Fighting Climate Gentrification in the Courts

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Samantha Blend, Fighting Climate Gentrification in the Courts, 41 Pace Envtl. L. Rev. 352 ()
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FIGHTING CLIMATE GENTRIFICATION IN THE COURTS

By Samantha Blend*

ABSTRACT

Climate gentrification, a specific type of gentrification that occurs when the impacts of climate change displace lower-income communities, will likely increase in severity as climate change worsens. While policies such as inclusionary zoning may be the most efficient way to combat climate gentrification, litigation can fill gaps that may arise in such policies. This Note examines potential causes of action for climate gentrification litigation and their likelihood of success. Based on an examination of the different causes of action and their likelihood of success, this Note concludes that climate gentrification litigation can help legitimize the issue of climate gentrification and strengthen the push for courts to engage in climate litigation.

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INTRODUCTION

It is impossible to ignore the impacts of climate change regardless of where one stands on the climate debate. Instances of extreme weather conditions caused by climate change, such as rising temperatures and high-impact storms, are increasing. As these conditions worsen, climate change acts as a “threat multiplier” by exacerbating existing inequities, such as economic inequality. The financial burden of climate change on households already facing economic disadvantages increases as extreme climate events occur more frequently, and it becomes more difficult for those households to afford materials to get through storms, complete necessary home repairs, and handle other costs associated with natural disasters. In addition, some solutions to climate change intensify threats to already vulnerable communities. Climate resilience, adaptation, and mitigation strategies that do not take equity into account end up primarily benefiting wealthy communities, exposing existing inequalities, and worsening the wealth gap.

One result of these inequities is climate gentrification. For the purposes of this Note, gentrification is defined as “the process by which higher income households displace lower income residents of a neighborhood, changing

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3. Id.
the essential character and flavor of that neighborhood.” Climate gentrification is a specific type of gentrification that occurs when the impacts of climate change lead or contribute to the displacement of lower-income residents. While it remains crucial to address climate gentrification through strategic development plans and administrative efforts on local and national levels, those strategies are not foolproof and can falter when there is an implementation gap or a lack of equity considerations. Litigation can potentially act as a gap filler in such situations. This Note will discuss potential litigation strategies that may help counteract the existing gentrification patterns emerging from climate change, as well as prevent future climate gentrification.

The Geneva Association — comprised of experts in the study of risk and insurance — notes the growing importance of litigation addressing climate issues: “Interest in climate litigation is increasing, reflecting a growing perception that courts can be a forum for progressing climate justice and can offer a focal point for bringing concerned citizens together.” Climate litigation has gone through different “waves” or “generations” and is currently in its third wave. The first wave primarily involved climate nuisance cases that focused on advancing federal policy and environmental standards. The second wave was characterized by a shift to using state common law nuisance claims and lawsuits against corporations to hold them accountable for contributing to climate change. The third and current wave is characterized by novel claims primarily using constitutional rights and a focus on more ambitious climate action.

Potential climate gentrification litigation

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5. MAUREEN KENNEDY & PAUL LEONARD, DEALING WITH NEIGHBORHOOD CHANGE: A PRIMER ON GENTRIFICATION AND POLICY CHOICES 5 (2001); see also Bethany Y. Li, Now is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification, 85 FORDHAM L. REV. 1189, 1194 (2016).


9. Id. at 6; Katrina Fischer Kuh, The Legitimacy of Judicial Climate Engagement, 46 ECOLOGY L.Q. 731, 735 (2019).

10. GOLNARAGHI ET AL., supra note 8, at 6; Kuh, supra note 9, at 735.

11. GOLNARAGHI ET AL., supra note 8, at 6.

12. Id.
fits into the third wave because it pushes for action that attends to the rights of vulnerable communities rather than action that only focuses on environmental benefits.

An additional factor interwoven with climate gentrification and climate litigation is environmental justice (EJ). Climate gentrification is an EJ issue, and EJ continues to be at the forefront of climate change. This is evident through increased federal action on EJ — such as a new EJ screening tool from the Council on Environmental Quality and a report from the Environmental Protection Agency (EPA) detailing its authority to advance EJ — and the Intergovernmental Panel on Climate Change’s emphasis on sustainable development for all in a recent report. EJ aims to address the inequities caused and aggravated by climate change so that everyone — no matter “race, color, national origin, or income” — can enjoy the same level of protection from environmental and health hazards, as well as the same access to the decision-making processes. Although climate litigation, especially EJ litigation, has not led to many clear-cut wins in court, it can still prove effective outside the courtroom, including by pushing agencies to more seriously consider equity issues in climate planning. In addition, the claims made in EJ cases can provide a foundation or framework for potential climate gentrification cases to build upon.

This Note focuses on how climate gentrification litigation can not only act as a gap filler, but can provide a crucial tool to mitigate current impacts and motivate more equitable climate action moving forward. While no one legal strategy may fully solve such a complex issue, strategic litigation can contribute to a solution. Part I of this Note provides a background on the issue of climate gentrification and breaks down the different methods through which it occurs, as well as how it relates to other issues, such as green gentrification. Part I also introduces case studies of two communities — Miami, Florida, and the Rockaway Peninsula in Queens, New York (the Rockaways) — that are already facing climate gentrification to provide examples of concepts addressed throughout this Note. Part II provides examples of the types of policies implemented to prevent climate gentrification, as well as potential gaps that arise with these policy efforts. Part III explains

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how litigation can fill in these gaps. Part IV provides an analysis of the potential causes of action for climate gentrification litigation and reviews the potential risks of such actions. Finally, Part V describes how litigation strategies might be plugged into the efforts of the case study communities.

I. OVERVIEW OF CLIMATE GENTRIFICATION

As previously mentioned, climate gentrification is a form of gentrification in which the impacts of climate change contribute to the displacement process typically witnessed with gentrification. Climate gentrification is an intersectional issue between racial segregation, economic inequality, and municipal planning efforts to prepare for the future while keeping up with the pressures of development and growth. These issues are then intensified by climate change, which catalyzes gentrification in areas that may not have experienced it otherwise.

This illustrates one of the most significant differences between the process of climate gentrification and the process of conventional gentrification, which is that climate gentrification forces unwanted displacement of households that would not have left their communities but for the impacts of climate change. While on the surface climate gentrification and conventional gentrification involve similar causations, such as seeking relief from rising property costs or preferences for amenities, with climate gentrification, the rising property costs are spurred by climate impacts and the preferred amenities provide resilience to climate change. Another difference between climate gentrification and conventional gentrification is that climate gentrification does not always involve an influx of wealthier households triggering the displacement of low-income communities. These differences and more are further evidenced by the three pathways through which climate gentrification typically unfolds: superior investment, cost-burden, and resilience investment.

