. & CMTY. DEV. L. 140 (2005); William B. Stoebuck, *Suburban Land Banking*, 1986 U. ILL. L. REV. 581, 583–85 (1986); Frank S. Alexander, *Land Banking as Metropolitan Policy*, METRO. POL’Y PROGRAM BROOKINGS (Oct. 2008) [hereinafter Alexander, *Land Banking as Metropolitan Policy*], [https://www.brookings.edu/wp-content/uploads/2016/06/1028\\_mortgage\\_crisis\\_alexander.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/1028_mortgage_crisis_alexander.pdf) [<https://perma.cc/D7P8-XCPE>].

46. *See* ALEXANDER, LANDS BANKS AND LAND BANKING, *supra* note 14, at 10–11.

47. *See National Map of Land Banks & Land Banking Programs*, CTR. FOR CMTY. PROGRESS, <https://www.communityprogress.net/land-bank-map-pages-447.php> [<https://perma.cc/JL64-Q3PU>] (last visited Feb. 12, 2021).

48. *See generally* ALEXANDER, LANDS BANKS AND LAND BANKING, *supra* note 14; Richard C. Sadler & Natalie K. Pruett, *Mitigating Blight and Building Community Pride in a Legacy City: Lessons Learned from a Land Bank’s Clean and Green Programme*, 52 CMTY. DEV. J. 591 (2017).

But land banks mostly focused on urban revitalization at the scale of individual land parcels. Cities still desired sweeping, comprehensive development programs that had been the focus of redevelopment agencies. This was the case in late 1990s New London, Connecticut, where the city and state partnered to implement a vision for large-scale, mixed-use urban revitalization based on a comprehensive masterplan and considerable state funding. The redevelopment plans targeted a blighted area believed to be unsuitable for the type of development that would raise property values, grow the tax base, and elevate the city's brand.<sup>49</sup> Controversy sparked when the city used eminent domain to acquire the property necessary to implement the plan.

The controversy led to the case *Kelo v. City of New London*<sup>50</sup> and reignited decades-long concerns over the efficacy of state-led efforts at urban transformation. The Court affirmed its holding in *Berman* from 51 years prior. It held that New London's plan to redevelop 90 acres of land in the Fort Trumbull neighborhood and bring between 1,200 and 2,300 jobs to a blighted town was not conceived to benefit Pfizer, Inc., the private company selected to act as the developer.<sup>51</sup> Therefore, the plan had a public purpose even if it was being implemented by a private developer. Once again, the Court upheld the use of eminent domain where a comprehensive redevelopment plan was developed to justify the acquisition of both blighted and non-blighted property for redevelopment.<sup>52</sup> As with urban renewal, the backlash to *Kelo* reflected the undercurrent of skepticism and hostility towards large-scale, government-sponsored redevelopment. A *Washington Times* article incorrectly reported that the "Supreme Court decision in *Kelo v. City of New London* created new eminent domain powers to allow local governments to take private property from its lawful owner and give it to a private developer who promises to generate greater tax revenue with the land."<sup>53</sup> Politicians ratcheted up their rhetoric as well. Congresswoman Maxine Waters, a California Democrat and member of the Congressional Black Caucus, called the decision "the most un-American thing that can be done."<sup>54</sup> Congressman F. James

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49. For a discussion of the rise of place branding in urban economic development, see Christopher J. Tyson, *Annexation and the Mid-size Metropolis: New Insights in the Age of Mobile Capital*, 73 U. PITT. L. REV. 505, 522 n.74 (2012).

50. See 545 U.S. 469 (2005).

51. See *id.* at 483–84.

52. See *id.* at 488–90.

53. See Charles Hurt, *Congress Assails Domain Ruling*, WASH. TIMES (July 1, 2005), <https://www.washingtontimes.com/news/2005/jul/1/20050701-010419-9346r/> [<https://perma.cc/A7C5-4GTN>].

54. See *id.*

Sensenbrenner Jr., a Wisconsin Republican, went even further by saying that *Kelo* “ha[d] the potential of becoming the Dred Scott decision of the 21st century.”<sup>55</sup> Then-Congressman Bernard Sanders, his chamber’s lone self-described socialist, commented, “I believe that the result of this decision will be that working families and poor people will see their property turned over to corporate interests and wealthy developers.”<sup>56</sup>

If *Kelo* rendered the term “redevelopment” a bad word, the rise and fall of the California Community Redevelopment Act (CCRA)<sup>57</sup> cemented the word’s negative connotations. California was the first state to authorize the creation of redevelopment authorities in 1945, allowing cities “to govern land to effectively overcome classic market problems such as holdouts, free-riders, collective action, and oligopolies.”<sup>58</sup> The CCRA enabled California cities to establish redevelopment authorities, dubbed “RDAs,” and imbued them with eminent domain powers that could be deployed behind what many viewed as vague determinations of blight and inadequacy.<sup>59</sup> Between 1980 and 2011, California officials grew concerned that redevelopment financing methods were depleting state education funding.<sup>60</sup> Eventually, in June 2011, the California legislature imposed an immediate freeze on redevelopment authorities, proceeded to dissolve them, and outlined a process by which redevelopment authorities would devolve.<sup>61</sup>

### B. Redevelopment Authorities and Land Banks Today

In spite of this checkered past, the current desire for reparative, comprehensive, and sustainable approaches to disinvestment calls for a reconsideration of public institution-led redevelopment. Redevelopment authorities and land banks are underappreciated vehicles for racial and spatial justice in cities. In order to realize their

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55. *See id.*

56. *See id.*

57. CAL. HEALTH & SAFETY CODE § 33000 (West 2020).

58. Tim Kowal, *Who Will Redevelop Redevelopment?: Power and Pragmatism in California Redevelopment Law*, 12 ALB. L. ENV’T OUTLOOK J. 93, 106 (2007) (citations omitted).

59. *See, e.g., id.* at 102–03.

60. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure 2* (U.S. Dep’t Hous. & Urb. Dev., Working Paper No. EMAD-2014-01, 2014).

61. *See id.* at 1. *See generally* Kyle D. Mott, *Redevelopment Reimagined: A Proposal to Revive California’s Redevelopment Agencies to Attain the Greenhouse Gas Reduction Targets of Senate Bill 375*, 17 CHAP. L. REV. 233 (2013).

full potential, they must be positioned in accord with a robust equitable development vision. This opportunity is not lost on the urban development professionals leading today's RALBs. In recent years, many RALBs have rebranded themselves in recognition of past mistakes and in an effort to embrace more reparative, humane, and innovative approaches to redevelopment. In 2018, the Portland Development Commission rebranded itself as "Prosper Portland" with a new mission, vision, and values that focused on equitable and inclusive economic development.<sup>62</sup> In 2018, the Cincinnati Port of Greater Cincinnati Development Authority rebranded itself as "The Port" and launched "Vision 2022," a multi-faceted strategy to drive economic growth, job creation, equitable development, and shared prosperity for all Cincinnati residents.<sup>63</sup> In 2012, Atlanta's Development Authority rebranded itself as "Invest Atlanta" and articulated its mission "[t]o advance Atlanta's global competitiveness by growing a strong economy, building vibrant communities, and increasing economic prosperity for all Atlantans."<sup>64</sup> In 2019, Baton Rouge's hybrid redevelopment authority and land bank rebranded itself under the name "Build Baton Rouge" and restated its mission as "[b]ringing people and resources together to promote equitable investment, innovative development, and thriving communities across all of Baton Rouge."<sup>65</sup>

The invocation of equity and inclusion is much more than buzzword branding or an effort to respond to the growing awareness of cities and metropolitan regions as sites of innovation and local problem-solving — what Bruce Katz and Jeremy Nowak have termed the "new localism."<sup>66</sup> These developments represent an acknowledgment of the

62. *See About Us*, PROSPER PORTLAND, <https://prosperportland.us/about-us/> [https://perma.cc/9W5A-GJZB] (last visited Feb. 12, 2021).

