

2-8-2019

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Robert Romano
Chicago-Kent College of Law

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Recommended Citation

Robert Romano, *Path to Destruction: Cook County's Property Tax System is a Cause for Concern as it Mimics the Defunct Taxing Procedures that Led to the Detroit Foreclosure Crisis*, 94 Chi.-Kent L. Rev. 107 (2019).
Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol94/iss1/6>

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PATH TO DESTRUCTION: COOK COUNTY'S PROPERTY TAX
SYSTEM IS A CAUSE FOR CONCERN AS IT MIMICS THE
DEFUNCT TAXING PROCEDURES THAT LED TO THE
DETROIT FORECLOSURE CRISIS

ROBERT ROMANO

“An unlimited power to tax involves, necessarily, a power to destroy; because there is a limit beyond which no institution and no property can bear taxation.”¹

INTRODUCTION

Over the past decade, Detroit—which was once the national epicenter of industrial development and homeownership for the working class—has transformed into the national epicenter of poverty, abandonment, and property foreclosure. In the 1960s, Detroit had the “highest home ownership rate of any major city in America.”² Today, the city owns “the largest stockpile [of unused and abandoned properties] of any municipality in the nation, most of which have reverted back to the city due to unpaid taxes.”³ Detroit has one of the highest property tax foreclosure rates since the Great Depression, and between 2011 and 2015, one out of every four properties in Detroit was foreclosed on due to delinquent property taxes.⁴ On September 7, 2016, officials in Wayne County, Michigan, which includes the City of Detroit, began selling off nearly 15,000 homes in the largest foreclosure auction in United States history.⁵

1. *M'Culloch v. Maryland*, 17 U.S. 316, 327 (1819).

2. Michael Simoni, *Tuning Up the Motor City: The Viability of Restructuring Detroit's Oppressive Property Tax System Within the Boundaries of Michigan's Constitution*, 51 WAYNE L. REV. 1309, 1314 (2005).

3. *Id.*

4. Bernadette Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/opinion/sunday/dont-let-detroits-revival-rest-on-an-injustice.html?mcubz=1> [<http://perma.cc/7XVY-7LD3>]; Bernadette Atuahene, *Detroit's homeowners deserve better*, THE DETROIT NEWS (Jan. 31, 2017, 11:42 PM), <http://www.detroitnews.com/story/opinion/2017/01/31/property-assessments/97304442> [<http://perma.cc/EUB2-K3FS>].

5. Edmund Zagorin, *Detroit's Housing Disaster Is Its Leaders' Fault*, HUFFPOST: POL. (Oct. 11, 2016, 2:21 PM), https://www.huffingtonpost.com/entry/detroit-tax-foreclosure_us_57e18a91e4b0e80b1b9ec242 [<https://perma.cc/9KXM-YJ3A>].

The foreclosure crisis in Wayne County has been fueled by an epidemic of unpaid property taxes that are the “result of illegal property tax assessments and inflated property tax bills.”⁶ Tax foreclosure is often triggered by poverty—the inability to pay property taxes due—or property abandonment when the property owner is no longer willing to pay property taxes because the land has so little market value.⁷ After the housing market crash in 2008, property values in Wayne County plummeted to nearly half their market value from the 1990s—which was also the last time Wayne County assessed property values.⁸ Despite this dramatic decrease in property market value, Wayne County officials failed to conduct updated property assessments that would have lowered property taxes to reflect the decrease in market value.⁹ As a result, Wayne County residents were being assessed exorbitantly high property taxes on properties that had not been reassessed in nearly 15 years.¹⁰ The problem with such an outdated property assessment system is evident, as some homeowners were “getting taxes assessed on a \$30,000 or \$40,000 property value for a house that probably couldn’t sell for more than \$5,000.”¹¹

The most prominent factors that caused the foreclosure crisis in Wayne County, such as unlawful property assessments, declining property values, abandonment, and a disproportionate tax burden between high- and low-income residents, are also present in varying forms in Cook County, Illinois. Illinois has the second highest property tax rate in the nation,¹² and it is currently the most indebted state in the country, with approximately \$210.4 billion worth of unfunded bills and financial obligations.¹³ Like

6. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

7. Michelle Wilde Anderson, *Needing and Fearing Billionaires in Cities Abandoned by Wealth*, 35 *YALE L. & POL'Y REV.* 235, 237 (2016).

8. “The City of Detroit has been in a steady state of decline since the late 1960s . . . [and] lost 34,931 housing units in the 1990s, more than any other city in the country.” Simoni, *supra* note 2, at 1314; Zagorin, *supra* note 5.

9. Anderson, *supra* note 7; Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4; Violet Ikononova, *Study finds Detroit's foreclosure crisis fueled by illegal assessments*, *DETROIT METRO TIMES* (July 12, 2017), <https://www.metrotimes.com/detroit/could-detroits-tax-foreclosures-be-unconstitutional/Content?oid=4522278> [<https://perma.cc/W55P-Y3NE>]; Zagorin, *supra* note 5.

10. Zagorin, *supra* note 5.

11. *Id.*

12. Tonya Moreno, *Best and Worst States for Property Taxes*, *THE BALANCE* (July 2, 2017), <https://www.thebalance.com/best-and-worst-states-for-property-taxes-3193328> [<https://perma.cc/M6SE-TSQ3>].

13. Illinois has \$210,424,765,000 worth of unfunded bills and only \$25,458,945,000 worth of assets available to pay the bills. *TRUTH IN ACCOUNTING, ILLINOIS FINANCES CONTINUE TO CRUMBLE 2* (2017), <http://www.truthinaccounting.org/library/doclib/IL-2016-2pager.pdf> [<https://perma.cc/8E7U-HHSN>].

every other state in the country, the 2008 housing market crash caused property values in Illinois to plummet. However, Cook County's corrupt and inaccurate property assessment procedures, both before and after the housing crash, forced residents to either pay excessive property tax bills or abandon their homes.¹⁴ For decades, the Cook County Assessor's Office has been intentionally overvaluing properties in low-income neighborhoods while undervaluing higher-priced parcels in more affluent neighborhoods, placing a substantial tax burden on the lower-class and providing wealthy homeowners with an unsanctioned tax break.¹⁵ Additionally, the snowball effect that property foreclosures have on the market value of nearby properties¹⁶ has led to an increase in the number of vacant properties and a significant decrease in Illinois' overall population.¹⁷ As Cook County residents flee in search of higher-paying jobs and lower taxes, low-income homeowners who cannot afford to escape are left to shoulder the County's substantial tax burden.

The strongest correlation between the foreclosure crisis in Wayne County and the current condition of Cook County arises from a defunct property tax system that disproportionately burdens low-income homeowners through manipulated and inaccurate property assessments. Part I of this Note provides an explanation of the Detroit Foreclosure Crisis and its effect on the Wayne County community. Part II discusses Cook County's property tax assessment procedures and analyzes the impact that rising property taxes have on low-income neighborhoods, particularly on the South Side of Chicago, and how these taxes mimic the inflated property taxes in Wayne County that led to the Detroit Foreclosure Crisis. Finally, Parts III and IV identify the most significant similarities between present-day Cook County and pre-crisis Detroit, while discussing potential solutions that may prevent Cook County from suffering the same fate as Detroit.

14. See Jason Grotto, *An Era of Errors*, CHI. TRIB. (June 10, 2017), <http://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/houlihan.html> [<http://perma.cc/9DDZ-X9BR>].

15. *Id.*

16. See generally Stephan Whitaker & Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes* (Fed. Reserve Bank of Cleveland, Working Paper No. 11-23R), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1935510 [<https://perma.cc/9KDA-44XW>].

17. See Marwa Eltagouri, *Illinois loses more residents in 2016 than any other state*, CHI. TRIB. (Dec. 21, 2016, 7:00 AM), <http://www.chicagotribune.com/news/local/breaking/ct-illinois-population-decline-met-20161220-story.html> [<http://perma.cc/TU6T-9ZWA>].

I. DETROIT'S UNCONSTITUTIONAL PROPERTY TAXES

In 2013, Detroit filed the largest municipal bankruptcy in American history,¹⁸ and after decades of disorganized and negligent property tax enforcement, Wayne County officials began a vigorous campaign of property tax collection “without addressing its infamous reputation for wild overvaluation of assessed property values.”¹⁹ As a result, Wayne County tax collectors began foreclosing tens of thousands of tax delinquent properties,²⁰ and by 2015, approximately one-seventh of Detroit’s population was on the verge of eviction.²¹ However, due to the significant number of homeless and impoverished residents, once the foreclosed properties were vacated, they were often vandalized and stripped of all valuable materials.²² This, in turn, caused residential property values to decrease even further, substantially reducing the price at which properties were sold at the County’s tax foreclosure auction.²³

Wayne County officials have refused to remove delinquent properties from the tax foreclosure list despite evidence of excessive property tax assessments,²⁴ and the unfortunate reality of Wayne County’s tax foreclosure auctions is that many of the properties being sold are still occupied by their original homeowners at the time of the sale.²⁵ Once a house is sold, the residents are evicted.²⁶ However, many of these properties are purchased by speculators who buy them at an extremely low price and then leave the properties vacant and vulnerable to further vandalism.²⁷ Ultimately, Wayne County’s tax foreclosure auctions lead to major land consolidation by wealthy individuals, which has essentially monopolized Detroit’s urban infrastructure.²⁸ When speculators accumulate vast amounts of prop-

18. Atuahene, *Don’t Let Detroit’s Revival Rest on an Injustice*, *supra* note 4.

19. Anderson, *supra* note 7.

20. *Id.*

21. Laura Gottesdiener, *The Foreclosure Conveyor Belt That Could Remove as Many as 100,000 Detroit Residents From Their Homes*, THE NATION (April 20, 2015), <https://www.thenation.com/article/foreclosure-conveyor-belt-could-remove-many-100000-detroit-residents-their-homes/> [<https://perma.cc/PRS3-7PEX>].

