

BURNING DOWN THE HOUSE? BEN CARSON AND U.S. HOUSING POLICY

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*“With Ben Carson wanting to hit his mother on head with a hammer, stab a friend and Pyramids built for grain storage—don’t people get it?”
Donald Trump, 2015.¹*

The U.S. Department of Housing and Urban Development (HUD) was established as a Cabinet agency by law in 1965,² shortly after passage of the Housing and Urban Development Act of 1965.³ The aims of the latter act were ambitious, including to “aid in assuring a decent place to live for every citizen” through the provision of “low-rent housing.”⁴ In signing it, President Lyndon Johnson declared that “in years to come, I believe this act will become known as the single most important housing legislation in our history.”⁵

The expanded federal role in housing was not without controversy. It was reported that “[d]uring Congressional debate on the bill, many members said that the rent subsidy program ‘smacked of Socialism.’”⁶ Almost a decade later, these subsidies were transformed by the Housing and Community Development Act of 1974.⁷ That act’s “primary objective” was

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1. Donald Trump (@realDonaldTrump), TWITTER (Nov. 6, 2015, 9:08 AM), <https://twitter.com/realdonaldtrump/status/662632599962173440?lang=en>.

2. Department of Housing and Urban Development Act, Pub. L. No. 89-174, 79 Stat. 667 (1965) (codified as amended at 42 U.S.C. § 3532 (2012)).

3. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451 (1965).

4. *Id.* § 23(a)(1).

5. Robert B. Semple, Jr., *\$7.5 Billion Bill, with a Rent Subsidy Proviso, Signed by Johnson*, N.Y. TIMES, Aug. 11, 1965, at 1.

6. *Id.*

7. See Housing and Community Development Act of 1974, Pub. L. No 93-383, 88 Stat. 633-34 (1974) (codified as amended at 42 U.S.C. § 5301 (2012)).

“the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”⁸ Under the provision we refer to as “Section 8,”⁹ as amended over the years:

The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.¹⁰

Today the “Housing Choice Voucher” (HCV) subsidy “is based on a local ‘payment standard’ that reflects the cost to lease a unit in the local housing market.” Accordingly, “[i]f the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.”¹¹

Federal regulation notes that “[t]he HCV program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.”¹²

As a HUD fact sheet states:

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the

8. *Id.* § 101(c).

9. As an Urban Institute analysis has noted:

The development of these programs has varied since public housing was initiated under the US Housing Act of 1937. During the first phase, extending from 1937 through the 1960s, public housing was the only form available, and almost all of its housing stock was built during that period. During the second phase, from the 1960s to the 1980s, the federal government shifted its emphasis to the privately-owned subsidized approach and more often executed contracts directly with for-profit and nonprofit housing developers, rather than with PHAs. The contracts generally guaranteed subsidies and imposed affordability restrictions for up to 30-year terms. The housing voucher approach began in the 1970s (as Section 8 certificates) and is the only one of the three deep-subsidy programs that has expanded substantially since the 1980s.

G. THOMAS KINGSLEY, TRENDS IN HOUSING PROBLEMS AND FEDERAL HOUSING ASSISTANCE 8 (2017), <https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf>.

10. 42 U.S.C. § 1437f(b)(1) (2012).

11. 24 C.F.R. § 982.1(a)(3) (2015).

12. *Id.* § 982.1(a)(1).

program. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.¹³

And a family must be quite poor to qualify:

In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, a PHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income. Median income levels are published by HUD and vary by location. The PHA serving your community can provide you with the income limits for your area and family size.¹⁴

Those families served are disproportionately headed by women. According to a 2012 report, "three-quarters of households living in public housing and in Project-Based Section 8 housing are female-headed, and over 83% of voucher-holding households are headed by women."¹⁵ As a 2016 report notes: "An obvious reason for the prevalence of female heads of households, especially with children, in affordable housing programs and on affordable housing wait lists is that, according to a National Women's Law Center report, women live in poverty at rates higher than men[.]"¹⁶ A principal reason for that discrepancy is that "occupational segregation still pushes large numbers of women into low-paying domestic, health-care and hospitality jobs."¹⁷

An agency the scale of HUD has not been without scandals, most notably during the tenure of President Ronald Reagan, when sixteen HUD officials working under Secretary Samuel Pierce, Jr., "the only African American to serve in President Ronald Reagan's Cabinet," were convicted of crimes.¹⁸ As the *Washington Post* reported:

13. *Housing Choice Vouchers Fact Sheet*, HUD.GOV, https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Oct. 6, 2019).

14. *Id.*

15. *Who Lives in Federally Assisted Housing?*, HOUSING SPOTLIGHT, Nov. 2012, at 1, 2, <https://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

16. GAIL QUETS ET AL., *A GENDER LENS ON AFFORDABLE HOUSING 7* (2016), https://www.icrw.org/wp-content/uploads/2016/11/gender_lens_on_affordable_housing_by_regender_final-1.pdf.

17. *Id.*

18. J.Y. Smith, *HUD Secretary Samuel Pierce Jr., 78, Dies*, WASH. POST (Nov. 4, 2000), <https://www.washingtonpost.com/archive/local/2000/11/04/hud-secretary-samuel-pierce-jr-78-dies/c145b4ef-26da-4165-aefe-fb797d1c1f56/?noredirect=E2%80%A6> (poignantly, "Mr. Pierce's service at HUD began with an unintended slight from Reagan. At a reception for municipal leaders in 1981, the president failed to recognize him and greeted him as 'Mr. Mayor.'). Alphonso Jackson, HUD secretary under President George W. Bush, resigned under pressure amidst investigations but was never charged with a crime. See Charlie Savage, *No Charges for Ex-Head of Housing Under Bush*, N.Y. TIMES, May 3, 2010, at A17. Among other things, Jackson had "attracted attention after he said at a public forum in Dallas in 2006 that he had canceled a

The scandal arose in 1989 after an internal HUD audit of a program designed to provide rent subsidies to developers to improve housing for the poor. A congressional committee took up the matter and in 1990 issued a report alleging that millions of dollars had been distributed to Republican consultants at a time when funding for the program was being cut from \$26 billion to \$8 billion. As secretary, Mr. Pierce agreed to the spending reductions.¹⁹

Pierce's executive assistant, Deborah Gore Dean, was convicted "of 12 felony counts of defrauding the Government, taking a bribe and lying to Congress."²⁰ She "asserted that all of the improper transactions had been approved by her boss"—Secretary Pierce.²¹ It was reported that "Mr. Pierce had left the routine supervision of the agency's enormous bureaucracy as well as multibillion-dollar grant programs to Ms. Dean and her associates."²²

The wrongdoing that occurred under Secretary Pierce may, however, be exceeded by the damage caused by Secretary Ben Carson. In running against Donald Trump for the 2016 Republican presidential nomination, Carson, a celebrated neurosurgeon,²³ had been bitterly attacked by the eventual victor in Trump's inimitable syntax:

"And I don't want a person that's got pathological disease, I don't want it. Now, I'm not saying he's got it. He said it," he clarified. "This isn't something I'm saying—he's a pathological liar, I'm not saying it. He said he's got pathological disease. He actually said 'pathological temper,' and then he defined it as 'disease,' so he said he has 'pathological disease.' Now if you're pathological, there's no cure for that, folks. OK? There's no cure for that."²⁴

government contract to a business run by a man who said he disliked President George W. Bush. Mr. Jackson later claimed that he had made that story up." *Id.*

19. Smith, *supra* note 18.

20. Stephen Labaton, *Ex-Official Is Convicted in HUD Scandal of 80's*, N.Y. TIMES, Oct. 27, 1993, at A14.

21. *Id.*

22. *Id.*

23. See Ben Terris & Stephanie Kirchner, *The Story of the Surgery that Made Ben Carson Famous—and its Complicated Aftermath*, WASH. POST (Nov. 13, 2015), https://www.washingtonpost.com/lifestyle/style/the-story-of-the-surgery-that-made-ben-carson-famous--and-its-complicated-aftermath/2015/11/13/15b5f900-88c1-11e5-be39-0034bb576eee_story.html (noting Carson was "known for announcing at debates that among the field of rivals he's 'the only one to separate Siamese twins.'").