63. *See Our Vision*, PORT, <https://www.cincinnatiport.org/our-vision/> [https://perma.cc/XUL5-PD7K] (last visited Feb. 12, 2021).

64. *What We Do*, INVEST ATLANTA, <https://www.investatlanta.com/about-us/what-we-do> [https://perma.cc/5A3W-3GCL] (last visited Feb. 15, 2021); *see also Atlanta Development Authority Renamed 'Invest Atlanta,' TweetMyJobs Launched*, ATLANTA BUS. CHRON. (Jan. 19, 2012, 11:43 AM), <https://www.bizjournals.com/atlanta/news/2012/01/19/atlanta-development-authority-renamed.html> [https://perma.cc/KJ5S-X9B5].

65. *About Us*, BUILD BATON ROUGE, <https://buildbatonrouge.org/about-us/> [https://perma.cc/7T5F-UKNA] (last visited Feb. 16, 2021); *see also Timothy Boone, Build Baton Rouge: East Baton Rouge Redevelopment Authority Gets New Name, Vision Statement*, ADVOCATE (May 16, 2019, 11:03 AM), [https://www.theadvocate.com/baton\\_rouge/news/business/article\\_0dc96468-77f4-11e9-809c-8738f8f2950f.html](https://www.theadvocate.com/baton_rouge/news/business/article_0dc96468-77f4-11e9-809c-8738f8f2950f.html) [https://perma.cc/6FB4-BAYH].

66. *See generally* BRUCE KATZ & JEREMY NOWAK, *THE NEW LOCALISM: HOW CITIES CAN THRIVE IN THE AGE OF POPULISM* (2018).



failures of racialized urbanism and the need for a more race-conscious, human-centered, reparative approach to community economic development. Many of the agencies have incorporated the language of equitable development into their missions, and some have authored specific presentations on how their former administrations advanced racist, environmentally harmful, and poorly planned revitalization attempts that are directly tied to the present-day issues with systemic, place-based disinvestment occurring in their respective communities. This framing of RALBs' future focus reflects broader conversations around structural racism, white supremacy, and growing income inequality and promises a greater spatial understanding of these dynamics.

As the mainstream of U.S. society comes to terms with the limits of policing and incarceration in addressing the root causes of urban disinvestment, there is increasing advocacy for diverting funds away from policing and incarceration and towards policies and projects that rebuild communities.<sup>67</sup> Local officials are awakening to what community economic development professionals have long known: market forces cannot and will not solve the most pressing issues of urban disinvestment.<sup>68</sup> Without a comprehensive, equitable planning approach led by well-resourced public institutions, redevelopment will only occur at the expense of the vulnerable and those already burdened by the tragic failures and cumulative consequences of past discriminatory housing and urban development policy. Moreover, the rise of impact investing and the expansion of public finance tools like the New Markets Tax Credit program will have an even greater chance of impacting disinvested neighborhoods with the public institutional infrastructure necessary to address systemic disinvestment over the long term.<sup>69</sup> Public institutions are an essential component of advancing equitable development.

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67. *See supra* notes 9–10 and accompanying text.

68. *See, e.g.*, Press Release, Congressman Dan Kildee, Reps. Kildee, Ferguson Introduce Bipartisan Bill to Expand Land Banks Across America (June 16, 2020), <https://dankildee.house.gov/media/press-releases/rep-kildee-ferguson-introduce-bipartisan-bill-expand-land-banks-across-america> [<https://perma.cc/3KE4-9YMD>].

69. Congress authorized the New Markets Tax Credits program in December 2000. It incentivizes community development and economic growth through the use of tax credits that attract private investment to distressed communities. It is managed through the Community Development Financial Institutions Funds of the United States Department of the Treasury. In December 2020, Congress extended the New Markets Tax Credit program and increased the annual tax credits allocated to \$5 billion, up from the recent average of \$3.5 billion. *See* Brian Rogal, *Congress Breathes New Life into New Markets Tax Credits*, BISNOW (Jan. 28, 2021), <https://www.bisnow.com/chicago/news/economic-development/congress-breathes->

RALBs can convene private investment and facilitate market transactions with private actors, but their value is much greater than merely serving as intermediaries. Working together, RALBs can perform a public trust role to repurpose vacant, blighted, and tax adjudicated properties for the public good. The public trust doctrine restrains private actors from owning and controlling certain public resources and places those resources in trust, with the sovereign as trustee and the state as the beneficiary.<sup>70</sup> In *Law and the Urban Commons*, Sheila Foster wrote that the public trust doctrine typically applies to ecologically sensitive lakes, beaches, rivers, forests, and wetlands and ensures that the public can access those resources and that they are protected for use by future generations.<sup>71</sup> She and other scholars have recognized that there is a burgeoning recognition of resources that are identified as serving a public purpose greater and more valuable than the privatized investment alternatives such resources could otherwise serve.<sup>72</sup> Without parsing the particulars of the judicial interpretation of public trust law and applying it here, an expanded view of the public trust doctrine can provide the legal foundation to support an expanded role for RALBs as the protectors of vulnerable communities relative to the realities of wealth accumulation and the development of city land.

While the methodology of contemporary redevelopment has largely embraced equitable development as a desired goal, it is important to clearly articulate a framework for undoing the racially discriminatory work of predecessor regimes. As the reference to the public trust

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new-life-into-new-markets-tax-credits-107530 [https://perma.cc/6X87-JEGF]. For more information, see *New Markets Tax Credit Program*, CMTY. DEV. FIN. INSTS. FUND, <https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit> [https://perma.cc/L9FC-HM5P] (last visited Feb. 16, 2021). For a discussion of the role the New Markets Tax Credits program could play in advancing Black entrepreneurship and, by extension, equitable development, see generally Janet Thompson Jackson, *Can Free Enterprise Cure Urban Ills?: Lost Opportunities for Business Development in Urban, Low-Income Communities Through the New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659 (2007).

70. See, e.g., Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 452 (1892) (allowing for the disposition of trust lands so long as trust purposes are upheld).

71. See Sheila Foster, *Law and the Urban Commons*, in *THE CITIES AS A COMMONS PAPERS: THE FOUNDING LITERATURE AND INSPIRATIONAL SPEECHES* 22, 22 (2019), <https://www.enainstitute.org/wp-content/uploads/2019/03/CO-CITY-OPEN-BOOK-The-City-as-a-Commons-Papers-1.pdf> [https://perma.cc/B8Y4-M2XC].

72. See, e.g., Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281, 284–85 (2016); Charlotte Hess, Mapping the New Commons (July 2008) (unpublished paper), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1356835](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1356835) [https://perma.cc/7WGU-72ST].

doctrine underscores, it is also necessary to articulate a broader role for public institutions in not only participating in public-private partnerships where public resources are leveraged to catalyze otherwise privately owned development, but also in owning assets on behalf of and with the active participation of disinvested communities. To accomplish that, RALBs must work at the intersection of several areas of focus: social and racial justice, climate change adaptation, public finance, urban planning and placemaking, real estate development, and law and policy reform. Together these focus areas comprise the essential components of an equitable development strategy, and each is an essential component of bringing about lasting, meaningful improvements in the condition of disinvested neighborhoods.