22. Bernadette Atuahene, *Detroit’s tax foreclosures indefensible*, DETROIT FREE PRESS (Sept. 1, 2016, 12:46 PM), <http://www.freep.com/story/opinion/contributors/2016/09/01/detroits-tax-foreclosures-indefensible/89717644/> [<https://perma.cc/68LE-SSEE>].

23. Anderson, *supra* note 7, at 238.

24. “In 2015, for example, the city assessed [a residential] home for \$24,912 . . . which [was] still way off the mark for a derelict property that last sold for \$2,900 and is surrounded by other derelict homes.” Atuahene, *Don’t Let Detroit’s Revival Rest on an Injustice*, *supra* note 4.

25. Zagorin, *supra* note 5.

26. *Id.*

27. *Id.*

28. Anderson, *supra* note 7, at 252.

erty, they also accumulate vast amounts of political power.²⁹ Speculators shape Detroit's public policy by bargaining and brokering property trades with the local government.³⁰ Speculators have the upper-hand when it comes to brokering deals with the city because they have no incentive to increase the value of their properties or even pay their property taxes,³¹ and the city would rather meet speculators' demands than seize the property (again) and add to the stockpile of government-owned land.³² If the speculators lose their property to tax foreclosure they merely buy it back at auction, creating "a cycle where Detroiters lose their houses, the city loses residents, the county loses property taxes and speculators profit."³³ Therefore, despite foreclosing tens of thousands of properties and selling them at auction, Wayne County suffered nearly "\$300 million in lost tax revenues from foreclosed homes seized for nonpayment of taxes."³⁴

It soon became clear to the Michigan Legislature that this practice of mass property tax foreclosure was an ineffective method of raising revenue that imposed a substantial burden on Wayne County's sizeable low-income community.³⁵ Legislation was enacted in 2014 which implemented delinquent tax payment plans and reduced the interest rate from 18 percent to 6 percent.³⁶ However, this is not a long-term solution because the affected individuals are impoverished, and many low-income residents are unable to repay their delinquent property taxes even with a lower interest rate.³⁷ The legislation that was enacted by the Michigan Legislature yielded minimal results, and in 2015 nearly 100,000 residents—or one out of every seven city residents—were on the verge of eviction due to property tax foreclosure.³⁸

Wayne County's delinquent property tax payment plans suffered the same fatal flaw as the subprime mortgages that led to the housing market crash in 2008. Prior to the housing market crash in 2008, Detroit had one of

29. *Id.*

30. *Id.*

31. Zagorin, *supra* note 5.

32. See Anderson, *supra* note 7, at 252; Simoni, *supra* note 2, at 1314.

33. Zagorin, *supra* note 5.

34. Anderson, *supra* note 7, at 238.

35. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4; Eric D. Lawrence, *Wayne Co. treasurer, others sued over foreclosures*, DETROIT FREE PRESS (July 13, 2016, 7:16 PM), <http://www.freep.com/story/news/local/michigan/detroit/2016/07/13/aclu-sues-wayne-co-treasurer-others-over-foreclosures/87025762/> [<https://perma.cc/IB9A-Q8FM>].

36. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4; Lawrence, *supra* note 35.

37. Lawrence, *supra* note 35.

38. Gottesdiener, *supra* note 21.

the highest subprime mortgage rates in the nation, and a large percentage of these subprime mortgages were sold to low-income homeowners.³⁹ Low-income residents were already struggling to pay even the most modest of mortgage rates, and when the mortgage rates began to exceed the depleted market value of the property, homeowners chose to default.⁴⁰ Similarly, a substantial portion of Wayne County's population is living below the federal poverty line,⁴¹ and there is an extremely high likelihood that the majority of these low-income residents will be forced to enter into payment plans in order to prevent their houses from being foreclosed on.⁴² Therefore, residents who were able to avoid foreclosure in the aftermath of the subprime mortgage crisis are still vulnerable to foreclosure as a result of the delinquent property tax payment plans.

While Wayne County officials and the Michigan Legislature have made some efforts to remedy the County's history of excessive property assessments, there still exists a systematic pattern of discrimination against the low-income minorities that reside in Detroit.⁴³ To achieve a "uniform" property taxation system for all local municipalities, the Michigan Constitution prohibits properties from being assessed at more than 50 percent of their market value.⁴⁴ Between 2009 and 2015 Wayne County officials assessed "as many as 85 percent of Detroit homes at rates that violated Michigan law."⁴⁵ Perhaps more notably, a study found that lower-valued homes were subjected to inflated and unconstitutional assessments more frequently than higher-valued homes.⁴⁶ In an effort to remedy this longstanding practice of excessive property assessments, Wayne County officials began "parcel-by-parcel reassessment," which reduced homeowner property taxes

39. "More than two-thirds of all mortgages in the city in 2005 were subprime . . . [and] [t]he city has seen at least 65,000 mortgage foreclosures since 2005, and fifty-six percent of that foreclosed property is now blighted or abandoned." Anderson, *supra* note 7.

40. Kimberly Amadeo, *What Caused the Subprime Mortgage Crisis?*, THE BALANCE (Apr. 26, 2018), <https://www.thebalance.com/what-caused-the-subprime-mortgage-crisis-3305696> [<https://perma.cc/9KKQ-B2R2>].

41. "Forty percent of [Detroit's] population lives below the federal poverty line . . ." Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

42. The result of the 2014 legislation was that "27,539 Detroiters who were in foreclosure [in 2013] were able to stay in their homes." Lawrence, *supra* note 35.

43. See Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

44. "The [Michigan] legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent; and for a system of equalization of assessments." MICH. CONST. art. IX, § 3.

45. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4. In 2010, Detroit property tax assessments were, "on average, 7.3 times higher than the [state constitutional] limit." Atuahene, *Detroit's Tax Foreclosure Indefensible*, *supra* note 22.

46. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

by an average of 5 to 15 percent.⁴⁷ However, studies indicate that the decrease in property taxes occurred mostly in high- and mid-value neighborhoods, while the county's poorest areas continued to experience excessive property taxes caused by overvalued property assessments.⁴⁸ Thus, even after Detroit's "parcel-by-parcel" reassessment, nearly every home with a value under \$18,000 was assessed at more than 50% of its true market value.⁴⁹

Although homeowners can appeal property assessments, the vast majority of appeals are filed—and won—by the non-minority upper-class.⁵⁰ Many Detroit residents also qualify for the city's Poverty Tax Exemption, "which eliminates property taxes for those living under the federal poverty line."⁵¹ However, because of the lack of outreach and resources in the low-income communities, many homeowners were not aware that they qualified for a property tax exemption and thus would not receive one.⁵² Even more troubling is the fact that Wayne County offers significant tax breaks, incentives, and subsidies to businesses and commercial developers.⁵³ This in turn causes residential property taxes to increase significantly, while adding little to the market value of those properties and leaving the homeowners responsible for a large percentage of the County's property tax revenue.⁵⁴ What makes these tax breaks so troubling is that the County provides incentives for large out-of-state companies, while eliminating "a variety of tax credits . . . that supported hundreds more everyday projects in [the] neighborhoods and communities, projects that had relied on tax incentives for decades."⁵⁵

The purpose of giving significant tax breaks to commercial developers is to create new jobs and foster capital investments in downtrodden urban neighborhoods.⁵⁶ These tax breaks provide incentives for outside business-

47. Ikonomova, *supra* note 9. *See also* Atuahene, *Detroit's homeowners deserve better*, *supra* note 4.

48. "[I]n 2015, properties with the lowest values were, on average, assessed at 4.8 times the legal limit, while properties with the highest values were, on average, legally assessed." Atuahene, *Detroit's tax foreclosures indefensible*, *supra* note 22; Ikonomova, *supra* note 9.

49. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

50. Atuahene, *Detroit's homeowners deserve better*, *supra* note 4; Ikonomova, *supra* note 9.

51. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

52. *Id.*

53. *Id.*

54. *See id.*

55. John Gallagher, *Tax breaks for mega-deals OK, but bring back incentives for smaller projects, too*, DETROIT FREE PRESS (June 17, 2017, 11:01 PM), <http://www.freep.com/story/money/business/john-gallagher/2017/06/18/tax-breaks-mega-deals/393533001/> [<https://perma.cc/AK8Z-FHRL>].