24. Nick Gass, *Trump Lays into Carson in 9-Minute Rant: 'How Stupid are the People of Iowa?'*, POLITICO (Nov. 13, 2015, 6:35 AM), <https://www.politico.com/story/2015/11/trump-slams-ben-carson-iowa-215819>; see also Jenna Johnson, *Donald Trump Begs Iowans Not to Believe Ben Carson: 'Don't Be Fools, Okay?'*, WASH. POST (Nov. 13, 2015, 2:42 AM), <https://www.washingtonpost.com/news/post-politics/wp/2015/11/13/donald-trump-begs-iowans-not-to-believe-ben-carson-dont-be-fools-okay/> ("As Trump attacked Carson using deeply personal language, the

“Trump went on to compare Carson to a child molester.”²⁵ Like Pierce, Carson is the only African-American in the Trump Administration Cabinet, which is the “the whitest, most male-dominated group since Ronald Reagan’s.”²⁶ He was confirmed by the Senate 58-41 in what the *New York Times* described as “a rare show of bipartisanship. Unlike many other cabinet members chosen by President Trump, Mr. Carson, who has no experience running a large federal bureaucracy, did not face much pushback from Democrats during his confirmation process.”²⁷

No less a liberal than Senator Elizabeth Warren (D., Mass.) had even voted to advance Carson’s nomination from the Senate Banking, Housing and Urban Affairs Committee.²⁸ Indeed, Carson won a unanimous committee vote: “[t]he panel’s top Democrat, Sen. Sherrod Brown of Ohio, said he was supporting the retired neurosurgeon because of his commitments to address lead hazards, uphold fair housing laws and advocate for rental assistance.”²⁹

Within thirteen months of praising Carson, who she ended up voting against on the Senate floor amidst intense liberal backlash, Sen. Warren would be calling for his firing.³⁰ Focusing on HUD’s vital mission of securing housing for the poor, and examining Carson’s record as HUD secretary into the summer of 2019, this article argues that any confidence in Carson was misplaced, and the lives of vulnerable people are at risk during Carson’s tenure.

audience grew quiet, a few shaking their heads. A man sitting in the back of the auditorium loudly gasped.”).

25. Johnson, *supra* note 24.

26. Emily Stewart, *Trump Has so Few Black Senior Advisers, Kellyanne Conway Struggles to Name One*, VOX (Aug. 12, 2018, 2:00 PM), <https://www.vox.com/policy-and-politics/2018/8/12/17681156/kellyanne-conway-omarosa-trump-black-adviser>.

27. Yamiche Alcindor, *Ben Carson Is Confirmed as HUD Secretary*, N.Y. TIMES, Mar. 3, 2017, at A17.

28. Elana Schor, *Warren Defends Her Vote for Carson Amid Liberal Ire*, POLITICO (Jan. 25, 2017, 6:15 PM), <https://www.politico.com/story/2017/01/elizabeth-warren-ben-carson-234185>.

29. Zachary Warmbrodt, *Banking Committee Approves Ben Carson Nomination*, POLITICO (Jan. 24, 2017, 10:52 AM), <https://www.politico.com/story/2017/01/ben-carson-hud-senate-banking-committee-approves-234103>. This may be challenging to explain in a Democratic presidential bid. See Daniel Strauss, *Brown Seeks Obama Meeting as He Considers Presidential Run*, POLITICO (Dec. 26, 2018, 5:19 AM), <https://www.politico.com/story/2018/12/26/sherrod-brown-obama-2020-ohio-1068723> (“Sen. Sherrod Brown hasn’t decided whether he’s running for president—but he’s checking off a lot of the boxes that come along the way.”).

30. Rebecca Shapiro, *Elizabeth Warren Tells Ben Carson to His Face: You Should Be Fired*, HUFFPOST (Mar. 22, 2018, 10:48 PM), https://www.huffpost.com/entry/elizabeth-warren-tells-ben-carson-to-his-face-you-should-be-fired_n_5ab451e9e4b008c9e5f5c427.

SECRETARY CARSON'S DEPARTMENT

ProPublica has described HUD as “something of an overlooked stepchild within the federal government. Founded in 1965 in a burst of Great Society resolve to confront the ‘urban crisis,’ it has seen its manpower slide by more than half since the Reagan Revolution.”³¹ Yet, as *ProPublica* notes, the agency’s mission is vast:

HUD still serves a function that millions of low-income Americans depend on—it funds 3,300 public-housing authorities with 1.2 million units and also the Section 8 rental-voucher program, which serves more than 2 million families; it has subsidized tens of millions of mortgages via the Federal Housing Administration; and, through various block grants, it funds an array of community uplift initiatives. It is the Ur-government agency, quietly seeking to address social problems in struggling areas that the private sector can’t or won’t solve, a mission that has become especially pressing amid a growing housing affordability crisis in many major cities.³²

Carson was an unlikely person to assume the responsibility of running this agency, and not just because he lacked any administrative experience. Known for his outrageous remarks, he had once excused a video that showed him calling people “stupid” by blaming the same era that gave rise to HUD itself:

Asked to explain his remarks . . . Carson said he was referring to Americans “who take the disadvantaged people in our country and say, ‘You poor little thing, I’m going to give you everything that you possibly need.’”

“That’s not helping those people, and all that you have to do is look what’s happened since the Great Society programs of Lyndon Johnson. We’ve spent \$19 trillion and we have 10 times more people on food stamps, more people in poverty, more broken homes, out of wedlock births, crime, incarceration.”³³

Carson’s tenure started inauspiciously when, in addressing HUD employees, he referred to slaves as immigrants.³⁴ Two months later Carson

31. Alec MacGillis, *Is Anybody Home at HUD?*, PROPUBLICA (Aug. 22, 2017, 8:00 AM), <https://www.propublica.org/article/is-anybody-home-at-hud-secretary-ben-carson>.

32. *Id.*

33. Nick Gass, *Ben Carson’s 15 Most Controversial Quotes*, POLITICO (Nov. 6, 2015, 10:53 AM), <https://www.politico.com/story/2015/10/ben-carson-controversial-quotes-214614>.

