

Segregation, Racial Health Disparities, and Inadequate Food Access in Brooklyn

Silvia M. Radulescu*

ABSTRACT

Despite remarkable medical advances and the steady rise of New Yorkers' overall life expectancies, striking health disparities exist among New Yorkers along racial and economic lines. Poor health is concentrated in predominantly Black and Hispanic poverty-stricken neighborhoods. Within just a ten-mile radius in Brooklyn, there is a decade-long life-expectancy gap between white and Black residents. One reason for the racial health disparities is unequal access to healthy food. This Note examines the relationship between racial health disparities and unequal food access in Brooklyn and traces the disturbing inequality to government-sanctioned segregation policies. Part I presents a historical overview of the laws and policies that created segregation in Brooklyn. Part II distills Brooklyn's present-day racial health disparities and food access inequalities. Part III argues that inadequate access to healthy food in poor Black and Hispanic Brooklyn neighborhoods results from twentieth-century, government-sanctioned segregation policies and practices. Finally, Part IV analyzes proposed policies and argues that any policies aimed at improving racial health disparities should be paired with initiatives that also address other segregation-rooted racial inequalities—such as generational wealth, income, and educational opportunities—to increase the likelihood of success.

INTRODUCTION	252
I. HISTORICAL BACKGROUND	253
A. Brooklyn's Beginnings	253
B. Twentieth Century Laws and Policies that Created Segregation Nationwide	254
C. Ghettoization in Brooklyn, New York	259
II. INEQUALITIES TODAY	260

* Silvia M. Radulescu, J.D. Candidate, Georgetown University Law Center, 2022; B.A. Government, Hamilton College, 2017. I thank Professor Sheryll Cashin for her guidance; Conor O'Shea, Ondine Jean-Baptiste, and Fulton Wald for their feedback; and James Ehret and my family for their constant support. © 2022, Silvia M. Radulescu.

<i>A. Current Racial Health Disparities in Brooklyn</i>	260
<i>B. Inadequate Access to Healthy Food in Black Brooklyn</i>	262
III. INTERCONNECTION BETWEEN SEGREGATION AND HEALTH DISPARITIES	264
<i>A. Concentrated Poverty and Disinvestment</i>	265
<i>B. Predatory Food Industry Practices</i>	265
IV. POTENTIAL SOLUTIONS	268
<i>A. Existing Interventions</i>	268
<i>B. Recommendations</i>	270
V. CONCLUSION	272

INTRODUCTION

In Brooklyn, New York, Brooklyn Heights’s pristinely preserved, multi-million-dollar brownstones cloaked with greenery present a striking contrast to Brownsville’s vacant lots, boarded-up properties, and discarded cardboard and plastic remnants lining the streets. These marked differences amount to more than imbalances in aesthetics or residents’ comfort. They reflect structural inequalities in a web of interrelated social and economic conditions¹ touching every aspect of residents’ lives—from the likelihood of surviving infancy to educational and economic opportunities to life expectancy. Throughout Brooklyn, these cradle-to-grave structural inequalities are directly tied to race; consequently, poor health, poverty, and lower life expectancy are concentrated in predominantly Black and Hispanic neighborhoods.²

This Note focuses on just one of the many structural inequalities: inadequate access to healthy foods in predominantly Black and Hispanic Brooklyn neighborhoods. As this Note shows, there are racial disparities in food access in Brooklyn; white residents have better access to healthy food than Black and Hispanic residents. This Note argues that the food access discrepancies and related racial health disparities result from twentieth-century segregation policies and practices—such as redlining, blockbusting, and predatory lending. Segregation contributed to the problem and facilitated differential investment and treatment by private and public actors in the food industry between poor Black and Hispanic neighborhoods and affluent, whiter spaces.

Part I presents a historical overview of the laws and policies that created segregation in Brooklyn. Part II distills Brooklyn’s present-day racial health

1. Social determinants of health are conditions in places where people live that affect a wide range of health risks and welfare outcomes. These conditions are shaped by the distribution of money, power, and resources at global, national, and local levels, and are primarily responsible for health inequities worldwide. Examples of social determinants of health include safe and affordable housing, access to education, public safety, availability of healthy foods, local emergency/health services, and toxin-free environments. See *About Social Determinants of Health (SDOH)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/socialdeterminants/about.html> (last visited Mar. 29, 2022).

2. See *infra* Part II.

disparities and food access inequalities. Part III argues that inadequate access to healthy food in poor Black and Hispanic Brooklyn neighborhoods results from twentieth-century, government-sanctioned segregation policies and practices. Finally, Part IV analyzes proposed policies and argues that any policies aimed at improving racial health disparities should be paired with initiatives that also address other segregation-rooted racial inequalities—such as generational wealth, income, and educational opportunities—to increase the likelihood of success.

I. HISTORICAL BACKGROUND

A. Brooklyn's Beginnings

Brooklyn, New York was incorporated from a town into a city in 1834. Slavery in New York state had only been abolished seven years prior and, at that time, the city was mostly limited to the area hugging the island's western shore.³ Past Green-Wood Cemetery and Prospect Park—located in the upper-left quadrant of present-day Brooklyn—was farmland. In 1838, James Weeks, a freed Black man from Virginia, bought a parcel of land and founded historic Weeksville—one of the first free Black communities in the country.⁴ Within ten years, Weeksville had become a “successful community of more than 500 people,” boasting unique opportunities for homeownership, employment, and success for its Black residents.⁵ By the 1880s, Brooklyn had evolved from farmland into one of the nation's leading producers of manufactured goods.⁶ A myriad of products were produced in dockyards, gas refineries, ironworks, slaughterhouses, book publishers, sweatshops, and factories.⁷ As the eastward-expanding Brooklyn street grid reached Weeksville, the city “grew up, around and through the town,” and by the 1930s, Weeksville had been absorbed entirely by Brooklyn.⁸

The city's rapid growth brought a shortage of affordable housing. From 1906 to 1915, a fourth of all residences built in Brooklyn were tenements.⁹ Brooklyn accounted for forty-seven percent of all New York City tenements, and fifty-six percent of working-class families lived in “discredited old law tenements.”¹⁰ The

3. See Matthew Wills, *Brooklyn Farms, Then and Now*, HUFFINGTON POST (Aug. 10, 2010, 5:22 PM), https://www.huffpost.com/entry/brooklyn-farms-then-and-n_b_677625.

4. See Lucie Levine, *The History of Weeksville: When Crown Heights had the Second-Largest Free Black Community in the U.S.*, 6SQFT (Jul. 18, 2018), <https://www.6sqft.com/the-history-of-weeksville-when-crown-heights-had-the-second-largest-free-black-community-in-the-u-s/>.

5. See Suzanne Spellén, *The Inspiring Story of Weeksville, One of America's First Free Black Communities*, BROWNSTONER (Feb. 1, 2016, 11:10 AM), <https://www.brownstoner.com/history/weeksville-brooklyn-history-heritage-center/>.

6. See *History of Brooklyn: Early 20th Century*, THIRTEEN, <https://www.thirteen.org/brooklyn/history/history4.html> (last visited Mar. 29, 2022).

7. See *id.*

8. Spellén, *supra* note 5.

9. See CRAIG STEVEN WILDER, *A COVENANT WITH COLOR: RACE AND SOCIAL POWER IN BROOKLYN* 178 (2000).

10. See *id.* at 178–79.

Black laboring class was distributed throughout North and Central Brooklyn, and although they tended to live in sections with the “highest concentration of law tenements and the oldest physical plants,” the only neighborhood predominantly occupied by Black families was the St. Marks district of Central Brooklyn.¹¹ In other words, the laboring class—Black and white alike—generally lived elbow-to-elbow in these tenements as a result of class, not race.

Between the end of the Civil War and the turn of the century, Black and white populations were not particularly segregated in urban areas.¹² While, overall, Black Americans experienced more disadvantaged residential conditions than whites, their overrepresentation in the “poorest housing and meanest streets” had more to do with systematic discrimination in employment rather than in housing.¹³ Black Americans were excluded from most skilled trades and non-manual employment and thus were relegated to lower-paying employment opportunities, but their residential status did not differ significantly from others in the same economic circumstances.¹⁴ Moreover, the urban spatial structure at the time was not conducive to high levels of segregation—thus urban populations were distributed uniformly—because land use was not highly specialized, building densities and real estate prices were low, and “socially distinctive residential areas” had not yet emerged.¹⁵ Residential integration, however, steadily declined from 1880 to the mid-twentieth century and has mostly stalled since then.¹⁶

B. Twentieth Century Laws and Policies that Created Segregation Nationwide

Scholars maintain that ghetto¹⁷ creation began in 1920¹⁸ and that by 1930 Black Americans were “well on their way to experiencing a uniquely high degree of spatial isolation in American cities.”¹⁹ Government segregation policies began shortly after the turn of the century when, in 1910, Baltimore became the first of many cities to impose zoning ordinances decreeing residential segregation by

11. *See id.* at 179.

