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## The Mount Laurel Prescription: The Potential for Public Health Improvement Through Community Desegregation in New Jersey

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In late February 2021, a third-grade girl from Monmouth County, New Jersey began crying during a Zoom class. When her teacher asked her what was wrong, the girl revealed that she and her family were starving. The child's mother, a restaurant worker, had been out of work for nearly a year and had only recently gotten work as a dishwasher, but that work couldn't lift the family out of their desperate situation.<sup>1</sup> The Covid-19 pandemic has served to both reveal and intensify the plight of the poor in New Jersey and across the country. The poor suffer in often isolated communities that perpetuate the plight of poverty and plague residents with significant immediate and long-term threats to their physical and mental health and safety. Broad, systemic change is necessary to end the cycle of entrenched segregation and poverty in the United States. In New Jersey, as in other states, meaningful efforts towards integration of communities have been made, but real progress remains elusive.

In 1975, the New Jersey Supreme Court (NJSC) issued a decision in *Southern Burlington County N.A.A.C.P. vs. Mount Laurel* (Mount Laurel I), that came to be known as the Mount Laurel doctrine.<sup>2</sup> The doctrine requires the implementation of affirmative zoning that provides for the establishment of affordable housing in all of the state's municipalities.<sup>3</sup> For nearly fifty years, New Jersey has wrestled with implementation of the Mount Laurel mandate, which aspires to give low-income families access to neighborhoods, schools, and services that may finally break the chain of generational poverty. Despite surviving challenges and resistance, the doctrine has never been fully and fairly implemented or enforced throughout the state. In the 45 years since the original holding, new challenges have arisen to complicate the issue. Gentrification is now a reality in many of the poorest neighborhoods of New Jersey's cities; as a result, the state

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<sup>1</sup> Carly Baldwin, *MONMOUTH CO. GIRL, 9, CONFESSES TO VIRTUAL CLASS SHE'S STARVING MIDDLETOWN, NJ PATCH* (2021), <https://patch.com/new-jersey/middletown-nj/monmouth-co-girl-8-confesses-virtual-class-shes-starving> (March 22, 2021).

<sup>2</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 336 A.2d 713 (1975).

<sup>3</sup> *Id.*

must now creatively apply the Mount Laurel mandate in sites far different from the white, wealthy suburbs it was first intended to integrate.

Municipalities have resisted compliance with Mount Laurel by exploiting opportunities for work-arounds, fines, and other options for avoidance and delay.<sup>4</sup> These efforts evince a failure to recognize the inherent richness of community diversity and inclusivity. More importantly, failure to implement Mount Laurel leaves most residents of the state in deeply segregated communities. The entrenched segregation of neighborhoods in New Jersey has wide and deep public health implications, particularly in the poorest urban and rural municipalities. Statewide enforcement of the Mount Laurel doctrine will likely broadly improve the quality of life of the residents of affordable housing in a variety of ways, all of which promise to contribute directly to their physical and mental health, life habits, safety, and longevity.

Significantly, the community public health benefits that will be achieved through the full and fair enforcement of the Mount Laurel doctrine will be reinforced and expanded by an essential effect of that implementation: the integration of New Jersey's public schools. The chronic, generational, negative public health effects of segregated communities are compounded by the structure of New Jersey's public school system, which is a community-school model in which the public schools directly mirror the segregated communities in which they are situated. Failing communities are being served by failing schools. Because of that structure, public health crises that could be alleviated by the schools are instead exacerbated by them. A wealth of public health services reaches students and families through public schools; therefore, segregated schools that lack adequate facilities and services result in not only poor educational outcomes,

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<sup>4</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/> (Feb 8, 2021).

but also poor community physical and mental health, increased violence, and socioeconomic instability.

In 1983, the NJSC held in a subsequent decision known as *Mount Laurel II* that every community in the state must provide its “fair share” of affordable housing, and the court also provided for a process by which developers could sue municipalities for noncompliance: the “builders’ remedy.” The full and fair implementation of *Mount Laurel II*, including the refusal to accept payments, mere plans, or transfers of obligations as options to immediate compliance will go a long way towards efficiently desegregating New Jersey’s communities and schools and improving public health through both communitywide and school-based programs, amenities, and facilities. As such, *Mount Laurel* can serve as a model for establishing and achieving national standards of public health. This paper will consider the *Mount Laurel* doctrine as established and applied in New Jersey from 1975 to the present and examine the potential public health benefits of its full implementation, focusing on its promise for allowing low-income families to access goods, services, and facilities that improve quality of life and health outcomes. The goals and potential of the full enforcement of the law will be analyzed particularly with regard to the problem of community and associated school segregation in New Jersey and the case will be made that both the full enforcement of *Mount Laurel* and the resulting socioeconomic and racial desegregation will increase access to services and facilities that will significantly improve public health statewide.

#### HISTORY:

The federal Fair Housing Act, passed in 1968 as part of the Civil Rights Era legislation, prohibited discrimination against purchasers or renters of homes on the basis of the applicant’s “race, color, religion, or national origin.”<sup>5</sup> The Fair Housing Act not only outlawed

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<sup>5</sup> Public Law 90-284 82 Stat., (April 1968).

discrimination, but it also mandated affirmative federal, state, and local actions to meaningfully address the segregative effects of decades of discriminatory policies and practices.<sup>6</sup> Only seven years later, the New Jersey Supreme Court (NJSC), in *Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township*, held that state and municipal regulations that discriminated against the poor by prohibiting low-income housing opportunities were unconstitutional, requiring the following:

Every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing...cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefore.<sup>7</sup>

The groundbreaking decision established the first such fair share mandate in the nation and has been “widely regarded as one of the most significant civil rights cases in the United States since *Brown v. Board of Education* (1954).”<sup>8</sup> In *Mount Laurel*, the court recognized in New Jersey’s urban communities a “critical erosion of the city tax base and inability to provide the amount and quality of those governmental services -- education, health, police, fire, housing and the like -- so necessary to the very existence of safe and decent city life.”<sup>9</sup>

In response to challenges to noncompliant municipalities, the New Jersey Supreme Court expanded the mandate statewide in a 1983 decision, asserting “The existence of a municipal obligation to provide a realistic opportunity for a fair share of the region's present and prospective low and moderate income housing need” that extended “to every municipality, any

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<sup>6</sup> Trump Administration Eliminates Affirmatively Furthering Fair Housing Rule, NLIHC and other Advocates Condemn Action, Rhetoric, NATIONAL LOW INCOME HOUSING COALITION (2020), <https://nlihc.org/resource/trump-administration-eliminates-affirmatively-furthering-fair-housing-rule-nlihc-and-other> (Feb 27, 2021).

<sup>7</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 174, 336 A.2d 713 (1975).

<sup>8</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/> (Feb 8, 2021).