34. Liam Stack, *Online Uproar After Housing Secretary Refers to Slaves as ‘Immigrants’ in a Speech*, N.Y. TIMES, Mar. 7, 2017, at A13 (“The remark, which came as part of a 40-minute address on the theme of America as ‘a land of dreams and opportunity,’ was met with swift outrage online.”). This should not have been surprising. Carson’s history of downplaying slavery had included “repeated comparisons of Obamacare to the enslavement of blacks in the South[.]” Evan

was arguing that public housing should not be “comfortable” lest it “would make somebody want to say: ‘I’ll just stay here. They will take care of me.’”³⁵

At the agency, Carson was reportedly invisible: “Carson himself was barely to be seen—he never made the walk-through of the building customary of past new secretaries.”³⁶ Yet:

[T]here was the mystery of why Carson’s family was taking such a visible role in the department. There was the omnipresent Mrs. Carson. Even more striking, however, had been the active role of the secretary’s second-oldest son. Ben Carson Jr., who goes by B.J. and co-founded an investment firm in Columbia, Maryland, that specializes in infrastructure, health care and workforce development, was showing up on email chains within the department and appearing often at headquarters. One day, he was seen leaving the 10th-floor office of David Eagles, the new COO, who was crafting a HUD reorganization to accompany the cuts.³⁷

In December 2017, Carson made news for leading prayer at a Cabinet meeting, asking God to bless President Trump’s tax cuts: “Carson also used spiritual terms to reinforce the Trump administration’s claim that the tax cuts will pay for themselves, thanking God for economic expansion ‘so we can fight the corrosive debt that has been destroying our future.’”³⁸

Gahr, *Really, Dr. Carson? Obamacare Is Worse than 9/11?*, DAILY BEAST (July 12, 2017, 4:42 PM), <https://www.thedailybeast.com/really-dr-carson-obamacare-is-worse-than-911>.

35. Yamiche Alcindor, *Housing Secretary, On a Tour, Says Compassion Is Not About Comfort*, N.Y. TIMES, May 4, 2017, at A15. Carson was not the first HUD secretary to make such an assertion. Alphonso Jackson, HUD secretary for President George W. Bush, also made unfortunate pronouncements: “In 2004, less than two months after his confirmation as housing secretary, Mr. Jackson told a House panel that he believed poverty ‘is a state of mind, not a condition.’” *HUD Secretary Plans to Resign, Report Says*, N.Y. TIMES, Mar. 31, 2008, at A13. Jackson was also African-American. A more exemplary HUD secretary was Patricia Roberts Harris, the first African-American Cabinet member (for President Jimmy Carter). See Juan Williams, *Patricia R. Harris Dies at 60*, WASH. POST (Mar. 24, 1985), <https://www.washingtonpost.com/archive/politics/1985/03/24/patricia-r-harris-dies-at-60/fc328a6a-5758-4713-8747-95f75069fbc5/>. As the *Washington Post* reported:

Appearing before the Senate Banking Committee, she was pressed by Sen. William Proxmire (D-Wis.) as to whether she had empathy for the poor.

“Senator I am one of them,” she replied. “You do not seem to understand who I am. I am a black woman, the daughter of a dining car worker. I am a black woman who could not buy a house eight years ago in parts of the District of Columbia If you think I have forgotten that, you are dead wrong.”

Id.

36. MacGillis, *supra* note 31.

37. *Id.*

38. Christina Wilkie, *Ben Carson Leads Prayer for Tax Cuts at Trump Cabinet Meeting*, CNBC (Dec. 20, 2017, 2:11 PM), <https://www.cnbc.com/2017/12/20/ben-carson-leads-prayer-for-tax-cuts-at-trump-cabinet-meeting.html>.

A February 2018 *Washington Post* article was entitled “Ben Carson, or the Tale of the Disappearing Cabinet Secretary.”³⁹ It was reported of Carson’s wife, Candy, and his family, that

“[A]t one point, Candy seemed to be coming in every day,” said a former HUD employee. “There’s this glass door on the 10th floor, where the secretary’s office is. It used to be they would keep it open, but they started keeping it closed. The family would go in and then freeze everyone else out.”⁴⁰

Matters seemed to go too far, finally, when “[i]n one case, Carson’s son invited an administrator of the Centers for Medicare and Medicaid Services to an event in Baltimore; three months later CMS awarded a \$485,000 contract to his wife’s company.”⁴¹ Carson was forced to order an internal investigation.⁴² And Carson would be forced by public outrage to cancel an order for a \$31,000 dining set that he appeared to blame his wife for.⁴³

It is sad that *this* episode was the tipping point for some Democrats: “One senator, Sherrod Brown of Ohio, suggested that he regretted being one of the few Democrats to support the secretary’s nomination a year ago.”⁴⁴ After all, Carson’s dereliction of duties involved matters much more consequential than furniture.⁴⁵ In the same Senate hearing in which he finally expressed contrition for the furniture order, “Mr. Carson continued to show

39. Ben Terris, *Ben Carson, or the Tale of the Disappearing Cabinet Secretary*, WASH. POST (Feb. 6, 2018, 4:00 AM), https://www.washingtonpost.com/lifestyle/style/ben-carson-or-the-tale-of-the-disappearing-cabinet-secretary/2018/02/05/74c46de8-04ff-11e8-b48c-b07fea957bd5_story.html.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Ben Carson’s Explanation for the \$31,000 Dining Set*, CNN (Mar. 1, 2018, 1:09 PM), <https://www.cnn.com/2018/03/01/politics/ben-carson-furniture-statement/index.html>. However, it was clear Carson himself was involved. See Rene Marsh & Gregory Wallace, *First on CNN: Emails Show Ben, Candy Carson Selected \$31,000 Dining Set*, CNN (Mar. 14, 2018, 9:15 PM), <https://www.cnn.com/2018/03/14/politics/emails-ben-candy-carson-dining-set/index.html> (“Revelations of the inconsistencies come just weeks after Secretary Carson used a biblical reference -- Psalms 91 -- in his defense: ‘Under his wings you will find refuge.’”).

44. Glenn Thrush, *Carson Backs Down on Purchase of Furniture*, N.Y. TIMES, Mar. 23, 2018, at A22.

45. Though a ticking time bomb for Carson in the whole affair may be the allegation he retaliated against a whistleblower. See Jack Gillum & Juliet Eilperin, *HUD Staffer Who Complained About Carson’s Redecorating Resigns Under Protest*, WASH. POST (June 27, 2018, 11:09 AM), https://www.washingtonpost.com/politics/hud-staffer-who-complained-about-carsons-redecorating-resigns-under-protest/2018/06/27/c586e572-7a1f-11e8-aeec-4d04c8ac6158_story.html (“Helen Foster, in a sharply worded letter to Carson and HUD Deputy Secretary Pam Patenaude, said she was demoted as chief administrative officer and called a liar by the secretary on social media after criticizing his redecorating expenses and saying that more than \$10 million in taxpayer funds had been ‘grossly mismanaged.’”).

support for Mr. Trump's 2019 budget request, which included a \$6 billion cut to HUD, hours after Senate and House negotiators bypassed the White House to allocate big increases to his agency's budget."⁴⁶

And Carson takes a dim view of government efforts toward racial equality. As the *Post* reported—in the context of Carson's decision to “delay a measure to strengthen a civil-rights-era requirement for local governments to take active steps to undo racial segregation”—“‘Racism is like pornography,’ Carson told about 20 HUD employees at a Kentucky field office, leaning on a lectern with a smirk curling his neatly trimmed mustache. ‘You know it when you see it.’”⁴⁷

In March 2018, a leak revealed that HUD was even “considering removing the words ‘free from discrimination’ from its mission statement.”⁴⁸ Instead, it would put “an emphasis on ‘self-sufficiency,’ a mantra that HUD Secretary Ben Carson has been touting in public appearances.”⁴⁹

In April 2018, Carson was pushing to increase rent for public housing tenants, and to impose work requirements upon them.⁵⁰ As one article reported: “In some cases, rental payments for some of the neediest families would triple, rising from a minimum of \$50 per month to a minimum of \$150, according to HUD officials. Some 712,000 households would see their rents jump to \$150 per month under the proposal, the officials said.”⁵¹ In a *Washington Times* column, Carson disparaged the poor receiving government benefits: “Today, a record 28 million able-bodied adults receive Medicaid, a 400 percent increase since 2000. More than 43 percent of all households receiving federal housing assistance are headed by an able-

46. Thrush, *supra* note 44. One writer described the Trump budget proposal as “the most radical attack on federal housing aid since the U.S. Housing Act became law in 1937.” George Zornick, *How Trump Plans to Evict Poor Families From Public Housing*, NATION (Feb. 16, 2018), <https://www.thenation.com/article/how-trump-plans-to-evict-poor-families-from-public-housing/>. As he wrote:

Taken together, this appears to be an aggressive push to force people out of public housing, either by foisting difficult employment and rent demands on residents, making living conditions unbearable, or canceling vouchers outright—all while this same population would face reduced food-stamp and health-care benefits thanks to Trump's proposed drastic cuts to SNAP and the Medicaid program.

