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Homeowners Associations: Facilitating Segregation in the Modern American South

When a person looks to buy a house for the first time in the Southeast United States, they are 70% likely to be buying one in a Homeowners Association community (Meriotti, 2024). For some this is fine; they pay their annual, semiannual, or monthly payment, and in exchange they get access to a pool and the garbage collection services that their local government could not afford to offer. But for others, the tyrannical regimes of these HOAs can mean their dream of being homeowners is over, and more often than not, those people are minorities. This is especially true in the South, where 56% present of the population is part of a minority group (Moslimani et al, 2024) and yet only around half of those people are homeowners (Bahney, 2023). 70% of white people in similar areas own homes (Bahney, 2023), making this 20% discrepancy in home ownership startling. The disparity is due in part to Homeowners Associations (HOAs) that increase the wealth gap and facilitate modern day segregation in the American Southeast through their discriminatory actions and unchecked power.

The novel *Americanah*, written by Nigerian author Chimamanda Ngozi Adichie in 2013, demonstrates the need for support for minority homeowners in predominantly white areas. The Nigerian character of Auntie Uju feels unwelcome in her neighborhood by the treatment of herself and her son in the local elementary school. Auntie Uju and her son Dike eventually leave the area, continuing the cycle of planned communities being beacons for exclusion and in some cases even persecution. While an HOA is not directly involved in Auntie Uju's move away from her home in the Massachusetts suburbs, they facilitate the exclusion she experiences and are often used as a tool to keep minority homeowners away from communities.

Homeowners Associations have complicated histories, especially in the Southeast. They arose in the 1800s, but were not widely implemented until the 1950s and 1960s with the rise of suburban housing complexes (Williams, 2020). There is much evidence that on top of HOAs being used to manage the services and amenities of housing developments, they were also used to keep minorities away from middle class white communities and homeownership (Williams, 2020). There were clauses written into HOA contracts that stipulated that homeowners would never allow a house to be rented or sold to a Black person or family. Cheryl Thompson, an investigative reporter

with National Public Radio, investigated these legal bylines and their connection to redlining, a racist practice where primarily Black families were barred from getting housing loans based on their location (Domonoske, 2016). She found that while these guidelines were no longer legally binding, the areas they referred to were still heavily majority white and the residents often exhibited racist attitudes towards any incoming Black homeowners (Thompson et al., 2021). HOAs are depersonalized institutions that were built on and reflect the cultural attitudes of the dominant society. This means they act at times as the voice of the dominant community, holding legal authority over residents, but are not accountable. In *Americanah* the African characters feel excluded from neighborhoods they have every right to live in. And while they experience microaggressions from their white neighbors the official voice of the neighborhood, one often articulated by HOAs, is nominally silent. HOAs at times provide an institutional form of exclusion that in other communities remains covertly expressed.

While most families in the Southeast who run up against their HOAs do not come to find their lives entirely ruined that is not always the case, especially for minority homeowners, as these stories will show: Gavin Henry, a Black veteran living in Pflugerville, Texas, was fined by his HOA for a shed that was already built when he bought his house. His HOA admitted they used satellite images to search for violations. Not only was Henry's privacy and property violated, he is still paying off the fine for the shed he did not build (Lewis, 2013). In Bee Cave, Texas, the HOA pays for several off duty police officers to be present in the community to monitor traffic (Remadna, 2023). This is a not uncommon practice called private policing, the practice is more likely to practice racial profiling, and is therefore more likely to harm residents of color (Durlauf, 2005). This is on top of a decree in a different Texas town made by the Providence Village HOA which banned those who were renting their homes using the federal housing choice voucher program (commonly known as Section 8). The HOA blamed the people who used it, 93% of whom are Black, for local crime in order to justify the decision. The ruling was eventually overturned, but not before a single mother of four, Revisha Threats, had already lost her home, as had many others (Fletcher, 2022). While policies are used against minority homeowners in some places, in others it is fines that cause the most damage. In Georgia, homeowners are angry with their HOAs for fines that were levied for trivial infractions. Enrique Inostroza owes over 1,200 dollars for yard maintenance issues and over 3,000 dollars in unpaid fees. Roberto Cardenas owes 700 dollars for cars that are not his being parked in front of his house (Lindstrom, 2023). Trenita Rogers, a former homeowner in South Carolina, was unaware she was part of an HOA until she was told she needed to vacate the house she had lived in for 12 years. Her home was foreclosed on and sold at auction for a fraction of its asking price by her HOA without her knowledge. Rogers owed the HOA \$1,491 (twelve years in unpaid fines), despite being unaware that her home was in an HOA community. She is currently in a legal battle against her former HOA (Kummerer, 2022). In short, the regulations put in place by HOA boards produce a myriad of confusing and

discriminatory policies that target residents of color while enforcing a particular vision of what a community should look like and how it should operate.

