



**VML EXECUTIVE COMMITTEE MEETING**  
**RICHMOND MARRIOTT DOWNTOWN**

**FRIDAY JULY 19, 2019**

**9:00 A.M.**

- I. Call to Order

**ACTION AGENDA**

- II. Consideration of Minutes from April 12-13, 2019  
III. Resolution on Bank Accounts (Ratify)  
IV. 2020 Budget (Ratify)

**DISCUSSION AGENDA**

- V. Mayor Stoney – Education Funding (Lincoln Saunders)  
VI. Paul Meyer, Executive Director North Carolina League of Municipalities  
VII. Grant to Virginia Tech – Stephanie Davis  
VIII. Handbook  
IX. General Assembly Update  
X. Conference Update  
XI. NLC Update  
XII. Retreat Discussion

- XIII. Future Meetings:

- a. Executive Committee Meeting – August 17-18 – Roanoke  
b. Broadband Summit – September 6th  
c. VML Annual Conference – October 6-8, Roanoke  
d. Finance Forum – Tentatively January  
e. Legislative Day – Feb. 6<sup>th</sup> - Richmond

- XIV. Other Matters

- XV. Adjournment

**MINUTES  
VML EXECUTIVE COMMITTEE  
APRIL SPECIAL MEETING**

**April 11-12, 2019**

**In attendance on April 11th:** Patricia Woodbury, Willie Greene, Bill Rush, A.D. “Chuckie” Reid, Tommy Smigiel, Jon Stehle, Anita James Price, Jill Carson. (Exec. Director and General Counsel)

Dinner was served at 6:30pm and there was general discussion regarding the partnership with VMLIP which has announced a name change to the Virginia Risk Sharing Association. The meeting ended at 9:10pm.

**In attendance on April 12th:** Patricia Woodbury, Willie Greene, Bill Rush, A.D. “Chuckie” Reid, Ophie Kier, Jon Stehle, Anita James Price, Jill Carson. For part of the meeting Sean Polster and Tommy Smigiel were on the phone participating. (Exec. Director and General Counsel)

**Call to Order:** President James-Price called the meeting to order at 8:54am.

**Consideration of Minutes from January, 2019.** Motion approved without objection.

**Presentation:** Janet Areson, Policy Director provided background on the policy and legislative committee appointment process. The legislative committee will meet on June 6<sup>th</sup>, Sept. 6<sup>th</sup> and at the annual conference. The policy committees will meet on July 18<sup>th</sup>.

**Discussion of the Partnership Agreement with VMLIP.** Roger Wiley, General Counsel recapped the discussion from the evening along with Anita and there was discussion about the proposal. A motion was made by Bill Rush to send a letter to the VMLIP Chair asking for 3 changes to the agreement and it was seconded by Jon Stehle. The motion passed with two “no” votes.

**Relocation of Offices.** There was discussion about the office space at 7<sup>th</sup> and Franklin Street.

**Request from Virginia Tech.** There was discussion about the request from Virginia Tech and it was agreed that they would be invited to present to the Executive Committee in May.

**Dues.** It was agreed that there would be no dues increase this year.

**Future Meetings.** The dates and locations of future meetings were reviewed.

1. Executive Committee Meeting – May 16-17 Roanoke
2. Executive Committee Meeting August 16-17 – Harrisonburg
3. Annual Conference – October 6, Roanoke

**Items Proposed for Discussion in May:** Virginia Tech

**Adjournment.** The meeting was adjourned at 12:49pm.

Respectfully submitted,

Michelle Gowdy  
Executive Director



**OFFICERS**

**PRESIDENT**

ANITA JAMES PRICE  
ROANOKE VICE MAYOR

**PRESIDENT-ELECT**

THOMAS R. SMIGIEL, JR.  
NORFOLK COUNCIL MEMBER

**VICE PRESIDENT**

OPHIE KIER  
STAUNTON VICE-MAYOR

**PAST PRESIDENT**

PATRICIA P. WOODBURY  
NEWPORT NEWS COUNCIL MEMBER

**EXECUTIVE DIRECTOR**

MICHELLE GOWDY

**MAGAZINE**

VIRGINIA TOWN & CITY

## Resolution

Whereas, the separation of VML's financial accounts from those of the former VML Insurance Program, now known as VRSA has created a need for VML to open one or more new bank accounts; and

Whereas, SunTrust Bank has informed VML staff that federal banking regulations require such new accounts to include the name and social security account number of at least one responsible officer, despite VML's status as a non-profit corporation; now, therefore, to induce our Executive Director, Michelle Gowdy to act as the responsible individual on VML's bank account(s) to fulfill that regulatory requirement, now therefore, be it

Resolved by the Executive Committee of the Virginia Municipal League that Executive Director Michelle Gowdy is authorized and designated to act as the responsible individual listed on such bank account(s) as may be required to properly invest and account for VML's funds. The Executive Committee further agrees that the corporation shall indemnify Ms. Gowdy and hold her harmless for any action taken by her in good faith to open and maintain such account(s) in compliance with the applicable regulations, including but no limited to the assumption of responsibility for any taxes or other charges on interest earnings reported to the Internal Revenue Service for such accounts as accruing under Ms. Gowdy's social security account number.

July, 2, 2019

A handwritten signature in black ink that reads "Anita James Price". The signature is written in a cursive, flowing style.

**Anita James Price**  
VML President

P.O. Box 12164  
RICHMOND, VIRGINIA 23241

13 EAST FRANKLIN STREET  
RICHMOND, VIRGINIA 23219

804/649-8471

[www.vml.org](http://www.vml.org)

Virginia Municipal League  
Statement of Revenues and Expenses  
For the Eleven Months Ending 5/31/2019

	Annual Budget	YTD Budget	YTD Actual	YTD Variance
<b>REVENUES</b>				
Membership Dues	\$1,178,240.00	\$1,178,240.00	\$1,175,866.00	\$2,374.00
Annual Conference	250,000.00	250,000.00	277,685.00	(27,685.00) \$25K for VHDA that wasn't known
Workshops/Seminars	31,000.00	30,183.37	22,830.00	7,353.37
Advocacy	22,000.00	22,000.00	27,765.00	(5,765.00)
Investment Income	34,000.00	31,166.63	56,172.39	(25,005.76) came in higher than known
Publications	36,000.00	32,999.89	37,261.00	(4,261.11) yeah Rob!
Insurance Programs	900,000.00	900,000.00	950,000.00	(50,000.00) this will be closer to \$900K after reconciliation
Sponsorships	143,000.00	143,000.00	89,232.09	53,767.91
Affiliated Groups	90,000.00	90,000.00	80,431.00	9,569.00
Miscellaneous Income	30,000.00	27,500.00	28,718.27	(1,218.27)
<b>Total Revenues</b>	<b>2,714,240.00</b>	<b>2,705,089.89</b>	<b>2,745,960.75</b>	<b>(40,870.86)</b>
<b>EXPENSES</b>				
Compensation and Benefits	1,541,000.00	1,413,000.11	960,271.49	452,728.62
Annual Conference	250,000.00	250,000.00	340,533.39	(90,533.39) Leslie GTD #s
Workshops/Seminars	25,000.00	24,541.63	52,331.07	(27,789.44) Leslie GTD #s
Travel	22,000.00	20,166.74	32,358.08	(12,191.34) Jessica traveling with Michelle not known
Office Supplies & Postage	20,000.00	18,333.37	14,431.46	3,901.91
Office Maintenance & Equipment	27,400.00	25,366.74	22,363.86	3,002.88
Building Repairs & Utilities	37,500.00	34,375.00	29,895.21	4,479.79
Computer Services	206,100.00	188,925.00	76,165.25	112,759.75
Dues & Subscriptions	54,000.00	53,250.00	30,854.67	22,395.33
Insurance Expense	24,000.00	24,000.00	21,890.99	2,109.01
Professional Fees	57,000.00	53,916.63	82,929.96	(29,013.33) Hefty gneeral counsel not known
Advocacy	197,000.00	191,208.37	272,673.22	(81,464.85) higher due to outside contractor rather than employee
Publications	72,000.00	66,000.00	59,364.48	6,635.52
Executive Committee	33,000.00	30,249.89	37,554.53	(7,304.64) really expensive first of fiscal year meeting - leslie #s?
Depreciation Expense	55,000.00			Keiter will do this
Miscellaneous	35,000.00	32,208.26	37,663.55	(5,455.29) banking fees higher than known
Real Estate Tax	7,000.00	7,000.00	6,975.00	25.00
Accumulated Leave Earned	40,000.00		3,014.06	(3,014.06) to be completed by me for audit
<b>Total Expenses</b>	<b>2,703,000.00</b>	<b>2,432,541.74</b>	<b>2,081,270.27</b>	<b>351,271.47</b>
<b>Net Revenue</b>	<b>11,240.00</b>	<b>272,548.15</b>	<b>664,690.48</b>	<b>(392,142.33)</b>

you can unhide rows to see detail

Virginia Municipal League  
Balance Sheet  
As of 5/31/2019

	Actual
<b>Assets</b>	
Cash - Operating	\$886,687.14
Cash - FSA Account	2,183.25
Local Govnt Investment Pool	3,318,935.78
Regular Dues AR	(36,631.00)
Prepaid Expenses	675.00
Due From VBCOA	(59.68)
Due From VLGMA	(1,946.39)
Due From MEPAV	7,217.69
Due From VEPGA	(90.69)
Due from VML/VACO AEP	(192.61)
Due from NOVEC	(68.09)
Building	200,395.00
Acc Depreciation - Building	(200,395.00)
Land	144,799.54
Furniture, Etc.	91,591.78
Acc Dep - Furniture, etc.	(64,216.91)
Leasehold Improve 13 E Frankln	282,898.98
Acc Dep - Leasehold Improvmnts	(125,219.96)
Computer & Equipment	111,873.91
Acc Dep - Computer & Equipment	(68,749.69)
Other Capital Expenditures	65,571.14
Acc Dep - Other Cap Expendituers	(61,581.29)
<b>Total Assets</b>	<b>4,553,677.90</b>
<b>Liabilities</b>	
Miscellaneous Payables	(8,919.19)
FSA Payable prior to 1/06	(2,073.82)
Flexible Spending Acct Payable	(4,856.76)
Legal Resources Payable	18.00
Affiliate Investments	(578,100.00)
Def Inc - Conference Contrib	(37,280.00)
Def Inc - Exhibit Fees	(14,880.00)
Unearned Advertising	(8,370.00)
Accrued Vacation	(65,143.47)
Lease Obligation	(12,540.88)
<b>Total Liabilities</b>	<b>(732,146.12)</b>
<b>Fund Surplus:</b>	
Cur Unrstrict Bal/Mem Equity	3,156,841.30
YTD Net Income	664,690.48
<b>Liabilities &amp; Fund Surplus</b>	<b>3,089,385.66</b>

# FY20 VML PROPOSED BUDGET

The image features a solid blue background with a gradient from light blue at the top to a darker blue at the bottom. In the bottom right corner, there are several white, parallel diagonal lines of varying lengths and positions, creating a sense of motion or a stylized graphic element.

# OVERVIEW

- ▶ Budget decreases \$114,240 or 4%
- ▶ Reflects NO increase to membership dues
- ▶ Incorporates planned move to a leased facility

# REVENUE HIGHLIGHTS

- ▶ No membership due increases
- ▶ Adds Petersburg dues
- ▶ Eliminates Lynchburg dues
- ▶ Updates Associate dues to reflect current members



# REVENUE HIGHLIGHTS

- ▶ Increases Investment Income based on market conditions
- ▶ Decreases revenue from VML Insurance based on new agreement
- ▶ Increases VML Bond/Finance Program revenues based on higher participant utilization

# EXPENSE HIGHLIGHTS

- ▶ Incorporates an up to 5% salary increase for eligible staff
- ▶ Eliminates General Counsel position as it will continue to be outsourced
- ▶ Adds Rent expense for leased space
- ▶ Reduces utilities and phone services in anticipation of move
- ▶ Eliminates IT consulting line item as now will be done in house
- ▶ Adds \$100,000 in contingency in anticipation of move and selling of property
  - ▶ Ex. Moving expenses, building repairs, etc.

		<b>Revenues</b>			
		<b>FY19 Budget</b>	<b>FY20 Proposed</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Membership Dues</b>	Regular Dues	1,093,362	1,081,000	(12,362)	-1%
	Associate Dues	64,444	79,000	14,556	23%
	Sustaining Dues	20,434	10,000	(10,434)	-51%
<b>Membership Dues Total</b>		<b>1,178,240</b>	<b>1,170,000</b>	<b>(8,240)</b>	<b>-1%</b>
<b>Annual Conference</b>	Conference Advertising	1,000	-	(1,000)	-100%
	Conference Registration	149,000	150,000	1,000	1%
	Conference Sponsorship	45,000	45,000	-	0%
	Conference Exhibits	45,000	45,000	-	0%
	Conf - Mayor's Institute	10,000	10,000	-	0%
<b>Annual Conference Total</b>		<b>250,000</b>	<b>250,000</b>	<b>-</b>	<b>0%</b>
<b>Workshops/Seminars</b>	Newly Elected Officials	8,000	8,000	-	0%
	Regional Suppers	6,300	6,500	200	3%
	Finance Forum	5,700	6,000	300	5%
	Other Workshops/Seminars	3,500	3,500	-	0%
	Virginia Leadership Academy	7,500	-	(7,500)	-100%
<b>Workshops/Seminars Total</b>		<b>31,000</b>	<b>24,000</b>	<b>(7,000)</b>	<b>-23%</b>
<b>Advocacy</b>	Local Government Day	9,500	9,500	-	0%
	Rent Payments during GA	12,500	12,500	-	0%
<b>Advocacy Total</b>		<b>22,000</b>	<b>22,000</b>	<b>-</b>	<b>0%</b>
<b>Investment Income</b>		34,000	60,000	26,000	76%
<b>Publications</b>	VTC Advertising	25,450	30,500	5,050	20%
	VTC Subscriptions	550	1,000	450	82%
	Online Classified Advertising	10,000	11,000	1,000	10%
<b>Publications Total</b>		<b>36,000</b>	<b>42,500</b>	<b>6,500</b>	<b>18%</b>
<b>Insurance Programs</b>		900,000	750,000	(150,000)	-17%
<b>Sponsorships</b>	VML Bond/Finance Program	115,000	140,000	25,000	22%
	US Communities Program	28,000	28,000	-	0%
<b>Sponsorships Total</b>		<b>143,000</b>	<b>168,000</b>	<b>25,000</b>	<b>17%</b>
<b>Affiliated Groups</b>	VBCOA Administrative Fee	30,000	21,218	(8,782)	-29%
	VLGMA Administrative Fee	11,750	11,750	-	0%
	MEPAV Administrative Fee	9,000	9,270	270	3%
	VEPGA Administration Fee	36,750	37,678	928	3%
	AEP Administrative Fee	2,500	5,000	2,500	100%
<b>Affiliated Groups Total</b>		<b>90,000</b>	<b>84,916</b>	<b>(5,084)</b>	<b>-6%</b>
<b>Miscellaneous Income</b>		30,000	28,584	(1,416)	-5%
	<b>Total Revenues</b>	<b>2,714,240</b>	<b>2,600,000</b>	<b>(114,240)</b>	<b>-4%</b>

**Expenses**

		<b>FY19 Budget</b>	<b>FY20 Proposed</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Compensation and Benefits</b>					
<b>Salaries</b>	Salaries	1,078,880	1,000,000	(78,880)	-7%
	Overtime Salaries	5,000	5,000	-	0%
	Contract Labor/Interns	26,000	26,000	-	0%
<b>Salaries Total</b>		<b>1,109,880</b>	<b>1,031,000</b>	<b>(78,880)</b>	<b>-7%</b>
<b>Benefits</b>	VEC Unemployment	15,000	15,000	-	0%
	Social Security Tax	63,510	59,000	(4,510)	-7%
	Medicare Tax	15,530	15,000	(530)	-3%
	Life Insurance	13,550	12,000	(1,550)	-11%
	401 Pension Plan	112,750	110,000	(2,750)	-2%
	RHSP	5,355	5,000	(355)	-7%
	Health Insurance	141,240	90,000	(51,240)	-36%
	Health Insurance - dependent	33,000	40,000	7,000	21%
	Employee Assistance Plan	310	310	-	0%
	Dental Coverage	8,655	8,000	(655)	-8%
	Long Term Disability	3,755	3,500	(255)	-7%
	Short Term Disability	4,145	3,700	(445)	-11%
	Flexible Spending Acct Fees	900	900	-	0%
	Wellness	300	300	-	0%
	Payroll Services	7,000	7,000	-	0%
	Employee Parking	6,120	6,990	870	14%
<b>Benefits Total</b>		<b>431,120</b>	<b>376,700</b>	<b>(54,420)</b>	<b>-13%</b>
<b>Compensation and Benefits Total</b>		<b>1,541,000</b>	<b>1,407,700</b>	<b>(133,300)</b>	<b>-9%</b>
<b>Annual Conference</b>	Annual Conf - Other Expense	5,000	5,000	-	0%
	Annual Conf - Mking & Promotion	2,000	2,000	-	0%
	Annual Conf - Food	170,000	170,000	-	0%
	Annual Conf - A/V	20,000	20,000	-	0%
	Annual Conf - Speakers/ Entertainment	20,000	20,000	-	0%
	Annual Conf - Travel/Transport	5,000	5,000	-	0%
	Annual Conf - Supplies	5,000	5,000	-	0%
	Annual Conf - Staff Exp	8,000	8,000	-	0%
	Annual Conf - Exhibit Hall	10,000	10,000	-	0%
	Host night	5,000	5,000	-	0%
<b>Annual Conference Total</b>		<b>250,000</b>	<b>250,000</b>	<b>-</b>	<b>0%</b>
<b>Workshops/Seminars</b>	Newly Elected Officials	10,000	10,000	-	0%
	Regional Suppers	2,000	2,000	-	0%
	VML Events at NLC	2,000	10,000	8,000	400%
	Finance Forum	5,000	5,000	-	0%
	Other Workshops & Seminars	6,000	6,000	-	0%
<b>Workshops/Seminars Total</b>		<b>25,000</b>	<b>33,000</b>	<b>8,000</b>	<b>32%</b>

		<b>FY19 Budget</b>	<b>FY20 Proposed</b>	<b>\$ Change</b>	<b>% Change</b>
<b>General Operating Expenses</b>	VML Transportation & Parking	8,000	12,000	4,000	50%
	Lodging	6,000	10,000	4,000	67%
	Meals	2,000	2,500	500	25%
	Seminar & Conf Registration Fees	6,000	5,000	(1,000)	-17%
	Office Supplies	12,000	12,000	-	0%
	Postage	8,000	2,000	(6,000)	-75%
	Office Equip - Purch/Lease	6,200	6,200	-	0%
	Copier Expense	18,200	17,300	(900)	-5%
	Rent - Storage	3,000	3,000	-	0%
	Office Rent		55,000	55,000	
	VML Phone Services	9,500	5,000	(4,500)	-47%
	Telephone - Cellular	6,000	3,600	(2,400)	-40%
	Maintenance & Repairs	13,000	13,000	-	0%
	Office Utilities	9,000	4,500	(4,500)	-50%
	VML Computer Equipment	2,800	2,800	-	0%
	IT Consulting	150,000		(150,000)	-100%
	IT Services	18,000	18,000	-	0%
	Software Purchase/Subscription	27,300	27,300	-	0%
	Internet Services	1,500	1,500	-	0%
	Website	6,500	6,500	-	0%
	National League of Cities Dues	45,000	45,000	-	0%
	Dues Licenses & Certifications	7,000	8,000	1,000	14%
	Subscriptions	2,000	2,000	-	0%
	Insurance Expense	24,000	24,000	-	0%
	Fiscal Services	21,000	2,000	(19,000)	-90%
	Legal Services	1,000	1,000	-	0%
	Annual Audit	20,000	21,000	1,000	5%
	Contract with VML Insurance	15,000	-	(15,000)	-100%
<b>General Operating Expenses Total</b>		<b>448,000</b>	<b>310,200</b>	<b>(137,800)</b>	<b>-31%</b>
<b>Advocacy</b>	Local Government Day	13,000	20,000	7,000	54%
	Advocacy (Lobbying)	2,000	2,000	-	0%
	Rent during GA	21,600	21,600	-	0%
	Outside Contracts	152,900	190,000	37,100	24%
	Legislative/Policy Committees	6,000	20,000	14,000	233%
	Reportable Lobbying Expenses	1,500	1,500	-	0%
<b>Advocacy Total</b>		<b>197,000</b>	<b>255,100</b>	<b>58,100</b>	<b>29%</b>
<b>Publications</b>	VTC Mailing Service	4,000	4,000	-	0%
	VTC Printing	57,500	57,500	-	0%
	VTC Postage	10,000	12,000	2,000	20%
	Other Publications	500	500	-	0%
<b>Publications Total</b>		<b>72,000</b>	<b>74,000</b>	<b>2,000</b>	<b>3%</b>
<b>Executive Committee</b>	Exec Comm - Other	1,000	1,000	-	0%
	Exec Comm - Meetings	22,000	25,000	3,000	14%
	Exec Comm - Travel	10,000	10,000	-	0%
<b>Executive Committee Total</b>		<b>88,000</b>	<b>91,000</b>	<b>3,000</b>	<b>3%</b>
<b>Miscellaneous</b>	Depreciation Expense	55,000	55,000	-	0%
	Employee Training	1,500	1,500	-	0%
	Employee Recruitment	3,000	-	(3,000)	-100%
	Banking Fees	25,000	25,000	-	0%
	Promotional Items	1,500	1,500	-	0%
	Essay contest	1,500	1,500	-	0%
	Miscellaneous Expense	2,500	2,500	-	0%
	Real Estate Tax	7,000	7,000	-	0%
	Contingency		100,000	100,000	
<b>Miscellaneous Total</b>	Accumulated Leave Earned	40,000	40,000	-	0%
		<b>137,000</b>	<b>234,000</b>	<b>97,000</b>	<b>71%</b>
	Total Expenses	<b>2,703,000</b>	<b>2,600,000</b>	<b>(103,000)</b>	<b>-4%</b>
	Net Revenue	<b>11,240</b>	<b>-</b>	<b>-</b>	<b>-</b>



VirginiaTech.

College of Architecture and  
Urban Studies

The Graduate Certificate in Local Government  
Management  
[www.cpap.vt.edu](http://www.cpap.vt.edu)

April 1, 2019

Michelle Gowdy  
Executive Director  
Virginia Municipal League  
P. O. Box 12164  
Richmond, VA 23241

Dear Ms. Gowdy,

I am writing on behalf of the Virginia Tech Graduate Certificate in Local Government Management Program (Certificate) to thank you for the opportunity to request funding support for the Certificate student scholarship program.

The Bob Stripling Scholarship program has provided over \$450,000 in scholarships to students in the Certificate program. The Scholarship provides every full-time local government employee in the Commonwealth of Virginia who is enrolled in the Certificate program financial assistance for tuition costs. At this time, the tuition for one course at Virginia Tech is approximately \$2,500. With the combination of Bob Stripling scholarship funds and local government tuition reimbursement programs, on average our students pay approximately half of the tuition costs. Your support matters!

Ninety percent (90%) of our students are working professionals in local government management. They work full-time, attend courses at night, and are working towards higher levels in local government. For many of our students, the position of County, City, or Town Manager is their ultimate career goal.

The Certificate program recognizes the contribution you make through marketing materials distributed at both the Winter and Summer VLGMA conferences, invitations to speak at class sessions and participation in a variety of activities with our students. We will continue to promote your organization as an investor in preparing the next generation of local government leaders and managers.

As a result of our reputation as one of the only local government management graduate programs in the Nation, we continue to see increasing enrollments in our program. In addition, many of our students continue on with their education and enter the Master of Public Administration program at Virginia Tech.

We have a solid team of instructors including Kim Payne, former City Manager of Lynchburg; Anthony Romanello, Executive Director, Henrico Economic Development Authority; Steven

*Invent the Future*

Owen, City Manager of Staunton; Wyatt Shields, City Manager of Falls Church; Cindy Mester, Assistant City Manager of Falls Church; Rob Stalzer, Fairfax City manager; Peter Huber, Former Pulaski County Administrator, Leslie Beauregard, City of Charlottesville Assistant City Manager, Kathleen Guzzi, Former Botetourt County Administrator and Greg Kelly, Former Town Manager of Abingdon.

With a total scholarship budget of \$60,000 annually, you can understand how important your donation is to our scholarship program. As we discussed, other Virginia association contributions are \$5,000 annually.