12. *See* DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID 19–20* (1993); SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 102 (2004).

13. MASSEY & DENTON, *supra* note 12, at 19.

14. *See id.*

15. *See id.*

16. RICHARD ROTHSTEIN, *THE COLOR OF LAW* 39 (2017).

17. A ghetto is a set of neighborhoods within an urban area, to which members of a minority group have been forcibly relegated. Ghettos do not form organically, and they are different from ethnic clusters. Ghettos are a social-organizational device that uses spatial confinement to reconcile economic exploitation and social ostracization. The segregation, combined with physical disrepair and overcrowding, exacerbates poverty and criminality and limits participation in national life. *See generally* Loïc Wacquant, *What is a Ghetto? Constructing a Sociological Concept*, *REVISTA DE SOCIOLOGIA E POLÍTICA* (Nov. 2004); *see also* MASSEY & DENTON, *supra* note 12, at 18–19, 57.

18. *See* MASSEY & DENTON, *supra* note 12, at 57; *but cf.* John L. Logan, Weiwei Zhang, Richard Turner & Allison Shertzer, *Creating the Black Ghetto: Black Residential Patterns before and during the Great Migration*, 660 *ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI.* 18 (2015) (pointing to an “embryonic form of a ghetto” developing as early as 1880).

19. MASSEY & DENTON, *supra* note 12, at 31.

race.²⁰ These zoning ordinances explicitly prohibited Black Americans from purchasing homes on blocks where a majority of whites lived.²¹ The Baltimore mayor who signed the ordinance into law subscribed to Progressives' position that "Blacks should be quarantined in isolated slums in order to reduce the incidents of civil disturbance, to prevent the spread of communicable disease into nearby white neighborhoods, and to protect property values among the white majority."²²

However, local governments soon had to modify their approach to race-based segregation when the Supreme Court overturned Louisville, Kentucky's racial zoning ordinance in the 1917 case, *Buchanan v. Warley*.²³ To prevent Black Americans from living in white-middle-class neighborhoods, local and federal officials pivoted to an economic zoning approach, using terms like "slum" as a proxy for race instead of using the racially explicit language of the earlier zoning ordinances.²⁴ To avoid white neighborhoods' "deterioration," local governments permitted—and sometimes made explicit exceptions for—zoning of industrial development, toxic waste facilities, liquor stores, nightclubs, and brothels in areas with substantial Black populations.²⁵ Economic zoning was a "convenient, race-neutral tool,"²⁶ that furthered segregation²⁷ and intensified degradation of Black neighborhoods.²⁸

In 1933 and 1934, as part of the New Deal reforms, the federal government established two federal lending programs to stabilize the mortgage market and make housing in the United States more affordable. The Home Owners' Loan Corporation (HOLC) refinanced home mortgages to rescue existing homeowners from bank foreclosures,²⁹ while the Federal Housing Administration (FHA) dealt directly with banks and other lenders by underwriting, or insuring, new mortgages to incentivize lenders to issue more and greater loans.³⁰ Both HOLC and FHA exercised prudence about borrowers' abilities to avoid default on mortgage

20. See Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910–1913*, 42 MD. L. REV. 289, 301 (1983).

21. Christopher Silver, *The Racial Origins of Zoning in American Cities*, in URBAN PLANNING AND THE AFRICAN-AMERICAN COMMUNITY 23, 27 (1997); see also Power, *supra* note 20.

22. Silver, *supra* note 21.

23. See *Buchanan v. Warley*, 245 U.S. 60 (1917) (ruling that racial zoning ordinances interfered with the property owner's freedom of contract and right to sell to whomever he pleased).

24. ROTHSTEIN, *supra* note 16, at 48, 53.

25. See *id.* at 49–50, 54–57; see also RICHARD ROTHSTEIN, *ECON. POL'Y INST., THE MAKING OF FERGUSON* 9 (2014), <https://www.epi.org/publication/making-ferguson/>; Vednita Nelson, *Prostitution: Where Racism & Sexism Intersect*, 1 MICH. J. OF GENDER & L. 81, 83 (1993) (“[S]trip joints and massage parlors are typically zoned in Black neighborhoods.”).

26. CASHIN, *supra* note 12, at 109.

27. See Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 70 (2011).

28. See ROTHSTEIN, *supra* note 16, at 50, 54.

29. See *id.* at 63–64; Alan S. Blinder, *From the New Deal, a Way Out of a Mess*, N.Y. TIMES (Feb. 24, 2008), <https://www.nytimes.com/2008/02/24/business/24view.html>.

30. See Marie Justine Fritz, *Federal Housing Administration (FHA)*, ENCYCLOPEDIA BRITANNICA (Oct. 4, 2019), <https://www.britannica.com/topic/Federal-Housing-Administration>.

loans.³¹ Yet, they based their assessments on residents' demographics rather than solely on the conditions of individual homes and their surrounding homes.³² The FHA only insured properties that it appraised to have a low risk of loan default.³³ To qualify for a government-insured mortgage, both the property and the borrower had to meet the FHA's *Underwriting Manual* requirements.³⁴ Loans were denied to residents of neighborhoods deemed "riskier" investments, and "risky" neighborhoods were identified by redlining practices.³⁵ HOLC created color-coded maps of hundreds of American cities, indicating the assumed security and investment potential in each neighborhood.³⁶ The safest neighborhoods for investment were colored green; the riskiest were red.³⁷ Redlined neighborhoods were denied or limited financial services based on their racial or ethnic composition, without regard to individual residents' qualifications or creditworthiness.³⁸ "A neighborhood earned a red color if [Black] Americans lived in it, even if it was a solid middle-class neighborhood of single-family homes."³⁹ As Professor Sheryll Cashin explains:

[T]he federal government, through its [FHA] mortgage insurance program, adopted and propagated the orthodoxy that homogeneity was necessary to ensure stable housing values. The FHA, the largest insurance operation in the world in its heyday, essentially chose to underwrite mortgages only for new single-family homes in predominantly white neighborhoods, investing and propagating the notion of redlining and initially locking out whole races and whole classes of people from the suburban dream.⁴⁰

31. ROTHSTEIN, *supra* note 16, at 64; *see, e.g.*, CASHIN, *supra* note 12, at 111.

32. *See* Candace Jackson, *What is Redlining?*, N.Y. TIMES (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>; Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; *see generally* Price V. Fishback et al., *The HOLC Maps: How Race and Poverty Influenced Real Estate Professionals' Evaluation of Lending Risk in the 1930s*, NAT'L BUREAU OF ECON. RSCH. (Oct. 2021), https://www.nber.org/system/files/working_papers/w28146/w28146.pdf.

33. *See* FHA UNDERWRITING MANUAL (1938), <https://www.huduser.gov/portal/sites/default/files/pdf/Federal-Housing-Administration-Underwriting-Manual.pdf>; *see also* Wendy Plotkin, "Racial" Provisions of FHA Underwriting Manual, 1936, <http://wbhsi.net/~wendyplokin/DeedsWeb/fha36.html>.

34. *See* FHA UNDERWRITING MANUAL, *supra* note 33; *see also* Plotkin, *supra* note 33.

35. *See* Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

36. *See* ROTHSTEIN, *supra* note 16, at 64; Jackson, *supra* note 32; Price V. Fishback et al., *supra* note 32.

37. ROTHSTEIN, *supra* note 16, at 64.

38. *See id.* at 64–66; Jacob W. Faber, *We Built This: Consequences of New Deal Era Intervention in America's Racial Geography*, 85 AM. SOC. REV. 739, 742 (2020).

39. *See* ROTHSTEIN, *supra* note 16, at 64.