When encountering solutions to the Homeowners Association vs. homeowner power struggle, the question arises of why HOAs have such power in the first place. This is because their power over regular homeowners seems wholly unnecessary. Why should the group that manages the local pool and organizes the garbage collection have the ability to foreclose on someone's home? The answer comes down to the structural issues in local government. HOAs can be very attractive to local governments, especially in areas with low taxation (Boshart, 2023). In some HOA areas, infrastructure that would be the expected responsibility of the local government like garbage collection, maintaining roads and sidewalks, and sewer and power management is controlled by HOAs because the government cannot afford those activities (McKenzie, 2011). This financial tradeoff saves the government but harms the homeowner as the HOA communities become controlled by wealthy, private entities with the ability to instigate any preferred bylaws. HOAs can generate rules that control fines and cause regular homeowners to become swamped with debt over small issues like shutter color (Stoogenke, 2023) or grass length (WCNC Charlotte staff writer, 2011). Some legislators are now attempting to mitigate the power HOAs have over homeowners, especially in the case of excessive fines. Georgia State Senators Donzella James and Viola Davis are seeking to protect homeowners from HOAs with legislation that limits how, and in what amounts, HOAs can fine homeowners (Jackson, 2024). However, the two senators are facing opposition both from conservative senators and association lobbyists (Jackson, 2024).

While the individual stories of minority people being abused or violated by their Homeowners Association is troubling to hear, it is often thought that these instances are anomalies and that most HOAs neutrally regulate their homeowners. But as Dr. Evan McKenzie points out in his book on the subject, *Beyond Privatopia*, "only the rare dispute... comes to public attention" (McKenzie, 2011). McKenzie also referenced these discriminatory practices in his previous book, *Privatopia*, which was published in 1994. Instances where homeowners were "foreclose[ed] on for nonpayment and how suburban houses were made "off limits to Black Americans" (McKenzie, 1994), highlighting the history of this issue. Mariette Williams writes for *Business Insider* about the importance of homeownership, especially for Black families. She states that "Owning real estate is one of the best ways to build wealth and pass that wealth on to the next generation." And when white households earn over eight times more than Black households (Kochhar & Moslimani, 2023), the need to close that gap becomes paramount. That feat becomes even harder when 72% of Southern homes are in communities that have demonstrated repeatedly that they thrive off of exclusion.

Wealth inequality is widely felt in America, but it is especially prominent in the South, where racial inequality has been a serious problem since the founding of the southern states. Racial discrimination has not disappeared but rather evolved with the

times, especially in the Southeast. First one sees the abominable practice of slavery, which morphed into Jim Crow laws and segregation, which then has changed to become police brutality, a flawed justice system, discriminatory housing practices, and countless other civil rights offenses. And while Homeowners Associations are not the final battle to win in the war for equality, they are an institution that was created by, thrives off of, and continues to promote racial division. They act as a reminder that America and the American South have a long way to go in dismantling the systems -- including the seemingly-neutral and trivial Homeowners Association -- that harm all citizens.

As the percentage of Americans, particularly Americans in the South, buying homes in Homeowners Association communities continues to grow, the need for protections from dominating HOAs similarly increases. There are three levels to the solutions in defending homeowners, especially minority homeowners, from their HOAs.