Checks can be made payable to "VLGMA Scholarship Fund" and mailed to the Greater Lynchburg Community Trust, 101 Paulette Circle, Suite B, Lynchburg, VA 24502. Credit cards can also be used via the Lynchburg Trust website at [www.lynchburgtrust.org](http://www.lynchburgtrust.org). The trust is a 501c(3) entity that collects, invests, and distributes our scholarship funds. Our fund and endowment is overseen by the VLGMA Scholarship Committee that comprises of six local government managers who approve the scholarships through official action and oversees the balances. The Lynchburg Trust also makes available our annual financial audit and this document can be accessed at [www.lynchburgtrust.org](http://www.lynchburgtrust.org).

Please let me know if you have any questions regarding this request. Thank you for preparing the next generation of local government leaders.

Sincerely,

*Stephanie Dean Davis*

Stephanie Dean Davis, PhD  
Associate Director  
Center for Public Administration and Policy  
Graduate Certificate in Local Government Management  
Virginia Polytechnic Institute and State University

# The Graduate Certificate in Local Government Management

## Bob Stripling Scholarship for the Advancement of Local Government Management

### Policy Document and Guidance

#### **Purpose:**

The purpose of the Virginia Local Government Management Association (VLGMA) Bob Stripling Scholarship for the Advancement of Local Government Management (The Scholarship) is to provide financial assistance to those students who enroll in the Virginia Tech Graduate Certificate in Local Government Management and who are unable to obtain full reimbursement from their employer for the tuition and fees for the Courses or obtain other grants in aid to cover the full costs.

#### **Eligibility:**

Students must meet all of the criteria below in order to be eligible for the Scholarship program. Eligibility for the scholarship award is as follows:

#### Full-time Classification

- 1) Full-time employee of a Virginia Local Government;
- 2) Local government does not fund the entire cost of the program;

#### Part-time Classification

- 1) "Permanent" part time positions;
- 2) Part time position with a minimum of 20 hours per week;
- 3) Part-time service with a Virginia local government of at least five years;
- 4) Local government does not fund the entire cost of the program.

#### Online Student Classification

- 1) Full-time employee of a Virginia Local Government;
- 2) Demonstrated desire to enroll in Online program due to work constraints (fire, EMS, Dispatch, Police, Sheriff, other 24/7 functions);
- 3) Local government does not fund the entire cost of the program.

#### **Endowment levels:**

The endowment level is set by the Lynchburg Trust. The endowment funds cannot be used for the purpose of the scholarship awards. The Scholarship committee for the purpose of funding the scholarship awards may transfer endowment interest. The Endowment Committee will meet annually.



**Process:**

Award decisions will be made by a committee of VLGMA members appointed by the President of the VLGMA. Scholarship award amounts will vary depending on the funds available within the scholarship fund, the number of qualified students who apply and the size of the individual awards.

Awards will be made available approximately thirty days prior to the start of classes each semester. Payments will be made to the University Bursar and deposited in the student's account within thirty days of the award. Students must be enrolled before scholarship monies can be deposited. Funds can only be used towards tuition and fees for the Certificate program. Part-time students will be awarded 50% of the full scholarship amount approved.

**Academic Year 2018/2019 (Fall, Spring, Summer)**

**The scholarship amounts are prorated and need-based. Students will receive financial assistance of 40% of student net cost.**

(Effective August 3, 2018)

For students who withdraw or otherwise do not complete the course, the scholarship will be returned to the Lynchburg Trust in full via the Bursar's Office with Virginia Tech.



## Graduate Certificate in Local Government Management Program

The Virginia Tech Center for Public Administration and Policy (CPAP), in partnership with the Virginia Local Government Management Association, developed a new graduate certificate program in local government management that provides the next generation of local government managers with the tools to advance their careers and provide exceptional leadership within the communities where they work. The International City/County Management Association (ICMA) has identified leadership development as one of the most important issues that local governments will face in the coming decade.

Students are exposed to a full spectrum of local government issues, service delivery options, and management tools. The analysis of real life, local government case studies are central to classroom experience. Case studies and other practical exercises are used within the courses to emphasize the relationship between the political and management worlds which all local government managers must understand and navigate in order to be successful. Courses are taught live, two-way video at ten sites throughout the Commonwealth.

The Local Government Management Certificate program received the **Stephen B. Sweeney Academic Award** by the International City/County Management Association.

**Dr. John Nalbandian**, a professor at the University of Kansas and Virginia Tech Courtesy Professor of Practice, is one of the most esteemed professors of urban management in the world. He is an advisor to the certificate program, visits Blacksburg several times a year to meet with faculty, students, and local government officials, and delivers guest lectures in the program.

The certificate program consists of four 3-credit hour courses, for a total of twelve hours of graduate coursework.

Students who complete the certificate may apply for entrance as a degree seeking student in the CPAP MPA program and transfer all twelve credit hours towards their MPA.

### Courses

- Local Government and the Professional Manager
- Human Resource, Financial, and Performance Management for Local Government Managers
- The Context of Local Government Management
- Local Economic Development Planning

Students are required to complete all four courses with a GPA of 3.0 or better in order to earn the certificate.

### Application Deadlines

Fall semester: August 1

Spring semester: January 1

Summer semester: May 1

Non-degree candidates may apply for admission to the certificate program using the Virginia Tech Graduate School's online application system found under "Admissions" at [graduateschool.vt.edu/admissions/applying/index.html](http://graduateschool.vt.edu/admissions/applying/index.html). Students must have a four year degree from an accredited university.





Center for Public Administration and Policy

in partnership with



For More Information:

Stephanie Dean Davis, Program Director  
Center for Public Administration and Policy  
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[www.cpap.vt.edu/LGMC/index.html](http://www.cpap.vt.edu/LGMC/index.html)  
[www.cpap.vt.edu](http://www.cpap.vt.edu)  
"The Certificate" on Facebook

*Virginia Tech does not discriminate against employees, students, or applicants on the basis of age, color, disability, gender, national origin, political affiliation, race, religion, sexual orientation or veteran status. Anyone having questions concerning discrimination or accessibility should contact the Office for Equity and Access.*

[cpap@vt.edu](mailto:cpap@vt.edu)

[cpap.vt.edu](http://cpap.vt.edu)



## Graduate Certificate in Local Government Management Program

Center for Public Administration and Policy



School of Public and International Affairs



**Subject:** FW: NLC Officer

**Date:** Friday, July 12, 2019 at 9:33:49 AM Eastern Daylight Time

**From:** Michelle Gowdy

**To:** Manuel Timbreza

---

**From:** Sean Polster <spolster@warrentonva.gov>

**Sent:** Wednesday, June 26, 2019 1:38 PM

**To:** Michelle Gowdy <mgowdy@vml.org>; anita price <anita.price@roanokeva.gov>

**Subject:** NLC Officer

I am writing to let you both know that I'd like to seek the endorsement of VML for NLC 2nd Vice President. After last year's experience I believe that we as an organization need a strong ground game and work plan to accomplish this goal.

I look forward to working with you both and VML towards this opportunity. Thank you both.

Sean Polster, At-Large Councilmember

Warrenton Town Council

(540) 222-1993

Facebook/Twitter/Insta @seanmpolster

# VML Staff Accountability Chart

Revised: January 2019

## OUTSIDE COUNSEL

- Reports to Executive Director

## EXECUTIVE DIRECTOR

- 'Visionary' Role
- LMA\* - Org Culture/Values
- Major External Relationships
- Legal Compliance
- Executive Committee Liaison

**MICHELLE GOWDY**

## POLICY GROUP

### POLICY DEVELOPMENT DIR

- LMA\* for Policy Group
- Advocacy Partnerships
- VML Policy Statement
- Annual Legislative Program
- Federal Policy Impacts

**JANET ARESON**

## OPERATIONS GROUP

### COMMUNICATIONS DIR

- LMA\* for Operations Group
- Membership Relations
- Marketing and Business Rel.
- Communications Systems
- Database Oversight (Interim)

**ROB BULLINGTON**

## ADMINISTRATION GROUP

### CHIEF OF STAFF

- 'Integrator' and CoS Role
- LMA\* for Admin Group
- Finance Director
- Human Resource Director
- Acting Deputy Exec Director

**(VACANT)**

## FISCAL POLICY MGR

- State Budget and Taxation
- Local Revenues/Mandates
- Fiscal Federalism
- Education Funding Formulas
- Transportation Funding

**NEAL MENKES**

## MEMBERSHIP MGR

- Mtg/Conference Coordinator
- Educational Programs
- Awards Programs
- Member Services & Dues
- Affiliate Relations

**SANDY HARRINGTON**

## OFFICE MGR

- Office Coordinator
- Executive Asst to Exec Director
- Accounts Receivable
- Filing System
- Reception and Phones

**JONI TERRY**

## POLICY/ADVISORY REL MGR

- General Gov't
- Health & Human Services
- Education
- Public Safety & Judicial
- Elections

**JESSICA ACKERMAN**

## MEDIA MGR

- Print and Digital Publishing
- Graphics
- Messaging and Branding
- E-Communications
- Webmaster

**MANUEL TIMBREZA**

## OFFICE SYSTEMS MGR

- Building Maintenance
- Office Systems
- Purchasing
- Staff Support
- Safety

**PATRICK FORD**

## INTERGOV'TAL POLICY MGR

- Regionalism
- Land Use and Planning
- Community & Econ Develop't
- Transportation
- Environmental Quality

**(VACANT)**

## PART-TIME STAFF/ CONTRACTUAL

1. Business Marketing and ad sales
2. Creative: Writing and Editing

## DATABASE/IT MGR

- Database System Admin
- IT System Maintenance
- IT Staff
- Knowledge Management
- Records Management

**(VACANT)**

## FINANCE MGR

- Budget and Accounting
- Banking & Investments
- Accounts Payable
- Payroll
- Employee Benefits

**(FILL WHEN FIN/HR IN-HOUSE)**

\*LMA: Leadership, Management, Accountability

Chart Adapted From *Entrepreneurial Operating System* (EOS)

## VML Operations Support – work in progress update July 3, 2016

### Communications:

**Virginia Town & City (magazine)** – We are currently in pre-production for the July/August issue which will focus on the tourism industry in Virginia. Highlights include results of our online “The Virginia You Love” survey contest, an article from the Virginia Tourism Corporation and a staff review of a recent visit to Franklin, VA (see the “New” section below for more details). Recent issues of *Virginia Town & City* have focused on the disruption economy, youth services programs, and energy.

We have begun the lengthy process of reviewing the credentials of the 4,500+ individuals and organizations that currently receive *VT&C* with the goal of cutting costs by eliminating those who should no longer receive it and boosting subscription revenue by ensuring that subscribers are accurately listed.

**eNews (bi-weekly newsletter)** – Continues with regular, bi-weekly schedule. However, following the pre-special session edition on July 2 we will publish a post-special session edition on July 12. Plans are underway to rebrand the newsletter with a new name, new look and more control over who receives it and has access to it (i.e. non-members will no longer have access). Because this work is tied to a larger IT effort (see below), rollout may not occur until early 2020. However, planning and initial branding work will begin in the coming weeks.

**Social Media** – Our summer communications intern, Josette Bulova, has increased our SM presence with regular posts and several new social media campaigns including “Municipality Mondays” highlighting our municipal members and weekly posts spotlighting activities of our Municipal Business Associate members. She is also putting together a SM strategy to carry us forward after the summer.

**New: “Member Outreach”** – We would like to find ways to use VML’s resources and staff expertise to help municipal members who are experiencing public relations, branding and/or public awareness related issues. We envision a suite of options to potentially include graphic design, copywriting, social media support and general publicity. For starters, several members of our team spent a day in Franklin, VA (recently named as the “worst place in Virginia” by *USA Today*). The team interviewed various municipal leaders, visited local businesses, spoke with community leaders and took lots and lots of photographs. The details of the visit – extolling all the positive things happening in Franklin – will be featured in the July/August edition of *VT&C* with follow-up via social media and other channels. We hope to use this as a model for providing public relations boosts to other members.

### VML Events:

**VML Annual Conference and Mayors Institute** – New forms were created for attendees and exhibitors to register and pay for the 2019 annual conference and Mayors Institute. We continue to monitor these registrations, solve issues and answer questions as they arise. Sponsorship opportunities were announced via *eNews* recently and we are increasing our outreach to previous and new sponsors to secure those spots.

Additionally, we continue to work with VML’s policy team to develop the program for this year’s conference, secure speakers, schedule activities, monitoring hotel reservations and availability, banquet

event orders and generally working to ensure that our event in Roanoke fulfills all the traditional expectations while adding new, engaging elements.

**Other Events:** VML Events and activities over the past several months include representation at the Virginia First Cities meetings, coordinating and presenting “If I Were a Mayor” Awards and regional dinners, and participation in the Wallerstein Scholarship Interviews at UVA and the first Legislative meeting of 2019.

Upcoming events include:

- Policy Committee Meetings- July 18
- Executive Committee Meeting- July 18/19
- Executive Committee Meeting-August 16/17
- VML/VACO Broadband Summit- September 5
- Legislative Committee Meeting-September 6

## **Affiliate Relations:**

Affiliate groups served by the Virginia Municipal League (VML) include: the Municipal Electric Power Association of Virginia (MEPAV), Northern Virginia Electric Cooperative (NOVEC), Virginia Building and Code Officials Association (VBCOA), Virginia Energy Purchasing Group Association (VEPGA), Virginia Local Government Managers Association (VLGMA), and the VML/VACO Appalachian Power Steering Committee.

Ongoing services include membership services, processing dues assessments, financial reporting, responding to member inquiries, staffing board and committee meetings and working with the leadership in each affiliate group on items related to budgeting and association needs.

In addition, we are planning and executing the groups’ annual conferences, board/committee meetings and training events (MEPAV, VEGPA, VBCOA). MEPAV sponsored a research student at the George Washington University as an American Public Power Association (APPA)/DEED member. Articles related to the relevant Aaffiliate groups have been included in recent issues of *Virginia Town & City*.

Upcoming affiliate activities include:

- VSAE Meeting Planners Summit-August 1/2
- VEGPA Board Meeting-August 8
- MEPAV Board Meeting-August 15
- VBCOA Board Meeting-September 22
- VBCOA Annual Meeting and Conference-Sept 22/24
- MEPAV Fall E&O-October 23/24

## **Information Technology:**

We were pleased to add a full-time Information Technology Administrator, Brendan Hogan, to our staff in June. In addition to providing general IT support, Brendan's immediate work is to evaluate our current database/accounting/website/events management systems. The goal is to establish a one-stop-shop for maintaining and improving membership data, business processes, membership services and events management to increase staff efficiency, ensure accuracy of data and cut operating costs. He will be presenting conclusions and discussing options with the VML staff in the coming weeks and then will lead the implementation of those improvements.



# PRELIMINARY AGENDAS

## Virginia Mayors Institute

Saturday, October 5

9 a.m.	Registration / Continental Breakfast
9:30 a.m.	Opening & Welcome
10 - 11 a.m.	Scheduled Workshops
Noon	Lunch
1 - 2 p.m.	Scheduled Workshops
2 p.m.	Brewery Tour
6:30 p.m.	Reception and Dinner

Sunday, October 6

8 a.m.	Continental Breakfast
8:30 - 10:30 a.m.	Scheduled Workshops
11:30 a.m.	Presentation of Certificates / Concludes



## Virginia Mayors Institute

October 5 - 6, 2019 • Roanoke



All conference activities, including general sessions, break outs, and the exhibit hall, will take place at the Hotel Roanoke & Conference Center located at 110 Shenandoah Avenue, Roanoke, VA 24016.

## VML Annual Conference

Sunday, October 6

Noon - 6:30 p.m.	Registration and Exhibit Hall Opens
Noon - 1 p.m.	Lunch and visit with Exhibitors - Exhibit Hall
Noon - 2 p.m.	Executive Committee Meeting
12:30 - 1:45 p.m.	Women in Local Government Lunch (ticketed item)
2 - 3:15 p.m.	Legislative Committee Meeting
2:45 - 3:15 p.m.	Nominations Committee Meeting
1 - 3:15 p.m.	Public Art Tour of Downtown Roanoke



October 6-8, Hotel Roanoke & Conference Center

Enjoy a walking tour of the City of Roanoke's public art. Participants are asked to gather in the lower lobby of the Hotel Roanoke & Conference Center on Sunday afternoon at 1 p.m. The tour will begin promptly at 1:15 p.m. Starting with public art located near the Hotel Roanoke and moving into downtown with the Sister City Sculptures in Century Plaza, the Market Building Mosaics, the Art in Roanoke Display on the Elmwood Park Art Walk, and finally the art in the Main Library. This is a walking tour, please wear comfortable shoes. *Sunshine, we're fine. Drizzle, bring your umbrella. Downpour, cancel.*

Continues on next page.

## Sunday, October 6

1 - 3:15 p.m.

### Walk to the Star

Enjoy the unparalleled view of the Roanoke Valley from Mill Mountain Park at the base of the famous Roanoke Star. A must-see for anyone who has never been there! Participants will be transported from the Hotel Roanoke lobby to the park. The terrain is easy, but hilly, so please wear comfortable shoes. *Sunshine, we're fine. Drizzle, bring your umbrella. Downpour, cancel.*



3:30 - 5 p.m.

### Opening Session – Crystal Ballroom

Call to order  
Presentation of Colors  
Pledge of Allegiance  
Welcome – City of Roanoke Mayor  
Report of the Nominations Committee

5:30 - 7 p.m.

### Reception in the Exhibit Hall

Join us as we kick off the Annual VML Annual Conference, visit with the Exhibitors, catch up with old friends and make some new ones!

7 - 9 p.m.

### GAME NIGHT!

After the reception, grab a drink and a dessert and join us for VML's first ever game night! Our professional DJ and game master will keep the party going with top-notch tunes and team challenges including trivia, photobooth charades, bonus round karaoke and minute-to-win-it skill tests. The winning team will take home bragging rights and souvenirs. Whether you come to win or just to watch and share the fun, the important thing is to be there!

## Monday, October 7

6:30 a.m.

### Guided Run

Join members of the Roanoke Parks and Rec Department for a guided run.

7 a.m. - 3:30 p.m.

### Registration & Exhibit Hall

7:30 - 8:30 a.m.

### Continental Breakfast

8:30 - 10:30 a.m.

### City, Town and Urban Section Elections and Workshops

The Annual meeting of the City, Urban, and Town Sections include the election of the Chair and Vice Chair of each section and a workshop. The chair of each section is a member of the VML Executive Committee.

City Section – TBA    Town Section – TBA    Urban Section – Scooters

10:45 - Noon

### Concurrent Workshops

Noon – 1:15 p.m.

### Lunch in the Exhibit Hall

Noon - 2 p.m.

### Spouse Activity – Planternoon (Design your own terrarium)

Join Let's Party Creatively and design your own unique terrarium to display your favorite message on a sturdy, wooden chalkboard container. The "Planternoon" includes all supplies, smocks, gloves, three premium succulents, soil, decorative stones, moss, and your choice of a gnome or fairy! *This is a ticketed event and reservations are required! Price includes lunch, wine and all terrarium materials.*



## Monday, October 7

Noon - 1:15 p.m. **NBC-LEO Lunch** (ticketed item)

Noon - 1:15 p.m. **VLGMA Lunch** (ticketed item)

1:30 - 5 p.m. **VLGMA Board Meeting**

1:30 p.m. **Tour of Roanoke's Innovation Corridor**  
(conducted by the City of Roanoke)

Connected to downtown Roanoke, the Innovation Corridor is where leading biomedical researchers, students, healthcare providers and businesses excel through collaboration. Tour participants will visit key facilities and other significant points in the vicinity of South Jefferson Street while learning about plans for partnerships, infrastructure improvements and developments as part of the corridor's "Roanoke Innovates" branding and marketing initiative.



About the Innovation Corridor: The corridor offers interdisciplinary training and research facilities through the Fralin Biomedical Research Institute at VTC and Carilion Clinic, in addition to strong academic and economic partnerships between Carilion Clinic, Virginia Tech, Virginia Western Community College, Jefferson College of Health Sciences at Carilion Clinic, and Radford University.

1 - 5 p.m. **Concurrent Workshops**

2:45 - 3:15 p.m. **Break / Exhibit Hall Closes**

6 - 9 p.m. **Host City Night Market Square - Downtown Roanoke**

Downtown Roanoke welcomes VML participants beginning with a reception in the center of Market Square, followed by a Taste of Roanoke! Attendees will be able to enjoy samples of local restaurants' signature dishes, local craft beers, and the opportunity to dance the night away to live music.



## Tuesday, October 8

6:30 a.m. **Yoga**

7 a.m. **Registration**

7:30 a.m. **Past Presidents' Meeting Breakfast**

7:30 - 8:30 a.m. **Continental Breakfast**

8:30 - 10:15 a.m. **Concurrent Workshops**

8:30 - 10:15 a.m. **Round Tables**

10:30 - 11:15 a.m. **General Session**

11:15 - Noon **Annual Business Meeting and Election of Officers**

Report of the Exec Director  
Report of the President  
Report of the policy committees  
Report of the legislative committee  
Voting on the Policy statements  
Voting on the legislative agenda  
Election of Officers

## Tuesday, October 8

12:15 – 2 p.m.      **VML Banquet with Speaker and Awards**  
Remarks - Outgoing President Anita Price  
Innovation Awards Presentations  
Remarks - Incoming President  
Invitation to Norfolk 2020

**Annual Conference concludes**





# Homeward Bound

THE ROAD TO AFFORDABLE HOUSING



## About the National League of Cities

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

## Acknowledgements

Special thanks to the housing specialists, scholars, real estate developers, city staff and task force members whose participation and contributions to the task force made this work possible.

Photo credits: All photos Getty Images, 2019, unless otherwise noted.

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# FOREWORD FROM MAYOR BOWSER

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**T**he United States has a housing crisis. In cities and towns nationwide, access to housing — particularly access to safe and affordable housing — continues to be a major concern and increasingly serves as one of the biggest barriers to economic prosperity for American families.

Because of stagnant wages, rising real estate prices, higher interest rates, and strict lending standards, housing has become an outsized cost for more and more working families. And not just for homeowners. Nearly 40 percent of households in the U.S. are rented homes, and of these households, half are “cost burdened,” meaning they spend more than 30 percent of their income on housing. Too many Americans are forgoing basic necessities just to pay rent or make their mortgage payment.

This crisis is affecting the quality of life for people throughout our nation, and the time to act is now. All levels of government need to face this housing crisis head-on.

We know: When cities come together and focus on an issue, we get the work done. Cities are incubators for innovation and places where rhetoric translates into action.

But cities cannot do this work alone. The federal government must step up, treat our nation’s housing needs seriously, and recognize that housing is infrastructure. Together, we must double-down on solutions that are working. We must think bigger and bolder to address our most persistent challenges. And when we have solutions, we must fund them.

A safe and stable home is the first step to a safe and stable life. Together, we must act with urgency to end our nation’s housing crisis.



## **MURIEL BOWSER**

Mayor, Washington, D.C.,  
and Chair, NLC’s Housing Task Force



# INTRODUCTION

**H**ousing is the single biggest factor impacting economic mobility for Americans.<sup>1,2</sup> When residents have stable living conditions, the benefits are apparent — students do better in school and health outcomes improve.<sup>3</sup> Communities benefit as a whole from this stability. Opportunities for investment growth and economic prosperity develop when sustainable housing serves the needs of residents across generations and income levels. It's up to local governments to make the right housing decisions to create positive outcomes for residents and communities.

Stable housing is a prerequisite for:

- **Economic mobility.** Federal investment in affordable, stable housing is also an investment in children and their future. Student achievement is maximized when students can go home to stable, affordable housing. Low-income children in affordable housing score better on cognitive development tests than those in unaffordable housing.<sup>4</sup> Younger low-income children in families using housing vouchers to move to neighborhoods

with better opportunities earn an average of \$302K more in their lifetime. And affordable housing options in high opportunity neighborhoods create economically diverse schools, which are 22 times more likely to be high performing as high-poverty schools.<sup>5</sup>

- **Job security.** The construction of 100 affordable homes generates on average \$11.7 million in local income, 161 local jobs and \$2.2 million in local taxes.<sup>6</sup> Conversely, involuntary housing loss, like forced moves and evictions, is strongly correlated to involuntary job loss.<sup>7</sup>

- **Health and well-being.** Young children in families who live in unstable housing are 20 percent more likely to be hospitalized than those in stable housing.<sup>8</sup> In addition, households with poor housing quality had 50 percent higher odds of an asthma-related emergency-room visit during the period of the study.<sup>9</sup> Other research indicates that “five percent of hospital users who are responsible for half of the health care costs in the U.S. are, for the most part, patients who live below the poverty line and are housing insecure.”<sup>10</sup>

<sup>1</sup> [The Links Between Affordable Housing and Economic Mobility](#), Reid, Carolina, The Terner Center, University of California at Berkeley, May 2018.

<sup>2</sup> [Housing Policy Levers to Promote Economic Mobility](#), Blumenthal, Pamela and McGinty, John, the Urban Institute, October 2015.