40. CASHIN, *supra* note 12, at 103.

By the time the Community Reinvestment Act (CRA) outlawed redlining in 1977,⁴¹ Black and Hispanic neighborhoods had already deeply suffered from the disinvestment and neglect.⁴² The deliberate lack of investment led neighborhoods to deteriorate, further discouraging businesses and other potential investors.⁴³ Redlining led to significantly lower property values, relatively fewer neighborhood amenities, worse waste management,⁴⁴ and lack of job opportunities close to home.⁴⁵ Moreover, discriminatory color-coding practices parroting HOLC's security maps continued through other real estate venues, even long after the CRA.⁴⁶

After World War II, the federal government further exacerbated residential segregation by guaranteeing loans to mass-production subdivision builders and spurring the “suburbanization of every metropolitan area.”⁴⁷ Entire suburbs were created on the condition—imposed by the FHA and the Department of Veterans Affairs (VA)—that these suburbs be “all white.”⁴⁸ The FHA barred developers from selling homes to Black Americans, obligated developers to include racially restrictive covenants in the subdivisions' property deeds, and even withheld financing “if the presence of [Black] Americans in *nearby* neighborhoods threatened integration.”⁴⁹ By 1948, most American housing was constructed with federal financing; by 1950, half of American mortgages were insured by the FHA or the newly created VA.⁵⁰ Scholar Richard Rothstein argues that the federal government's financing of entire subdivisions as “racially exclusive white enclaves” was the FHA's biggest impact on segregation.⁵¹

41. See Eugene A. Ludwig, James Kamihachi & Laura Toh, *The Community Reinvestment Act: Past Successes and Future Opportunities*, in REVISITING THE CRA: PERSPECTIVES ON THE FUTURE OF THE COMMUNITY REINVESTMENT ACT 85 (Feb. 2009), https://www.frbsf.org/wp-content/uploads/sites/3/revisiting_cra.pdf.

42. See MASSEY & DENTON, *supra* note 12, at 58 (“Federally sponsored mortgage programs systematically channeled funds away from minority neighborhoods, bringing about a wholesale disinvestment in [B]lack communities during the 1950s and 1960s.”).

43. See Michela Zonta, *Racial Disparities in Home Appreciation*, CENTER FOR AMERICAN PROGRESS (Jul. 15, 2019), <https://www.americanprogress.org/article/racial-disparities-home-appreciation/> (“Investment money was consistently deflected away from central cities where people of color were concentrated.”); MASSEY & DENTON, *supra* note 12, at 2.

44. See Amanda T. Chang, *What a Waste: Segregation and Sanitation in Brooklyn, New York in the post-WWII Era*, PITZER COLL. SENIOR THESES (2016), http://scholarship.claremont.edu/pitzer_theses/69.

45. See ROTHSTEIN, *supra* note 16, at 97–99.

46. Zillow, the prominent online real estate marketplace company, used traffic-light color coding to rate neighborhood schools until as recently as December 2016. See Teke Wiggin, *Zillow wipes colors from school ratings after media coverage*, INMAN (Dec. 20, 2016), <https://www.inman.com/2016/12/20/zillow-wipes-colors-school-ratings-media-coverage/>; see also Kendra Yoshinaga & Anya Kamenetz, *Race, School Ratings and Real Estate: A ‘Legal Gray Area’*, NPR (October 10, 2016, 6:00 AM), <https://www.npr.org/sections/ed/2016/10/10/495944682/race-school-ratings-and-real-estate-a-legal-gray-area>.

47. ROTHSTEIN, *supra* note 16, at 75.

48. See *id.* at 70.

49. See *id.* at 71, 84.

50. See *id.* at 70–71.

51. See *id.* at 70.

Black families' inability to obtain federally insured mortgages in the suburbs made them vulnerable to exploitive real estate practices like blockbusting and predatory lending.⁵² Blockbusting was a practice whereby real estate agents would acquire properties in areas adjacent to Black neighborhoods or ghettos, rent or sell them to carefully chosen Black families, manipulate white families into believing that an impending "invasion" of Black families would make their home values plummet in the near future, and purchase the panicked whites' homes at cheap prices.⁵³ Then, agents would sell the homes to Black families at inflated prices.⁵⁴ Since these homes were expensive and Black families were disqualified from conventional federal homeownership financing, many families had to purchase their homes on installment plans.⁵⁵ The installment plans, called contract sales, were heavily skewed in the agents' favor.⁵⁶ Black buyers had to place large down payments for their homes and pay the rest with high interest rate monthly installments.⁵⁷ Ownership would not transfer to the buyer until the house was paid in full—fifteen to twenty years later.⁵⁸ Because Black buyers accumulated no equity in the homes until they were paid off in full, the contract sellers held the deeds and could evict the would-be owners if a single monthly payment came late.⁵⁹

Forcing Black families to pay excessive prices via contract sales and discouraging investors from Black neighborhoods created conditions for neighborhood deterioration.⁶⁰ Black families were hard-pressed to meet the demanding monthly payments, so they had no choice but to forgo luxuries like time, upkeep, and space.⁶¹ "Husbands and wives both worked double shifts. They neglected basic maintenance. They subdivided their apartments, crammed in extra tenants and, when possible, charged their tenants hefty rents Overcrowded neighborhoods meant overcrowded schools."⁶² Conditions like these helped "fuel the rise of gangs, which in turn terrorized shop owners and residents."⁶³ This neighborhood deterioration—combined with blockbusting tactics and disinvestment—triggered a mass exodus of white families from urban areas to the newly developed

52. See ROTHSTEIN, *supra* note 16, at 95–99.

53. See MASSEY & DENTON, *supra* note 12, at 37–38; ROTHSTEIN, *supra* note 16, at 95; CASHIN, *supra* note 12, at 118.

54. See MASSEY & DENTON, *supra* note 12, at 37–38; ROTHSTEIN, *supra* note 16, at 96; CASHIN, *supra* note 12, at 118.

55. See ROTHSTEIN, *supra* note 16, at 96.

56. See *id.*

57. See *id.*

58. See *id.*

59. See Natalie Moore, *Contract Buying Robbed Black Families in Chicago of Billions*, NPR (May 30, 2019), <https://www.npr.org/local/309/2019/05/30/728122642/contract-buying-robbed-black-families-in-chicago-of-billions>; ROTHSTEIN, *supra* note 16, at 96; see also MASSEY & DENTON, *supra* note 12, at 39.

60. See ROTHSTEIN, *supra* note 16, at 97.

61. See *id.*; see also MASSEY & DENTON, *supra* note 12, at 39.

62. ROTHSTEIN, *supra* note 16, at 97.

63. *Id.*

suburbs.⁶⁴ Black neighborhoods suffered as the deliberate lack of investment prevented economic growth and opportunity.⁶⁵ Neighborhood deterioration and white flight further discouraged businesses and other potential investors, sparking a vicious cycle of oppression.⁶⁶ By the mid-twentieth century,⁶⁷ areas the federal government had redlined based on race in the 1930s and 1940s became ghettos.⁶⁸

C. Ghettoization in Brooklyn, New York

Ghettoization in Brooklyn developed in the way typical of ghetto creation nationwide.⁶⁹ As Black Americans and Puerto Ricans began to move to Brooklyn, they were funneled into undesirable neighborhoods by local and national policies and practices and excluded from economic opportunities for advancement available to working-class whites.⁷⁰ Though in 1930 Brooklyn had “no contiguous, compacted ghetto” like in Manhattan’s Harlem or Chicago’s South Side, segregation of the Black population in Brooklyn soon crystallized.⁷¹ By 1945, most Black Brooklynites lived in Central Brooklyn and, within a decade, “a vast [B]lack ghetto stretched across Brooklyn and was becoming the largest concentration of its kind.”⁷² From 1940 to 2000, the white population of Brooklyn declined by 67%, and the Black population increased by an astronomical 683%.⁷³ Yet, these demographic trends were “hardly the natural outcome of a large number of Southern Blacks moving to Black Brooklyn and a large number of whites moving out of Black Brooklyn.”⁷⁴ Instead, these demographic changes resulted from racially explicit and well-defined institutional practices, government laws and policies, and private behaviors.⁷⁵

64. *See id.* at 98–99.

65. *See* MASSEY & DENTON, *supra* note 12, at 2 (“[S]egregation concentrates poverty to build a set of mutually reinforcing and self-feeding spirals of decline into [B]lack neighborhoods. When economic dislocations deprive a segregated group of employment and increase its rate of poverty, socioeconomic deprivation inevitably becomes more concentrated in neighborhoods where that group lives. The damaging social consequences that follow from increased poverty are spatially concentrated as well, creating uniquely disadvantaged environments that become progressively isolated—geographically, socially, and economically—from the rest of society.”).

66. *See, e.g.*, Faber, *supra* note 38.

67. *See* MASSEY & DENTON, *supra* note 12, at 57.

68. *See id.* at 10 (“[T]he [B]lack ghetto was constructed through a series of well-defined institutional practices, private behaviors, and public policies by which whites sought to contain growing urban [B]lack populations.”).

69. WALTER THABIT, FORWARD BY FRANCES FOX PIVEN, *HOW EAST NEW YORK BECAME A GHETTO* 39 (2003).

70. *See id.* at 37–38.

71. WILDER, *supra* note 9, at 177; *see also* Themis Chronopolous, “What’s Happened to the People?” *Gentrification and Racial Segregation in Brooklyn*, 24 J. OF AFR. AM. STUD. 549, 556–57 (2020).