<sup>9</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 173, 336 A.2d 713 (1975).

portion of which is designated by the State... as a ‘growth area.’”<sup>10</sup> *Mount Laurel II*, as the 1983 decision is called, also established “fair share” standards, required affirmative zoning for affordable housing units, and provided for remedies including the right of builders to sue municipalities for not meeting set-aside mandates (the builder’s remedy).<sup>11</sup> *Mount Laurel II* also encouraged the state legislature to facilitate a process by which municipalities could plan and establish compliance; the result was New Jersey’s Fair Housing Act of 1985 which created the Council on Affordable Housing (COAH).<sup>12</sup> The Act gave COAH “primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in [the] State.”<sup>13</sup>

COAH lacked teeth; municipalities were loath to create timely compliance plans, which forced COAH to create for reluctant towns incentives and alternatives to the *Mount Laurel* requirements.<sup>14</sup> The wealthiest municipalities exploited loopholes and opt outs such as willing refusal to initiate new, necessarily compliant construction; transferring their affordable housing obligations to poorer adjacent towns through Regional Contribution Agreements (RCAs); and limiting low-income families’ access by restricting half of developed units to senior citizen use only.<sup>15</sup> COAH was to release municipality-specific fair share compliance reports every six years; it consistently delayed reports, with numbers released at increasingly wider timespans, and it bowed to the pressures of the most exclusive communities, with numbers decreasing by half with each reporting period.<sup>16</sup> COAH’s first round report (1986) required 10,849 low- and moderate-

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<sup>10</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 92 N.J. 158, 215, 456 A.2d 390, 418 (1983).

<sup>11</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/> (Feb 8, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> The Fair Housing Act (N.J.S.A. 52:27 D-301) L. 1985, c. 222, s. 1, July 2, 1985.

<sup>14</sup> Susan J. Kraham, *Right for a Remedy: Observations on the State Constitutional Underpinnings of Mount Laurel*, RUTGERS UNIVERSITY LAW REVIEW (2011).

<sup>15</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/#mount-laurel-2> (Mar 9, 2021).

<sup>16</sup> *Id.*

income homes per year statewide, round two (1994) required 6,465 units, and round three, which was not released until 2004, required 3,515 homes per year statewide.<sup>17</sup> In 2008, New Jersey Bill A-500 abolished RCAs and other loopholes; it also guaranteed access to affordable housing for families making less than \$23,000/year.<sup>18</sup>

In July 2015, the Obama administration, in conjunction with the U.S. Department of Housing and Urban Development (HUD), announced a new administrative rule, which required “communities receiving HUD funding to use HUD-provided data to identify potential local fair housing issues, and then to develop approved goals to address these issues.”<sup>19</sup> The Affirmatively Furthering Fair Housing (AFFH) rule, the administration asserted, acted on the statutory duty to “affirmatively further fair housing”<sup>20</sup> and take “meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”<sup>21</sup> In 2018, the Trump administration repealed the AFFH regulations with the “Preserving Community and Housing Choice” rule, a move condemned by the National Low Income Housing Coalition (NLIHC) and fourteen other civil rights and housing organizations.<sup>22</sup>

## COMMUNITY STRUCTURE AND PUBLIC HEALTH IN NEW JERSEY

Over the last twenty years, New Jersey Supreme Court rulings have required the state to balance the inequities in the community school funding gaps by directing more state aid away

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<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> HandelDestinvil, *Obama Administration Introduces New Administrative Rule on Fair Housing*, AMERICAN BAR ASSOCIATION: PRACTICE POINTS (2015).

<sup>20</sup> Fair Housing Act, 42 U.S.C. §3604, Section 808(e)(5), 1968.

<sup>21</sup> Id.

<sup>22</sup> Trump Administration Eliminates Affirmatively Furthering Fair Housing Rule, NLIHC and other Advocates Condemn Action, Rhetoric, NATIONAL LOW INCOME HOUSING COALITION (2020), <https://nlihc.org/resource/trump-administration-eliminates-affirmatively-furthering-fair-housing-rule-nlihc-and-other> (Feb 27, 2021).

from wealthy community schools and investing it in struggling schools.<sup>23</sup> Despite the progress towards more equitable school funding and the *Mount Laurel* mandate of affordable housing development for low-income families in all municipalities, still communities and schools across the state remain deeply segregated.<sup>24</sup> There are broad public health disparities as a result of that segregation. Access to healthy, affordable foods, community health centers, mental health services, exercise and recreational facilities, well policed neighborhoods, and quality schools are essential determinants of public health and longevity that are directly tied to communities.<sup>25</sup> Systemic segregation of communities results in statewide depression of public health outcomes. By integrating both communities, and, as a consequence, public schools, the Mount Laurel doctrine in its fullest enforcement as the constitutional mandate that the NJSC declared it to be, promises to improve public health statewide, decrease generational poverty and poor health outcomes, reduce violence, and extend lifespans. Low- and middle-income families who access more affluent communities will also likely access improved health and quality of life.

### **Fresh Food Availability and Affordability**

A key determinant to overall human development and wellbeing and so, more broadly, good public health is a good diet and the establishment of healthy eating habits, particularly in youth. Despite its being the Garden State, as of 2018, “340 thousand New Jersey residents live in 134 federally-recognized, ‘food deserts,’ or areas that lack access to healthy food retailers that provide affordable fruits, vegetables, whole grains, low fat milk, and other foods that make up

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<sup>23</sup> *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990), discussed later in this paper is a groundbreaking holding by the Supreme Court of New Jersey recognizing that fair school funding is constitutional just as *Mount Laurel* held with regard to low-income housing.

<sup>24</sup> Greg Flaxman et al., *A Status Quo of Segregation: Racial and Economic Imbalance in New Jersey Schools, 1989-2010*, SEGREGATION IN EAST COAST SCHOOLS (2013).

<sup>25</sup> Social Determinants of Health, SOCIAL DETERMINANTS OF HEALTH - HEALTHY PEOPLE 2030, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> (last visited Apr 29, 2021).



the full range of a healthy diet.”<sup>26</sup> Reasonable access as determined by the USDA is having a supermarket that sells fresh food within one mile of urban residents and within ten miles of rural residents.<sup>27</sup> The food desert problem is connected to and exacerbated by transportation availability and expense. “Low-income residents are particularly burdened by food deserts . . . because of the added cost of travelling to and from the store and may forgo purchasing fresh fruits and vegetables.”<sup>28</sup> The city of Salem in the southern portion of the state has a population of 5,000 and not a single supermarket, the closest one being 12-15 miles away.<sup>29</sup> The concentration of poverty in communities across the state creates these dangerous pockets that fail to attract supermarkets and other fresh food retailers. The resulting lack of access to healthy, fresh foods affects public health through a variety of negative effects on physical and cognitive development and wellness.

Residents of food deserts are forced to subsist on the high-priced, low-quality foods offered by convenient stores.<sup>30</sup> The consistent consumption of highly processed foods available in such stores results in type-2 diabetes, heart disease, stunted growth, high blood pressure, low energy, stress, and depression.<sup>31</sup> Lack of access to fresh foods results in a broad variety of negative health and cognitive outcomes associated with both malnutrition and also obesity and its associated long-term effects on overall health.<sup>32</sup>

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<sup>26</sup> Healthy Food Retailers: Opening Doors to Healthy Food in Every New Jersey Community, PATHS: Providing Access to Healthy Solutions. (Jan. 16, 2021).

