

# Is Tax Increment Financing Racist? Chicago's Racially Disparate TIF Spending

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*ABSTRACT: Tax Increment Financing ("TIF") is a financing tool used by cities large and small across the country. Chicago, whose history includes several instances of de jure and de facto racial discrimination, is an especially prolific TIF user. This Note examines TIF distribution in each of Chicago's 50 wards. Both a regression analysis and full population data show that white wards receive substantially greater TIF allocations than black and Hispanic wards. To solve this disparity, this Note proposes amending the Illinois TIF statute to narrow the circumstances in which TIF is available. This Note further proposes changing Chicago's TIF allocation process to restrict TIF dollars to wards experiencing extreme poverty and wards with little racial disparity, concluding that the latter is the best and fastest short term option to correct the imbalance.*

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## I. INTRODUCTION

The 20th century introduced radical changes to the landscape of American cities. An evolving economy and the population's migration away from farms and toward cities resulted in massive decreases in labor and farm jobs, and even greater increases in professional and service employment.<sup>1</sup> As manufacturing and labor moved overseas, incomes surged in the jobs that took their place.<sup>2</sup> These shifts, combined with rapid suburbanization in the mid- to late-20th century,<sup>3</sup> left behind abandoned buildings in the nation's central cities.<sup>4</sup>

At the same time as these shifts altered employment in American cities, black and Hispanic in-migration caused a dramatic change in the racial and socioeconomic makeup of central cities.<sup>5</sup> The race of in-migrants was the primary motivation for white flight to suburbs, even controlling for endogenous locational preferences.<sup>6</sup> This combination of deindustrialization

1. Ian D. Wyatt & Daniel E. Hecker, *Occupational Changes During the 20th Century*, MONTHLY LAB. REV., Mar. 2006, at 35, 36 chart 1; see also PATRICK J. CARR & MARIA J. KEFALAS, HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA 4-5 (2009) (discussing migration from rural to urban areas).

2. See THEODORE CAPLOW ET AL., THE FIRST MEASURED CENTURY: AN ILLUSTRATED GUIDE TO TRENDS IN AMERICA, 1900-2000, at 164 (2001) ("Middle-income families—those in the middle fifth of the aggregate income distribution—saw their average annual incomes, measured in constant dollars, increase from more than \$15,000 in 1929 to more than \$47,000 in 1998.").

3. KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 4 (1985) ("The 1980 census revealed that more than 40 percent of the national population . . . lived in the suburbs . . .").

4. See generally John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. URB. AFF. 301 (2000) (describing the barriers to growth created by abandoned and vacant properties).

5. See DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 74-81 (1993) (discussing how racial migration patterns resulted in "hypersegregation" in cities); John F. Kain, *Housing Segregation, Negro Employment, and Metropolitan Decentralization*, 82 Q.J. ECON. 175, 176-77 (1968) ("The means by which racial segregation in housing has been maintained are amply documented. They are both legal and extra-legal; for example: racial covenants; racial zoning; violence or threats of violence; preemptive purchase; various petty harassments; implicit or explicit collusion by realtors, banks, mortgage lenders, and other lending agencies; and . . . the Federal Housing Administration (FHA) and other Federal agencies." (footnote omitted)); Jay Radey, *The Coming Integration*, 7 DEPAUL J. SOC. JUST. 15, 27 (2013) ("[A]s black and brown people would move into a neighborhood, white people would move out—quickly in the 60s and 70s and perhaps more slowly in recent memory but always with inevitability."); Leah Platt Boustan, *Was Postwar Suburbanization "White Flight"? Evidence from the Black Migration* 21 (Nat'l Bureau of Econ. Research, Working Paper No. 13543, 2009) (finding a causal connection between white out-migration to suburbs and black in-migration, controlling for other proposed causes).

6. Boustan, *supra* note 5, at 19; see also William H. Frey, *Central City White Flight: Racial and Nonracial Causes*, 44 AM. SOC. REV. 425, 426 (1979).

and white flight decimated central cities.<sup>7</sup> Abandoned warehouses, apartments, and commercial buildings were among “the most visible and demoralizing signs of inner city decline” and created both economic and political problems.<sup>8</sup> Municipal leaders facing this problem had several alternatives, though many—including block grants and tax foreclosures—were either ineffective or too restricted.<sup>9</sup> Cities instead turned to a relatively new tool, tax increment financing (“TIF”), to solve these problems and spur redevelopment.<sup>10</sup>

This Note describes, in Part II.A, TIF’s history as a municipal spending tool, detailing its mechanics and the policy arguments on both sides of the still-raging TIF debate. In Part II.B, this Note recounts Chicago’s demographic and discriminatory history, explaining why Chicago is a good candidate for this study. Next, in Part III, an empirical analysis using data from each of Chicago’s 50 wards demonstrates a substantial negative effect on TIF spending in predominantly black and Hispanic wards. In Part IV.A, this Note proposes amendments to the Illinois TIF statute, limiting the circumstances in which cities can use TIF. Finally, this Note also proposes in Part IV.B that Chicago unilaterally alter its TIF criteria to restrict TIF to impoverished wards and to wards with a racial composition near normal distribution.

## II. WHY STUDY TIF IN CHICAGO?

### A. TAX INCREMENT FINANCING

TIF saw widespread legislative adoption starting in the 1970s and large cities started using the tax benefit by the 1990s.<sup>11</sup> As cities responded to deep cuts in federal redevelopment funds, TIF became an important tool for local governments.<sup>12</sup> Cities use TIF in projects ranging from upgrading streets and

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7. See SEAN ZIELENBACH, *THE ART OF REVITALIZATION: IMPROVING CONDITIONS IN DISTRESSED INNER-CITY NEIGHBORHOODS* 67–74 (2000) (discussing the rise and fall of residential, commercial, and industrial sectors in urban Chicago in the mid- to late-20th century).

8. Accordino & Johnson, *supra* note 4, at 301 (discussing the negative cyclical effect abandoned property has on local economies and residents).

9. See 42 U.S.C. §§ 5301–5321 (2012); Accordino & Johnson, *supra* note 4, at 309; Jonathan M. Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U. DET. J. URB. L. 405, 405 n.3 (1979). The effectiveness of those policies was often limited, however, due to state restrictions on city power, extended and inefficient proceedings, and/or political disfavor. Accordino & Johnson, *supra* note 4, at 309, 313.

10. Davidson, *supra* note 9, at 405–06.

11. See Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 69–70 (2010) (tracing the origin of TIF and noting that “[b]y the early 1990s, 56 percent of cities with populations over 100,000 had used TIF”). Illinois passed its TIF statute, the Tax Increment Allocation Redevelopment Act, in 1977. 65 ILL. COMP. STAT. 5/11-74.4 (2014).

12. See Davidson, *supra* note 9, at 406 (noting, in 1978, “[t]he recent growth in TIF’s use as a redevelopment tool”); Rachel Weber, *Tax Increment Financing in Theory and Practice, in FINANCING ECONOMIC DEVELOPMENT IN THE 21ST CENTURY* 283, 283 (Sammi B. White & Zenia

lighting, to cleaning up environmental hazards, to purchasing and renovating land or buildings.<sup>13</sup> For the reasons discussed below, TIF has become an extremely popular—and controversial—economic development tool.

### 1. How It Works

To use TIF, a city council must first create a TIF district. Prior to creating the district, city officials present to the city council a comprehensive redevelopment plan for the proposed district.<sup>14</sup> The council then draws the district boundaries, which can vary widely in size, ranging from “a few square blocks [to] most of a city.”<sup>15</sup> After creating the district, the city determines the property values for all buildings inside the district.<sup>16</sup> From that base, the city leverages future property-value growth to fund the upfront costs associated with a redevelopment project.<sup>17</sup> Rather than routing all property-tax income to the city’s general fund, the marginal property-tax dollars from the TIF district are channeled into a separate account, usually managed by the city or the city’s economic development authority, to finance those upfront costs.<sup>18</sup> This continues until a predetermined expiration date.<sup>19</sup> For example, in Table 1 below, a hypothetical city could finance \$1 million worth of construction, infrastructure, or other services to further development.

Table 1. Increment Illustrated

Property Tax Revenues at District Creation	\$1,000,000
Property Tax Revenues when District Expires	\$2,000,000
Total “Increment” Available for Development Spending	\$1,000,000

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Z. Kotval eds., 2d ed. 2013) (“If the past quarter of a century is any indication, tax increment financing . . . is likely to remain one of the most popular forms of finance for local economic development in the United States.”).

13. Briffault, *supra* note 11, at 68.

14. Davidson, *supra* note 9, at 407.

15. Briffault, *supra* note 11, at 68.

16. *Id.* at 67–68.

17. *Id.* at 67; Davidson, *supra* note 9, at 407; Weber, *supra* note 12, at 286. For a discussion of how this process works in the bond market, see Richard A. Epstein, *How to Undermine Tax Increment Financing: The Lessons of City of Chicago v ProLogis*, 77 U. CHI. L. REV. 121, 121–24 (2010).

18. Briffault, *supra* note 11, at 67. Each year’s “increment” is thus the difference between the present value of all property in the district and the base-assessed value of those properties. Davidson, *supra* note 9, at 407. For a basic overview of TIF, see Briffault, *supra* note 11, at 67–74. As Professor Briffault describes, this process is, theoretically, “a closed circuit: the incremental revenues pay for the public expenditures, which induce the private investment, which generates the incremental revenues, which pay for the public expenditures.” *Id.* at 68.

19. See Briffault, *supra* note 11, at 68 (“Eventually, the TIF program expires . . .”).

This program only works if property values increase over the life of the TIF district.<sup>20</sup>

## 2. Why It's Popular

There are many reasons TIF is now the primary economic development tool in a city's arsenal. First, TIF is a practical option. As the federal government slashed funding for redevelopment in the mid-20th century,<sup>21</sup> the ability to handpick development projects and finance them self-sufficiently made TIF an easy choice for municipal governments.<sup>22</sup> Additionally, TIF allows local governments significant flexibility and "avoids much of the red-tape and delay associated with grant programs."<sup>23</sup>

Second, TIF is a clear choice politically, as it allows local governments to increase their tax base without increasing taxes.<sup>24</sup> In fact, TIF allows cities to avoid programs like tax abatements, credits, or across-the-board cuts that shrink, rather than grow, their tax bases.<sup>25</sup> TIF also shields municipal politicians from the (direct) voter constraints associated with bond

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20. Of course, if property values decrease or remain constant during the TIF district's life, the city will not recover the initial capital investment and the result is essentially the same as a direct transfer to the developer. Several failed TIF districts can leave a city bankrupt. *See infra* note 42 and accompanying text.

21. Weber, *supra* note 12, at 283.

22. *See id.* at 284 ("TIF is often perceived as a 'self-financing' form of subsidy . . ."); *see also* Briffault, *supra* note 11, at 67 (noting that "TIF programs are market-oriented" and that "local governments use TIF to act as entrepreneurs").

23. Davidson, *supra* note 9, at 408.

24. *See id.* at 411 ("[T]he affected taxing districts and the public-at-large gain substantially from the increased tax base when the project is fully implemented . . ."); *see also* Briffault, *supra* note 11, at 73 (describing the tax mechanics of TIF and noting that "TIF channels new money into districts"); Michael T. Peddle, *TIF in Illinois: The Good, the Bad, and the Ugly*, 17 N. ILL. U. L. REV. 441, 445 (1997) (noting that spillover tax increases may net the municipality a profit in the long-term).