First, an overriding commitment to social and racial justice recognizes that the current condition of systematically disinvested neighborhoods is the intended and expected result of decades of racist housing, housing finance, and urban development policy. This history and its racist intent are well documented, and the recent explosion in popular discourse about the impacts of redlining, blockbusting, slum clearance, and the national highway system on Black neighborhoods, Black society, and Black family wealth has highlighted the deep historical foundations of spatial inequality in the modern metropolis.<sup>73</sup> Opportunity, life chances, and the creation of transferrable social and economic capital are all mediated by place, and place is a social construction flowing from the cumulative mal-distributions of resources and political power based on race and class.<sup>74</sup> Because of this history of intentional discriminatory state action, public institutions must play a central role in allocating resources in ways that measurably advance the quality of life and material circumstances of disinvested community residents and the places they live, work, and play.

Calls for social and racial justice necessarily implicate resource distribution and the problem of wealth extraction typically posed by new development in disinvested communities. Where urban development is concerned, social justice movements have long battled with City Hall and wealthy developers for not only equitable policy enactment, but also equitable results. Therefore, calls for equitable development include specific resource and burden-shifting tools and proposals that guarantee tangible and measurable results. Community

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73. See, e.g., Tyson, *Ferguson to Flint*, *supra* note 3, at 34.

74. See David Dante Troutt, *Trapped in Tragedies: Childhood Trauma, Spatial Inequality, and Law*, 101 MARQ. L. REV. 601, 619–25 (2018).

benefits agreements (CBAs) have risen as a potent tool in protecting community interest in the course of new development.<sup>75</sup> CBAs are project-specific, legally binding agreements between a developer and a community “that detail[] the project’s contributions to the community and ensures community support for the project.”<sup>76</sup> Community benefits secured by CBAs often include access to living wage jobs, affordable housing, health and community services, and open space. By securing community-driven concessions and protections from private developers, CBAs ensure that private interest will do more than merely extract value from disinvested communities. They also ensure public participation in development planning and execution. This not only shifts the balance of influence in the character of development, but also provides opportunities for neighborhood and resident leadership development in ways that increase the expertise and capacity of disinvested communities to exercise greater agency in the transactions and negotiations that are often inaccessible and opaque to laypeople.<sup>77</sup>

In 2016, Detroit voters were the first in the nation to approve a CBAs ordinance, which applies to projects greater than \$75 million in value or that receive over \$1 million in city support.<sup>78</sup> After almost five years, however, the measure has been criticized for falling short on expanding opportunities for Detroit’s Black community.<sup>79</sup> While CBAs can do considerable good to address racial justice in urban development, RALBs can deliver even greater benefits since their focus stretches far beyond an individual project or transaction. Equity-focused RALBs understand the specific context of disinvested neighborhoods and the specific conditions from which vacant and

75. See Audrey G. McFarlane, *Putting the “Public” Back into Public-Private Partnerships for Economic Development*, 30 W. NEW ENG. L. REV. 39, 57–60 (2007).

76. *Community Benefits 101*, P’SHP FOR WORKING FAMS., <https://www.forworkingfamilies.org/page/community-benefits-101> [https://perma.cc/2BMJ-QETQ] (last visited Mar. 25, 2021).

77. For more information on community benefits agreements, see *Delivering Community Benefits Through Economic Development: A Guide for Elected and Appointed Officials*, P’SHP FOR WORKING FAMS. 6–9 (2014), [https://www.forworkingfamilies.org/sites/default/files/publications/1114%20PWF%20CBA%20Handout\\_web.pdf](https://www.forworkingfamilies.org/sites/default/files/publications/1114%20PWF%20CBA%20Handout_web.pdf) [https://perma.cc/7KVH-5BGH].

78. See Christine Ferretti, *Prop B Wins, Prop A Fails in Detroit Community Benefits*, DETROIT NEWS (Nov. 9, 2016, 3:42 PM), <https://www.detroitnews.com/story/news/politics/elections/2016/11/08/detroit-community-benefits-results/93507310/> [https://perma.cc/CTF5-XSPA].

79. See Kimberly Hayes Taylor, *Why Detroit’s Tool to Force Developers to Invest in Community Is Coming Up Short*, CURBED DETROIT (Jan. 21, 2020, 11:02 AM), <https://detroit.curbed.com/2020/1/21/21066933/detroit-community-benefits-agreement-ordinance-process> [https://perma.cc/N4WL-9YAM].

abandoned properties arise. They are embedded and invested in the local communities, local politics, and local government bureaucracies. Community interests are not a separate plank in the urban development partnership interest matrix but rather an integral component of the processes of community economic development through RALBs' active, structured, and ongoing collaboration with the community members and institutions, a core feature of its operation. A CBA offers community control for a single transaction or development, but equity-focused RALBs are aware of the holistic issues of urban planning, housing, and transit and provide the community with a public institution in which they can have real involvement and exercise real influence through the participatory channels endemic to local government.<sup>80</sup>

Second, envisioning a more equitable urban future must contend with the realities of climate change and the various emerging adaptation responses and opportunities. Extreme weather events are increasingly more frequent and ferocious. The 2020 hurricane season produced 30 named storms — the most since 1851 — with damages of over \$66 billion in the United States alone.<sup>81</sup> Climate change adaptation is fundamentally an infrastructure issue, and U.S. cities approach the challenge at a deficit. More than \$4 trillion is needed to bring existing infrastructure up to par by 2025, and only half of that amount is committed.<sup>82</sup> Manmade failures such as the Flint water crisis also illustrate the ways in which the exploitation of disinvested communities, the collapse of essential urban infrastructure, and the challenges of localism and federalism combine to compound the perils of life in disinvested communities.<sup>83</sup> Climate gentrification occurring in areas like metropolitan Miami, Florida, exposes the risks of further marginalization of already disinvested communities.<sup>84</sup> As urban

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80. For a discussion on the limits of CBAs for community control in urban development, see K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 714–19 (2020).

81. See Mira Rojanasakul & Brian K. Sullivan, *This Year's Wild Hurricane Season Is an Ominous Sign of What's Ahead*, BLOOMBERG GREEN (Dec. 5, 2020), <https://www.bloomberg.com/graphics/2020-hurricane-season-overview/> [<https://perma.cc/DK6W-N8R7>].

82. See Christine Sgarlata Chung, *Rising Tides and Rearranging Deckchairs: How Climate Change Is Reshaping Infrastructure Finance and Threatening to Sink Municipal Budgets*, 32 GEO. ENV'T L. REV. 165, 172 (2020) (discussing the American Society of Engineer's projections for the nation's infrastructure needs and the associated costs of inaction).

83. See *id.* at 173–75; Tyson, *Ferguson to Flint*, *supra* note 3, at 16–22.

84. Climate gentrification refers to the displacement of the residents of higher elevation property by those fleeing the vulnerabilities of coastal property. In 2017, the

developers assess opportunities for reversing systemic disinvestment, they must simultaneously understand the urgency of climate change adaptation and how to integrate those approaches into strategies for equitable development.