A. Superior Investment

The first pathway — superior investment — occurs when wealthy households move from a high climate risk neighborhood, which is increasingly seen as a bad investment, to a naturally low climate risk neighborhood,

16. William Butler et al., LeRoy Collins Inst., Addressing Climate Driven Displacement: Planning for Sea Level Rise in Florida’s Coastal Communities and Affordable Housing in Inland Communities in the Face of Climate Gentrification 104 (2021); Keenan et al., supra note 6, at 4.
18. Nathan, supra note 6 at fig.1; Keenan et al., supra note 6, at 3 fig.1.
which is viewed as the better investment.\textsuperscript{19} The increase in wealthy households in the low climate risk neighborhood then drives up the prices of the entire neighborhood. This situation is unfolding in Miami, where 300,000 coastal homes are projected to be at risk of regular flooding.\textsuperscript{20} Resultantly, the value of homes in some low-lying, high-risk neighborhoods has fallen 7.6\% in recent years.\textsuperscript{21} In addition, some insurance companies estimate that the “projected increase in tidal flooding frequency and severity could result in a $10 to $30 billion devaluation in exposed properties [throughout Florida] by 2030.”\textsuperscript{22} As owning coastal, low-lying property becomes a greater risk, neighborhoods farther inland are becoming more popular for property owners. For example, Little Haiti, a neighborhood in Miami that is ten feet above sea level, has experienced a 19\% increase in home value since 2016.\textsuperscript{23}

\section*{B. Cost-Burden}

The second pathway — cost-burden — occurs when the cost of living in a high climate risk neighborhood becomes too great of a burden for lower-income households, who then relocate to an area facing less climate change impacts to avoid recovery and resilience costs.\textsuperscript{24} This pathway is seen in some neighborhoods of the Rockaways, located on a peninsula in the borough of Queens and geographically isolated from the rest of New York City.\textsuperscript{25} There, residents still have not fully recovered from Superstorm Sandy and consequently live with long-term impacts that make it difficult to afford their homes.\textsuperscript{26} While gentrification was already impacting the

\begin{footnotes}
\footnotetext{19. Keenan et al., supra note 6, at 2.}
\footnotetext{21. Id.}
\footnotetext{24. Keenan et al., supra note 6, at 3.}
\end{footnotes}
Rockaways prior to Sandy, the impacts of climate change, such as intense storms and increased flooding, have heightened that issue. Seeking relief from these increasing costs, many families have moved out of their neighborhoods in the Rockaways.

The Rockaways have a racial and economic divide between the west and east side of the peninsula. More than 66% of residents in the eastern part of the Rockaways (the side farthest from New York City) identify as Black or Hispanic, and almost all residents of areas in the western part identify as white. In the eastern neighborhoods of the Rockaways, such as Far Rockaway and Edgemere, 22 and 28.6% of the population, respectively, live below the poverty level. Thirty-three percent of all children on the peninsula live below the federal poverty level. Meanwhile, the neighborhood of Belle Harbor, on the west side of the peninsula, has a household poverty rate of 1.3%. Increased isolation and segregation, as well as intensifying climate impacts, have prevented the Rockaways from organizing and advocating as strategically as other neighborhoods in New York City. This led to a lack of rebuilding support, especially for lower-income residents on the peninsula. As the option to repair and rebuild becomes unaffordable for residents, the last option available to them has been to accept a buyout of their property from the city and move to a different neighborhood.

C. Resilience Investment

The third and final pathway — resilience investment — is also referred to as green gentrification. This occurs when neighborhoods implement climate resilience strategies, which consequently make the neighborhood unaffordable for lower-income households. These households are priced out of the area due to the increasing property values and living costs from the

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28. Id.
30. Erdos, supra note 27.
33. Id.
34. Khafagy, supra note 25.
35. Keenan et al., supra note 6, at 4.
resilience efforts, as well as from incoming wealthier households attracted to the neighborhood by the resilience strategies. An example of this can be seen in efforts to address surface urban heat islands, which primarily impact people of color in large urban areas. Planting trees in low-income neighborhoods and communities of color can increase property values and consequentially displace the very same residents such policy actions were meant to help.

D. Climate Gentrification Skepticism

Although the previously described pathways of climate gentrification are seen across communities, some scholars debate the role climate change plays in climate gentrification and whether climate gentrification is a significant standalone phenomenon rather than part of a greater national housing trend. Those who argue that climate gentrification is not strictly a climate change-related event point to the beliefs of investors and residents of communities experiencing climate gentrification. Specifically, one study points to Yale’s 2019 Climate Opinion Map of Miami-Dade County that stated only 50% of Miami-Dade residents believed climate change would impact them personally. That map was updated to reflect data collected in 2023 and shows that 57% of Miami-Dade County residents and 60% of Queens County residents (where the Rockaways are located) believe climate change will impact them.

However, belief in climate change does not reduce the validity of climate gentrification because the harms from this phenomenon are felt in these communities, no matter their personal opinions. Though 45% of the nation may believe climate change will cause little to no harm to them personally, the impacts of climate change across the world are well

36. Id. at 3–4.
37. Angel Hsu et al., Disproportionate Exposure to Urban Heat Island Intensity Across Major US Cities, 12 NATURE COMM’NS, no. 2721, 2021, at 1, 1.
38. Id. at 6–7.
39. See Han Li & Richard J. Grant, Climate Gentrification in Miami: A Real Climate Change-Minded Investment Practice?, 131 CITIES, no. 104025, 2022, at 1, 3; see also Augustin Indaco et al., The Effects of Flood Insurance on Housing Markets 1–2 (IZA Inst. Lab. Econ., Discussion Paper No. 11810, 2018).
40. Li & Grant, supra note 39.
41. Id.
42. Yale Climate Opinion Maps 2023: Methodology, YALE PROGRAM ON CLIMATE CHANGE COMM’N (Feb. 23, 2022), https://climatecommunication.yale.edu/visualizations-data/ycom-us/ [https://perma.cc/QSK5-G6AZ ] (click on Miami-Dade County, Florida and Queens County, New York reference “risk perceptions” category) (explaining that this change could be due to changes in methodology of data gathering involved with the climate map and does not necessarily reflect an increase in a community’s beliefs).
documented. Communities are already responding to the impacts of climate change, such as sunny day floods and extreme storms, and they will continue to react as these issues become harder to avoid and costlier to live with. Even if residents do not identify climate risks as the reason they are moving, it does not refute the existence of climate gentrification. For example, residents may point to an increased cost of living as a reason for moving, but in some communities, those rising costs would not exist but for climate change impacts, as seen by the cost-burden and resilience investment pathways of climate gentrification.