<sup>27</sup> Jill P. Capuzzo, JILL P. CAPUZZO ARCHIVES: PAGE 2 OF 12 NEW JERSEY MONTHLY (2019), <https://njmonthly.com/authors/jill-p-capuzzo/page/2> (May 9, 2021).

<sup>28</sup> Id.

<sup>29</sup> Briana Vannozzi, JERSEY IS THE GARDEN STATE, SO WHY ARE THERE FOOD DESERTS?: VIDEO NJ SPOTLIGHT NEWS (2019), <https://www.njspotlight.com/video/jersey-is-the-garden-state-so-why-are-there-food-deserts/>. (Mar 16, 2021).

<sup>30</sup> Nina Rainiero, FOODACCESS HOUSING & COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY, <https://www.hcdnnj.org/foodaccess> (Feb 19, 2021).

<sup>31</sup> J.J. Suarez et al., *Food Access, Chronic Kidney Disease, and Hypertension in the U.S.*, AMERICAN JOURNAL OF PREVENTATIVE MEDICINE (2015).

<sup>32</sup> Briana Vannozzi, JERSEY IS THE GARDEN STATE, SO WHY ARE THERE FOOD DESERTS?: VIDEO NJ SPOTLIGHT NEWS (2019), <https://www.njspotlight.com/video/jersey-is-the-garden-state-so-why-are-there-food-deserts/>. (Mar 16, 2021).

Some of the known consequences of food insecurity are stunted growth, slower healing of wounds, higher chances of bone fractures and breaks, impaired immune system, increased chances of poor eyesight, slowed brain development, lower than average attention span, increased chance of apathy and depression, lower IQ in later life, higher risk for cognitive disease.<sup>33</sup>

Children raised in food deserts inherit the lifelong, unhealthy dietary habits and the full array of physical and emotional instability that result from the poor health and shortened life spans of their parents, extended families, and caretakers.<sup>34</sup> Children born into communities of generational poverty and food deserts likely begin to experience effects on their own health beginning in utero.<sup>35</sup> Proposed in 2019, New Jersey Bill A4700, the Food Desert Elimination Act, would offer four years of property tax credits to store owners who open in fresh-food markets in areas designated as food deserts.<sup>36</sup> While such a measure is well-intentioned, the full implementation of the Mount Laurel doctrine offers a better long-term solution. Low-income residents who gain access to more affluent communities are freed from food deserts, while the more mixed income neighborhoods that result from gentrification and more fully integrated communities throughout the state will substantially reduce the number of food deserts and the public health consequences associated with them.

### **Health Care and Maintenance**

Dietary, consumer, and lifestyle habits directly related to segregated communities persist generationally and threaten the ability of residents to survive and thrive. Research reveals that there is a directly proportionate correlation between the levels of both socioeconomic disparity and segregation in communities, and the differences in healthy and unhealthy behaviors and

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<sup>33</sup> Isaiah McCall, *The Issue: Food Access and Insecurity*, Get Access, NORTH JERSEY, <https://www.northjersey.com/restricted/?return=https%3A%2F%2Fwww.northjersey.com%2Fstory%2Fnews%2Fbergen%2Fhackensack%2F2020%2F11%2F02%2Fhackensack-may-next-hoboken-nj-2021%2F3745809001%2F>. (Jan 22, 2021).

<sup>34</sup> The Impact of Poverty, Food Insecurity, and Poor Nutrition on Health and Well-Being, HUNGER AND HEALTH (December 2017) <https://frac.org/wp-content/uploads/hunger-health-impact-poverty-food-insecurity-health-well-being.pdf>

<sup>35</sup> Id.

<sup>36</sup> A4700, NEW JERSEY A4700, [https://www.njleg.state.nj.us/2020/Bills/A5000/4700\\_I1.HTM](https://www.njleg.state.nj.us/2020/Bills/A5000/4700_I1.HTM) (Mar 12, 2021).

outcomes in those communities.<sup>37</sup> The negative consequences associated with food deserts and other community-related threats to health and safety require affordable, accessible health care. The concentration of low-income residents in segregated communities that lack the socioeconomic diversity that *Mount Laurel* aims to establish, however, compounds rather than compensates for the food deserts by isolating residents from accessible health care as well. A New Jersey state study entitled “Healthy People 2020” identified the dearth of medical services and providers in economically disadvantaged communities as one of the “high priority health issues that represent significant threats to the public’s health.”<sup>38</sup> Segregation itself correlates directly with lack of access to high quality medical care.<sup>39</sup> The concentration of Black residents in the communities without sufficient health care facilities further compromises a vulnerable population. Because health care providers are less likely to establish offices and more likely to close them in poorer and blacker communities in New Jersey, “African Americans face challenges in accessing medical care, and it is likely that these are more acute in segregated areas.”<sup>40</sup> As a result of lack of access to adequate medical services, residents of these health care deserts suffer not only poor health, but also delays in care for preventable diseases, resulting in premature deaths.<sup>41</sup>

### **Mental Health and Social Services**

The lack of health care providers in segregated, low-income communities includes mental and behavioral health care providers as well. As a result of the difficulties innate to the predicament of negotiating life in poverty and in impoverished, underserved communities, fully

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<sup>37</sup> David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUBLIC HEALTH REPORTS (2001).

<sup>38</sup> Developing a Roadmap for Access to Care: NJHI – New Jersey Health Initiatives, NJHI (2018), <https://www.njhi.org/submissions/developing-a-roadmap-for-access-to-care/> (Mar 16, 2021).

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id..

half of the children and adolescents who come of age in such circumstances manifest emotional problems.<sup>42</sup> Mental health and substance abuse issues have increased during the pandemic, particularly among the poor and people of color who have been most vulnerable to and victimized by the virus directly and the associated array of socioeconomic crises more broadly. During the pandemic, “New Jersey saw the greatest increase in opioid overdose deaths in May 2020, compared to all other months in the previous three years.”<sup>43</sup> The pandemic also increased mental health crises among New Jersey’s children.<sup>44</sup> Before the pandemic, “Only 41.8% of adults with mental illness in New Jersey receive[d] any form of treatment from either the public system or private providers (according to SAMHSA).”<sup>45</sup> There has been a critical lack of psychiatric professionals serving the state, and that shortfall is particularly prevalent in the poorest and arguably neediest communities.<sup>46</sup> New Jersey’s segregated communities suffer a severe lack of mental health and treatment facilities, a fatal liability that has increased exponentially during the Covid-19 crisis. Tragically, the medical health, socioeconomic, and emotional ramifications of the virus and the lockdown have also been associated with increased substance abuse, domestic violence, and crimes of desperation; “the biggest increases have been in violent crimes, particularly murder, aggravated assault, and shooting incidents.”<sup>47</sup>

## **Crime Prevention and Community Policing**

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<sup>42</sup> Judith Twitch, et al., *What Kinds of Mental Health Services do Public Schools in the United States Provide?*, ADVANCES IN SCHOOL MENTAL HEALTH PROMOTION (2007).