56. Carl W. Herstein, *Real Property*, 44 WAYNE L. REV. 1019, 1106 (1998).

es and investors to move into the area to obtain the tax benefits.⁵⁷ As businesses and commercial developers begin to move to these neighborhoods, the market value of surrounding properties will inevitably increase due to the influx of capital investment in the area.⁵⁸ However, Michigan law requires that “all property shall be uniformly assessed,” which means that the values of the tax-exempt properties are still included when calculating the County’s total assessed property value for residential homes.⁵⁹ Therefore, as commercial development causes property values to increase, it directly causes residential property taxes to increase despite little to no increase in the resident’s household income. As a result of the government-subsidized development, residential homeowners are the only source of property tax revenue in the area and are assessed higher property taxes because the exempted commercial property owners are not required to pay their substantial share of the County property taxes. These tax exemptions may lead to even more tax foreclosures in Detroit because residential homeowners can no longer afford to pay the high property taxes that result from the commercial development in the area.⁶⁰ Thus, the cycle continues as rising properties taxes force residents to abandon their homes, which in turn reduces the market value of still-occupied residential properties and increases homeowners’ vulnerability to foreclosure.

II. COOK COUNTY FORECLOSURE CRISIS

Many of the same risk factors that led to the foreclosure crisis in Detroit are present in Cook County and threatening to send the County into a property foreclosure spiral. In 2016, Cook County had 2,176,266 properties that were in foreclosure proceedings, and 52.3 percent of these homes had “underwater” mortgages,⁶¹ which occurs when the remaining balance on the mortgage loan is higher than the true market value of the property.⁶² The significant number of underwater properties in Cook County is the

57. *Id.*

58. *Id.*

59. Simoni, *supra* note 2, at 1312–13.

60. The incentives and tax exemptions have “enhanced the value of property within those zones, [but also] created certain expectations on the part of the current property owners.” Herstein, *supra* note 56.

61. *Chicago ranks as a top market for foreclosure properties, says RealtyTrac*, INMAN (May 16, 2017), <https://www.inman.com/2016/01/28/chicago-ranks-as-a-top-market-for-foreclosure-properties-says-realtytrac/> [<https://perma.cc/Y5KG-K6FM>].

62. *What Is an Underwater Mortgage?* NOLO, <https://www.nolo.com/legal-encyclopedia/what-is-underwater-mortgage.html> [<https://perma.cc/6CB4-UH3U>].

result of decimated property values⁶³ and increasing property vacancies caused by the housing crash in 2008.⁶⁴ Additionally, the disproportionate impact that property assessments have throughout Cook County,⁶⁵ similar to the harmful effects of the inflated property assessments in Wayne County, have brought Cook County to the precipice of a historic crisis.

The foreclosure crisis in Cook County was underway several years before the housing crash in 2008.⁶⁶ Between 2005 and 2007, foreclosure filings in Cook County increased by 77.4 percent.⁶⁷ These foreclosures were not limited solely to low-value properties with risky subprime mortgages.⁶⁸ Since 2008, foreclosures on prime-rate mortgages have increased by 40 percent in Cook County, accounting for approximately one out of every three new foreclosure filings.⁶⁹ This demonstrates that not only were low-income subprime borrowers at risk of foreclosure, but also those wealthier homeowners who were able to afford the “lower-risk” prime-rate mortgages.⁷⁰ However, despite the large number of prime-rate foreclosures in wealthier neighborhoods, the majority of property foreclosures in Cook County occurred in low-income minority communities.⁷¹

Between 2010 and 2015, the median housing value in Cook County decreased approximately 17.72 percent.⁷² The most significant decreases in property value were seen in low-income South Suburban cities such as Dolton, which experienced a 33 percent decrease in median housing value from 2010 to 2015.⁷³ Furthermore, statistics demonstrate that cities with the

63. AM. CMTY. SURVEY, U.S. CENSUS BUREAU, SELECTED HOUSING CHARACTERISTICS: 2011–2015 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES 3 (2015), https://factfinder.census.gov/rest/dnldController/deliver?_ts=557064321820 [https://perma.cc/Y4LV-QET3].

64. John Gamino, *Vacant and Abandoned*, SOUTH SIDE WEEKLY (April 14, 2015), <https://southsideweekly.com/vacant-and-abandoned/> [https://perma.cc/6TG3-5WCK].

65. See generally COOK CTY. CLERK, 2008 COOK COUNTY TAX RATES REPORT (2008).

66. “1.6 percent of all housing units in the Chicago metro area were in foreclosure proceedings in 2007, compared to 1 percent nationally.” Stacie Young, *The Foreclosure Crisis in the Chicago Area: Facts, Trends and Responses 2* (Aug. 20, 2008) (unpublished working document) (on file with Chicago State University), <https://www.csu.edu/cerc/researchreports/documents/ForeclosureCrisisChicagoAreaFactsTrendsResponses2008.pdf> [https://perma.cc/J4QV-YDKF].

67. *Id.* at 11.

68. Gamino, *supra* note 64.

69. NICHOLAS BIANCHI, NAT’L PEOPLE’S ACTION, *THE HOME FORECLOSURE CRISIS IN CHICAGO 5* (2010). In 2008, “Illinois [had] the fifth highest foreclosure inventory in the nation by share of loans and foreclosures.” Young, *supra* note 66, at 20.

70. BIANCHI, *supra* note 69, at 5.

71. “Bank-owned homes were three times more concentrated in minority areas as they were in majority-white areas in Chicago in 2009.” *Id.*

72. Median housing value of \$265,800 in 2010, and median housing value of \$218,700 in 2015. AM. CMTY. SURVEY, *supra* note 63.

73. *Id.*

highest percentage of residents with a mortgage experienced the most significant decreases in median housing value.⁷⁴ These statistics are indicative of the detrimental effect that foreclosures have on the market value of surrounding properties. By definition, an increase in the number of homes that are subject to a mortgage results in an increased number of homes that are susceptible to bank foreclosure. Thus, cities with a high percentage of homeowners with a mortgage are the most vulnerable to the snowball effect of property foreclosures and the resulting decrease in market value of surrounding properties.

While the number of bank-owned homes was largely concentrated in Cook County's South Suburban low-income neighborhoods,⁷⁵ the foreclosures in these neighborhoods had a domino effect that negatively impacted property values throughout all of Cook County.⁷⁶ A mortgage foreclosure can reduce the value of properties within 660 feet by approximately one percent,⁷⁷ and the closer a property is to the foreclosed home, the greater the reduction of that property's market value.⁷⁸ It has been estimated that a "single foreclosed, tax delinquent, and vacant home can lower the value of neighboring homes by as much as ten percent,"⁷⁹ and in the years following the housing market collapse more than half of Chicago's land area was within 540 feet of a foreclosed residential property.⁸⁰ Furthermore, much like the county- and speculator-owned homes in Wayne County that were left vacant and derelict, bank-owned homes in Cook County continue to exacerbate the harmful effect that foreclosure has on surrounding property values because most banks do not maintain the foreclosed and vacant properties.⁸¹ Residents who were able to avoid foreclosure during the 2008 housing crisis were still vulnerable to foreclosure or underwater mortgages caused by the rapidly decreasing market values of nearby properties. Thus, the determinative factor of whether a homeowner would be forced into foreclosure was not the type of mortgage they had, but the amount of foreclosures in a concentrated area and the detrimental effect these foreclosures have on surrounding property values.⁸²

74. In 2010, the percentage of homeowners with a mortgage in Dolton was 83.10 percent. Riverdale – 84.20 percent. Calumet Park – 82.50 percent. All of Cook County – 71.60 percent. Decrease in Median Housing Value in Riverdale – 26.86 percent. Calumet Park – 27.24 percent. *See id.*

75. Young, *supra* note 66, at 17.

76. *See generally* COOK CTY. CLERK, *supra* note 65.

77. Whitaker & Fitzpatrick, *supra* note 16, at 8.

78. *See id.* at 8–9.

79. Gamino, *supra* note 64. *See also id.*

80. BIANCHI, *supra* note 69.

81. Gamino, *supra* note 64.

82. *See* Whitaker & Fitzpatrick, *supra* note 16, at 8.

A. Mass Exodus of Illinois Residents

In 2016, approximately 114,144 residents moved out of Illinois, causing the state to experience its lowest population since 2009.⁸³ More than half of these former residents, approximately 66,244 people, were living in Cook County before they departed.⁸⁴ 2016 also marked the third consecutive year in which Illinois lost more residents than any other state in the country.⁸⁵ According to a survey of former Illinois residents, “high taxes, the state budget stalemate, crime, [and] the unemployment rate” were the most common factors that caused residents to flee the state.⁸⁶ Even more problematic is the fact that a majority of residents leaving the state are young, working-age adults in search of better jobs and business opportunities.⁸⁷ According to studies conducted by the Illinois Policy Institute and migration data from the Internal Revenue Service, weak job creation and losses in manufacturing jobs, primarily in the South Suburbs of Chicago, have caused residents to flee Cook County.⁸⁸

The mass exodus of Cook County residents has the potential to cause major political and financial fallout.⁸⁹ Federal and State government funds are distributed to local governments based on population, so Cook County’s recent population decline will only exacerbate the County’s long-term budgetary concerns.⁹⁰ Furthermore, local governments continue to allocate millions of dollars to infrastructure and schools based on the outdated assumption that population will increase in the future.⁹¹ However, if this population growth does not occur, the remaining taxpayers will be left to cover the costs.⁹²

83. In 2016, Illinois experienced a net loss of 37,508 residents and was “among just eight states to lose residents [in 2016], putting its population at 12,801,530.” Eltagouri, *supra* note 17.