<sup>3</sup> [The Positive Impacts of Affordable Housing on Health: A Research Summary](#), Lubell, Crain, and Cohen, Enterprise Community Partners, 2007.

<sup>4</sup> [Housing Affordability and Child Well-Being](#), Newman, Holupka, Bloomberg School of Public Health, Johns Hopkins University, January 2015.

<sup>5</sup> [High-flying schools, student disadvantage, and the logic of NCLB](#) Harris, American Journal of Education, 113(3), 367-394. (2007).

<sup>6</sup> [Housing Investments Spark Economic Stimulus and Job Creation](#), Fact Sheet, Opportunity Starts at Home Campaign, 2019.

<sup>7</sup> Who gets evicted? Assessing individual, neighborhood, and network factors, Desmond, Gershenson, Harvard University, Social Science Research, 1-16, 2016.

<sup>8</sup> [Housing as a Health Care Investment: Affordable Housing Supports Children's Health](#), Sandel, Cook, Poblacion, Sheward, Coleman, Viveiros, Sturtevant, National Housing Conference, Children's HealthWatch, 2016.

<sup>9</sup> [Pediatric Asthma Health Disparities: Race, Hardship, Housing, and Asthma in a National Survey](#), Hughes, Matsui, Tschudy, Pollack, Keet, Academic Pediatric Association, November 2016.

<sup>10</sup> [Tailoring Complex Care Management for High-Need, High-Cost Patients](#), Blumenthal, Abrams, JAMA, October 2016.



### The task force settled on a set of five national housing policy recommendations:

-  1. Immediately stabilize and stem the loss of public and affordable housing.
-  2. Follow emergency intervention with passage of a long-term, stand-alone federal housing bill that authorizes ten years of new funding for pilot programs that advance housing for all.
-  3. Support innovation and modernization of land-use and planning at the local and regional level.
-  4. Fix inequities in housing development and the housing finance system.
-  5. Support scalable innovation and financing for cities, towns and villages.

### They also settled on five local recommendations:

-  1. Establish local programs by combining funding and financing streams to support housing goals.
-  2. Modernize local land use policies, including zoning and permitting, to rebalance housing supply and demand.
-  3. Identify and engage broadly with local stakeholders; and coordinate across municipal boundaries, to develop a plan to provide housing opportunities for all.
-  4. Support the needs of distinct sub-populations including the homeless, seniors and persons with conviction histories.
-  5. Prioritize equitable outcomes in housing decision as it is an essential component for success.

Our goal is to ensure that safe and quality housing will be viewed as a right, not a choice.

In order to make real progress in narrowing the gap in access to quality, affordable and safe housing, local leaders must take on the status quo and make significant structural alterations. The most obvious route to address historic inequities would be to institute new policies that consider housing affordability, housing stability and the gap in availability of safe, healthy housing in all communities. City governments must provide tenants with legal support, prevent foreclosures, prioritize control over zoning by communities of color and create independent equitable development entities that put decision-making power over public investment in the hands of communities most at risk for displacement.





# A NATIONAL AGENDA

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Every American deserves the opportunity for housing, because stable housing is a prerequisite for economic mobility, job security, and health and well-being.



**P**resident Lyndon Johnson signed The Housing and Urban Development Act into law in 1965. With the stroke of his pen, he transformed the way government approaches housing. The new law established a **national goal** to “make sure that every family in America lives in a home of dignity and a neighborhood of pride, a community of opportunity and a city of promise and hope.”<sup>11</sup> The Act would reshape American cities, towns, and villages by vastly expanding housing and homeownership opportunities — for some. Official policies of residential segregation and housing discrimination, including mortgage redlining, made their own mark on cities and tribal lands in ways we still haven’t overcome.

## Early Federal Policy

*American’s attitudes and biases about housing are changing; local governments are changing in response.*

Today’s housing crisis is rooted in the bedrock of America’s founding and the seizure of land for development by new settlers. Fast forward to the 1930s: America was building on existing racist deed restrictions with the introduction of redlining, which was the overt practice of restricting the neighborhoods in which homebuyers could get federally-backed home mortgages

based on race and ethnicity. National policy sanctioned by the Federal Housing Administration included color-coded lines drawn on maps to delineate areas where financial institutions should or should not invest.

The federal government built redlining into its developing federal mortgage system, transforming American cities. Local government was complicit in redlining through its role in using the federal guidelines. In the 1930s, redlining converted clear racist action into structural racism that has resulted in long-lasting negative impacts. The practice shaped the geography of American cities, towns and villages, and embedded drastic racial bias into both institutional policy and implicit associations by setting the precedent that spaces associated with people of color are risky investments.

Historically, decisions made by local government leaders have in many cases exacerbated this crisis. While there is increasingly strong leadership by mayors and councilmembers, the problems with the current-day housing crisis are often the outcomes of past restrictive local policies, such as the movement in the post-World War II era toward suburbanization and housing policies dependent on automobiles.

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<sup>11</sup>HUD at 50: Creating Pathways to Opportunity, Khadduri, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 2015.



Adding to this history of inequitable outcomes in the housing market are choices made by local government officials to protect incumbent homeowners rather than newcomers through “NIMBY” politics. This trend has grown over the last 70 years. Even though some trends are reversing on sprawl, NIMBYism is still a potent force.

In addition to impacts on housing and geography, the legacy of redlining facilitated the racial wealth gap. Since most Americans build wealth through homeownership, the provision of higher value government-backed loans to white families that were denied to families of color subsidized the intergenerational accumulation of wealth differentially by race. People of color were systematically denied loans and forced into devalued properties. Unfortunately, these patterns of racial discrimination in lending continue as, even today, real estate and financial industries deny low-interest loans to people of color at higher rates than they do to white people.

Racialized zoning has permanently altered America’s cities. It embedded legally recognized segregation into our geography and social relationships. Today’s housing crisis is a descendant of these destructive, 90-year old policies. Addressing today’s housing crisis requires us to examine our past. It also requires city leaders to address those residents most impacted by the housing crisis today. These efforts may help rebuild the trust that communities of color have lost in their local governments due to centuries of policies, practices and procedures that caused differential outcomes by race.

### Changing Urban Patterns

Urban decline, characterized by “white flight” (a term coined in the mid-20th century to describe the departure of white people from places largely populated by people of color), and residential segregation, mortgage discrimination, and federal disinvestment in legacy infrastructure, has made its way to the towns, villages and suburbs beyond city limits. Problems once concentrated in large urban areas have sprawled. But there’s another problem. Local leaders in the suburban and rural areas don’t have federal programs tailored to their municipalities. Instead, their only choice is to address these challenges using set federal programs established with large cities in mind.

Suburban sprawl is resulting in problems once relegated to urban spaces. Such problems include those associated with maintenance and replacement of decades-old, federally-funded legacy infrastructure and public housing. And no matter the location or size of a city, village or town, challenges like these are too big to solve alone.

Local elected officials are hearing the message loud and clear that all residents are ready for a new direction on housing. Local governments, having contributed to the present state of housing affordability, are changing their approaches to housing. Many are adopting practices that reduce costs and limit other barriers to housing development. Experimentation and innovation at the local level, free from the threat of federal preemption, is the appropriate response at this time.

Despite abundant research and evidence supporting the importance of housing stability, the growing demand for housing



assistance, and the demonstrable need for greater policy interventions, federal housing assistance is poised to fall to its lowest level in 40 years.<sup>1,2</sup>

For many reasons, the federal budget and appropriations process has failed to create opportunities for Congress to intervene sufficiently before a housing crisis, past or present. The housing foreclosure crisis precipitated The Great Recession that finally spurred Congress into action with a recovery act, and a new set of quickly-assembled programs to mitigate foreclosure and eviction. In the end, these efforts did not live up to expectations.

The federal budget and appropriations processes are also subject to constant and growing uncertainty, even in years

when the government avoids shutdowns. Uncertainty over program funding and subsidy availability weakens potential for federal intervention in the housing market, where lenders and developers alike crave and reward certainty.

Furthermore, most public housing in the U.S. is at least 40 years old and in need of repair. Despite a clear need, years of funding cuts, uneven management and oversight have jeopardized the longevity of about a million units of permanently affordable public housing. The primary residents of public housing — families with children, the elderly and people with disabilities — will strain public services if their housing becomes distressed to the point where they have to be involuntarily removed.

<sup>1</sup>New Budget Deal Needed to Avert Cuts, Invest in National Priorities, Parrott, Kogan, Taylor, Center on Budget and Policy Priorities, 2019

<sup>2</sup>Chart Book: Cuts in Federal Assistance Have Exacerbated Families’ Struggles to Afford Housing, Rice, Center on Budget and Policy Priorities, 2016



# AFFORDABLE HOUSING FOR VULNERABLE POPULATIONS

**H**ousing affordability issues can be particularly harmful for more vulnerable populations like the homeless, senior citizens and residents with incarceration histories. However, improvements over the past decade serve as evidence that positive change will continue.



## The Homeless

Housing and other issues, such as homelessness, have been viewed as intractable urban policy issues for decades. But the nation's housing-affordability crisis has only been around since the 1970s, with the modern experience of homelessness emerging in the early 1980s.

As cities grappled with unsheltered homelessness, a variety of responses developed around the idea of emergency shelter. In the ensuing decade, a shelter and transitional housing-based system developed with budding federal resources. At the start of the 1990s, homelessness became less of a priority. Additionally, the homeless were often required to demonstrate medication and sobriety compliance before being considered for permanent housing placement.

Introduction of the U.S. Housing and Urban Development's Housing First strategy, built on the premise that the answer to homelessness

is housing, turned this framework around in the early- to mid-1990s. The strategy placed people into housing, regardless of sobriety and medication compliance. It also provided client-tailored case management services. As efforts built, these services began to include clinically-proven case management techniques based on harm-reduction and trauma-informed care.

In 2010, the federal government's plan, Opening Doors, amended its plan to prioritize specific sub-populations for the first time. By then, many communities had developed plans to end homelessness, and since 2010, veteran homelessness in the U.S. has declined 48.8 percent.



## Senior citizens

With an estimated 50.8 million people aged 65 and older in the U.S., addressing the issue of home repairs and modifications so that residents can age in place can seem daunting for local leaders. But these modifications are necessary to reduce emergency responder calls for injuries resulting from homes not having things like ramps and grab bars.

To strategically meet this growing need, city leaders can standardize the assessment of needs, improve resource targeting, enhance service provider coordination, increase client-



level data-sharing and persistently engage local decision makers.

Home repair programs administered by local government (and often funded with resources from the CDBG program) can be targeted to support low-income seniors. Capturing these data and targeting information about these households allows cities to address various housing challenges.



### Residents with incarceration histories

Cities and towns of all sizes need to consider their roles in policy, services and support for the nine million Americans who get released from jail each year, as well as the more than 600,000 persons released annually from state and federal prisons. Even a few days spent in jail can cause housing issues. In addition, challenges to finding housing often worsen after prison reentry. In 2013, HUD noted that “Incarceration and homelessness are highly interrelated as the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn increases the risk

for subsequent re-incarceration.” (Notice PIH 2013-15 (HA))<sup>12</sup>

To cut down on the risk of homelessness for these residents and improve their access to housing, city leaders must commit to reviewing, and modifying if necessary, local fair-housing policy related to landlords’ ability to deny rental applicants based solely on conviction history. Prison and pre-arrest diversion also rank high on the list of city policy options.

Some city leaders may also have the ability to influence local public housing authority (PHA) policies. PHA can also contribute to other inequities, as described in 2015 HUD guidance: “Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal-history-based restrictions on access to housing are likely disproportionately to burden African-Americans and Hispanics.” (Notice PIH 2015-19)<sup>13</sup>

City leaders who can influence PHA policy should dig further and ask themselves if the local PHA places additional restrictions on access to public housing beyond those restrictions required by Federal regulations (which are limited to one’s name appearing on the lifetime sex offender registry or convictions for manufacturing methamphetamines on government property). If such additional restrictive layers exist, city leadership should look into whether or not the restrictions meet a “reasonable and necessary” test of producing tangible evidence of improved public safety. If they don’t, actions should be taken to remove those additional layers.

<sup>12</sup> [Guidance on housing individuals and families experiencing homelessness through the public housing and housing choice voucher program](#), U.S. Dept. of Housing and Urban Development, Washington, D.C., June 10, 2013

<sup>13</sup> [Guidance for Public Housing Agencies and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions](#), U.S. Dept. of Housing and Urban Development, Washington, D.C. Nov. 2, 2015

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**City leaders must commit to reviewing, and modifying if necessary, local fair-housing policy related to landlords’ ability to deny rental applicants based solely on conviction history.**



# A DIFFERENT SET OF CHALLENGES — SMALLER CITIES, TOWNS, VILLAGES AND LEGACY CITIES

American municipalities represent a huge variety of sizes, places and circumstances, each with their own housing challenges. For many cities, especially those smaller in size or those with a legacy of growth driven by industrial manufacturing or family farms, stagnant economic trends have led to an excess of homes and/or residential lots.

Cities in this situation show a distinct pattern of economic changes that diminish the earning power of workers, often starting with increasing global competition, the loss of major employers or natural disasters such as draught or flood. In the absence of jobs and with reduced opportunities, populations decline, and tax dollars for new municipal investments designed to spur growth decrease.

Efforts to boost economic growth do not directly address vacant and abandoned housing, one of the greatest challenges for cities in this bucket. The 2018 report, *The Empty House Next Door*,<sup>14</sup> suggests that small cities and rural areas have levels of vacancy comparable to, or higher than, even the most distressed central cities.

Other problems can include rental property owners who fail to maintain their property in habitable condition, inadequate building inspection and code enforcement, and limited protections for tenants facing eviction. Problems can extend to the leveraging of public lands through land trusts or land banks, and effectively using the Community Reinvestment Act to advance private sector investment.



<sup>14</sup> [Guidance on housing individuals and families experiencing homelessness through the public housing and housing choice voucher program](#), U. S. Dept. of Housing and Urban Development, Washington, D.C., June 10, 2013



The first step is accruing data on vacant property. Gary, Indiana, through its Gary Counts initiative, has inventoried more than 58,000 parcels, leading to the identification of more than 25,000 empty lots and 6,500 vacant buildings. More than 200 volunteers, plus partners from Indiana University, University of Chicago, The Knight Foundation and the Legacy Foundation, supported the effort. The goal of this exercise, according to Gary Mayor Karen Freeman-Wilson, was to “make smarter, more calculated decisions on how to best address demolition and redevelopment.” The city made this a community-wide priority.

Although demolition of a dilapidated house is often the safest course of action, the cost of demolition and the backlog on such projects remain a challenge. Once a lot is cleared however, an increasing number of policy options emerge, like greening empty lots, side-lot annexations, land banking and land trusts.

Additionally, many cities create opportunities for vacant lot annexations as part of a wider neighborhood stabilization plan. In this case, existing homeowners may annex an adjacent vacant lot, thus increasing the size of their individual lot. This usually comes with an incentive, such as a property tax waiver for some fixed period on the value added to individual's property. This technique keeps land on the tax rolls over the long-term, brings stability to the neighborhood and provides a tangible benefit to the homeowner who acquired the extra land.

Another alternative is to reinvent vacant lots as open space, especially in neighborhoods with few parks and playgrounds. Open space can also be turned into neighborhood gardens. Maintaining open space around a neighborhood has an added environmental



benefit: Open land absorbs rainfall instead of contributing to runoff that clogs sewer pipes. For land that is neither immediately commercially viable for sale nor useful for parks and open space, land banks and land trusts present the most useful options. A land bank acquires and holds land for future investment and development. Often these properties were the subject of foreclosure proceedings and may be tax-delinquent properties. Land banks are separate institutions from local governments but work hand-in hand to establish strategic long-term goals for real estate development.

A land trust (or community land trust), on the other hand, is a form of shared equity ownership to ensure permanently affordable housing. The largest and most well-known in the U.S. is the Champlain Housing Trust in Vermont. The second largest is the Dudley

Neighbors Inc. property in Boston's Roxbury neighborhood. The trust manages real estate pulled from the private marketplace. Home prices are kept at below market rates because the land is kept by the trust and the appreciation of the property is shared from owner to owner over time. Each owner can buy into the trust at a below-market price in exchange for sharing the appreciated value of the property with the trust at the time of sale. This mechanism guarantees long-term affordability in perpetuity.

The best strategy is for cities to use an “upstream approach.” This means preventing vacancy before it happens. This approach requires coordination of several strategies including temporary or emergency mortgage/

rental assistance, vigorous code enforcement including rental inspection ordinances, incentive funds for improvements to homes and apartment buildings (going to owner-occupants or to building owners), and protections for tenants from evictions that aren't just-case. Seniors on fixed incomes, for example, are a perfect target for programs that offer financial assistance for home maintenance and improvement toward the goal of helping residents age in place. For smaller communities that lack capacity for such preemptive measures, a shared regional housing authority (or even shared code inspection and enforcement) may prove to be an appropriate mechanism to manage such tasks.

Finally, because housing is such an important component of community prosperity, investments in nurturing or simplifying the creation of new small businesses is an essential task for city government. The U.S. Small Business Administration indicates that there are more than 30 million small businesses, which account for more than 99 percent of the U.S.' businesses.<sup>15</sup> These businesses are the drivers of economic churn in American communities and hire locally.



<sup>15</sup> 2018 Small Business Profile, U.S. Small Business Administration, Washington, D.C., 2018, <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-All.pdf>.



# LOCAL SOLUTIONS AND PRACTICES

American cities have varying levels of authority and different combinations of housing-related policy tools at their disposal. Even more important to note is that each city faces unique conditions in its local housing market. These varying conditions call for a diverse array of approaches to reach successful outcomes especially for “missing middle” housing for average income Americans. When it comes to cities providing housing for low and very low income residents, the efforts contributed by local governments must be supported by robust federal housing subsidy programs such as HUD’s HOME and CDBG programs.

Local housing market factors include:

1. Fluctuations in job and population growth or loss
2. Labor costs
3. Building material costs

4. Availability and cost of credit for consumers and for investors
5. The presence and capacity of real estate developers
6. The presence and capacity of Community Development Corporations and Community Development Financial Institutions
7. Availability, cost and regulation of land
8. The type, location and quality of existing housing
9. State preemptions
10. Building codes and inspections policies
11. Tenant protections (such as just-cause eviction, rent control, rental inspections)
12. Federal housing supports





13. History of real estate lending practices, including disparities by race, gender, etc.
14. History of restrictive covenants and discriminatory zoning practices like redlining
15. Perceived quality of schools
16. Perceived value of housing stock production compared to other policy goals (such as community character, building height, setback requirements and other aesthetics)

Some of these conditions are beyond local government control. Others, such as use of federal housing supports, land regulation, and how a city manages its permitting and real-estate development processes can be greatly influenced by local governments.

In cities with hotter markets, skyrocketing housing prices are often the result of mismatches between supply and demand. A growing economy paying good wages to an expanding high-skill workforce attracts more residents. Those residents in turn compete for a limited pool of housing. Thus, supply of housing for middle income working families remains insufficient. Meanwhile, older housing stock that might otherwise be affordable remains out of reach for many lower- and middle-income residents because consumer demand keeps rents high overall. This is an example of downward market pressure.

In cooler-market cities where employment numbers are flat or declining and population may also be declining, property values tend to be stagnant. This happens when properties fail to appreciate, which means homeowners don't accumulate wealth even though tax rates often increase. Existing residents — many of whom may be on fixed incomes,

like seniors — experience greater and greater economic strain.

These cities in economic transition often have little capital to make strategic investments to keep decay, blight and abandonment at bay. The spiral continues until land prices drop so low that they entice private sector speculation. This trend has severe consequences, like the potential loss of existing affordable housing due to abandonment, neglect and ultimate demolition, and displacement of existing residents who will not reap the benefits associated with new investments.



### Local Case Studies

Different cities have handled these challenges differently. Members of the housing task force have shared their stories to help their peers think through their own housing challenges, and consider what tools might help solve them.

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## 1. LOCAL GOVERNMENT: LEVERAGING FINANCES



### Case Study: Washington, D.C.’s Housing Preservation Fund

#### Key strategies learned in Washington, D.C.:

- Make preserving existing affordable housing a priority.
- Partnerships outside local government are essential to secure the necessary capital.

Washington, D.C.’s, population and economy have grown in recent years, causing an increased demand for affordable housing for low and moderate income households. In addition, the current affordable-housing stock is at risk because:

- Between 2006 and 2014, at least 1,000 subsidized housing units became less affordable.
- An additional 13,700 units have subsidies that will expire by 2020 and may also become less affordable.

Following the recommendations of the DC Housing Preservation Strike Force (an 18-member team of housing experts and members of the public created in 2015 by Mayor Muriel Bowser to address the issue of affordable housing), the city created a “Preservation Unit” within the Department of Housing and Community Development. The unit launched in 2017 and focuses on preserving affordable units with and without government subsidies. It also collects and maintains data on all affordable housing opportunities in the city. Its specific duties include:

- Reaching out to property owners, investors and others associated with real estate and housing advocacy in the District to establish relationships and gather information.
- Discussing specific options with owners and other interested parties with the goal of coming to agreement on preservation outcomes, even when the threat to affordability is not in the immediate future.
- Providing financial and technical assistance in real-time so preservation emerges as the most efficient and effective method for the city to provide affordable housing.

Mayor Bowser invested \$10 million in local funds for the unit’s Housing Preservation Fund in fiscal years 2017 and 2018. Along with additional private and philanthropic investments, the fund will grow to about \$40 million. The money will be used to help finance eligible borrowers intending to purchase and maintain occupied multi-family housing with more than five units, half of which must be affordable to households earning up to 80 percent of the median family income. As of this writing, more than 800 units have been

preserved as affordable housing since the start of fiscal year 2018.

Targeted programs that address challenges in the housing market are aligned with the funding. For instance, the Small Buildings Grant Program will provide funds for limited systems replacement and other key repairs to eligible property owners of multi-family rental housing of five to 20 units. Repairs are expected to improve substandard housing conditions, including safety and environmental hazards in D.C. as required by other regulatory agencies. The Tenant Opportunity to Purchase Act gives tenants in buildings for sale the first opportunity to buy the building. The following services are available to support tenant groups seeking to purchase a building and convert the units into cooperatives or condominiums:

1. Financial assistance such as seed money, earnest money deposits and acquisition funding;
2. Technical assistance; and
3. Specialized organizational and development services, to include structuring the tenant association, preparing legal documents, and helping with loan applications.

More than 1,000 units have been preserved as affordable housing since fiscal year 2002.

Other targeted programs, like the Single-Family Rehabilitation program and the Safe at Home program, assist seniors with home repairs to alleviate D.C. building-code violations, remove health and safety hazards, and improve accessibility for residents with mobility or other physical impairments. The city is also instituting a new Housing Assistance Program for Unsubsidized Seniors

that provides modest housing assistance to low-income seniors who do not otherwise receive housing assistance.



### Case Study: Safeguarding Affordable Homes, Oakland 17K/17K

#### Key strategies learned in Oakland:

- Set realistic targets.
- Back the initiative with local resources.
- Secure community support.

Oakland, California, rode the crest of a great economic wave in 2015. Years of growth in both higher-wage and lower-wage jobs had helped to make the city a haven for tech entrepreneurs and others seeking to share in the growing prosperity and Bay Area lifestyle. But the large numbers of businesses and people pouring into the city strained the local housing market. Limited housing supply and rising prices contributed to the growing number of Oaklanders unable to purchase or rent affordable homes. In addition, local housing dynamics led to the displacement of generations of vulnerable residents, including many residents of color and low-income families who initially established the vibrant and diverse culture of the city.

Mayor Libby Schaaf decided to guard these communities. In September 2015, she convened the Oakland Housing Cabinet, an assembly of city councilmembers, housing experts and community stakeholders. The Housing Cabinet quickly established a set of shared values and criteria for evaluating the feasibility of the city's strategic options on housing affordability, with help from the city's *Roadmap Toward Equity: Housing Solutions for Oakland*.<sup>16</sup> The following year, the Housing Cabinet released its *Oakland at Home*<sup>17</sup> report. The report outlined a new goal: to protect 17,000 households from displacement and building 17,000 new and affordable homes by 2024. Mayor Schaaf called the plan "17K/17K." Strategies included using funds from the city's \$600 million infrastructure and affordable housing bond called "Measure KK" and reforming the city's permitting process.

By 2019, nearly 13,000 Oaklanders now benefited from new tenant protections and the number of evictions had declined by more than 30 percent.<sup>18</sup> In addition, 10,000 new homes have been built, representing a 34 percent increase in the number of affordable homes over the previous three years.



### Case Study: A Fight for Housing Affordability in Atlanta

#### Key strategies learned in Atlanta:

- Partner with the private and nonprofit sectors.
- Set a bold vision.
- Commit local resources.

When it comes to affordable housing, Atlanta is battling a serious crisis. The rising cost of owning or renting a home has become a serious barrier, and eighty percent of city households spend 45 percent or more of their annual income on housing and transportation expenses. About 1,500 homes are lost each year to deterioration.