RALBs can also address environmental racism. Black, Latinx, and other minority communities have long been forced to shoulder a disproportionate share of exposure to the negative effects of pollution due to having toxic facilities and land uses located within close proximity to where they live, work, and play.<sup>85</sup> The location of industrial plants, highways, waste management facilities, and correctional facilities have traditionally been placed near or adjacent to disinvested communities, compounding the disinvestment process and further imperiling the chance for revitalization.<sup>86</sup>

Developing buildings — especially housing — with improved ventilation, greater insulation, and more access to green space and transportation has been at the core of the green building movement for the past few decades.<sup>87</sup> Green housing is healthier housing, which improves health outcomes for the most vulnerable. The economics of real estate development in disinvested areas often renders the addition of cutting-edge green building technology unaffordable. As green building technology becomes mandated by states and local governments, the building supplies and construction markets will adapt to meet the new regulatory environment. With RALBs embedded within local communities, real estate developer markets, and construction markets, they have a greater ability to match incentives to projects to ensure the mass adaptation of these techniques and innovations in ways that private developers or city halls might not be able to.<sup>88</sup>

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City of Miami and Miami Beach passed a \$400 million bond measure, half of which will fund flood mitigation projects and other measures to adapt to sea-level rise. In 2018, Miami became the first city in the country to pass a climate gentrification resolution. See Marcel Apple, *Climate Gentrification: An Imminent Threat to Oceanfront Cities*, 20 SUSTAINABLE DEV. L. & POL'Y 20, 20 (2020).

85. See generally CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (Robert D. Bullard ed., 1993).

86. See *id.*

87. See, e.g., Noreen Beatley, *Green Is Affordable*, SHELTERFORCE (Dec. 14, 2011), [https://shelterforce.org/2011/12/14/green\\_is\\_affordable/](https://shelterforce.org/2011/12/14/green_is_affordable/) [<https://perma.cc/7VF5-U3NU>].

88. For further discussion on green building technology and local government regulation, see generally Anthony DeLaPaz, Note, *LEED Locally: How Local Governments Can Effectively Mandate Green Building Standards*, 2013 U. ILL. L. REV. 1211 (2013); Keith H. Hirokawa, *At Home with Nature: Early Reflections on*

Third, RALBs can be first movers in development and thereby leverage their expertise in public finance to reduce the risks and costs for investors. Disinvested communities are areas where investment and market activity are lacking because of a host of factors, including perceptions of risk and the high costs of entry for first movers. Public entities have exclusive or greater access to a variety of public finance tools that can fill in the gap between project costs and private equity or debt financing. Tax increment financing, tax abatements, payments in lieu of taxes, and state tax credits are all devices that states and municipalities have created to incentivize development in disinvested areas. At the federal level, tax credit programs for community economic development — named for their focus on low-income housing, new markets, enterprise zones, and opportunity zones — have proliferated and expanded into what has been called the “tax war on poverty.”<sup>89</sup> These programs have been the dominant sources for capital in disinvested communities for a few decades, and there are developers experienced with delivering transformative developments under these programs. Because of the essential role these programs play in community economic development, RALBs must remain engaged in their utilization and expansion.

Fourth, urban planning and placemaking are important because the aesthetic and functional qualities of places are a core component of real and perceived value and livability.<sup>90</sup> In Black communities, public spaces are often poorly planned or unplanned and heavily regulated by the state through policing and other public order regulations that have treated the Black presence in public space as a nuisance. The Black experience is marked by being excluded, harassed, and ostracized in public spaces.<sup>91</sup> Urban planning has been criticized as a tool of white supremacy and for reproducing racial hierarchies because it is the discipline of the urban renewal failures. Critics point to the top-down,

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*Green Building Laws and the Transformation of the Built Environment*, 39 ENV'T L. 507 (2009).

89. See generally Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791 (2014).

90. See generally RACHEL ENGH ET AL., CTR. FOR CMTY. PROGRESS & METRIS ARTS CONSULTING, TRENDS IN CREATIVE PLACEMAKING ON PROBLEM PROPERTIES: 2019 NATIONAL SURVEY FINDINGS (2019), [https://communityprogress.org/filebin/Trends\\_in\\_Creative\\_Placemaking\\_on\\_Problem\\_Properties\\_-\\_2019\\_National\\_Survey\\_Findings\\_FINAL.pdf](https://communityprogress.org/filebin/Trends_in_Creative_Placemaking_on_Problem_Properties_-_2019_National_Survey_Findings_FINAL.pdf) [<https://perma.cc/B9R6-CWZ3>].

91. See, e.g., Alissa Walker, *How to End Anti-Blackness in Cities*, CURBED (June 17, 2020, 10:20 AM), <https://archive.curbed.com/2020/6/17/21291761/black-urbanism-racism-cities-jay-pitter> [<https://perma.cc/27UJ-5MZH>]; see also Schindler, *supra* note 26, at 1988.

elitist foundations of the profession and how marginalized people are rarely engaged in the processes and decision-making that impact their communities.<sup>92</sup> They also acknowledge that the racist effects of urban planning were intentional, and now that same intentionality is required through bottom-up, race-conscious planning to repair the damage.<sup>93</sup> Efforts like the Design Justice movement focus on reforming design practices to align with racial justice efforts.<sup>94</sup> These and other efforts also reflect the potential for RALBs to provide a significant link between the development of plans for revitalization of disinvested areas, and the implementation capacity needed to realize those plans. Private developers seeking to invest in disinvested communities may operate apart from any comprehensive, community-led planning effort, either because one does not exist or doing so does not comport with the developer's timeline or investment goals. Equity-focused RALBs can feature comprehensive planning and sustained community engagement as part of their core functions, allowing them to chronicle and curate public sentiment on desired urban development outcomes. This can in turn inform the allocation of resources and public finance tools to ensure that any development pursued corresponds with the community's expressed aspirations and has a high quality of place and design.

Fifth, residents in disinvested communities want to see those landscapes physically transformed. Audrey McFarlane has quantified the benefits to cities of public subsidies for real estate development as including

- (1) a success story to promote; (2) needed business activity in the city and its attendant benefits; (3) the potential for increased tax revenues through increased taxable activities — though many of the deals are subsidized by the city foregoing the very taxable increases one would think were sorely needed; and (4) indirect synergistic benefits of

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92. See Diana Budds, *How Urban Design Perpetuates Racial Inequality — and What We Can Do About It*, FAST CO. (July 18, 2016), <https://www.fastcompany.com/3061873/how-urban-design-perpetuates-racial-inequality-and-what-we-can-do-about-it> [<https://perma.cc/YC4V-C9N4>].

93. See, e.g., Adrien Weibgen, *Racist Planning Shaped Our City; Conscientious Planning Can Help Undo Its Mistakes*, N.Y. DAILY NEWS (Apr. 11, 2019, 10:00 AM), <https://www.nydailynews.com/opinion/ny-oped-racist-planning-shaped-our-city-20190411-pkobnblgejhbdjitqpdhflxj6u-story.html> [<https://perma.cc/S5YQ-L5H9>].