84. Marwa Eltagouri & Grace Wong, *Chicago area leads U.S. in population loss, sees drop for 2nd year in a row*, CHI. TRIB. (Mar. 23, 2017, 6:25 AM), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-census-population-loss-met-20170322-story.html> [perma.cc/C5CG-ZYTR].

85. *Id.*

86. Eltagouri, *supra* note 17.

87. *Id.*

88. *Id.*

89. Eltagouri & Wong, *supra* note 84.

90. *Id.*

91. *Id.*

92. *Id.*

*B. Cook County Property Taxes, Assessment
Procedures and Consequences*

In Cook County, the County Assessor determines the fair market value of real estate throughout the County and reassesses the fair market value of Cook County real estate on a triennial basis.⁹³ Cook County is split into three taxing districts—the North Suburbs, South Suburbs, and the City of Chicago—and one of the three districts is reassessed each year.⁹⁴ In theory, a homeowner's property tax will fluctuate according to the fair market value of their property.⁹⁵ However, the most significant factor in calculating residential property taxes is not the market value of a property, but how much a property's market value has gone up or down in relation to the total change in the value of *all property within its taxing district*.⁹⁶ Herein lie the two fundamental flaws in the Cook County assessment process. First, the Cook County Assessor has the ability to manipulate assessed property values to meet the fiscal demands of a particular taxing district,⁹⁷ and second, even in years when the South Suburbs are not being reassessed, South Suburban residents experience significant property tax increases caused by reassessments in the more affluent North Suburbs.⁹⁸

1. Manipulated Property Assessments

Both Cook County and Wayne County have engaged in decades of illegal property assessments by distorting and manipulating the true value of properties, which has the ultimate effect of increasing residential property taxes.⁹⁹ However, the inaccurate property assessments in Cook and Wayne County differ in that Wayne County was grossly overvaluing properties, while Cook County is grossly undervaluing high-priced properties. Cook County's undervaluation of property raises residential property taxes, particularly in low-income communities, while providing tax-breaks to commercial and high-income residents.¹⁰⁰

93. COOK CTY. ASSESSOR'S OFFICE, HOW RESIDENTIAL PROPERTY IS VALUED, <http://www.cookcountyassessor.com/Resources/Property-Valuation.aspx> [https://perma.cc/DM3Y-YKBN].

94. *Id.*

95. *Id.*

96. Richard Magnone, *How real property taxes are calculated in Cook County*, REDA | CIPRIAN | MAGNONE, LLC (June 29, 2012), <http://www.illinois-attorney.com/news/how-real-property-taxes-calculated-cook-county/> [http://perma.cc/G9P6-2EF8].

97. See Grotto, *An Era of Errors*, *supra* note 14.

98. See COOK CTY. CLERK, *supra* note 65.

99. See Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4; Grotto, *An Era of Errors*, *supra* note 14.

100. Grotto, *An Era of Errors*, *supra* note 14.

Through the 2009 tax year, Cook County was decreasing assessed property values by approximately 40 percent.¹⁰¹ In 2008 alone, the Cook County Assessor's Office "shaved tens of billions of dollars from the total assessed value of the county" by undervaluing commercial and industrial properties, which substantially increased the tax burden for residential homeowners.¹⁰² In theory, property owners will pay taxes in proportion to their percentage of the total assessed value of the county. For example, if commercial and residential properties each comprise exactly 50 percent of Cook County's total assessed property value, then the commercial and residential property owners will each be responsible for 50 percent of the County's property taxes. Therefore, undervaluing commercial and industrial properties causes residential properties to account for a larger percentage of the County's total assessed property value, resulting in higher residential property taxes and lower commercial and industrial property taxes.

Not only did this undervaluation achieve the County's ultimate goal of raising residential property taxes, but it did so under the guise of lower property values which led the average homeowner to believe that their property taxes were being lowered.¹⁰³ However, these homeowners would not experience lower property taxes because the Cook County Assessor was undervaluing commercial properties significantly more than residential properties.¹⁰⁴ Since property taxes go up or down in relation to the total value of all property within a particular taxing district, undervaluing commercial properties more than residential properties meant that an individual residential property was not decreasing in value relative to the other properties within the taxing district.¹⁰⁵ Cook County was able to increase residential property taxes by intentionally undervaluing commercial properties more than residential properties, thus leaving residential homeowners responsible for a larger percentage of the total County property taxes.¹⁰⁶

Similar to the Michigan Constitution, the Illinois Constitution provides that all property values shall be assessed uniformly, and to achieve this uniformity the County applies a multiplier called the "equalization factor" to the assessed value of each property.¹⁰⁷ The assessed value of a

101. *Id.*

102. *Id.*

103. "[S]hrouded by an opaque and convoluted assessment system, these widespread inaccuracies were invisible to the average homeowner." *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. ILL. CONST. art. IX, § 4; "To ensure uniform assessment statewide, [Illinois Department of Revenue] calculates the factor needed to bring the total assessed value of all properties in Cook County

property multiplied by the equalization factor is the equalized assessed value (EAV) of that particular property.¹⁰⁸ The total EAV of a taxing district is merely the sum of all property's EAV within that district.¹⁰⁹

Property taxes are calculated backwards, in the sense that the County first determines the "total amount of money that local government units say they need to operate," known as the tax levy.¹¹⁰ Once the tax levy is determined, the County will divide a taxing district's total EAV into the tax levy to calculate the tax rate.¹¹¹ The EAV of an individual property will then be multiplied by the tax rate, the result of which is the total property tax bill for the property owner.¹¹² The equalization factor and tax rate is the same for commercial, industrial, and residential properties.¹¹³ However, Cook County intentionally undervalued commercial and industrial properties more than residential properties, causing the residential homeowners to experience much higher property taxes.¹¹⁴ The Chicago Tribune uncovered this systematic practice of undervaluing commercial and industrial properties by "compiling and analyzing more than 100 million property tax records from the years 2003 through 2015."¹¹⁵ Additionally, the Tribune reviewed thousands of pages of documents and the computer code that the Cook County Assessor used to set the value of residential properties.¹¹⁶ The Tribune then vetted the findings with top experts in the field to reach the conclusion that residential property assessments had been unlawfully undervalued for nearly a decade, which resulted in significantly higher property taxes for homeowners.¹¹⁷

Assume, *arguendo*, that a residential home is in a single taxing district, such as the City of Chicago. If the City of Chicago determines its tax

to a level equal to 33 1/3 percent of the total market value of all Cook County real estate." COOK CTY. CLERK, 2016 COOK COUNTY TAX RATES RELEASED 5 (2017), <https://www.cookcountyclerk.com/sites/default/files/pdfs/2016%20Tax%20Rate%20Report.pdf> [https://perma.cc/P7DD-STSN].

108. COOK CTY. ASSESSOR'S OFFICE, CALCULATING AN ESTIMATED RESIDENTIAL PROPERTY TAX BILL, <http://www.cookcountyassessor.com/Resources/Residential-Tax-Bill.aspx> [https://perma.cc/D4TE-XU74].

109. COOK CTY. TAX RATES RELEASED, *supra* note 107, at 3.

110. Grotto, *An Era of Errors*, *supra* note 14.

111. *Id.*

112. *Id.*

113. For the year 2016, "[t]he state equalization factor issued by the Illinois Department of Revenue (IDOR) has increased . . . to 2.8032." COOK CTY. TAX RATES RELEASED, *supra* note 107.

114. Grotto, *An Era of Errors*, *supra* note 14.

115. Jason Grotto, *An Unfair Burden*, CHI. TRIB. (June 10, 2017), http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=d25c485f-f601-4e18-986d-4d93719e3b7e [https://perma.cc/F7ZH-KE5A].

116. Grotto, *An Era of Errors*, *supra* note 14.

117. Grotto, *An Unfair Burden*, *supra* note 115.

levy is \$50 million, and the total EAV of Chicago is \$2 billion, then the tax rate for Chicago residents will be 2.5 percent. Thus, a residential home with an EAV of \$100,000 will be assessed a property tax bill for \$2,500. However, if the total EAV of Chicago is undervalued at \$1 billion instead of \$2 billion, a residential home with an EAV of \$100,000 will now be assessed a property tax bill for \$5,000. Thus, a decrease in the total EAV can cause residential homeowners to experience higher property taxes even though the value of their property stayed the same. This reduction in the total EAV of taxing districts was done throughout Cook County by intentionally undervaluing commercial and industrial properties substantially more than residential properties.¹¹⁸

In 2008, Cook County officials attempted to eliminate the County's practice of purposeful property undervaluation by overhauling the entire assessment system.¹¹⁹ However, this did not remedy the substantial tax burden that had been placed on residential homeowners because the inaccurate assessment practice was eliminated just before the housing market collapsed, "throwing the entire [assessment] system into disarray."¹²⁰ Cook County residents were now experiencing substantial increases in the assessed value of their property at a time when property values were plummeting across the country.¹²¹

Many Cook County residents were hopeful that the corruption surrounding property assessments would come to an end when Joseph Berrios took over as Cook County Assessor in December 2010.¹²² Instead, Berrios only made matters worse by "using methods hidden from the public [that] repeatedly produced initial valuations of commercial and industrial properties—known as first-pass values—that did not change."¹²³ For example, in 2009 as the financial crisis was eviscerating the real estate market, a large commercial brick building on Chicago's Northwest Side was valued by Berrios' predecessor at \$13,455,132.¹²⁴ In 2012, when the commercial real estate market had made a triumphant comeback, Berrios assessed the same large brick building at the exact same value—\$13,455,132.¹²⁵ Then again in

118. Grotto, *An Era of Errors*, *supra* note 14.

119. *Id.*

120. *Id.*

121. *Id.*

122. Grotto, *An Unfair Burden*, *supra* note 115.

123. Jason Grotto, *Commercial Breakdown*, CHI. TRIB. (Dec. 7, 2017), <http://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/index.html> [<https://perma.cc/QY7P-2FLE>].