Mayor Keisha Lance Bottoms recognized the need for funding and a comprehensive policy agenda to address the situation. HouseATL, a taskforce funded by the Arthur

M. Blank Family Foundation in partnership with Urban Land Institute Atlanta and others, developed a set of 23 tactical recommendations to improve housing affordability. The recommendations focused on households earning less than 120 percent of the area's median income (AMI). HouseATL committed to raising \$500 million from local private and philanthropic resources, and another \$500 million from local public resources.<sup>19</sup>

HouseATL's strategy for leveraging private and philanthropic resources calls for raising between \$20 and \$50 million annually from local social impact funds and other charitable organizations over a period of eight years. An additional \$50 to \$75 million in private capital will be raised from individual and corporate investors through the use of New Markets Tax Credits. Private sector investments in the production of affordable homes will also be facilitated through regulatory reforms to Atlanta's zoning and building codes. This will allow for greater innovation, cost savings, and increased production within the housing sector.



### Case Study: Connecting Health and Housing in Portland

#### Key strategies learned in Portland:

- Leverage investments by local healthcare organizations to expand affordable housing.
- Prevent displacement to improve residents' health.

Five local healthcare organizations in Portland, Oregon, recognized the connection between housing and health and got together to do something about it. They donated \$21.5 million to a nonprofit organization called Central City Concern (CCC). The organization was created decades ago by the city of Portland and Multnomah County to administer local grant money, since the Oregon Constitution prohibits cities from partnering directly with private organizations.

<sup>16</sup> Policy Link & City of Oakland, "A Roadmap Towards Equity: Housing Solutions for Oakland, California" <https://www.policylink.org/sites/default/files/pl-report-oak-housing-070715.pdf>. (2015).

<sup>17</sup> City of Oakland & Enterprise Community Partners, "Oakland at Home: Recommendations for Implementing A Roadmap Toward Equity..." <http://www2.oaklandnet.com/w/OAK057411>. (2016).

<sup>18</sup> City of Oakland & Enterprise Community Partners, "Oakland at Home Update: A Progress Report..." <http://www2.oaklandnet.com/w/OAK057411>. (2019).

<sup>19</sup> "Investing In an Affordable Atlanta" <https://houseatl.org/recommendations/>, 2019.



Other contributors, including the city, have given a total of \$90.9 million to CCC's Housing is Health project. The money will fund three housing developments that will result in 379 units for residents with high medical needs and other residents who are either homeless or at risk of homelessness.

Creating these affordable housing units is intended to stop further trauma, like displacement, as it would make residents' recoveries and long-term health outcomes more difficult. Each of the three buildings is located in an area of the city identified as at risk of gentrification. The three buildings provide support services, such as recovery support and life skills training, and are designed to serve residents with particular needs. For example, the Eastside Health Center will provide affordable supportive housing units for people in recovery and respite housing, and a small number of units will be for palliative care. One building includes a federally-qualified health center.

## 2. LEVERAGING LOCAL LAND USE AND REGULATION



### Case Study: Weathering Compromise in Seattle

#### Key strategies learned in Seattle:

- Plan for increasing densities.
- Include developers in the planning.
- Prepare for neighborhood push-back.

Seattle's population growth has been explosive. Estimates from 2009 for the Puget Sound region suggested that the area's total population would top 5 million by 2040, an increase of nearly 40 percent. In 2009, there was already substantial competition for a relatively limited supply of available and affordable homes. The increased competition for homes drove prices upward and exacerbated a persistently limited supply of income- and rent-restricted affordable homes.

Inclusionary zoning had been a priority for affordable housing advocates in Seattle for decades. But the politics around mandatory affordability requirements had stymied

progress on the policy. Seattle's city council identified the need to build more affordable units in late 2014. Affordable housing advocates and community groups, and faith, labor and environmental organizations, agreed. The council began the process of reviewing proposals to impose mandatory linkage fees on every square foot of multifamily residential and commercial development citywide. The proposal excluded the 65 percent of the city zoned exclusively for detached single-family houses. As proposed, the linkage fee policy would require payments ranging from \$5 to \$22 per square foot developed. There was also an option for builders to set aside three to five percent of units built for affordable housing that would be accessible to households that earn up to 80 percent of the area's median income. In contrast to an earlier incentive-zoning effort, this proposed linkage fee did not include a provision for additional up-zoning capacity for developers.

Area developers opposed this plan with such force that Seattle city leaders enlisted the Housing Affordability and Livability Agenda (HALA) committee to help come up with a compromise.

HALA put together its leading recommendation in July 2015. The recommendation was for a policy of Mandatory Housing Affordability (MHA), a "both/and" approach to inclusionary zoning. The policy would, for the first time, require new multifamily and commercial development to contribute to affordable housing and

increase development capacity wherever requirements were imposed. The program was designed to create 6,000 new rent- and income-restricted homes over a decade while allowing for the creation of more housing options to meet the growing need.

The program mandated that all new multifamily housing developments reserve between 5 and 11 percent of planned units as rent restricted housing for low-income families. The alternative was to contribute between \$5 and \$34.75 per square foot of development to the Seattle Office of Housing fund to build affordable housing.<sup>20</sup> MHA also changed zoning laws in 27 of Seattle's urban villages to allow for increased height and density of buildings for developers. In many ways, this was the more politically challenging aspect of the policy, given longstanding local pushback on efforts to increase zoning capacity in Seattle neighborhoods. Over the next four years, several rezone packages triggering MHA were passed for some of the fastest-growing urban center neighborhoods. In March 2019, "citywide" MHA implementation was signed into law.

<sup>20</sup> City of Seattle, "Implementing Mandatory Housing Affordability (MHA) Citywide" [http://www.seattle.gov/Documents/Departments/HALA/Policy/MHA\\_Overview.pdf](http://www.seattle.gov/Documents/Departments/HALA/Policy/MHA_Overview.pdf).



### Case Study: Evolution of Neighborhoods in Charlotte

#### Key strategies learned in Charlotte:

- Use data in planning and decision making.
- Partner with private sector specialists.
- Anticipate that land use priorities are not static.

The overarching goal of Charlotte, North Carolina's, Housing Locational Policy (HLP) was to distribute affordable housing investments into more affluent communities to limit the concentration of poverty within distressed neighborhoods. In 2011, city leadership took the policy a step further, targeting the city's investments towards subsidized multi-family housing developments. The city started by conducting a comprehensive analysis of Charlotte's neighborhood statistical areas. The analysis identified neighborhoods as "permissible" or "non-permissible" areas for multi-family housing development. Over time, local housing conditions in Charlotte began to

change for the better. The city's ability to locate and maintain affordable housing development also improved.

Within five years, market conditions had noticeably evolved. Under the existing HLP rules, many neighborhoods where affordable housing had occurred naturally became designated as non-permissible areas for new subsidized-housing development. Furthermore, many of the residents of these historically affordable neighborhoods were at risk of displacement. Based on community feedback and input from the city council, city leadership determined that the HLP should change course and focus on three goals:

1. First, the HLP should provide clear guidance for investments that create and preserve affordable and workforce housing in areas near employment, commercial centers, existing and proposed transit hubs, and the center city, and within gentrifying neighborhoods.
2. Second, the policy should support the city's revitalization efforts.
3. Third, the HLP<sup>21</sup> should promote diverse neighborhoods.

To meet these goals, city staff proposed "site scoring." The city's housing operations manager, along with the data-analytics team, used public data to power an online tool. The tool scored proposed development sites against four criteria:

1. Proximity to current and/or planned transit assets and amenities,
2. Income diversity,
3. Access to jobs within a reasonable distance, and
4. Level of neighborhood change or risk of displacement in historically lower-income neighborhoods.

Development sites were allocated a maximum of ten points in each scoring criteria and scored based on proximity to transit assets and amenities like grocery stores, medical facilities, schools, banks and parks. Full points were awarded to proposed sites within half a mile of transit or other designated amenities. Fractional points were awarded to sites at distances greater than a mile from transit or amenities. City councilmembers assessed site scores independently or in aggregate with higher scores, indicating greater alignment with HLP policy. The scoring methodology returned consistent and useful information, so the city approached its longstanding partner and a local software company, Esri, to automate its manual processes into an online geographic information system application.



### Case Study: Rethinking Vacant Land in Peoria

#### Key strategies learned in Peoria:

- Leverage city-owned land for permanent affordability since it is an unmatched real estate development asset.
- Utilize land banks and land trusts since they contribute to permanent affordability.

Peoria's Southside neighborhoods are a microcosm of the city's housing market crisis. The historic area's commercial and residential buildings have deteriorated so much so that very little market demand exists. A typical single-family home sells for less than \$20,000, making new construction impossible without deep subsidies. In addition, downward pricing pressures make renovation of older housing financially infeasible. With so many Southside homes lost to structural deterioration, and in some cases abandonment, the affordability and availability of the community's remaining housing stock has been negatively affected.

In response, Peoria's Community Development

<sup>21</sup> "City of Charlotte Affordable Housing Location Guidelines" [https://charlottenc.gov/HNS/Housing/Strategy/Documents/Affordable%20Housing%20Location%20Guidelines\\_CouncilApproved\\_01.14.19.pdf](https://charlottenc.gov/HNS/Housing/Strategy/Documents/Affordable%20Housing%20Location%20Guidelines_CouncilApproved_01.14.19.pdf), (Jan 16, 2019).



Department established a plan for city-owned vacant land. The plan emphasized three main strategies:

1. Land banking (breaking up lots for future sale),
2. Development, and
3. Side-lot transfer to interested adjacent owners.

Peoria leadership leveraged the land-banking program for city-owned parcels in neighborhoods with weak real estate markets and a high density of city property. In other neighborhoods, leadership made city-owned parcels available to developers if they could demonstrate verifiable plans, financing and familiarity with the development process. In most of these cases, subsidies, tax credits or in-kind donations from partners such as Habitat for Humanity facilitated development. Parcels suited for side-lot transfers typically had limited development potential and were offered to adjacent property owners with limited or no history of code violation or delinquency.

Through these and other steps, the city intends to divest itself of ownership of many vacant properties while facilitating a more equitable share of residential development within the capitalized Southside neighborhoods.



### Case Study: Bozeman's ADU standardization

#### Key strategies learned in Bozeman:

- ADUs provide immediate density increases while maintaining the form of traditional single-family neighborhoods.
- ADUs offer greatly decreased cost per unit.

A strong local job market, in part, has driven Bozeman's recent housing challenges. In recent years, the city has boomed with 11,000 new jobs and now has an unemployment rate of 2.5 percent.<sup>22</sup> With nearly all of Bozeman's local workforce employed, local employers have been forced to look outside the city for skilled workers to fill the open positions. The influx of new residents and job seekers has strained Bozeman's limited housing supply.

The city recently conducted a Community Housing Needs Assessment. It concluded that the city needed an additional 1,460 housing

units to catch up to current demand, and as many as 6,340 new units by 2023. But Bozeman would need a range of housing units including both rental and for-sale homes for families, employees filling vacant and newly created jobs, and retirees. To help ensure affordability, at least 60 percent of the new housing supply would need to be subsidized.

Early on, city leaders recognized that making a wider and more diverse selection of housing types available could ease Bozeman's tight housing markets. It would also have a positive impact on affordability. Residential developments with a greater density of smaller, less-expensive homes, featuring innovative design rose, to the top of the list.

Bozeman's Unified Development Code (UDC) had recently changed, making accessory dwelling units (ADUs), and duplexes easier for homeowners to utilize. The city's planning division worked with a group of college students from Montana State University's College of Architecture in late 2018 to promote the use of ADUs to property owners. Students worked with city planners to ensure that designs were code compliant. They also addressed issues related to parking requirements and fitting designs into the 600 square-foot ADU size limit.<sup>23</sup> The students presented their final ADU designs to homeowners and the City Commission. Designs received official agency review by the Chief Building Official

for UDC and building code compliance. City officials hope that designs will serve as a model for wider community use.

In a separate effort to address housing affordability, Bozeman partnered with the Trust for Public Land on the Bridger View Redevelopment Project (BVR) to create a dense community of more than 60 modest, well-designed homes on an eight-acre parcel in northeast Bozeman. Homes had one to three bedrooms, ranged in size from 800 to 1500 square feet, and were clustered in layouts that emphasized shared common spaces and outdoor living. More than half of the homes cost between \$175K and \$250K.<sup>24</sup> These prices were well below the city's median sale price of approximately \$375K.<sup>25</sup> Revenue from the sale of market-rate units subsidized the sale of the below-market value units. To increase the feasibility of the project, the city split the cost of infrastructure and impact fees for the project.

<sup>22</sup>Wendy Sullivan & Christine Walker, Bozeman, Montana Community Housing Needs Assessment. City of Bozeman, 2019. <https://www.bozeman.net/home/showdocument?id=8773>.

<sup>23</sup>Policy Link & City of Oakland, "A Roadmap Towards Equity: Housing Solutions for Oakland, California" <https://www.policylink.org/sites/default/files/pl-report-oak-housing-070715.pdf>. (2015).

<sup>24</sup>City of Oakland & Enterprise Community Partners, "Oakland at Home: Recommendations for Implementing A Roadmap Toward Equity..." <http://www2.oaklandnet.com/w/OAK057411>. (2016).

<sup>25</sup>City of Oakland & Enterprise Community Partners, "Oakland at Home Update: A Progress Report..." <http://www2.oaklandnet.com/w/OAK057411>. (2019).



### Case Study: Envisioning a New Future in Minneapolis and single family zoning elimination

#### Key strategies learned in Minneapolis

- Confronting historic patterns of housing inequity should be a significant local priority.
- Aggressive and creative community engagement is essential to a positive outcome.

Minneapolis has set ambitious goals for improving the city's focus on housing affordability and choice, as well as racial equity and climate change. The plan, called Minneapolis 2040, reflects two years of public feedback which includes voices from historically underrepresented groups.<sup>26, 27</sup> New provisions for up-zoning (expanding residential zoning to more dense use) will allow duplexes and triplexes to be built in all

residential areas (formerly R-1) and thus allow denser development, particularly connected to transit zones. Other policy innovations include data-focused research to guide and evaluate housing priorities. These policy changes also support different housing types, like prefabricated and manufactured housing, ADUs and tiny houses.<sup>28</sup>

A variety of local *Yes in My Backyard* (YIMBY) activist groups and city officials have contributed to the success of these fledgling efforts. Conversations about the history of discriminatory housing practices perpetuated by single-family zoning (about 50-60 percent of Minneapolis is zoned for single-family homes), as well as the need for "missing middle" type homes,<sup>29</sup> influenced change. Housing advocates and city leaders organized walk-and-talk tours in every ward, inviting residents to explore their communities while envisioning a better future.<sup>30</sup> Street fairs and neighborhood events engaged residents rather than traditional neighborhood meetings.<sup>31</sup>

This extensive community outreach effort is intended to minimize the potential disruptions within the city's neighborhoods.

<sup>26</sup> <https://minneapolis2040.com/overview/>

<sup>27</sup> <https://minneapolis2040.com/planning-process/>

<sup>28</sup> <https://minneapolis2040.com/topics/housing/>

<sup>29</sup> <https://www.nytimes.com/2018/12/13/us/minneapolis-single-family-zoning.html>

<sup>30</sup> <https://www.curbed.com/2019/1/9/18175780/minneapolis-2040-real-estate-rent-development-zoning>

<sup>31</sup> ^



### Case Study: Making Boise Work for All Residents

#### Key strategies learned in Boise:

- Addressing housing affordability for residents all incomes requires embracing denser, more walkable neighborhoods and housing of all types.
- It's imperative to secure financial commitments from the public and private sector.

Boise is the most populated city in Idaho and, with a three percent growth rate in 2017, is among the fastest growing areas in the U.S. But despite strong job growth, close to half of renters in Boise are considered "cost-burdened," spending more than 30 percent of their income on housing. The city estimates needing 1,000 new housing units annually for the next 20 years.

To meet this challenge, the city's Grow Our Housing initiative embraces dense, walkable neighborhoods, access to housing at all income levels, and financial commitments from both the public and private sectors. The initiative seeks to:

- Create new mixed-use and other urban zones that emphasize higher residential densities,
- Reduce minimum lot size and increase maximum density in most common residential zones,
- Grant density bonuses for small footprint housing developments (with homes of less than 700 square feet),
- Increase allowances for ADUs including two-bedroom units,
- Expand incentives to developers who build housing for residents at 80 percent or below the area's median income, and
- Create a land trust to conserve affordable housing financed by public and private dollars.

Despite the clear direction and commitment of local leadership, Boise faces significant challenges, including anti-growth groups that advocate for slower change. In addition, state government prohibits the city from making use of inclusionary zoning or issuing a voter-approved tax levy for the expansion of local bus services linking residents to jobs in the area.





### Case Study: Greensboro's Safe Homes for Kids with Asthma

#### Key strategies learned in Greensboro:

- Both small and large interventions can improve community health.
- Community partners can bring significant capacity to help cities achieve their health goals.

The Greensboro Housing Coalition has worked with the Kresge Foundation on its Advancing Safe and Healthy Homes for Children and Families Initiative (ASHHI) to improve rental housing conditions in the city since 2012. The coalition's "Removing Asthma Triggers and Improving Children's Health" project involved working with partners at the University of North Carolina at Greensboro, Triad Healthcare Network and Cone Health to improve housing conditions in the homes of 41 pediatric asthma patients between 2013 and 2015.

As a "demonstration project" — one intended to promote innovation and serve as a basis for analysis — the work included home interventions such as repairing leaks and improving ventilation. These interventions led to patients sleeping better, having an easier

time working at school and home, using their asthma medications less, and needing fewer medical visits. Households that received follow-up visits showed a 50 percent reduction in hospital bills.

Since the ASHHI project, the Greensboro Housing Coalition has taken an even broader approach to asthma prevention. Now, leadership looks beyond the physical home environment to neighborhoods most impacted by asthma, like Cottage Grove, which was built on the site of the old city dump. Collaborative Cottage Grove is a grassroots effort that seeks to improve housing and neighborhood conditions by working with the community and local leaders to prioritize initiatives that promote better health.



### Case Study: Reshaping More than Milwaukee's Skyline

#### Key strategies learned in Milwaukee:

- Focusing on people at risk of displacement helps preserve community stability.
- This focus can become the key to further investment, both commercial and residential.

Downtown Milwaukee has undergone a nearly decade-long construction boom that has reshaped its skyline. Some estimate that the boom has enabled Milwaukee's builders to boost the local housing supply with nearly 12,000 new units of market-rate housing. But, the trend in prosperity belied challenges in nearby neighborhoods. These communities suffered from lingering issues of vacancy and abandonment as well as rising foreclosures and evictions. They also faced a severe shortage of affordable housing units for low income families. In fact, Milwaukee has one of the worst shortages of affordable housing in America. Only 25 affordable housing units are

available in the city for every 100 extremely low-income households.<sup>32</sup> In a key finding from Milwaukee's 2018 Anti-Displacement Plan (ADP), the Department of City Development noted that the City's ability to preserve and protect housing choices for its low-income families at risk for displacement, would require production of new affordable housing units.<sup>33</sup>

In response, Mayor Tom Barrett announced his 10,000 Homes Initiative. The goal is to build or improve 10,000 housing units over ten years in neighborhoods throughout the city. The 10,000 Homes Initiative will rely on funding from developer-financed tax-incremental districts — an economic development tool infrequently used to fund residential development.

In early 2019, city leaders drafted guidelines governing the use of tax increment financing (TIF) assistance for multi-family residential developments. The new TIF-assistance guidelines prioritized residential development projects in three types of neighborhoods: those at risk for displacement, those where robust market-rate housing development has exponentially outpaced affordable housing development, and those that lack current affordable housing options.

In order to be eligible for TIF assistance, a proposed building or improvement project must have at least 20 percent of its proposed units at prices affordable to households earning 60 percent or less of the AMI and 25 percent of units must be affordable to households earning 50 percent of the AMI. All projects were required to yield a minimum of 20 affordable housing units that will remain affordable for at least 15 years.

<sup>32</sup> Nusser, Susan. "Can Milwaukee Really Create 10,000 Affordable Homes?" CityLab. <https://www.citylab.com/equity/2018/10/can-milwaukee-really-create-10000-affordable-homes/570742/>.

<sup>33</sup> Department of City Development, A Place in the Neighborhood. City of Milwaukee, 2018. <https://city.milwaukee.gov/ImageLibrary/Groups/cityDCD/planning/plans/AntiDisplacement/Anti-DisplacementPlan.pdf>.



### 3. COMPREHENSIVE PLANNING



#### Case Study: Redefining “Affordability” in Rochester

##### Key strategies learned in Rochester:

- AMI is a straight-forward HUD metric.
- City policy makers and developers must use it effectively to address the needs of residents in specific neighborhoods.

According to HUD, the AMI in the Rochester Metropolitan Statistical Area for a family of four is \$74,000. The area median income in the city of Rochester alone is half as much. Previously, housing that was affordable for a family earning \$88,800 was considered affordable, even though it was not at all affordable to the one-third of Rochester’s cost-burdened families that spend more than half of their income on housing.

City leaders redefined the term “affordability” using the HUD guidelines. The idea was to do a better job creating, preserving and restoring housing to fit the income needs of Rochester residents and safeguard the definition of affordability in the city’s charter. Now, to encourage the development of more affordable housing units, the city awards more support to development proposals that include plans for some units to be 50 percent AMI and below.

Under the new charter provisions, low and moderate income will be categorized as follows:

- Extremely low or less than or equal to 30 percent AMI.
- Very low, or more than 30 percent and less than or equal to 50 percent AMI.
- Low, or more than 50 percent and less than or equal to 80 percent AMI.
- Moderate, or more than 80 percent and less than or equal to 120 percent AMI.



#### Case Study: Closing the Affordability Gap in Boston

##### Key strategies learned in Boston:

- Steady, long-term attention to housing affordability and securing buy-in from constituents for targeted housing goals.

Boston is part of Suffolk County, which has one of the most narrow housing affordability gaps in the U.S.<sup>34</sup> But, housing affordability is still pressured by the city’s growing population. In the recent past, Boston projected a population growth of 91,806. Now, the city expects 142,133 more residents by 2030.<sup>35</sup> Mayor Martin Walsh and his administration are focusing on housing disparity and increasing housing stock by implementing the Housing Boston 2030 Plan (HB30).<sup>36</sup> The plan sets goals for housing production, including income-restricted housing designed to be affordable to a range of incomes. It also includes plans for strategic growth that increases homeownership, promotes fair and equitable access to

housing and preserves and enhances existing neighborhoods to prevent displacement.

In 2018, the updated Housing Boston 2030 plan increased the city’s overall housing target from 53,000 to 69,000 new units, including 15,820 income-restricted units by 2030.

Bostonians are supportive of affordable housing creation. Voters passed the Community Preservation Act in 2016 which would create a Community Preservation Fund financed by a one-percent property tax-based surcharge on residential and business property tax.<sup>37</sup> The revenue will fund initiatives in affordable housing creation, historic preservation and maintenance of open space for public recreation.



#### Case Study: Resilience in San Antonio

##### Key strategies learned in San Antonio:

- Environmental factors frequently create added costs for occupants of low-income housing when it comes to utilities, maintenance and even health costs.

<sup>34</sup> The Urban Institute, “The Housing Affordability Gap for Extremely Low-Income Renters in 2013.”

<sup>35</sup> “2018 update on Housing Boston 2030”, found on Boston.Gov.

<sup>36</sup> “Mayor Walsh releases “Housing a Changing City: Boston 2030,”” <https://www.cityofboston.gov>.

<sup>37</sup> “Community Preservation Act,” <https://www.boston.gov/community-preservation-act>.

- Local climate change impacts exacerbate existing problems.
- Efforts to improve sustainability in housing saves residents money and improves quality of life for the whole community.

Housing affordability is about more than the list price of a home. San Antonio, for example, is one of the fastest growing large cities in the United States. The region's rapid economic and population growth has caused local housing costs to increase faster than AMI for nearly two decades.<sup>38</sup> For residents, that means homes are increasingly difficult to afford. And there are other associated rising costs, like utilities, maintenance and even healthcare.

San Antonio has always been hot, but climate change has caused temperatures to spike. In recent years, the city's development boom has generated a growing urban heat island.<sup>39</sup> At night, the central urban core can be up to 20 degrees warmer than rural areas in the northern part of Bexar County.<sup>40</sup> These higher temperatures reduce air quality as the sunlight and heat react with pollutants to generate ground level ozone, exacerbating dangerous smog.

The city has taken a holistic approach through San Antonio Green and Healthy Homes programs, which "provide assistance to owners and landlords of residential properties (both single-family and multi-

family) in creating healthy, safe, energy-efficient and sustainable homes for families and children."