72. WILDER, *supra* note 9, at 177.

73. Chronopolous, *supra* note 71, at 558.

74. *Id.*

75. *See* ROTHSTEIN, *supra* note 16; MASSEY & DENTON, *supra* note 12, at 10; David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH REPS. 404, 405 (2001); THABIT *supra* note 69, at 37, 54.

As early as 1940, more than 81% of Black Brooklynites lived in a small, red-lined portion known as “Black Brooklyn.”⁷⁶ This geographical concentration continued to grow post-war as a combination of “new financial mechanisms . . . federal and state highway programs, and state-regulated annexation and zoning practices” fueled “suburban explosion.”⁷⁷ The index of dissimilarity in New York City—the standard quantitative measure of a city’s segregation—reached 86.8 in 1940, meaning 87% of Black residents would have to move elsewhere to be evenly distributed throughout the city.⁷⁸ Even during Weeksville’s prime, in 1860, the index had been much lower, at 40.6.⁷⁹

By the 1950s, Brooklyn’s manufacturing industry began to wane. Manufacturing plants moved to cheaper cities and large container ships started dominating the shipping trade, rendering Brooklyn’s warehouses and ports less active.⁸⁰ Between 1954 and 1990, manufacturing fell by half.⁸¹ “Economic dislocation and the easy availability of government-sponsored housing loans” coaxed hundreds of thousands of white middle-class residents away from the city and into the suburbs.⁸² “Once-vibrant neighborhoods fell into disrepair, decay, and poverty.”⁸³ They became ghettos that still persist today.

II. INEQUALITIES TODAY

The consequences of racial residential segregation are not limited to decimated property values and hindrance of generational wealth-building. Racial residential segregation is also a fundamental cause of disturbing racial disparities in health and life expectancy.⁸⁴ Segregation has produced racial differences in several determinants of health—including socioeconomic status, educational opportunity, employment opportunity, housing quality, access to medical care, access to healthy food, and crime.⁸⁵ This Note focuses on just one of these structural inequalities: access to healthy food.

A. Current Racial Health Disparities in Brooklyn

Despite remarkable medical advances and the steady rise of New Yorkers’ overall life expectancies, striking disparities exist among New Yorkers along

76. Chronopolous, *supra* note 71, at 557.

77. Karl Taeuber, *The Contemporary Context of Housing Discrimination*, 6 YALE L. & POL’Y REV. 339, 341 (1988).

78. MASSEY & DENTON, *supra* note 12, at 20–21.

79. *See id.* at 21. Today, New York City’s Segregation Index is 76.1—one of the highest in the nation. *See* William H. Frey, *Black-White Segregation Edges Downward Since 2000, Census Shows*, BROOKINGS INST. (Dec. 17, 2018), <https://www.brookings.edu/blog/the-avenue/2018/12/17/black-white-segregation-edges-downward-since-2000-census-shows/>.

80. *See History of Brooklyn: The Post-War Years*, THIRTEEN, <https://www.thirteen.org/brooklyn/history/history5.html> (last visited Mar. 29, 2022).

81. *Id.*

82. *Id.*

83. *Id.*

84. Williams & Collins, *supra* note 75, at 404–05; *see* Li Wenhui et al., *infra* note 121.

85. *See* Williams & Collins, *supra* note 75, at 406–07, 411.

racial and economic lines.⁸⁶ Poor health is concentrated in predominantly Black and Hispanic poverty-stricken neighborhoods.⁸⁷ Within Brooklyn, disparities are most prevalent in an area known as “Black Brooklyn.”⁸⁸ Black Brooklynites have higher levels of obesity, hypertension, diabetes, infant mortality, and premature mortality.⁸⁹ Life expectancy in East New York and Brownsville—predominantly Black Brooklyn neighborhoods—is 77.7 and 75.8 years, respectively.⁹⁰ In Bensonhurst and Borough Park—white middle-class Brooklyn neighborhoods—life expectancy is 83.8⁹¹ and 84.2⁹² years. Even recent pandemic-related deaths mirror the health discrepancies seen in life expectancy data. As of March 28, 2022, one of East New York’s zip codes (11239) reported 1,367 COVID-19 deaths per 100,000 people, making it significantly higher than Brooklyn’s overall death rate of 417.13 and higher than New York City’s overall death rate of 407.55

86. See M. NAIDOO ET AL., N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY COMMUNITY HEALTH PROFILES 2018 MAP ATLAS (2018), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018-chp-atlas.pdf> [hereinafter 2018 NYC HEALTH PROFILES ATLAS]; N.Y. STATE DEP’T OF HEALTH, 2017 HEALTH CARE DISPARITIES IN NEW YORK STATE: A REPORT ON HEALTH CARE DISPARITIES FOR GOVERNMENT SPONSORED INSURANCE PROGRAMS (2017), https://www.health.ny.gov/health_care/managed_care/reports/docs/demographic_variation/demographic_variation_2017.pdf [hereinafter 2017 NYS HEALTH CARE DISPARITIES REPORT]; C. MYERS ET AL., N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, HEALTH DISPARITIES IN NEW YORK CITY: HEALTH DISPARITIES IN LIFE EXPECTANCY AND DEATH (2010), <https://www1.nyc.gov/assets/doh/downloads/pdf/episrv/disparitiesone.pdf> [hereinafter 2010 NYC HEALTH DISPARITIES REPORT]; A. KARPATI ET AL., N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, HEALTH DISPARITIES IN NEW YORK CITY REPORT (2004), https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_other_2004_jul_health_disparities_in_new_york_city_karpati_disparities.pdf [hereinafter 2004 NYC HEALTH DISPARITIES REPORT]; Emma Lee, *The Health Disparities and Discrimination of East New York*, NYCROPOLIS (May 3, 2018), <https://eportfolios.macaulay.cuny.edu/vellon18/discrimination/eweinstein720/the-health-disparities-and-discrimination-of-east-new-york/>; Andrea Leonhardt, *NYC’s Life Expectancy Rises, Yet Health Disparities Continue to Persist*, BK READER (July 10, 2019), <https://www.bkreader.com/2019/07/10/nycs-life-expectancy-rises-yet-health-disparities-continue-to-persist/>; Felipe G. Operti et al., *Dynamics of Racial Segregation and Gentrification in New York City*, CORNELL UNIV. PHYSICS AND SOC’Y DEP’T (2019), <https://arxiv.org/abs/1904.07205>.

87. See 2018 NYC HEALTH PROFILES ATLAS, *supra* note 86; 2010 NYC HEALTH DISPARITIES REPORT, *supra* note 86; 2004 NYC HEALTH DISPARITIES REPORT, *supra* note 86.

88. Black Brooklyn comprises of the following neighborhoods: Fort Greene, Clinton Hill, Bedford-Stuyvesant, Prospect Heights, Crown Heights, Brownsville, Ocean Hill, East New York, Canarsie, Flatlands, East Flatbush, Flatbush, parts of Bushwick, and parts of downtown Brooklyn. See Chronopolous, *supra* note 71, at 553; see also Matthew Bloch et al., *Mapping Segregation: New York*, N.Y. TIMES (July 8, 2015), <https://www.nytimes.com/interactive/2015/07/08/us/census-race-map.html>.

89. See 2018 NYC HEALTH PROFILES ATLAS, *supra* note 86.

90. See Lee, *supra* note 86; *Keeping Track Online: The Status of New York City Children*, CITIZENS’ COMM. FOR CHILD., <https://data.cccnewyork.org/data/map/1341/life-expectancy#1341/a/3/1573/40/a/a> (last visited Mar. 29, 2022) (illustrating 2018 life expectancy data for each neighborhood); see also 2018 NYC HEALTH PROFILES ATLAS, *supra* note 86, at 63; see generally N.Y.C., EAST NEW YORK, BROOKLYN (2012), http://www.nyc.gov/html/ops/nycstim/downloads/pdf/east_new_york_spotlight_110831.pdf.

91. See K. HINTERLAND ET AL., N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, COMMUNITY HEALTH PROFILES 2018: BENSONHURST 20 (2018), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018chp-bk11.pdf>.