Scholars who assert that the housing effects of climate change are not nationally impactful cite studies that show how the housing trends in communities at risk of sea level rise and flooding have followed the larger economic trends of the nation. However, there are a few caveats to this point. First, flood insurance that mitigates the financial risk of sea level rise for some households has helped to keep property values stable in some coastal neighborhoods, such as Miami. This would have kept property in these areas more closely aligned with national trends. Second, despite the finding that flood insurance generally stabilized property values, some communities are operating outside of this national trend. New York serves as a rare but important exception to this flood insurance finding. After Superstorm Sandy, property value in the floodplains of New York decreased directly after the storm and has persistently stayed at a lower level. Some experts believe this may be because the impacts of Sandy created a “perceived risk associated to living by the ocean.” Third, while some studies have not shown a negative impact of increased flooding on coastal home prices, they have witnessed a positive impact on higher-elevation homes. Finally, other studies demonstrate that homes at risk of sea level rise sell for around

44. Nathan, supra note 6.
45. Li & Grant, supra note 39, at 1–2; Indaco et al., supra note 39.
46. See Indaco et al., supra note 39.
47. Id.
49. See Indaco et al., supra note 39, at 23.
7% less than similar properties the same distance from the beach that have less risk.\(^{50}\)

Therefore, it is clear that while some scholars may hesitate to find that climate gentrification causes major housing and economic trends separate from what is experienced nationally, the impacts of climate gentrification continue to unfold. Particularly, communities at the frontlines of climate change, such as Miami and the Rockaways, are already experiencing these impacts. Unfortunately, public officials in some of these communities are hesitant about how serious climate gentrification may be. In a series of interviews with officials and lawmakers in Florida, some expressed that the increasing growth and development throughout the state is the greatest contributor to driving up property costs and forcing residents to move while making no mention of climate change.\(^{51}\) Some officials also claimed that a factor forcing residents inland is the lack of room in coastal areas for further development.\(^{52}\) These statements demonstrate how displacement and gentrification are often considered separately from coastal resilience and sea level rise when an integrated approach would be much more effective.\(^{53}\) The following section addresses different approaches communities have taken to work against climate gentrification.

II. POLICY AND COMMUNITY EFFORTS TO FIGHT CLIMATE GENTRIFICATION AND POTENTIAL GAPS IN SUCH EFFORTS

As communities like Miami and the Rockaways face worsening climate change impacts, they grapple with how best to fight climate gentrification in a way that addresses the many catalysts of climate gentrification. Policies and community efforts targeting climate gentrification have proven effective at lessening harms that are already felt from climate gentrification while also making changes to avoid future issues. In fact, one study showed that anti-gentrification efforts implemented in certain New York City neighborhoods worked to help those areas recover faster and with more success.


\(^{52}\) Id. at 87.

\(^{53}\) See id. at 91.
after Sandy.\textsuperscript{54} In contrast, areas like the Rockaways that did not have such established programs were not able to react in the same way.\textsuperscript{55}

Equitable community planning and policies are often seen as the most effective methods to tackle climate gentrification because they are preemptive and can empower communities to eliminate issues early on or avoid them altogether rather than relying on litigation that may have to wait for harm to occur.\textsuperscript{56} Examples of effective community and policy strategies to combat climate gentrification include preserving affordable housing through inclusionary zoning, community benefit agreements (CBAs), and community land trusts (CLTs).\textsuperscript{57} There are, however, gaps in these efforts, which are categorized as: (1) implementation gaps, which occur when policies addressing an issue like climate gentrification are in place but do not have the intended impact;\textsuperscript{58} and (2) and equity gaps, which occur when policies primarily benefit areas with high economic value.\textsuperscript{59}

\textbf{A. Inclusive Zoning}

One strategy to help fight climate gentrification is protecting affordable housing through inclusive zoning. “From an equity standpoint, affordable housing protection and provision is the most important intervention that can be made.”\textsuperscript{60} Inclusionary zoning is defined as “an affordable housing tool that requires some market-rate developers to also develop some units that are affordable to low-and moderate-income households.”\textsuperscript{61} Inclusive zoning statutes that permit increased housing density would allow for a

\begin{itemize}
  \item \textsuperscript{54} Amy Zimmer, Anti-Gentrification Work Helped LES Bounce Back Faster After Sandy: Study, D\textsc{nainfo} (Oct. 24, 2016), https://www.dnainfo.com/new-york/20161024/lower-east-side/les-sandy-les-bounce-back/
  \item \textsuperscript{55} Id.
  \item \textsuperscript{56} Pirani, supra note 7.
  \item \textsuperscript{57} Sarena Malsin, Unveiling the “Trojan Horses” of Gentrification: Studies of Legal Strategies to Combat Environmental Gentrification in Washington, D.C. and New York, N.Y., 28 P\textsc{ace} E\textsc{nv}t L. R\textsc{ev}. 147, 167–79 (2020) (discussing the role of land use and inclusionary zoning in combating gentrification); Marcel Apple, Climate Gentrification: An Imminent Threat to Oceanfront Cities, 20 S\textsc{ustain}able D\textsc{ev}. L. & P\textsc{ol’y} 20, 20 (2020) (explaining how Miami’s municipal initiatives are helping the community); Equitable Adaptation Legal & Policy Toolkit: Resilient Affordable Housing, Anti-Displacement & Gentrification, G\textsc{eo}. C\textsc{limate C\textsc{tr}.}, https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/resilient-affordable-housing-anti-displacement-gentrification.html
  \item \textsuperscript{58} But\textsc{ler et al.}, supra note 16, at 12.
  \item \textsuperscript{59} Id. at 13.
  \item \textsuperscript{60} Id. at 14.
  \item \textsuperscript{61} Inclusionary Zoning, F\textsc{la}. H\textsc{ous}. C\textsc{oal.}, https://flhousing.org/inclusionary-zoning/
\end{itemize}
greater amount of housing, which would ensure a greater allowance of affordable housing in neighborhoods where residents need it most, such as higher-elevation neighborhoods facing climate gentrification. Such zoning requirements can also lower the risk of increasing housing costs. This is accomplished through policies that require a certain amount of workforce or other affordable housing in development projects located in specific zones. In addition, communities can implement protections for affordable housing by stabilizing property taxes in vulnerable neighborhoods and ensuring that new affordable housing is built to withstand environmental impacts from climate change.

Some inclusionary zoning practices are seen in the high-elevation neighborhood of Overtown in Miami, which has mandated increased workforce housing allowances. Workforce housing is a form of affordable housing for low and moderate-income families. It is required in development projects in the neighborhood of Overtown, a community that is already facing climate gentrification through the superior investment pathway. This mandate expands affordable housing options for low-income households established in high-elevation neighborhoods that are facing an influx of high-income households.