One of the flagship initiatives is the Under 1 Roof program. Launched as a pilot in 2016 with just \$200,000, and serving just ten families, the program identified and replaced failing roofs with free, energy-efficient "high-reflectance roofs." These "cool roofs" helped address a range of health, energy and environmental issues.<sup>41</sup>

In fiscal year 2018, San Antonio's city council approved a \$2.25 million budget to expand Under 1 Roof to include five other districts. At the time, Councilman Roberto Triveño noted that, "What started out as a District 1 pilot program with a sliver of funding has grown into a multi-million-dollar program that assists folks across the city and helps combat rising urban temperatures while saving residents money." The program, he said, saves participating homeowners an average of \$1,200 per year in energy costs.

In addition, the city's municipal utility (CPS Energy), developed a cool-roof rebate program to incentivize other residents to install new roofs with high-reflectance materials. Programs like this can dramatically extend the lifespan of a city's affordable housing stock, and help reduce the need for demolition.

## REFLECTIONS ON THE CASE STUDIES

These examples show us that cities need holistic, integrated housing strategies to improve housing affordability. Strategies must connect opportunities for employment and new business creation with land-use decisions. They must also have focus on two critical factors: making a variety of dwellings available to meet the needs of diverse groups of residents and ensuring access to transportation options so residents can get to work and meet other needs like health care, shopping and recreation.

**City leaders must explore key questions, including:**

1. What are my city's local housing goals and does the comprehensive plan reflect those goals?
2. What are the economic conditions of my city's local housing market?
3. What are the regulatory conditions of the local housing market for development and redevelopment (zoning, permitting, fees)?
4. What policy tools and options are available to cities in my state to address these conditions to improve quality and affordability?
5. What is the local political environment for decision making on housing?
6. Do residents understand the trade-offs in land use decisions that come from a restricted housing supply on matters like taxes, job growth, investment attraction?
7. How do city leaders confront and push-back against NIMBYism (The "Not in my backyard" phenomenon where residents don't want affordable housing in their neighborhoods) in housing decisions?
8. How can good decisions that increase housing quality across a range of housing choices be accomplished for the benefit of existing residents without the collateral damage of displacement?



<sup>38</sup> The City of San Antonio, "Housing Policy Framework." August 2018. <https://www.sanantonio.gov/Portals/0/Files/HousingPolicy/Resources/SA-HousingPolicyFramework.pdf>.

<sup>39</sup> Gibbons, Brendan. "Climate Change Will Make Life Hotter, Harder in San Antonio." San Antonio News Express. <https://www.expressnews.com/news/local/article/Climate-change-will-make-life-hotter-harder-in-12221130.php>.

<sup>40</sup> Huddleston, Scott. "Heat Map of San Antonio Conveys What's at Stake in Climate Plan." San Antonio News Express. <https://www.expressnews.com/news/local/article/Heat-map-of-San-Antonio-conveys-what-s-at-stake-13414579.php>.

<sup>41</sup> Trevino, Robert. "City By Design." <https://citybydesign.org/>.



# RECOMMENDATIONS

## Federal Policy Agenda

National polls overwhelming support greater federal investment in housing. The vast majority of the public (85 percent) believes that ensuring all residents have safe, decent, affordable homes should be a “top national priority.”<sup>42</sup> This view is strong across the political spectrum: 95 percent of Democrats agree it should be a top national priority, along with 87 percent of unaffiliated voters and 73 percent of Republicans. Eight in ten voters also say that both the president and Congress should “take major action” to make housing more affordable for low-income households.

Local elected officials overwhelmingly support greater federal investment in housing, and recognize that housing is extremely costly for working families. Those leaders are also making changes to reduce the wealth and housing affordability gap. According to NLC’s 2019 [State of the Cities](#) report, local governments are taking bold action to improve housing stability and affordability through land and housing trusts, eviction assistance resources and fair housing ordinances.

As noted by the task force chair, Washington, D.C., Mayor Muriel Bowser, in D.C., “affordable housing isn’t just a problem for our most vulnerable residents — it affects our entire community.”



## NLC Calls on the federal government to enact housing legislation that:

### 1. Immediately stabilizes and stems the loss of public and affordable housing.

Historic unmet demand for units of affordable and workforce housing has created a national housing crisis. Emergency or supplemental appropriations are an appropriate and necessary federal response to quickly intervene in the immediate crisis of housing supply.

- **Approve emergency funding to address the nation’s highest priority housing needs.** Funding could take the form of a stand-alone emergency bill, or as a piece of any larger infrastructure package.
- **Emergency funding should include \$30 billion to address the immediate crisis.** Of that amount, \$15 billion for the public housing capital program, \$5 billion for the Community Development Block Grant program, \$5 billion for the HOME program and \$5 billion for the National Housing Trust Fund.

<sup>42</sup> [National Housing Survey](#), HART RESEARCH ASSOCIATES, Study #12590, February/March 2019.



### 2. Authorizes ten years of new programs and funding to provide housing opportunities for all.

Now is the time to rethink and modernize housing policy at every level of government. Although cities value current HUD programs, it's clear that existing resources are insufficient to stem the growth of the affordable housing crisis.

- **Reauthorize and restore the HOME Investment Partnership Program and the Community Development Block Grant Program.** The HOME program is the only federal grant program aimed at construction of affordable housing in support of local governments. Unfortunately, funding cuts have significantly reduced the impact of the program which, today, serves mostly to cover gaps in financing of tax-credit housing projects. HOME should be reauthorized to support the construction of small and medium multifamily units that create greater housing options for multiple income levels. The CDBG program, the largest single federal grant program available to local governments, is bloated with regulatory and reporting requirements and is ripe for review to increase efficiencies and reduce burdens on grantees.
- **Increase funding for the National Housing Trust Fund and authorize a pilot allocation to regional councils of government.** The pilot would determine if lessons learned from regional allocations from the Highway Trust Fund can be applied to the National Housing Trust Fund. It would also foster the blending of federal funding for construction of affordable housing and transportation infrastructure.

- **Commit to a new vision for public housing and public housing agencies as the nation's stewards of permanently-affordable housing.** Public housing is the nation's largest source of permanently-affordable housing. More than 3,000 large and small public-housing agencies assist families and individuals at the bottom rung of the economic ladder by providing housing stability. A well-maintained stock of permanently-affordable housing would help cities manage swings in the housing market and weather economic downturns.
- **Protect and improve underserved and affordable housing and homeownership requirements on the private market.** The policies adopted by mortgage finance giants Fannie Mae and Freddie Mac shape neighborhoods and economic opportunity. Federal regulatory requirements should recognize and leverage these forces which have the power to improve access to affordable and workforce housing. That includes regular allocations to the National Housing Trust Fund and products that support the market for construction of workforce housing and small-dollar mortgage loans.

### 3. Support innovation and modernization of land-use and planning practices at the local and regional level.

Cities, towns and villages across the U.S. are already reevaluating local land use and planning practices to make them more equitable and to address past discriminatory practices. These municipalities are also already working to establish codes that reflect a need for resilience in the face of extreme-weather events. Different approaches may make higher-opportunity neighborhoods more — or less — accessible, but the impacts are not always clear.

Moreover, inequities exist regionally between the cities, towns and villages just as they exist between neighborhoods.

- **Provide federal grants for local housing, planning, land use and community engagement.** The cost of developing and administering changes to local land-use policies and practices puts quick action out of reach for many, if not most, of the 19,000 cities, towns and villages in the U.S. Federal funding and technical assistance would speed the development and adoption of best practices among local governments.
- **Offer renter tax credit.** A federal tax credit for renters, which does not currently exist, would expand the availability of federal rental assistance in the form of a refundable tax credit targeted to lower-income, rent-burdened households. A new balance of renter-tax credits and direct subsidies has the potential to improve equity and economic mobility opportunities at the local level.
- **Increase funding, landlord incentives and mobility for HUD's Choice Voucher Program.** Given the fundamental importance of housing stability for nearly every measure of well-being for residents, it is unreasonable to place arbitrary funding limits on the HUD Choice Voucher Program and administer housing assistance as a lottery. Rather, in conjunction with a well-regulated housing market, federal housing assistance should meet the demand for housing for all. Short of that, the federal government should increase funding annually by significant and predictable margins until the lottery aspect of the program is nullified.
- **Fix the market for small-dollar mortgage**

**lending and entry level homeownership.** Recent research from the Urban Institute has shown that, even for credit-worthy borrowers, financial institutions are generally not approving small-dollar mortgages. As a result, three quarters of homes purchased for \$70,000 or less in 2015 were purchased with cash, indicating risky property speculation. The unavailability of small-dollar mortgages puts housing out of reach for homebuyers at lower-incomes, and revitalization out of reach for communities in distress.

### 4. Fix inequities in housing development and the housing finance system.

The long history of federally-sanctioned housing discrimination and racial segregation is embedded in the development of America's cities, towns and villages. This legacy continues to have profound impacts on people of color and other vulnerable groups to this day. According to Brookings, on average in metropolitan areas, homes in neighborhoods that are 50 percent black are valued at roughly half the price of homes in neighborhoods without black residents.

It is incumbent upon all elected officials to understand how the present housing inequities came about. It is also their responsibility to make fully-informed policy choices that stop the perpetuation of these inequities, unintentionally or otherwise.

- **Reform of the Community Reinvestment Act (CRA) to increase public accountability of banks to serve every community.** CRA assessment areas need to be updated to include areas with considerable bank lending and deposit gathering outside of bank branch networks. This would result in more

loans and investments reaching low and moderate income (LMI) borrowers and communities. Regulators should also improve public data around community development lending and investments in order to provide greater clarity to lenders about what qualifies for CRA and to help identify areas around the country in need of greater community development lending and investing. Conversely, federal regulators should not adopt a one-ratio or single-metric approach to CRA exams, and should not adjust bank asset thresholds solely for making exams easier for banks to pass, or otherwise dilute attention to LMI borrowers and communities.

- **Eviction prevention and mitigation grants.** In 2016, 2.3 million eviction filings were made in U.S. courthouses — a rate of four every minute. That same year, one in 50 renters was evicted from his or her home. The federal government should partner with local governments and other stakeholders to help residents overcome events that place them at risk of eviction.
- **Expand Fair Housing to include sexual orientation, gender identity, marital status and source of income.** A growing number of local governments are enacting fair housing protections beyond those required by federal statute to ensure housing opportunities for every resident. Unfortunately, various state preemptions of local authority over land use and protected classes has created an uneven and inequitable marketplace for housing across the country. The federal government should level the field by expanding fair-housing protections.
- **Targeted investment and access to credit for neighborhoods and residents impacted by redlining and reverse-**

**redlining.** As documented by the Economic Policy Institute, the Federal government's general failure to intervene in discriminatory mortgage lending practices is one of the root causes of racially segregated, impoverished neighborhoods. For such communities, to overcome decades of unfair treatment, new targeted federal resources should be enacted to restore housing stability and rates of homeownership. This would also serve to stabilize impacted neighborhoods overall.

- **Fair housing and anti-displacement in federally-designated opportunity zones.** NLC's [2018 City Fiscal Conditions survey](#) indicates that local tax revenue growth is experiencing a year-over-year slowdown, as it is outpaced by growth in service costs and other expenditures. For cities and city leaders, opportunity zones represent a chance to overcome such slowdowns and associated neighborhood decline, in new and innovative ways. Within opportunity zones, private investment supplements public spending to advance public policy goals. It follows that public and private investment within Opportunity Zones should be in alignment according to key performance measures of fair housing and equitable economic development.

### 5. Supports scalable innovation and financing for cities, towns, and villages.

Every U.S. city, town and village relies on strong regional partnerships with HUD and the United States Department of Agriculture (USDA) for capacity building and access to capital to better serve the housing needs of their residents. The federal government is often the only feasible source of technical assistance and access to capital for the 20



percent of the U.S. population that lives in small and rural communities.

The Housing Assistance Council, in Congressional [testimony](#), put it best: “Rural housing markets are not just smaller versions of urban ones, and [federal housing programs] do not necessarily translate to the benefit of rural places. The few programs and modest federal spending on rural-specific programs are simply not enough to maintain a level playing field with other parts of the country.”

- **Increase funding for USDA rural-rental programs and improve alignment with HUD rental-assistance programs.** For many rural communities, housing instability and unavailability are compounding broader economic crises that have been decades in the making. These situations require a variety of approaches to overcome. At the same time, economic recovery cannot begin without housing stability.

- **Increase coordination between public housing agencies regionally.** The number of affordable housing units administered by Small Public Housing Agencies may be small compared to large PHAs, but there is nothing more important to the community. In addition to housing, small PHAs often serve as a hub for residents to access a far broader range of support services. More capacity building and technical assistance for small PHAs is necessary so that they can coordinate regionally and connect service providers across jurisdictional boundaries.
- **Offer federal assistance to rural homebuyers.** Homebuyers in small and rural communities often face challenges similar to impoverished urban neighborhoods, like inadequate access to mortgage credit, aging and declining housing stock and higher costs for housing construction and rehabilitation. Federal-homebuyer assistance should be available and flexible for use in both urban and rural communities.



# SUMMARY OF RECOMMENDATIONS FOR LOCAL ACTIONS

**Establish local programs by combining funding and financing streams to support housing goals. Among the means available to most cities are:**

- Housing trust funds,
- First-time home buyer supports,
- Housing rehabilitation and preservation grants or loans and
- Tax incentives.



**Modernize local land use policies, including zoning and permitting, to rebalance housing supply and demand. Focus on:**

- Data management to set development priorities;
- Increased density allowances and ADUs;
- Land trusts, banks; and
- Streamlined development permitting, transparent fees and time-limited review procedures.

**Identify and engage broadly with local stakeholders; and coordinate across municipal boundaries, to develop a plan to provide housing opportunities for all. To that end, utilize:**

- Data to understand the local housing market conditions,
- Partnerships with private- and non-profit sector actors,
- Development of a comprehensive housing strategy based on a set of community-wide values that also identifies the consequences that may accrue when making choices among competing values.

**Support the needs of distinct sub-populations including the homeless, seniors and persons with conviction histories. Cities should:**

- Look to the success stories on fighting chronic homelessness,
- Prioritize specific sub-populations,
- Target wrap-around support services and
- Maintain existing affordable housing stock and support rehabilitation efforts, reduce or eliminate restrictions on access to public housing that go beyond federal mandates for those with conviction histories.

**Prioritize equitable outcomes in housing decision as it is an essential component for success. This means:**

- Ensuring enforcement of Fair Housing laws,
- Putting decision making about public investments in the hands of communities most at risk for displacement and
- Rebuilding trust between local government and communities of color.



# SUMMARY OF RECOMMENDATIONS FOR FEDERAL ACTIONS

## Immediately stabilize and stem the loss of public and affordable housing.

- Historic unmet demand for units of affordable and workforce housing has created a national housing crisis.
- Emergency or supplemental appropriations are an appropriate and necessary federal response to quickly intervene in the immediate crisis of housing supply.
- Crisis-response funding should include at least \$15 billion for the public housing capital program, \$5 billion for the CDBG program, \$5 billion for the HOME program, and \$5 billion for the National Housing Trust Fund.

## Follow emergency intervention with passage of a long-term, stand-alone federal housing bill that authorizes ten years of new funding for pilot programs that advance housing for all.

- The housing crisis, and ongoing housing inequities, have been decades in the making; long-term corrective action is necessary for success.
- Long-term stand-alone housing bills could transform housing in America, just as the highway bill has done for transportation and the farm bill has done for nutrition and health.
- Program objectives should include capacity building for local governments, regional coordination across jurisdictional bounds, support for permanently affordable housing, and achievement bonuses for existing programs like CDBG.



## Support innovation and modernization of land-use and planning at the local and regional level.

- Local leaders recognize that change is necessary to create housing opportunities for all, but local budget and capacity constraints put quick action out of reach for many of the 19,000 cities, towns, and villages across the U.S.
- Federal grants to support modernization of local housing, planning, land use, and community and regional engagement would speed adoption of best practices among local governments
- Innovations that could foster additional change include rental voucher mobility, affordable and small-dollar mortgages



for first-time homebuyers, and support for small multi-family units that can fill multiple needs in different housing markets.

### Fix inequities in housing development and the housing finance system.

- Government failures to intervene in discriminatory mortgage lending practices, including redlining and predatory lending, is a root cause of racially-segregated, impoverished neighborhoods today.
- Federal resources should be enacted to restore housing stability and rates of homeownership for historically segregated and disadvantaged communities and their residents.
- Federal fair housing protections should be extended to include sexual orientation, gender identity, marital status and source of income.

### Support scalable innovation and financing for cities, towns and villages.

- Increase funding for USDA rural rental programs and improve alignment with HUD rental assistance programs.
- Increase coordination between public housing agencies regionally.
- Maintain federal support for first-time homebuyers in cities, towns, and villages of every size and circumstance.



“  
**Government failures to intervene in discriminatory mortgage lending practices, including redlining and predatory lending, is a root cause of racially-segregated, impoverished neighborhoods today.**



# CONCLUSION

**W**hile a wide variety of housing challenges faces American cities, two stand out. In fast-growing cities, wages lag behind housing costs, leading to a scarcity of affordable housing. In legacy cities with slower growth, a persistent high rate of vacant and blighted housing exists due to the ongoing after-effects of the foreclosure crisis and general economic disruption.

As part of NLC's path forward, we will continue to do research, focus on education, provide technical assistance and capacity building, push for advocacy goals that benefit all communities, and bring stakeholders together.

#### **NLC's research will:**

- Continue to share quantitative and qualitative data on housing quality and affordability;
- Dive more deeply into urban-rural, small and legacy city questions including the integration of housing strategies with economic growth initiatives;
- Seek partnerships with the Urban Institute and the New York University Furman Center (among others) to advance mutual research priorities;
- Identify tested as well as promising practices that increase affordable housing and
- Further investigate the emerging intersection between climate resilience and housing affordability.

#### **NLC's focus on education will:**

- Lift up the lessons from cities captured by the task force and by countless other cities, towns, and villages that are implementing both tested and innovative

techniques to address community housing needs;

- Make use of NLC's many constituency and member groups and partners to engage local stakeholders and
- Enhance the leadership training and skills building programs available through NLC University.

#### **NLC will continue its technical assistance and capacity building work to coordinate technical assistance efforts across the organization including those targeting:**

- Homeless veterans,
- Seniors seeking to age in place,
- Equitable wealth creation,
- Shared equity housing models,
- Sustainable and healthy housing and
- Our Cities of Opportunity: Healthy People, Thriving Communities pilot program.

#### **NLC will continue advocacy work to:**

- Advance a strong voice at the federal level to push for implementation of recommendations contained in this report and
- Exercise leadership in coalitions including Opportunity Starts at Home and Mayors & CEO's for U.S. Housing Investment, among others.

City leaders are working to make a difference but all city residents, and all levels of government, have more to do. This report and the subsequent work to come are meant to provide a resource for city leaders, a platform for community conversation, and an action plan for solutions.

**Appendix A:  
Summary of the Task Force Work**

NLC’s President Karen Freeman-Wilson, mayor of Gary, Ind., announced the formation of the National Housing Task Force in November 2018, under the leadership of chair Muriel Bowser, mayor of Washington, D.C.

“Every American deserves a place to call home. But in cities across the country, serious shortages of adequate housing means that too many residents don’t have the security of a stable home,” said Freeman-Wilson at the time of the task force’s formation.

Local leaders are on the front lines of ensuring that residents have safe, affordable housing. Through the formation of this task force, NLC sought to leverage its members’ collective experience to help solve this urgent challenge. Comprised of 18 other elected city leaders representing a diversity of city sizes, geography, roles in their respective regions and market types – plus the executive directors of two state municipal leagues (California and Michigan) – the task force was charged to develop a set of best and promising practices at the local level, as well as policy recommendations to federal and state governments.

Reflecting on her own city, Mayor Bowser said, “The affordable housing crisis is one of the most critical issues we are facing in this country, and one on which we are effectively working to tackle in Washington, D.C. From investing hundreds of millions of dollars for affordable units in new developments to building creative livings spaces like grand-family housing for seniors raising their grandchildren, we know that mayors will lead the way in providing innovative solutions.”

The task force kicked off with an introductory

call on December 19, 2018, but the work began in earnest with their first in-person convening January 22-23, 2019 in Washington, DC. At that meeting the members worked with and learned from partners in the non-profit and private sectors. These included:

- Carlton A. Brown, Principal, Direct Investment Development, LLC
- Sarah Brundage, Senior Director of Public Policy, Enterprise Community Partners, Inc.
- Lorraine Collins, Director of Public Policy, Enterprise Community Partners, Inc.
- Chris Herbert, Managing Director, Joint Center for Housing Studies of Harvard University
- Mike Koprowski, National Campaign Director, Opportunity Starts at Home Campaign
- Marion McFadden, Sr. Vice President, Public Policy, Enterprise Community Partners, Inc.
- Christopher Ptomey, Executive Director, Terwilliger Center for Housing, Urban Land Institute
- Adrienne Todman, CEO, National Association of Housing and Redevelopment Officials
- Margery Austin Turner, Senior Vice President, Urban Institute

**Common Themes and Priority Topics**

A series of common themes emerged from the first convening that the task force members shared, as listed below.

- The regional nature of housing policy issues contrasts with the local controls cities have over land use and funding.
- The need to address housing holistically

because of its intersections with neighborhood economic development, household wealth creation, access to jobs and services, placemaking, public health, race and equity, etc.

- The need to address housing not just from the supply side but also from the demand side via focusing on access to economic opportunity and income growth.
- The levers cities have over housing through local land use policies and regulations including their development review processes and comprehensive plans.
- The need for the federal and state governments to be better partners for cities and have more defined roles (such as the federal role on low-income housing).
- The need for cities to unlock the production potential of the private market and better partner with the private development community.
- The need for a toolkit of practices that cities from a variety of market types can utilize.

**Through their deliberations, the task force also settled the following five priorities.**

1. Identifying housing funding and financing resources cities have at the local level, (such as housing trust funds and land banks and trusts, etc.).
2. How to address special populations in local housing policy such as (seniors, the homeless, and people with conviction histories).
3. Levers cities can exercise on housing utilizing local land use policies and

regulations as well as their development review processes.

4. Federal housing resources.
5. Role of comprehensive planning in building a shared vision and collective action for housing.

The task force next met via webinar for a staff forum on February 20, 2019 to share local innovations. This discussion and subsequent follow-up with NLC staff identified case studies for sharing in this report based on the four categories of local actions prioritized in the first meeting: local funding, land use policy and regulation, comprehensive and strategic planning and engagement and housing for distinct and vulnerable populations.

The second and final in-person task force meeting took place on March 11, 2019 during NLC’s City Congressional Conference in Washington, D.C. The meeting included reflections by Boston Mayor Martin Walsh on the efforts he has implemented to address housing in one of the highest-cost cities in the U.S. These efforts include:

- Creating a housing plan for 69,000 units by 2030, of which 29,000 units have already been built or are in construction,
- Emphasizing low- and middle-income housing including for seniors and students,
- Streamlining approval processes,
- Pushing back on input from neighborhoods that don’t want to see growth and
- Opening a new Office of Housing Stability, to deal with evictions and displacements



Mayor Walsh also emphasized the need for more federal support for public housing as well as for vouchers for low-income households.

### City Leaders' Housing Aspirations

At the March 11 task force meeting, Mayor Bowser also facilitated an aspirational discussion around a question: what would task force members do to solve this problem if they “weren’t afraid to fail?” Their answers revealed insights into what cities could and should be doing to address their housing challenges. Responses fell into the four categories of local actions:

#### Local funding

- Create a fiscally sustainable local housing trust fund.
- Offer more rental subsidies and where permitted some forms of rent control.
- Require every corporation in city to establish a workforce training fund/program.

#### Land use policy, regulation and development process

- Ask residents in all neighborhoods to agree upon their share of citywide housing, production and preservation goals as a way of combatting resistance to growth and NIMBYism (Not in My Backyard attitudes).
- Ensure that affordable housing is built along new transit lines, especially along routes that connect to employment centers.
- Reduce barriers such as onerous development regulations especially on

distressed property.

- Require that every annexation includes a percentage of affordable housing with community amenities (such as grocery stores and parks).
- Require developers to provide and subsidize more affordable housing.
- Tie economic development incentives for corporations to affordable housing production.
- Spread affordable housing around to deconcentrate poverty.

#### Planning

- Conduct a comprehensive housing assessment and a timeline to accomplish the city’s needs and goals.
- Define displacement and create a strategy to prevent it as part of growth.

#### Distinct and vulnerable populations

- Create a new equity housing fund to address the legacy effects of redlining.
- Bolster anti-poverty programs like workforce training and only attract employers that pay living wages.
- Increase the minimum wage to help households afford better housing.
- Implement policies to address the related costs that impact housing affordability (like transportation).
- Require building owners to notify tenants when they intend to sell a property, giving tenant coops an opportunity to purchase.