92. See *id.*

per 100,000 people.⁹³ By contrast, predominantly white neighborhoods like Park Slope and Brooklyn Heights reported much lower death rates as of the same date, 170.92 and 341.93 per 100,000 people respectively.⁹⁴

B. Inadequate Access to Healthy Food in Black Brooklyn

One of the structural explanations for current racial health disparities in Brooklyn is inadequate access to healthy food in Black and Hispanic neighborhoods. Overall, Black Americans have inadequate access to supermarkets, and Black neighborhoods have a greater prevalence of fast food.⁹⁵ Consumption of nutritious food is tied to availability, and the availability of healthful products in grocery stores varies across counties and zip codes.⁹⁶ “Food deserts” are neighborhoods with limited access to grocery stores and healthy food options, and “food swamps” are areas where unhealthy food—like high-calorie fast food and junk food—is more readily available than healthy food.⁹⁷ Food swamps typically exist in food deserts, and their existence predicts obesity rates more accurately than the existence of food deserts.⁹⁸ Without access to nutritional foods, people living in food deserts and food swamps frequently consume low nutrition, high-calorie diets.⁹⁹ They eat more unhealthy and processed foods, which doubles the risk of heart attack and diabetes, quadruples the risk of renal failure, and septuples the risk of early-life stroke.¹⁰⁰ New York City’s biggest food deserts and food swamps are in low-income, predominantly Black and Hispanic areas of Brooklyn. Fast-food chains in residential areas are most prevalent in poverty-stricken, formerly redlined Brooklyn neighborhoods like East New York, Bedford-Stuyvesant, and Brownsville.¹⁰¹

East New York has the highest concentration of fast-food restaurants in all five boroughs; high-calorie fast food and junk food are more readily available than healthy food.¹⁰² East New York’s population is 55.1% Black and 35.77% Hispanic; 27.4% of households’ incomes are below poverty; 33.8% of households

93. See *Covid-19: Data by ZIP Code*, N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE (Feb. 18, 2022, 5:54 PM), <https://www1.nyc.gov/site/doh/covid/covid-19-data-totals.page#zip>.

94. See *id.*

95. See Naa Oyo A. Kwate, *Fried Chicken and Fresh Apples: Racial Segregation as a Fundamental Cause of Fast Food Density in Black Neighborhoods*, 14 HEALTH & PLACE 32, 37 (2008).

96. See Williams & Collins, *supra* note 75, at 410.

97. See Kristen Cooksey-Stowers et al., *Food Swamps Predict Obesity Rates Better Than Food Deserts in the United States*, 14 INT’L J. ENV’T RSCH. & PUB. HEALTH 1366, 1367 (2017).

98. See *id.* at 1368, 1376.

99. See *id.* at 1366-67.

100. Joel Fuhrman, *The Hidden Dangers of Fast and Processed Food*, 12 AM. J. LIFESTYLE MED. 375, 375 (2018).

101. See Naa Oyo A. Kwate et al., *Inequality in obesigenic environments: Fast food density in New York City*, 15 HEALTH & PLACE 364, 366 fig. 1, 368 Fig. 2 (2009) (fig. 1, depicting a map of the percent of Black residents in New York City) (fig. 2, depicting a map of average exposure to fast food across New York City that shows exposure is higher in areas with a higher percentage of Black residents).

102. See Andrea Leonhardt, *East New York—NYC’s Biggest ‘Food Swamp?’*, BKREADER (May 21, 2018), <https://www.bkreader.com/2018/05/21/east-new-york-nycs-biggest-food-swamp/>.

receive SNAP benefits; and 4.8% of adults are unemployed.¹⁰³ The neighborhood has over forty fast-food chain restaurants in only two zip codes. Correspondingly, 35% of East New York adults and 25% of children are obese, and the neighborhood has the highest diabetes rate in New York City.¹⁰⁴ In Bedford-Stuyvesant, eight in ten food stores are bodegas, yet only 21% of the bodegas carry fruit, and only 6% carry green leafy vegetables.¹⁰⁵ Bedford-Stuyvesant's population is 64% Black and 20% Hispanic; 25.6% of households' incomes are below poverty; 29.1% of households receive SNAP benefits; 5.5% of adults are unemployed.¹⁰⁶ In Brownsville, where 41% of adults are obese, there is one supermarket for every fifteen bodegas.¹⁰⁷ Brownsville's population is 72.7% Black and 21.7% Hispanic; 37.6% of households' incomes are below poverty; 45.7% of households receive SNAP benefits; 8.1% of adults are unemployed.¹⁰⁸ Compare the limited healthy food access in these areas to Brooklyn Heights, a predominantly white Brooklyn neighborhood with 6% Black and 6% Hispanic residents,¹⁰⁹ where residents have access to four full-service supermarkets, two fruit and vegetable stores, an outdoor farmer's market operating three times a week, two bakeries, a butcher shop, a fishmonger, and three specialty cheese and chocolate stores.¹¹⁰ Brooklyn Heights's population size is less than half of Brownsville's, a fourth of East New York's, and an eighth of Bedford-Stuyvesant's.¹¹¹

What makes data like this all the more disturbing is that they are directly tied to racial disparities in health and life expectancy. Daily intake of foods that are high in fat, salt, and sugar translates into a "nutrient-poor diet," and makes Black Americans living in low-income neighborhoods "vulnerable to obesity, heart

103. See Melissa Gallanter, *Foodscape: East New York/Starrett City*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (Jan. 22, 2022), <https://www.nycfoodpolicy.org/foodscape-east-new-york-starrett-city/>.

104. See Lea Cearine, *New York City's Biggest 'Food Swamps'*, CITYLIMITS (May 21, 2018), <https://citylimits.org/2018/05/21/new-york-citys-biggest-food-swamps/>.

105. See New York Law School Racial Justice Project, *Unshared Bounty: How Structural Racism Contributes to the Creation and Persistence of Food Deserts*, RACIAL JUST. PROJECT 11 (2012) [hereinafter *Unshared Bounty*].

106. See Melissa Gallanter, *Foodscape: Bedford-Stuyvesant*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (Aug. 31, 2021), <https://www.nycfoodpolicy.org/foodscape-bedford-stuyvesant/>.

107. See Melissa Gallanter, *Foodscape: Brownsville*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (July 6, 2021), <https://www.nycfoodpolicy.org/foodscape-brownsville/>.

108. See *id.*

109. See *Brooklyn Heights Residents*, NICHE, <https://www.niche.com/places-to-live/n/brooklyn-heights-new-york-city-ny/residents/> (last visited Mar. 29, 2022); see also *Foodscape: Fort Greene and Brooklyn Heights*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (Dec. 12, 2021), <https://www.nycfoodpolicy.org/foodscape-fort-greene-and-brooklyn-heights/>. When data from Brooklyn Heights are combined with that from Fort Greene, the two neighborhoods are 25.4% Black; 12% of households' incomes are below poverty; 13.3% of households receive SNAP benefits; 4.6% of adults are unemployed. *Id.*

110. *Unshared Bounty*, *supra* note 105, at 11.

111. Brooklyn Heights' population is 20,256. Brownsville's is 58,300. East New York's population is 91,958, and Bedford-Stuyvesant's population is 157,530. See John Misachi, *Brooklyn Neighborhoods by Population*, WORLD ATLAS (Jan. 30, 2019), <https://www.worldatlas.com/articles/brooklyn-neighborhoods-by-population.html>.

disease, hypertension, and all manner of chronic illnesses related to a poor diet.”¹¹² Certainly, fast food is also present in whiter spaces, but segregation’s downstream effects “make fast food *more prevalent* in Black neighborhoods.”¹¹³ Moreover, when inadequate food access is paired with the additional structural inequalities Black Americans face, its disastrous effects are compounded. Limitations in services, goods, and resources—such as grocery stores, employment opportunities, or accessible health practitioners—collectively impact health.¹¹⁴

III. INTERCONNECTION BETWEEN SEGREGATION AND HEALTH DISPARITIES

Inadequate access to healthy food in low-income Black and Hispanic Brooklyn neighborhoods can be traced directly to the aforementioned government-sanctioned segregation policies and practices.¹¹⁵ Segregation concentrated Black Americans in poverty-stricken neighborhoods and strictly capped opportunities for financial growth.¹¹⁶ It encouraged white Americans and businesses (including grocery stores)¹¹⁷ to relocate to the suburbs, which further reduced the urban tax base and cities’ ability “to provide a broad range of supportive social services to economically deprived residential areas.”¹¹⁸ Between 1970 and 1988, Brooklyn lost half of its large grocery stores, mirroring the trend of white flight to suburbia.¹¹⁹ Segregation policies facilitated supermarkets’ exodus to the suburbs and, by underwriting white flight, led to the decline of the independent grocers that remained.¹²⁰ When predominantly Black neighborhoods deteriorated from the vicious cycle of disinvestment and abandonment, the government made insufficient effort to rectify the devastating economic consequences of its segregation policies, leaving Black Americans exposed to predatory commercial practices. Comparing a 1938 redlined map of Brooklyn to recent poverty and life expectancy maps shows shocking overlap. Neighborhoods that were redlined in the mid-twentieth century now have the highest poverty levels and lowest life

112. See *Unshared Bounty*, *supra* note 105, at 6; see also *Access to Foods that Support Healthy Eating Patterns*, OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-foods-that-support-healthy-eating-patterns> (last visited Mar. 29, 2022).