25. Briffault, *supra* note 11, at 73.

referenda.<sup>26</sup> Unlike regular bond issuance, which is often subject to a referendum, TIF spending requires no voter approval.<sup>27</sup>

Finally, TIF's popularity derives from its ability to let cities choose which development projects—and sometimes which companies—will move to town.<sup>28</sup> Though most effective as a redevelopment tool, TIF is now a key part of most cities' incentive packages when enticing relocating firms.<sup>29</sup> TIF also encourages local governments to compete for private investment and as one scholar describes, “fits into the ‘entrepreneurial’ spirit of contemporary local economic development programs.”<sup>30</sup>

### 3. Why It's Controversial

While TIF has found favor among municipal governments across the country, it is a lightning rod for controversy in many communities.<sup>31</sup> The most common criticism is probably that cities abuse TIF.<sup>32</sup> One of TIF's

26. Davidson, *supra* note 9, at 408. Of course, politicians' reelection outcomes may change if their constituents agree or disagree with the city's TIF use, especially as public awareness of the program increases. See, e.g., Andrew Denney, *Council, School Board Candidates Address Failed TIF District*, COLUM. DAILY TRIB. (Mar. 30, 2014, 2:00 AM), [http://www.columbiatribune.com/news/local/council-school-board-candidates-address-failed-tif-district/article\\_66867bco-b7c1-11e3-a29b-10604b9f6eda.html](http://www.columbiatribune.com/news/local/council-school-board-candidates-address-failed-tif-district/article_66867bco-b7c1-11e3-a29b-10604b9f6eda.html); Gregg Hennigan, *Coralville Candidates Tackle Issues Tied to Von Maur Deal*, GAZETTE (Apr. 3, 2014, 2:32 AM), <http://thegazette.com/2011/10/24/coralville-candidates-tackle-issues-tied-to-von-maur-deal>; David Sirota, *Chicago Mayor Rahm Emanuel Cuts Schools, Pensions While Preserving Fund for Corporate Subsidies*, INT'L BUS. TIMES (Aug. 5, 2014, 1:05 PM), <http://www.ibtimes.com/chicago-mayor-rahm-emanuel-cuts-schools-pensions-while-preserving-fund-corporate-subsidies-1648754>; Press Release, Vt. Mayors Coal., *Mayors Applaud Governor, Legislature for Passage of Meaningful TIF Legislation* (May 14, 2013), <http://www.burlingtonvt.gov/Press/Mayors-Applaud-Governor-Legislature-for-Passage-of-Meaningful-TIF-Legislation>.

27. See, e.g., 70 ILL. COMP. STAT. 1850/8 (2014) (allowing bonds for most purposes only “after approval by referendum”); WASH. REV. CODE § 39.88.090 (2014) (requiring that all bonds are “subject to potential referendum approval by the voters”); WIS. STAT. § 67.05 (2013–14) (specifying that a referendum is appropriate when issuing a bond).

28. See Briffault, *supra* note 11, at 68 (“Many TIF plans are intended to aid a specific firm, but others reflect efforts to attract large numbers of investors to an area.”).

29. *Id.* at 71 (noting “the change in the language used to describe TIF activity from *redevelopment* . . . to simply *development*”); see also *City Council Approves Subsidy for McCormick Place Hotel*, CRAIN'S CHI. BUS. (Mar. 6, 2014), <http://www.chicagobusiness.com/real-estate/20140306/CREDO3/140309856/city-council-approves-subsidy-for-mccormick-place-hotel>; Janet Moore, *North Minneapolis Redevelopment Seeking TIF Assistance*, STAR TRIB. (Aug. 4, 2014, 3:50 PM), <http://www.startribune.com/north-minneapolis-redevelopment-seeking-tif-assistance/269881221>.

30. Briffault, *supra* note 11, at 67. For criticism of this feature, see *infra* Part II.A.3.

31. A full discussion on TIF's controversial aspects is far beyond the scope of this Note. For a very broad overview of TIF's criticisms and concerns, see generally Joseph F. Luther, Comment, *Tax Increment Financing: Municipalities Avoiding Voter Accountability*, 1987 DET. C.L. REV. 89 (discussing the policy and legal arguments against TIF); Peddle, *supra* note 24, at 448–53 (“TIF in Illinois: The Bad”).

32. See, e.g., Ben Joravsky & Mick Dumke, *Shedding Light on the Shadow Budget*, CHI. READER (Dec. 10, 2009), <http://www.chicagoreader.com/chicago/shadow-budget-tif/Content?oid=1251320&showFullText=true> (criticizing “the inequity and the transparency problem” with TIF in Chicago); Eric Tellez, *TIF Abuse Buys Downtown Fat Cats, as Neighborhoods Suffer*, PROGRESS ILL.

distinguishing features is its lack of administrative, state, or judicial oversight.<sup>33</sup> While this feature enables local governments to respond to development opportunities faster, the potential for abuse is ever-present.<sup>34</sup> For example, Coralville, Iowa's use of TIF garnered national attention during the city's 2013 elections.<sup>35</sup> Though the city used TIF for one of the financing mechanism's prototypical purposes (redeveloping a former industrial park),<sup>36</sup> Coralville went beyond renovating or razing abandoned structures and instead used TIF to build a hotel and convention center, a brewery, and a department store, among others.<sup>37</sup> As a result of these projects, the credit-rating agency Moody's downgraded the city's bond by six levels in two years.<sup>38</sup> But Coralville is not alone. Commentators and advocacy groups criticize TIF use in cities such as Chicago, Illinois;<sup>39</sup> Bismarck, North Dakota;<sup>40</sup> and

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(Dec. 5, 2011, 9:33 AM), <http://www.progressillinois.com/posts/content/2011/12/05/tif-abuse-buoys-downtown-fat-cats-neighborhoods-suffer> (“[R]esidents do not understand why money can be found for downtown corporations, but not for crucial neighborhood services.”); *TIF Abuse Worse than Reported, Inspector General Says*, CRAIN'S CHI. BUS. (Nov. 26, 2012), <http://www.chicago-business.com/article/20121126/BLOGSo2/121129911/tif-abuse-worse-than-reported-inspector-general-says> (reporting that the Daley administration required TIF recipients to donate a portion of the funds to charities close to the Daley family).

33. Briffault, *supra* note 11, at 67–69.

34. *Id.* at 66 (“Even TIF’s most ardent backers acknowledge that ‘perhaps more than any other public finance/economic tool [it] can often elicit an emotional and personal response by the community.’” (quoting COUNCIL OF DEV. FIN. AGENCIES & INT’L COUNCIL OF SHOPPING CTRS., TAX INCREMENT FINANCE BEST PRACTICES REFERENCE GUIDE 14 (2007), <http://docplayer.net/2921021-Tax-increment-finance-best-practices-reference-guide.html>)).

35. See Jeffrey Patch, *Coralville Debt Spurs Record Number of Candidates Challenging Incumbents*, IOWA WATCHDOG (Sept. 24, 2013), <http://watchdog.org/107357/coralville-tif>; The Daily Show with Jon Stewart, *Koch Blocked*, COMEDY CENTRAL (Feb. 5, 2014), <http://www.cc.com/video-clips/gzhohj/the-daily-show-with-jon-stewart-koch-blocked> (discussing national political action committees’ involvement in the Coralville mayoral race).

36. *Tax Increment Financing*, CITY CORALVILLE, IOWA, <http://www.coralville.org/index.aspx?NID=649> (last updated Apr. 28, 2014).

37. Gregg Hennigan, *Ratings Agency Downgrades Coralville Bond Ratings Again*, GAZETTE (Mar. 28, 2014, 4:26 PM), <http://thegazette.com/2013/06/11/ratings-agency-downgrades-coralville-bond-ratings-again>.

38. *Id.*; see also Gregg Hennigan, *Coralville Bond Rating Outlook Remains ‘Negative,’* GAZETTE (Aug. 6, 2014, 2:50 PM), <http://www.thegazette.com/subject/news/coralville-bond-rating-outlook-remains-negative-20140806>.

39. John Byrne, *McCormick Place Hotel TIF Money Gets Green Light*, CHI. TRIB. (Mar. 4, 2014), [http://articles.chicagotribune.com/2014-03-04/news/chi-mccormick-place-hotel-tif-money-gets-green-light-20140304\\_1\\_mccormick-place-new-hotel-tif](http://articles.chicagotribune.com/2014-03-04/news/chi-mccormick-place-hotel-tif-money-gets-green-light-20140304_1_mccormick-place-new-hotel-tif).

40. Leann Eckroth, *Lawsuit Filed Against the City of Bismarck over TIF Funds*, BISMARCK TRIB. (Apr. 6, 2010, 12:17 AM), [http://bismarcktribune.com/news/local/lawsuit-filed-against-the-city-of-bismarck-over-tif-funds/article\\_883ce240-413c-11df-b15d-001cc4c03286.html](http://bismarcktribune.com/news/local/lawsuit-filed-against-the-city-of-bismarck-over-tif-funds/article_883ce240-413c-11df-b15d-001cc4c03286.html).



Stockton, California,<sup>41</sup> where failed TIF projects contributed to Stockton's bankruptcy in 2012.<sup>42</sup>

Another critique is that TIF's economic returns are questionable. Scholars disagree as to whether TIF actually generates marginal economic returns.<sup>43</sup> For example, a TIF project in an abandoned industrial park may provide significant economic growth, while the TIF district containing the Chicago Loop may be more illustrative of rent-seeking rather than marginal economic gains.<sup>44</sup> Critics also charge that TIF results in an "inefficient[] allocat[ion of] government and private resources,"<sup>45</sup> that TIF spending occurs most frequently in growing or more affluent areas rather than poor or declining ones,<sup>46</sup> and that TIF over-encourages risk on the part of local government.<sup>47</sup> These complaints are by no means exhaustive,<sup>48</sup> and this Note's purpose is not to analyze the pros and cons of the program. However, understanding TIF's mechanics is critical to understanding both how its inequitable use arose, and how to restructure the benefit in the future.

### B. WHY CHICAGO?

This Note focuses on Chicago for two reasons: its prolific TIF use and its history of segregation. First, Chicago is a prolific user of TIF, and data on TIF spending is readily available thanks to both the city and community

41. Alison Vekshin, *Stockton, California, Warns of Possible Default on 2006 Debt*, BLOOMBERG BUS. (Oct. 21, 2011, 4:18 PM), <http://www.bloomberg.com/news/articles/2011-10-21/stockton-california-warns-of-possible-default-on-tax-revenue-shortfall>.

42. *Id.*; *Which American Municipalities Have Filed for Bankruptcy?*, PBS (Feb. 8, 2014, 3:43 PM), <http://www.pbs.org/newshour/updates/municipalities-declared-bankruptcy>.

43. Compare Richard F. Dye & David F. Merriman, *The Effects of Tax Increment Financing on Economic Development*, 47 J. URB. ECON. 306, 324 (2000) (finding that TIF "reallocate[s] property improvements in such a way that capital is less productive in its new location"), with Paul F. Byrne, *Determinants of Property Value Growth for Tax Increment Financing Districts*, 20 ECON. DEV. Q. 317, 325-27 (2006) (evaluating the effects of different variables and ultimately finding that, in the right conditions, TIF results in faster economic growth).

44. See Paul N. Courant, *How Would You Know a Good Economic Development Policy if You Tripped Over One? Hint: Don't Just Count Jobs*, 47 NAT'L TAX J. 863, 874 (1994) ("One reason that local governments may engage in development policies is that there is a winning political coalition that benefits, even if the aggregate benefits are negative.").

45. Dye & Merriman, *supra* note 43, at 326; see also *id.* at 325-27.

46. Briffault, *supra* note 11, at 80.

47. Weber, *supra* note 12, at 296.

48. Other critiques include TIF's propensity to push out residents through property appreciation spillover, Rachel Weber et al., *Spillovers from Tax Increment Financing Districts: Implications for Housing Price Appreciation*, 37 REGIONAL SCI. & URB. ECON. 259, 260 (2007), that TIF, at least in the short-term, requires subsidization by other parts of the city, David B. Lawrence & Susan C. Stephenson, *The Economics and Politics of Tax Increment Financing*, 26 GROWTH & CHANGE 105, 123-34 (1995), and that judicial review of TIF district creation is too expensive and too deferential to city government, Peddle, *supra* note 24, at 449-51.

organizations.<sup>49</sup> Most states impose restrictions on how cities can use TIF, commonly limiting it to “blighted” areas.<sup>50</sup> In Illinois, however, the TIF statute’s objective is much broader. There, TIF’s purpose “is to relieve conditions of unemployment, to maintain existing levels of employment, . . . and to encourage the increase of industry and commerce within this State.”<sup>51</sup> Unlike neighboring Indiana, whose statute is relatively restrictive, Illinois’ TIF statute is extremely broad in delimiting the types of expenditures cities may undertake.<sup>52</sup> Further, local governments in Illinois have broad discretion and little oversight in creating TIF districts.<sup>53</sup> The consequence, as the Illinois statute explicitly encourages, is that TIF is used heavily in Illinois.<sup>54</sup> Between 2000 and 2010, 173 projects in nearly 90 TIF districts were operational within the city.<sup>55</sup> Additionally, Chicago’s TIF use is particularly susceptible to

49. See generally David Roeder, *Taming the TIF Monster*, CHI. SUN-TIMES, Sept. 29, 2013, at 6 (discussing, in 2013, a current account balance of \$1.7 billion in TIF revenues, for which \$1.5 billion is committed through 2017); *Tax Increment Financing*, CITY CHI., <http://www.cityofchicago.org/city/en/depts/dcd/provdrs/tif.html> (last visited Mar. 4, 2016); *TIF Portal*, CITY CHI., <http://webapps.cityofchicago.org/ChicagoTif> (last visited Mar. 4, 2016); TIF ILLUMINATION PROJECT, <http://www.tifreports.com> (last visited Mar. 4, 2016).