Miami has implemented other similar affordable housing policies. The city passed its first climate gentrification resolution in 2018, stating that a purpose of the resolution is “to research gentrification that is accelerated due to climate change, in areas that exhibit low area median income rates and high topographic elevations.” Since that resolution, the city began its Building Blocks Program as a direct response to Miami’s housing crisis.

63. See Apple, supra note 57.
66. Harris, supra note 64.
68. Mia. City Comm’n Res. 4929 (Fla. 2018).
affordability crisis. This program accelerates housing solutions for residents by launching Miami-Dade’s Office of Housing Advocacy, distributing $110 million in rental assistance and developing 14,000 affordable and workforce housing units. Another example of Miami’s affordable housing policies is the double density bonus that the city offers developers. This allows developers to double the number of units they can build if they provide a proper mix of units for different income levels. This provision is provided for a small sector of Miami housing, but it has proven successful, especially because it is tailored to individual projects.

Similarly, New York City has implemented a Mandatory Inclusionary Housing (MIH) Program, and the state of New York has also announced $10.6 million in grants to assist affordable housing projects. However, the benefits provided to developers participating in the MIH program do not outweigh the profit loss they face by providing the required amount of affordable housing. This has resulted in a limited number of developers who elect to participate in the program. New York City’s challenge with its MIH program is an example of an implementation gap in affordable housing efforts. When developers must opt into an affordable housing program, it can be challenging to ensure they receive a level of benefits that motivates them to participate in the program without ruining the program’s ability to help lower-income households. Implementing inclusionary zoning policies that increase housing density can help developers maintain expected profits while providing the necessary amount of affordable housing.

In addition, affordable housing can experience an equity gap when communities do not provide the necessary protection for existing affordable housing. Affordable housing typically faces a dire lack of investment, which causes the housing quality to devolve so that it cannot withstand climate change impacts. If residents in need of affordable housing do not receive


70. Building Blocks for Housing Affordability, supra note 69.


72. Id. at 107–08, 141.


74. Malsin, supra note 57, at 168.

75. Id.

support to withstand climate change impacts, they are typically unable to afford to continue living in the same area. Developers recognize this and will target those residents with buyout offers.

B. Community Benefit Agreements

A second strategy that helps fight climate gentrification is the utilization of Community Benefit Agreements (CBAs). CBAs are legally binding contracts between community groups and developers that act as a form of restorative justice. Through these agreements, community groups can require developers to provide specific benefits to the community, such as affordable housing and environmental resilience improvements. In exchange for meeting those requirements, developers benefit by securing support from the community regarding new development projects.

Examples of CBAs include an agreement created in Miami between the Liberty Square Resident Council and developer Related Urban Development for the city’s redevelopment of Liberty Square, a neighborhood at a higher elevation of ten feet. The CBA ensured that the Council and the community would support the development project as long as the developer provided approximately 1,500 units of mixed-income housing, as well as other community benefits, such as community facilities, job training, and green construction features. The CBA also provided a guide to hold the project developer accountable so that it would have to pay damages if it failed to meet any of these requirements.


Support to withstand climate change impacts, they are typically unable to afford to continue living in the same area. Developers recognize this and will target those residents with buyout offers. A second strategy that helps fight climate gentrification is the utilization of Community Benefit Agreements (CBAs). CBAs are legally binding contracts between community groups and developers that act as a form of restorative justice. Through these agreements, community groups can require developers to provide specific benefits to the community, such as affordable housing and environmental resilience improvements. In exchange for meeting those requirements, developers benefit by securing support from the community regarding new development projects.

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78. Id.
80. Equitable Adaptation Legal & Policy Toolkit: Community Protections and Agreements, supra note 79.
82. Memorandum of Understanding, supra note 81.

Unfortunately, CBAs can experience implementation and equity gaps depending on the effectiveness of the provisions in the agreement. For example, a CBA between Harlem and Columbia University to prevent the University from expanding farther into Harlem and further gentrifying the community did not ultimately protect the community.\footnote{85}{Pirani, supra note 7.} The University continued its expansion, and the redress method established by the CBA did not function to the community’s benefit.\footnote{86}{Id.} The agreement created a system in which redress funds from the University were put into a community benefit fund, rather than going straight into businesses and housing projects.\footnote{87}{Id.} Those in charge of the community benefit fund dictated where the funds went, and residents impacted by gentrification did not always receive the financial relief needed.\footnote{88}{Id.}

C. Community Land Trusts

A third strategy for how communities can combat climate gentrification is through Community Land Trusts (CLTs). CLTs are nonprofit organizations that acquire land, build or redevelop affordable housing on the land, and then sell or rent the affordable housing.\footnote{89}{Equitable Adaptation Legal & Policy Toolkit: Community Land Ownership: Community Land Trusts, GEO CLIMATE CTR., https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/community-land-ownership-community-land-trusts.html [https://perma.cc/T697-T58B].} The CLT maintains ownership of the land on which the housing property is located, and the resale of any housing is typically restricted to maintain permanent affordability.\footnote{90}{Id.} CLTs play a key role in a community’s resilience and sustainability by ensuring affordable housing is available and utilizing green development and design elements.\footnote{91}{Id.}

Examples of CLTs can be seen in the Rockaways, where New York’s Department of Housing Preservation and Development is working toward administering a CLT in Edgemere (a neighborhood on the east side of the
In addition, Miami’s Building Blocks Program approved a recommendation to fund a little over $2 million to CLTs in the area. There are also examples of CLTs that local governments sponsor to establish a certain number of affordable units, such as the Interboro CLT in New York City and the Tallahassee Lenders’ Consortium Inc.’s CLT in Florida. However, CLTs can run into implementation gaps if the trust has trouble acquiring properties and if cities are unwilling to forego the highest bidder to provide the land trusts with donated or discounted land. In addition, similar to CBAs, the success of a CLT can often depend on how strategically the trust is established and how effectively the trust can navigate legal challenges.

Although these policy initiatives are crucial in managing climate gentrification, that alone is not enough. Litigation must occur to address gaps in such initiatives, to bring greater awareness to the threat of climate gentrification, and to push courts to address the issue. The following section provides a background on the types of litigation that intersect with climate gentrification litigation. In addition, it addresses how litigation may be used to address the harms felt by communities facing early climate gentrification impacts.

III. HOW TO INCORPORATE LITIGATION IN THE FIGHT AGAINST CLIMATE GENTRIFICATION

Climate gentrification litigation varies from standard gentrification litigation because it involves the additional issues associated with climate change. This creates an intersection between litigation addressing climate change, EJ, and gentrification. To understand the complexities of climate gentrification litigation and how it may be most successful, it is important to keep in mind the background of these three types of litigation, how they have evolved, and how they overlap.