94. See, e.g., Bryan Lee Jr., *America's Cities Were Designed to Oppress*, BLOOMBERG CITYLAB (June 3, 2020, 3:56 PM), <https://www.bloomberg.com/news/articles/2020-06-03/how-to-design-justice-into-america-s-cities> [<https://perma.cc/UHA9-99QK>].



signaling that the city is on the rise — that the city is the “place to be.”<sup>95</sup>

These benefits are also associated with disinvested neighborhoods: the desire for a success story, the promise of new commercial activity, the impact of a new edifice where blight or vacancy used to exist, and the potential for other development to follow all provide profound material, symbolic, and existential benefits for disinvested neighborhoods. Ultimately, the ability to generate real estate development is one of the primary measures of the effectiveness and value of RALBs. Community-based organizations and small community developers often lack the technical expertise to advance complex real estate development processes, which can take years to bring to fruition and can require significant carrying costs since in most real estate development transactions compensation for planning and coordination activities are paid in arrears.<sup>96</sup>

Finally, there must be an ongoing focus on law and policy reform and innovation. Much of the law reform scholarship impacting urban development has focused on constitutional matters such as the law of exactions and eminent domain.<sup>97</sup> These issues are important and loom large in legal disputes over real estate development, but these transactional problems often overshadow more structural issues that have historically resulted in considerable injustice. Specifically, there is a larger issue in the area of obtaining marketable title to vacant and abandoned property because of heirs property issues, which vary state by state. Heirs property refers to the process of land transfer between generations of a single family who have acquired their interests by intestate succession, by will, or by gift.<sup>98</sup> Heirs property issues are one

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95. McFarlane, *supra* note 75, at 44.

96. *See, e.g.*, OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URB. DEV., BUILDING THE ORGANIZATION THAT BUILD COMMUNITIES: STRENGTHENING THE CAPACITY OF FAITH- AND COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS 16–17 (Roland V. Anglin ed., 2004), <https://www.huduser.gov/Publications/pdf/buldOrgCommunities.pdf> [<https://perma.cc/7JKB-BGWE>]. Developers are typically compensated for their planning and coordination efforts in real estate development transactions through a developer fee that is often paid after project financing has closed or after the building has been completed. This financial practice favors developers who can support their operating costs in the interim between project commencement and closing — something small community developers often cannot.

97. *See, e.g.*, Audrey G. McFarlane & Randall K. Johnson, *Cities, Inclusion and Exactions*, 102 IOWA L. REV. 2145 (2017).

98. *See, e.g.*, Thomas Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, AM. BAR ASS’N (Oct. 1, 2016), [https://www.americanbar.org/groups/state\\_local\\_government/publications/state\\_local](https://www.americanbar.org/groups/state_local_government/publications/state_local)

of the leading causes of involuntary land loss in Black families, and the history of Black land theft has generated understandable mistrust in Black communities of real estate transactions generally.<sup>99</sup> The Uniform Partition of Heirs Property Act proposes a new way of partitioning land held in common, and to date has been adopted in Nevada, Georgia, Arkansas, Montana, Alabama, Hawaii, South Carolina, Connecticut, New Mexico, and Texas.<sup>100</sup> The heirs property issue is one example of the need for sustained legal and policy reform to maximize opportunities for equitable results in the transformation of disinvested urban space and to realize meaningful positive impacts on the people who call those neighborhoods home.

## II. REDEVELOPMENT'S VULNERABILITY TO MUNICIPAL FISCAL CRISIS

If RALBs are the optimum vehicles for advancing equitable development at scale, they must be adequately funded. Securing adequate, dedicated funding is challenging because (1) the nature of local government finance has long viewed policing and incarceration as the most favored institutional responses to the myriad challenges stemming from disinvested communities, (2) the project cycle of catalytic development is protracted and often extends beyond political and budget cycles, and (3) the privatized view of community uplift creates a legitimacy issue for an active or aggressive and centralized government-led approach. While it is not within the scope of this Article to survey the various funding allocations RALBs around the country receive, there is an indication of the low level of public funding in reporting from the Georgia Association of Land Banks (GALB). Georgia leads the nation with the proliferation of land banks in their respective communities, and those entities report considerable success amidst significant funding challenges. In a 2019 publication, the GALB cited government funding support as a chief limitation on its effectiveness.<sup>101</sup>

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[\\_law\\_news/2016-17/fall/restoring\\_hope\\_heirs\\_property\\_owners\\_uniform\\_partition\\_heirs\\_property\\_act](https://www.lawnews/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act) [https://perma.cc/ZDR3-SRU8].

99. See Rishi Batra, *Improving the Uniform Partition of Heirs Property Act*, 24 GEO. MASON L. REV. 743, 747 (2017).

100. See *id.* at 754.

101. See SARA J. TOERING, CTR. FOR CMTY. PROGRESS, PROGRESS IN COMMUNITY, EXCELLENCE IN DIVERSITY 7, 28 (2019), [https://www.communityprogress.net/filebin/GALBA-Report\\_FINAL.pdf](https://www.communityprogress.net/filebin/GALBA-Report_FINAL.pdf) [https://perma.cc/9573-T82G].

Policing, incarceration, and code enforcement are widely viewed as core responsibilities of local government and as the appropriate responses to persistent urban disinvestment. They are prioritized for public funds, especially amidst tightening budgets and fiscal crises, and they tend to edge out funding for more comprehensive redevelopment efforts.<sup>102</sup> The dominant response to the blight and social disorder resulting from a century of the systemic disinvestment of Black and other marginalized communities has been policing and incarceration.<sup>103</sup> The failures of these approaches are catastrophic in financial and human terms and have fueled several decades of activism around police brutality and mass incarceration that are forcing a re-examination of policing, punishment, and social control writ large.<sup>104</sup> Code enforcement efforts have targeted blighted properties, but seldom do these efforts tie into a broader, well-resourced strategy to not only sanction and penalize negligent property owners but also return blighted properties to commerce in ways that reflect a community's ambitions for sustainable and affordable land and economic development. Furthermore, the payoff for such efforts manifests far beyond political cycles, making it hard to sustain political support over matters more urgent and perceived to be more legitimate spending targets like public safety and infrastructure.

The context for the current municipal fiscal crisis is varied and complex. Municipalities have fiscal obligations to their citizens for whom they provide health, safety, and general welfare services and protections; bondholders who finance their debt; employees who depend on city governments for their livelihood; recipients of essential infrastructure and services provided by both general and special purpose municipalities; and retirees who have paid into pension funds upon which they count on to support them and their surviving spouses until death. Municipalities experience fiscal distress mostly because of economic decline, tax base erosion, demographic changes, federal and

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102. See Emily Badger & Quoc Trung Bui, *Cities Grew Safer. Police Budgets Kept Growing*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/interactive/2020/06/12/upshot/cities-grew-safer-police-budgets-kept-growing.html> [https://perma.cc/VU5P-4MQF] (“Across these 150 large cities, the average share of general expenditures devoted to the police has gradually increased by about 1.2 percentage points since the late 1970s, to 7.8 percent. . . . For comparison, this same set of cities now devotes on average about 5 percent of spending to housing, and 3 percent to parks.”); see also Akinnibi et al., *supra* note 10.

103. See ANGELA J. HATTERY & EARL SMITH, POLICING BLACK BODIES: HOW BLACK LIVES ARE SURVEILLED AND HOW TO WORK FOR CHANGE 16–17 (2017).