50. Weber, *supra* note 12, at 284. Indiana’s TIF statute defines a blighted area, or an “[a]rea needing redevelopment” as “an area in which normal development and occupancy are undesirable or impossible” caused by environmental or economic factors. IND. CODE ANN. § 36-7-1-3 (West 2015).

51. 65 ILL. COMP. STAT. 5/11-74-3 (2014).

52. While the Illinois statute limits TIF funds to an “industrial project,” the statute provides that “[i]ndustrial project” means any (a) capital project, including one or more buildings and other structures, improvements, machinery and equipment . . . suitable for use by any manufacturing, industrial, research, transportation or commercial enterprise . . . ; or (b) land, buildings, machinery or equipment comprising an addition to or renovation, rehabilitation or improvement of any existing capital project . . . .” *Id.* 5/11-74-2.

53. Compare Briffault, *supra* note 11, at 84 (“TIF decisionmaking is largely unencumbered by upper-level government red tape, bureaucracy, or oversight.”), with Peddle, *supra* note 24, at 448 (listing “lack of administrative regulations, lax state agency enforcement, [and] lax judicial review and intervention” as common criticisms of TIF in Illinois).

54. The TIF statute states that “the purpose of this Division 74 is . . . to take as much advantage of the provisions of Section 103 of the United States Internal Revenue Code[, which exempts interest on state and local bonds,] as is possible . . . .” 65 ILL. COMP. STAT. 5/11-74-3; see also Peddle, *supra* note 24, at 448 (“TIF in Illinois, due [to several reasons], has become a general economic development tool available to nearly any municipality and used with little or no discretion or oversight.”).

55. ELLYN FORTINO, TIF RDA’S 2000 TO JULY 30, 2010 (2010), <https://www.scribd.com/doc/46571575/RDA-list-2000-2010> (displaying a list of all TIF districts and projects active between Jan. 1, 2000 and July 30, 2010). As a means of comparison, 32 TIF districts are active in Denver and 17 are active in Dallas, while California proscribed the tool in 2012. CITY & COUNTY OF DENVER, ACTIVE FINANCING (TIF) AREAS IN THE CITY AND COUNTY OF DENVER AS OF FEBRUARY 2015 (2015), [http://www.denvergov.org/Portals/344/documents/Financial\\_Reports/Active\\_TIF\\_Areas.pdf](http://www.denvergov.org/Portals/344/documents/Financial_Reports/Active_TIF_Areas.pdf); Terry Pristin, *Uncertain Fate for Urban Projects in California*, N.Y. TIMES (Apr. 10, 2012), <http://www.nytimes.com/2012/04/11/real-estate/commercial/an-uncertain-fate-for-urban-projects-in-california.html>; Memorandum from the City of Dall. to Members of the Econ. Dev. Comm. (Feb. 17, 2011), [http://www.dallas-ecodev.org/wp-content/uploads/2012/04/all\\_tifs\\_annual\\_report\\_fy09.pdf](http://www.dallas-ecodev.org/wp-content/uploads/2012/04/all_tifs_annual_report_fy09.pdf).

criticism: many TIF districts are located in the wealthiest parts of the city;<sup>56</sup> TIF dollars frequently subsidize major corporations' activities;<sup>57</sup> and many critics claim that TIF dollars should instead support Chicago's struggling public school system.<sup>58</sup>

The second reason for this Note's focus on Chicago is its notorious history of racial segregation.<sup>59</sup> During the first half of the 20th century, blacks undertook a massive migration from the rural South to urban centers.<sup>60</sup> During this time, rapid industrialization also created new socioeconomic classes, with blacks, Jews, Italians, and other "new" immigrant groups inevitably at the bottom of the new social order.<sup>61</sup> This economic segregation eventually spilled over into race riots, including the 1919 violence that gripped Chicago's south side.<sup>62</sup> White intolerance and "fear of racial turnover and black 'invasion'" forced most blacks into "recognized Negro areas," often referred to as Chicago's "Black Belt."<sup>63</sup> By 1960, ten times as many blacks lived in Chicago than at the turn of the century, and the city was growing even more segregated.<sup>64</sup> Many post-war programs (often intentionally) exacerbated the separation.<sup>65</sup> Judicial enforcement of restrictive housing covenants,<sup>66</sup> blatantly racist Federal Housing Administration programs,<sup>67</sup> and Chicago's deliberate and systematic use of public projects—like the Robert Taylor Homes and the

56. See Briffault, *supra* note 11, at 72 (noting that Chicago's largest TIF districts have been in the affluent Loop area).

57. Ellyn Fortino & Margaret Smith, *Corporate Giants Received TIF Money, Records Show*, N.Y. TIMES (Feb. 26, 2011), <http://www.nytimes.com/2011/02/27/us/27cnctif.html>.

58. For an even-handed assessment of this claim, see generally ROBERT BRUNO & ALISON DICKSON QUESADA, TAX INCREMENT FINANCING AND CHICAGO PUBLIC SCHOOLS: A NEW APPROACH TO COMPREHENDING A COMPLEX RELATIONSHIP (2011), [https://ler.illinois.edu/wp-content/uploads/2015/01/Bruno\\_Quesada\\_12152011.pdf](https://ler.illinois.edu/wp-content/uploads/2015/01/Bruno_Quesada_12152011.pdf). Of course, this argument assumes that property values will increase absent the TIF projects.

59. See generally ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940–1960 (1998) (describing segregation in Chicago, especially from 1960 onward); MASSEY & DENTON, *supra* note 5 (recounting Chicago's long history of segregation).

60. MASSEY & DENTON, *supra* note 5, at 18 ("In 1870, 80% of black Americans still lived in the rural south . . . . By 1970, 80% of black Americans lived in urban areas . . . .").

61. *Id.* at 27.

62. For a brief overview of the 1919 riot, see Ken Armstrong, *The 1919 Race Riots*, CHI. TRIB., <http://www.chicagotribune.com/news/nationworld/politics/chi-chicagodays-raceriots-story-story.html> (last visited Mar. 4, 2016).

63. MASSEY & DENTON, *supra* note 5, at 30.

64. HIRSCH, *supra* note 59, at 3–9.

65. See *id.* at 10 (noting how the Federal Housing Administration, Home Owners Loan Corporation, Chicago Housing Authority, and other governmental agencies "furthered the racial segmentation of metropolitan America and inner-city decay by supporting the flight of the white, middle-class population to the suburbs").

66. *Id.*

67. *Id.* See generally Kain, *supra* note 5.

Dan Ryan Expressway—all contributed to make today's Chicago “the most highly segregated major city in America.”<sup>68</sup>

Given Chicago's segregationist history, the housing segregation that still lingers in its neighborhoods, and the government programs that created today's segregated cityscape, Chicago is a perfect candidate for this study.<sup>69</sup> This Note explores whether one of Chicago's newest and most widely used government programs creates, intentionally or unintentionally, a more segregated city.

### III. IS TIF RACIST? DATA FROM CHICAGO'S 50 WARDS

This Note empirically examines whether Chicago's TIF use further stratifies the city's racial distribution. Subpart A predicts the effects of income and race on TIF spending. Next, Subpart B details data sources and methodology. Subpart C concludes by presenting the results and offering one interpretation of their meaning.

#### A. HYPOTHESES

This Note's first hypothesis is that TIF spending does not correlate with ward income. Though incomes in Chicago are far from normally distributed,<sup>70</sup> that data measures income in place of residence, not place of employment.<sup>71</sup> In general, residential locational choice does correlate with employment locational choice.<sup>72</sup> Thus, while there is reason to believe that residents of wealthier neighborhoods may work and shop in wealthier business areas, that does not imply that development occurs only, or even primarily, in wealthy areas.

Second, this Note hypothesizes that TIF spending negatively correlates with a ward's racial minority population. Chicago's long history of racial segregation, intentionally and unintentionally furthered by government

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68. Readey, *supra* note 5, at 18; see also EDWARD GLAESER & JACOB VIGDOR, CTR. FOR STATE AND LOCAL LEADERSHIP, MANHATTAN INST., *THE END OF THE SEGREGATED CENTURY: RACIAL SEPARATION IN AMERICA'S NEIGHBORHOODS, 1890–2010*, at 9 (2012).

69. GLAESER & VIGDOR, *supra* note 68, at 4 (finding that “Chicago, long one of the nation's most segregated cities, posts the highest dissimilarity and isolation levels” among major American cities).

70. See RICH BLOCKS, POOR BLOCKS, <http://www.richblockspoorblocks.com> (search by “income” for “Chicago, IL”) (last visited Mar. 4, 2016) (visually depicting incomes by zip codes and census tracts, among other boundaries).

71. See generally *Income Main*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/income> (last visited Mar. 4, 2016) (“The Census Bureau reports income from several major household surveys and programs.” (emphasis added)).

72. See, e.g., Daniel P. McMillen & Larry D. Singell, Jr., *Work Location, Residence Location, and the Intraurban Wage Gradient*, 32 J. URB. ECON. 195, 195 (1992); Chen Feng Ng, *Commuting Distances in a Household Location Choice Model with Amenities*, 63 J. URB. ECON. 116, 117–18 (2008); Michelle J. White, *Location Choice and Commuting Behavior in Cities with Decentralized Employment*, 24 J. URB. ECON. 129, 130 (1988).

programs, still affects the cityscape to this day.<sup>73</sup> While the city's policies are no longer overtly racist, no one disputes that the mostly white north-side neighborhoods are faring better than their mostly black and Hispanic south- and west-side counterparts.<sup>74</sup> This Note posits that disparate growth is due, at least in part, to the city's economic spending through TIF.

### B. METHODOLOGY

This study uses a regression analysis to determine what effect race and income have on TIF spending. The effects are analyzed at the ward-level rather than census-tract level because wards are integral to Chicago's political decision-making.<sup>75</sup> Further, wards are a better vehicle for this study because a census tract-level analysis would result in too many tracts without any spending because they are too small.<sup>76</sup> Moreover, this Note benefits from having full population data, at least for the year 2010, from the Census Bureau and the City of Chicago.<sup>77</sup> TIF spending data is drawn from the City of Chicago's data portal from 2000 through 2010.<sup>78</sup> Race and ethnicity data are drawn from the 2010 Census.<sup>79</sup>

Income data is somewhat more problematic and less exact. First, the five-year American Community Survey ("ACS") provided census tract-level income

73. See *supra* Part II.B.

74. The top two results from searching "Chicago's most attractive neighborhoods" yield just one and three non-northside neighborhoods, respectively. Ian Spula, *Chicago's Best Places to Live*, CHI. REAL EST. (Mar. 17, 2016, 10:57 AM), <http://www.chicagomag.com/Chicago-Magazine/April-2014/chicago-neighborhoods>; Sabrina Wu, *10 Great Neighborhoods in Chicago*, GREAT AM. COUNTRY, <http://www.greatamericancountry.com/places/local-life/great-neighborhoods-in-chicago> (last visited Mar. 4, 2016).

75. Chicago's 50 wards each elect aldermen to represent their ward's interest in city government. For a discussion of this system, see Roger E. Kasperson, *Toward a Geography of Urban Politics: Chicago, a Case Study*, in THE STRUCTURE OF POLITICAL GEOGRAPHY 366, 367–68 (Roger E. Kasperson & Julian V. Minghi eds., 2011). But see Kenneth R. Mladenka, *The Urban Bureaucracy and the Chicago Political Machine: Who Gets What and the Limits to Political Control*, 74 AM. POL. SCI. REV. 991, 996 (1980) (concluding that professional bureaucrats are, to a significant extent, responsible for city service allocation).

76. After compiling the data, only seven of the 50 wards have no TIF spending.

77. See generally *Data Portal*, CITY CHI., <https://data.cityofchicago.org> (last visited Mar. 4, 2016); U.S. CENSUS BUREAU, <http://www.census.gov> (last visited Mar. 4, 2016).

78. *TIF Balance Sheets*, CITY CHI., <https://data.cityofchicago.org/Community-Economic-Development/TIF-Balance-Sheets/hezc-e4be> (last visited Mar. 4, 2016). This data is overlaid onto Chicago's ward map at Derek Eder's website. *Chicago TIF Projects*, DEREK EDER, <http://derekeder.com/maps/chicago-tif/index.html> (last visited Mar. 4, 2016).