Id.

47. Terris, *supra* note 39.

48. Tracy Jan, *Ben Carson's Mission Statement for HUD May No Longer Include Anti-Discrimination Language*, WASH. POST (Mar. 7, 2018, 11:42 AM), <https://www.washingtonpost.com/news/wonk/wp/2018/03/07/ben-carsons-mission-statement-for-hud-may-no-longer-include-anti-discrimination-language/>.

49. *Id.*

50. Braktkon Booker, *HUD Unveils Plan to Increase Rent on Millions Receiving Federal Housing Assistance*, NPR (Apr. 25, 2018, 10:43 PM), <https://www.npr.org/2018/04/25/605900171/hud-unveils-plan-to-increase-rent-on-millions-receiving-federal-housing-assistan>.

51. *Id.*

bodied adult. And in 2016, more than 16 million able-bodied adults received food stamps.”⁵²

Those condemning Carson’s proposed changes to housing policy included U.S. Rep. Cedric Richmond (D., La.), the chair of the Congressional Black Caucus:

“Secretary Carson’s immoral, ill-advised proposal is the latest example of the Trump administration’s war on poor people,” Richmond said in a statement.

“Thankfully this proposal would require Congressional approval before it can become law, and the Congressional Black Caucus will work with our colleagues in Congress to oppose it and other related measures,” he said.⁵³

The Center on Budget and Policy Priorities was similarly critical:

The Trump plan doesn’t seem to advance any coherent policy goal. For example, HUD says that it aims to encourage work, but key aspects of the plan would if anything discourage work, such as raising household rents to 35 percent of income (which would hike rents more sharply as earnings rise) and eliminating the childcare deduction. And there’s no evidence that raising minimum rents on destitute families will lead them to earn more.⁵⁴

According to the Center, most of those receiving housing assistance *do* work yet

[M]any of those harmed would be people who already work . . . Low-wage jobs often have unpredictable hours, ranging from 40 hours in some weeks to just a fraction of that amount in others. As a result, workers who are doing their best to earn a living could lose rental assistance because their employers don’t give them enough hours to meet the requirement.⁵⁵

52. Ben Carson, Opinion, *Unlocking America’s Full Potential*, WASH. TIMES (Apr. 22, 2018), <https://www.washingtontimes.com/news/2018/apr/22/unlocking-americas-full-potential-requires-a-reform/>.

53. Booker, *supra* note 50.

54. Will Fischer, *Trump Plan Would Raise Rents on Working Families, Elderly, People with Disabilities*, CTR. ON BUDGET & POL’Y PRIORITIES (Apr. 27, 2018, 10:00 AM), <https://www.cbpp.org/blog/trump-plan-would-raise-rents-on-working-families-elderly-people-with-disabilities>.

55. Will Fischer, *Trump Plan to Condition Rental Assistance on Work Will Hurt Families, Not Support Work*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 7, 2018, 5:15 PM), <https://www.cbpp.org/blog/trump-plan-to-condition-rental-assistance-on-work-will-hurt-families-not-support-work>. Demonizing those in government-subsidized housing as lazy also ignores the fact that 53% of those in public housing, and Section 8 housing, are either children or senior citizens. See NAT’L CTR FOR HEALTH IN PUB. HOUSING, DEMOGRAPHIC FACTS: RESIDENTS LIVING IN PUBLIC HOUSING (2016), <https://nchph.org/wp-content/uploads/2016/07/Demographics-Fact-Sheet-2016-1.pdf>.

In August 2018, HUD announced it was seeking comments on replacing a 2015 “*Affirmatively Furthering Fair Housing*” regulation Carson had suspended—according to HUD:

The stated purpose of that regulation was to provide HUD program participants with a revised planning approach to assist them in meeting their legal obligation to affirmatively further fair housing. Since then, HUD found that in contrast to its stated goals, the AFFH rule proved ineffective, highly prescriptive, and effectively discouraged the production of affordable housing.⁵⁶

The proposed rulemaking asserts that “[t]he highly prescriptive regulations give participants inadequate autonomy in developing fair housing goals as suggested by principles of federalism.”⁵⁷ Yet, as one commentator, Jake Blumgart, had written: “The Affirmatively Furthering Fair Housing (or AFFH) rule, promulgated by President Barack Obama’s Department of Housing and Urban Development in 2015, marked the first forward momentum for the Fair Housing Act in decades.”⁵⁸ As he noted, “[t]he rule required jurisdictions that receive federal housing funding to not only document barriers to integration and opportunity, but to detail—and prioritize—policies to eradicate them.”⁵⁹

Presidential candidate Carson had weighed in against the rule as far back as 2015 in his favorite venue, the *Washington Times*:

Remember busing, that brilliant social experiment that was to usher in a new era of racial utopia in America? Undaunted by the failed socialist experiments of the 1980s, the Obama administration has recently implemented a new Department of Housing and Urban Development (HUD) rule designed to “desegregate” housing by withholding funds from communities that fail to demonstrate their projects “affirmatively further” fair housing.⁶⁰

Carson had complained that the Obama Administration rule would require that “affordable housing be built primarily in wealthier neighborhoods with few current minority residents and that the new housing

56. Press Release, U.S. Dep’t of Housing & Urb. Dev., HUD Seeks to Streamline and Enhance ‘Affirmatively Furthering Fair Housing’ Rule (Aug. 13, 2018), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_079.

57. Affirmatively Furthering Fair Housing: Streamlining and Enhancements, 83 Fed. Reg. 40713 (proposed Aug. 16, 2018) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, 903).

58. Jake Blumgart, *Fair Housing Still Has a Chance Under Trump*, SLATE (Mar. 14, 2017, 9:00 AM), <https://slate.com/business/2017/03/the-affirmatively-furthering-fair-housing-rule-is-still-working-under-trump.html>.