113. Kwate, *supra* note 95, at 34 (emphasis added).

114. See Raja Staggers-Hakim, *Black Lives Matter; Civil Rights, and Health Inequities*, 40 W. NEW ENG. L. REV. 447, 456 (2018).

115. See THABIT *supra* note 69, at 37, 54.

116. See *id.*

117. See, e.g., MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 18–19 (1997) (“Locked out of the greatest mass-based opportunity for wealth accumulation in American history, [Black] Americans who desired and were able to afford home ownership found themselves consigned to central-city communities where their investments were affected by the ‘self-fulfilling prophecies’ of the FHA appraisers” cut off from sources of new investment, their homes and communities deteriorated and lost value in comparison to those homes and communities that FHA appraisers deemed desirable.”).

118. See Williams & Collins, *supra* note 75, at 410.

119. See Nathan Rosenberg & Nevin Cohen, *Let Them Eat Kale: The Misplaced Narrative of Food Access*, 45 FORDHAM URB. L.J. 1091, 1099 (2018); *supra* Part I(C).

120. See Rosenberg & Cohen, *supra* note 119, at 1099.

expectancy at birth in all of Brooklyn.¹²¹

A. Concentrated Poverty and Disinvestment

Racial residential segregation is the key structural factor responsible for the creation of the urban underclass and perpetuation of Black poverty in the United States.¹²² Segregation leads to “racial differences in the purchasing power” for a broad range of services, including services necessary to support good health.¹²³ Not only are there significantly fewer commercial enterprises in segregated urban areas—resulting in services fewer in quantity, poorer in quality, and higher in price—but, on average, Black Americans “pay higher costs than whites for housing, food, insurance, and other services.”¹²⁴ The depressed urban economy has made it difficult to keep supermarkets or other businesses in the area, and “once shopping options became limited, liquor stores began to serve as a main source of food in urban areas.”¹²⁵ Liquor stores and bodegas typically sell processed food that “is generally more expensive than what could be found in a supermarket,” and fresh fruits and vegetables are often unavailable.¹²⁶ Moreover, segregation “fosters a weak retail climate and a surplus of low-wage labor, both of which make the proliferation of fast food probable.”¹²⁷ Segregation has created health-destructing neighborhood environments and continues to minimize necessary resources for good health in predominantly Black areas.¹²⁸

B. Predatory Food Industry Practices

Segregation facilitates predatory location and advertising of unhealthy food that extracts profits and kills,¹²⁹ by creating a “ready, spatially concentrated target

121. See *Brooklyn*, THE RED LINE ARCHIVE, <https://www.redlinearchive.net/portfolio/red-line-maps/> (last visited Apr. 7, 2022) (depicting a map that shows the racial segregation in New York City); *Poverty in Brooklyn: A Block by Block Analysis*, INST. FOR CHILD., POVERTY & HOMELESSNESS (2010); see also *Disparities in Life Expectancy and Death in New York City*, N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE (Apr. 2010), <https://www1.nyc.gov/assets/doh/downloads/pdf/episrv/disparitiesone.pdf> (depicting a map of poverty levels in Brooklyn); Li Wenhui et al., *Summary of Vital Statistics 2018 New York, NY*, N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, BUREAU OF VITAL STAT. 10 (Dec. 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/vs/2018sum.pdf> (depicting a map of life expectancy at birth in New York City).

122. MASSEY & DENTON, *supra* note 12, at 9.

123. See Williams & Collins, *supra* note 75, at 410.

124. See *id.* at 410.

125. Kate Meals, *Nurturing the Seeds of Food Justice: Unearthing the Impact of Institutionalized Racism on Access to Healthy Food in Urban African-American Communities*, 15 SCHOLAR: ST. MARY’S L. REV. & SOC. JUST. 97, 121 (2012).

126. See *id.*

127. See Kwate, *supra* note 95, at 37.

128. See Dorothy E. Roberts, *The Most Shocking and Inhuman Equality: Thinking Structurally About Poverty, Racism, and Health Inequities*, 49 U. MEM. L. REV. 167, 176–77 (2018); see also Chronopolous, *supra* note 71, at 552 (“Racial segregation signifies the . . . maldistribution of government resources, municipal services, economic opportunities, and life chances.”).

129. See generally Joel Fuhrman, *The Hidden Dangers of Fast and Processed Food*, 12 AM. J. LIFESTYLE MED. 375 (2018) (using the term “Fast Food Genocide” to refer to the causative role of junk food, fast food, and processed food in shortened lifespans); see also Kwate, *supra* note 95, at 33.

area” upon which fast-food companies capitalize.¹³⁰ Health and life expectancy are directly tied to availability of fast food versus healthy food,¹³¹ and regions with greater numbers of fast food restaurants have higher morbidity and mortality rates.¹³² Access to unhealthy food establishments increases consumption of fast food,¹³³ likely because a primary motivation for consuming fast food is convenience.¹³⁴ Notably, Professor Naa Oyo A. Kwate points out that there is no reason why Black Americans would intrinsically find fast foods more appealing or convenient than others.¹³⁵ Yet fast food restaurants are more likely to be in areas with higher concentrations of Black residents¹³⁶ because segregation creates localized geographic market areas that promote fast food, concentrate available low-wage labor pools, and weaken community political strength that could oppose fast food sitting.¹³⁷

It is no coincidence that Black neighborhoods nationwide are disproportionately exposed to fast food; Kwate argues that the high prevalence of fast-food restaurants in predominantly Black neighborhoods suggests purposeful targeting.¹³⁸ Before opening a business, owners consider location characteristics, and location analyses for many predominantly Black neighborhoods would reveal: “a retail climate that generates few customers, a relatively high crime rate, public services that have faced years of cutbacks and neglect, visibly deteriorated buildings, and several competing fast-food restaurants.”¹³⁹ Unless targeting residents was a primary goal, corporations would have few incentives to open stores in these neighborhoods.¹⁴⁰ Corporations know these neighborhoods have limited food options, limited purchasing power, cheaper commercial rent, less competition from healthy alternatives, and a surplus of low-wage labor.¹⁴¹ “That Blackness and economic disadvantage is conflated is firmly embedded in [corporations’ imaginations].”¹⁴² As American dietary patterns, consumer spending, and market penetration has changed, “targeting [Black] Americans has become increasingly important” for fast food companies.¹⁴³

130. See Kwate, *supra* note 95, at 35.

131. See Fuhrman, *supra* note 129, at 375–76. See also *Eating More Ultra-Processed Foods May Shorten Life Span*, HARV. MED. SCH. (May 1, 2019), <https://www.health.harvard.edu/staying-healthy/eating-more-ultra-processed-foods-may-shorten-life-span>.

132. See Kwate, *supra* note 95, at 33.

133. Peter James et al., *Do Minority and Poor Neighborhoods Have Higher Access to Fast-Food Restaurants in the United States?*, 29 HEALTH & PLACE 10, 15 (2014).

134. See Kwate, *supra* note 95, at 34.

135. See *id.*

136. Cooksey-Stowers et al., *supra* note 97, at 2; see also James et al., *supra* note 133, at 10.

137. See Kwate, *supra* note 95, at 33.

138. *Id.* at 35.

139. *Id.*

140. *Id.*

141. See *id.* at 35–41.

142. *Id.* at 36.

143. *Id.* In 1996, scholars predicted that as trends in the population at large moved away from high fat foods, marketing toward low-income communities of color would increase—as had been done with cigarette and alcohol advertising. *Id.* at 35. Their prediction has proven true. See *infra* notes 148–159.