First, climate litigation, in which parties seek judicial remedies in response to losses due to climate change or to abate losses from climate change, is rising as societal awareness and scientific understanding of

95. Equitable Adaptation Legal & Policy Toolkit: Community Land Ownership: Community Land Trusts, supra note 89.
climate change increases. As previously stated, climate litigation is in its third wave. Currently, cases are focusing on novel causes of action, constitutional and human rights, and the advancement of ambitious climate policy. The cases in this third wave are often strategic in nature, involve a variety of types of litigants on either side of the lawsuit, and include climate change as a core element.

One example of a third-wave case is *Juliana v. United States*, in which environmental groups alongside a group of young environmental activists brought suit against parties of the U.S. government, claiming that it was responsible for climate change impacts due to its inaction in changing the energy systems under its control. The plaintiffs’ claims were rooted in the Fifth Amendment and the public trust doctrine and were ultimately dismissed by the Ninth Circuit Court of Appeals. Another example is *Commonwealth v. Exxon Mobil Corp.*, in which the Attorney General of Massachusetts accused Exxon of misleading the state’s consumers and investors about climate change and how the corporation’s use of fossil fuels contribute to the phenomenon. This case involved novel claims of greenwashing and consumer protection and has so far survived a motion to dismiss, as of March 2024.

Courts, influenced by the doctrine of constitutional avoidance, seem unwilling to decide many third-wave climate litigation cases on the merits, especially cases like *Juliana* that seek to establish a new constitutional right (the right to a clean and healthy environment). The *Exxon* case had a stronger chance of surviving a motion to dismiss because it dealt with

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96. Golnaragi et al., *supra* note 8, at 4.
97. *Id.* at 6; Kuh, *supra* note 9, at 740.
98. Kuh, *supra* note 9, at 740–44.
100. *Id.* at *1*.
102. *Id.* at *4*.
103. Kuh, *supra* note 9, at 745 (illustrating how such decisions can also be referred to as judicial climate avoidance when courts resist deciding climate litigation due to concerns about judicial influence on climate policy); Andrew Nolan, *Cong. Rsch. Serv.*, R43706, *The Doctrine of Constitutional Avoidance: A Legal Overview* 2 (2014) (defining the constitutional avoidance doctrine as “a host of loosely related rules . . . that discourage a federal court from issuing broad rulings on matters of constitutional law”).
existing rights in consumer protection and greenwashing. However, most third-wave climate litigation cases are dismissed based on procedural factors, with courts expressing hesitation to make a merit-based decision that may overstep judicial bounds and interfere with the separation of powers.\footnote{Kuh, supra note 9, at 744.} This resistance hinders the legal climate movement. More substantive judicial action on climate change would strengthen democracy and help address the legal climate-related questions that are here to stay.\footnote{Id. at 746.} Despite this resistance from courts, climate litigation cases continue to increase in number as climate risk rises.\footnote{GOLNARAGHI ET AL., supra note 8, at 7.}

Second, EJ litigation has experienced similar resistance from courts.\footnote{See Henderson et al., supra note 15, at 17.} EJ litigation typically alleges intentional racism and disparate impacts that arise from the placement of toxic sites such as landfills, infrastructure projects, and other greenhouse gas emitters.\footnote{Id. at 17.} In the approximately forty years since the first EJ case, there have been few major EJ wins in court.\footnote{Id. at 21.} Many EJ claims based on Title VI of the Civil Rights Act of 1964 do not succeed because of evidentiary challenges to prove intentional discrimination.\footnote{Id. at 17.} For example, in \textit{Coalition for the Advancement of Regional Transportation v. Federal Highway Administration} — a case regarding the environmental impacts of the construction of new bridges — the court found that the mere disparate impact of a new bridge is an expectation with new construction and not proof of intentional discrimination.\footnote{Coal. for the Advancement of Reg’l Transp. v. Fed. Highway Admin., 959 F. Supp. 2d 982, 1020–21 (D. Ky. 2013). This case references the standard set by the Supreme Court to prove intentional discrimination: “a clear pattern, unexplainable on grounds other than race . . . impact alone is not determinative, and the Court must look to other evidence.” (quoting Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977)).}

Other common causes of action in EJ cases include claims under the National Environmental Policy Act (NEPA), such as in \textit{Hausrath v. U.S. Department of the Air Force}, and newer claims based on state EJ statutes, such as in \textit{Friends of Buckingham v. State Air Pollution Control Board}.\footnote{Henderson et al., supra note 15, at 18–19.} \textit{Hausrath} is a rare example of a court finding that the defendant did not fulfill the NEPA requirement of taking a “hard look” at potential environmental impacts and needed to conduct additional environmental review.\footnote{Hausrath v. U.S. Dep’t of the Air Force, 491 F. Supp. 3d 770, 804 (D. Idaho 2020).} NEPA
requires an agency undertaking major federal action to follow a specific set of procedures that require the agency to take a “‘hard look’ at environmental consequences, and that provide for broad dissemination of relevant environmental information.” However, NEPA “does not mandate particular results, but simply prescribes the necessary process” and “merely prohibits uninformed — rather than unwise — agency action.” Resultantly, courts’ rulings on NEPA cases focus more on the technicalities of the depth and procedure of NEPA assessment rather than the substantive information involved. As long as the agency correctly follows NEPA procedure, courts often find that the NEPA requirements are met, even when the EJ review was incorrect or the project in question leads to harmful environmental impacts. In *Friends of Buckingham*, the court found that the Virginia Air Pollution Control Board’s approval of a permit for construction of a compressor station did not properly consider EJ as required by Virginia’s Commonwealth Energy Policy. While some EJ cases such as *Friends of Buckingham* have been successful, these cases depend on states instituting EJ requirements and standards.

Similar to climate litigation, EJ litigation continues to rise despite a lack of major wins in court. Climate and EJ litigation often overlap because EJ cases address negative environmental impacts that are disproportionately felt by underserved communities, which are heightened by climate change. Additionally, some EJ cases fight against contributors to climate change, such as cases brought against the permitting of toxic facilities that release pollutants. Continued EJ litigation can help bring attention to critical EJ issues and test strategies for future advocacy.

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115. Id.
118. *Friends of Buckingham* v. State Air Pollution Control Bd., 947 F.3d 68, 75, 93 (4th Cir. 2020).
120. Id. at 21.
122. Id.
Finally, litigation addressing gentrification has been in the works since the adoption of the Fair Housing Act (FHA) in 1968. Gentrification cases typically focus on preserving affordable housing that low- and moderate-income households who are displaced by gentrification rely on. Gentrification litigation claims include litigation focused on zoning laws, environmental impact statements, and new uses of the FHA. An example of recent gentrification cases that tested the viability of claims based on zoning laws, as well as the FHA, can be found in Washington, D.C. In 2018, Barry Farm Tenants & Allies Association (BFTAA) submitted a petition for review in the D.C. Court of Appeals challenging the D.C. Zoning Commission’s approval of a new development project, citing violations of zoning laws. In that case, the court found that the D.C. Zoning Commission did not appropriately address key issues involved in a new development, including the disruption and gentrification of the existing community. D.C. Zoning Code requires such considerations. Concurrently, BFTAA brought a separate claim in the D.C. District Court against the D.C. Housing Authority alleging violations of the FHA. There, the court did not rule on the merits of the D.C. Housing Authority’s alleged violations of the FHA but instead dismissed them due to a lack of ripeness.