<sup>43</sup> Debra L. Wentz, *Someone Needs to be There to Answer New Jersey Residents’ Call for Help*, NORTHJERSEY.COM, (Aug. 5, 2020), <https://www.northjersey.com/story/opinion/2020/08/05/nj-must-answer-those-asking-help-their-mental-health-opinion/3300479001/>.

<sup>44</sup> *Id.*

<sup>45</sup> Mental Health Resources in New Jersey, RESOURCES TO RECOVER - GATEWAY TO MENTAL HEALTH SERVICES, <https://www.rtor.org/directory/mental-health-new-jersey/>. (Mar 16, 2021).

<sup>46</sup> Richard J. Codey, Star-Ledger Guest Columnist, CODEY: A WAY TO CLOSE THE MENTAL HEALTH GAP IN N.J.: OPINION NJ (2016), [https://www.nj.com/opinion/2016/07/closing\\_the\\_mental\\_health\\_gap\\_in\\_new\\_jerseys\\_most.html](https://www.nj.com/opinion/2016/07/closing_the_mental_health_gap_in_new_jerseys_most.html) (Mar 24, 2021).

<sup>47</sup> Rebecca Edwards, CRIME AND THE CORONAVIRUS: WHAT YOU NEED TO KNOW SAFEWISE (2021), <https://www.safewise.com/blog/covid-19-crimes/>. (Apr 27, 2021).

Mental health and addiction issues frequently coincide with or are exacerbated by the perceived and actual safety and security of the residents of particular communities. A 2017 FBI report identified Camden as New Jersey’s most dangerous city, and emphasized that, nationally, “the vast majority of cities on th[e] list have higher poverty and unemployment rates than the state as a whole.”<sup>48</sup> The correlation between economic insecurity and crime rates has been well established. Residents of high-poverty neighborhoods statistically experience higher crime rates, higher un- and underemployment rates, and inferior educational opportunities.<sup>49</sup> Critically, government studies have consistently found that the experience of crime and violence in a community is an important public health issue.<sup>50</sup> New Jersey’s racially and socioeconomically segregated communities intensify the exposure to crime and violence in needy communities just as it safely isolates those living in privileged neighborhoods. “Unfortunately, these lines of segregation often go beyond race, and just a few miles can mean a tremendous difference in crime rates, schools and income.” Additionally, “several studies have found that segregation is positively associated with the risk of being a victim of homicide for Blacks.”<sup>51</sup>

The systemic seclusion of Black populations in struggling communities dating as far back as the New Deal has perpetuated an entrapment of Black Americans in poor and high-crime areas.<sup>52</sup> The public health implications of such segregation range from depression and isolation

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<sup>48</sup> Violent Crime, FBI (2018), <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/violent-crime> (last visited Mar 14, 2021).

<sup>49</sup> Trenton’s concentrated poverty rate highest in New Jersey, THE CENTER SQUARE (2021), [https://www.thecentersquare.com/new\\_jersey/trenton-s-concentrated-poverty-rate-highest-in-new-jersey/article\\_c69b612c-5091-11eb-b596-2f78884c9c25.html](https://www.thecentersquare.com/new_jersey/trenton-s-concentrated-poverty-rate-highest-in-new-jersey/article_c69b612c-5091-11eb-b596-2f78884c9c25.html) (last visited Feb 14, 2021).

<sup>50</sup> Crime and Violence, CRIME AND VIOLENCE | HEALTHY PEOPLE 2020, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/crime-and-violence> (Mar 25, 2021).

<sup>51</sup> David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUBLIC HEALTH REPORTS (2001).

<sup>52</sup> Libertina Brandt, *How Redlining Kept Black Americans from Home Ownership Decades Ago — And Is Still Contributing to the Racial Wealth Gap Today*, BUSINESSINSIDER.COM (2020). <https://www.businessinsider.com/how-redlining-kept-black-americans-from-homeownership-and-still-does-2020-6>.

to chronic disease and shortened lifespans.<sup>53</sup> The complexities of community policing in poor, Black areas as exposed in recent years, and particularly in 2020 by the murder of George Floyd, have resulted in a sometimes toxic dynamic that deters positive interactions between law enforcement and residents. Efforts have been made to reestablish essential trust between police and residents of segregated communities; however, despite systemic approaches to community policing, in Newark and Camden, the two most racially segregated and impoverished cities in the state, when it comes to policing, “the trauma of violence is still palpable and brutality incidents are still a reality.”<sup>54</sup> The dual threat of high crime by fellow residents and the perceived danger of illegitimate and dangerous interference by police officers exacerbates emotional and mental instability and also impacts physical health by discouraging open use of public recreational and outdoor spaces even where they exist.

### **Access to Safe Open Spaces**

The crime rate and local policing policies of a community directly correlate with the ability and willingness of a community’s residents to socialize and exercise in outdoor spaces, and the ability to socialize and exercise in the outdoors directly correlates to public health. A recent New Jersey state report issued during the pandemic affirmed that “access to public space is more important than ever, as it so clearly impacts public health and issues connected to public health such as community policing, social inclusion, and equity.”<sup>55</sup> The health benefits of outdoor exercising including walking, jogging, and cycling extends to people of all ages.<sup>56</sup> All

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<sup>53</sup> HEALTHYPEOPLE.GOV, (March 7, 2021), <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/crime-and-violence>.

<sup>54</sup> Ankita Rao, THESE NEW JERSEY CITIES REFORMED THEIR POLICE – WHAT HAPPENED NEXT? THE GUARDIAN (2020), <https://www.theguardian.com/us-news/2020/jun/25/camden-newark-new-jersey-police-reform> (Mar 24, 2021).

<sup>55</sup> Danielle Russell, *Rethinking Public Space in 2021*, DOWNTOWNNJ.COM, (October 19, 2020), <https://www.downtownnj.com/rethinking-public-space/>.

<sup>56</sup> New Jersey Access to Open Space Report (2019), NJ BICYCLE AND PEDESTRIAN RESOURCE CENTER, <http://njbikeped.org/portfolio/new-jersey-access-to-open-space-2019/> (May 9, 2021).

residents, but children and senior citizens in particular, require a sense of safety and comfort if they are to consistently participate in healthy, open-air activities. The socialization that accompanies such activities is also an essential component of strong communities and overall good public health. Unfortunately, in poor, segregated communities, residents often associate negative behaviors such as drug use and crime to open spaces, and those associations deter proper use.<sup>57</sup> Recognizing that municipalities burdened by poor health outcomes require safe open spaces to improve those outcomes, New Jersey has created Get Active NJ, a program that offers grants to struggling neighborhoods that design for and promote safe walking spaces.<sup>58</sup> While the establishment of such spaces in vulnerable neighborhoods is an important step, the integration of neighborhoods in compliance with the Mount Laurel doctrine will open safe recreational spaces to broader populations across the state.

