

THE GROUND BENEATH OUR FEET: BASEMENT APARTMENTS, CLIMATE CHANGE, AND HOUSING INEQUALITY*

SATEESH NORI, ESQ.**

[They] mistook measurement for understanding. And they always had to put themselves at the center of everything. That was their greatest conceit. The earth is becoming warmer—it must be our fault! The mountain is destroying us—we have not propitiated the gods! It rains too much, it rains too little—a comfort to think that these things are somehow connected to our behavior, that if only we lived a little better, a little more frugally, our virtue would be rewarded. But here was nature, sweeping toward him—unknowable, all-conquering, indifferent—and he saw in her fires the futility of human pretensions.¹

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INTRODUCTION

In September 2021, forty-three people died in the aftermath of Hurricane Ida in the greater New York area.² In New York City, several people died in basement apartments, including a two-year-old boy named Ang and his parents, who drowned as unexpected flood waters rushed into their basement home.³ Ang, Mingma Sherpa, and Lobsang Lama had recently immigrated from Nepal to

* Title Inspired by the novel by Salman Rushdie, not the U2 song.

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¹ ROBERT HARRIS, POMPEII 272 (2003).

² See Andy Newman et al., *What We Know About the People Who Died in the Flooding*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/09/02/nyregion/ida-new-york-city-deaths.html>.

³ See Sarah Maslin Nir, *Trapped in Basements and Cars, They Lost Their Lives in Savage Storm*, N.Y. TIMES (Oct. 13, 2021), <https://www.nytimes.com/2021/09/02/nyregion/nyc-flooding-deaths.html>.

seek a new life in Woodside, Queens.⁴ Their dreams died with them because they were victims of two colliding forces: climate change and the affordable housing crisis. News reports, however, were quick to identify the villains in these basement deaths to be greedy landlords, reporting that the New York City Police Department (NYPD) was exploring criminal charges against them.⁵

Basement apartments⁶ represent more than the traditional struggle between landlords and tenants: battles over rent, repairs, and space. The prevalence of basement apartments as a housing of last resort means that our housing policies have failed and that they have unfairly pitted low-income communities of color against one another.⁷ In my view, if we don't address the issue of basement apartments, climate change will further displace, bankrupt, and even kill people in these communities.

Here, I attempt to tell a deeper story about basement apartments, those who rent them out, and those who live in them. In Part I, I describe how basement apartments came to be. They are partly a creature of the housing crisis and resulting market failures and partly the result of the exploitation of homeowners in communities of color and the systematic disinvestment in low-income neighborhoods. In Part II, I discuss the climate crisis, from Superstorm Sandy to Hurricane Ida, and its impact in New York City on vulnerable tenants and low-income communities of color. In Part III, I offer a survey of the movements to address the basement housing crisis in New York City, including a bill that is currently under consideration at the state level.⁸ Finally, in Part IV, I offer my conclusions: that basement apartments are emblematic

⁴ *See id.*

⁵ *See NYPD Probing Flooding Deaths in Basement Apartments*, REAL DEAL (Sept. 8, 2021, 11:49 AM), <https://therealdeal.com/2021/09/08/nypd-probing-flooding-deaths-in-basement-apartments>.

⁶ I refer throughout to “basement apartments,” but the ideas and principles here apply equally to cellars, attics, and any other non-traditional living spaces.

⁷ Describing the battle of resiliency plans for East River Park, Michael Kimmelman writes: “The park saga is not a conflict between bad versus good actors, but a confluence of different interests, different areas of expertise, different notions of community. It is a parable of progress.” Michael Kimmelman, *What Does It Mean to Save a Neighborhood?*, N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2021/12/02/us/hurricane-sandy-lower-manhattan-nyc.html>.

⁸ *See* S.B. 8783, 2021–2022 Leg., Reg. Sess. (N.Y. 2021).

of the complete failure of housing policy in New York City; that in communities of color, both homeowners and their tenants are victims of this failure; and that the climate crisis will devastate these communities further.