An example of a gentrification case based on environmental impact statements is Ordonez v. City of New York. In that case, the plaintiffs argued that they were facing gentrification from a development project and that the Department of City Planning had not properly addressed the risk of displacement in its environmental impact statement. The court ultimately dismissed this case, stating that while it was sympathetic to petitioners wanting to protect those in the community without a strong voice, the court’s role “is only to examine whether the lead agency . . . considered all relevant areas of environmental concern and examined them rationally.”

125. Id. at 797.
126. Id. at 810–25.
128. Id. at 1227.
129. Id. at 1228.
131. Id. at 69.
133. Id. at 81 (emphasis added) (quoting Coal. Against Lincoln W., Inc. v. Weinshall, 799 N.Y.S.2d 205, 222 (App. Div. 2005)).
This decision emphasizes that courts determine the validity of the environmental review based on the procedure involved rather than the effectiveness of the review.

The claims brought in previous gentrification litigation will help guide climate gentrification litigation, especially when addressing the superior investment and resilience investment pathways. These pathways most resemble historical cases of gentrification because they typically involve wealthier residents moving into a neighborhood and displacing lower-income households. However, applying conventional gentrification claims to the cost-burden pathway of climate gentrification will be difficult. This is because the cost-burden pathway involves residents getting priced out of a neighborhood due to the impacts of climate change, rather than from an influx of wealthier residents. Making that case would be more challenging to demonstrate through evidence, especially given courts’ reluctance to recognize environmental rights.

The claims brought in previous climate and EJ litigation will also be helpful to guide climate gentrification litigation, as they provide examples of what types of climate-based claims may be successful. Though litigation involving novel claims, as often seen with climate and EJ litigation, does not guarantee success, litigation as a tool to combat climate gentrification should not be discounted. The issues involved in climate gentrification cases are complex and require a variety of strategies and efforts to successfully protect the communities facing the most impact. Courts have the authority to consider intergenerational harms and assess scientific claims, and they should engage more on the issues around climate policy. Even unsuccessful cases can further the goal of stopping climate gentrification by raising the issue through a prominent platform and inspiring action from federal and local governments.

**IV. POTENTIAL CAUSES OF ACTION FOR CLIMATE GENTRIFICATION LITIGATION**

There are a few causes of action from the previously described areas of litigation that may be successful in future climate gentrification litigation. This section details these causes of action and how they may apply to the previously defined climate gentrification pathways of superior investment, cost-burden, and resilience investment.

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134. Kuh, supra note 9, at 734.
A. Equal Protection

Equal protection in gentrification claims is frequently brought as a Fourteenth Amendment equal protection claim actionable under section 1983. A successful equal protection claim under section 1983 requires a plaintiff to establish that: (1) the defendant’s actions had a discriminatory effect and (2) the defendant’s actions were motivated by a discriminatory purpose. These cases are usually brought against a municipal government entity. Such a claim would likely be most effective when addressing the superior investment and resilience investment pathways of climate gentrification because these pathways usually involve a specific action by a defendant that a plaintiff may be able to demonstrate was discriminatory. For example, with the superior investment pathway, a defendant may approve development for incoming wealthier residents that impacts the current residents’ community. With the resilience investment pathway, a defendant may implement environmental policies that harm current residents by increasing their cost of living.

Examples of such claims are seen in The Two Hundred v. Governor’s Office of Planning and Research. In that case, the plaintiffs were fighting against a regulation set by California to penalize the use of non-electric vehicles in transit priority areas, which included neighborhoods that plaintiffs felt were far outside California’s busiest transit areas. The plaintiffs stated that this requirement would impose a cost on low-income households that would continue to deprive them of affordable homeownership. This claim is an example of a potential resilience investment climate

137. Erie CPR, 343 F. Supp. 3d at 560.
138. In a section 1983 suit, “local and municipal governments can be named as defendants, but neither a state nor the federal government can be sued under section 1983. Private individuals can also be sued under section 1983, but they must be acting on behalf of a state or local government.” What are the Elements of a Section 1983 Claim?, THOMSON REUTERS (June 13, 2022), https://legal.thomsonreuters.com/blog/what-are-the-elements-of-a-section-1983-claim/#:~:text=In%20addition%2C%20local%20and%20municipal,under%20color%20of%20law%E2%80%9D [https://perma.cc/NU7M-L54L]; see, e.g., Erie CPR, 343 F. Supp. 3d at 557 (determining that a plaintiff’s section 1983 complaints against a state agency defendant were dismissed, but that the same claims survived a motion to dismiss against the state’s Public Utilities Commission due to a lack of evidence as to the level of autonomy the commission had from the state).
140. Id. at 15.
gentrification pathway. The defendant implemented a specific policy (penalizing the use of fossil fuel vehicles) that hindered people’s ability to afford housing (by forcing them to pay fines or buy new vehicles). The court ultimately sustained a demurrer from the defendant on ten of the fifteen causes of action alleged by the plaintiffs, and the case is still pending. In a previous similar lawsuit between the plaintiff and a different defendant, the court sustained a demurrer on the equal protection claims because the plaintiff did not bring any direct or circumstantial evidence of a discriminatory intent regarding the new policy.

Equal protection claims could apply to climate gentrification by providing a cause of action for plaintiffs facing discriminatory action that leads to gentrification. It is clear that this cause of action requires a great deal of evidence of discrimination, especially to prove discriminatory intent. To prove discriminatory intent, a plaintiff must demonstrate that a policy was adopted because of, not just in spite of, the adverse impacts on an underserved community. Courts will consider factors such as the background of the policy, the sequence of events leading up to the policy, any departures from normal procedure that occurred, legislative and administrative history behind the policy, and any statements by decisionmakers involved in the policy. Plaintiffs that experience a discriminatory effect (facing displacement from their homes) and have evidence to show a discriminatory intent, rather than just demonstrating how certain residents will be impacted, may be able to bring a successful equal protection claim.