59. *Id.*

60. Ben Carson, Opinion, *Experimenting with Failed Socialism Again*, WASH. TIMES (July 23, 2015), <https://www.washingtontimes.com/news/2015/jul/23/ben-carson-obamas-housing-rules-try-to-accomplish/>.

it unreasonable, a half-century later, to expect this law to be meaningfully enforced by HUD? Presumably Carson knows that Donald Trump himself, and his late father, were famously sued by the Nixon Administration's Justice Department, for violating the Fair Housing Act.⁶⁶ Trump's own agenda on equality is clear. It was reported in January 2019 that his administration was considering rescinding *all* federal disparate impact regulations—which would have implications specifically for HUD, but also far beyond HUD alone.⁶⁷

One can hope Blumgart is right, and some jurisdictions will move forward to combat housing discrimination even with HUD derelict in its duties. In Philadelphia in 2018—after proposed mandatory inclusionary zoning “was defeated by developer groups”—bonuses were created for voluntary inclusionary zoning:

Two kinds of bonuses were created. In neighborhood commercial corridors and multi-family row house areas, developers can get height and density bonuses and would pay \$20-to-\$24 per additional square foot or \$25,000-\$30,000 per new unit allowed. In higher density categories often found downtown, developers get greater floor area in exchange for \$25-\$30 per extra square foot allowed by the bonus.⁶⁸

Such innovation may keep the dream of inclusionary zoning alive. Too often, as one writer notes, “Section 8” has become, for some, a racial slur, even though “[b]lacks don’t in fact make up a majority of residents

their basic rights of private property,’ according to the University of Minnesota Law Library account.” *Id.*

66. See *Decades-Old Housing Discrimination Case Plagues Donald Trump*, NPR (Sept. 29, 2016, 10:22 PM), <https://www.npr.org/2016/09/29/495955920/donald-trump-plagued-by-decades-old-housing-discrimination-case> (“*Washington Post* reporter Michael Kranish, co-author of the book, *Trump Revealed*, tells NPR’s Robert Siegel that the Justice Department considered the case ‘one of the most significant race bias cases’ at the time.”); see also Michael Kranish & Robert O’Harrow Jr., *Inside the Government’s Racial Bias Case Against Donald Trump’s Company, and How He Fought It*, WASH. POST (Jan. 23, 2016), https://www.washingtonpost.com/politics/inside-the-governments-racial-bias-case-against-donald-trumps-company-and-how-he-fought-it/2016/01/23/fb90163e-bf8e-11e5-bcda-62a36b394160_story.html (“Trump employees had secretly marked the applications of minorities with codes, such as ‘No. 9’ and ‘C’ for ‘colored,’ according to government interview accounts filed in federal court.”).

67. Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-Discrimination Rules*, WASH. POST (Jan. 3, 2019, 4:00 AM), https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html (“Disparate impact was written into the original regulations that implemented Title VI of the 1964 Civil Rights Act, which bars discrimination based on race, color or national origin by entities, including schools, that receive federal funding.”).

68. Jake Blumgart, *Spoiler Alert: Philly City Council’s Season of Housing and Development Reform, Recapped*, PLANPHILLY (Dec. 20, 2018), <http://planphilly.com/articles/2018/12/20/spoiler-alert-philly-city-council-s-season-of-housing-and-development-reform-recapped>.

receiving housing assistance nationwide today (the number is closer to about 44 percent).⁶⁹ An Urban Institute researcher

[R]outinely heard residents in communities that had never contained public housing blame changes in their neighborhoods on *those Section 8 people*. At a time when industrial jobs were disappearing, cities were rapidly losing population and public resources were drying up as a result, people kept saying, “[i]t must be the Section 8 program.” Even in neighborhoods where few voucher holders ever moved in.⁷⁰

Other researchers note that “[r]esearch on attitudes people have about subsidized housing (and those living in such housing) indicates that they are most often not based on any reliable evidence, nor on the realities of subsidized housing today, but rather on stereotypes derived from past experiences with ‘project-based’ housing.”⁷¹

As a law professor, Norrinda Brown Hyatt, writes:

Overtly racist conduct designed to intimidate black newcomers in historically all-white suburbs became illegal with the passage of the Fair Housing Act (FHA). In its place, facially neutral terms and policies have come into use, including “Section 8,” to serve the same purpose. Simply put, Section 8 is the new n-word.⁷²

Yet, as Hyatt notes, “[b]arriers to mobility in housing for African-Americans, including relocation to all-white suburbs when desired, need to be eradicated if the wealth, education, and opportunity gaps plaguing America’s lower class are to close at all.”⁷³

69. Emily Badger, *How Section 8 Became a ‘Racial Slur’*, WASH. POST (June 15, 2015, 4:53 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/06/15/how-section-8-became-a-racial-slur/>.

70. *Id.*

71. J. Rosie Tighe et al., *Source of Income Discrimination and Fair Housing Policy*, SAGE JOURNALS (2016) (citations omitted), <https://journals.sagepub.com/doi/full/10.1177/0885412216670603>, reprinted in 32(1) J. PLAN. LITERATURE, 3, 3, 6 (2017). And that project-based housing has been neglected by Democrats and Republicans alike. In New York City, it was reported in February 2018 that “conditions that left hundreds of thousands of New York City Housing Authority residents without heat and hot water during a record cold snap, as ancient boilers struggled to keep up with falling temperatures, were decades in the making.” Jeffery C. Mays, *The Latest Mayor-Governor Spat Is Over Fixing Public Housing Boilers*, N.Y. TIMES, Feb. 17, 2018, at A21. This prompted “a familiar game of political football featuring Gov. Andrew M. Cuomo and Mayor Bill de Blasio”—both Democrats. *Id.* Yet, for those suffering, resolution of these issues is no “game.”

72. Norrinda Brown Hyatt, *Section 8 Is the New N-Word: Policing Integration in the Age of Black Mobility*, 51 WASH. U. J.L. & POL’Y 61, 64 (2016).

73. *Id.* at 90. One writer notes that “many states seem especially determined to keep voucher-holders in areas of concentrated poverty.” Alana Semuels, *How Housing Policy Is Failing America’s Poor*, ATLANTIC (June 24, 2015), <https://www.theatlantic.com/business/archive/2015/06/section-8-is-failing/396650/>.

At the heart of the bias against those in subsidized housing, or dependent upon other government assistance, seems to be the myth of the “welfare queen” first conjured by President Reagan: “Conservatives refuse to give up their quest to bring down this lazy, scheming, African-American woman who uses her food stamps and other government aid to support a lavish lifestyle with countless jobless men who drift in and out of her bed.”⁷⁴

Indeed, racial bias goes well beyond *subsidized* housing. One national study in 2018 found that “black renters can expect to pay one percent more than white renters if they move into an area that is 25 to 35 percent white[.]”⁷⁵ And “[t]hat increases to just over 2.5 percent more if a neighborhood is 40 to 45 percent white—and 3.5 percent more if the area is 65 to 70 percent white.”⁷⁶

And yet it is entirely possible that a more conservative U.S. Supreme Court may strike down the Fair Housing Act.⁷⁷ As one author noted, “[i]t’s . . . become a battleground for one of the most powerful tools used to fight discrimination of any kind. That tool is called the ‘disparate impact standard,’ and many legal scholars expect the court’s conservative bloc to abolish it.”⁷⁸

Moreover, Carson has been indifferent to discrimination that is not race-based. For example, he does not believe transgender people should have access to homeless shelters, stating that “[t]here are some women who said they were not comfortable with the idea of being in a shelter, being in a shower, and somebody who had a very different anatomy.”⁷⁹ More crudely,

74. Dahleen Glanton, *The Myth of the ‘Welfare Queen’ Endures, and Children Pay the Price*, CHI. TRIB. (May 17, 2018, 5:00 AM), <https://www.chicagotribune.com/columns/dahleen-glanton/ct-met-dahleen-glanton-welfare-queen-20180516-story.html>.

75. Josh Magness, *Black Renters Pay More in a White Neighborhood, Study Finds. But Just How Much More?*, MIAMI HERALD (Sept. 17, 2018, 11:30 AM), <https://www.miamiherald.com/news/nation-world/national/article218530145.html>.

76. *Id.*

77. See John Blake, *A New Supreme Court Is Poised to Take a Chunk Out of MLK’s Legacy*, CNN (Jan. 21, 2019, 3:48 AM), <https://www.cnn.com/2019/01/20/us/mlk-legacy-supreme-court/index.html>.