104. See, e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1788–802 (2020).

state mandates, federal revenue cuts, state tax levy limits, recessions, and mismanagement. These are the leading causes of local government fiscal distress.<sup>105</sup> The COVID-19 pandemic has added unprecedented pressures to municipal finances as the increased needs of first responders and the fall-off in sales tax revenue upend an already precarious fiscal terrain. On average, sales taxes account for about 24% of local governments' revenue streams.<sup>106</sup> The specter of uncertainty surrounding the pandemic has limited the ability of online purchases to make up the loss of in-store sales as purchasers cut back on spending and comply with stay-at-home orders.<sup>107</sup> Municipal fiscal matters are also driven by the long history of spending prioritization and perceptions of worthiness. Racial power influences the perception of the appropriate priorities for municipal spending, specifically with regard to the appropriate responses to urban crime and social decline. Additionally, legal reasoning and rhetoric have promoted normative views of localism and neighborhood value that have heightened the specter of risk associated with Black neighborhoods.<sup>108</sup>

While RALBs can support themselves through revenue generated from their development and land disposition activities, this funding may be insufficient to support the interdisciplinary vision outlined earlier. Moreover, where redevelopment authorities can be formed or expanded to meet this interdisciplinary vision, the start-up capital needed will likely have to come from municipal governments. City governments will be less inclined to prioritize the approach to equitable development outlined herein if they are also stretched because of factors beyond their control (i.e., a pandemic), have political incentives to not adequately fund public institution-led equitable development, and face objective fiscal limitations. Furthermore, local governments "chasing sales and property tax revenues fail to recognize the role of [RALBs in] . . . creating a sense of place based on a community's unique natural and cultural assets."<sup>109</sup> This requires viewing RALBs as more than just a tool for increasing local tax revenues, but rather as a core part of a "comprehensive

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105. See Christopher J. Tyson, *Exploring the Boundaries of Municipal Bankruptcy*, 50 WILLAMETTE L. REV. 661, 668 (2014).

106. See Bruce D. McDonald, III & Sarah E. Larson, *Implications of the Coronavirus on Sales Tax Revenue and Local Government Fiscal Health*, 6 J. PUB. & NONPROFIT AFFS. 377, 378 (2020).

107. See *id.* at 379, 383–84.

108. See, e.g., Tyson, *Municipal Identity*, *supra* note 27, at 681–94.

109. *APA Policy Guide*, *supra* note 11.

strategy for promoting physical revitalization,” social cohesion and rehabilitation, and financial reinvestment.<sup>110</sup>

Organizers and activists in Black communities have long advocated for a more activist role in equitable redevelopment by their local governments as is evidenced by the rise of the “Defund the Police” campaign, an effort of the Movement for Black Lives that calls for diverting funding away from traditional policing and towards efforts that address the root causes of social disorder and misery in disinvested Black communities.<sup>111</sup> Calls for a reduced emphasis on traditional law enforcement as an intervention strategy do not necessarily represent an affirmative vision for the role of government institutions in mediating equitable development. Black communities are sometimes prone to the same preference for private-sector solutions as the mainstream. This is most evident in the “Buy the Block” movement of a growing class of Black celebrities and young professionals who advocate place-based, economic nationalism to counter gentrification as realized through Black residential displacement.<sup>112</sup> The desire for the respect, status, and autonomy that is associated with private

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110. *See id.*

111. *See The Time Has Come to Defund the Police*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/defund-the-police/> [<https://perma.cc/HKT7-7TJA>] (last visited Feb. 16, 2021).

112. The “Buy the Block” movement has been popularized by celebrities such as the late Nipsey Hussle (Ermas Asghedom) and Jay-Z (Shawn Carter). Prior to his murder in March 2019, Hussle was known not only as a rising hip-hop artist but also as a burgeoning real estate developer in his home neighborhood of Hyde Park in South Los Angeles. *See* Angel Jennings & Sonaiya Kelley, *Must Reads: Before His Death in South L.A., Nipsey Hussle Was Trying to Buy Back His Hood*, L.A. TIMES (Apr. 2, 2019, 3:00 AM), <https://www.latimes.com/local/lanow/la-me-nipsey-hussle-south-la-20190402-story.html> [<https://perma.cc/PSU4-MHU2>]. In an April 2019 performance, Jay-Z rapped, “[g]entrify your own hood before these people do it. Claim eminent domain and have your people move in. That’s a small glimpse into what Nipsey was doing. For anybody still confused as to what he was doing.” Abel Shifferaw, *JAY-Z Performs New Freestyle at Webster Hall: ‘Gentrify Your Own Hood Before These People Do,’* COMPLEX (Apr. 26, 2019), <https://www.complex.com/music/2019/04/jay-z-webster-hall-b-sides-show-new-freestyle-brings-out-nas> [<https://perma.cc/8A2G-JCQC>]. Black investors have also developed impact funds to target Black neighborhood investments as a defense against Black displacement due to gentrification — most notably the Tulsa Real Estate Fund, which has raised over \$9 million in investment capital. *See Real Estate Mogul Jay Morrison Raises \$9.6 Million in First Seven Days of Historic IPO of First African-American Owned Real Estate Crowdfund*, CISION PR NEWSWIRE (June 7, 2018, 10:52 AM), <https://www.prnewswire.com/news-releases/real-estate-mogul-jay-morrison-raises-9-6-million-in-first-seven-days-of-historic-ipo-of-first-african-american-owned-real-estate-crowdfund-300661744.html> [<https://perma.cc/E6TG-XCDT>]. *See generally* Langston A. Tolbert, *Utilizing Educational Focused Community Funds in the Fight Against Displacement and the Revitalization of Distressed Communities*, 63 *How. L.J.* 303 (2020) (discussing impact investing and anti-displacement).

ownership is deeply ingrained in U.S. society across all races and cultures. Moreover, the quest for control over the physical and spatial development of Black neighborhoods and the desire for individual and family wealth creation has deep roots in Black freedom struggles.<sup>113</sup>

The challenge is that the presence of Black developers and property owners does not change the underlying real estate economics and perceptions of risk by third parties: investors, financiers, and insurers.<sup>114</sup> Moreover, it should not be assumed that Black investors will choose racial solidarity over profits, to say nothing of the rank unfairness of having to make such a choice. The accumulation of private property and wealth in Black hands as a tool for creating Black social, political, and economic power is arguably an imperative in the context of America's capitalist democracy. But it must not be confused with a mass strategy to address systemic, cumulative, and intergenerationally transferred Black disadvantages of the character, scope, and scale as has been highlighted in the Black-white wealth gap discourse.<sup>115</sup> The mass solution must involve a considerable deployment of public resources in areas beyond policing and incarceration. It must involve public institutions that are governed by democratic values and therefore allow for community engagement and oversight as a core feature of their operational design. The process of urban transformation through real estate development facilitated by

113. "Buy the Block" has its roots in Black nationalism, a current ideology in Black political thought and social movement focus, which has existed alongside the more recognized civil rights movement. "Black nationalism emphasizes Black self-determination, or Blacks' ability to shape their own political, economic, and cultural future" within American capitalism. Adjoa A. Aiyetoro & Adrienne D. Davis, *Historic and Modern Social Movements for Reparations: The National Coalition of Blacks for Reparations in America (N'COBRA) and Its Antecedents*, 16 TEX. WESLEYAN L. REV. 687, 725 (2010). "The promise of black capitalism was so politically appealing that every presidential administration since that of Nixon has adopted it in one form or another, be it 'community capitalism,' 'enterprise zones,' or 'minority enterprise.'" Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887, 926 (2019). "Amidst a widening racial wealth gap, the promotion of black banking and microenterprise has been a consistent policy Band-Aid." *Id.* Many have criticized these approaches as sidestepping the greater and more "fundamental challenge of overcoming America's legacy of slavery and institutional racism." *Id.*

114. See, e.g., Aaron Ross Coleman, *Black Capitalism Won't Save Us*, NATION (May 22, 2019), <https://www.thenation.com/article/archive/nipsey-killer-mike-race-economics/> [<https://perma.cc/MC2A-3N8B>].