79. *2010 Census Interactive Population Search*, U.S. CENSUS BUREAU, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=17> (last visited Mar. 4, 2016). For a visual representation of both demographics in each ward and demographic shifts among wards, see Emily Chow et al., *Reshaping Chicago's Political Map: Race, Ward-by-Ward*, CHI. TRIB. (July 14, 2011), <http://media.apps.chicagotribune.com/ward-redistricting/index.html>.

data.<sup>80</sup> Those tracts are cross-referenced to an existing data set matching tracts with Chicago's 77 community areas.<sup>81</sup> Community areas are translated into wards by overlaying ward and community area GIS files.<sup>82</sup> Finally, the tract-level data—now organized into approximate wards—is averaged and produces the income number used in the analysis.<sup>83</sup>

This Note modifies these variables from their nominal value into a measure of how far the ward's nominal value differs from a normal distribution. Thus, the measure of how "white" a ward is actually measures the percent difference between the percentage of white citizens in the ward and the percentage of white citizens in the entire city.<sup>84</sup> All race variables follow this formula:

$$V = \frac{V_w}{P_w} - \frac{V_T}{P_T}$$

where  $V_w$  and  $V_T$  are the nominal racial population in the ward ( $w$ ) and city ( $T$ ), respectively, and  $P_w$  and  $P_T$  are the total nominal populations in the ward and city. This approach controls for variation in ward populations and allows for easy categorization based on over- and under-representation.<sup>85</sup> Additionally, this study transforms the dependent TIF-spending variable, which appears in millions, to reduce the distortion of outlier data points.

80. To access this data, see *American Fact Finder*, U.S. CENSUS BUREAU, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Mar. 4, 2016). This Note pulled data from Table DP03 ("Selected Economic Characteristics").

81. Rob Paral, *Chicago Ward Component File*, CHI. DATA GUY (May 14, 2013), <http://robparal.blogspot.com/2013/05/chicago-ward-component-file.html>; *Boundaries—Community Areas (Current)*, CITY CHI., <https://data.cityofchicago.org/Facilities-Geographic-Boundaries/Boundaries-Community-Areas-current-/cauq-8yn6> (last visited Mar. 4, 2016). Paral's website is an outstanding compilation of demographic and statistical data and information on Chicago.

82. *Boundaries—Community Areas (Current)*, *supra* note 81; *Boundaries—Wards (2003–2015)*, CITY CHI., <https://data.cityofchicago.org/Facilities-Geographic-Boundaries/Boundaries-Wards-2003-2015-/xt4z-bnwh> (last visited Mar. 4, 2016).

83. In other words, ward income is calculated by averaging each community area's average income. Thus, accuracy suffers from the key assumption that incomes are normally distributed in both tracts and community areas, which is unlikely.

84. Measures for "white," "black," "Hispanic," "Asian," and "income" are calculated using the same formula.

85. As an example, the initial independent variables in Ward 1 were:

Ward	White	Black	Hispanic	Asian	Income
1	0.1342	-0.2568	0.1421	-0.0234	.2999

Therefore, Ward 1 is 13.42% more white and 25.68% less black than it would be if the city was perfectly integrated. The full compiled data set is located in Appendix A, *infra*.

Predictably, fitting a multiple regression with all independent variables resulted in significant multicollinearity.<sup>86</sup> To fit a better model, an AIC analysis dropped Income, Asian, and Multiracial variables to arrive at the final model.<sup>87</sup> Thus, the multiple regression formula used in this study is:

$$\log(TIF) = \alpha W + \beta B + \gamma H$$

where  $\alpha$ ,  $\beta$ , and  $\gamma$  are the coefficients of white, black, and Hispanic variables, respectively.<sup>88</sup> Of course, this model is imperfect because it does not account for multiracial, Asian, and income values.

### C. RESULTS

The data support this Note's hypotheses, finding an insignificant effect from Income but substantial effects from race. This Subpart begins by analyzing income results both as a regression variable and in the population. Next, race is analyzed separately by the regression analysis, then the population study. The compiled data set appears in Appendix A.

#### 1. Income's Effect on TIF Spending

Data did not show that income has a significant effect on a ward's TIF spending. Though the data was imperfect,<sup>89</sup> neither the population study nor the regression produced results that indicated any strong correlation. Prior to the AIC, the income variable showed a coefficient of just 0.46 in the multiple regression and 1.068 in a pairwise comparison.<sup>90</sup> Neither value was close to significance.

86. Multicollinearity results from two or more independent variables being themselves correlated. In this case, the variables for race are strongly correlated because an increase in the percentage of white residents necessarily means a decrease in the percentage of all other residents.

87. The AIC is a useful way to eliminate variables that add to the complexity of a model without aiding its fit. See generally YOSIYUKI SAKAMOTO ET AL., AKAIKE INFORMATION CRITERION STATISTICS: MATHEMATICS AND ITS APPLICATIONS (1986).

88. Results are presented *infra* Part III.C.

89. See *supra* notes 80–83 and accompanying text.

90. For those unfamiliar with statistical interpretation, those numbers mean that, were these coefficients significant, for each percent the ward's median income exceeded the city's median income, TIF spending would increase by \$460,000 (or \$1,068,000 if not controlled for other variables).

Table 2. TIF Spending by Income—Regression

Analysis	Coefficient (Transformed)	Coefficient (Untransformed)	Std. Error	<i>p</i>
Multiple Reg.	-0.7589	0.4681	1.0961	0.492
Simple Reg.	0.06616	1.06840	0.5721	0.908

These results are generally inconclusive, but a possible explanation is this Note's hypothesis that resident income bears little relation to economic growth.

The population analysis warrants the same conclusion. These results measure average TIF spending in wards that are categorized into five groups, based on the disparity between the ward's average median income (hereinafter referred to solely as "income") and the city's median income.<sup>91</sup> Incomes less than 10% above or below the city median are considered Normal; incomes between 10% and 25% above or below the median are High/Low; incomes more than 25% from the median are Very High/Low.

Table 3. TIF Spending by Income—Population

Income Level	Actual Spending (Millions)	Expected Spending (Millions)
Very High	\$23.88	\$24.45
High	\$25.69	\$24.45
Normal	\$38.67	\$24.45
Low	\$20.18	\$24.45
Very Low	\$11.46	\$24.45

Interestingly, most spending occurs in relatively normal income areas. However, the lowest-income areas receive substantially lower allocations. This result is especially concerning given that no primarily white or Asian wards fall into the Low or Very Low classification.<sup>92</sup> Despite that interesting (and

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91. This Note uses the phrase "average median income" to reflect the calculated income data discussed above. Specifically, this Note averages the median income values for all community areas present in each ward. *See supra* notes 80–83. Thus, a ward's calculated "income" is the average of the median values—the "average median income."

92. *See infra* Appendix A. That result, however, is likely due to race's substantial effect on TIF spending rather than an effect by income. *See infra* Part III.C.2.ii.



concerning) result, there is no apparent relationship between TIF spending and income in the population.

## 2. Race's Effect on TIF Spending

Race, however, appears to have a significant effect on TIF spending. While the coefficients in the regression are small and only marginally significant, spending distribution in the full population is stark. This Subpart examines and interprets the regression results. That analysis indicates that race has an effect on TIF spending, though that effect may not be significant. However, the next Subpart details the full population data, which shows a stark racial disparity in aggregate spending.

### a. Regression Results

Race's effect as a predictor of TIF spending is partially significant, but it is unclear whether the predicted effect is substantial. Initially, the regression produces negative coefficients, with varying significance, for each of the three independent variables.

Table 4. TIF Spending by Race—Regression

Variable	Coefficient (Transformed)	Coefficient (Untransformed)	Std. Error	<i>p</i>
White	-5.9134	0.00270	3.6462	0.1117
Black	-5.6495	0.00352	3.1959	0.0837*
Hispanic	-6.6055	0.00135	3.2252	0.0463**

As Table 4 shows, all variables have negative multiplicative coefficients, but only the Hispanic variable is statistically significant. Transformed variables show small effects on TIF spending. Thus, the regression suggests that race is a significant, but small, effect on TIF spending.

However, pairwise comparisons show a stronger effect than the regression indicates. Plotting the data shows a positive relationship between TIF spending and a ward's white population, a negative relationship between spending and Hispanic population, and an inconclusive relationship between TIF spending and black population.<sup>93</sup> Of course, these pairwise plots do not control for changes in other variables, but they visually demonstrate an effect the regression does not reflect.

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93. All pairwise plots are included in Appendix B, *infra*.

Figure 1. Hispanic vs. logTIF

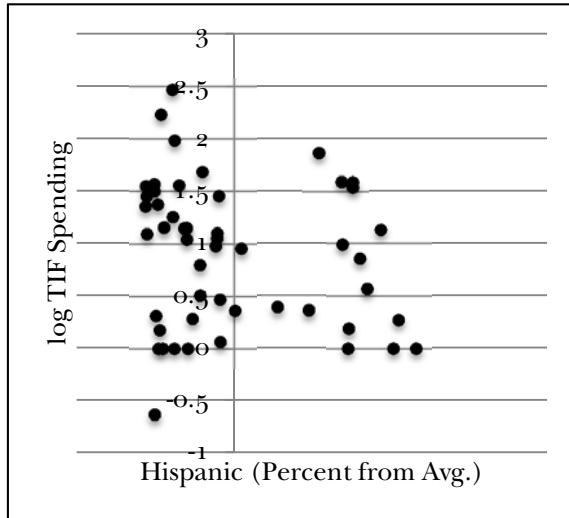
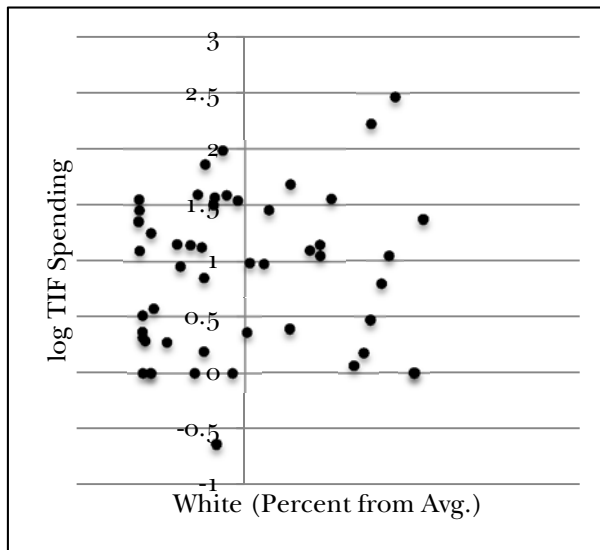


Figure 2. White vs. logTIF



While both plots are far from linear in relationship, they do show an overall trend that TIF spending relates to these populations. In both plots, all values

left of the  $y$ -axis represent results where a different race is overrepresented in the ward. Thus, trends showing a positive or negative relationship between TIF spending and a ward's primary race appear to the right of the  $y$ -axis.<sup>94</sup>

The relatively insignificant results and the relatively few controlled variables limit this regression's usefulness.<sup>95</sup> However, the analysis does show that, even without controlling for several factors that may skew the results, there is a noticeable trend in TIF spending against minority populations. That trend is much more apparent in the population study.

#### *b. Population Results*

The full population study shows a significant disparity between TIF spending in white and Asian wards and spending in black and Hispanic wards. This Subpart benefits from having full population data, so it can analyze the actual division of TIF dollars by ward and measure what racial disparity attends that allocation.<sup>96</sup> This analysis compares actual TIF spending in racially concentrated wards with the "expected" spending in those wards ( $TIF_E$ ). The "expected" spending is the average of all TIF spending in all wards.<sup>97</sup>

First, each ward is examined individually to determine which race is overrepresented. This Note considers a ward racially overrepresented where a single race comprises at least ten percent more of the population than it would if race was normally distributed.<sup>98</sup> This classification applies only to wards where a *single* race is overrepresented by at least ten percent. Only two wards in the city do not fall into this classification structure.<sup>99</sup> Second, TIF spending in each race classification is averaged according to this formula:

94. Even a perfect linear relationship between TIF spending and one race would not necessarily result in a linear relationship left of the  $y$ -axis because changes in percentage of other races would skew those results.

95. A more complete study of this question may account for economic indicators such as ward GDP, average wages, ward growth, number of businesses operating in the ward, and number of individuals employed in the ward, among others. Additionally, a more complete study would control for endogenous variables. Those analyses are beyond the scope of this Note.

96. Understanding what the dependent variable *would* be in a population is, of course, the ultimate goal of a regression analysis. See ALAN AGRESTI & BARBARA FINLAY, STATISTICAL METHODS FOR THE SOCIAL SCIENCES 4–7 (3d ed. 1997). The regression is helpful, however, because the population analysis covers only the 2000–2010 period.

97. Total TIF spending in Chicago between 2000–2010 was \$1.224 billion and there are 50 wards in Chicago. Thus, the "expected" spending in each ward is \$24.45 million.