I. WHY DO BASEMENT APARTMENTS EXIST?

“The city has more homeless residents now than at any time since the Great Depression. More than half of all households cannot afford the rent. Displacement, gentrification, and eviction are rampant. Two pillars of New York’s distinctive housing system—public housing and rent regulation—are both under threat.”⁹

The problem of housing inequality in New York City is growing steadily worse. Since the publication of *In Defense of Housing* in 2016, a seminal work on the commodification of housing, the City’s homeless population has increased,¹⁰ New York City Housing Authority residents have suffered crisis after crisis,¹¹ and the rent regulation system is facing challenges in federal court.¹² Too many New Yorkers live on the brink of eviction and permanent housing insecurity, and the most vulnerable tenants in New York City were and are Black and brown. In 2016, tenants living in majority-Black districts were three times more likely to face eviction than tenants living in

⁹ DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING* 16–17 (2016).

¹⁰ See Nolan Hicks, *De Blasio Says Homelessness Was Biggest Failure, Critics Have Longer List*, N.Y. POST (Oct. 1, 2021, 3:03 PM), <https://nypost.com/2021/10/01/de-blasio-says-homelessness-was-biggest-failure>.

¹¹ See David Brand, *NYCHA’s Shift to Private Management May Drive Evictions, New Report Warns*, CITY LIMITS (Jan. 27, 2022), <https://citylimits.org/2022/01/27/nychas-shift-to-private-management-may-drive-evictions-new-report-warns> (describing increasing evictions and other crises, such as lead paint dangers).

¹² See Suzannah Cavanaugh, *Two More Rent Law Challenges Tossed, Landlords Rest Hopes on Appeal*, REAL DEAL (Sept. 16, 2021, 5:29 PM), <https://therealdeal.com/2021/09/16/two-more-rent-law-challenges-tossed-landlords-rest-hopes-on-appeal>.

majority-white zip codes.¹³ The pandemic made such disparities worse.¹⁴

While it would be simple to frame the rise of basement apartments as a reverberation of the low supply of safe, decent, and affordable housing, supply constraints are not the only explanation for the growing prevalence of basement apartments, which grew like a cancer in cities because of two other factors: historic racial discrimination in mortgage lending policies, and historic disinvestment in infrastructure where communities of color live.¹⁵

The racial discrimination faced by Black homebuyers at the hands of banks, and the practice of “blockbusting,”¹⁶ resulted in Black homebuyers paying more for housing and being under greater pressure to pay for it.¹⁷

As author Ta-Nahesi Coates describes: “Black people were viewed as a contagion. Redlining went beyond FHA-backed loans and spread to the entire mortgage industry, which was already rife with racism, excluding black people from most legitimate means of obtaining a mortgage.”¹⁸ These practices drove aspiring Black homeowners into the hands of predatory lenders.¹⁹ As a result, Black families were forced to live in neighborhoods where there was “less of everything, with the exception perhaps of policing.”²⁰

In “Race for Profit,” Professor Keeanga-Yamahtta Taylor tells of a typical example of the exploitation of a Black homebuyer:

¹³ See Oksana Mironova, *Race and Evictions in New York City*, CMTY. SERV. SOC’Y (June 22, 2020), <https://www.cssny.org/news/entry/race-evictions-new-york-city>.

¹⁴ See *id.*

¹⁵ See SHERYLL CASHIN, *WHITE SPACE, BLACK HOOD: OPPORTUNITY HOARDING AND SEGREGATION IN THE AGE OF INEQUALITY* 125 (2021).

¹⁶ The practice of persuading owners to sell property cheaply because of the fear of people of another race or class moving into the neighborhood, and thus profiting by reselling at a higher price.

¹⁷ See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 98–99 (2017).

¹⁸ Ta-Nehesi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631>.

¹⁹ See CASHIN, *supra* note 15, at 125.

²⁰ *Id.* at 57.

In buying 78 Arch Street in Paterson, New Jersey, an African American mother of eight secured a home with “electrical deficiencies” and “large holes in the plaster” for \$17,500. A welfare recipient, she rented out the first floor of her house to another poor family in order to offset the cost of her monthly mortgage.²¹

But basement apartments are also the outgrowth of systematic underinvestment in communities of color. In *White Space, Black Hood*, Professor Sheryll Cashin describes the government’s overinvestment in white neighborhoods and disinvestment in others.²² This disinvestment went deep, affecting roads, transportation, and housing infrastructure.²³ When people from communities of color, lured by the American dream of homeownership, went into it head-first, they often got much less than they bargained for in terms of location, quality, and value.²⁴ In my view, it is likely that this underinvestment in infrastructure negatively impacted roads, sewers, drains, and other flood protection methods, setting the stage for the devastation of climate change.