124. *Id.*

125. *Id.*

2015, as the real estate market continued to climb, Berrios assessed the same brick building at the exact same value—\$13,455,132.¹²⁶ The failure to update commercial property values to reflect the growing real estate market, while continuing to increase residential property assessments, allowed commercial property owners to pay significantly lower property taxes than residential homeowners.¹²⁷

The Chicago Tribune analyzed more than 40,000 commercial and industrial properties in Chicago and concluded that “more than two-thirds [of the properties] had identical first-pass values in at least two consecutive reassessments.”¹²⁸ Given the dynamic and complex nature of the real estate market, especially after the 2008 housing crash, experts say that it is “inconceivable” for such first-pass values to remain the same over time.¹²⁹ An expert from the International Association of Assessing Officers, a professional organization that develops assessment valuation guidelines used around the world, stated that “[f]or values to stay exactly the same, that indicates they aren’t doing anything . . . [and if] your models are working correctly, the chances of values staying exactly the same are virtually impossible.”¹³⁰

Cook County’s failure to update commercial property values is almost the direct inverse of the unlawful property assessment procedures in Wayne County that led to the Detroit Foreclosure Crisis. In Detroit, residential property values were not being updated and lowered to reflect a cratering housing market, which resulted in residential homeowners paying excessive property taxes that were disproportionate to the low market value of their homes.¹³¹ Conversely, Cook County is not updating and increasing commercial property values to reflect a flourishing housing market, which results in commercial property owners paying significantly lower taxes that are disproportionate to the high market value of their properties.¹³²

While undervaluing commercial properties increases the tax burden for all residential homeowners, the detrimental impact of the inaccurate assessment procedures was even greater in the low-income Chicago suburbs.¹³³ Several years after the housing market collapse, Cook County assessments continued to “systematically hurt homeowners living in poorer

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. See Atuahene, *Don’t Let Detroit’s Revival Rest on an Injustice*, *supra* note 4.

132. Grotto, *Commercial Breakdown*, *supra* note 123.

133. Grotto, *An Era of Errors*, *supra* note 14.

areas while giving many people living in affluent neighborhoods an un-sanctioned tax break”¹³⁴ through a residential property tax scheme that shifted the tax burden “from wealthier, majority-white neighborhoods to poorer, minority neighborhoods.”¹³⁵

2. Disparate Impact of Property Assessments in Chicago Suburbs

Although property values have dropped throughout all of Cook County since the 2008 housing crash,¹³⁶ many statistics regarding assessed property values are misleading due to the disproportionate impact that the triennial property assessment procedure has on the South Suburbs.¹³⁷ Cook County does very little to prevent, identify, or remedy the disproportionate impact that the triennial property assessments have on the South Suburbs.¹³⁸ In most counties across the country, assessors conduct Sales Ratio Studies to determine whether assessments are fair and accurate by comparing the actual sales price of properties to the assessed values.¹³⁹ However, Cook County does not conduct such studies, but instead relies on research from the Illinois Department of Revenue that is not released until several years after the property taxes have been calculated and levied on residents.¹⁴⁰ Sales Ratio Studies are the “industry’s standard tool for identifying and preventing inequities,” and a recent lawsuit filed against Joseph Berrios and the Cook County Assessor’s Office is seeking a permanent injunction to force the County to comply with the national property assessment administration standards.¹⁴¹

Independent researchers conducted Sales Ratio Studies that compared assessed property values in Cook County to actual sales prices, revealing that beginning in 2009 the Cook County property tax system was plagued by regressivity, which occurs from “the overvaluing of low-priced homes

134. *Id.*

135. Jason Grotto & Hal Dardick, *Lawsuit targets Berrios over biased residential assessments in Cook County*, CHI. TRIB. (Dec. 14, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-cook-county-assessor-berrios-sued-met-20171214-story.html> [https://perma.cc/46PM-32QZ]. The Assessor also punished small business owners by “generally undervaluing expensive downtown buildings while overvaluing small businesses in poorer neighborhoods.” Grotto, *Commercial Breakdown*, *supra* note 123.

136. AM. CMTY. SURVEY, *supra* note 63.

137. *See generally* COOK CTY. CLERK, *supra* note 65.

138. *See* Grotto, *An Unfair Burden*, *supra* note 115.

139. *Id.*

140. *Id.*

141. Complaint for Injunctive and Other Relief at 13, Brighton Park Neighborhood COU v. Berrios, No. 2017-CH-16453 (Ill. Cir. Ct. Cook Cty. Ch. Div. Dec. 14, 2017), <http://www.chicagotribune.com/news/ct-lawsuit-brighton-park-logan-square-joseph-berrios-20171214-htmlstory.html> [https://perma.cc/NY8V-JNH3].

and undervaluing of high-priced [homes.]”¹⁴² The result of regressive property valuation is the inequitable distribution of property taxes between high- and low-income residents.¹⁴³ Since the total amount of property taxes levied each year is fixed, if one group of property owners is not required to pay its fair share of the total County taxes because its property was undervalued, then all other property owners (whose properties were not undervalued) will be forced to make up the difference through higher taxes.¹⁴⁴

Since 2013, the EAV of the North Suburbs has increased approximately 14 percent.¹⁴⁵ In contrast, the EAV of the South Suburbs has increased only 1.7 percent during the same time span.¹⁴⁶ However, this net increase in the South suburbs is misleading because the district’s EAV actually decreased every single year except for 2016—when the North Suburbs were reassessed at a significant increase of 17.42 percent and the tax levy was increased by \$272 million.¹⁴⁷ Thus, despite declining property values in the South Suburbs prior to 2016, the average tax bill for South Suburban residents increased by 3.9 percent.¹⁴⁸ This demonstrates that even when property values decrease or remain the same in the low-income South Suburbs, as determined by independent Sales Ratio Studies, South Suburban residents continue to be assessed higher property taxes as a result of the county’s insatiable and ever-increasing tax levies.¹⁴⁹

A combination of high property taxes and reduced city population has led to a boom in the rental housing market in Cook County’s North Suburbs.¹⁵⁰ Between 2004 and 2011, approximately 1,600 new apartment units were built in Cook County, but in 2012, zero new apartment units were built throughout the entire County.¹⁵¹ However, since 2013, when property values had dropped nearly 13 percent since 2010,¹⁵² the suburban housing market has experienced an influx of approximately 11,600 new apartment units—10 times the amount of apartment units that hit the suburban hous-

142. Grotto, *An Unfair Burden*, *supra* note 115.

143. *Id.*

144. Grotto, *Commercial Breakdown*, *supra* note 123.

145. COOK CTY. TAX RATES RELEASED, *supra* note 107.

146. *Id.*

147. *Id.* at 4-5.

148. *Id.*

149. See *id.* Grotto, *An Unfair Burden*, *supra* note 115.

150. Inst. for Hous. Studies, *2017 State of Rental Housing in Cook County*, DEPAUL U. (May 11, 2017), <https://www.housingstudies.org/research-publications/state-of-housing/2017-state-rental-housing-cook-county/> [<https://perma.cc/7FYU-9S7K>].

151. Chacour Koop, *After big lull, suburban apartment construction has boomed since 2013*, DAILY HERALD (Oct. 23, 2017, 9:37 AM), <http://www.dailyherald.com/news/20171021/after-big-lull-suburban-apartment-construction-has-boomed-since-2013> [<https://perma.cc/K6X2-K8BA>].

152. AM. CMTY. SURVEY, *supra* note 63.

ing market in the eight years between 2004 and 2012.¹⁵³ While apartment units may be an attractive alternative for residents who are subject to underwater mortgages, the substantial increase of multi-family rental units in the North Suburbs has had a negative effect on the assessed property valuations and the property tax rates in the South Suburbs.¹⁵⁴

The increasing demand for suburban apartment units is a cause for concern because the majority of these new apartment units are being built in the North Suburbs for higher-income renters.¹⁵⁵ As a result, property values in the North Suburbs will continue to increase due to the influx of new renters and rental units, while the South Suburbs will suffer the negative effects of increasing property assessment values in the North. Similarly, the increase in higher-income rental units have caused rental prices to escalate, which has led to a significant decrease in the number of affordable rental units for lower-income residents.¹⁵⁶ The “affordability gap”¹⁵⁷ in the rental housing market has grown dramatically since the 2008 recession, and “[b]etween 2014 and 2015, nearly 9,000 fewer affordable units were available to lower-income renters, despite a growth of over 2,500 renter households needing affordable housing.”¹⁵⁸ Thus, while both high- and low-income residents are victims of Cook County’s exorbitant property taxes, only the higher-income residents have the ability to escape and seek haven in suburban rental units.