78. *Id.* As the author points out: “Justice Anthony Kennedy was the only conservative who voted to preserve the standard during a crucial housing case in 2015. He said the courts shouldn’t just pay attention to intentional racism. In his decision upholding the standard, he alluded to the damage done by ‘unconscious prejudices and disguised animus.’” *Id.* Kennedy has now retired. *Id.*

79. Jennifer Hansler, *Carson Defends Delay in LGBT Homeless Protections*, CNN (Mar. 20, 2018, 3:50 PM), <https://www.cnn.com/2018/03/20/politics/ben-carson-lgbt-homeless-rights/index.html>. At a 2016 conservative gathering, Carson had warned that “mass killings” could result from the legalization of gay marriage. See Will Schmitt, *Ben Carson Warns Conservatives of ‘Mass Killings Once Again’ Without Resistance to Government*, SPRINGFIELD NEWS-LEADER (Oct. 7, 2016, 4:53 PM), <https://www.news-leader.com/story/news/politics/2016/10/07/ben-carson-warns-conservatives-mass-killings-once-again-without-resistance-government/91732194/>. Yet, in his

he once “visibly shocked” agency staff during an internal HUD meeting by expressing “concern about ‘big, hairy men’ trying to infiltrate women’s homeless shelters[.]”⁸⁰

In September 2018, new evidence was reported concerning Carson’s mismanagement. As the *Washington Post* reported, “[t]he U.S. Department of Housing and Urban Development awarded promotions and pay increases to five political operatives with no housing policy experience within their first months on the job, demonstrating what government watchdogs and career staff describe as a premium put on loyalty over expertise.”⁸¹ Each had worked on the Carson or Trump presidential campaigns, and three did not even have bachelor’s degrees.⁸² The *Post* found that of “24 Trump administration HUD appointees without housing policy experience on their résumés or LinkedIn profiles, 16 listed work on either Carson’s or Trump’s presidential campaigns—or had personal connections to their families.”⁸³ One “senior advisor” with a “\$131,767-a-year role” had “promoted a conspiracy theory on Twitter that Hillary Clinton’s campaign chairman had taken part in a satanic ritual”—but had no housing background.⁸⁴ Arguably, Carson’s HUD has become the “swamp” President Trump so famously promised to “drain.”⁸⁵

In December 2018, Carson’s top deputy resigned—it was reported that “[s]ome said she and not HUD Secretary Ben Carson ‘ran the agency.’”⁸⁶ In

confirmation process, “Carson also committed to ensuring LGBT Americans enjoy equal rights when it comes to HUD programs when pressed on his past controversial statements about that group.” Jeremy Diamond, *Ben Carson Sits for Hearing Amid Questions About Qualifications*, CNN (Jan. 12, 2017, 3:56 PM), <https://www.cnn.com/2017/01/12/politics/ben-carson-hud-confirmation-hearing/index.html>.

80. Tracy Jan & Jeff Stein, *HUD Secretary Ben Carson Makes Dismissive Comments About Transgender People, Angering Agency Staff*, WASH. POST (Sept. 19, 2019, 4:11 PM), <https://www.washingtonpost.com/business/2019/09/19/hud-secretary-ben-carson-makes-dismissive-comments-about-transgender-people-angering-agency-staff/>.

81. Tracy Jan, *Ben Carson’s HUD: Political Loyalty Required, No Experience Necessary*, WASH. POST (Sept. 20, 2018, 7:42 AM), https://www.washingtonpost.com/business/economy/ben-carsons-hud-political-loyalty-required-no-experience-necessary/2018/09/20/addb8e74-9b0c-11e8-b60b-1c897f17e185_story.html.

82. *Id.*

83. *Id.*

84. *Id.*

85. See, e.g., Brett Samuels, *Trump: ‘It May Not Look Like It, But We Are Draining the Swamp,’* THE HILL (Apr. 12, 2018, 2:19 PM), <https://thehill.com/homenews/administration/382883-trump-it-may-not-look-like-it-but-we-are-draining-the-swamp>.

86. Laura Strickler et al., *Pam Patenaude Resigns From HUD, Top Deputy to Ben Carson*, NBC NEWS (Dec. 17, 2018, 2:50 PM), <https://www.nbcnews.com/politics/politics-news/pam-patenaude-resigns-hud-top-deputy-ben-carson-n948781>; see also Tracy Jan et al., *After Butting Heads with Trump Administration, Top HUD Official Departs Agency*, WASH. POST (Jan. 16, 2019), <https://www.washingtonpost.com/business/economy/top-hud-officials-departure-follows->

further evidence of his incompetence, when the government shut down due to President Trump's demands for a border wall,

[T]he Department of Housing and Urban Development sent letters to 1,500 landlords . . . as part of a last-minute effort to prevent the eviction of thousands of tenants. A lot of those tenants live in units covered by a HUD program that *many agency officials didn't realize had expired* on Jan. 1 and that they are now unable to renew.⁸⁷

Didn't realize?

As one January 2019 article reported:

Ramona Wormley-Mitsis got welcome news in December: After years of waiting, the federal government had approved a subsidy that allowed her to rent a three-bedroom house, bracketed by a white picket fence to keep her two autistic sons from bolting into traffic.

A few days later, the dream was deferred. The Department of Housing and Urban Development—one of the federal agencies hit hardest by the shutdown—would not be able to pay her new landlord until the government reopened.⁸⁸

Another January 2019 article noted that “HUD officials, speaking in an interview on the condition of anonymity, acknowledged that staff should have had the contracts teed up before the shutdown. Carson himself has largely remained silent on the impact of the shutdown, now in its fifth week.”⁸⁹ That article reported that

[I]n Largo, Fla., Jessica McBride, a single mother with a HUD housing voucher worth \$775 a month, said her landlord would not renew her lease because the property no longer accepts Section 8 vouchers because of the shutdown. The landlord gave her until the end of January to move out.⁹⁰

disagreements-over-housing-policy-and-puerto-rico-disaster-funds/2019/01/16/e6ba5be4-1839-11e9-9ebf-c5fed1b7a081_story.html (“Deputy Secretary Pam Patenaude, second-in-command at the agency helmed by Ben Carson and widely regarded as HUD’s most capable political leader, is said to have grown frustrated by what a former HUD employee described as a ‘Sisyphean undertaking.’”).

87. Robert Costa et al., *As Shutdown Drags on, Trump Officials Make New Offer, Seek Novel Ways to Cope with Its Impacts*, WASH. POST (Jan. 6, 2019, 5:28 PM) (emphasis added), https://www.washingtonpost.com/national/health-science/as-shutdown-drags-on-trump-officials-look-for-novel-ways-to-cope-with-its-impacts/2019/01/06/96c54a50-11ee-11e9-90a8-136fa44b80ba_story.html.

88. Glenn Thrush, *Shutdown Nudges Vulnerable Closer to the Edge*, N.Y. TIMES, Jan. 22, 2019, at A1.

89. Tracy Jan, *‘It’s Like the Real-Life Hunger Games in America:’ Shutdown Threatens HUD’s Protections for Vulnerable*, WASH. POST (Jan. 24, 2019, 4:00 AM), https://www.washingtonpost.com/business/economy/its-like-the-real-life-hunger-games-in-america-shutdown-threatens-huds-protections-for-vulnerable/2019/01/24/68d2df2a-1b2d-11e9-9ebf-c5fed1b7a081_story.html.