**At the City Congressional Conference, NLC staff took advantage of the gathering of more than 2,000 city leaders in Washington, D.C. to engage with them directly about the task force’s work and seek their input on the same questions the task force members were addressing. Staff met with the following groups:**

- NLC Board of Directors
- Advisory Council
- Community and Economic Development Policy and Advocacy Committee
- Large Cities Council
- Small Cities Council
- Young Municipal Leaders

Valuable feedback from each of these constituencies was incorporated into the report and helped shape its direction.

#### A Federal Housing Policy Agenda for Cities

After the City Congressional Conference, task force members convened a final time remotely via webinar on April 10, 2019 to discuss a federal policy agenda for NLC to advocate for on behalf of cities. The proposals were organized according to five distinct policy outcomes (although there was some overlap among those outcomes). The five outcomes identified by the task force are:

- **Housing Affordability:** policy proposals addressing the growing gap between rising rents and flat incomes.
- **Housing Availability:** policy proposals to preserve and expand the number of units of affordable housing.
- **Housing Stability:** policy proposals to stabilize those in financial distress related to housing, and preventing eviction.

- **Fair Housing:** policy proposals to address historic injustices and ongoing inequities, and anti-displacement proposals.
- **Housing for Small, Rural and Legacy Communities:** policy proposals aimed at towns and villages below 30,000 in population or in a state of economic transition.

**Task force members discussed nearly 30 proposals responding to the following questions:**

1. Are there any priorities identified by members of the task force, or that are important to your city, that are missing from this list?
2. Are you able to identify a single top priority within each of the five policy outcomes?
3. Are you able to identify three top priorities overall?
4. If the federal government could enact one single housing policy proposal this year, which proposal would have this most immediate significant impact for your city?

**From this process, the task force developed the federal policy agenda section of the report.**

### Appendix B: The State Regulatory Context

*Local Tools to Address Housing Affordability: A State-by-State Analysis, shows the following:*

Given the diverse landscape of housing affordability, cities must build and maintain the proper tools and flexibility to meet the needs of their residents. To that end, cities have implemented solutions such as inclusionary housing, rent control, fair housing and housing trust funds. They have also leveraged programs like their states' tax incentive programs to expand housing affordability and access.

NLC conducted an assessment of all 50 states and the District of Columbia to show how states and cities interact in each of these policy areas and provide details about cities' implementation authority. In the pages of *Local Tools to Address Housing Affordability: A State-by-State Analysis*, data for each policy comes from existing research, state legislation and relevant court decisions. Among the highlights are the following:

- Cities in 20 states and the District of Columbia are expressly permitted or face no legal barriers to inclusionary housing.
- Cities in 13 states and the District of Columbia are permitted, have some barriers, or have limited control to implement rent control. Oregon is the only state to mandate rent control.
- Cities in 25 states and the District of Columbia have either state law protections or local protections for those using housing vouchers as a source of income.
- Cities in 35 states and the District of Columbia have established housing trust funds.

The local housing context varies by regional housing market types and by the tools available to cities, towns and villages to address the needs of their communities. Based on our assessment of inclusionary housing, rent control, housing voucher holder protections, housing trust funds and state tax incentive programs, cities in New York, California and the District of Columbia have more tools to address housing affordability than others. Cities in Idaho, Indiana, Kansas, Texas and Virginia have fewer.

In addition to the number of tools available to cities, the way these policies play out locally varies significantly by state. For example, in some states with local inclusionary housing, rent control restrictions limit the authority of cities to implement mandatory programs, whereas in other states, this is not the case.

A new example of rent control can be seen in Oregon. In February 2019, it became the first state in the U.S. to enact mandatory statewide rent control. Cities in Oregon must adhere to the statewide rent control laws and are preempted from passing their own. This has created a new dynamic, the impacts of which will need to be evaluated.

Despite these variations, one thing is clear: The significant housing problem facing our country is compelling cities and states to rethink how they address the issue, and to adapt the relationship they have with each other to meet the scale of the challenge.

Cities can take several steps to achieve the careful balance of local flexibility and mutual housing affordability goals, including the recommendations outlined below.

**Review, strengthen and update tools to improve housing affordability.** Nearly all cities have control over local planning, zoning and

development regulations and can carefully examine these tools to improve housing options across income levels. For example, cities can relax density requirements in areas designated as single family, modify parking requirements and streamline development processes for projects with an affordability component.

**Fill a policy vacuum.** Cities in 23 states do not have state or local sources of income protections for housing voucher holders. These states also do not have explicit restrictions on local fair housing, meaning that many cities could create policies to limit discrimination and help extend housing options to those using housing vouchers.

**Leverage state programs for local investment.** Cities should leverage state tax credits and state housing trust funds to maximize their ability to provide affordable housing at all income levels.

**Proactively engage state partners.** For example, cities Utah have been working with the state legislature and state Commission on Housing Affordability to craft a bill that not only accelerates affordability in regional housing markets across the state, but also offers cities flexibility to do so in ways that meet their individual needs.

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SLLC Amicus Briefs 2018-2019

Case Name	Case Description	Signatories	Brief Author(s)	Firm(s)	Result	Comments
<i>Mt. Lemmon Fire District v. Guido</i>	ADEA applies to state and local government employers with less than 20 employees	NCSL, CSG, NACo, NLC, USCM, ICMA, IMLA, NPELRA, IMPA-HR	Collin O'Connor Udell	Jackson Lewis	8-0 opposed	
<i>Weyerhaeuser Company v. U.S. Fish and Wildlife Service</i>	"Critical habitat" under the Endangered Species Act (ESA) must also be habitat	NCSL, CSG, NACo, NLC, USCM, ICMA, IMLA	Bryan K. Weir, Thomas R. McCarthy, and J. Michael Connolly	Consovoy McCarthy Park & the Antonin Scalia Law School Supreme Court Clinic	8-0 in favor	
<i>Timbs v. Indiana</i>	Eighth Amendment's Excessive Fines Clause is "incorporated" against states and local governments	NACo, NLC, USCM, ICMA, IMLA	Lawrence Rosenthal	Chapman University, Fowler School of Law	8-0 opposed	
<i>Nieves v. Bartlett</i>	Probable cause generally defeats a First Amendment retaliatory arrest case	NACo, NLC, USCM, ICMA, IMLA	Sean R. Gallagher, Bennett L. Cohen, Britton St. Onge	Polsinelli PC	6-3 in favor	
<i>Fort Bend County, Texas v. Davis</i>	Title VII's charge-filing requirement isn't jurisdictional	NCSL, NACo, NLC, USCM, ICMA, IMLA, NPELRA, IMPA-HR, NSBA	Collin O'Connor Udell and Mara E. Finkelstein	Jackson Lewis	9-0 opposed	
<i>Knick v. Township of Scott</i>	Takings claim may be brought in federal court	B7-IMLA	Matt Zinn, Andrew Schwartz, and Laura Beaton,	Shute, Mihaly & Weinberger	5-4 opposed	
<i>Virginia Uranium v. Warren</i>	Federal law doesn't preempt state statute prohibiting uranium mining	NCSL, NLC, ICMA	John J. Korzen	Wake Forest University School of Law	7-2 in favor	



<i>Gamble v. United States</i>	States and the federal government may prosecute the same offenses	NACo, NLC, USCM, ICMA, IMLA, NDAA, NSA	Gordon D. Todd, Josh Fougere, Spencer Driscoll, Audry M. Klossner	Sidley Austin	7-2 in favor	
<i>Tennessee Wine &amp; Spirits Retailers Association v. Byrd</i>	State durational residency law for alcohol sellers is unconstitutional	NCSL, NACo, NLC, USCM, ICMA, IMLA	Richard A. Simpson, Tara L. Ward, and Emily S. Hart	Wiley Rein	7-2 opposed	
<i>American Legion v. American Humanist Society</i>	Bladensburg Peace Cross located on public land doesn't violate the Establishment Clause	NACo, NLC, ICMA, IMLA, GFOA	Paul J. Zidlicky, Michael B. Buschbacher, and Christopher S. Ross	Sidley Austin	7-2 in favor	
<i>PDR Network, LLC v. Carlton &amp; Harris Chiropractic Inc.</i>	Does the Hobbs Act require a district court to accept the FCC's legal interpretation of the Telephone Consumer Protection Act	NACo, NLC, USCM, IMLA	Ashley E. Johnson, Bradley G. Hubbard, and Elizabeth A. Kiernan	Gibson, Dunn & Crutcher		Majority of the Court didn't answer the question presented
<i>Kisor v. Wilke</i>	Precedent requiring deference to agencies' interpretations of their regulations is upheld	NCSL, CSG, NACo, USCM, ICMA, IMLA, GFOA, NSBA	Allyson N. Ho, Kathryn Cherry, and Elizabeth A. Kiernan	Gibson, Dunn & Crutcher	9-0 opposed	
<i>Mitchell v. Wisconsin</i>	Warrantless blood draws of unconscious persons are generally permissible	NCSL, ICMA, IMLA, NDAA	Lauren S. Kuley and Keith Bradley	Squire Patton Boggs	5-4 in favor	SLLC argued for exigency exception plurality adopted
<i>McDonough v. Smith</i>	Statute of limitations for a fabrication of evidence claim begins running upon acquittal	NLC, USCM, IMLA	Geoffrey Eaton	Winston & Strawn	6-3 opposed	

State & Local Legal Center



## Supreme Court Preview for States and Local Governments 2019

July 2019

By: Lisa Soronen, State and Local Legal Center, Washington, D.C.

*The State and Local Legal Center (SLLC) files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments.*

\*Indicates a case where the SLLC has filed or will file an *amicus* brief.

### **Big cases**

In [\*New York State Rifle & Pistol Association Inc. v. City of New York, New York\*](#) the Supreme Court will decide whether New York City's ban on transporting a handgun to a home or shooting range outside city limits violates the Second Amendment, the Commerce Clause, or the constitutional right to travel. The Second Circuit held the law is constitutional on all accounts. Applying intermediate scrutiny, the Second Circuit held the rule was "substantially related to the achievement of an important governmental interest." It seeks to "protect public safety and prevent crime." And the court agreed with the former Commander of the License Division that premises license holders "are just as susceptible as anyone else to stressful situations," including driving situations that can lead to road rage, "crowd situations, demonstrations, family disputes," and other situations "where it would be better to not have the presence of a firearm." The Second Circuit concluded the rule doesn't discriminate against interstate commerce in violation of the Commerce Clause. First, it does not facially discriminate against interstate commerce. Licensees may still patronize out-of-state firing ranges—they just can't bring their gun licensed in New York City. Second, no evidence suggests the rule was intended to protect the economic interests of the City's firing range industry. Finally, the challengers failed to offer evidence that the rule has had a discriminatory effect on interstate commerce. While the challengers claim they have not attended out-of-city shooting events with their gun they may have attended them *without* their gun. The Second Circuit rejected the challengers' right to travel argument "for much the same reasons as does their parallel invocation of the dormant Commerce Clause."

In [\*Department of Homeland Security v. Regents of the University of California\*](#) the Supreme Court will decide whether the Department of Homeland Security's (DHS) decision to end the

Deferred Action for Childhood Arrivals (DACA) program is judicially reviewable and lawful. Three lower courts have concluded ending the policy is both reviewable and unlawful. DACA was established through a DHS [Memorandum](#) during the Obama presidency. The program allowed undocumented persons who arrived in the United States before age 16 and have lived here since June 15, 2007, to stay, work, and go to school in the United States without facing the risk of deportation for two years with renewals available. DHS rescinded DACA in September 2017 after receiving a letter from the Attorney General stating the program was unconstitutional and created “without proper statutory authority.” The United States [argues](#) that a court can’t review DHS’s decision to rescind DACA because the federal Administrative Procedures Act precludes review of agency actions “committed to agency discretion by law.” According to the United States, DHS’s decision to discontinue DACA “falls comfortably within the types of agency decisions that traditionally have been understood as ‘committed to agency discretion’”—particularly because this decision arose in the immigration context. The United States argues DACA may be rescinded because it is unlawful as it is a legislative rule which should have been promulgated through notice-and-comment rulemaking and is “substantively inconsistent” with the Immigration and Nationality Act.

### **Employment**

Title VII prohibits discrimination “because of . . . sex.” In [Zarda v. Altitude Express](#) the Second Circuit held that discrimination on the basis of sexual orientation violates Title VII. The main opinion in *Zarda* concluded the question in this case is whether sexual orientation is “properly understood” as a “subset of actions taken on the basis of sex.” The court concluded it was by looking at the statute’s text. According to the court: “the most natural reading of the statute’s prohibition on discrimination ‘because of . . . sex’ is that it extends to sexual orientation discrimination because sex is necessarily a factor in sexual orientation. This statutory reading is reinforced by considering the question from the perspective of sex stereotyping because sexual orientation discrimination is predicated on assumptions about how persons of a certain sex can or should be, which is an impermissible basis for adverse employment actions.” In [Bostock v. Clayton County Board of Commissioners](#) the Eleventh Circuit reaffirmed its previous holding that discrimination on the basis of sexual orientation doesn’t violate Title VII.

In [EEOC v. R.G. & G.R. Harris Funeral Homes](#) the Sixth Circuit held discriminating against transgender persons violates Title VII because it amounts to discrimination on the basis of sex stereotyping. The court also held that transgender status is protected under Title VII. The Supreme Court will review both lower court holdings. Title VII prohibits discrimination “because of . . . sex.” In [Price Waterhouse v. Hopkins](#) (1989) the Supreme Court held that employees may bring sex discrimination claims based on sex stereotyping under Title VII. In 2004 the Sixth Circuit extended *Price Waterhouse*’s reasoning to transgender persons as they are also engaging in “non sex-stereotypical behavior.” So that previous case controlled the outcome of *Harris Funeral Homes*. The Sixth Circuit also held that transgender status is a protected class under Title VII. *Harris Funeral Homes* argued that transgender status refers to “a person’s self-assigned ‘gender identity’” rather than a person’s sex, and therefore such a status is not protected under Title VII. The Sixth Circuit disagreed noting “it is analytically impossible to fire an



employee based on that employee's status as a transgender person without being motivated, at least in part, by the employee's sex.”

The question presented in [\*Comcast Corp. v. National Association of African American-Owned Media\*](#) is whether a claim of race discrimination under 42 U.S.C. § 1981 fails in the absence of but-for causation. Section 1981 states “[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” Per its so-called “mixed-motive” theory, Title VII of the Civil Rights Act of 1964 disallows race, color, religion, sex, or national origin to be “a motivating factor for any employment practice, even though other factors also motivated the practice.” In this case an African American-owned operator of television networks sued Comcast under Section 1981 claiming its refusal to contract with the networks was racially motivated. Comcast argued that it could only be sued under Section 1981 if racial discrimination was the “but-for” reason it would not contract with the networks. The Ninth Circuit disagreed and applied the “mixed-motive” framework from Title VII to Section 1981 despite the fact that Section 1981 contains no “motivating factor” language like Title VII. In a [case](#) decided the same day where the same networks sued Charter Communications, the Ninth Circuit noted that Section 1981 guarantees “the same right” to contract “as is enjoyed by white citizens.” According to the Ninth Circuit: “If discriminatory intent plays any role in a defendant’s decision not to contract with a plaintiff, even if it is merely one factor and not the sole cause of the decision, then that plaintiff has not enjoyed the same right as a white citizen.”

### **Environment**

In [\*County of Maui, Hawaii v. Hawaii Wildlife Fund\*](#)\* the Supreme Court will decide whether the Clean Water Act (CWA) requires a National Pollutant Discharge Elimination System (NPDES) permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater. Maui County injects treated wastewater from wells into the groundwater. Some of the treated wastewater reaches the Pacific Ocean. The Hawaii Wildlife Fund sued the County arguing it was required to obtain an NPDES permit under the CWA for these discharges. A party must obtain an NPDES permit if it discharges a pollutant from a point source to a navigable water. Wells are point sources and the Pacific Ocean is a navigable water. The Ninth Circuit assumed without deciding groundwater isn’t a point source or navigable waters. The Ninth Circuit held that the CWA requires Maui to get an NPDES permit in this case. It concluded that the discharges in this case are point source discharges because “nonpoint source pollution” excludes, for example, roadway runoff that isn’t “collected, channeled, and discharged through a point source.” Here the pollutants are collected in wells. According to the lower court, they are also “fairly traceable” from the point source to the navigable water and reach the navigable water at “more than de minimis levels.”

The Anaconda Smelter, now owned by ARCO, processed copper ore from Butte for nearly one hundred years before shutting down in 1980. That same year Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or Superfund law. EPA required ARCO to pursue particular remedies. Landowners located within the bounds of the site sought two additional remedies beyond what EPA required. In [\*Atlantic\*](#)

[\*Richfield Co. v. Christian\*](#), ARCO argues that two provisions of CERCLA prevent the landowners from obtaining additional remedies in this case. ARCO also argues that CERCLA preempts state common-law claims for restoration beyond EPA-ordered remedies. The Supreme Court of Montana rejected all of ARCO's arguments. ARCO first claimed the landowners were "challenging" EPA's remedial plan. The Superfund statute jurisdictionally bars courts from hearing "challenges." The court found no "challenge" in this case because "the Property Owners are not seeking to interfere with [EPA's] work, nor are they seeking to stop, delay, or change the work EPA is doing." ARCO next claimed the property owners are "Potentially Responsible Parties" (PRP), even though the EPA has never ordered them to pay for the cleanup. The Superfund statute prohibits PRPs from "conducting any remedial action that is inconsistent with EPA's selected remedy without EPA's consent." The Montana Supreme Court noted the property owners have "never been treated as PRPs for any purpose—by either EPA or ARCO—during the entire thirty-plus years since the Property Owners' property was designated as being within the Superfund site." Finally, the Montana Supreme Court rejected the argument CERCLA preempts state common-law remediation claims pointing out that CERCLA has two savings clauses which "expressly contemplate the applicability of state law remedies."

### **States' rights**

In [\*Allen v. Cooper\*](#) the Supreme Court will decide whether states can be sued in federal court for copyright violations. North Carolina owns a ship pirate Blackbeard captured, renamed *Queen Anne's Revenge*, and sunk between 1717-18. In the late 1990s North Carolina permitted a private research and salvage firm to photograph the ship. North Carolina continued to own the shipwreck and its artifacts. The company could make money from the sale of media related to the ship. Frederick Allen, who was hired by the salvage firm to take photos and videos of the ship, sued North Carolina for infringing on images Allen copyrighted. Allen claims North Carolina can be sued in federal court for infringing on his copyright because Congress abrogated states' sovereign immunity in the Copyright Remedy Clarification Act. Both parties agree that Congress made a clear statement of intent to abrogate sovereign immunity. So, the only issue in the case is whether Congress validly exercised its power to abrogate sovereign immunity. The Fourth Circuit concluded Congress did not. In the Copyright Remedy Clarification Act Congress invoked the U.S. Constitution Article I Patent and Copyright Clause. But the Fourth Circuit pointed out that in [\*Seminole Tribe v. Florida\*](#) (1996), the Supreme Court held that Congress can't use its Article I power to abrogate Eleventh Amendment immunity. Allen also argued Congress validly enacted the Copyright Remedy Clarification Act under the authority granted to it in § 5 of the Fourteenth Amendment. North Carolina countered Congress did not validly exercise its § 5 power in enacting the Act because (1) it did not purport to rely on its § 5 authority, and (2) it did not tailor the Act to an "identified, widespread pattern of conduct made unconstitutional by the Fourteenth Amendment." The Fourth Circuit agreed with North Carolina that in adopting the Act Congress found no widespread pattern of states infringing on copyrights "that presumably violated the Fourteenth Amendment's Due Process Clause."

The Immigration Reform and Control Act (IRCA) states that *any information contained in the Form I-9, which is used to verify a person's eligibility to work in the United States, may only be used for limited federal enforcement.* The question the Supreme Court will decide in [\*Kansas v.\*](#)

[Garcia](#) is whether the IRCA preempts states from using information contained in the I-9 to prosecute a person under state law (in this case for identity theft). A police officer pulled over Ramiro Garcia for speeding, and Garcia disclosed he worked at Bonefish Grill. An officer obtained Garcia's I-9 and discovered the social security number he used to complete the form wasn't his own. Kansas prosecuted Garcia for violating a state statute prohibiting identity theft. Kansas claimed it didn't rely on the I-9 to prosecute Garcia as he also used the social security number on his state tax forms. Garcia argued the prosecution was preempted by the IRCA. The Kansas Supreme Court agreed holding that the IRCA expressly preempts using information in the I-9 to pursue state law violations. According to the court: "The language in [the IRCA] explicitly prohibited state law enforcement use not only of the I-9 itself but also of the 'information contained in' the I-9 for purposes other than those enumerated." The fact the information from the I-9 was available from other sources, according to the Kansas Supreme Court, does not "alter the fact that it was also part of the I-9." The Supreme Court added a question about whether the IRCA impliedly preempts Kansas's prosecution of Garcia.

### **Crime and punishment**

The question in [Kahler v. Kansas](#) is whether the Eighth and Fourteenth Amendments permit a state to abolish a defense to criminal liability that mental illness prevented a defendant from *knowing his or her actions were wrong*. James Kahler was sentenced to death for fatally shooting his wife, her grandmother, and his two daughters. Kahler presented the testimony of a forensic psychiatrist who stated that Kahler was suffering from severe major depression at the time of the crime and that "his capacity to manage his own behavior had been severely degraded so that he couldn't refrain from doing what he did." Kahler claims he should have been able to assert an insanity defense but wasn't allowed to under Kansas law. Prior to 1996, Kansas had adopted the *M'Naghten* rule for an insanity defense. Under that rule "the defendant is to be held not criminally responsible (1) where he does not know the nature and quality of his act, or, in the alternative, (2) where he does not know right from wrong with respect to that act." In 1996 Kansas adopted the *mens rea* approach which "allows evidence of mental disease or defect as it bears on the mental element of a crime but abandons lack of ability to know right from wrong as a defense." In a 2003 case the Kansas Supreme Court rejected Kahler's argument that the *mens rea* approach "violates the Due Process Clause because it offends a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

In [Miller v. Alabama](#) (2014) the Supreme Court held that juvenile offenders convicted of homicide can't receive a *mandatory* sentence of life imprisonment without parole. Instead the sentencing court must take into account how children are different from adults and only sentence the "rare juvenile offender whose crime reflects irreparable corruption" to life imprisonment without parole. In [Montgomery v. Louisiana](#) (2016) the Supreme Court held that *Miller's* rule applies retroactively to juveniles convicted and sentenced before *Miller* was decided. The question in [Malvo v. Mathena](#) is whether Lee Boyd Malvo may have his sentences of life imprisonment without the possibility of parole, issued before *Miller*, reconsidered under *Miller* even though they weren't mandatory. In 2002 Malvo was seventeen years old when he and John Muhammad killed twelve people over the course of seven weeks. In 2003 Malvo was convicted of two counts of capital murder for his crimes in Fairfax County, Virginia. The jury choose life



imprisonment without parole instead of the death penalty. Subsequently, Malvo pled guilty to capital murder in another Virginia jurisdiction and received two additional terms of life imprisonment without parole. Malvo seeks to have his sentences remanded for a determination of whether he is “one of the rare juvenile offenders who may, consistent with the Eighth Amendment, be sentenced to life without the possibility of parole because his ‘crimes reflect permanent incorrigibility.’” Warden Mathena objects to resentencing arguing that Malvo’s sentences weren’t mandatory and that “*Miller*’s new rule explicitly applies to *mandatory* life-without parole sentences.” Mathena claims Malvo’s sentences weren’t mandatory because Virginia judges have the discretion to suspend capital sentences. Malvo responds that judges weren’t aware of their power to do so at the time. The Fourth Circuit agreed with Malvo that regardless of whether his sentence was mandatory, broad language in *Montgomery* indicates that *Miller* “is not limited to mandatory life-without-parole sentences but also applies . . . to all life-without-parole sentences where the sentencing court did not resolve whether the juvenile offender was ‘irretrievably corrupt’ or whether his crimes reflected his ‘transient immaturity.’” Specifically, *Montgomery* states that *Miller* “rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.”

In [Apodaca v. Oregon](#) (1972) and [Johnson v. Louisiana](#) (1972), five Justices agreed that the Sixth Amendment requires unanimous jury verdicts in *federal* criminal cases. Five Justices also agreed that jury verdicts in *state* criminal cases don’t have to be unanimous. In [Ramos v. Louisiana](#) the Supreme Court will consider overruling the latter holding in *Apodaca* and *Johnson*. Evangelisto Ramos was convicted 10-2 of second-degree murder based solely on circumstantial evidence and was sentenced to life in prison without the possibility of parole. Ramos argues that the Fourteenth Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict against the states. In *Apodaca* four Justices, in an opinion written by Justice White, looked at the “function served by the jury in a contemporary society” and rejected incorporation. Justice Powell, writing alone, adopted what Ramos describes as a “never-used-before-never-used-since theory of partial incorporation of the Sixth Amendment. Justice Powell believed that the Sixth Amendment required unanimity at the Founding, and in federal cases, but opined that the protections guaranteed by the Fourteenth Amendment were less than those offered by the Sixth Amendment.” Ramos [argues](#) that there has been “a sea change in constitutional exegesis” with regard to the application of the Bill of Rights to the states. According to Ramos, since *Apodaca* the Court has focused on a constitutional right’s “historic origins” rather than its “functional purpose.” “The historical record is clear that unanimity was an essential component of what was conceived of when the Constitution referred to juries.” Ramos also argues that since *Apodaca* the Supreme Court has “rejected the notion of partial incorporation or watered down versions of the Bill of Rights.”