98. For example, if a single race made up 25% of the city's population but was 50% of the ward's population, that ward would be overrepresented by 25%.

99. Two races are actually overrepresented in the Ward 1—white and Hispanic. Ward 49 is the only ward in Chicago where no race is over- or underrepresented by 10%.

$$TIF_R = \sum_1^n \frac{W_1 + W_2 + W_3 + \dots + W_n}{n}$$

where  $TIF_R$  is the average TIF spending in the race classification,  $W_n$  is the TIF spending in ward  $n$ , and  $n$  is the total number of wards in the race classification. Finally, the TIF average in each race classification is compared to the expected spending in each ward ( $TIF_R - TIF_E$ ). This final step yields the actual disparity between TIF spending and race.

Table 5. TIF Spending by Race—Population

Race Classification	Actual TIF Spending (Millions)	Expected TIF Spending (Millions)
White	\$41.62	\$24.45
Black	\$17.24	\$24.45
Hispanic	\$16.00	\$24.45
Asian	\$28.84	\$24.45
Normal <sup>100</sup>	\$15.43	\$24.45

These results show the stark contrast between spending in white wards and minority wards.<sup>101</sup> Though these results are not solely attributable to race,<sup>102</sup> the disparity is obvious. White wards, located primarily in northeast Chicago, receive more than twice as many TIF dollars as black and Hispanic wards.<sup>103</sup> Even excluding Ward 2, which contains the Chicago Loop, TIF spending in white wards averages \$22.30 million per ward—still significantly

100. The Normal classification applies to the two wards mentioned in *supra* note 99, where no single race is overrepresented by more than 10%.

101. It is possible that some of this effect could be attributed to the same disconnect between residential income and TIF spending. See *supra* notes 70–73 and accompanying text. However, the income data presented above shows that variable has little to no relation with TIF spending. See *supra* Part III.C.1. Though both race and income are measured by place of residence rather than employment, this Note posits the TIF spending targets economic development—intentionally or unintentionally—in white wards.

102. Other variables might include aggregate economic activity, proximity to public transportation and major traffic thoroughfares, and others. But those variables may also have a collinear relationship with race as well. A more complete study, controlling for all these variables, is beyond this Note’s resources.

103. Recall that northeast Chicago is the location of the “most attractive neighborhoods” in the city. See *supra* note 74 and accompanying text.

higher than black and Hispanic wards.<sup>104</sup> The combination of regression results and actual population data demonstrate that TIF spending in Chicago favors white wards and disfavors black and Hispanic wards. While further study is appropriate and encouraged, this data establishes that a ward's racial composition affects its TIF allocation.

#### IV. FIXING THE BROKEN SYSTEM

Given the racial disparity in TIF spending, this Part proposes several solutions to provide a more equitable distribution of resources across Chicago. This Note does not address the universe of possible policy responses.<sup>105</sup> However, two solutions would provide an expedient solution within the existing Illinois TIF framework.<sup>106</sup> First, Illinois should amend the authorizing statute. Second, Chicago itself should limit new TIF district creation to wards that meet certain criteria.

##### A. AMEND THE ILLINOIS TIF STATUTE

The existing Illinois TIF statute is too broad and allows nearly unlimited municipal authority to create TIF districts. The Tax Increment Allocation Redevelopment Act (“the statute”),<sup>107</sup> states its purpose is “to promote and protect the health, safety, morals, and welfare of the public,” and “that blighted conditions need to be eradicated . . . and that redevelopment of such areas [should] be undertaken . . . [by] encourag[ing] private investment.”<sup>108</sup> This Subpart demonstrates the statute's primary flaw—its extremely over-inclusive definition of “blighted area.”<sup>109</sup> Further, this Subpart examines the statute's weak “but-for” causation standard, which allows cities too much discretion and makes litigation too difficult.

##### 1. Blighted Conditions

The TIF statute's definition of “blighted area” is too broad and allows too many areas to qualify for TIF district status. The statute sets out a number of factors that supposedly indicate blight in an area.<sup>110</sup> If five or more factors are

104. Chicago's Ward 2 received over \$292 million in TIF dollars between 2000–2010 and is a major outlier in this data set. *See infra* Appendix A. However, the ward is nearly 50% whiter than it should be under a normal distribution.

105. For example, some scholars note both the difficulty and irony of litigating improper TIF outlays. *See, e.g.,* Peddle, *supra* note 24, at 449 (writing that “[b]light and the ‘but for’ test are . . . met by the administrative fiat,” and that “one who challenges a TIF in defense of the public interest is caught in a Catch 22: litigating the case forces the municipality to spend taxpayer dollars to defend a lawsuit ultimately grounded in saving taxpayer dollars”).

106. A third option is discontinuing the TIF program altogether. This Note assumes TIF, when used appropriately, is a net positive and a desirable program.

107. 65 ILL. COMP. STAT. 5/11-74.4 (2014).

108. *Id.* 5/11-74.4-2(b).

109. *Id.* 5/11-74.4-3(a).

110. *Id.*

“present . . . to a meaningful extent” and “reasonably distributed” throughout the area, that area qualifies as blighted.<sup>111</sup> These factors are shown in Table 6.

Table 6. Illinois Statute’s Factors for Blighted Area Designation

<b><i>Dilapidation</i></b>	“An advanced state of disrepair or neglect of necessary repairs to the primary structural components of buildings . . . .” <sup>112</sup>
<b><i>Obsolescence</i></b>	“Structures have become ill-suited for the original use.” <sup>113</sup>
<b><i>Deterioration</i></b>	“[M]ajor defects in . . . doors, windows, . . . and fascia.” Deterioration also includes defects “including, but not limited to, surface cracking, crumbling, potholes, . . . and weeds protruding through paved surfaces.” <sup>114</sup>
<b><i>Below-Minimum Code Standards</i></b>	“[S]tructures that do not meet the standards of zoning, subdivision, building, fire,” and other codes, “but not including housing and property maintenance codes.” <sup>115</sup> However, one scholar writes that previous qualifying minor “code infractions” included “repairing a hole in a screen, painting rust spots on an awning, . . . [and] repairing cracks in linoleum floors.” <sup>116</sup>
<b><i>Illegal Use of Individual Structures</i></b>	“The use of structures in violation of applicable . . . laws, exclusive of those applicable to the presence of structures below minimum code standards.” <sup>117</sup>
<b><i>Excessive Vacancies</i></b>	“[B]uildings that are unoccupied or under-utilized and that represent an adverse influence on the area . . . .” <sup>118</sup>
<b><i>Lack of Ventilation, Light, or Sanitary Facilities</i></b>	“The absence of adequate ventilation for light or air circulation in . . . rooms without windows, or that require the removal of dust, odor, gas, smoke, or other noxious airborne materials.” <sup>119</sup>
<b><i>Inadequate Utilities</i></b>	“Inadequate utilities are those that are: (i) of insufficient capacity to serve the uses in the redevelopment project area, (ii) deteriorated, antiquated, obsolete, or in disrepair, or (iii) lacking within the redevelopment project area.” <sup>120</sup>
<b><i>Excessive Land Coverage and</i></b>	To fit into this category, the parcel must exhibit at least one of these conditions: insufficient light and air in or

111. *Id.* 5/11-74.4-3(a)(1).

112. *Id.* 5/11-74.4-3(a)(1)(A).

113. *Id.* 5/11-74.4-3(a)(1)(B).

114. *Id.* 5/11-74.4-3(a)(1)(C).

115. *Id.* 5/11-74.4-3(a)(1)(D).

116. David A. Reingold, *Are TIFs Being Misused to Alter Patterns of Residential Segregation? The Case of Addison and Chicago, Illinois*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT 223, 226–27 (Craig L. Johnson & Joyce Y. Man eds., 2001).

117. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(E).

118. *Id.* 5/11-74.4-3(a)(1)(F).

119. *Id.* 5/11-74.4-3(a)(1)(G).

120. *Id.* 5/11-74.4-3(a)(1)(H).

<b><i>Overcrowding of Structures</i></b>	around buildings, increased threat of fire spread, inadequate access to roads; lack of reasonable off-street parking, or inadequate provision for loading or service. <sup>121</sup>
<b><i>Incompatible Land-Use Relationships</i></b>	“[I]ncompatible land-use relationships, buildings occupied by inappropriate mixed-uses, or uses considered to be noxious, offensive, or unsuitable . . . .” <sup>122</sup>
<b><i>Environmental Cleanup Required</i></b>	“The proposed . . . project area has incurred Illinois Environmental Protection Agency or United States Environmental Protection Agency remediation costs [or has] a need for . . . clean-up of hazardous waste, hazardous substances, or underground storage tanks required by State or federal law, provided that the remediation costs constitute a material impediment to the development . . . .” <sup>123</sup>
<b><i>Lack of Community Planning</i></b>	The area “was developed . . . without the benefit or guidance of a community plan.” <sup>124</sup>
<b><i>Property Values Growing Slower Than CPI</i></b>	This factor is met if property values: (1) declined in the last three of five years; (2) appreciated slower than the city’s average increase; or (3) appreciated slower than the Consumer Price Index. <sup>125</sup>

While these factors appear sufficiently limited in the abstract, their application raises several concerns. Chicago has authorized 174 TIF districts since Illinois enacted the statute.<sup>126</sup> In fact, “a major TIF consultant . . . could not recall a single occasion where he had . . . made a negative finding in a TIF qualification study.”<sup>127</sup> A review of Chicago TIF Redevelopment Plans supports that anecdote.<sup>128</sup> The redevelopment plan for Chicago’s 63rd and Ashland TIF district, for example, lists obsolescence, deterioration, below-minimum code standards, excessive vacancies, deleterious land use, and lack of community planning as the factors supporting its eligibility as a TIF

121. *Id.* 5/11-74.4-3(a)(1)(I).

122. *Id.* 5/11-74.4-3(a)(1)(J).

123. *Id.* 5/11-74.4-3(a)(1)(K).

124. *Id.* 5/11-74.4-3(a)(1)(L).

125. *Id.* 5/11-74.4-3(a)(1)(M). This factor is perhaps the most egregious. Using this standard, the entire city qualified for this factor of “blight.” *Chicago Home Prices & Values*, ZILLOW, <http://www.zillow.com/chicago-il/home-values> (last visited Mar. 4, 2016) (showing that median estimated home values declined in 2009, 2010, and 2011). Additionally, there are different factors for creating a TIF district encompassing unimproved land. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(2) (3). This Note, which concentrates on TIF use in Chicago, focuses on blight factors for improved parcels because few areas of Chicago are unimproved.

126. *TIF Status and Eligibility*, CITY CHI., <https://data.cityofchicago.org/Community-Economic-Development/TIF-Status-and-Eligibility/3qsz-jemf> (last visited Mar. 4, 2016).

127. Peddle, *supra* note 24, at 449.

128. For a full list of redevelopment plans, see *TIF District Redevelopment Plans*, CITY CHI., [http://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/redevelopment\\_plans.html](http://www.cityofchicago.org/city/en/depts/dcd/supp_info/redevelopment_plans.html) (last visited Mar. 4, 2016).

district.<sup>129</sup> Those factors are clearly supported; that district is located in West Englewood, one of the most depressed and dilapidated neighborhoods in Chicago.<sup>130</sup>

Conversely, Chicago's redevelopment plan for the recently expired Central Loop TIF District lists the same factors as supportive of its eligibility.<sup>131</sup> The Chicago Loop is home to several global headquarters, opulent office buildings, and is one of the wealthiest areas in the city.<sup>132</sup> The Central Loop study also lists dilapidation as a factor "present to a limited extent."<sup>133</sup> In support of that factor, the report notes that "[e]ight of the 213 buildings in the Added Project Area are in a dilapidated condition."<sup>134</sup> Additionally, the study reports nearly half of all buildings in the Central Loop District as obsolete, excessively vacant, and/or deteriorated.<sup>135</sup> Though the statute defines excessive vacancy as "unoccupied or under-utilized" buildings "that represent an adverse influence on the area,"<sup>136</sup> the city's eligibility study supports that factor by noting that half of the buildings in the Loop "are more than 20 percent vacant."<sup>137</sup> That definition is seriously flawed; a 2012 study found that the average vacancy rate for office buildings in downtown Chicago was 16%.<sup>138</sup>

This result is contrary to the principle behind TIF and is possible because the statute's blight factors are poorly defined. In fact, many of Chicago's most affluent (and correspondingly white) neighborhoods received TIF because they achieved "blighted" status under these definitions. Amending the statute

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129. CITY OF CHI., 63RD/ASHLAND REDEVELOPMENT PLAN AND PROJECT 9 (2005), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T\\_143\\_63rdAshlandRDP.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T_143_63rdAshlandRDP.pdf).