**B. Title VI Disparate Impact**

Title VI claims of disparate impact can be brought alongside cases that have equal protection claims. To state a successful claim under Title VI, a plaintiff must show that: (1) they belong to a protected class, (2) they qualify for the benefit or program at issue that receives federal funding, (3) they suffered an adverse action, and (4) the adverse action happened due to circumstances that gave rise to an inference of discrimination. In addition,
to show disparate treatment under Title VI, a plaintiff must demonstrate an inference of intentional discrimination, which “can be inferred if the plaintiff alleges that the defendant treated other similarly situated individuals outside of the protected group more favorably.”147 This claim would be most effective when addressing the resilience investment pathway. With resilience investment climate gentrification, plaintiffs that belong to a protected class could demonstrate that: (1) they qualify for the benefits of the new environmental policies, (2) that such policies are causing an adverse action, and (3) that the instituted policy infers discrimination if they were treated differently from a similarly situated group.

Examples of this claim are seen in *Erie CPR v. Pennsylvania Department of Transportation*. In *Erie*, plaintiffs brought a Title VI claim regarding the demolition of a bridge their community relied on for transportation.148 They stated that bridges in white communities were maintained better and not demolished without providing an alternative.149 The court stated that while the plaintiffs provided support for most elements of a Title VI claim, their disparate treatment allegations failed because they did not demonstrate how the white communities were similarly situated to theirs.150 The court also did not feel that plaintiffs successfully proved a pattern of discrimination because they only provided two instances of bias that the court was not convinced amounted to a discriminatory motive.151

Disparate impact claims could apply to climate gentrification cases by providing a cause of action for plaintiffs who belong to a protected class and can show they suffered an adverse action with an inference of discrimination that ultimately deprived them of a benefit. For example, if an underserved community could demonstrate that an environmental protection granted to similarly situated communities has not been afforded to it and that there is a clear pattern inferring discrimination, the underserved community may have a successful Title VI claim. This could occur when a federal agency implements an environmental resilience strategy, such as restoring natural areas that act as a buffer to mitigate flooding. Underserved residents could establish a Title VI claim if they can demonstrate that such a strategy primarily benefits similarly situated wealthier households, that the strategy has made their housing unaffordable, and that proper input from underserved households was not sought when implementing the strategy. However, this claim is limited to programs or benefits that receive federal

147. *Id.* at 554.
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* at 555.
financial assistance. In addition, it may be difficult for plaintiffs to prove that a group receiving better treatment is similarly situated, as noted in *Erie*.

C. National Environmental Policy Act

As previously discussed, NEPA claims focus on the procedure of a party’s environmental review.

NEPA ‘directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another’ . . . the statute is primarily information-forcing . . . The overarching question is whether an EIS’s deficiencies are significant enough to undermine informed public comment and informed decision-making.\(^{152}\)

This claim would be most effective when addressing the resilience investment or the superior investment pathways. With either pathway, the defendant is likely to implement a project, such as a new development or new climate resilience efforts. These projects would likely require a level of environmental review, which, if not done properly, could result in a lawsuit bringing a NEPA claim.

Examples of this claim are seen in *Bitters v. Federal Highway Administration* and *St. Paul Branch of the NAACP v. U.S. Department of Transportation*. In *Bitters*, the plaintiff brought suit over California’s Department of Transportation approving federal funds to reintroduce vehicular traffic to a pedestrian-only mall.\(^{153}\) The court dismissed the plaintiff’s claims, finding that the defendants fulfilled the NEPA requirement of a hard look by considering the interests of those affected and by providing a thorough analysis of the possible social, economic, and land use impacts of that group.\(^{154}\) In *St. Paul*, the court dismissed the plaintiff’s claims that the defendant’s NEPA environmental review was deficient in analyzing the potential displacement of existing residents.\(^{155}\) The court stated that the defendant’s review fulfilled the NEPA requirements, but it acknowledged the plaintiff’s displacement concerns and encouraged the defendants to work with the plaintiffs on avoiding displacement.\(^{156}\)


\(^{154}\) Id. at *49.


\(^{156}\) Id. at 1118–19.
NEPA claims could apply to climate gentrification cases if plaintiffs can demonstrate that federal agencies are not conducting thorough environmental reviews, including specific reviews of potential displacement. For example, if a community could demonstrate that a new development project involving federal funds or a federal agency action did not appropriately take a hard look at potential community displacement, it may successfully raise a NEPA claim. However, such a claim is restricted given the need for actions requiring federal review, as well as courts’ seemingly broad acceptance of environmental review as a “hard look.” As seen in many of the examples of NEPA claims, a court determining that an agency has fulfilled the NEPA requirement does not mean that the agency is effectively taking action to avoid displacement or other environmental impacts.157

D. Fair Housing Act

The FHA “makes it unlawful to deny housing on behalf of race or color, among other things.”158 To successfully establish a claim based on this section of the FHA, a plaintiff must prove that the defendant’s conduct actually or would predictably result in discrimination, which requires plaintiffs to show that a facially neutral policy has a significant adverse impact on members of a protected group.159 This claim would be most effective when addressing the superior investment and resilience investment pathways of climate gentrification because those two pathways involve potential situations in which a plaintiff may be denied housing directly by a defendant.

Examples of this claim are seen in The Two Hundred and Owens v. Charleston Housing Authority. In The Two Hundred, plaintiffs stated that the new emissions policy violated the FHA because the policy would create a new, unlawful barrier to affordable homeownership that impacts a protected group.160 In Owens, the court sided with plaintiffs on their FHA claims, stating that they established a prima facie case of disparate impact under the FHA by demonstrating that: (1) their county has a high need for

157. Legal scholars have summarized NEPA cases involving EJ issues and noted that “courts have invalidated federal and state actions for failure to fully analyze EJ concerns and incorporate EJ analysis into decision-making.” However, incorporating EJ concerns and analysis does not implicitly lead to effective EJ decisions by agencies. Clifford J. Villa, No “Box to be Checked”: Environmental Justice in Modern Legal Practice, 30 N.Y.U. Envtl. L.J. 157, 191–92 (2022).
159. Id. at 942–43.
low-income housing, (2) Black residents represent a majority of residents in need of low-income housing, and (3) the loss of the housing at issue in the case would disproportionately affect Black residents in the community. In addition, the court stated that the burden would shift to the defendant to "demonstrate that its decision was justified by a legitimate and substantial goal," but that the defendant in this case was unable to do so.

FHA claims can be applied to climate gentrification cases to allow plaintiffs to act when they are denied housing and can demonstrate it was a discriminatory action. This would most likely be successful in addressing superior investment and resilience investment pathways of climate gentrification. Plaintiffs experiencing the superior investment pathway of climate gentrification could have a successful FHA claim if they could demonstrate their need for affordable housing and how an influx of wealthier residents to a low climate risk neighborhood is depriving primarily underserved communities of housing. Plaintiffs experiencing the resilience investment pathway of climate gentrification could have a successful FHA claim if they could show that resilience strategies are pricing out underserved communities from their housing. An important factor to keep in mind is that if the defendant can provide a substantial and legitimate reason for their discriminatory action, they may be able to defeat a plaintiff's prima facie disparate impact claim based on the FHA. This could be a serious concern for plaintiffs facing the resilience investment pathway of climate gentrification, as defendants may be able to argue that their implementation of resilience strategies is legitimate because of climate change risks, even if it has discriminatory results.