The first solution is simple, and involves HOAs simply abiding by the law. Every single state in the country has a law against refusal to rent or sell a house to someone on the basis of a protected state. The Fair Housing Act specifically for Georgia reads, "It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color," etc. And while this is the law just for Georgia the laws regarding fair housing for other states are very similar. This law applies to those using Section 8 as well. HOAs barring people from or renting based on government assistance is illegal and counts as housing discrimination, but that did not stop HOAs from doing so in the past. This solution would also involve HOAs being more transparent in their leadership and elections, actions they should have always been doing. When pitched initially HOAs were seen as something positive for neighborhoods because they were made up of residents of those neighborhoods who were acting in the best interest of those neighborhoods (McKenzie, *Beyond Privatopia*). But as time has gone on, HOAs have been accused of operating like banana republics, using voter suppression, the misuse of funds and intentionally obscuring practices (McKenzie, *Privatopia*). A simple solution would be for HOAs to be more open to the public, the way they were originally intended. If minority homeowners are able to play an active part in their HOA they are far less likely to be harmed by its rulings, fines, and regulations. An open knowledge of the HOA system can help regulate it. Essentially, the first solution would be the bare minimum for HOAs to follow local, state, and federal laws and meet the expectations that were put in place when they were first created.

The second solution to this issue would be to bar HOAs from having the power to decide who gets to live in a community and remove their power to foreclose on and remove homeowners from the homes they have already paid for. This means passing legislation at the state level to strip HOAs of the power to demand excessive fines, activate foreclosures, and auction off people's homes. This is the work that is already being done by Atlanta senators, Donzella James and Viola Davis, who are trying to make it more difficult for HOAs to levy fines against homeowners. HOAs use these actions to

facilitate exclusion and keep out minority homeowners. These administrative bodies simply should not have the power to decide who should or should not live in their communities. A further legal requirement should be requiring HOAs to include robust due-process mechanisms in their bylaws to ensure that residents can challenge rulings they feel are arbitrary and by making HOAs legally responsible for discriminatory behavior. Making sure HOAs are vulnerable to legal repercussions for misbehavior could curb the worst abuses, as could making them subject to regular government oversight and auditing. Homeowners should also have a clear, reliable, and legal route they can take to challenge exploitative fines and processes. Private lawsuits are currently one of the only actions homeowners have to defend themselves and while those can be successful, they can also push homeowners further into debt and drag out the price of fines. The battle against HOAs must come from systematic changes that entirely limit their power, not a legal slap on the wrist for the few who are caught abusing their position.

The third solution would be the most involved. It would require the reallocation of funds so local governments would not have to rely on HOAs to provide basic services in the first place. HOAs were initially created to complete the basic tasks that local governments were unable to accomplish. If people have to pay an additional fine on top of their taxes to ensure their garbage gets collected, their roads and sidewalks stay drivable and walkable, and their sewage remains in the sewer, then local governments are fundamentally failing these communities. These are some of the most basic expectations of living in a developed area and it is completely unreasonable that there should be a price to pay on top of taxes for these basic operations. If the local government becomes better funded to the point that they can facilitate the operation of the expected systems, then not only would that remove HOA fines, it could also remove HOA power. Many of the stories above and stories in general where HOAs abused their power came from the HOA reactions to fines not being paid. This could be a result of a person not being in the financial position to pay, being unaware they had a fine, that fine being paid but not noted down as paid, or any number of other situations. If these fines were no longer required, because a homeowner's taxes were already providing them with basic services, then the HOAs would have less financial power over people. HOAs would subsequently have less control over local government making them less able to skirt around rules and regulations in place to protect homeowners. As all levels of government seem to be perpetually out of money this solution seems unlikely, but should it be put in place it would likely lead to the most holistic improvement in the relationship between minority homeowners and their HOAs.

Ifemelu, the main character of *Americanah*, notes in her blog, "Raceteenth or Various Observations About American Blacks (Those Formerly Known as Negroes) by a Non-American Black" that white people and Black people see neighborhood diversity differently. To a Black person a neighborhood is diverse if 40% of the population is Black. Ifemelu writes, "[to white people] they mean 9% Black people. (The minute it gets

to 10% Black people, the white folks move out)” (Adichie, *Americanah*). That is the crux of the issues with HOAs, they allow people to feel comfortable with the stagnation of progress. If a neighborhood becomes too diverse, white residents will not want to live there anymore, yet the community needs to be diverse enough for people to still feel like the work towards racial equality is over. That is the sad fact of HOAs: they have evolved from lawful segregation to technically lawful segregation. They are excellent at maintaining the status quo. As more minorities become homeowners and overwhelm the status quo, HOAs will continue to push back against progress. It will take a combined effort from homeowners, legislators, and governments to rebuild HOAs into organizations that actually work to serve homeowners, instead of them being the organizations that take away people's homes.

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