115. "Over the past 30 years, the median wealth of white households has consistently dwarfed that of Black households — ranging from a gap of \$106,900 in 1992 to \$185,400 in 2007 (both adjusted for inflation to 2019 dollars)." Emily Moss et al., *The Black-White Wealth Gap Left Black Households More Vulnerable*, BROOKINGS (Dec. 8, 2020), <https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/> [<https://perma.cc/L2DV-WAQ5>].

public finance and supported by meaningful community engagement requires a long financial commitment by local governments. The municipal fiscal crisis therefore poses significant challenges to a robust equitable development vision.

### III. THE ROLE OF FEDERAL POLICY

Given the precariousness of local governments' financial capacity to support expanded RALB activity in service of the equitable development vision outlined herein, federal policy and resources are necessary. One of the core features of local government finance is the reliance on federal funding streams to deliver public goods, infrastructure, and services. Federal grants place conditions, terms, obligations, and penalties on state and local governments in receipt of federal dollars.<sup>116</sup> A review of the last two decades of federal legislation concerning land banks offers a promising vision for how the equitable development vision outlined herein might be pursued for both redevelopment authorities and land banks and encourage their collaboration in service of equitable development.

Since 2008, Congress and the United States Department of Housing and Urban Development (HUD) have recognized and supported land bank creation and operations. This came as part of Congress's response to the foreclosure crisis of 2008. Under the Housing and Economic Recovery Act (HERA),<sup>117</sup> Congress authorized the allocation of \$3.9 billion federal funds under the newly established Neighborhood Stabilization Program (NSP).<sup>118</sup> Grantees who received NSP funding were "required to use at least 25 percent of the grant to provide housing for individuals or families earning less than 50 percent of the area median income."<sup>119</sup> Moreover, "all activities funded by NSP [were required to] benefit low- and moderate-income households earning less than 120 percent of the area median income."<sup>120</sup> Land

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116. See, e.g., Tyson, *Ferguson to Flint*, *supra* note 3, at 52.

117. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).

118. See DEP'T. OF HOUS. & URB. DEV., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 5 (2009) [hereinafter HUD, REVITALIZING FORECLOSED PROPERTIES], <https://www.huduser.gov/portal/publications/landbanks.pdf> [https://perma.cc/N5LF-AVNP]; Alexander, *Neighborhood Stabilization & Land Banking*, *supra* note 7, at 4 ("The statutory provision authorizing the creation of what is known today as the Neighborhood Stabilization Program is found in section 2301 of the Housing and Economic Recovery Act of 2008, Pub. L. 110-298.").

119. HUD, REVITALIZING FORECLOSED PROPERTIES, *supra* note 118, at 5.

120. *Id.*

banks were authorized as permissible recipients of funding.<sup>121</sup> When the NSP legislation was renewed, land banks were allowed to use the funds to acquire foreclosed homes *and* residential properties, as opposed to solely foreclosed homes.<sup>122</sup>

NSP was intended to reduce inventories of foreclosed homes by providing funding to state and local governments. Eligible activities include (1) establishing financial assistance for the purchasers of foreclosed homes, (2) purchasing and rehabilitating homes and residential properties that have been abandoned or foreclosed upon, (3) establishing and operating land banks, (4) demolishing blighted structures, and (5) redeveloping demolished or vacant properties as housing.<sup>123</sup> HERA marked the first time in history that Congress identified land banks in federal legislation and as potential recipients of federal funding. In addition to several requirements, land banks were restricted from holding property for more than ten years. A land bank could, however, maintain property it did not own provided it charged the property owner the full cost of maintenance or placed a lien on the property.<sup>124</sup> Overall, NSP provided land banks with a funding mechanism to acquire and redevelop properties into productive use. So long as land banks served rehabilitative uses that were pertinent to achieving the goals established by NSP, they were offered broad access to crucial funding.<sup>125</sup>

While the NSP program modeled an ideal level of cooperation among the federal, state, and local levels of government, this was far from the case. Land bank advocates argued that the federal government's approach to supporting land banks amounted to a short-term measure for a long-term issue.<sup>126</sup> In 2009, Congress amended HERA with the American Recovery and Reinvestment Act, which allowed land banks to use NSP funds for operating costs associated

121. See Alexander, *Neighborhood Stabilization & Land Banking*, *supra* note 7, at 3.

122. See *id.* at 4.

123. See *NSP Basics*, HUD EXCH., <https://www.hudexchange.info/programs/nsp/nsp-eligibility-requirements/> [<https://perma.cc/RP7Q-VZUD>] (last visited Mar. 4, 2021).

124. See HUD, REVITALIZING FORECLOSED PROPERTIES, *supra* note 118, at 5.

125. See *id.* at 6.

126. See, e.g., Kim Graziani & Tarik Abdelazim, *From the Great Recession to COVID-19: Land Banks Are Critical to Long-Term Equitable Recovery*, CTR. FOR CMTY. PROGRESS (June 1, 2020), <https://www.communityprogress.net/blog/great-recession-covid19-land-banks-critical-longterm-equitable-recovery> [<https://perma.cc/7NZF-Y9JH>].



with the maintenance of residential properties.<sup>127</sup> In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act provided an additional \$1 billion for NSP.<sup>128</sup> Land banks increased in number, and between 2009 and 2019, 15 states passed land bank legislation.<sup>129</sup>

A 2011 HUD study evaluated NSP's impact across local and state governments based on a sample of 1,000 grantees. Of that sample, ten grantees allocated NSP funds towards land banking efforts. These ten grantees land banked 379 properties in nine counties.<sup>130</sup> The land banking grantees allocated \$935,892,013 in NSP funds towards their efforts — totaling 50% of the total NSP allocations recorded in the sample.<sup>131</sup> Of the grantees evaluated, three reasons were listed for choosing to land bank property. First, land banking grantees decided to hold properties for specific development plans later.<sup>132</sup> Those plans included “the development of single-family infill development and multifamily rental housing.”<sup>133</sup> Second, the grantees chose land banking to hold properties that lacked a clear disposition or development plan.<sup>134</sup> It was noted that in some cases, this meant the properties would remain vacant lots “until a disposition plan c[ould] be put in place, until market conditions improve[d] . . . , or until land banks c[ould] assemble adjacent lots for a larger redevelopment project.”<sup>135</sup> Third, grantees chose land banking because delays in local redevelopment processes meant property could not be redeveloped within NSP's three-year timeframe.<sup>136</sup>

As land banking expert Frank Alexander noted, it is important to consider that the problems NSP funding was meant to address would continue well beyond the short time window.<sup>137</sup> As for long-term

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127. See Alexander, *Neighborhood Stabilization & Land Banking*, *supra* note 7, at 4.

128. See *Neighborhood Stabilization Program Data*, DEP'T HOUS. & URB. DEV., <https://www.huduser.gov/portal/datasets/NSP.html> [https://perma.cc/HP9C-Q8VM] (last visited Feb. 12, 2021).

129. Graziani & Abdelazim, *supra* note 126.

130. JONATHAN SPADER ET AL., U.S. DEP'T OF HOUS. & URB. DEV., THE EVALUATION OF THE NEIGHBORHOOD STABILIZATION PROGRAM 57 (2015), [https://www.huduser.gov/portal/publications/pdf/neighborhood\\_stabilization.pdf](https://www.huduser.gov/portal/publications/pdf/neighborhood_stabilization.pdf) [https://perma.cc/YKH8-YS9N].

131. *Id.* at 89.