Fast food companies, whose marketing practices are currently unregulated by the government, also target Black and Hispanic communities through their advertising.¹⁴⁴ In 2017, 86% of advertising dollars spent on food ads went toward promoting fast food, candy, sugary drinks, and unhealthy snacks on Black-targeted television programming.¹⁴⁵ Between 2013 and 2017, companies boosted their spending on advertisements targeting Black television viewers by more than 50%—even though total television advertisement spending declined.¹⁴⁶ KFC, Taco Bell, Pizza Hut, PepsiCo, and McDonalds¹⁴⁷ were some of the biggest targets of Black and Hispanic youth, and their increased spending intensified advertising racial disparities.¹⁴⁸ In 2013, Black children and teenagers viewed 70% more food ads than their white peers.¹⁴⁹ By 2017, that number had increased to 86% more than white children and 119% more than white teenagers.¹⁵⁰ A recent study by the City University of New York (CUNY) Urban Food Policy Institute found more than twice as many ads promoting unhealthy food and beverages in Black and Hispanic New York City communities (compared to mostly white communities).¹⁵¹ Further, the proportion of all advertisements using predatory, misleading, and aggressive messages was significantly higher in these low-income neighborhoods.¹⁵² The aggressive targeting is concerning because “constant exposure to ads for unhealthy food and drinks can shape children’s norms and

144. See, e.g., Roberto A. Ferdman, *The Disturbing Ways that Fast Food Chains Disproportionately Target Black Kids*, WASHINGTON POST (Nov. 12, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/11/12/the-disturbing-ways-that-fast-food-chains-disproportionately-target-black-kids/> (discussing how Popeye’s and Papa John’s purchase ads on television channels popular with Black audiences, such as BET); see also Shamard Charles, *Junk Food Ads Disproportionately Target Black and Hispanic Kids, Study Finds*, NBC NEWS (Jan. 16, 2019, 11:53 AM), <https://www.nbcnews.com/health/health-news/junk-food-ads-disproportionately-target-black-hispanic-kids-study-finds-n9591111>; Olga Khazan, *Fast-Food Chains Disproportionately Target Black Children*, THE ATLANTIC (Nov. 13, 2014), <https://www.theatlantic.com/health/archive/2014/11/the-racial-gap-in-fast-food-marketing/382688/>.

145. Theresa Braine, *Fast-Food Companies Target Blacks and Latinos With Ads for Greasiest and Most Sugary Foods, New Report Says*, N.Y. DAILY NEWS (Jan. 16, 2019, 12:30 AM), <https://www.nydailynews.com/news/national/ny-news-fast-food-advertising-sugar-grease-black-hispanic-20190115-story.html> (referencing study by the Rudd Center for Food Policy & Obesity at the University of Connecticut, the Council on Black Health at Drexel University, and Salud America! at UT Health San Antonio); see also HARRIS ET AL., *INCREASING DISPARITIES IN UNHEALTHY FOOD ADVERTISING TARGETED TO HISPANIC AND BLACK YOUTH* (2019), <https://media.ruddcenter.uconn.edu/PDFs/TargetedMarketingReport2019.pdf> [hereinafter Rudd Report].

146. Braine, *supra* note 145; see also Rudd Report, *supra* note 145, at 5.

147. See Braine, *supra* note 145.

148. See Rudd Report, *supra* note 145, at 5.

149. *Id.*

150. *Id.*

151. See *An Overview of the CUNY Predatory Food and Beverage Marketing Project*, CUNY URB. FOOD POL’Y INST. (Jan. 28, 2020), <https://www.cunyorbanfoodpolicy.org/news/2020/1/26/an-overview-of-the-cuny-predatory-food-and-beverage-marketing-project>.

152. See *id.*

expectations about what foods are okay to eat on a regular basis.”¹⁵³ The foods and drinks most heavily targeted to children of color are high in sugar, salt, and/or fat—foods that should not be consumed on a regular basis.¹⁵⁴

IV. POTENTIAL SOLUTIONS

The government is obligated to mitigate the entrenched architecture of segregation and its consequences for food security and health. Permitting a ten-year life-expectancy gap within a ten-mile radius is abhorrent, immoral, and undermines the very idea of equal citizenship. It is inconsistent with our country’s linchpin values of justice and equality. At all levels, the government must step in with its power and resources to protect its Black and Hispanic Brooklyn-based citizens from the racial health disparities dramatically shortening their lives. Not only would eliminating health disparities in New York City save thousands of lives per year¹⁵⁵ but concentrated Black poverty was largely a government creation.¹⁵⁶ The responsibility thus falls squarely on the government’s shoulders to remedy the egregious structural inequalities it created. Some efforts have been made to address the food access problem in Brooklyn, yet these efforts have been insufficient.¹⁵⁷ Given how intertwined the effects of segregation are on Black and Hispanic New Yorkers, policies aimed at improving food access should be paired with initiatives that also address other segregation-rooted racial disparities—like generational wealth, income, transportation, or educational opportunities—to increase the likelihood of success.

A. Existing Interventions

One of the most prominent food access interventions lures supermarkets to food swamps by subsidizing supermarket development through government-sponsored programs.¹⁵⁸ Policies expanding food retail are based on the assumption that improving healthy food access addresses malnourishment and diet-related diseases.¹⁵⁹ However, research indicates that merely expanding food retail access is insufficient.¹⁶⁰ Standing alone, it has “no appreciable effect on shopping patterns, food choices, health, obesity, or diet-related diseases.”¹⁶¹ More

153. Lisa Rapaport, *Junk Food Ads Disproportionately Target Black and Hispanic Kids: Report*, REUTERS (Jan. 17, 2019, 4:11 PM) (quoting Jennifer Emond, a researcher at the Geisel School of Medicine at Dartmouth College), <https://www.reuters.com/article/us-health-minorities-food-ads/junk-food-ads-disproportionately-target-black-and-hispanic-kids-report-idUSKCN1PB2O5>.

154. *Id.*

155. Adam Karpati et al., *Health Disparities in New York City*, N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE (2004).

156. *See, e.g.*, CASHIN, *supra* note 12, at 115; *see also* THABIT, *supra* note 69, at 37 (“Segregation—American style apartheid—created the conditions that put East New York and other vulnerable communities at risk.”).

157. *See, e.g.*, Rosenberg & Cohen, *supra* note 119.

158. *Id.* at 1092.

159. *Id.* at 1105.

160. *See id.* at 1092.

161. *See id.* at 1092, 1106.

specifically, it does not give overworked residents more time to shop and cook; increase underpaid residents' income to buy healthier food, which is more expensive than junk or fast food;¹⁶² and it does not address inadequate health and nutrition education.¹⁶³ Inadequate food access is not a physical proximity issue in a vacuum; it is a product of disinvestment and predation on vulnerable neighborhoods. Food access is interconnected with purchasing power, allocation of resources, and opportunity.¹⁶⁴ Focusing solely on the proximity aspect of food access may bring some gains—like the 126 new supermarket projects the Obama Administration's Healthy Food Financing Initiative (HFFI) achieved.¹⁶⁵ But luring supermarkets to food swamps does not, alone, address the depth of the problem.

In 2009, New York City launched the Food Retail Expansion to Support Health (FRESH) program, using a combination of local zoning and tax incentives to establish and retain healthy and affordable food options to eligible communities.¹⁶⁶ FRESH offers huge benefits for neighborhood grocery stores, including an exemption from the 8.875% sales tax on construction, renovation, or equipment materials, a \$500 tax reduction for each full-time employee, a deferral of mortgage recording taxes, reduced parking requirements, and additional square footage in mixed-use buildings.¹⁶⁷ Over \$100 million has been invested into New York City's economy from the twenty-two FRESH projects approved so far, and over 1,600 jobs have been created or retained through FRESH.¹⁶⁸ Yet FRESH's approach of combining zoning and financial incentives still only addresses physical proximity to food and arguably "invites gentrifying forces such as real estate developers and corporate chains" into poor Black and Hispanic neighborhoods.¹⁶⁹ As one critic commented, "FRESH is a subsidy for supermarket chains, not poor people."¹⁷⁰ To increase FRESH's effectiveness, it should be paired with other government initiatives like expanding SNAP benefits and eligibility or increasing

162. Meals, *supra* note 125, at 105.

163. See Lilia Smelkova, *Food Education in America*, CTR. FOR SCI. IN THE PUB. INT., FOOD EDUCATION IN AMERICA i (Dec. 2015), https://kiesel.ucdavis.edu/Food_education_report_Dec2015.pdf.

164. See FOOD SYSTEMS AND NUTRITION EQUITY, GLOBAL NUTRITION REPORT (2021), <https://globalnutritionreport.org/reports/2020-global-nutrition-report/food-systems-and-nutrition-equity/>.

165. HFFI was a federal program implemented during the Obama Administration that distributed over \$500 million to help develop and expand supermarkets and grocery stores in food deserts. See Rosenberg & Cohen, *supra* note 119, at 1103.

166. See *Food Retail Expansion to Support Health (FRESH)*, N.Y.C. ECON. DEV. CORP., <https://edc.nyc.gov/program/food-retail-expansion-support-health-fresh> (last visited Mar. 29, 2022).

167. See Batya Ungar-Sargon, *Have City Subsidies to Supermarkets Made NYC Healthier?*, CITYLIMITS (Apr. 5, 2016), <https://citylimits.org/2016/04/05/have-city-subsidies-to-supermarkets-made-nyc-healthier/>.