This dynamic of over- and under-investment created, as Professor Cashin describes, a residential caste system by which American cities are divided into “racialized spaces of high and low opportunity.”²⁵ Historic maps show redlining in action in New York City.²⁶ This pattern represents, as Professor Deborah Archer writes in describing race-based underdevelopment in transportation policy, a limitation of opportunity for people of color.²⁷

²¹ KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* 133 (2019).

²² See CASHIN, *supra* note 15, at 111.

²³ See *id.* at 120–21.

²⁴ See TAYLOR, *supra* note 21, at 174.

²⁵ Sheryll Cashin, *It’s Time to Dismantle America’s Residential Caste System*, POLITICO (Sept. 12, 2021, 7:00 AM), <https://www.politico.com/news/magazine/2021/09/12/its-time-to-dismantle-americas-residential-caste-system-511150>.

²⁶ See Camila Domonoske, *Interactive Redlining Map Zooms in on America’s History of Discrimination*, NPR (Oct. 19, 2016, 3:22 PM), <https://www.npr.org/sections/thetwo-way/2016/10/19/498536077/interactive-redlining-map-zooms-in-on-americas-history-of-discrimination>.

²⁷ See generally Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125 (2021).

Today, we see that the areas most impacted by foreclosures are also communities of color.²⁸ Many homeowners, still beset by unsustainable mortgages, continue to earn income by illegally converting vacant spaces in their homes into rented spaces.²⁹ Studies show that such units exist in largely middle-class and immigrant communities, in places like Queens, Brooklyn, and the Bronx.³⁰ The 2009 mortgage foreclosure crisis, which devastated these same communities,³¹ revealed the need for relief for landlords and tenants—landlords from predatory mortgages and tenants from summary evictions.³² In Queens, for example, it was people in immigrant communities who, like Black people decades before, were left with few options to purchase or rent decent housing.³³

II. BASEMENTS AND THE CLIMATE CRISIS

Climate change brought new horrors to the housing landscape in New York City. For example, Superstorm Sandy devastated Far Rockaway, where homes and apartment buildings were destroyed, power went out, and basic needs like medical care were disrupted.³⁴ Studies show that climate change in New York City will grow steadily worse, with increased temperatures, rising sea levels, and more rainfall.³⁵

The aftermath of Sandy resulted not in equitable rebuilding, but “climate gentrification,” as low-income Black residents of

²⁸ See Matthew Bloch & Janet Roberts, *Mapping Foreclosures in the New York Region*, N.Y. TIMES (May 30, 2010), <https://archive.nytimes.com/screenshots/www.nytimes.com/interactive/2009/05/15/nyregion/0515-foreclose.jpg>.

²⁹ See ROBERT NEUWIRTH & RACHANA SHETH, PRATT CTR. FOR CMTY. DEV. & CHHAYA CMTY. DEV. CORP., *NEW YORK'S HOUSING UNDERGROUND: A REFUGE AND RESOURCE* 6 (2008), <https://chhayacdc.org/wp-content/uploads/2019/11/New-Yorks-Housing-Underground.pdf>.

³⁰ See *id.* at 3, 5.

³¹ See CASHIN, *supra* note 15, at 7.

³² NEUWIRTH & SHETH, *supra* note 29, at 6.

³³ See *id.* at 4.

³⁴ See Action for the Climate Emergency, *Hurricane Sandy in New York City: Youth & Climate*, YOUTUBE (AUG. 24, 2021), <https://www.youtube.com/watch?v=BdCvJ0qfDok&t=99s>.

³⁵ See William Solecki & Cynthia Rosenzweig, *New York City Panel on Climate Change Report Chapter 9: Perspectives on a City in a Changing Climate 2008–2018*, 1439 ANNALS N.Y. ACAD. SCI. 280, 280 (2019).

communities like Edgemere were coerced into permanently relocating.³⁶ The City enacted policy fixes, such as “Build it Back,” in the post-Sandy era, to attempt to address the impact of climate change on the areas most affected by it.³⁷ Unfortunately, “Build it Back” proved to be a technocratic failure.³⁸ Frustrated homeowners, desperate for funds to repair their storm-damaged homes, often faced delays in aid.³⁹ Many neighborhoods impacted by Sandy remain unprepared for the next storm, which is inevitable.⁴⁰