C. TIF Districts

Illinois has the second highest residential property taxes in the country, and between 1990 and 2015 Illinois’ residential property taxes grew 3.3 times faster than the median household income.¹⁵⁹ Property taxes are the main source of revenue for the local governments in Illinois, and residential

153. Koop, *supra* note 151.

154. *See generally* COOK CTY. CLERK, *supra* note 65.

155. “As the economy improved after 2012, the number of very low-income renter households declined while there were increases in higher-income renter households.” Inst. For Hous. Studies, *supra* note 150.

156. *Id.*

157. Affordability gap is “the difference between the demand for affordable rental housing by lower-income households and the supply of units that would be affordable at 30 percent of their income.” *Id.*

158. *Id.*

159. “If Illinois froze its residential property taxes today, it would take 28 years for residents’ property-tax burden to return to 1990 levels.” ERIK RANDOLPH ET AL., GROWING OUT OF CONTROL: PROPERTY TAXES PUT INCREASING BURDEN ON ILLINOIS TAXPAYERS 1 (2015), https://files.illinoispolicy.org/wp-content/uploads/2015/12/Proptax2_Report_CR2.pdf [<https://perma.cc/XP89-J63H>].

taxpayers are responsible for over 64 percent of all property taxes—an increase of nearly 12 percent over the last twenty years.¹⁶⁰ However, since property tax payments have grown approximately “60 percent more than median income,” low-income homeowners have found it increasingly difficult to contribute their share of the County’s property tax revenue.¹⁶¹ Much like Wayne County’s vigorous campaign of tax collection on impoverished residents after Detroit filed for bankruptcy, Cook County has sought ways to extract revenue from low-income communities that were already finding it difficult to pay their excessive property taxes.

Tax Increment Financing (TIF) districts are revitalization plans implemented by local governments that incentivize commercial development in “blighted” neighborhoods through tax exemptions and subsidies.¹⁶² A TIF district “purportedly creates additional tax revenue . . . [through] economic-development activity that would not have happened otherwise.”¹⁶³ This “additional” revenue occurs “if new development takes place in the TIF district, or if the value of existing properties rises, resulting in higher tax bills.”¹⁶⁴ However, only residential homeowners will receive higher tax bills because the commercial developers that caused property values to rise through government-subsidized investments are exempt from the property taxes.¹⁶⁵

Much like the property assessment procedures in Wayne County, the Cook County Assessor takes into account the value of *all* properties in a TIF district—including the higher valued tax-exempt properties—to calculate the assessed value of residential properties.¹⁶⁶ A commercial developer is adding little value to residential properties, yet residential tax bills are increasing as a result of the development.¹⁶⁷ A recent study cited by the Illinois Policy Institute found that TIF districts “have little impact on economic development other than increasing [the] assessed value of property within the district.”¹⁶⁸ Merely increasing the total assessed property value in a TIF district only serves to raise property taxes and does not necessarily

160. *Id.* at 2.

161. *Id.* at 9.

162. See Cook Cty. Clerk’s Office, TIFS 101, <https://www.cookcountyclerk.com/service/tifs-101> [<https://perma.cc/FJK8-DU96>].

163. RANDOLPH ET AL., *supra* note 159, at 21.

164. Cook Cty. Clerk’s Office, *supra* note 162.

165. *Id.*

166. *Id.*

167. See generally COOK CTY. CLERK, *supra* note 65.

168. Chris Lentino, *Tax Increment Financing: A Primer*, ILL. POL’Y INST. (Feb. 21, 2017), <https://www.illinoispolicy.org/tax-increment-financing-a-primer/> [<http://perma.cc/7VFFV-WVEA>].

create more jobs or a better standard of living for residents within the district.¹⁶⁹

This is exceptionally problematic because the tax-exempt properties in a TIF district are the primary sources that are driving up property values and residential tax bills, leaving low-income residents responsible for a much larger portion of Cook County's property tax revenue than they would have been without the commercial development. Additionally, TIF districts de-incentivize private development in low-income communities because they put non-subsidized developers at a competitive disadvantage in relation to subsidized developers. Thus, businesses and other commercial entities have little incentive to invest in these communities unless the developer is receiving a subsidy or tax-exemption, and the more subsidized development that occurs in a low-income neighborhood, the higher residential property tax bills will become.

Furthermore, the "additional" funds produced by the TIF districts are supposed to be reinvested into the community from which they came¹⁷⁰—unfortunately this is not always the case.¹⁷¹ For example, between 2002 and 2010, barely half of Chicago's TIF revenue went to infrastructure and public facilities, and nearly \$334 million went to large corporations such as Coca-Cola, Quaker Oats, and Wrigley.¹⁷² TIFs have been described as nothing more than political slush funds that perpetuate the corruption and unfairness that exists in the Cook County government.¹⁷³ Most notably, it was revealed in 2014 that Mayor Rahm Emmanuel was cutting public pensions and funneling TIF funds to his campaign donors.¹⁷⁴ According to several Cook County aldermen, and supported by TIF documentation obtained from the Department of Community Development, revenue generat-

169. *Id.*

170. Cook Cty. Clerk's Office, *supra* note 162.

171. See Mary Ann Ahern, *Emanuel Defends Diverting \$55M in TIF Funds to Navy Pier Rehab*, NBC CHI. (July 24, 2017, 9:12 AM), <https://www.nbcchicago.com/news/local/Emanuel-Defends-Diverting-55M-in-TIF-Funds-to-Navy-Pier-Rehab-436414503.html> [<http://perma.cc/4DT4-HY85>]; *City Council approves subsidy for McCormick Place hotel*, CRAIN'S CHI. BUS. (March 6, 2014, 6:00 AM), <http://www.chicagobusiness.com/realestate/20140306/CRED03/140309856/city-council-approves-subsidy-for-mccormick-place-hotel> [<http://perma.cc/8926-J7JD>].

172. *How Do TIFs Work?*, CIVICLAB, http://www.civiclab.us/tif_illumination_project/how-do-tifs-work/ [<http://perma.cc/NN6L-ZYKF>].

173. Lentino, *supra* note 168.

174. David Sirota, *Revealed: Rahm Emanuel cuts public pensions, diverts money to benefit campaign donors*, PANDO (Apr. 4, 2014), <https://pando.com/2014/04/04/revealed-rahm-emanuel-cuts-public-pensions-diverts-money-to-benefit-campaign-donors/> [<http://perma.cc/F8SJ-LZMQ>].

ed by TIF districts is primarily “used to help clout-heavy developers and corporations . . . and strengthen the political position of the mayor.”¹⁷⁵

Even if TIF funds are reinvested back into the community, property taxes will continue to increase for residential homeowners as a result of higher surrounding property values. Therefore, in low-income communities, residents will be assessed higher property taxes while experiencing no meaningful increase in their household income. Additionally, statistics regarding the overall revenue generated from the 163 total TIF districts in Chicago are grossly misleading because the few, more affluent TIF districts produce significantly more revenue than the lower-income TIF districts that are actually in need of the additional TIF funds.¹⁷⁶ According to reports from the Cook County Clerk’s Office, TIF districts located on Chicago’s Gold Coast—a very wealthy and affluent neighborhood—had collected more than \$1.35 billion by 2007.¹⁷⁷ Similarly, the Central Loop TIF alone created \$875 million of additional TIF revenue.¹⁷⁸ In stark contrast, the TIF districts that are truly “blighted” and in need of TIF funds, such as Englewood, Woodlawn, and Pullman, have failed to produce any sort of meaningful improvements in their neighborhoods through the TIF program.¹⁷⁹ The Pullman TIF suffered the most, creating a mere \$20,000 of TIF revenue in seven years.¹⁸⁰ Overall, the South Side of Chicago contains 40 more TIF districts than Central Chicago, yet these wealthier Central Chicago TIFs generate nearly 84% more revenue.¹⁸¹ This ultimately raises the question as to why Gold Coast communities are TIF districts in the first place since they are clearly not “blighted” neighborhoods, and where exactly their substantial TIF revenue is being allocated.

D. Property Tax Appeals

As seen throughout Wayne County, raising property taxes for low-income residents who are already struggling to make their payments will

175. Ben Joravsky & Mick Dumke, *The Shadow Budget*, CHI. READER (Oct. 22, 2009), <https://www.chicagoreader.com/chicago/the-chicago-shadow-tif-budget/Content?oid=1218391> [https://perma.cc/78PF-V3KF].

176. *See How Do TIFs Work?*, *supra* note 172.

177. Ben Joravsky, *The True TIF Tally*, CHI. READER (Nov. 22, 2007), <https://www.chicagoreader.com/chicago/the-true-tif-tally/Content?oid=999808> [http://perma.cc/VK9V-NZNL].