168. See *Food Retail Expansion to Support Health (FRESH)*, *supra* note 166.

169. See Lia Warner, *The FRESH Approach to Food Insecurity: NYC's Market-Based Food Movement*, COMPASS, <https://wp.nyu.edu/compass/2019/04/22/the-fresh-approach-to-food-insecurity-nycs-market-based-food-movement/>.

170. See *id.*

the minimum wage, so residents in FRESH zones can afford to shop at the subsidized stores.

B. Recommendations

Improving access to healthy food is unquestionably a key to reducing racial health disparities, but policymakers should avoid limiting their focus to supply-side policies. If food disparities are to be adequately addressed, policymakers must grapple with reducing racial disparities in socio-economic circumstances on the consumer end. One consideration, for example, could be to expand low-income Black and Hispanic households' purchasing power by increasing the minimum wage. Anti-hunger organizations frequently advocate for increased minimum wage laws because minimum wage increases have been found to significantly improve food security with no adverse impact on employment.¹⁷¹ This is especially true for Black and Hispanic, high school graduate, and single-parent households.¹⁷² It enables households to reduce their reliance on low-cost food, afford more balanced meals, and maintain a food supply.¹⁷³ Though New York City is heralded for already having a \$15 minimum wage,¹⁷⁴ policymakers should implement another increase. New York City is the most expensive American city to live in and Brooklyn, alone, is the fourth most expensive.¹⁷⁵ Brooklyn's cost of living is 80% above the national average, with housing expenses at 240% higher than the national average.¹⁷⁶ Even basic groceries like milk, eggs, and chicken are 48% to 56% more expensive in New York than in Chicago.¹⁷⁷ The goal of addressing inadequate food access should be to "create policies that build capital within communities and distribute our country's substantial wealth more equitably, while providing living wages and labor standards so that people have time and money to provide for their needs."¹⁷⁸ Increasing the minimum wage would be a step toward achieving this goal, especially when paired with existing healthy food proximity programs.

Another wealth-based solution could involve pairing programs like HFFI or FRESH with rent stabilization policies in poverty-stricken, predominantly Black and Hispanic Brooklyn neighborhoods. Reinvestment in urban neighborhoods tends to trigger gentrification—a process whereby the influx of more affluent businesses and residents changes the character of a neighborhood and displaces

171. See William M. Rodgers III, *The Impact of a \$15 Minimum Wage on Hunger in America*, THE CENTURY FOUND. (Sept. 1, 2016), <https://tcf.org/content/report/the-impact-of-a-15-minimum-wage-on-hunger-in-america/?session=1>.

172. See *id.*

173. See *id.*

174. See *id.*

175. See Dan Burrows, *The 20 Most Expensive Cities in the U.S.*, KIPLINGER (July 20, 2020), <https://www.kiplinger.com/real-estate/601142/20-most-expensive-cities-in-the-us>.

176. See *id.*

177. See *Cost of Living Comparison Between Chicago, IL and New York, NY*, NUMBEO (last visited Mar. 23, 2022).

178. Rosenberg & Cohen, *supra* note 119, at 1120.

current residents.¹⁷⁹ Gentrification generally has extreme effects on low-income residents. Some are forced out of their neighborhoods due to rising rental costs and find themselves having to move to lower-income communities than they were previously living in.¹⁸⁰ Others become trapped in their gentrifying neighborhoods, “unable to bear the financial burden of moving and forced to extend beyond their means to remain in their ever-costlier communities.”¹⁸¹ New York City already has rent-control laws, but the city’s rent-control tenants are, on average, more likely to be white.¹⁸² Stabilizing rent in predominantly Black and Hispanic Brooklyn neighborhoods could be a way to ensure that the influx of businesses and economic growth would not harm the very residents food-access programs are designed to help.¹⁸³

Aside from money and time, another factor diluting the effectiveness of HFFI and FRESH-like programs is inadequate nutrition education. Currently, food education in the United States is “negligible, scattered, and inefficient,” and we lack a robust national food education program for children and adults.¹⁸⁴ In Brooklyn, only 58% of public schools partnered with food and nutrition education programs (FNPs) during the 2016-2017 school year.¹⁸⁵ Though schools with more than 90% of students living in poverty make up a third of public schools in the city, only 63% of them partnered with FNPs—compared to 86% of wealthy schools.¹⁸⁶ And schools with the highest proportion of Black and Hispanic students had the lowest rate of partnership with FNPs, at 53%.¹⁸⁷ Part of making healthy food more accessible should involve education—making information about food’s impact on health, what constitutes a “healthy” diet, and how to shop for or prepare healthy meals readily available.¹⁸⁸ Eating habits are formed in early childhood, so schools are often the best staging point for nutrition education, especially in

179. See *What Are Gentrification and Displacement*, URB. DISPLACEMENT PROJECT, <https://www.urbandisplacement.org/gentrification-explained> (last visited Mar. 29, 2022).

180. See Ryan Cohen, *Shelter-In-Place: Reducing Displacement and Increasing Inclusion in Gentrifying Neighborhoods*, 13 HARV. L. & POL’Y REV. 273, 285 (2018).

181. *Id.*

182. See *id.* at 320.

183. See *id.* at 275, 283-85; see also Melissa Eddy, *Berlin Freezes Rents for 5 Years in a Bid to Slow Gentrification*, N.Y. TIMES (Jan. 31, 2020), <https://www.nytimes.com/2020/01/31/world/europe/berlin-gentrification-rent.html>; Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*, BROOKINGS INST. (Oct. 18, 2018), <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>.

184. See SMELKOVA, *supra* note 163.

185. See Pamela Koch et al., *Expanding and Enhancing Food and Nutrition Education in New York City Public Schools: An Examination of Program Characteristics and Distribution*, 12 NUTRIENTS 2423, 2433 (2020).

186. See *id.*

187. See *id.*

188. It is also important to ensure that any food education program is culturally competent and recognizes healthy food options from many different cultures.

lower-income communities.¹⁸⁹ Evidence shows that healthy school lunch initiatives improve students' eating behaviors, food selection, and food consumption.¹⁹⁰ Other avenues for education geared toward adults could include bolstering programs like the Department of Agriculture's SNAP-Ed Connection or the Expanded Food and Nutrition Education Program (EFNEP), which teach people about nutritional health and how to shop for and cook healthy meals.¹⁹¹ Providing food education programs could help improve individuals' shopping patterns and food choices, two of the areas in which programs like HFFI and FRESH fall short.

V. CONCLUSION

The current racial health discrepancies in Brooklyn, New York, can be traced back to twentieth-century segregation policies and practices, such as redlining, blockbusting, and predatory lending. Regardless of the depth of their racist beliefs and proclivities, white Americans would not have been able to create such stark racial segregation had the government not implemented scores of racially discriminatory policies and subsidized white suburban flight.¹⁹² "Private discrimination also played a role, but it would have been considerably less effective had it not been embraced and reinforced by government."¹⁹³ At federal, state, and local levels, the government has a pressing obligation to intervene and bring this vicious and unforgiving cycle of disinvestment and predation on Black and Hispanic Brooklynites to an end. Thousands of lives are at stake yearly. Because of how intertwined the effects of segregation are, policies aimed at improving racial health disparities should be paired with initiatives that also address other segregation-rooted racial discrepancies, to increase the likelihood of success.

189. See UNION OF CONCERNED SCIENTISTS, THE DEVASTATING CONSEQUENCES OF UNEQUAL FOOD ACCESS 8 (2016), https://www.ucsusa.org/sites/default/files/attach/2016/04/ucs-race-income-diabetes-2016.pdf?utm_source=twitter&utm_medium=social&utm_campaign=tw.

190. *Healthy School Lunch Initiatives*, CNTY. HEALTH RANKINGS & ROADMAPS (Dec. 10, 2020), <https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/healthy-school-lunch-initiatives>.

191. See *SNAP-Ed Connection*, USDA, <https://snaped.fns.usda.gov/> (last visited Mar. 29, 2022); *Expanded Food and Nutrition Education Program (EFNEP)*, USDA, <https://nifa.usda.gov/program/expanded-food-and-nutrition-education-program-efnep> (last visited Mar. 29, 2022).

192. See KERNER COMM'N, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 119 (1968), https://belonging.berkeley.edu/sites/default/files/kerner_commission_full_report.pdf?file=1&force=1; see, e.g., Kriston Capps, *How the Federal Government Built White Suburbia*, BLOOMBERG CITY LAB (Sept. 2, 2015, 11:36 AM), <https://www.bloomberg.com/news/articles/2015-09-02/how-the-federal-government-built-white-suburbia>.

193. ROTHSTEIN, *supra* note 16, at XII.