During Sandy, it became clear that climate change was affecting not just geographically vulnerable housing near coastal or low-lying areas, but also neglected and improperly maintained housing in interior areas not usually vulnerable to weather events. For example, residents of public housing projects in landlocked areas of the city were ravaged by the storm.⁴¹ And as Hurricane Ida sucker-punched areas of Queens which were never thought to be vulnerable to flooding, a renewed focus on efforts to protect basement tenants took root. As described in a City report written after Ida:

Most residential damage in single-family homes (1-4 units) is from flooding in sub- or at-grade space (e.g., basements, ground floors). These damaged properties are located across the city, though concentrated in Queens, Brooklyn, the Bronx, and Staten Island, with many in lower-income and immigrant

³⁶ See Amir Khafagy, *She Survived Hurricane Sandy. Then Climate Gentrification Hit*, GUARDIAN (Apr. 18, 2021, 5:00 AM), <https://www.theguardian.com/us-news/2021/apr/18/hurricane-sandy-new-york-far-rockaway-climate-gentrification-hit>.

³⁷ See *Build It Back*, NYC RECOVERY: SANDY FUNDING TRACKER, <https://www1.nyc.gov/content/sandytracker/pages/build-it-back> (last visited June 1, 2022).

³⁸ See Press Release, N.Y.C. Comptroller Scott M. Stringer, Comptroller Stringer Audit of Build It Back Reveals Millions Paid Out for Incomplete Work, Double-Billing & Undocumented Travel Costs (Mar. 31, 2015), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-audit-of-build-it-back-reveals-millions-paid-out-for-incomplete-work-double-billing-undocumented-travel-costs-2>.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See Claudia Irizarry Aponte & Greg B. Smith, *NYCHA's Post-Sandy Rebuild Mired in Delays and Dubious Contracts*, CITY (Oct. 29, 2019), <https://www.thecity.nyc/special-report/2019/10/29/21210733/nycha-s-post-sandy-rebuild-mired-in-delays-and-dubious-contracts>.

communities with a high percentage of at-risk populations. Unlike some prior storms, the impacts were notably felt inland rather than in the coastal areas, with the flooding caused by rainfall rather than storm surge.⁴²

The vulnerability of low-income New Yorkers, and in particular of communities of color, to the impacts of climate change on basement apartments—whether as owners or as tenants—is an environmental justice issue.⁴³ Those who died in basements because of Hurricane Ida suffered from a “confluence of crises, including a lack of affordable housing, the pandemic and climate change . . . hidden issue[s] for many low-income Asian immigrants who are often forced by cultural needs, poverty and immigration status to live in unsafe conditions.”⁴⁴

Unfortunately, the confluence of climate change and its impact on vulnerable urban tenants is not unique to New York City, or even to the United States. In Beijing, according to scholars Youqin Huang and Chengdong Yi, basement dwellers are called the “mouse tribe” because of the underground warrens that they are forced to live in.⁴⁵ “Physically, basement rentals are underground and scattered across the city, often invisible to urban residents and policy makers, let alone to visitors and outsiders . . . [C]onventional migrant enclaves demonstrate visible poor housing conditions and human misery, in sharp contrast to clean, orderly, and aesthetic private housing in suburban neighbourhoods.”⁴⁶

In 2021, flooding in central China resulted in the deaths of more than three hundred people.⁴⁷ The parallels between migrants

⁴² OFF. OF THE DEPUTY MAYOR FOR ADMIN., *THE NEW NORMAL: COMBATING STORM-RELATED EXTREME WEATHER IN NEW YORK CITY* 22 (2021), <https://www1.nyc.gov/assets/orr/pdf/publications/WeatherReport.pdf>.

⁴³ See Kimmy Yam & Sakshi Venhatraman, *Ida's Forgotten Victims: Nearly All Storm's Basement Deaths Were Asian Residents, Obscured by Climate Injustice*, NBC NEWS (Oct. 18, 2021, 3:08 PM), <https://www.nbcnews.com/news/asian-america/ida-s-forgotten-victims-nearly-all-storm-s-basement-deaths-n1281670>.

⁴⁴ *Id.*

⁴⁵ Youqin Huang & Chengdong Yi, *Invisible Migrant Enclaves in Chinese Cities: Underground Living in Beijing, China*, 52 URB. STUDIES 2948, 2949 (2015).

⁴⁶ *Id.* at 2950.