## NEW JERSEY PUBLIC SCHOOLS

The most important of the factors that determine public health outcomes and that would be directly addressed by the enforcement of the Mount Laurel doctrine is the integration of New Jersey's public schools. The Fair Share Housing Center's comparison of *Mount Laurel* to *Brown v. Board* is especially relevant because of New Jersey's neighborhood school structure.<sup>59</sup> The community school populations in New Jersey directly reflect the segregated towns they serve. The poorest schools serve the poorest citizens while the wealthiest schools serve the wealthiest citizens. In *Mount Laurel I*, the court recognized the disincentive for municipalities to broaden access to communities and their schools:

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<sup>57</sup> Id.

<sup>58</sup> Healthy New Jersey, DEPARTMENT OF HEALTH FOR THE STATE OF NEW JERSEY | HOMEPAGE (2017), <https://www.nj.gov/health/> (Apr 9, 2021).

<sup>59</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/> (Mar 12, 2021).

Land use regulation for a fiscal end derives from New Jersey's tax structure, which has imposed on local real estate most of the cost of municipal and county government and of the primary and secondary education of the municipality's children. The latter expense is much the largest, so, basically, the fewer the school children, the lower the tax rate.<sup>60</sup>

Because the Mount Laurel doctrine has never been realized, however, in the years following the cases, the problems in the schools have only worsened. “Between 1989 and 2015, the proportion of schools serving a majority nonwhite student population more than doubled from 22% to 46%.”<sup>61</sup> During that same period, “the percentage of students in intensely segregated schools--schools serving a population with 0%-10% white students--nearly doubled from 11.4% to 20.1%.”<sup>62</sup>

The Obama administration attempted to address just such regression with the Affirmatively Furthering Fair Housing rule of 2015. The rule shifted HUD’s focus in terms of the information it gave to and received from localities away from impediments to fair housing and towards full disclosure of demographics so as to affirmatively address entrenched segregation through integration programs.<sup>63</sup> Under Secretary Ben Carson, HUD terminated the AFFH rule,<sup>64</sup> but, in New Jersey, Mount Laurel still applies, and “housing segregation plays a major role in shaping the landscape of school segregation in the state.”<sup>65</sup> Across the state, the segregated housing the AFFH aimed to identify, the absence of the affirmative integration programs it aimed to establish, and the combined lack of school choice and free transportation

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<sup>60</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 336 A.2d 713 (1975).

<sup>61</sup> Gary Orfield, et al., *New Jersey’s Segregated Schools: Trends and Paths Forward*, THE CIVIL RIGHTS PROJECT (2017).

<sup>62</sup> *Id.*

<sup>63</sup> Affirmatively Furthering Fair Housing, FEDERAL REGISTER (2015), <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing> (Mar 12, 2021).

<sup>64</sup> Secretary Carson Terminates 2015 AFFH Rule: HUD.gov / U.S. Department of Housing and Urban Development (HUD), SECRETARY CARSON TERMINATES 2015 AFFH RULE | HUD.GOV / U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) (2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_20\\_109](https://www.hud.gov/press/press_releases_media_advisories/hud_no_20_109) (Jan 21, 2021).

<sup>65</sup> Gary Orfield, et al., *New Jersey’s Segregated Schools: Trends and Paths Forward*, THE CIVIL RIGHTS PROJECT (2017).



“deeply shape school opportunity and tend to perpetuate inequality.”<sup>66</sup> Political and financial structures that determine the geography and quality of subsidized housing as well as discrimination in home loans and financing perpetuate inequities in schools in direct correlation with housing, resulting in a crippling “double segregation.”<sup>67</sup> As of early 2019, “Nearly half of all black and Latino students in the state, roughly 270,000 children, attend schools that are more than 90% non-white. The Garden State ranks as the sixth most segregated state in the U.S. for black students, and seventh for Latinos.”<sup>68</sup>

In 2018, the Black Parents Workshop, Inc., (BPW) sued the South Orange Maplewood School District for both the racial inequity of the district high school’s opportunities, and, crucially, the segregation of the K-5 district schools which lay the groundwork for the high school’s segregative tracking and leveling structure.<sup>69</sup> As part of the settlement of that suit, the city of South Orange will affirmatively integrate the district schools using measures recommended by a Temple University professor; the progress will be monitored by a New Jersey Supreme Court Justice.<sup>70</sup> The settlement is promising because “research has demonstrated large benefits from court-ordered school integration, including, for blacks, reduced dropout rates, less incarceration, fewer homicide arrests and less homicide victimization.”<sup>71</sup> Studies have also found “higher adult earnings and less poverty for adults who had attended integrated schools.”<sup>72</sup> Implementation of Mount Laurel would organically achieve integrative measures such as those compelled by the BPW/South Orange settlement, substantially improving educational outcomes,

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<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Rachel M. Cohen, *New Jersey is Getting Sued over Segregation*, BLOOMBERG NEWS (2019).

<sup>69</sup> Rebecca Everett, REBECCA EVERETT: FOR NJ.COM NJ.COM (2020), [https://connect.nj.com/staff/r\\_everett/posts.html](https://connect.nj.com/staff/r_everett/posts.html) (Mar 9, 2021).

<sup>70</sup> Id.

<sup>71</sup> Richard Rothstein, *For Public Schools, Segregation Then, Segregation Since: Education and the Unfinished March*, ECONOMIC POLICY INSTITUTE (2013).

<sup>72</sup> Id.

quality of life, and public health benefits statewide. The New Jersey courts have acted affirmatively to make school funding fairer, but socioeconomically integrating communities across the state would integrate the schools so as to improve the quality of struggling schools and achieve more equity in terms of educational resources and the quality of facilities and the services provided by them.<sup>73</sup> Integrated school would not only be an additional public health benefit of Mount Laurel realization, but they would exponentially increase the impact of all of the other benefits.

### **Educational Outcomes**

The systemic inequities addressed in BPW’s lawsuit are not unique to South Orange. In January 2020, a school segregation lawsuit brought by Latino Action Network against the state of New Jersey opened in a Trenton courtroom.<sup>74</sup> Superior Court Judge Mary Jacobson called the statistics detailing the status of New Jersey public schools as among the most segregated in the country “indisputable.”<sup>75</sup> The disparate educational outcomes of the students populating those schools are just as clear. The achievement gap between majority and minority students in deeply segregated schools has been called as “the civil rights issue of our time.”<sup>76</sup> The connection between the homogeneity of a school’s population and the academic outcomes is extreme, and, for minority communities, it is debilitating. “Segregated schools have much higher concentrations of poverty and other problems, and much lower average test scores, level of student, teacher qualifications, and advanced courses.”<sup>77</sup> Academic achievement is inevitably

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<sup>73</sup> Education Law Center, SCHOOL FACILITIES | EDUCATION LAW CENTER, <https://edlawcenter.org/issues/school-facilities-program/>. (Feb 12, 2021).