130. Antonio Olivo et al., *Vacant Homes Keep Englewood in Downward Spiral*, CHI. TRIB. (June 23, 2011), [http://articles.chicagotribune.com/2011-06-23/news/ct-met-englewood-20110623\\_1\\_vacant-homes-housing-crisis-englewood-and-west-englewood](http://articles.chicagotribune.com/2011-06-23/news/ct-met-englewood-20110623_1_vacant-homes-housing-crisis-englewood-and-west-englewood).

131. CITY OF CHI., CENTRAL LOOP ADDED PROJECT AREA TAX INCREMENT FINANCING ELIGIBILITY STUDY 4 (1997), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T\\_014\\_CentralLoopRDP.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T_014_CentralLoopRDP.pdf). Curiously, the Central Loop study lists "deferred maintenance" as a supporting factor, even though that factor does not appear in the statute. *Id.*; see also 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1) (2014).

132. Zahra Ink, *The Loop, a Chicago Neighborhood Visit from Chicago Traveler*, CHI. TRAVELER, <http://www.chicagotraveler.com/neighborhoods/chicago-loop-feature.htm> (last visited Mar. 4, 2016).

133. CITY OF CHI., *supra* note 131, at 4.

134. *Id.*

135. *Id.* The city provides little guidance regarding its definition of (or distinction between) obsolescence and deterioration. The TIF statute merely defines obsolescence as "ill-suited for the original use," and deterioration as "major defects in the secondary building components such as doors, windows," and the like. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(B) to (C).

136. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(F).

137. CITY OF CHI., *supra* note 131, at 4.

138. David Roeder, *A Peek Inside High-Rise Office Rentals*, CHI. SUN-TIMES, Feb. 29, 2012, at 26. In 2006, when the Central Loop TIF district was still active, the average vacancy rate in Chicago's high-end office buildings was 18.2%. Ryan Ori, *Downtown Office Rents Spike 28 Percent Since 2006*, CRAIN'S CHI. BUS. (Aug. 6, 2012), <http://www.chicagobusiness.com/realestate/20120806/CREDo2/120809886/downtown-office-rents-spike-28-percent-since-2006>.



will solve this problem. Changing just six definitions would result in a more equitable allocation of TIF dollars.<sup>139</sup>

*i. Obsolescence*

First, the Illinois legislature should define obsolescence as: “[t]he condition or process of falling into disuse. Structures are obsolete when they are ill-suited for [ongoing] use.”<sup>140</sup> The statute’s current emphasis on “the original use” provides far too much flexibility. For example, in a recent case challenging TIF use in the Village of Arlington Heights, Illinois, the city’s determination that a shopping mall was obsolete prevailed because “the U-shape of the shopping center was outdated.”<sup>141</sup> Though technically within the definition of obsolete—“[n]o longer in general use; out-of-date”<sup>142</sup>—this definition is over-inclusive.<sup>143</sup> Focusing on the *structure’s* suitability for *ongoing* use more faithfully serves TIF’s goal of spurring development rather than subsidizing renovations.<sup>144</sup>

*ii. Deterioration*

Next, the legislature should eliminate deterioration as a factor. The statute currently defines deterioration as “major defects in the . . . doors, windows, porches, gutters and downspouts, and fascia,” or that the roads, sidewalks, or parking “evidence deterioration.”<sup>145</sup> This factor is duplicative of dilapidation,<sup>146</sup> obsolescence,<sup>147</sup> and code violations.<sup>148</sup> Admittedly, the deterioration factor is distinguishable from each of these. Dilapidation addresses *primary* building components, while deterioration addresses *secondary* components; obsolescence focuses on the structure’s suitability for its original use; deterioration focuses on the physical maintenance of the

139. In this Subpart (Part IV.A), bracketed italicized language in quotations represents proposed amendments to the statutory provision cited.

140. This substantively changes only a small part of the second sentence, which currently provides that “[s]tructures have become ill-suited for *the original use*.” 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(B) (emphasis added).

141. *Capital Fitness of Arlington Heights, Inc. v. Vill. of Arlington Heights*, 915 N.E.2d 826, 834 (Ill. App. Ct. 2009).

142. *Obsolete*, BLACK’S LAW DICTIONARY (10th ed. 2014).

143. For example, a building without automatic doors could be considered “out-of-date.”

144. Briffault, *supra* note 11, at 71 (discussing TIF’s evolution and its “shift[] from what was initially an urban renewal program targeted at depressed central city areas”).

145. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(C).

146. *Id.* 5/11-74.4-3(a)(1)(A) (“An advanced state of disrepair or neglect of necessary repairs to the primary structural components of buildings . . .”).

147. *Id.* 5/11-74.4-3(a)(1)(B) (“The condition or process of falling into disuse. Structures have become ill-suited for the original use.”).

148. *Id.* 5/11-74.4-3(a)(1)(D) (“All structures that do not meet the standards of zoning, subdivision, building, fire, and other governmental codes applicable to property, but not including housing and property maintenance codes.”).

building; the code standards factor distinguishes from deterioration by concentrating on non-housing and -property maintenance codes.<sup>149</sup> These distinctions, however, are more form than substance. While structural deficiencies should qualify as a factor for blight, issues resolvable by a trip to the hardware store should not.

*iii. Below-Minimum Code Standards*

A structure's failure to meet minimum code standards should be allowed as a factor only if there is substantial failure. The statute currently provides that "[a]ll structures that do not meet the standards of zoning" qualify an area as "below minimum code standards."<sup>150</sup> The legislature should amend this provision to only qualify structures that *substantially fail* to meet zoning standards. Further, the legislature should clarify that housing and property maintenance code violations are not a factor. These two changes—requiring substantial code deviation and clarifying the inability to use housing and property codes—would eliminate the possibility that "minor code violations, such as repairing a hole in a screen" could qualify an area as "blighted."<sup>151</sup> Changing the latter part of the statute, exempting housing and property maintenance code violations from consideration, clarifies the statute's current language to the same effect. The current language is apparently vague, as a settlement decree reveals that the Village of Addison, a northwest Chicago suburb, considered housing code violations as a factor supporting TIF district designation.<sup>152</sup> These changes ensure that only serious building deficiencies will qualify an area for TIF district status.

*iv. Excessive Vacancies*

The statute currently defines excessive vacancies as "[t]he presence of buildings that are unoccupied or under-utilized and that represent an adverse influence on the area because of the frequency, extent, or duration of the vacancies."<sup>153</sup> The legislature should amend the statute to provide that only buildings that are *substantially* unoccupied or under-utilized qualify for the excessive vacancy factor, and should also require that the substantial under-utilization *cause* the adverse influence on the area. As noted above, Chicago "satisfied" this factor with a slightly above-average vacancy rate in commercial office buildings in its Central Loop district.<sup>154</sup> While *substantial* deviations from normal occupancy rates should be considered, *marginal* deviations like

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149. *Id.* 5/11-74.4-3(a)(1)(A) to (D).

150. *Id.* 5/11-74.4-3(a)(1)(D).

151. Reingold, *supra* note 116, at 227.

152. *Hispanics United of DuPage Cty. v. Vill. of Addison*, 988 F. Supp. 1130, 1141-42 (N.D. Ill. 1997).

153. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(F).

154. Roeder, *supra* note 138; *see also* CITY OF CHI., *supra* note 131, at 28-29.

those in the Central Loop district should not. Further, the current disjunctive test for frequency, extent, and duration is inadequate. The Central Loop, for example, has an historical average vacancy rate of approximately 15%.<sup>155</sup> Designation of the Central Loop as a “blighted area” also demonstrates that the current nexus between vacancy and effect on nearby properties is too weak. The statute currently provides that vacancies “represent” an adverse influence on the area, which is vague at best.<sup>156</sup> A proper standard should require vacancies *cause* an adverse influence on the area. This formulation is much more amenable to judicial oversight and provides much more guidance to cities in its appropriate application.

*v. Declining Value*

The legislature should amend the declining value factor to qualify only areas where “[t]he total equalized assessed value of the proposed redevelopment project area has declined for [4] of the last 5 calendar years prior to the year in which the redevelopment project area is designated.”<sup>157</sup> The statute’s current “3 of the last 5” year allowance may be adequate, but limiting TIF only to those areas in demonstrable decline, as opposed to those experiencing price volatility, is less likely to result in false positives. Furthermore, marginally slower *growth* should not qualify an area as a TIF district, as the current statute allows.<sup>158</sup> TIF is meant to combat urban deterioration, not to jumpstart land appreciation.

*vi. Lack of Community Planning*

Finally, the legislature should eliminate the lack of community planning factor because it duplicates two other factors and is applied unevenly. The statute provides several avenues to establish a lack of community planning. First, the city can show “adverse or incompatible land-use relationships,” which is already a separate factor.<sup>159</sup> Second, the city can also point to “inadequate street layout, improper subdivision, [or] parcels of inadequate shape and size to meet contemporary development standards.”<sup>160</sup> These factors are already covered by both the below-minimum code standards factor, which provides that structures not meeting “standards of zoning [and] subdivision”<sup>161</sup> qualify an area for TIF district status, and the obsolescence

155. Roeder, *supra* note 138.

156. 65 ILL. COMP. STAT. 5/11-74.4-3(a)(1)(F).

157. *See id.* 5/11-74.4-3(a)(1)(M) (emphasis added). Currently, the statute qualifies areas where the EAV declined in three of the last five years, *or* where EAV increased slower than the city average, *or* where EAV increased slower than the All Urban Consumer CPI. *Id.*

158. *Id.*

159. *Id.* 5/11-74.4-3(a)(1)(L); *see also id.* 5/11-74.4-3(a)(1)(J) (“Deleterious land use or layout. The existence of incompatible land-use relationships . . .”).

160. *Id.* 5/11-74.4-3(a)(1)(L).

161. *Id.* 5/11-74.4-3(a)(1)(D).

factor, which (currently and as amended above) would establish eligibility where structures are “inadequate . . . to meet contemporary development standards.”<sup>162</sup> This standard is unnecessary and effectively reduces the number of factors a city must establish for TIF eligibility.

## 2. The Causation Standard

The Illinois Legislature should also tighten the statute’s causation standard to align TIF with its original purpose and to prevent TIF from subsidizing projects that would move forward without TIF support. Currently, the statute sets forth two causation requirements: first, that the “area on the whole has not been subject to growth and development through investment by private enterprise” and second, that the area “would not reasonably be anticipated to be developed without the adoption of the redevelopment plan.”<sup>163</sup> The first element is easily applied and does not need changing. The second element, however, is too ambiguous and requires stronger language.

The legislature should amend the second element to restrict TIF spending to areas that “[*are not suitable for development in the foreseeable future*] without the adoption of the redevelopment plan.”<sup>164</sup> Colloquially referred to as the statute’s “but-for” standard,<sup>165</sup> the current provision’s emphasis on reasonable anticipation of development is too vague. This “but-for” standard intends to limit spending TIF dollars only where market failure prevents an area from developing.<sup>166</sup> Today, that test is “perfunctory.”<sup>167</sup> In construing this “reasonable anticipation” standard, an Illinois court held that a city’s promise to spend TIF dollars for a developer’s project was “properly considered . . . in making [the city’s] ‘but-for’ determination.”<sup>168</sup> In other words, the city was allowed to consider whether the *specific* development under consideration would occur without the redevelopment plan. That result is inconsistent with the statute’s intent and with TIF’s purpose.<sup>169</sup> Amending the statute’s language will strengthen the causation standard and facilitate judicial review of improper TIF designations.<sup>170</sup>

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162. *Id.* 5/11-74.4-3(a)(1)(L); *see also id.* 5/11-74.4-3(a)(1)(B).

163. *Id.* 5/11-74.4-3(n)(J)(1).

164. *Id.*

165. *See* Malec v. City of Belleville, 943 N.E.2d 243, 267 (Ill. App. Ct. 2011).

166. *See, e.g.*, Briffault, *supra* note 11, at 71; Peddle, *supra* note 24, at 449; David Merriman, Book Review, 55 NAT’L TAX J. 839, 839 (2002) (reviewing TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT, *supra* note 116).

167. Peddle, *supra* note 24, at 449.

168. Bd. of Educ. v. Vill. of Robbins, 765 N.E.2d 449, 460 (Ill. App. Ct. 2002).

169. Briffault, *supra* note 11, at 71.

170. Lack of sufficient judicial review is a problem with the current TIF framework. *See id.* at 86; Peddle, *supra* note 24, at 449–50. Part of that problem is the presumption of validity Illinois courts give to municipal ordinances, requiring plaintiffs to prove the TIF districts ineligible by “clear and convincing evidence.” *Vill. of Robbins*, 765 N.E.2d at 454.