In [McKinney v. Arizona](#) the Supreme Court will decide whether a jury rather than a judge must weigh the factors mitigating against imposing a death sentence when the law at the time a person was convicted allowed a judge to weigh mitigating factors. The Court also has agreed to decide whether a trial court rather than an appellate court must correct the failure to weigh relevant mitigating factors. A jury found James Erin McKinney guilty of first-degree murder related to two separate burglaries and murders committed in 1991. McKinney had PTSD from his “horrific” childhood but the Arizona Supreme Court disallowed the sentancer to consider non-

statutory mitigating evidence (including family background and mental condition) unconnected to the crime. In 1996 the trial court found the evidence of PTSD to be unconnected to the crime and sentenced McKinney to death. In 2015 the Ninth Circuit held en banc that the Arizona Supreme Court's "causal nexus" to the crime test for applying non-statutory mitigating factors violates *Eddings v. Oklahoma* (1982), which held that a sentencer in a death penalty case may not "refuse to consider, as a matter of law, any relevant mitigating evidence." The Ninth Circuit ordered that McKinney be resentenced. The Arizona Supreme Court resentenced McKinney again to death after considering his family background and PTSD. McKinney argues he should be resentenced by a jury instead of the Arizona Supreme Court because in *Ring v. Arizona* (2002) the Supreme Court held juries—rather than judges "are required to make the findings necessary to impose the death penalty." The Arizona Supreme Court concluded *Ring* did not apply because McKinney's conviction became final in 1996, prior to *Ring*. McKinney also argued that the *Eddings* violation in this case, where the trial court failed to consider relevant mitigating evidence, should be remanded to the trial court for resentencing not decided by the Arizona Supreme Court.

### **Miscellaneous**

In *Kansas v. Glover* the Supreme Court will decide whether it is reasonable, under the Fourth Amendment, for an officer to suspect that the registered owner of a vehicle is the one driving it absent any information to the contrary. Officer Mark Mehrer ran the license plate of a vehicle that was being driven lawfully. He discovered that the vehicle's owner, Charles Glover, had a suspended license. He pulled the driver over and discovered he was in fact Charles Glover. Glover claimed the officer violated his Fourth Amendment rights because the officer lacked reasonable suspicion of illegal activity to pull over the car. The Kansas Supreme Court agreed. Kansas argued in favor of an "owner-is-the-driver presumption." The Kansas Supreme Court rejected it because it is based on the "stacking" of "unstated assumptions"—that the registered owner is likely the primary driver of the vehicle and owners will "likely disregard the suspension or revocation order and continue to drive." Assumption aren't enough under the Fourth Amendment. The Kansas Supreme Court also noted that the presumption rests in part on what the driver *does not* know—who is actually driving the car. "And in evaluating whether the State has met its burden to prove the lawfulness of a search or seizure, courts cannot 'draw inferences from the lack of evidence in the record' because doing so may relieve the State of its burden and shift the burden to the defendant to establish why reasonable suspicion did not exist."

In *Georgia v. Public.Resource.org* the Supreme Court will decide whether a state may copyright statutory annotations. Georgia, through a Code Revision Commission, made up of the Lieutenant Governor, the Speaker of the House, members of the Senate and House, and others, contracts with Lexis to draft the statutory annotations published in the Official Code of Georgia Annotated (OCGA). Georgia claims it may copyright these annotations. Public.Resource.org disagrees and has, among other things, copied and uploaded the OCGA on its website and made it publically available for free. While the Eleventh Circuit noted annotations don't carry the force of law it nevertheless held Georgia may hold no copyright to them. First, while a private party, Lexis, is responsible for drafting the annotations it does so under the "highly detailed instruction" of the Code Revision Commission. Second, while the annotations don't carry the force of law they are

“law-like.” “Having been *merged* by the General Assembly with the statutory text into a single, unified edict, stamped with the state’s imprimatur, and created and embraced by the same body that wrote the text that they explicate, the annotations have been suffused with powerful indicia of legal significance that is impossible to ignore.” Finally, the annotations are created using a process “very closely related” “to the process by which the statutory provisions were made into binding law.” “[T]he annotations are prepared by the Commission outside of the normal channels of the legislative process . . . and are not voted on individually in the way that Georgia session laws are.” But the Georgia General Assembly votes to adopt annotations like it would any other law.

In [\*Espinoza v. Montana Department of Revenue\*](#) the Supreme Court will decide if a state-aid program violates a state constitutional prohibition against mixing church and state because religious institutions may participate, does discontinuing that program violate the federal constitution’s Free Exercise or Equal Protection Clauses. Montana statutes allow taxpayers to receive tax credits for contribution to Student Scholarship Organizations (SSO) that give students scholarships to attend private schools, including religious schools. The Montana Department of Revenue adopted Rule 1 disallowing religious schools to participate in the program because it concluded their participation would violate Montana’s Constitution. The Montana Supreme Court held that the Tax Credit Program violates the Montana Constitution. According to the court, the provision of the Montana Constitution entitled “Aid prohibited to sectarian schools,” is a “broader and stronger” prohibition against aid to sectarian schools than other states.” The court concluded: “Although the Tax Credit Program provides a mechanism of attenuating the tax credit from the SSO’s tuition payment to a religiously-affiliated [schools], it does not comport with the constitutional prohibition on indirectly aiding sectarian schools.” In one sentence the Montana Supreme Court stated that prohibiting state aid to religious schools in this case doesn’t violate the federal constitution.

In [\*Kelly v. United States\*](#) the Supreme Court will decide whether a public official “defrauds” the government of its property by advancing a “public policy reason” for an official decision that is not the subjective “real reason” for making the decision. Former New Jersey Governor Chris Christie’s Deputy Executive Director of the Port Authority of New York and New Jersey, the Port Authority’s Director of Interstate Capital Projects, and Christie’s Deputy Chief of Staff for Intergovernmental Affairs orchestrated “Bridgegate.” Under the guise of conducting a traffic study, they conspired to reduce traffic lanes from the George Washington Bridge (the busiest bridge in the world) to Fort Lee the first week of Fort Lee’s school year, because the mayor of Fort Lee refused to endorse Governor Christie for governor. Two of the former employees were convicted of violating a number of federal fraud statutes; one was a cooperating witness. The Third Circuit accepted the United States’ argument that these convictions should stand because the former employees deprived the Port Authority of tangible property. Specifically, the court concluded the time and wages of the former employees and the 14 Port Authority employees they “conscripted” in the scheme was sufficient to deprive the Port Authority of money or property. In their [\*certiorari\*](#) petition the former employees argue that the Third Circuit read the fraud statutes too broadly. They claim it can’t be that “any official (federal, state, or local) who conceals or misrepresents her subjective motive for making an otherwise-lawful decision—including by purporting to act for public-policy reasons without admitting to her ulterior political



goals, commonly known as political ‘spin’—has thereby defrauded the government of property (her own labor if nothing else).” If using government resources while misrepresenting a subjective motive is fraud they continue, “nearly limitless array of routine conduct” will be criminal.

In [\*Moda Health Plan v. United States\*](#) the Supreme Court will decide whether Congress may enact appropriations riders restricting the sources of funding available to pay health insurers for losses incurred that were supposed to be paid per federal law. The Affordable Care Act’s (ACA) risk corridor program provided that if a health insurance plan participating in the exchange lost money between 2014 and 2016 it would receive a payment from the federal government based on a formula defined in the statute. If it made money the plan had to pay the federal government based on a formula. The Government Accountability Office (GAO) identified a particular funding source the federal government could use to make payments. Congress passed appropriations riders for all three years disallowing that funding source to be used to make risk corridor payments. Over the three-year period the risk corridor program was short \$12 billion. Moda Health Plan claims it is owed \$290 million. The Federal Circuit held that the federal government is not obligated to pay the statutory formula for what it owes insurers under the risk corridor program because of the appropriations riders. The Federal Circuit concluded that the section of the ACA related to the risk corridor program is “unambiguously mandatory” and requires the federal government to “make payments at the full amount indicated by the statutory formula if payments in fell short.” However, the federal government suspended its obligation to pay the full formula amount through the riders. “Congress clearly indicated its intent here. It asked GAO what funding would be available to make risk corridors payments, and it cut off the sole source of funding identified beyond payments in. It did so in each of the three years of the program’s existence.”

Patrick Murphy killed George Jacobs. Oklahoma prosecuted Murphy. Per the Major Crimes Act states lack jurisdiction to prosecute Native Americans who commit murder in “Indian country.” Murphy is Native American. In [\*Carpenter v. Murphy\*](#) Murphy and Oklahoma disagree over whether the murder took place on a Creek Nation reservation. By the mid-nineteenth century, treaties with the federal government had given the Creek Nation a vast tract of land in modern Oklahoma. In 1901, the Creek Nation agreed to the allotment of tribal lands. Per the Major Crimes Act “Indian country” includes “all lands within the limits of any Indian reservation.” Congress may disestablish or diminish Indian reservations. Allotment on its own does not disestablish or diminish a reservation. In *Solem v. Barlett* (1984) the Supreme Court established a three-part test to determine when Congress has diminished a reservation. First, courts “must examine the text of the statute purportedly disestablishing or diminishing the reservation.” Murphy argues that Congress never diminished the 1866 territorial boundaries of the Creek Nation where the murder took place. The Fifth Circuit agreed. It reviewed eight statutes allotting Creek land and creating the State of Oklahoma. The court concluded that the statutory text “fails to reveal disestablishment.” “Instead, the relevant statutes contain language affirmatively recognizing the Creek Nation’s borders.”



## Supreme Court Review for States and Local Governments 2019

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*The State and Local Legal Center (SLLC) files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments.*

\*Indicates a case where the SLLC has filed or will file an *amicus* brief.

### **Big cases**

In [\*Rucho v. Common Cause\*](#) the Supreme Court held 5-4 that partisan gerrymandering claims are non-justiciable—meaning that a federal court cannot decide them. Chief Justice Roberts wrote the majority opinion which his conservative colleagues joined. According to the Chief Justice for federal courts to “inject [themselves] into the most heated partisan issues” by deciding partisan gerrymandering claims “they must be armed with a standard that can reliably differentiate unconstitutional from ‘constitutional political gerrymandering.’” The inability of the Court to do just that is why the majority concluded these claims simply can’t be brought. According to the Court: “plaintiffs inevitably ask the courts to make their own political judgment about how much representation particular political parties *deserve*—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end. But federal courts are not equipped to apportion political power as a matter of fairness, nor is there any basis for concluding that they were authorized to do so.”

In [\*Department of Commerce v. New York\*](#) five Justices held that the reasons Commerce Secretary Wilbur Ross gave for adding the citizenship question to the 2020 census were pretextual in violation of the Administrative Procedures Act (APA). Since 1950 the decennial census has not asked all households a question about citizenship. In a March 2018 memo Secretary Ross announced he would reinstate the question at the request of the Department of Justice (DOJ), “which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act (VRA).” But additional discovery revealed the following: “that the Secretary was determined to reinstate a citizenship question from the time he entered office; instructed his staff to make it happen; waited while Commerce officials explored whether another agency

would request census-based citizenship data; subsequently contacted the Attorney General himself to ask if DOJ would make the request; and adopted the Voting Rights Act rationale late in the process.” The APA requires that federal agencies don’t act arbitrarily and capriciously. Here, according to the Court, “viewing the evidence as a whole,” Ross’s decision to include the citizenship question “cannot be adequately explained in terms of DOJ’s request for improved citizenship data to better enforce the VRA.” Before reaching this conclusion, a unanimous Court concluded that at least the states challenging inclusion of the question had standing because an undercount will result in the loss of federal funds. The Constitution requires an “Enumeration” of the population every 10 years, to be made “in such Manner” as Congress “shall by Law direct.” According to Court, the Enumeration Clause does not provide a basis to set aside the Secretary’s decision because it “vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration,’” and Congress “has delegated its broad authority over the census to the Secretary.” The Court held that adding the citizenship question to the census isn’t a question “committed to agency discretion by law,” that is unreviewable under the APA. Finally, the Court held the Secretary’s decision to add the question wasn’t “arbitrary and capricious” in violation of the APA because “evidence before the Secretary supported that decision.”

### **States’ rights/state sovereignty**

In a 7-2 decision in [\*Gamble v. United States\*](#)\* the Court didn’t overrule the “dual-sovereignty” doctrine. The Double Jeopardy Clause provides that no person may be “twice put in jeopardy” “for the same offence.” Per the “dual-sovereignty” doctrine, the Supreme Court has long held that a “crime under one sovereign’s laws is not ‘the same offence’ as a crime under the laws of another sovereign.” Terance Gamble was prosecuted for and convicted of possession of a firearm by a convicted felon under both Alabama and United States law. He argued the “dual-sovereignty” doctrine should be overturned because founding-era common law forbid successive prosecutions by different sovereigns. Justice Alito, writing for the majority of the Court, disagreed. Before discussing founding-era common law, Justice Alito noted the text of the Double Jeopardy Clause protects jeopardy “for the same offence” not for the same conduct or actions. “[A]n ‘offence’ is defined by a law, and each law is defined by a sovereign.” Justice Alito also noted the Court has recognized the “dual-sovereignty” doctrine since 1847. Regarding common law, Justice Alito wasn’t convinced it was in Gamble’s favor. Regardless, *stare decisis* (let the decision stand) “is another obstacle.” Finally, the majority rejected the argument that incorporating the Double Jeopardy Clause against the states “washed away” the “dual-sovereignty” doctrine. Interpretation of the Double Jeopardy Clause “long included the dual-sovereignty doctrine, and there is no logical reason why incorporation should change it.”

In [\*Franchise Tax Board of California v. Hyatt\*](#) (*Hyatt III*) the Supreme Court overturned precedent to hold 5-4 that states are immune from private lawsuits brought in courts of other states. Since 1993 Gilbert Hyatt and the Franchise Tax Board of California (FTB) have been involved in a dispute over Hyatt’s 1991 and 1992 tax returns. FTB claims that Hyatt owes California taxes from income he earned in California. Hyatt claims he lived in Nevada during the relevant time period. Hyatt sued FTB in Nevada claiming FTB committed a number of torts during the audit. At the case’s third trip to the Supreme Court FTB claimed that it can’t be sued



in Nevada's courts. In [Nevada v. Hall](#) (1979) the Supreme Court held that a state may be sued in the courts of another state without its consent. In *Hyatt III* the Supreme Court overruled [Nevada v. Hall](#). Hyatt argued that before the Constitution was ratified states "had the power of fully independent nations to deny immunity to fellow sovereigns," meaning other states could be sued in a state's courts, and that the Constitution didn't "alter[] that balance among the still-sovereign states." A majority of the Supreme Court disagreed. According to Justice Thomas, writing for the majority: "The problem with Hyatt's argument is that the Constitution affirmatively altered the relationships between the States, so that they no longer relate to each other solely as foreign sovereigns. Each State's equal dignity and sovereignty under the Constitution implies certain constitutional 'limitation[s] on the sovereignty of all of its sister States.' One such limitation is the inability of one State to hale another into its courts without the latter's consent. The Constitution does not merely allow States to afford each other immunity as a matter of comity; it embeds interstate sovereign immunity within the constitutional design."

In a unanimous decision in [Timbs v. Indiana](#)\* the Supreme Court held that the Eighth Amendment's Excessive Fines Clause is "incorporated" or applicable to states and local governments. Indiana sought to forfeit Tyson Timbs' Land Rover which he used to transport heroin. The trial court concluded the forfeiture was unconstitutional under the Eighth Amendment's Excessive Fines Clause because the value of the vehicle well exceeded the maximum statutory fine for the felony Timbs plead guilty to. The Indiana Supreme Court held the Excessive Fines Clause doesn't apply to the states. In an opinion written by Justice Ginsburg the Supreme Court disagreed holding that the Excessive Fines Clause is incorporated by the Due Process Clause of the Fourteenth Amendment. The Excessive Fines Clause is "fundamental to our scheme of ordered liberty" and "deeply rooted in the Nation's history and tradition" because it traces its "venerable lineage" back to at least the Magna Carta in 1215, was reaffirmed in the English Bill of Rights in 1689, and was adopted almost verbatim from there in the Eighth Amendment. When the Fourteenth Amendment was adopted in 1868, 35 of the 37 states prohibited excessive fines. Today "all 50 States have a constitutional provision prohibiting the imposition of excessive fines either directly or by requiring proportionality." The protection against excessive fines has been necessary "throughout Anglo-American history" because "exorbitant tolls undermine other constitutional liberties."

### **First Amendment**

The Bladensburg Peace Cross may stay the Supreme Court ruled in a 7-2 decision in [American Legion v. American Humanist Association](#).\* In 1918, residents of Prince George's County, Maryland, decided to erect a memorial to honor soldiers from the county who died in World War I. The monument, completed in 1925, is a 32-foot tall Latin cross that sits on a large pedestal. Among other things, it contains a plaque listing the names of 49 local men who died in the war. Over the years, memorials honoring the veterans of other conflicts have been added to the surrounding area. In 1961, the Maryland-National Capital Park and Planning Commission acquired the cross and the land it is on in order to preserve it and address traffic-safety concerns. The American Humanist Association sued the Commission claiming the cross's presence on public land and the Commission's maintenance of it violates the Establishment Clause. The

Supreme Court disagreed. Significantly, the Court stated that “retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality.” According to Justice Alito, the Bladensburg Cross doesn’t violate the constitution first because it “carries special significance in commemorating World War I.” Second, “with the passage of time” the cross “has acquired historical importance.” Third, the monument didn’t “deliberately disrespect[] area soldiers who perished in World War I” as no evidence indicates Jewish soldiers were excluded. Finally, according to the majority, “it is surely relevant that the monument commemorates the death of particular individuals.” While the Court acknowledged that the cross “is undoubtedly a Christian symbol,” it opined “that fact should not blind us to everything else that the Bladensburg Cross has come to represent.”

In [\*Nieves v. Bartlett\*](#)\* the Supreme Court held 6-3 that the existence of probable cause generally defeats a First Amendment retaliatory arrest case. While police officer Luis Nieves and Russell Bartlett have different versions of what happened at Artic Man, a weeklong winter sports festival in Alaska, even the Ninth Circuit agreed that Sergeant Nieves had probable cause to arrest Bartlett. Sergeant Nieves knew Bartlett had been drinking and talking loudly when he saw Bartlett stand close to another officer and the officer push Bartlett away. But Bartlett claimed Sergeant Nieves really arrested him in violation of his First Amendment free speech rights because he had refused to speak to Sergeant Nieves previously, which Bartlett reminded Sergeant Nieves of when he was being arrested. The Supreme Court held that probable cause *generally* defeats a retaliatory arrest claim. Chief Justice Roberts, writing for the majority, relied primarily on *Hartman v. Moore* (2006), where the Court held that probable cause defeats retaliatory *prosecution* claims. In *Hartman*, the Court noted that proving causation is difficult in retaliatory prosecution cases because “the official with the malicious motive does not carry out the retaliatory action himself—the decision to bring charges is instead made by a prosecutor, who is generally immune from suit and whose decisions receive a presumption of regularity.” Similarly, it is difficult to determine if protected speech is the cause of an arrest because “protected speech is often a ‘wholly legitimate consideration’ for officers when deciding whether to make an arrest.” The Court’s caveat is the “no-probable cause requirement should not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.”

In a 5-4 opinion in [\*Manhattan Community Access Corporation v. Halleck\*](#) the Supreme Court held that the First Amendment doesn’t apply to private entities running public access channels. New York City designated a private nonprofit, Manhattan Neighborhood Network (MNN), to operate the public access channels in Manhattan. MNN suspended two producers from its facilities and services after MNN ran a film they produced about MNN’s alleged neglect of the East Harlem community. The producers claimed MNN violated their First Amendment free speech rights when it “restricted their access to the public access channels because of the content of their film.” In an opinion written by Justice Kavanaugh the Court held that private operators of a public access cable channels aren’t state actors subject to the First Amendment. While the majority acknowledged that private entities may qualify as state actors in limited circumstances, including when the private entity performs a traditional, exclusive public function, the Court

concluded that exception doesn't apply in this case. According to the Court, operating public access channels has not been "traditionally and exclusively" performed by government.

### **Employment**

In *Fort Bend County, Texas v. Davis*\* the Supreme Court held unanimously that Title VII's charge-filing requirement is not jurisdictional. Instead, it is "mandatory procedural prescription" that a court must consider if timely raised. According to the Court, Congress must clearly state a prescription is jurisdictional. Title VII's charge-filing requirements "d[o] not speak to a court's authority," or "refer in any way to the jurisdiction of the district courts." Instead they "speak to . . . a party's procedural obligations. They require complainants to submit information to the EEOC and to wait a specified period before commencing a civil action."

In *Mt. Lemmon Fire District v. Guido*\* the Supreme Court ruled 8-0 that the federal Age Discrimination in Employment Act (ADEA) applies to state and local government employers with less than 20 employees. The term "employer" is defined in the ADEA as a "person engaged in an industry affecting commerce who has 20 or more employees." The definition goes on to say "[t]he term *also means* (1) any agent of such a person, and (2) a State or political subdivision of a State." The Supreme Court, in an opinion written by Justice Ginsburg, held that the phrase "also means" adds a new category to the definition of employer (that contains no size requirement) rather than clarifies that states and their political subdivisions are a type of person contained in the first sentence. The Court reasoned that "also means" is "additive" rather than "clarifying." The Court noted the phrase "also means" is common in the U.S. Code "typically carrying an additive meaning." Finally, the statute pairs states and their political subdivisions with agents, "a discrete category that, beyond doubt, carries no numerical limitation."

### **Section 1983/civil rights**

In *McDonough v. Smith*\* the Supreme Court held 6-3 that the statute of limitations for a fabrication of evidence claim begins running upon acquittal. Edward McDonough, commissioner of the county board of elections, processed forged absentee ballots, which he claimed he didn't know were forged. Youel Smith was appointed to investigate and prosecute the matter. McDonough claims Smith "falsified affidavits, coached witnesses to lie, and orchestrated a suspect DNA analysis to link McDonough to relevant ballot envelopes." The first trial involving McDonough ended in a mistrial. He was acquitted in a second trial. Just under three years after his acquittal McDonough sued Smith claiming Smith violated his constitutional rights by using fabricated evidence against him. Smith argued McDonough's case was untimely because the three-year statute of limitations began to run when the evidence was used against him. In an opinion written by Justice Sotomayor the Supreme Court held that the statute of limitations for a fabricated-evidence claim does not begin to run until the criminal proceedings against the defendant terminates in his or her favor. To determine when the statute of limitations should begin running the Court first turned to "common-law principles governing analogous torts." The most analogous claim to fabrication of evidence is malicious prosecution. The statute of limitations in malicious prosecution cases does not begin to run until the underlying criminal proceedings are favorably resolved.



In [\*City of Escondido v. Emmons\*](#) the Supreme Court granted one police officer qualified immunity and instructed the Ninth Circuit to decide again whether another officer should have been granted qualified immunity. In April 2013 police arrested Maggie Emmons' husband at their apartment for domestic violence. A few weeks later, after Maggie's husband had been released, police received a 911 call from Maggie's roommate's mother, Trina. While Trina was on the phone with her daughter she overheard Maggie and her daughter yelling at each other and Maggie's daughter screaming for help. When the officers knocked on the door no one answered but they were able to try to convince Maggie to open the door by talking to her through a side window. An unidentified male told Maggie to back away from the window. Officer Craig was the only officer standing outside the door when a man walked out of the apartment. Officer Craig told the man not to close the door but he did and he tried to brush past Officer Craig. Officer Craig stopped him, took him to the ground, and handcuffed him. The man was Maggie's father, Marty Emmons. He sued Officer Craig and Sergeant Toth, another officer at the scene, for excessive force. The Ninth Circuit denied the officers qualified immunity in this case saying the "right to be free of excessive force was clearly established." Regarding Sergeant Toth the Supreme Court held he should have been granted qualified immunity because he didn't use any force against Emmons. Regarding Officer Craig the Court said the Ninth Circuit defined the right to be free from excessive force at too high a level of generality. Instead, the Ninth Circuit "should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances." The lower court did cite to a Ninth Circuit case holding that persons have a right to be free from non-trivial force for engaging in passive resistance. But the Ninth Circuit "made no effort to explain how that case law prohibited Officer Craig's actions in this case." The Supreme Court vacated and remanded the Ninth Circuit's denial of qualified immunity to Officer Craig.