<sup>74</sup> John Mooney, ‘FAR-REACHING’ SCHOOL SEGREGATION LAWSUIT KICKS OFF IN TRENTON NJ SPOTLIGHT NEWS (2020), <https://www.njspotlight.com/2020/01/far-reaching-school-segregation-lawsuit-kicks-off-in-trenton/> (Mar 9, 2021).

<sup>75</sup> Id.

<sup>76</sup> Richard Rothstein, *For Public Schools, Segregation Then, Segregation Since: Education and the Unfinished March*, ECONOMIC POLICY INSTITUTE (2013).

<sup>77</sup> Erica Rankerberg, et al., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, UCLA INTEGRATION AND DIVERSITY (2003).

linked to the complex contributors to the overall environment and student morale, including staffing, facilities, security, and setting.

### **Public School Facilities and *Abbott v. Burke***

A case as groundbreaking as *Mount Laurel* in terms of civil rights and equity, *Abbott v. Burke* mandated safe and adequate educational facilities in New Jersey.<sup>78</sup> In a 1998 decision, the New Jersey Supreme Court held that the state must, for the first time, directly fund and manage improvement to all preschool, elementary, and high school buildings, targeting relief at dilapidated facilities in predominantly urban and segregated, minority schools.<sup>79</sup> *Abbott* has met challenges and resistance. In its most recent iteration, *Abbott XXIII*, the court rejected as premature a possibly portentous challenge to the state's 2021 budget as not meeting the state's legal obligation to the schools.<sup>80</sup> *Abbott XX* held that the School Funding Reform Act of 2008 was constitutional; that act now guides the state's progress in assuring that school facilities are safe and adequate statewide.<sup>81</sup> Despite efforts by the courts to address the vast inequities in school buildings and services, "New Jersey's majority white districts have on average \$3,400 more per student than nonwhite districts, even with a funding formula that allocates state aid according to need."<sup>82</sup> As the pandemic has laid bare, the slow, complicated march toward funding and facility fairness in New Jersey's schools, although well-intentioned, will nevertheless leave another generation trapped in the cyclic legacy of systemic segregation, poverty, poor public health, and shortened lives. The full and fair enforcement of *Mount Laurel*,

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<sup>78</sup> *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359 (1990).

<sup>79</sup> Education Law Center, SCHOOL FACILITIES | EDUCATION LAW CENTER, <https://edlawcenter.org/issues/school-facilities-program/> (Feb 21, 2021).

<sup>80</sup> Supreme Court of New Jersey M-832, (September 2019), 083626.

<sup>81</sup> Education Law Center, SCHOOL FACILITIES | EDUCATION LAW CENTER, <https://edlawcenter.org/issues/school-facilities-program/> (Feb 21, 2021).

<sup>82</sup> Patrick Wall, MOST NJ STUDENTS IN POOR AREAS ATTEND UNDERFUNDED SCHOOLS, REPORT SHOWS, EVEN AS MURPHY PROMISES TO BOOST EDUCATION SPENDING CHALKBEAT NEWARK (2019), <https://newark.chalkbeat.org/2019/3/4/21107056/most-nj-students-in-poor-areas-attend-underfunded-schools-report-shows-even-as-murphy-promises-to-bo> (last visited Apr 9, 2021).

however, in conjunction with *Abbott*, can exponentially increase the progress towards and ultimate achievement of the fair access to quality housing and education that New Jersey's Supreme Court has acknowledged as a constitutional right. Better school facilities will not only offer the immediate and long-lasting effects of better education, but also provide access to affordable, high-quality nutrition, physical and mental health screenings and services, social workers, before and after school care, and safe open spaces. Low-income families who gain access to more stable communities and schools will avail themselves of the broad spectrum of public health and safety benefits offered by both.

### **School Nutrition and Health Services**

Financially healthy communities have schools that offer quality health services, including cafeteria and nutrition programs, prevention and screening services, and emergency and medical care. School nutrition programs and health centers are not just coexistent with, but essential to adequate educational outcomes. The integrative model of health services offered by the best schools during and after school hours contributes to academic success as well as improved public health.<sup>83</sup> “Studies suggest that school nutrition programs can improve academic performance, potentially by supporting brain development cognition, memory, attention, behavior, and attendance.”<sup>84</sup> The screenings and treatments offered by well-staffed and well stocked health offices in K12 schools and the provision of fresh, nutritional foods result in immediate student and community health benefits, but they also have long-term implications by both contributing to healthy dietary and lifestyle habits and preventing the bleak effects of lack of care, particularly in communities that do not have accessible medical centers and in un- and underinsured

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<sup>83</sup> Lloyd J. Kolbe, *School Health as a Strategy to Improve Both Public Health and Education*, Lloyd, ANNUAL REVIEW OF PUBLIC HEALTH (2019).

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

communities.<sup>85</sup> Identification of and treatment for physical abuse and neglect are essential services that require training for all faculty, staff and administrators in addition to the health care providers in schools.<sup>86</sup> A comprehensive system of care and protection preserves and improves not only the physical wellbeing of students, but also their emotional health and security.

### **Mental Health and Social Services**

Integral to comprehensive health services are mental health services that include standard school counselors, psychologists and psychiatrists, substance abuse and addictions services, and crisis intervention. Teenagers in general and poor and minority teenagers in particular are underserved for mental and emotional illnesses, but, significantly, when they have access to treatment, “70-80% of youth who acquire such services receive them at school.”<sup>87</sup> The essential role of schools as the primary providers of mental health services to youths doubly burdens students at segregated schools who are less likely to have adequate services in their communities and also less likely to have them in their struggling schools. “More than 46% of 13- to-18-year-olds have experienced a mental health disorder at some point in their lives, and more than 20% have been diagnosed with a seriously debilitating mental disorder; however, as few as 20% of youth receive services for their mental health needs.”<sup>88</sup> Integrated schools would broaden mental health services to more effectively reach the most vulnerable students. Critically, schools serve

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<sup>85</sup> Id. (“Schools help provide the nutrition required for children and adolescents to maintain their health, sustain their accelerated growth and development, and prevent the establishment of behavioral patterns that result in obesity, related physiological risks, and consequent development of diabetes, heart disease, stroke, cancer, and other noncommunicable/chronic diseases later in life.”)

<sup>86</sup> Amber M. Northern, Ph.D., Aaron Churchill & Chad L. Aldis, *SCHOOLS' ROLE IN DETECTING CHILD MALTREATMENT* THE THOMAS B. FORDHAM INSTITUTE (2020), <https://fordhaminstitute.org/national/commentary/schools-role-detecting-child-maltreatment> (Apr 9, 2021).

<sup>87</sup> Id.

<sup>88</sup> Id.

as the entry point for most children who access the mental health system, providing them with essential help early and establishing a long-term pattern of care.<sup>89</sup> Referrals to and support during mental health care for children is provided by capable, qualified staff during school hours and in extended care programs. The stability and safety of before and after school care, especially for students in unsafe neighborhoods, provides both a sense of security and more opportunities for mental care and intervention.