90. *Id.*

Yet, the thirty-three-year-old, raising her daughter on a “\$20,000-a-year marketing job” could not find any other properties taking Section 8 vouchers, due to the shutdown.⁹¹

During the shutdown, the only sacrifice Carson seemed to personally endure was that the government could not pay for him to fly to Missouri to address a prayer breakfast.⁹² Yet he took time to further disparage his agency’s vulnerable clients in a hagiographic profile in a conservative outlet:

My message is, if you utilize the funding correctly, you empower people and they become self-sufficient, and then you don’t have to support them anymore. If you don’t, you get an ever-growing, unsustainable number of dependent people. Eventually you won’t be able to sustain them, and eventually you’ll have all kinds of riots and class warfare.⁹³

The agency was later forced to admit that the shutdown affected the vital distribution of Hurricane Maria disaster relief funds to Puerto Rico amidst claims the Trump Administration had sought to block the funding, as Trump himself had consistently downplayed the severity of Maria’s impact upon Puerto Rico.⁹⁴ Finally, in February 2019, funds began being disbursed, with one Democratic Florida congressman pointing out it had taken over a year-and-a-half.⁹⁵ Still, by March 2019, with Trump again reportedly complaining—in a private lunch with Republican senators—over Puerto Rican aid, it was noted that “Congress has appropriated nearly \$20 billion in HUD relief funds for Puerto Rico—which accounts for one type of federal

91. *Id.*

92. Associated Press, *Government Shutdown Cancel’s Carson Prayer Breakfast Speech*, WASH. TIMES (Jan. 9, 2019), <https://www.washingtontimes.com/news/2019/jan/9/government-shutdown-cancels-carson-prayer-breakfas/>.

93. #369: *Exclusive Interview with Dr. Ben Carson*, DAILY SIGNAL, at 11:39 (Jan. 7, 2019) (downloaded using SoundCloud). Carson’s demagoguery ignores the fact that in New York, for example, 37% of those who received federal rental assistance were elderly. See CTR. ON BUDGET & POL’Y PRIORITIES, NEW YORK FACT SHEET: RENTAL ASSISTANCE 1, chart 1 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-NY.pdf>. Are they supposed to return to work?

94. See Brett Samuels, *HUD Acknowledges Recent Shutdown Slowed Pace of Recovery Aid to Puerto Rico*, THE HILL (Feb. 14, 2019, 1:55 PM), <https://thehill.com/homenews/senate/430048-hud-acknowledges-recent-shutdown-slowed-pace-of-recovery-aid-to-puerto-rico>.

95. See Kate Santich & Bianca Padró Ocasio, *HUD Approves Puerto Rico Hurricane Recovery Plan, Allows \$8.2 Billion to Aid Rebuilding Effort*, ORLANDO SENTINEL (Feb. 28, 2019, 7:10 PM), <https://www.orlandosentinel.com/weather/hurricane/puerto-rico-hurricane-recovery/os-ne-hud-approves-latest-puerto-rico-recovery-plan-20190228-story.html> According to one account:

Trump told then-White House Chief of Staff John F. Kelly and then-Office of Management and Budget Director Mick Mulvaney that he did not want a single dollar going to Puerto Rico, because he thought the island was misusing the money and taking advantage of the government, according to a person with direct knowledge of the discussions who spoke on the condition of anonymity to describe sensitive internal deliberations. Instead, he wanted more of the money to go to Texas and Florida, the person said.

Jan et al., *supra* note 86.

aid that states ravaged by natural disasters can get. Of that pot of money, \$1.5 billion has been approved for spending.”⁹⁶ The HUD inspector general began reviewing whether Trump’s personal interference had been improper.⁹⁷

In April 2019, Carson announced a policy where those living in public housing with undocumented family members could be evicted—one immigration advocate noted such a policy “would not only impact those who are undocumented and living with family members in public housing, but also U.S.–born children living under the same roof[.]”⁹⁸ An analysis by HUD itself found that the rule could displace over 55,000 children.⁹⁹ And yet Carson defended the policy in a May 2019 congressional hearing: “[i]t seems only logical that tax-paying American citizens should be taken care of first,” Carson said . . . ‘It’s not that we’re cruel, mean-hearted. It’s that we are logical. This is common sense. You take care of your own first.’”¹⁰⁰ That hearing devolved into a tragicomedy of errors, with Carson mishearing government acronyms, confusing one housing term with Oreo cookies and another with “Amway,” and being unable to name his own director of HUD’s Office of Diversity and Inclusion.¹⁰¹

96. Seung Min Kim et al., *Trump Complains to Senators that Puerto Rico Is Getting Too Much Hurricane Relief Funding*, WASH. POST (Mar. 26, 2019, 9:02 PM), https://www.washingtonpost.com/politics/trump-complains-to-senators-that-puerto-rico-is-getting-too-much-hurricane-relief-funding/2019/03/26/c8c09c30-4fd3-11e9-8d28-f5149e5a2fda_story.html.

97. *Id.*

98. Yesenia Amaro, *Living in Public Housing with an Undocumented Immigrant? Your Family Could Be Displaced*, FRESNO BEE (Apr. 24, 2019, 12:11 PM), <https://www.fresnobee.com/news/local/article229543549.html>.

99. Tracy Jan, *HUD Says 55,000 Children Could Be Displaced Under Trump Plan to Evict Undocumented Immigrants*, WASH. POST (May 10, 2019, 4:00 AM), <https://www.washingtonpost.com/business/2019/05/10/hud-says-children-could-be-displaced-under-trump-plan-evict-undocumented-immigrants/>.

100. Tracy Jan, *HUD Secretary Ben Carson Defends Plan to Evict Undocumented Immigrants: ‘It’s Not that We’re Cruel, Mean-Hearted. It’s that We Are Logical.’* WASH. POST (May 21, 2019, 10:45 AM), <https://www.washingtonpost.com/business/2019/05/21/house-democrats-grill-hud-secretary-ben-carson-plan-evict-undocumented-immigrants/>.

101. See Colby Itkowitz, *Ben Carson Misheard a Housing Term as ‘Oreo,’ and Other Tense Moments at a Congressional Hearing*, WASH. POST (May 21, 2019, 5:20 PM), https://www.washingtonpost.com/politics/ben-carson-misheard-a-housing-term-as-oreo-and-other-tense-moments/2019/05/21/26c2342e-7bf8-11e9-8ede-f4abf521ef17_story.html. As one columnist wrote, “Carson tried to laugh the whole thing off -- and, to be clear, he was NOT joking with the whole ‘Oreo’ thing in the original exchange -- by tweeting out a picture of himself holding a package of the delicious sandwich cremes[.]” Chris Cillizza, *Ben Carson’s ‘Oreo’ Screw-Up Is the Most Predictable Thing Ever*, CNN (May 22, 2019, 1:16 PM), <https://www.cnn.com/2019/05/22/politics/donald-trump-ben-carson-oreo-hud/index.html>. To which the columnist responded: “AH HA HA HA . . . wait, we are talking about the HUD secretary not knowing a common term used in the housing industry. Which is concerning!” *Id.* However, one unabashed pro-Trump columnist dismissed Carson’s gaffes, and wrote that “[i]nstead of being forced to defend their own

In May 2019, the Government Accountability Office concluded Carson had acted unlawfully in redecorating his office, both in the purchase of the infamous dining room set costing nearly \$32,000 and in spending “more than \$8,000 for a dishwasher[.]”¹⁰² Still, an unabashed Carson signed off on a rule “to let shelters and other recipients of federal housing money discriminate against transgender people by turning them away or placing them alongside others of their birth sex—refusing to let them share facilities with people of the same gender identity.”¹⁰³