B. TARGET SPENDING ELSEWHERE

Even without changes to the state TIF statute, Chicago should commit itself to utilizing TIF dollars in a more racially equitable manner. The city's discretion in creating TIF districts and approving TIF projects is almost plenary.<sup>171</sup> That discretion allowed affluent, primarily white areas like the Loop,<sup>172</sup> River North<sup>173</sup> and North Center<sup>174</sup> to receive TIF dollars.<sup>175</sup> While the city cannot explicitly prefer or disfavor wards solely because of their racial content,<sup>176</sup> it need not continue rewarding wards with development dollars they do not need. Instead, Chicago should wield TIF to benefit wards that actually need the most help.

First, the city should target south- and west-side wards whose economies have struggled the most since the 2008 financial crisis. This option should be easy and attractive, as large parts of Chicago's south and west sides actually qualify as "blighted" under this Note's amended statutory definitions.<sup>177</sup> Encouragingly, Mayor Rahm Emanuel recently announced an initiative using TIF to spark development in some of these neighborhoods.<sup>178</sup> These targeted neighborhoods can certainly benefit from TIF dollars, and using TIF in those areas appears appropriate.<sup>179</sup> However, the city should continue to focus its TIF program on the most economically depressed areas—many of which are

171. Peddle, *supra* note 24, at 448.

172. CITY OF CHI., *supra* note 131, at 1–3; CITY OF CHI., RANDOLPH/WELLS REDEVELOPMENT PROJECT AREA: TAX INCREMENT FINANCE DISTRICT ELIGIBILITY STUDY, REDEVELOPMENT PLAN AND PROJECT 1 (2009), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T\\_172\\_RandolphWellsRDP.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T_172_RandolphWellsRDP.pdf).

173. CITY OF CHI., THE OHIO/WABASH TAX INCREMENT FINANCING REDEVELOPMENT AREA PROJECT AND PLAN 1–3 (2000), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T\\_100\\_OhioWabashRDP.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T_100_OhioWabashRDP.pdf).

174. CITY OF CHI., WESTERN AVENUE NORTH REDEVELOPMENT PROJECT AREA: TAX INCREMENT FINANCING DISTRICT ELIGIBILITY STUDY, REDEVELOPMENT PLAN AND PROJECT 1 (1999), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T\\_084\\_WesternNorthRDP.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/plans/T_084_WesternNorthRDP.pdf).

175. The pre-2005 wards containing the Loop (2 & 42), River North (42), and North Center (47) were white over-represented by 44.80% (Ward 2), 37.76% (Ward 42), and 43.05% (Ward 47), respectively.

176. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 226–27 (1995) (holding “all racial classifications . . . irrespective of the race of the burdened or benefited group” must pass strict scrutiny).

177. *See supra* Part IV.A.1.

178. Press Release, Office of the Mayor, City of Chi., Mayor Emanuel Announces “Opportunity Areas” as Part of Long-Term Strategic Vision to Support Growth and Development Across Chicago (Mar. 17, 2013), <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2013/March/3.17.13Vision.pdf>.

179. Of the seven neighborhoods in the initiative's focus, five (Bronzeville, Eisenhower Corridor, Englewood, Little Village, and Pullman) are on the south- or west-side. *Id.* The two north-side communities, Rogers Park and Uptown, are two of the less affluent north-side neighborhoods. Michael T. Maly & Michael Leachman, *Chapter 7: Rogers Park, Edgewater, Uptown, and Chicago Lawn, Chicago*, 4 CITYSCAPE: J. POL'Y DEV. & RES., no. 2, 1998, at 131, 134–39, 143–48.

the most black and Hispanic areas—to the exclusion of wealthy north-side neighborhoods.

Second, in order to break from its segregationist past, Chicago should encourage development in integrated neighborhoods through TIF expenditures. As of the 2010 Census, Chicago has only one reasonably integrated ward. Ward 49, containing Rogers Park and the northern end of Edgewater, boasts racial populations within ten percent of normal distribution.<sup>180</sup> The city should adopt an integrationist goal for non-economically depressed wards, awarding TIF dollars only in wards and neighborhoods where race is normally distributed.

Calls for integrationist policies are nothing new,<sup>181</sup> and adopting a pro-integration spending program in Chicago is unlikely to reverse the city's long-ingrained history of government-sponsored segregation.<sup>182</sup> Incenting integration through economic development spending, however, is a starting point. This integrationist TIF would work alongside the existing TIF program, as amended, essentially creating two categories of TIF use in Chicago. The first, discussed above, would restrict TIF to the most economically depressed parts of the city. The second, outlined below, would exist solely to spur additional development in racially integrated wards and neighborhoods.

This program would, of course, still require compliance with the TIF statute and TIF's purpose of spurring development where it would not otherwise occur.<sup>183</sup> With those principals in mind, the city should absolutely restrict TIF from non-economically depressed wards where a single race is over- or underrepresented by more than 15%. Further, any ward with a single race over- or underrepresented by ten percent should be barred from TIF dollars unless trends indicate that racial segregation is declining in that ward. Finally, developers receiving TIF dollars should demonstrate that their project will not result in a greater racial imbalance.

### 1. Use TIF in Economically Depressed Wards

First, Chicago should prohibit TIF dollars from non-economically depressed wards with greater than 15% racial over- or under-representation. Currently, only Ward 49 could qualify for TIF under this criterion; in fact, no

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180. See *infra* Appendix A (illustrating that Ward 49 is at most 7.1% off the norm).

181. See, e.g., Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1650-65 (1995) (calling for residential integration and abolition of discrete racial classifications); Martin Luther King, Jr., *The Ethical Demands for Integration*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 117, 118 (James Melvin Washington ed., 1986) (calling integration "the ultimate goal of our national community"); Readey, *supra* note 5, at 16-17 (calling for and predicting massive racial integration within a decade).

182. See *supra* Part II.B.

183. Thus, if a wealthy area like North Michigan Avenue were perfectly integrated, it would still not be eligible for TIF dollars.

other ward comes all that close.<sup>184</sup> However, installing this cap creates two incentives to integration. First, developers with flexible location preferences will choose to locate in Ward 49 under this system. By restricting TIF in this manner, the most racially integrated ward gets a substantial competitive advantage over other north-side wards in attracting investment and development.<sup>185</sup> Second, aldermen in disqualified wards will feel pressure from business and community leaders to decrease racial disparities in order to attract TIF dollars back to their community.<sup>186</sup> These dual pressures create economic incentives toward integration.

## 2. Use TIF in Racially Integrated Wards

Second, Chicago should restrict TIF dollars from wards with racial over- or under-representation between 10% and 20% unless the ward can demonstrate a downward trend in racial segregation. While this Note argues that wards with large racial disparities and relatively strong economic performances should not receive TIF dollars, the city ought to recognize those wards whose populations are shifting toward integration. Wards should demonstrate a three- or five-year trend toward integration to protect against single year statistical anomalies.<sup>187</sup> However, the city should reward those wards with populations relatively close to normal distribution and those moving in the right direction to fuel further community integration.<sup>188</sup>

## 3. Don't Allow TIF Projects that Racially Stratify a Ward

Finally, Chicago should not approve any TIF project unless the developer can reasonably demonstrate that the project will not racially stratify the ward.

184. See *infra* Appendix A (showing that Ward 49 is the only ward with greater than 15% over- or under-representation).

185. See *supra* note 29 and accompanying text.

186. See generally Gary S. Becker, *Public Policies, Pressure Groups, and Dead Weight Costs*, in CHICAGO STUDIES IN POLITICAL ECONOMY 88 (George J. Stigler ed., 1988).

187. Normally, population trends would not dramatically change in such a short time. See generally GREGORY SPENCER, U.S. CENSUS BUREAU, PROJECTIONS OF THE POPULATION OF THE UNITED STATES, BY AGE, SEX, AND RACE: 1983 TO 2080 (1984), <http://www.census.gov/prod/1/pop/p25-952.pdf> (projecting racial demographic shifts); Leobardo F. Estrada, *Anticipating the Demographic Future: Dramatic Changes Are on the Way*, CHANGE, May–June 1988, at 14 (predicting dramatic change within the following 20 years); Caroline J. Tolbert & Rodney E. Hero, *Dealing with Diversity: Racial/Ethnic Context and Social Policy Change*, 54 POL. RES. Q. 571 (2001) (predicting dramatic change within the following 12 years). However, when millions of dollars are on the line, one can imagine how a one-year “trend” could be accomplished without achieving any real, long-term integration.

188. Obviously, a single project would probably not attract members of one race to the exclusion of others. One possible mechanism for attracting different races is attracting different levels of income. See Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1335 (2004) (arguing that, in public education, “the best way to [achieve public school integration] is to pursue efforts to integrate schools by economic class”).

While some TIF projects probably do not increase a ward's racial disparity,<sup>189</sup> TIF dollars sometimes fund projects like car dealership relocations, luxury condominiums, and tourist attractions.<sup>190</sup> Instead, Chicago should prioritize projects accessible to all income levels, like supermarkets and industry.<sup>191</sup> While several existing programs already incent low-income development projects,<sup>192</sup> cities and developers can use TIF as another tool to grow the city more equitably.

These guidelines are merely a starting point, but they outline a framework to encourage investment in racially integrated areas. Furthermore, this proposed system has potential weaknesses, including the small number of eligible wards<sup>193</sup> and the possibility that few projects would take root.<sup>194</sup> While these concerns are legitimate and should be considered, Chicago's interest in reversing its course of segregation is compelling and immediate.

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189. As one example, the Parkside Old Town project in Ward 27, which received over \$9 million to build luxury condominiums, promised to rent-control a portion of units and reserve them for "households earning sixty percent (60%) or less of the median income for the City of Chicago." CITY OF CHI., PARKSIDE OLD TOWN REDEVELOPMENT AGREEMENT 3 (1997), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_030\\_ParksideOldTownRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_030_ParksideOldTownRDA.pdf). However, even this project was modest in its effect, as only about 30% of all units are reserved for below-median income households. *Id.*

190. See generally CITY OF CHI., CHI. OXFORD ASSOCS., L.P. REDEVELOPMENT AGREEMENT (1999), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_014\\_OxfordHouseHotelMonacoRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_014_OxfordHouseHotelMonacoRDA.pdf) (approving TIF dollars for a luxury hotel); CITY OF CHI., FOOTWEAR FACTORY REDEVELOPMENT AGREEMENT (2006), [http://www.cityofchicago.org/content/dam/city/depts/dcd/depts/dcd/tif/T\\_087\\_FootwearFactoryRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/depts/dcd/tif/T_087_FootwearFactoryRDA.pdf) (detailing an ordinance appropriating TIF dollars to a luxury apartment project); CITY OF CHI., GROSSINGER CITY AUTOCORP, INC. REDEVELOPMENT AGREEMENT (2008), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_158\\_GrossingerRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_158_GrossingerRDA.pdf) (approving TIF funding to relocate an car dealership); CITY OF CHI., LINCOLN/BELMONT/ASHLAND REDEVELOPMENT AGREEMENT (1994), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_028\\_LBARDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_028_LBARDA.pdf) (approving TIF dollars for a mixed-use project).

191. Two examples of ideal projects are the Wilson Yard in Ward 46, which built a Target in a lower-income neighborhood, and the Keebler Manufacturing Facility, which created 300 full-time, permanent jobs in Ward 9. CITY OF CHI., WILSON YARD REDEVELOPMENT AGREEMENT 29 (2006), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_110\\_WilsonYardRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_110_WilsonYardRDA.pdf); CITY OF CHI., KEEBLER REDEVELOPMENT AGREEMENT 22 (2003), [http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T\\_103\\_KeeblerRDA.pdf](http://www.cityofchicago.org/content/dam/city/depts/dcd/tif/T_103_KeeblerRDA.pdf).

192. See, e.g., U.S. Dep't of Hous. & Urban Dev., *HOME Investment Partnerships Program*, HUD EXCHANGE, <https://www.hudexchange.info/home> (last visited Mar. 4, 2016); *Grants*, ENTERPRISE, <http://www.enterprisecommunity.com/financing-and-development/grants> (last visited Mar. 4, 2016); *Smart Growth National Funding Opportunities*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/smartgrowth/smart-growth-national-funding-opportunities> (last visited Mar. 4, 2016).

193. Even with the 15% margin, only Ward 49 currently qualifies for this program. See *infra* Appendix A.

194. As noted previously, one criticism of TIF in general is that it may inefficiently allocate resources. See *supra* note 45 and accompanying text. It is possible that the integrated ward may not need TIF-eligible redevelopment.