E. Overview and Potential Risks

Overall, climate gentrification litigation will be most successful if litigants can tie an existing right, such as those in the FHA, to their cases. Equal protection and NEPA claims have a low likelihood of leading to a successful case, as they have burdensome evidentiary requirements and are often limited to actions involving federal agencies or federal funding. Alternatively, plaintiffs could be successful in climate gentrification claims rooted in zoning or other state or local statutes that include specific requirements for reviewing and preventing displacement.

In addition, it appears that the cost-burden climate gentrification pathway is the most difficult to address with these causes of action because it does not involve an action by another party, whether a governmental entity

162. Id.
or an individual. This pathway deals with communities that can no longer afford to live in their neighborhood because the impacts of climate change have directly made that area too expensive. The causation in a case involving cost-burden climate gentrification would be difficult to prove, unless a plaintiff could demonstrate how protections from such climate impacts were being disproportionately afforded to wealthier communities. Alternatively, plaintiffs facing this pathway of climate gentrification could argue that inaction toward climate impacts causing the cost burden stripped them of their right to housing. However, such an argument would likely face many of the same challenges as *Juliana*.¹⁶³

Until courts start addressing the merits of climate litigation, these causes of action do not have a high chance of success in court. Despite this projected outcome, there is still value in raising the issue of climate gentrification in the courts, as it could inspire agencies and developers to take climate gentrification seriously to avoid potential litigation. However, such litigation does involve a few risks, such as inefficiency. To pursue such cases, communities would have to wait to have evidence of some kind of harm and, in many cases, discriminatory intent. Moreover, litigation is expensive and can burden already struggling communities. While litigation may be able to help communities recover from such harms and avoid future discrimination, it would not be an efficient way to preempt climate gentrification altogether. In addition, unfavorable decisions may create further setbacks for communities by establishing harmful precedents for climate gentrification claims.

However, pursuing climate litigation, including climate gentrification claims, could demonstrate to courts the importance of reviewing the merits of such claims. Some studies argue that such engagement from courts regarding key climate issues is an integral part of their constitutional responsibility.¹⁶⁴ Specifically, these studies argue that courts should intervene when the political market malfunctions and that when courts interpret the Constitution to ensure representation, they can do so in a manner consistent with the constitutional text without imposing judicial values in a counter majoritarian fashion.¹⁶⁵ Applying this theory to climate change, it is clear that the political market is not functioning properly to ensure those

¹⁶³ See supra notes 99–105 and accompanying text.
¹⁶⁴ Kuh, supra note 9, at 764.
¹⁶⁵ Id. at 755–56 (defining a political market malfunction as when the process does not deserve trust as “(1) the ins are choking off the channels of political change to ensure that they will stay in and the outs will stay out, or (2) though no one is actually denied a voice or a vote, representatives beholden to an effective majority are systematically disadvantaging some minority out of simple hostility or a prejudiced refusal to recognize commonalities of interest”).
affected by climate gentrification are represented in the climate resilience process. Courts could and should use their constitutional authority to establish the right to affordable, sustainable housing in the wake of climate change.

V. POTENTIAL LITIGATION STRATEGIES APPLIED TO CASE STUDIES

As previously stated, Miami and the Rockaways are already experiencing climate gentrification. In Miami, one of the most prevalent climate gentrification pathways is the superior investment pathway, as wealthy households are becoming more attracted to property on higher-elevation lands, such as in Liberty City and Overtown. As they move into these neighborhoods, lower-income households struggle to afford living where they always have and face displacement. Residents in a neighborhood like Liberty City may be able to use claims rooted in the FHA to make a successful climate gentrification claim. Residents established the previously mentioned CBA with the developers charged with revitalizing Liberty City. Following the example set in Owens, lower-income households in Liberty City could demonstrate the need for affordable housing by pointing to the neighborhood’s poverty rate of 42.9%, which is more than double that of Miami-Dade County. Additionally, Liberty City is significantly more diverse than Miami-Dade County as a whole, with 78% Black residents and 20% Latino residents. If existing residents of these high-elevation neighborhoods are deprived of housing due to displacement by new development, they could demonstrate how this displacement would disproportionately impact households of color. Residents could use this to fight for more affordable housing if the CBA is not upheld or falls short of the community’s needs as development continues.

In the Rockaways, one of the most prevalent climate gentrification pathways is resilience investment, with lower-income communities facing a significant lack of resilience efforts compared to wealthier communities on the peninsula. In these communities, residents may be able to successfully raise an equal protection claim to address their climate gentrification issues. There is a history of these communities not receiving support for planning against gentrification and getting left out of resilience efforts made

166. Santiago, supra note 23.
168. Id. at 20.
169. Erdos, supra note 27; Bliss, supra note 32.
in surrounding neighborhoods, which deepens the wealth inequality between the west and east sides of the peninsula.\textsuperscript{170} First, the community could raise these claims against municipal entities such as the city or their county. Second, unlike the previously mentioned equal protection cases, the impacted communities have the potential to have more than just one or two discriminatory incidents to point to as evidence of discriminatory intent. They could point to (1) the lack of a storm surge barrier to protect their community while a storm surge was built in a wealthier neighborhood, (2) the lack of consideration of race or inequity in the city's resilience report post-Sandy, and (3) post-Sandy relief funds consistently going to wealthier communities.\textsuperscript{171} Finally, the communities under threat have experienced previously detailed harms since the storm that other communities have not, which could point to the disparate treatment they have faced and support a climate gentrification claim.

VI. CONCLUSION

To address climate gentrification effectively, it must be fought utilizing both policy and litigation. Climate gentrification occurs through three main pathways: superior investment, cost-burden, and resilience investment. While policies that work against climate gentrification, such as inclusionary zoning, CBAs, and CLTs, may be the most efficient way to combat the phenomenon when implemented appropriately, litigation can provide a failsafe for when there are gaps in such strategies. Climate gentrification litigation is an intersection between litigation addressing climate change, EJ, and gentrification. Potential causes of action for climate gentrification include claims rooted in equal protection, Title VI, NEPA, or the FHA. Though climate gentrification cases are unlikely to have a great deal of success in court, continued litigation against climate gentrification can help legitimize such claims and strengthen the push for courts to engage in climate litigation.

\textsuperscript{170} Erdos, supra note 27.  
\textsuperscript{171} Id.; Bliss, supra note 32; see THE CITY OF N.Y., A STRONGER, MORE RESILIENT NEW YORK (2013).