⁴⁷ See Austin Ramzy, *The Death Toll from Flooding in China Rises Sharply, to More than 300*, N.Y. TIMES (Aug. 2, 2021), <https://www.nytimes.com/2021/08/02/world/asia/china-flooding-deaths.html>.

in China and immigrants to New York City are numerous. Both groups are largely invisible to housing laws and policies in their regions. Neither group has much political power to force policymakers to address their housing issues. Finally, both groups are nakedly exposed to each climate disaster that will likely come, bringing death and devastation to their communities.

III. A SURVEY OF EFFORTS TO ADDRESS THE BASEMENT CRISIS

In 2008, the Pratt Center and Chhaya CDC released a report entitled “New York’s Housing Underground: A Refuge and Resource,” which outlines the framework of the “Basement Apartments Safe for Everyone (BASE)” campaign.⁴⁸ This project sought to establish guidelines and tools for legalizing basement apartments.⁴⁹

According to this report, between 1990 and 2000, approximately 114,000 underground apartments, including basement apartments, were created in New York City.⁵⁰ The report outlined options for converting “phantom apartments”⁵¹ into regulated, safe dwelling units. These recommendations were clarified in the “Blueprint,” which called for permanent funding

⁴⁸ See NEUWIRTH & SHETH, *supra* note 29, at 7–8. The elements of the campaign were: (1) the City should create an “accessory dwelling unit” category within the building and zoning codes, which would allow many of these currently illegal units to be legalized; (2) the City should offer landlords who agree to legalize their basement apartments as accessory dwelling units a reasonable (e.g., 12–18 month) grace period during which they will not be subject to penalties for illegal occupancy under the Building Code; (3) the City should provide landlords who offer to legalize their basement apartments for existing tenants at existing reasonable rents with technical assistance and financial incentives to make the necessary repairs; (4) the City and state should enable violations of accessory dwelling unit provisions to be heard in Housing Court, rather than at the Environmental Control Board, thus guaranteeing that landlord and tenant needs are taken into account. The City should also consider community mediation and enforcement, so as not to burden the legal system; (5) the City should establish community-based task forces in the neighborhoods that have the most unauthorized housing units to follow the impact of the accessory dwelling unit measure and the role that the housing underground plays in other neighborhood issues such as traffic, parking, schools, and hospital usage; (6) the City should push for passage of legislation requiring all sellers of buildings in the five boroughs to certify that their homes meet all applicable housing, zoning, and building codes before the sale is consummated. *Id.*

⁴⁹ *See id.*

⁵⁰ *See id.* at 2–4.

⁵¹ *Id.* at 1.

for a citywide program, including favorable loans to homeowners who sought to legalize their basement units.⁵²

In my experience, early advocacy before elected officials, bureaucrats within the Fire Department of the City of New York (FDNY), the Department of Buildings, the Department of Housing Preservation and Development, and others⁵³ about the importance of legalizing basement apartments was met with ambivalence and hostility. Objections, masked in red tape,⁵⁴ were raised about monitoring safety for the tenants of basement apartments. Concerns about the lack of parking in neighborhoods where basements would be legalized,⁵⁵ and the resulting overcrowding in local schools, were flagged.⁵⁶ Such arguments exhibited a willful ignorance of the fact that basements were already occupied, cars were already parked on streets, and children were already enrolled in schools.⁵⁷ Unfortunately, all of this was invisible to policymakers because basement apartments were in the shadows of the law.

The City implemented a BASE pilot in 2019 in East New York, Brooklyn.⁵⁸ Housing code requirements were eased for participating homeowners, including requirements for “ceiling height, natural light, means of egress, and sprinklers.”⁵⁹ The pilot also allowed for waivers of Department of Buildings and Department of Environmental Protection fees, and Housing Preservation and Development “launched a technical assistance

⁵² See BASEMENT APARTMENTS SAFE FOR EVERYONE, THE BASE CAMPAIGN’S BLUEPRINT FOR BASEMENT APARTMENTS (2021), https://prattcenter.net/uploads/0221/1613091577360099/Full_Blueprint.pdf.

⁵³ I was personally involved in this advocacy between 2008 and 2012 as a representative of Legal Services NYC on the BASE campaign coalition.

⁵⁴ See Gabriel Poblete, *How Do You Make Underground Apartments Safer? Many Legislators and Housing Advocates Say Legalize Them*, CITY & STATE N.Y. (Sept. 14, 2021), <https://www.cityandstateny.com/policy/2021/09/how-do-you-make-underground-apartments-safer-many-legislators-and-housing-advocates-say-legalize-them/185356>.