### **Preemption**

In 2009 in [\*Wyeth v. Levine\*](#) the Supreme Court held that federal law preempts state law failure to warn claims that a drug manufacturer failed to change a drug label *if* there is "clear evidence" the Food and Drug Administration (FDA) would not have approved the label change. In [\*Merck v. Albrecht\*](#) a unanimous Supreme Court held that a judge rather than a jury determines if the FDA would have approved the change. In this case more than 500 people who took Fosamax suffered atypical femoral fractures between 1999 and 2010. They claimed that Merck, the drug manufacturer, violated state law by failing to include a warning on the drug label until 2011. Merck claimed that their state law claims are preempted because the FDA would not have approved a change to the label warning about atypical femoral fractures until 2011. Both Merck and the FDA knew from the time the drug was approved in 1995 that it could theoretically cause atypical femoral fractures. But, according to Merck, until 2011 "both Merck and the FDA were unsure whether the developing evidence of a causal link between Fosamax and atypical femoral fractures was strong enough to require adding a warning to the Fosamax drug label." And in 2008 and 2011 the FDA rejected Merck's suggestion to add warning language about "stress fractures" for different reasons. The Third Circuit held that it is for a jury to decide whether the FDA, "in effect, has disapproved a state-law-required labeling change," in which case the state law claims would be preempted. The Supreme Court disagreed in an opinion written by Justice

Breyer. According to the Court, this question is a legal one for a judge and not a jury. “The question often involves the use of legal skills to determine whether agency disapproval fits facts that are not in dispute. Moreover, judges, rather than lay juries, are better equipped to evaluate the nature and scope of an agency's determination.”

The Supreme Court held 6-3 in [\*Virginia Uranium v. Warren\*](#)\* that Virginia’s statute prohibiting uranium mining isn’t preempted by the federal Atomic Energy Act (AEA). Virginia law “flatly” prohibits uranium mining in the state. The Supreme Court rejected Virginia Uranium’s arguments that the AEA preempts this ban. Looking at the text and the structure of the AEA the Court noted it grants “exclusive [federal] authority to regulate nearly every aspect of the nuclear fuel life cycle *except* mining.” Section 2021(k) states: “Nothing in this section [that is, §2021] shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.” Virginia Uranium argued that under this provision any state law enacted for the purposes of protecting the public against “radiation hazards,” including Virginia’s uranium mining ban, is preempted. The plurality concluded the statute is much more narrow reasoning, “only state laws that seek to regulate the activities discussed in §2021 *without an NRC agreement*—activities like the construction of nuclear power plants—may be scrutinized to ensure their purposes aim at something other than regulating nuclear safety.” Virginia Uranium next argued that *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Commission* (1983) indicated the Court should look into the legislative intent to determine whether the Virginia legislature adopted the mining ban to address radiation safety. According to Justice Gorsuch: “It is one thing to do as *Pacific Gas* did and inquire exactly into state legislative purposes when state law prohibits a regulated activity like the construction of a nuclear plant, and thus comes close to trenching on core federal powers reserved to the federal government by the AEA. It is another thing to do as Virginia Uranium wishes and impose the same exacting scrutiny on state laws prohibiting an activity like mining far removed from the NRC’s historic powers.” Finally, the plurality rejected the argument that Virginia’s ban was preempted because it conflicts with the AEA. More specifically, Virginia Uranium argued that even if “the text of the AEA doesn’t touch on mining in so many words, but its authority to regulate later stages of the nuclear fuel life cycle would be effectively undermined if mining laws like Virginia’s were allowed.” According to the plurality, the text and the structure of the AEA don’t support this conflict preemption argument.

## **Tax**

In [\*North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust\*](#) the Supreme Court held unanimously that the presence of in-state beneficiaries alone does not allow a state to tax undistributed trust income where the beneficiaries have no right to demand that income and may never receive it. The Kimberley Rice Kaestner trust is governed by New York law and its trustee is a New York resident who has “absolute discretion” to distribute the trust. When the beneficiaries, Kimberley Rice Kaestner and her children, lived in North Carolina the state taxed the income of the trust even though no funds were distributed during the time period. The trust sued North Carolina seeking the \$1.3 million it paid in taxes. The trust argued that the tax violated the Due Process Clause of the Fourteenth Amendment. The Supreme Court agreed

with the trust that North Carolina lacked a sufficient minimum connection with the trust, based solely on the beneficiaries in-state residence, to tax its undistributed income. Writing for the Court, Justice Sotomayor noted that “when a tax is premised on the in-state residence of a beneficiary, the Constitution requires that the resident have some degree of possession, control, or enjoyment of the trust property or a right to receive that property before the State can tax the asset.” Here, the beneficiaries received no income from the trust, had no right to demand trust income, and could not necessarily count on receiving funds from the trust in the future.

In an unanimous decision the Supreme Court held in [Dawson v. Steager](#) that West Virginia violated a federal statute by taxing all the retirement benefits of former federal law enforcement employees but not certain state law enforcement employees. 4 U.S.C. § 111 allows states to tax the pay of federal employees only “if the taxation does not discriminate . . . because of the source of the pay or compensation.” James Dawson, a former U.S. Marshal, sued West Virginia alleging it violated this statute because it taxed his pension but not the pensions of certain state law enforcement employees. The West Virginia Supreme Court found no discrimination because relatively few state employees received the tax break and the statute’s intent was to benefit those state retirees not harm federal retirees. In an opinion written by Justice Gorsuch the Supreme Court struck down West Virginia’s statute and held that a state “violates §111 when it treats retired state employees more favorably than retired federal employees and no ‘significant differences between the two classes’ justify the differential treatment.” “West Virginia expressly affords state law enforcement retirees a tax benefit that federal retirees cannot receive.” And all parties agreed that there aren’t significant differences in the job duties of U.S. Marshals and the tax-exempt state law enforcement retirees.

### **Capital punishment**

In [Madison v. Alabama](#) the Supreme Court held 5-3 that the Eighth Amendment prohibits a person who lacks a “rational understanding” due to mental illness for why the death penalty has been imposed to be put to death regardless of what mental illness the person is suffering from. Vernon Madison was sentenced to death for killing a police officer in 1985. Since then he has suffered a series of strokes and has been diagnosed with vascular dementia. He claims he no longer remembers the crime. In [Ford v. Wainwright](#) (1986), the Supreme Court held that the Eighth Amendment’s ban on cruel and unusual punishments disallows executing a person who has “lost his sanity” after sentencing. The Court “clarified the scope of that category in [Panetti v. Quarterman](#) [2007] by focusing on whether a prisoner can ‘reach a rational understanding of the reason for [his] execution.’” The majority of the Supreme Court agreed with Madison that he be executed even if he could not remember his crime. *Panetti* “asks about understanding, not memory—more specifically, about a person’s understanding of why the State seeks capital punishment for a crime, not his memory of the crime itself.” Alabama initially argued that Madison could be executed because he suffers from dementia instead of psychotic delusions, which Ford and Panetti suffered from. Alabama ultimately conceded that a person suffering from dementia may be unable to rationally understand the reasons for his or her sentence. The Supreme Court agreed with Alabama that *Panetti* focuses on the *effect* of the mental disorder not its *cause*. The Supreme Court was unable to determine whether Madison’s execution could go



forward because the lower court didn't determine whether Madison had a rational understanding of why Alabama sought to execute him.

In [\*Bucklew v. Precythe\*](#) the Supreme Court ruled 5-4 that Missouri wasn't required to execute Russell Bucklew using a drug he claimed would cause him less pain due to his unusual medical condition, cavernous hemangioma. Bucklew was sentenced to death for killing a neighbor who was sheltering his former girlfriend and her children after she broke up with Bucklew. Cavernous hemangioma causes tumors to grow in Bucklew's head, neck, and throat. He claims that the sedative Missouri intends to use in its lethal injection protocol will cause him feelings of suffocation and excruciating pain due to his disease for a longer amount of time than the alternative drug he suggests. The Eighth Amendment disallows "cruel and unusual punishment." The Supreme Court held in [\*Glossip v. Gross\*](#) (2015) that a state's refusal to alter its lethal injection protocol may violate the Eighth Amendment if an inmate identifies a "feasible, readily implemented" alternative procedure that would "significantly reduce a substantial risk of severe pain." Bucklew first argued that he didn't have to identify an alternative drug because his challenge wasn't facial (applicable to all prisoners sentenced to death) but instead was only to the lethal injection protocol as applied to him. Justice Gorsuch, writing for the Court, disagreed noting that "*Glossip* expressly held that identifying an available alternative is 'a requirement of all Eighth Amendment method-of-execution claims' alleging cruel pain." Bucklew ultimately identified nitrogen as an alternative drug. But the majority of the Court rejected it for two reasons. First, Bucklew failed to demonstrate Missouri could execute him "relatively easily and reasonably quickly" using nitrogen. Second, according to the Court, Missouri could legitimately refuse to switch drugs because nitrogen has never been used for an execution.

In an unauthored opinion in [\*Moore v. Texas II\*](#) the Supreme Court concluded Bobby James Moore has intellectual disability. According to the Supreme Court, "[a]t 13, Moore lacked basic understanding of the days of the week, the months of the year, and the seasons; he could scarcely tell time or comprehend the standards of measure or the basic principle that subtraction is the reverse of addition." For a court to find intellectual disability a person must have intellectual-functioning deficits and adaptive deficits that onset when the person was a minor. While the trial court found that Moore had adaptive deficits two or more standard deviations in all three adaptive skill sets (conceptual, social, and practical), the Texas Court of Criminal Appeals held that Moore had not proven that he "possessed the requisite adaptive deficits." In [\*Moore v. Texas I\*](#) the Supreme Court criticized the Texas Court of Criminal Appeals for five errors including: overemphasizing Moore's adaptive strengths, stressing Moore's improved behavior in prison, concluding that Moore's record of academic failure and child abuse detract from a "determination that his intellectual and adaptive deficits were related," and "requiring Moore to show his adaptive deficits were not related to a personality disorder." The final error the Supreme Court pointed to in *Moore I* was the Texas Court of Criminal Appeals relied on a number of factors from a 2004 Texas Court of Criminal Appeals court decision, *Ex parte Briseno*. The Supreme Court described factors as "having no grounding in prevailing medical practice," and "invit[ing] 'lay perceptions of intellectual disability' and 'lay stereotypes' to guide assessment of intellectual disability." In *Moore II* the Supreme Court held the Texas Court of Criminal Appeals made many of the same mistakes it made in its first decision. "We have found

in its opinion too many instances in which, with small variations, it repeats the analysis we previously found wanting, and these same parts are critical to its ultimate conclusion.” With no additional analysis, the Supreme Court agreed with Moore (and the prosecutor in this case) that “on the basis of the trial court record, Moore has shown he is a person with intellectual disability.”

### **Indian law**

In 1868 the Crow Tribe ceded most of its territory in what is now Montana and Wyoming to the United States in exchange for an agreement the Crow could “hunt on the unoccupied lands of the United States.” Clayvin Herrera invoked this treaty to defend against a charge of off-season hunting in Bighorn National Forest in Wyoming. In a 5-4 opinion in [Herrera v. Wyoming](#) the Supreme Court held that the treaty’s hunting rights survived Wyoming’s statehood and that lands in the Bighorn National Forest aren’t categorically “occupied” because they are in a national reserve. Over 100 years ago in [Ward v. Race Horse](#) (1896) the Supreme Court ruled that statehood extinguished hunting rights in an identical treaty between the Shoshone-Bannock tribes and the United States. The Court in *Race Horse* relied on the fact that (1) new states were admitted to the union on “equal footing” with existing states and (2) there was no evidence in the treaty that Congress intended for treaty rights to continue in “perpetuity.” In 1999 in [Minnesota v. Mille Lacs Band of Chippewa Indians](#) the Supreme Court explicitly rejected the “equal footing” rationale of *Race Horse*. The Court in *Mille Lacs* also criticized the notion that treaty rights fail to survive statehood if they are “temporary and precarious” because all treaty rights can be unilaterally repudiated by Congress. According to the Supreme Court in *Herrera v. Wyoming*, “although the decision in *Mille Lacs* did not explicitly say that it was overruling the alternative ground in *Race Horse*, it is impossible to harmonize *Mille Lacs*’ analysis with the Court’s prior reasoning in *Race Horse*.” Applying *Mille Lacs* rather than *Race Horse*, the Court concluded Wyoming’s admission to the United States didn’t abrogate the Crow Tribe’s off-reservation treaty hunting rights. “The Wyoming Statehood Act did not abrogate the Crow Tribe’s hunting right, nor did the 1868 Treaty expire of its own accord at that time. The treaty itself defines the circumstances in which the right will expire. Statehood is not one of them. The Court also concluded the Bighorn National Forest didn’t become categorically ‘occupied’ when the national forest was created. Treaties are construed as “they would naturally be understood by the Indians.” According to the Court, “[h]ere it is clear that the Crow Tribe would have understood the word ‘unoccupied’ to denote an area free of residence or settlement by non-Indians.”

In [Washington State Department of Licensing v. Cougar Den](#) the Supreme Court held 5-4 that a treaty forbids the State of Washington from imposing a tax upon members of the Yakama Nation that import fuel. An 1855 treaty between the United States and the Yakama Nation reserves to the Yamakas “the right, in common with the citizens of the United States, to travel upon all public highways.” A Washington statute taxes fuel importers who bring large quantities of fuel into the state by ground transportation. Cougar Den is a wholesale fuel importer owned by a Yakama member that transports fuel by truck from Oregon to Yakama-owned gas stations in Washington. Cougar Den argued the treaty preempted the tax. Justices Sotomayor and Kagan

joined Justice Breyer's plurality opinion that held this case involves a tax on travel with fuel. The tax violates the treaty for three reasons. First, the "in common with" treaty language could be read to mean that general legislation, like the legislation in this case, applies to Yakama and non-Yakama alike, but "that is not what the Yakama understood the words to mean in 1855." Second, the historical record indicates the right to travel includes a right to travel with goods for sale. Finally, imposing a tax upon travel with goods burdens the travel.

### **Miscellaneous**

In a 5-4 opinion in *Knick v. Township of Scott*\* the Supreme Court held that a property owner may proceed directly to federal court with a takings claim. In *Knick* the Court overturned *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (1985), which held that before a takings claim may be brought in federal court, a property owner must first seek just compensation under state law in state court. The Township of Scott adopted an ordinance requiring cemeteries, whether located on public or private land, to be open and accessible to the public during the day. Code enforcement could enter any property to determine the "existence and location" of a cemetery. The Constitution's Takings Clause states that "private property [shall not] be taken for public use, without just compensation." Rose Mary Knick sued the county in federal (rather than state) court claiming the ordinance was invalid per the Takings Clause after code enforcement went onto her property without a warrant looking for (and finding) a cemetery not open to the public during the day. In an opinion written by Chief Justice Roberts the Court overruled the state-litigation requirement of *Williamson County*. The Court reasoned the Takings Clause doesn't say: "Nor shall private property be taken for public use, *without an available procedure that will result in compensation.*" The majority of the Court was willing to overturn precedent in this case because *Williamson County* wasn't just "wrong." "Its reasoning was exceptionally ill founded and conflicted with much of our takings jurisprudence.

In *Mitchell v. Wisconsin*\* the Supreme Court held that generally when police officers have probable cause to believe an unconscious person has committed a drunk driving offense, warrantless blood draws are permissible. By the time the police officer got Gerald Mitchell from his car to the hospital to take a blood test he was unconscious. Wisconsin and twenty-eight other states allow warrantless blood draws of unconscious persons where police officers have probable cause to suspect drunk driving. Mitchell argued the police officer should have obtained a warrant before having his blood drawn. In *Missouri v. McNeely* (2013) the Court held that the fact that blood-alcohol evidence is always dissipating due to "natural metabolic processes" does not generally mean the exigent circumstances exception applies and warrantless BAC tests are allowed. But in *Schmerber v. California* (1966) the Court allowed a warrantless blood test of a drunk driver who had gotten into a car accident that "gave police other pressing duties," because "'further delay' caused by a warrant application really 'would have threatened the destruction of evidence.'" Reading these cases together Justice Alito, writing for a plurality of the Court, concluded an "exigency exists when (1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application." According to the Court, unconsciousness does not just create pressing needs; it is



*itself* a medical emergency.” Instead of adopting a per se rule that no warrant is required when officers have probable cause an unconscious driver has driven drunk, the Court created a rebuttable presumption. “We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.”

In *Tennessee Wine and Spirits Retailers Association v. Thomas*\* the Supreme Court held 7-2 that Tennessee’s law requiring alcohol retailers to live in the state for two years to receive a license is unconstitutional. The dormant Commerce Clause prohibits state laws that unduly restrict interstate commerce. Section 2 of the Twenty-first Amendment prohibits the transportation or importation of alcohol into a state in violation of state law. Tennessee Wine and Spirits Retailers Association argued based on *Granholm v. Heald* (2005), where the Court struck down discriminatory direct-shipment laws that favored in-state wineries over out-of-state competitors, that §2 limits discrimination against out-of-state alcohol *products and producers* not alcohol distributors. The Court disagreed with this interpretation of *Granholm* writing, “On the contrary, the Court stated that the Clause prohibits state discrimination against all ‘out-of-state economic interests,’ and noted that the direct-shipment laws in question ‘contradict[ed]’ dormant Commerce Clause principles because they ‘deprive[d] citizens of their right to have access to the markets of other States on equal terms.’” Applying §2 the Court concluded Tennessee’s law is unconstitutional writing: “The provision at issue here expressly discriminates against nonresidents and has at best a highly attenuated relationship to public health or safety.”

*Auer v. Robbins* (1997) deference, courts deferring to agencies’ reasonable interpretations of their ambiguous regulations, is alive following the Supreme Court’s decision in *Kisor v. Wilkie*.\* In part of the opinion joined by five Justices, the Supreme Court “reinforced” the limits of the *Auer* doctrine. Writing for herself, Justices Ginsburg, Breyer, Sotomayor, and Chief Justice Roberts, Justice Kagan explained exactly when *Auer* deference applies. First, a regulation must be “genuinely” ambiguous, meaning a court must exhaust all the “traditional tools” of constructing it including carefully considering its “text, structure, history, and purpose.” Second, an agency’s reading of the regulation must still be “reasonable,” meaning “it must come within the zone of ambiguity the court has identified after employing all its interpretive tools.” Third, *Auer* deference is only available after a court makes an “independent inquiry into whether the character and context of the agency interpretation entitles it to controlling weight.” According to the majority of the Court an agency interpretation of a regulation lacks “controlling weight” and should not be given *Auer* deference unless the interpretation is “authoritative” or its “official position.” The interpretation must also “in some way implicate” the agency’s “substantive expertise.” Finally, to receive *Auer* deference an agency’s reading of a rule must reflect “fair and considered judgment” instead of a “convenient litigating position” or “*post hoc* rationalization advanced” to “defend past agency action against attack.”

In an unauthored opinion in a case decided without oral argument, *Box v. Planned Parenthood*, the Supreme Court held that Indiana’s law disallowing fetal remains to be incinerated along with surgical byproducts is constitutional. The Seventh Circuit had invalidated this provision.

According to the Court, Planned Parenthood didn't argue that this provision creates an undue burden on a woman's right to obtain an abortion. Had Planned Parenthood argued so and had the Court agreed, it would have applied a more rigorous legal test, less deferential to Indiana's law. Applying "ordinary rational basis review" the Court concluded the law was "rationally related to legitimate government interests." The Supreme Court had previously acknowledged that a state has a "legitimate interest in the proper disposal of fetal remains." According to the Court, Indiana's law is rationally related, if not "perfectly tailored" to that interest. The Court didn't decide whether Indiana may prohibit the "knowing provision of sex-, race-, and disability selective abortions by abortion providers." The Court noted that only one federal appeals court has decided a case involving this issue. The Seventh Circuit struck down this provision and its ruling will remain in effect.

The Supreme Court held that "critical habitat" under the Endangered Species Act (ESA) must also be habitat. In [\*Weyerhaeuser Co. v. United State Fish and Wildlife Service\*](#)\* the Court also held a federal court may review an agency decision not to exclude an area from critical habitat because of the economic impact. The United State Fish and Wildlife Service (Service) listed the dusky gopher frog as an endangered species. It designated as its "critical habitat" a site called Unit 1 in Louisiana owned or leased by Weyerhaeuser Company, a timber company. The frog hasn't been seen at this location since 1965. As of today Unit 1 has all of the features the frog needs to survive except "open-canopy forests," which the Service claims can be restored with "reasonable effort." Weyerhaeuser argued Unit 1 could not be a "critical habitat" for the frog because it could not survive without an open-canopy forest. The Fifth Circuit disagreed holding that the definition of critical habitat contains no "habitability requirement." The Supreme Court held unanimously that "critical habitat" must be habitat. The ESA states that when the Secretary lists a species as endangered he or she must also "designate *any habitat of such species* which is then considered to be critical habitat." The Service argued that habitat includes areas like Unit 1 one which "require some degree of modification to support a sustainable population of a given species." The Supreme Court sent this case back to the lower court to "interpret the term 'habitat.'" The ESA requires the Secretary to consider the economic impact of specifying an area as a critical habitat and authorizes the Secretary to "exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat." Weyerhaeuser Company claimed the Service failed to fully account for the economic impact of designating Unit 1. The lower court refused to review the Service's decision-making process. The Supreme Court concluded it is reviewable. It "involves the sort of routine dispute that federal courts regularly review: An agency issues an order affecting the rights of a private party, and the private party objects that the agency did not properly justify its determination under a standard set forth in the statute."

In [\*Virginia House of Delegates v. Golden Bethune-Hill\*](#), the Supreme Court held 5-4 that the Virginia House of Delegates lacks standing to appeal a ruling striking down Virginia's redistricting plan because Virginia law does not allow it to displace the Attorney General and it is only a single chamber of a bicameral legislature. Voters sued a number of Virginia state agencies and elected officials over its state redistricting plan following the 2010 census. The Virginia House of Delegates intervened to defend the redistricting plan (but wasn't a party who

must have standing). After losing before a three-judge court in 2018 the Virginia Attorney General decided not to appeal the case. The Virginia House wanted to defend the plan and keep litigating the case. The House first claimed it had standing to act as the state's agent in litigation. Justice Ginsburg, writing for the majority, disagreed because "[a]uthority and responsibility for representing the State's interests in civil litigation, Virginia law prescribes, rest exclusively with the State's Attorney General." The House next claimed that even if it lacked standing to appeal as the state's agent it had standing "in its own right." The Court's majority responded: "This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage. The Court's precedent thus lends no support for the notion that one House of a bicameral legislature, resting solely on its role in the legislative process, may appeal on its own behalf a judgment invalidating a state enactment."

In [\*Gundy v. United States\*](#) the Supreme Court held 5-3 that the Sex Offender Registration and Notification Act's (SORNA) delegation of authority to the Attorney General to apply SORNA's requirements to pre-Act offenders doesn't violate the constitution's nondelegation doctrine. SORNA states "[t]he Attorney General shall have the authority *to specify the applicability* of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter." In 2007 the Attorney General issued an interim rule stating that SORNA's registration requirements apply in full to pre-Act offenders. Herman Gundy is a pre-Act offender who failed to register after being released from prison. He argued that Congress unconstitutionally delegated legislative power when it authorized the Attorney General to "specify the applicability" of SORNA's registration requirements to pre-Act offenders. Justice Kagan, writing for the plurality, concluded that Congress's delegation of authority to the Attorney General in SORNA is constitutional. She laid out the standard as follows: Article I of the Constitution states that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." Regardless, Congress may "obtain[] the assistance of its coordinate Branches"—and in particular, "may confer substantial discretion on executive agencies to implement and enforce the laws." "So we have held, time and again, that a statutory delegation is constitutional as long as Congress 'lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.'" Gundy claimed that SORNA "grants the Attorney General plenary power to determine SORNA's applicability to pre-Act offenders—to require them to register, or not, as she sees fit, and to change her policy for any reason and at any time." Justice Kagan agreed that if SORNA in fact did this "we would face a nondelegation question." But in a previous case, *Reynolds v. United States* (2012), the Supreme Court held that SORNA applied to pre-Act offenders but only when the Attorney General said it did. This was because "instantaneous registration" of pre-Act offenders "might not prove feasible." So, the Attorney General's role under SORNA was limited: to apply it to pre-Act offenders as soon as he or she thought it feasible to do so. Granting this authority to the Attorney General didn't violate the non-delegation doctrine, Justice Kagan reasoned, because Congress set out an "intelligible principle" to guide the Attorney General's exercise of authority. He or she had to require pre-Act offenders to register as soon as feasible.