178. *Id.*

179. *Id.*

180. *Id.*

181. Ben Joravsky & Mick Dumke, *Shedding Light on the Shadow Budget*, CHI. READER (Dec. 10, 2009), <https://www.chicagoreader.com/chicago/shadow-budget-tif/Content?oid=1251320> [https://perma.cc/ZW44-LFKU].

cause the neighborhood to experience an epidemic of tax delinquency, bank foreclosure, and property abandonment. Additionally, the lack of resources and community outreach in low-income neighborhoods means that many residents are unable to utilize, or are simply unaware of, the remedies and recourses available to challenge excessive property tax assessments.

To ensure fairness and accuracy, every property tax assessment system requires an appeals process that allows residents to file for property tax reductions on the grounds that their property was inaccurately assessed.¹⁸² When the government fails to fairly and accurately assess residential property values, the burden falls on the individual homeowners to hire an attorney to appeal the inaccurate assessment, costing residents substantial amounts time, effort, and money.¹⁸³ To successfully appeal an inaccurate property tax assessment, a homeowner must prove that “similar homes nearby were assessed at a lower tax value than the home in question, and should therefore receive a lower tax bill.”¹⁸⁴ However, this becomes much harder to prove when the Cook County Assessor overvalues all residential properties in the same neighborhood.

In addition to the disproportionate burden placed on low-income residents through Cook County’s systematic property overvaluation, the appeals process grants disproportionately larger tax reductions to higher-income property owners.¹⁸⁵ Administrative data and statistics collected from the Cook County Assessor’s Office demonstrate that property tax appeals in Cook County do not remedy the inequities in the property assessment system, but instead exacerbate the problem of regressivity.¹⁸⁶ According to research conducted by the Chicago Tribune and the University of Chicago, smaller homes in the low-income South Suburbs, such as Chicago Heights, Lynwood, and Ford Heights, were far more likely to be overvalued, while more expensive homes in upper-class neighborhoods such as Wilmette and Winnetka were being greatly undervalued.¹⁸⁷ Despite

182. Grotto, *Commercial Breakdown*, *supra* note 123.

183. *Id.*

184. Stefanos Chen, *Chicagoans Ax Their Property Taxes*, WALL STREET J. (July 1, 2015, 10:32 AM), <https://www.wsj.com/articles/chicagoans-ax-their-property-taxes-1435176367> [<https://perma.cc/GN5F-6W7Q>].

185. ROBERT ROSS, THE IMPACT OF PROPERTY TAX APPEALS ON VERTICAL EQUITY IN COOK COUNTY, IL 4 (2017), <http://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/data/harris-study.pdf> [<https://perma.cc/LY7Q-VLBA>].

186. *Id.*

187. “Homeowners in luxury housing markets may actually have a better chance of winning an appeal. There are fewer of these homes relative to the overall market, and many of them are customized with high-end finishes that make assessments difficult.” Chen, *supra* note 184; Grotto, *An Unfair Burden*, *supra* note 115.

this discriminatory property assessment system that substantially overvalues low-income properties in impoverished communities, studies show that owners of high-priced homes are still far more likely to appeal their property tax bill.¹⁸⁸ Low-income residents are forced to consider the financial consequences of appealing their property assessments because even if the homeowner is awarded a reduction in their tax bill, lawyer fees and legal costs may far exceed the reduction.¹⁸⁹

Given Cook County's historic practice of unfair and inaccurate property assessments, the property tax appeal industry has become a lucrative business.¹⁹⁰ In 2015, Cook County taxpayers filed more than 360,000 appeals¹⁹¹—seventy-four percent of whom won reductions¹⁹²—resulting in an estimated \$22 million in lawyer's fees.¹⁹³ However, Cook County's property tax appeals industry is plagued by the same flaws as the County's discriminatory property assessment system that disproportionately burdens low-income residents.¹⁹⁴ Cook County tax lawyers primarily solicit homeowners in high-income, English-speaking neighborhoods because more valuable properties are more likely to yield larger legal fees.¹⁹⁵ This leaves low-income communities with fewer resources available to dispute their inflated property taxes, continuing to fuel the regressiveness and injustice of Cook County's property tax system.¹⁹⁶

III. SIMILARITIES BETWEEN DETROIT AND COOK COUNTY

Cook County is traveling down a dangerous path to destruction—the same path that Wayne County traveled in the years leading up to the Detroit Foreclosure Crisis. The current economic and political climate in Cook County is strikingly similar to the conditions in Detroit that culminated in the largest municipal bankruptcy in United States' history. On the brink of its own crisis, the Cook County government continues to mimic the unlawful, inaccurate, and discriminatory property tax procedures that led to Detroit's demise. Present-day Cook County and pre-crisis Detroit share many

188. Grotto, *An Unfair Burden*, *supra* note 115.

189. See Chen, *supra* note 184 (“[M]ost attorneys work for a percentage of the refund, though some have upfront fees.”).

190. “[T]he number of appeals in Cook County is extraordinarily high, far exceeding the total in [the state of] New York, for example.” Grotto, *Commercial Breakdown*, *supra* note 123.

191. ROSS, *supra* note 185, at 1.

192. Grotto, *Commercial Breakdown*, *supra* note 123.

193. ROSS, *supra* note 185, at 5.

194. Grotto, *Commercial Breakdown*, *supra* note 123; ROSS, *supra* note 185, at 5.

195. ROSS, *supra* note 185, at 5.

196. *Id.* at 4–5.

similar characteristics. However, Detroit and Cook County share three significant factors in particular that have the potential to spiral out of control and cause Cook County to suffer the same fate as Detroit.

First, Cook County is experiencing a mass exodus of residents, much like Detroit's "white flight," who are fleeing the state and leaving low-income homeowners responsible for the County's inflated residential property taxes. Second, the Cook County Assessor's Office engages in systematic manipulation of assessed property values by overvaluing lower-priced properties, undervaluing higher-priced properties, and failing to update commercial and residential assessment values to reflect the status of the real estate market. Finally, Cook County's unlawful and discriminatory property assessment practices place a disproportionate burden on low-income residents, causing Chicago's South Suburbs to experience rising foreclosure rates and declining property market values.

The mass exodus currently taking place in Cook County mirrors the dramatic decline in Wayne County's population in the decades preceding the Detroit Foreclosure Crisis.¹⁹⁷ During the 1990s, Detroit lost more housing units than any other city in the country, and the demand for affordable housing was at an all-time high as the city continued to lose its most productive resources, such as successful businesses and human capital, to the suburbs.¹⁹⁸ Similarly, Cook County has experienced a significant decrease in population for three consecutive years,¹⁹⁹ losing more residents than any other county in the country in 2016.²⁰⁰ Cook County is plagued by the same problem that Detroit once was—as primarily high-income homeowners flee the city, the County is left with a much smaller group of residents to provide property tax revenue.

Cook County alone has a staggering \$139 billion of debt, up 30 percent since just 2011.²⁰¹ When Detroit filed for bankruptcy in 2013, it had amassed approximately \$20 billion of debt,²⁰² which is mere pocket change

197. Simoni, *supra* note 2.

198. Abby Cooper, Note, *\$1 Per Lot For Affordable Housing In Detroit: Non-Monetary Benefits Can Constitute Fair Value In The Sale Of City-Owned Surplus Property To Community Development Corporations*, 48 WAYNE L. REV. 1191, 1194 (2002).

199. Illinois has lost more residents than any other state for three consecutive years between 2014–2016. Eltagouri, *supra* note 17.

200. Eltagouri & Wong, *supra* note 84.

201. Greg Hinz, *Cook County governments owe \$139 billion – up 30% in six years*, CRAIN'S CHI. BUS. (Nov. 6, 2017), <http://www.chicagobusiness.com/article/20171106/BLOGS02/171109919/cook-county-governments-owe-139-billion-up-30-in-six-years> [https://perma.cc/LM6F-XQC8].

202. Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles Into Insolvency*, N.Y. TIMES (July 18, 2013), http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?pagewanted=all&_r=0 [https://perma.cc/DB9W-NDKN].

compared to Cook County's unfathomably high debt total. As seen several decades ago in Detroit, a declining population combined with a rising debt total is a recipe for disaster as there are fewer residents available to extract tax dollars from. Detroit attempted, and failed, to remedy this problem by conducting a tenacious campaign of tax foreclosure and heightened property tax rates. Instead of going after residents who already face the second highest property taxes in the country, Cook County needs to focus more on addressing the actual source of its debt, as outlined in the potential solutions discussed below.²⁰³

The second, and most significant, similarity between Cook County and Detroit is the purposeful manipulation of assessed property values, which causes low-income residents to pay excessive property taxes while providing a tax break for wealthier homeowners. In both Cook County and Detroit, the County Assessor was intentionally overvaluing lower-priced properties and failing to change outdated property assessments to reflect the actual state of the real estate market. Not only is this type of manipulation illegal, it also completely distorts the County's housing market and makes it nearly impossible to place a true market value on properties. Cook County's inaccurate property assessment system is detrimental to consumer confidence because when property values are opaque or uncertain, homeowners and developers are much less likely to invest in their land for fear that the money spent bettering their property will far exceed the property's actual value.