## V. CONCLUSION

Chicago's legacy as "the most highly segregated major city in America" lives on.<sup>195</sup> While the city's history includes many instances of *intentional* government-sponsored segregation, this Note demonstrates that (presumably) *unintentional* segregation is still occurring, aided at least in part by government outlays for economic development. That disparity is likely multifaceted: on the one hand, Chicago hopes to attract new citizens to its already affluent north-side neighborhoods, and on the other hand, the TIF statute currently allows them more than enough room to qualify almost every block of the city as "blighted."

Seven changes to the statute would at least mitigate this problem. The first six amendments that this Note proposes solve the statute's over-inclusive definition of "blight." Limiting that definition precludes many questionable TIF districts, as the current factor definitions are too vague and give too much discretion to city officials. The seventh change tightens the statute's causation standard to allow TIF only in areas where development is, without the subsidy, not feasible (rather than not imminent). Additionally, the city's own application of the statute can unilaterally improve TIF's equitable use. While the new mayoral administration has already started down this path,<sup>196</sup> it can and should do more to promote development in black and Hispanic communities and encourage residential integration.

As Chicago evolves into a 21st century city, its challenges originate both in what came before and what lies ahead. Equity in government services, whether TIF, schools, or police, should be one of the first challenges the city addresses, and this Note suggests a few places to start.

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195. Readey, *supra* note 5, at 18.

196. See, e.g., Fran Spielman, *Chicago to Get \$250 Million as Emanuel Winds Down 7 Downtown TIF Districts*, CHI. SUN-TIMES (July 12, 2015, 11:59 PM), <http://chicago.suntimes.com/early-often/chicago-to-get-250-million-as-emanuel-winds-down-7-downtown-tif-districts>; Press Release, *supra* note 178.

## APPENDIX A. RACIAL COMPOSITION BY CHICAGO WARD

2010 Ward	White	Black	Hispanic	Asian	Multiracial	Income	TIF Spending (millions)
1	13.42%	-25.68%	14.21%	-2.34%	0.29%	29.99%	\$2.45
2	44.80%	-26.70%	-19.53%	1.17%	0.26%	8.05%	\$292.71
3	-9.29%	31.84%	-25.17%	2.14%	0.51%	-34.01%	\$31.41
4	-8.95%	30.67%	-25.22%	2.41%	1.00%	-25.83%	\$36.75
5	-8.50%	31.16%	-25.17%	1.17%	1.23%	-23.57%	\$0.23
6	-31.28%	64.89%	-27.87%	-5.32%	-0.40%	-37.18%	\$35.19
7	-30.20%	59.31%	-23.91%	-5.20%	-0.05%	-20.76%	\$-
8	-31.14%	64.15%	-27.55%	-5.23%	-0.21%	-24.64%	\$12.45
9	-30.25%	60.65%	-24.68%	-5.31%	-0.34%	-25.22%	\$2.06
10	-13.94%	-14.56%	34.34%	-5.11%	-0.69%	-11.58%	\$38.95
11	5.60%	-27.89%	-5.81%	28.17%	0.00%	1.90%	\$9.54
12	-23.06%	-30.28%	52.62%	1.76%	-0.93%	-26.37%	\$1.87
13	1.41%	-30.62%	34.88%	-4.65%	-0.87%	15.51%	\$9.73
14	-14.84%	-30.90%	50.99%	-3.97%	-1.09%	-4.51%	\$-
15	-26.97%	-10.21%	42.70%	-4.44%	-0.95%	-34.58%	\$3.70
16	-30.31%	35.92%	0.31%	-5.22%	-0.64%	-34.13%	\$2.31
17	-29.52%	48.49%	-13.11%	-5.17%	-0.62%	-38.49%	\$1.93
18	-19.04%	22.04%	2.29%	-4.74%	-0.43%	-7.17%	\$9.04
19	35.43%	-7.03%	-23.49%	-4.77%	-0.07%	63.19%	\$1.50
20	-27.85%	46.68%	-14.62%	-4.05%	-0.12%	-41.19%	\$-
21	-31.42%	65.36%	-27.99%	-5.34%	-0.45%	6.48%	\$22.54
22	-27.75%	-24.11%	58.18%	-5.04%	-1.17%	-36.35%	\$-
23	-2.09%	-29.85%	37.78%	-4.73%	-0.96%	8.32%	\$34.50
24	-27.73%	53.12%	-19.34%	-5.16%	-0.76%	-37.60%	\$17.89
25	-11.78%	-23.64%	27.34%	8.45%	-0.29%	-16.15%	\$72.34
26	-12.14%	-19.99%	36.90%	-4.30%	-0.41%	-60.11%	\$1.55
27	-6.53%	27.09%	-18.79%	-1.97%	0.13%	11.46%	\$96.05
28	-20.06%	42.92%	-22.15%	-0.52%	-0.12%	-28.96%	\$14.28
29	-16.10%	36.44%	-15.75%	-4.19%	-0.30%	-20.24%	\$14.04
30	-3.69%	-30.26%	36.65%	-2.30%	-0.43%	-1.49%	\$-
31	-12.75%	-30.01%	46.99%	-3.53%	-0.75%	1.52%	\$13.40
32	40.84%	-29.69%	-10.78%	-0.83%	0.44%	71.76%	\$6.31
33	0.59%	-28.83%	24.01%	3.54%	0.51%	7.01%	\$2.29
34	-31.18%	64.62%	-27.60%	-5.30%	-0.44%	-4.11%	\$28.18
35	-12.07%	-28.09%	40.41%	-0.33%	-0.03%	19.38%	\$7.15
36	-5.42%	-28.92%	37.75%	-2.71%	-0.64%	-4.75%	\$38.50
37	-30.25%	46.79%	-10.74%	-5.02%	-0.71%	-24.86%	\$3.23
38	37.49%	-31.49%	-4.47%	-1.23%	-0.22%	17.63%	\$2.95
39	22.21%	-29.68%	-5.43%	11.16%	1.53%	26.46%	\$11.30
40	19.16%	-25.46%	-5.31%	10.45%	0.97%	10.94%	\$12.59
41	50.63%	-31.35%	-18.90%	-0.30%	0.03%	53.96%	\$-
42	37.76%	-27.11%	-23.11%	11.53%	0.84%	50.57%	\$169.65
43	53.11%	-29.22%	-24.08%	-0.22%	0.45%	83.06%	\$23.50

44	50.86%	-29.51%	-22.53%	0.74%	0.49%	132.29%	\$-
45	32.63%	-30.82%	-4.35%	2.08%	0.36%	35.21%	\$1.16
46	25.53%	-12.49%	-17.39%	3.47%	0.70%	29.71%	\$35.82
47	43.05%	-29.67%	-14.91%	0.69%	0.74%	56.00%	\$11.04
48	22.15%	-16.19%	-15.02%	7.74%	1.14%	5.67%	\$14.12
49	7.10%	-5.58%	-4.82%	1.36%	1.56%	2.35%	\$28.40
50	13.46%	-22.20%	-10.02%	17.12%	1.37%	1.06%	\$48.14

APPENDIX B. PLOTS OF TIF SPENDING BY RACE

Figure 3. White vs. logTIF

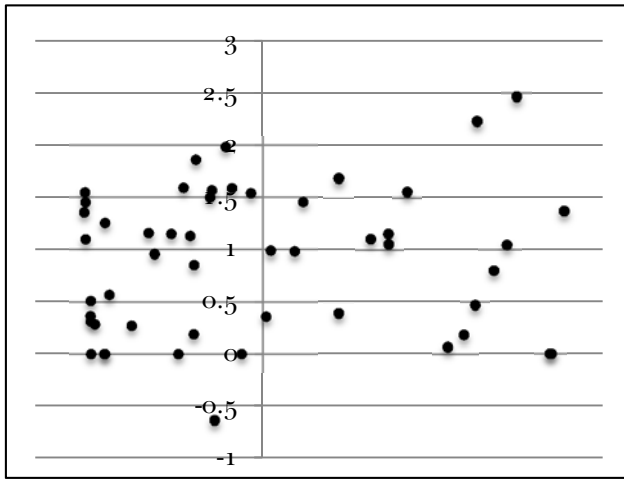


Figure 4. Black vs. logTIF

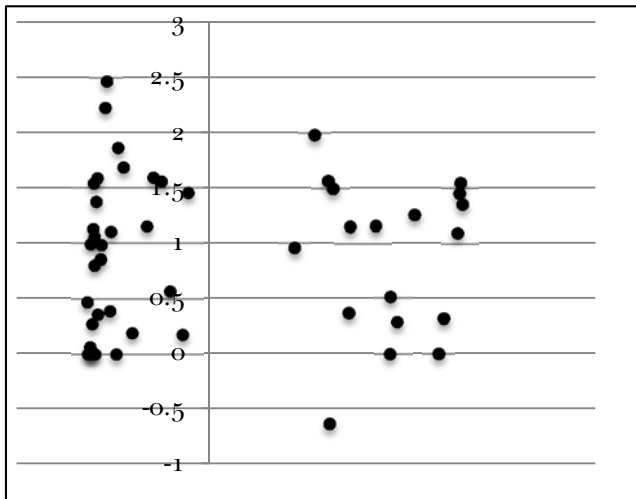


Figure 5. Hispanic vs. logTIF

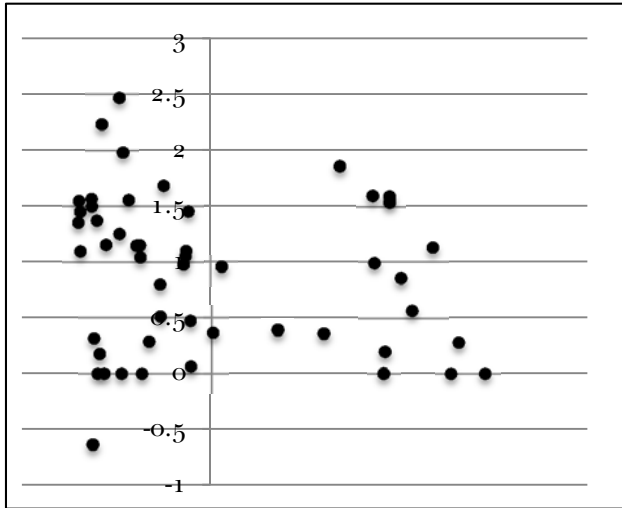
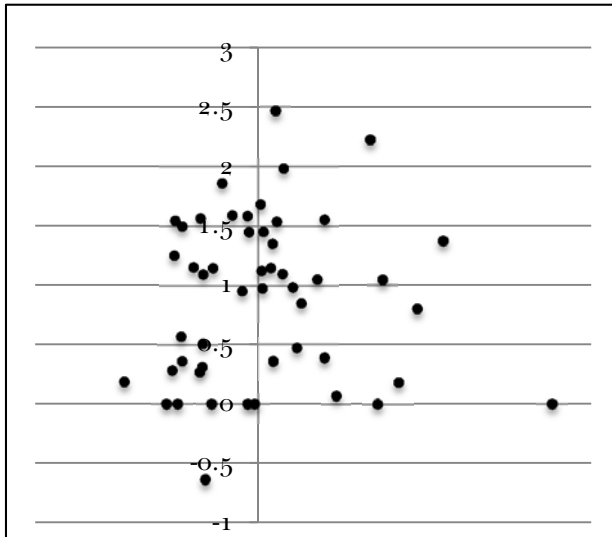


Figure 6. Income vs. logTIF



As a means of comparison, these charts plot the untransformed TIF values:

Figure 7. White vs. TIF

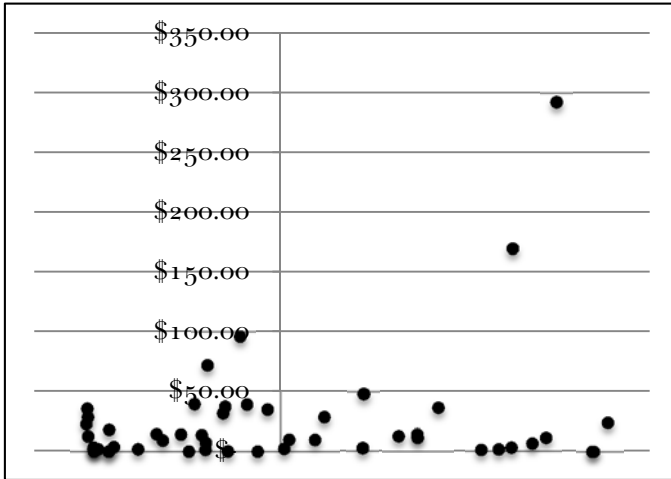


Figure 8. Hispanic vs. TIF