### **Before and After School Care, Safety, and Open Spaces**

The before and after school care programs offered by strong public schools protect both potential victims and perpetrators of crime. Many juvenile offenders enter the criminal justice system because of minor offenses committed during times when they had no access to safe, supervised care. “Adolescents who spent after-school hours with adult supervision reported better behavioral outcomes, such as fewer delinquent behaviors, more favorable school performance and attitude, and higher positive aspirations, than those without adult supervision.”<sup>90</sup> The entry into the criminal justice system is too frequently an event that becomes determinative of a lifelong lack of opportunity and a vulnerability to long-term negative consequences. Funding for afterschool programs in particular is an investment in community safety.

Afterschool programs play a vital role in turning the hours between 2 pm and 6 pm into a time of opportunity for our young people, with the 70% drop in juvenile crime corresponding with the rise in availability of afterschool opportunities across the country (peak time for juvenile crime in New Jersey). When schools are closed but many parents are still on the job, afterschool programs are keeping kids safe, inspiring them to learn and giving working parents peace of mind.<sup>91</sup>

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<sup>89</sup> Id.

<sup>90</sup> Diane Hsieh & Sandra Simpkins, IS THERE CORRELATION BETWEEN AFTER-SCHOOL PROGRAMS, DELINQUENCY? IT'S COMPLICATED YOUTH TODAY (2020), <https://youthtoday.org/2019/02/is-there-correlation-between-after-school-programs-delinquency-its-complicated/> (Mar 9, 2021).

<sup>91</sup> New Jersey, AFTERSCHOOL ALLIANCE (2020), <http://www.afterschoolalliance.org/policyStateFacts.cfm?state=NJ> (Feb 22, 2021).

Segregated schools themselves are more likely to be the sites of criminal activity and law enforcement intervention during school hours as well. The New Jersey Department of Education reported that, during the 2017-18 academic year, public schools in the state “placed nearly 7,500 calls to police . . . resulting in 1,385 arrests of students, and record[ing] nearly 25,000 incidents involving violence, vandalism, weapons, drugs, and harassment, intimidation and bullying.”<sup>92</sup> Minority, female, and physically disabled students are the most victimized in the school setting.<sup>93</sup> Segregated schools in segregated communities concentrate criminality and vulnerability in settings often devoid of options and hope. Integration of schools gives more students access to both health centers and safe spaces beyond the classrooms. Public schools in wealthier neighborhoods often serve as active community centers that feature safe playgrounds, recreational facilities, and meeting places.<sup>94</sup> Moreover, the communities surrounding the sites on which schools are situated prove to be influential to overall outcomes. “Studies have shown that land use conditions surrounding a school can affect the learning environment within the school in either a beneficial or detrimental way.”<sup>95</sup> Even air quality and pollution around schools impact both student health and academic achievement.<sup>96</sup> Diversifying both the populations and the settings of schools will raise the level of the poorest schools, achieve more socioeconomic equity, and improve public health statewide.

## COMPOUNDED EFFECTS OF SEGREGATED NEW JERSEY COMMUNITIES

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<sup>92</sup> Sergio Bichao, 7,500 CALLS TO POLICE, 1,400 ARRESTS - NJ'S MOST VIOLENT SCHOOLS NEW JERSEY 101.5 (2019), [https://nj1015.com/7500-calls-to-police-1400-arrests-njs-most-violent-schools/?utm\\_source=tsmclip&utm\\_medium=referral](https://nj1015.com/7500-calls-to-police-1400-arrests-njs-most-violent-schools/?utm_source=tsmclip&utm_medium=referral) (Apr 9, 2021).

<sup>93</sup> Id.

<sup>94</sup> New Jersey School Design Guide, STATE.NJ.US, <https://www.state.nj.us/transportation/community/srts/pdf/szdgchapter9.pdf>. (Mar 12, 2021).

<sup>95</sup> Id.

<sup>96</sup> Id.

There are complicated, generational, racial, and socioeconomic issues tied to the segregated community structure in New Jersey. The effects of poverty circle back on each other and compound each other to trap residents in oppressive cycles of causes and effects that entrench the darkest effects of poverty and segregation. This cycle overwhelms and invalidates the state's slow steps towards the full achievement of the goals set forth in both *Mount Laurel* and *Abbott*. A 2018 paper addressing the correctional system in the state noted as follows:

A small number of Camden residents have an enormous and disproportionate impact on the health care and criminal justice sectors, neither of which is designed to address the underlying problems they face: housing instability, inconsistent or insufficient income, trauma, inadequate nutrition, and lack of supportive social networks. These unaddressed social determinants of behavior appear to drive a cycle of repeated arrests and hospitalizations.<sup>97</sup>

Failing schools further compound those pervasive problems. Camden's problems similarly plague other struggling communities throughout the state from the urban north through the rural south and in many segregated communities in between. The problems are as complicated as they are clear. "Public health research has documented the social determinants of health, especially the powerful and interactive effects of health, education, and poverty/income/wealth, how disparities in each exacerbate the other two, and how these disparities accumulate over generations."<sup>98</sup> Because the integration of communities in New Jersey would simultaneously strike at the health and educational effects of poverty, enforcement of the *Mount Laurel* doctrine would effectively break this cycle and achieve meaningful change.

There are real barriers to *Mount Laurel* enforcement including compliance resistance, environmental concerns, and the complexities of gentrification. Wealthy, white municipalities turn a blind eye to the benefits of affordable housing in their communities; even recognizing

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<sup>97</sup> Anne Milgram, et al., PUBLICATIONS HARVARD KENNEDY SCHOOL (2019), <https://www.hks.harvard.edu/centers/wiener/programs/criminaljustice/research-publications/executive-session-on-community-corrections/publications> (April 12, 2021).

<sup>98</sup> Lloyd J. Kolbe, *School Health as a Strategy to Improve Both Public Health and Education*, LLOYD, ANNUAL REVIEW OF PUBLIC HEALTH (2019).



those benefits, it has been too easy for residents and community officials to achieve those benefits through RCAs, passing on the burden to neighboring localities.<sup>99</sup> Under COAH, municipalities avoided meaningful steps towards compliance by either submitting speculative plans so as to forestall real action or paying relatively modest fines as penalties for more overt noncompliance.<sup>100</sup> The most recent iterations of the municipalities' efforts to avoid compliance with *Mount Laurel* are challenges that argue that the building requirements of the doctrine associated with the mandate will result in environmental damage to their communities. *Mount Laurel II* specifically stipulated that "This obligation, imposed as a remedial measure, does not extend to those areas where the SDGP discourages growth -- namely, open spaces, rural areas, prime farmland, conservation areas, limited growth areas, parts of the Pinelands and certain Coastal Zone areas."<sup>101</sup> Furthermore, such environmental downsides could be greatly reduced or eliminated by more creative compliance measures such as conversion of existing housing to low and moderately priced units and investment by the state and municipalities in government owned and subsidized housing in a manner similar to European models. Such strategies along with the preservation of low- and moderate-income housing in gentrifying communities are environmentally friendly conservation and preservation efforts that may bring municipalities into compliance without requiring unrestricted new construction. Where new construction proceeds, installation of green energy systems and the use of sustainable materials can minimize negative environmental impacts. Critically, the potentially vast benefits to public health must be considered in balance with the appropriately mitigated environmental impacts that may result.