In a sop to the homebuilding industry, Carson touted, in July 2019, a new White House Council on Eliminating Barriers to Affordable Housing, which he would chair, that would seek to “remove the obstacles that impede the production of more affordable homes—namely, the enormous price tag of burdensome government regulations.”¹⁰⁴ Local zoning was cited as one of those burdens.¹⁰⁵ Trump agreed with a favorite Fox News television talk show host, Tucker Carlson, that homelessness nationwide had led to “filth”—without noting that “both Republican and Democratic lawmakers [had] raked Housing and Urban Development Secretary Ben Carson for reduced public housing assistance and community development grants.”¹⁰⁶ Like Trump, Carson has blamed Democrats for homelessness.¹⁰⁷

twisted and treasonous priorities, Democrats got an assist from open borders tools in the media making hay of Carson’s unfamiliarity with some stupid real estate acronym.” Michelle Malkin, *DUH: HUD Housing Should Put Americans First*, REALCLEAR POLITICS (May 22, 2019), https://www.realclearpolitics.com/articles/2019/05/22/duh_hud_housing_should_put_americans_first_140393.html.

102. David A. Graham, *The Unchecked Corruption of Trump’s Cabinet*, ATLANTIC (May 20, 2019), <https://www.theatlantic.com/ideas/archive/2019/05/watchdog-ben-carsons-table-spending-broke-law/589804/>.

103. Dominic Holden, *Now Trump Wants to Allow Anti-Transgender Discrimination in Homeless Shelters*, BUZZFEED NEWS (May 22, 2019, 12:32 PM), <https://www.buzzfeednews.com/article/dominicholden/homeless-shelters-transgender-rule-trump>.

104. Ben Carson, Opinion, *Ben Carson: Trump Is Getting Our Housing Market Back on Track*, WASH. POST (June 27, 2019, 2:25 PM), https://www.washingtonpost.com/opinions/ben-carson-our-affordable-housing-policy-is-failing-we-need-a-new-approach/2019/06/27/c5641dec-98fc-11e9-8d0a-5edd7e2025b1_story.html.

105. *See id.*

106. Eli Rosenberg & Alex Horton, *Trump Paints a Dark Picture of Homelessness in Cities: ‘We May Intercede,’* WASH. POST (July 2, 2019, 10:13 AM), <https://www.washingtonpost.com/politics/2019/07/02/trump-paints-dark-picture-homelessness-cities-we-may-intercede/>.

107. *See* Opinion, *Editorial: President Trump, If You Really Care About Homelessness, Help California House Homeless People*, L.A. TIMES (Sept. 20, 2019, 3:00 AM), <https://www.latimes.com/opinion/story/2019-09-19/trump-homelessness-california-ben-carson-newsom> (“Responding to a request for help with California’s homelessness crisis, Housing and Urban Development Secretary Ben Carson sent a letter to Gov. Gavin Newsom this week saying that California’s problem is of its own making—so forget about an increase in rent assistance for poor people.”).

With Democrats having taken control of the U.S. House in 2019, it appeared Carson might face no shortage of congressional inquiries and subpoenas.¹⁰⁸ In one April 2019 hearing, a Democratic House member, pressing Carson on the reason for withdrawing nondiscrimination guidance on HUD's website, lamented, in the face of Carson's elliptical answers, that "we are all now more stupid than we were when we came in the room today, sir."¹⁰⁹ As Carson has drawn even Republican criticism,¹¹⁰ it will be interesting to see how strong his support is. He has announced he intends to serve out Trump's first term and would consider serving in another.¹¹¹ Following that announcement, in a typically-strange fashion, he posted on Facebook "an image of a smiling Carson, accompanied by 'I AM NOT LEAVING!'"¹¹²

In conclusion, as HUD secretary, and the only African-American in President Trump's Cabinet, Ben Carson is in a powerful position to combat housing inequalities. Yet he has chosen to be complicit in them.¹¹³

108. See Nathalie Baptiste, *Yes, Ben Carson Is Still in Trump's Cabinet. And Congressional Probes Could Be Coming His Way*, MOTHER JONES (Dec. 26, 2018), <https://www.motherjones.com/politics/2018/12/yes-ben-carson-is-still-in-trumps-cabinet-and-congressional-probes-could-be-coming-his-way/>. Indeed, that oversight started immediately in 2019 during the shutdown. See Suzy Khimm & Laura Strickler, *House Democrats Investigate HUD's 'Failure' to Act as Shutdown Threatens Affordable Housing*, NBC NEWS (Jan. 9, 2019, 2:21 PM), <https://www.nbcnews.com/politics/white-house/house-democrats-investigate-hud-s-failure-act-shutdown-threatens-affordable-n956521> ("House Democrats are using their new oversight authority to investigate the Department of Housing and Urban Development's management of the shutdown, as questions mount about HUD's failure to renew low-income housing contracts for more than 1,000 properties across the country."). It was reported that "[p]eople really don't know what is going on," said Michael Kane, executive director of the National Alliance of HUD Tenants, an advocacy group. "No one really knows what happened in December, and who, if anyone, was responsible for this fiasco." *Id.*

109. Eileen Street, *Ben Carson Questioned on HUD's Lack of LGBTQ Nondiscrimination Guidance*, NBC NEWS (Apr. 4, 2019, 9:09 AM), <https://www.nbcnews.com/feature/nbc-out/ben-carson-questioned-hud-s-lack-lgbtq-nondiscrimination-guidance-n990821>.

110. A fellow Republican, Texas Land Commissioner George P. Bush, has complained about HUD's lethargy in disbursing Hurricane Harvey funds appropriated by Congress. HPM Digital Team, *Bush Complains to Trump About Delay in Arrival of \$4 Billion for Harvey Recovery and Flood Mitigation*, HOUS. PUB. MEDIA (Jan. 30, 2019, 12:45 PM), <https://www.houstonpublicmedia.org/articles/news/2019/01/30/319878/bush-complaints-to-trump-about-delay-in-arrival-of-4-billion-for-harvey-recovery-and-flood-mitigation/> ("The bottom line of Bush's letter is that he is asking Trump to call on HUD to publish the rules governing the \$4.383 billion appropriated to Texas immediately.").

111. Hamza Shaban, *HUD Secretary Ben Carson: I'm Not Leaving, But I Will Resign. But Maybe Stay*, WASH. POST (Mar. 8, 2019, 5:27 AM), <https://www.washingtonpost.com/business/2019/03/08/hud-secretary-ben-carson-im-not-leaving-i-will-resign-or-maybe-stay/>.

112. *Id.*

113. Today one can almost yearn for the days when another Republican, Jack Kemp, was HUD secretary—Kemp, at least, was fervent in his acknowledgement of inequality, and even proposed a "showcase program, HOPE (Homeownership and Opportunity for People Everywhere), which was

Accordingly, Sen. Warren was right in noting, in a face-to-face clash before a Senate committee, that any critique of Carson's tenure should go beyond the "fancy furniture" he tried to buy: "'We are going backwards,' she said. 'It is HUD's job to help end housing discrimination. That's what the law said. You said you would enforce these laws. You haven't, and I think that's the scandal that should get you fired.'"¹¹⁴

intended to sell public housing units to their tenants." Jason DeParle, *How Jack Kemp Lost the War on Poverty*, N.Y. TIMES, Feb. 28, 1993, § 6, at 26.

114. Shapiro, *supra* note 30.