Detroit and Cook County also share the unfortunate similarity of "bad timing" when it comes to rectifying their defunct property tax procedures. In Detroit, county officials attempted to remedy decades of negligent property tax collection at a time when poverty rates had substantially increased.²⁰⁴ The Detroit government was attempting to extract money from a small, low-income group of taxpayers who simply could not afford to provide enough revenue to meet the city's financial needs. Cook County followed suit when it attempted to overhaul its property tax system right when the housing market crashed.²⁰⁵ Cook County's solution to its own defunct taxing system was the same as its solution to nearly every other problem—raise taxes. However, the increase in property taxes was felt primarily by

203. Chris Lentino, *Cook County Local Government Debt Hits \$139 Billion*, ILL. POL'Y INST. (Nov. 7, 2017), <https://www.illinoispolicy.org/cook-county-local-government-debt-hits-139-billion/> [<https://perma.cc/3X6R-V55F>].

204. Anderson, *supra* note 7, at 238.

205. Grotto, *An Era of Errors*, *supra* note 14.

residential homeowners, while commercial and industrial property owners continued to receive tax breaks.

Detroit and Cook County also failed to conduct updated, accurate property assessments to reflect the condition of the real estate market. In Detroit, the housing market had cratered yet properties were still being assessed at significantly high values as if the market was flourishing.²⁰⁶ Similarly, in Cook County, when the market had finally rebounded after the 2008 recession, the Cook County Assessor failed to increase commercial and industrial property assessment values.²⁰⁷ The result of the Assessor's actions was a regressive property tax system in which lower-priced residential properties were substantially overvalued to make up for the substantial undervaluation of commercial properties.

The final similarity between Detroit and Cook County is the disproportionate burden that the manipulated assessment system and excessive property taxes place on low-income homeowners. As demonstrated by Detroit's downfall, forcing low-income residents to continue paying inflated property taxes is extremely risky because, ultimately, these residents can no longer shoulder the heavy tax burden. In Detroit, wealthy homeowners and commercial businesses fled to the suburbs, leaving behind a small group of low-income and impoverished residents. Then, when the remaining residents were no longer able to provide enough revenue to meet Detroit's fiscal demands, foreclosure, abandonment, and a collapsed housing market ensued.²⁰⁸ Thus, those residents who were actually capable of providing revenue for the city, such as upper-class homeowners and commercial developers, were no longer a viable source of revenue because they had either fled the city or already been given substantial subsidies and tax breaks.

Low-income homeowners in Cook County are experiencing the same injustices and disproportionate tax burden as Detroit's impoverished residents. By manipulating the property assessment system to overvalue lower-priced properties, the Cook County Assessor is shifting a large percentage of the County's residential property taxes from wealthier, upper-class property owners to poorer, lower-class residents.²⁰⁹ Additionally, the resources available to appeal property taxes are becoming more expensive and being utilized primarily by high-income homeowners.²¹⁰ Even more troublesome

206. Atuahene, *Don't Let Detroit's Revival Rest on an Injustice*, *supra* note 4.

207. Grotto, *Commercial Breakdown*, *supra* note 123.

208. Anderson, *supra* note 7.

209. Grotto, *An Era of Errors*, *supra* note 14.

210. ROSS, *supra* note 185, at 4–5.

is that low-income residents face a substantial risk of foreclosure as property taxes are increasing exponentially faster than household incomes. TIF districts are Cook County's attempt to foster development and increase household incomes in blighted neighborhoods. However, the revenue generated by TIF districts is not being allocated so as best to benefit the residents, creating no meaningful increase in household incomes while still providing subsidies and tax breaks to big businesses. This situation becomes even more dire considering the detrimental effect that property foreclosures have on surrounding properties.²¹¹ The snowball effect of property foreclosure and Cook County's inaccurate assessment system are threatening to send the City of Chicago spiraling into a property foreclosure crisis.

IV. POTENTIAL SOLUTIONS

The solution for Cook County is simple in theory but difficult in practice. Cook County must be transparent about the methods used to value properties, and the Cook County Assessor's Office must be held accountable for grossly inaccurate property assessments. Transparency and accountability for Cook County local governments and officials is an essential starting point to remedying the County's discriminatory and manipulated property tax system. First, Cook County should conform to the industry standard and conduct Sales Ratio Studies to determine whether property assessments are fair and accurate. These studies should be made available to the public, reassuring homeowners that their property assessments were calculated with diligence and precision. On June 29, 2018, Cook County took a step in the right direction when an Illinois court of appeals ordered the Assessor's Office to release the "records and formulas used to value commercial and industrial properties."²¹² However, no good deed goes unpunished, as Cook County taxpayers are now on the hook for the Assessor's legal fees, which are currently in excess of \$100,000.²¹³

Furthermore, the government should pre-approve and publish a complete budget plan for the use of TIF district revenue. Cook County must eliminate the "slush fund" of unallocated revenue that currently allows government officials to spend the money outside of the TIF district without informing the public. Additionally, the property tax appeals industry should be regulated to provide equal access of resources to low-income residents.

211. See Whitaker & Fitzpatrick, *supra* note 16, at 8.

212. Hal Dardick, *Appellate court orders Berrios to release assessment information to Tribune*, CHI. TRIB. (June 29, 2018), <http://www.chicagotribune.com/news/ct-met-assessor-berrios-lawsuit-ruling-20180629-story.html> [https://perma.cc/DB9W-NDKN].

213. *Id.*

Providing incentives, such as tax breaks or bonuses, for law firms to file lower-priced property appeals could make legal representation more accessible and affordable for low-income homeowners.

A significant contributor to the ever-increasing property tax burden on Cook County residents is the City of Chicago's staggering \$36 billion of unfunded pension liabilities.²¹⁴ A proposed solution, which the Illinois legislature already approved for State employees in 1998, is a 401(k)-style retirement plan for County employees that serves as an alternative to the traditional pension plan.²¹⁵ If a similar 401(k)-style plan was adopted by Cook County, it would help limit the County's growing pension obligations, while still providing a flexible and secure retirement plan for employees. A 401(k)-style retirement plan would reduce the burden that is currently placed on taxpayers to provide for public pensions. An individual with a 401(k) is contributing their own money from their own paycheck to fund their own retirement. Taxpayers would not be completely absolved of all responsibility, however, because public employers would be required to make matching contributions to an employee's 401(k)-style retirement plan. Since public entities are funded primarily by taxpayer dollars, these matching contributions would, in essence, be coming from Cook County residents through their taxes. However, these matching contributions would be significantly less than the amounts needed to continually fund the City's bloated and outdated pension system.

Finally, the Cook County Assessor is an elected position, and taxpayers must hold the Assessor's Office accountable for its intentional and discriminatory manipulation of the property tax system. Despite personnel changes in the Cook County Assessor's Office over the past few decades, the pattern of corruption and injustice has only gotten worse. A transparent government would reveal these unfair and discriminatory practices, allowing taxpayers to hold government officials accountable for their actions. On March 20, 2018, Joseph Berrios lost the Democratic primary election for Cook County Assessor to Frederick Kaegi.²¹⁶ However, as we have seen in the past, a new Assessor does not guarantee change. Cook County has experienced a succession of Assessors who merely continue the County's

214. *Id.*

215. Ted Dabrowski & John Klingner, *Pension reform plan for Illinois: Right under its nose*, ILL. POL'Y INST. (Mar. 24, 2017), <https://www.illinoispolicy.org/pension-reform-plan-for-illinois-right-under-its-nose/> [https://perma.cc/FBZ6-7YQT].

216. Hal Dardick, Ray Long & Joe Mahr, *Embattled incumbent Joseph Berrios concedes to Fritz Kaegi in Cook County's assessor race*, CHI. TRIB. (Mar. 21, 2018), <http://www.chicagotribune.com/news/local/politics/ct-met-cook-county-assessor-20180319-story.html> [http://perma.cc/BM5C-38PS].

historic practice of regressive and discriminatory property tax assessments.²¹⁷ This time around, the citizens of Cook County must hold Kaegi to a higher standard than they did Berrios and demand the overhaul of the property tax system that residents so desperately need.

CONCLUSION

Cook County has been unfairly and inaccurately assessing property values for decades, resulting in excessive and overly burdensome property taxes. Cook County's property tax system possesses many of the same fatal flaws as the Wayne County taxing procedures that led to the Detroit Foreclosure Crisis. Cook County benefits from a larger population and stronger economy than Detroit did before declaring bankruptcy. However, Cook County is following in Detroit's footsteps by disproportionately burdening low-income residents with excessive property taxes. As seen during Detroit's demise, there is a tipping point where residents can no longer afford to pay their inflated property taxes, causing property values to plummet as foreclosure spirals out of control. While there is no tried and true solution to this defunct property tax system, Cook County must learn from Detroit's mistakes because "those who fail to learn from history are doomed to repeat it."²¹⁸

217. Grotto, *An Unfair Burden*, *supra* note 115.

218. *Those Who Fail to Learn from History*. . . , NAT'L CHURCHILL MUSEUM BLOG ARCHIVE: CHURCHILL FELLOWS WEEKEND 2016 (Nov. 16, 2012), <https://www.nationalchurchillmuseum.org/blog.html> [<http://perma.cc/G342-WVBW>]. *See also* MEHDI KHOSROW-POUR, *ENCYCLOPEDIA OF INFORMATION SCIENCE AND TECHNOLOGY* 1411 (4th ed. 2018).