⁵⁵ See Ameena Walker, *NYC Housing Crisis Could Get Boost from Legalized Basement Apartments*, CURBED N.Y. (Feb. 17, 2017, 9:15 AM), <https://ny.curbed.com/2017/2/17/14642806/new-york-affordable-housing-solutions>.

⁵⁶ See Mireya Navarro, *Looser Rules on Illegal Housing Sought*, N.Y. TIMES (Oct. 13, 2013), <https://www.nytimes.com/2013/10/14/nyregion/looser-rules-on-illegal-housing-sought.html>.

⁵⁷ See *id.*

⁵⁸ See OFF. OF THE DEPUTY MAYOR FOR ADMIN., *supra* note 42, at 47.

⁵⁹ *Id.*

and financing program to assist owners in the Pilot program.”⁶⁰ Only one hundred out of eight thousand eligible homeowners participated.⁶¹ This may have been due to the difficulty in accessing information about the pilot program and understanding its requirements.

After Ida, the City faced criticism for failing to advance the basement pilot program more quickly,⁶² especially because the pandemic forced many more people into unemployment and insecure housing. In its own assessment, the City identified key recommendations to protect homeowners and tenants from the future impacts of climate change.⁶³ The measures include creating a database of vulnerable subgrade spaces, enhancing communication to basement occupants, enhancing first-responder (FDNY and NYPD) capabilities for basement evacuations, and building a “comprehensive Basement Apartment Conversion program.”⁶⁴ The pilot program, while a step forward, evaporated in the waning days of the DeBlasio administration.

At the state level, New York recently considered a bill to expand the use of basements and other “accessory dwelling units” (ADUs).⁶⁵ Supporters of the bill claimed that it would help increase the supply of affordable housing.⁶⁶ Similar measures have been enacted in other regions of the country.⁶⁷ In Oakland, funds are being made available to Black homeowners to create ADUs on their property as a way to increase income and prevent displacement.⁶⁸ This bill, while making the creation of ADUs

⁶⁰ *Id.*

⁶¹ *See id.*

⁶² *See* Mihir Zaveri, *11 Deaths Put Focus on N.Y.C.’s Failure to Make Basement Apartments Safe*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/09/14/nyregion/legalize-basement-apartments-nyc.html>.

⁶³ *See* OFF. OF THE DEPUTY MAYOR FOR ADMIN., *supra* note 42, at 48.

⁶⁴ *Id.* at 49.

⁶⁵ *See* S.B. 8783, 2021–2022 Leg., Reg. Sess. (N.Y. 2021).

⁶⁶ *See* Kathryn Brenzel, *Bill Would Legalize Granny Flats in New York*, REAL DEAL (Feb. 3, 2021), <https://therealdeal.com/2021/02/03/bill-would-legalize-granny-flats-in-new-york/>.

⁶⁷ *See* *Accessory Dwelling Units*, LOCAL HOUSING SOLUTIONS, <https://localhousingsolutions.org/housing-policy-library/accessory-dwelling-units> (last visited June 1, 2022).

⁶⁸ *See* *How Accessory Dwelling Units Can Increase Affordable Housing in Oakland Communities*, CHAN ZUCKERBERG INITIATIVE (Oct. 17, 2021), <https://chanzuckerberg.com/blog/oakland-accessory-dwelling-units>.

easier in many parts of New York State, potentially puts tenants at risk of living in unsafe housing subject to fewer regulations.

CONCLUSION

The issue of illegal basements pitting middle-class people of color as landlords against low-income people of color as tenants—the alluring undercard fight—distracts us from the real issue: the lack of safe, decent, and affordable housing and investment in low-income communities. Meanwhile, the climate crisis, like a ticking time-bomb, makes any workable solution to unsafe basement apartments fleeting, like sand in the floodwaters. Basement apartments represent a failure in our housing policy. That basement apartments are rented out means that the goal of stable homeownership remains out of reach for many middle-class homeowners, many of whom are Black or brown. That too many tenants rent basement apartments means that we lack an adequate supply of safe, decent, and affordable homes. We can tinker on the fringes of this problem with policies to make basements safer in the short-term. However, eventually and inevitably, climate change will force a reckoning with our failed housing policies. Proposals to legalize basements address the present circumstances facing homeowners and tenants, but they do not go to the roots: disinvestment, discrimination, and displacement in low-income communities. These failures will impact the most vulnerable people in our cities: Black and brown tenants, immigrant landlords, and communities of color.