132. See *id.* at 57.

133. *Id.*

134. See *id.*

135. *Id.*

136. See *id.*

137. See Alexander, *Neighborhood Stabilization & Land Banking*, *supra* note 7, at 5.

policy, Alexander proffered that the federal government should enact federal land banking policy. Under that approach, federal funding for land banking capitalization should also incentivize the development of inter-jurisdictional entities.<sup>138</sup> Furthermore, Alexander proposed that the federal government partner with local and state governments to facilitate land banking as a tool for neighborhood economic redevelopment.<sup>139</sup> Greater federal government support of land banks could include encouraging the development of hybrid redevelopment authorities and land banks, providing initial capital funding for land acquisition, and creating incentives for state and local practices like regional or inter-jurisdictional collaboration that facilitate equitable development.<sup>140</sup> The enabling of long-term strategies by RALBs through the support of federal funding would certainly catalyze equitable redevelopment through the interdisciplinary approach outlined herein.

New congressional legislation could strengthen land banks and increase the resources available to sustain their operations and advance their missions. The National Congressional Land Bank Network Act was introduced in June 2020 and seeks to “expand and fortify the nation’s network of land banks,” establish an infrastructure for dealing with distressed properties, and “authorize . . . \$10 million to build out the national infrastructure . . . and to fund grants for existing land banks.”<sup>141</sup> The legislation also includes an annual \$5 million to fund and support the network.<sup>142</sup> The legislation proposes to standardize the work that land banks do — providing “a boost to both the ‘tactical’ and ‘visionary’ challenges associated with distressed properties,” particularly those in disinvested communities.<sup>143</sup> Congressman Dan Kildee, the legislative author and the former Director of the Genesee County Land Bank in Flint, Michigan, has expressed his “hope that a national network of land banks can play a more preventative role” in distressed communities — such as those reeling under the pressures of the COVID-19 pandemic.<sup>144</sup>

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138. *See id.* at 4–5.

139. *See id.* at 4.

140. *See* Alexander, *Land Banking as Metropolitan Policy*, *supra* note 45, at 4.

141. Kriston Capps, *Can Land Banks Get Us out of This Mess?*, BLOOMBERG CITYLAB (June 15, 2020, 2:41 PM), <https://www.bloomberg.com/news/articles/2020-06-15/how-coronavirus-makes-the-case-for-land-banks> [<https://perma.cc/M5ES-2YPG>].

142. *Id.*

143. *Id.*

144. *Id.*

The proposed Land Bank Network Act is a very specific effort to bolster the role of land banks, but there is much more the federal government can do to advance equitable development and support the work of RALBs. The APA has identified several areas for new or expanded federal policy, including expanding funding for below-market-rate housing, comprehensive and community-led urban planning, and historic preservation tax credits.<sup>145</sup> Arguably the most high-profile, urban development-oriented federal tax credit is the federal Opportunity Zone program. Federal Opportunity Zones are “an economic development tool that allows people to invest in distressed areas” in order to “spur economic growth and job creation in low-income communities while providing tax benefits to investors.”<sup>146</sup> They were established under the Tax Cuts and Jobs Act of 2017.<sup>147</sup> Thousands of Opportunity Zones have been created in low-income communities in all 50 states. In the few years of its existence, the legislation has drawn significant criticism for benefiting wealthy investors more than distressed communities. Furthermore, critics have charged that Opportunity Zones accelerate the displacement of indigenous, low-income community residents from neighborhoods that, because of their proximity to already-gentrifying areas, do not need the investment boost Opportunity Zone investors may provide relative to the need in markets not experiencing investment.<sup>148</sup>

Opportunity Zone investments can be applied to businesses or real estate development projects. Given the benefits of spatial transformation to advancing equitable development, it is important to consider how Opportunity Zones can better support RALB activity. As of this writing, two bills in the United States Senate and one in the United States House of Representatives offer to reform Opportunity

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145. See *APA Policy Guide*, *supra* note 11.

146. *Opportunity Zones*, INTERNAL REVENUE SERV. (Jan. 21, 2021), <https://www.irs.gov/credits-deductions/businesses/opportunity-zones> [<https://perma.cc/2M6U-YKA3>].

147. Pub. L. No. 115-97, 131 Stat. 2054 (2017).

148. See SAMANTHA JACOBY, CTR. ON BUDGET & POL’Y PRIORITIES, POTENTIAL FLAWS OF OPPORTUNITY ZONES LOOM, AS DO RISKS OF LARGE-SCALE TAX AVOIDANCE (2019), <https://www.cbpp.org/research/federal-tax/potential-flaws-of-opportunity-zones-loom-as-do-risks-of-large-scale-tax> [<https://perma.cc/6N9S-PS2M>]; Sophie Quinton, *Black Businesses Largely Miss Out on Opportunity Zone Money*, PEW CHARITABLE TRS. (June 24, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/24/black-businesses-largely-miss-out-on-opportunity-zone-money> [<https://perma.cc/NNR2-VCBT>]; Alex Wittenberg, *The Biggest Problem with Opportunity Zones*, BLOOMBERG CITYLAB (June 25, 2020, 1:55 PM), <https://www.bloomberg.com/news/articles/2020-06-25/opportunity-zones-don-t-work-can-they-be-fixed> [<https://perma.cc/ZFV4-8APT>].

Zones. The Improving and Reinstating the Monitoring, Prevention, Accountability, Certification, and Transparency Provisions of Opportunity Zones (IMPACT) Act and the Opportunity Zone Reporting and Reform Act propose to amend the Internal Revenue Code to require greater reporting on the impact of Opportunity Zone tax incentives.<sup>149</sup> Neither address the potential for Opportunity Zones to support projects with strong community involvement and those coordinated or sponsored in some meaningful part by RALBs.

While the land bank legislation addresses land banks and not redevelopment authorities, the promise of broadening the community of policymakers attuned to the necessity for public institutional, centralized approaches to equitable development bodes well for both entities. Additionally, the calls for greater transparency around Opportunity Zones open the door for more community-focused measures to improve the way federal resources support equitable development. Given that the fiscal challenges facing municipalities will exist into the future and that those same municipalities will have to address increasing calls to fund equitable development efforts, all of these legislative opportunities open space for an expanded discussion around the need for an expansion of redevelopment authorities and land banks, as well as how local governments can be supported to increase their fiscal capacity to provide the capital necessary to further equitable development efforts.

### CONCLUSION

There is a moral and pragmatic imperative that local government resources be prioritized to lead the equitable development approaches that present the best opportunity to make meaningful change in historically disinvested communities. The need for a reimagining of approaches to address systemic urban disinvestment requires building up the public market and bolstering the role of public institutions as necessary tools for expanding citizenship, ensuring fairness, and pursuing equity. Redevelopment authorities and land banks should be viewed as the optimal vehicles for achieving equitable development. That they have been overlooked as vehicles for these aims is understandable, but, if redevelopment authorities and land banks are to be repositioned for equitable development, it will occur alongside

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149. See Improving and Reinstating the Monitoring, Prevention, Accountability, Certification, and Transparency Provisions of Opportunity Zones Act, S. 2994, 116th Cong. § 3 (2019); Opportunity Zone Reporting and Reform Act, S. 2787, 116th Cong. § 2 (2019); Opportunity Zone Accountability and Transparency Act, H.R. 5011, 116th Cong. § 2 (2019).

the realities of the fiscal crisis unfolding in many cities. Therefore, the federal government must do more to support redevelopment authorities and land banks as their combined efforts provide the best opportunity to achieve equitable development in cities.