Ironically, many higher income residents who resist integrating suburban neighborhoods are untroubled by gentrification, which displaces the urban poor to allow for luxury housing in

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<sup>99</sup> Roderick M. Hills, *Saving Mount Laurel?*, 40 FORDHAM URBAN LAW JOURNAL (2016).

<sup>100</sup> Mount Laurel Doctrine, FAIR SHARE HOUSING CENTER, <https://fairsharehousing.org/mount-laurel-doctrine/> (Feb 8, 2021).

<sup>101</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 92 N.J. 158, 215, 456 A.2d 390 (1983).

New Jersey's cities. Mount Laurel is fully adaptable to gentrification, however. The doctrine requires set-asides for low-income housing in construction, so, ideally, gentrification projects should integrate rather than obliterate traditional urban communities, providing safe, renovated low- and middle-income housing while also ensuring just such opportunities in wealthier, established communities for those who are displaced from the gentrified neighborhoods. Gentrifying communities may offer tax credits for builders who replace lost low-income housing with affordable units, or municipalities may freeze or defer property tax for retained residents in gentrified communities so that they are not forced from their homes<sup>102</sup> Until Mount Laurel is realized, residents forced from their homes by gentrification find themselves in an untenable position. "After living in Jersey City through challenging decades of disinvestment, lower-income African American and Latino families are being particularly threatened with displacement as investment floods in."<sup>103</sup> In an effort to protect residents victimized and displaced by gentrification, Newark adopted Ordinance 17-1457; it required inclusionary housing as part of all urban housing plans submitted for approval by the City Council.<sup>104</sup> If managed correctly, inclusionary gentrification, inclusionary set-asides in suburban communities, and targeted investments in rural communities may combine to integrate municipalities and schools, and open fuller, fairer access to higher quality of life and improved public health across the state.

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<sup>102</sup> Colleen O'Dea, CHALLENGE FOR NJ CITIES: GENTRIFY WITHOUT DRIVING OUT LESS-AFFLUENT RESIDENTS NJ SPOTLIGHT NEWS (2019), <https://www.njspotlight.com/2018/12/18-12-12-next-challenge-for-nj-cities-gentrify-without-driving-out-less-affluent-residents/> (Feb 12, 2021).

<sup>103</sup> New Jersey, AFTERSCHOOL ALLIANCE (2020), <http://www.afterschoolalliance.org/policyStateFacts.cfm?state=NJ> (Feb 22, 2021).

<sup>104</sup> The Starting Point: Structuring New Jersey's Land Use Laws at the Outset of Redevelopment to Promote Integration without Displacement, 53 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS (2019).

## CONCLUSION

Forty-five years ago, in *Mount Laurel I*, the NLSC recognized that “It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation.”<sup>105</sup> The irony of the Mount Laurel doctrine is that it is aging even as it has never fully come into existence. Despite the relative failure of the mandate to meet its ambitious goals, those goals remain as relevant today as ever. It is time. The state must require, by statute, municipal compliance with the constitutional obligation to provide low- and moderate-income housing in every New Jersey township. A-500 is insufficient. The state legislature must establish timelines, stringently enforce demonstrable milestones, and severely penalize localities that fail to comply so as to finally end the 45-year process of municipal evasion that has threatened public health in segregated communities.

The need for *Mount Laurel* enforcement remains urgent. New Jersey residents of all ages and demographics are increasingly victimized by prohibitive housing costs.<sup>106</sup> The lack of affordable housing, crippling student debt, and slow wage growth in the state are primary factors in the fact that nearly half of millennials, young adults aged 18-34, in New Jersey still live at home with their parents.<sup>107</sup> In the most deeply segregated communities, those that were disproportionately ravaged by Covid 19 deaths, residents face the familiar inequities even as they see a light at the end of the tunnel. Of the pandemic. Across New Jersey, only 4% of Covid vaccines have gone to Black residents, although they comprise 15% of the state’s population; in Mercer County, 8% of vaccines have gone to Black residents, who comprise a quarter of the

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<sup>105</sup> *S. Burlington Cty. NAACP v. Mount Laurel*, 67 N.J. 151, 179, 336 A.2d 713, (1975).

<sup>106</sup> Paula Franzese, *An Inflection Point for Affordable Housing: The Promise of Inclusionary Mixed-Use Redevelopment*, 52 UIC J. MARSHALL LAW REVIEW, 581 (2019).

<sup>107</sup> Erin Petenko, NJ TOPS NATION IN NUMBER OF MILLENNIALS LIVING WITH PARENTS NJ (2016), [https://www.nj.com/news/2016/09/new\\_jersey\\_tops\\_nation\\_in\\_number\\_of\\_millennials\\_living\\_with\\_their\\_parents.html](https://www.nj.com/news/2016/09/new_jersey_tops_nation_in_number_of_millennials_living_with_their_parents.html) (last visited May 9, 2021).

county's population; and in Trenton, one third of the vaccines have gone to Black residents, who make half of the city's population.<sup>108</sup> These sobering statistics evince the severe public health consequences of a deeply segregated state.

Had Mount Laurel been more fully realized prior to the Covid crisis, thousands of New Jersey lives, particularly those of poor and minority residents, may likely have been saved. The dream persists. When the next pandemic strikes, an integrated New Jersey would be better fit for the fight. To achieve the ambitious goal, “there needs to be a new civil rights movement mobilized around residential segregation, to build support for change.”<sup>109</sup> The full enforcement of *Mount Laurel* will likely achieve gradual movement away from systemic segregation and towards a more equitable community and school structure; it also may counteract the emergent, regressive effects of gentrification in New Jersey's poorest neighborhoods, allowing citizens who endured the darkest days in the most challenged cities to fully participate in the revitalization programs that promise transformation. Although the Mount Laurel doctrine has never been fully or fairly enforced, when it is, it will become a model for progressive community integration and improved public health nationwide.

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<sup>108</sup> Trymaine Lee, TRANSCRIPT: THE VACCINE GAP MSNBC (2021), <https://www.msnbc.com/podcast/transcript-vaccine-gap-n1260527> (last visited Apr 21, 2021).

<sup>109</sup> Colleen O'Dea, CHALLENGE FOR NJ CITIES: GENTRIFY WITHOUT DRIVING OUT LESS-AFFLUENT RESIDENTS NJ SPOTLIGHT NEWS (2019), <https://www.njspotlight.com/2018/12/18-12-12-next-challenge-for-nj-cities-gentrify-without-driving-out-less-affluent-residents/> (Feb 12, 2021).