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### Recommended Citation

Michelle L. Sidle, *An “Opportunity” To Invest In a “Rat-Infested” City: The Effects of President Trump’s Economic Development Plan in Baltimore*, 16 J. Bus. & Tech. L. 143 (2021)

Available at: <https://digitalcommons.law.umaryland.edu/jbtl/vol16/iss1/6>

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# An “Opportunity” To Invest In a “Rat-Infested”<sup>1</sup> City: The Effects of President Trump’s Economic Development Plan in Baltimore<sup>2</sup>

MICHELLE L. SIDLE\*<sup>©</sup>

## I. INTRODUCTION

In December 2017, President Trump signed the Tax Cuts and Jobs Act.<sup>3</sup> This legislation introduced Opportunity Zones as a method to encourage long-term private sector investments into developing and low-income communities.<sup>4</sup> In exchange for investing capital in projects in designated areas called “Opportunity Zones,” investors receive several tax benefits<sup>5</sup> to encourage investment.<sup>6</sup> Over 8,700 census tracts nationwide, encompassing 31.4 million people, were designated as Opportunity Zones.<sup>7</sup> This program has the potential to impact 1.6 million businesses and create 24 million jobs,<sup>8</sup> as Treasury Secretary Steven Mnuchin predicted that

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\* J.D. Candidate, 2021, University of Maryland Francis King Carey School of Law. The author wishes to thank the Journal of Business & Technology Law for providing a forum for publishing student work, and the Executive Board for their guidance and feedback. Further, the author wishes to thank Professor Daniel Goldberg for his insight and commentary. The author would also like to thank her family for all their love and support. Finally, the author dedicates this comment to Dr. Jorge Flikier, for his commitment to learning.

1. Donald J. Trump (@realDonaldTrump), Twitter (Jul 27, 2019, 4:14 AM), <https://twitter.com/realdonaldtrump/status/1155073965880172544?lang=en>.

2. This Comment is current as of Jan. 10, 2021. As such, subsequent IRS Notices and Regulations are not included in the analysis.

3. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

4. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019).

5. *Is Anyone Actually Investing in Opportunity Zone Funds?*, INSTITUTIONAL INVESTOR, <https://www.institutionalinvestor.com/article/b1fjptxyzv07y/Is-Anyone-Actually-Investing-in-Opportunity-Zone-Funds> (last visited Oct. 13, 2019).

6. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019) (listing benefits such a temporary tax deferral, a step up in basis, a potential for permanent exclusion from taxable income); *See infra* Section IV.

7. Rachel Reilly, Address at the Maryland Department of Housing and Community Development on Maryland Opportunity Zones (Oct. 7, 2019).

8. *Id.*

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Opportunity Zones would attract more than \$100 billion in private capital.<sup>9</sup> However, as one hedge fund executive noted, “Opportunity Zones are like high school sex... everyone is talking about it, but nobody is doing it.”<sup>10</sup> This rings true as some analysis show that Opportunity Zone Funds have raised, on average, 15 percent of their goal amount.<sup>11</sup> While the Opportunity Zone legislation<sup>12</sup> is an improvement from previous legislative iterations aimed at urban revitalization,<sup>13</sup> it is unlikely to succeed because it can be manipulated<sup>14</sup> and it disconnects tax incentives from the social change sought to be achieved.<sup>15</sup>

The following analysis will explore the successes and failures of this legislation,<sup>16</sup> using Baltimore City, Maryland as a case study.<sup>17</sup> Section II will discuss the factual circumstances<sup>18</sup> and Section III will explore the legislative history.<sup>19</sup> Then, Section IV will explain the current legislation and Section V will show how it has been utilized in Baltimore.<sup>20</sup> Lastly, Sections VI and VII will consider the rationale for passing this legislation,<sup>21</sup> and its identified shortcomings.<sup>22</sup>

## II. BACKGROUND

After the Great Recession in 2009, the United States economy embarked on a slow, but steady, path to economic recovery.<sup>23</sup> The unemployment rate fell to 5.5

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9. Ruth Simon & Peter Grant, *Opportunity-Zone Funds Are Off to a Slow Start, Lagging Behind Heady Expectations*, WALL STREET JOURNAL (Oct. 22, 2019), <https://www.wsj.com/articles/opportunity-zone-funds-are-off-to-a-slow-start-lagging-behind-heady-expectations-11571742002>.

10. *Is Anyone Actually Investing in Opportunity Zone Funds?*, INSTITUTIONAL INVESTOR, <https://www.institutionalinvestor.com/article/b1fjptxryzv07y/Is-Anyone-Actually-Investing-in-Opportunity-Zone-Funds> (last visited Oct. 13, 2019).

11. Ruth Simon & Peter Grant, *Opportunity-Zone Funds Are Off to a Slow Start, Lagging Behind Heady Expectations*, WALL STREET JOURNAL (Oct. 22, 2019), <https://www.wsj.com/articles/opportunity-zone-funds-are-off-to-a-slow-start-lagging-behind-heady-expectations-11571742002>.

12. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

13. *See infra* Section III.

14. *See infra* Section V.B.

15. *See infra* Section VII.

16. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

17. *See infra* Section V.

18. *See infra* Section II.

19. *See infra* Section III.

20. *See infra* Section V.

21. *See infra* Section VI.

22. *See infra* Section VII.

23. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 1 (2015).

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percent in February 2015,<sup>24</sup> from a high point of 10 percent in October 2009,<sup>25</sup> but that indication of the economy's improvement may be overstated because a significant number of potential workers had still not reentered the labor force.<sup>26</sup> Moreover, a larger share of mid and high paying jobs were replaced by lower wage positions.<sup>27</sup> The United States economy became increasingly dependent on a small handful of cities for growth as five metropolitan areas produced as many new businesses as the rest of the country combined from 2010 to 2014.<sup>28</sup> Although those areas of the country are nearing or exceeding their pre-recession economy, the overall national recovery has been largely uneven.<sup>29</sup> In contrast to those growing metropolitan areas, large swaths of the country still faced large-scale unemployment and low levels of investment.<sup>30</sup> These areas contained 1.4 million fewer jobs in 2016 than they did in 2007.<sup>31</sup> Moreover, these areas saw a six percent decline in local businesses during the peak years of the economic recovery.<sup>32</sup> Further, the recovery did little to improve business start-up rates, which remained particularly weak in low-income communities.<sup>33</sup> This last observation is crucial to nationwide economic recovery as the Great Recession led to a collapse in new business creation so extreme that companies were failing faster than they were being created.<sup>34</sup>

Research by the Economic Innovation Group has found that fifty million Americans lived in these economically distressed communities, which were struggling to attract capital to foster and sustain economic opportunity.<sup>35</sup> In response, state governors designated more than 8,700 census tracts in the United States and Puerto Rico as Opportunity Zones<sup>36</sup> under the Tax Cuts and Jobs Act of 2017.<sup>37</sup>

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24. *Id.* at 3.

25. U.S. Bureau of Labor Statistics, *Spotlight on Statistics: The Recession of 2007-2009* (2012).

26. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 1 (2015).

27. *Id.* at 3.

28. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019)

29. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 2 (2015).

30. *Id.*

31. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019)

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. BRETT MESSING, *QUALIFIED OPPORTUNITY FUNDS: A TOOL FOR DE-RISKING PORTFOLIOS*, 4 (2019).

37. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

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Under the Act,<sup>38</sup> investors with unrealized capital gains can receive tax benefits for reinvesting these gains into Opportunity Zones.<sup>39</sup> These tax benefits include (1) deferral of the payment of capital gains until 2027, (2) up to a fifteen percent reduction in their capital gains tax liability, and (3) complete exemption from capital gains taxes from any appreciation on the reinvested capital.<sup>40</sup> Investors receive these tax incentives by reinvesting realized capital gains into Qualified Opportunity Funds that invest in real estate or business projects in the designated Opportunity Zones.<sup>41</sup> From the standpoint of the investor, the government is essentially subsidizing their investments through potentially lower and deferred taxes.<sup>42</sup>

The reinvestment of capital gains is hypothesized to have a substantial impact in the economy. An analysis by the Economic Innovation Group estimates that by the end of 2014, United States investors held roughly \$2.26 trillion in unrealized capital gains.<sup>43</sup> Currently, the United States Treasury speculates that there are over \$6 trillion in unrealized gains eligible for this program<sup>44</sup> and estimates that over \$100 billion will be invested in Qualified Opportunity Funds.<sup>45</sup> However, recent analyses have shown mixed results as to the program’s impact so far. As of October 2019, Opportunity Zone Funds, on average, have raised less than fifteen percent of their targeted funding.<sup>46</sup>

### III. LEGISLATIVE BACKGROUND

Other types of federal programs for distressed communities with special tax incentives have been attempted.<sup>47</sup> These federal programs aim to enhance economic performance of an area in the form of more job opportunities and higher wages.<sup>48</sup>

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38. *Id.*

39. BRETT MESSING, QUALIFIED OPPORTUNITY FUNDS: A TOOL FOR DE-RISKING PORTFOLIOS, 4 (2019).

40. *Id.*

41. *Id.*

42. *Is Anyone Actually Investing in Opportunity Zone Funds?*, INSTITUTIONAL INVESTOR, <https://www.institutionalinvestor.com/article/b1fjptxryzv07y/Is-Anyone-Actually-Investing-in-Opportunity-Zone-Funds> (last visited Oct. 13, 2019).

43. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 16 (2015).

44. BRETT MESSING, QUALIFIED OPPORTUNITY FUNDS: A TOOL FOR DE-RISKING PORTFOLIOS, 4 (2019).

45. Peter Grant & Gregory Zuckerman, *Big Stock Windfall? New Rule Defers Taxes With Real Estate Investment*, WALL STREET JOURNAL (Oct. 2, 2018), [https://www.wsj.com/articles/real-estate-developers-rush-to-capitalize-on-tax-incentive-1538229600?mod=article\\_inline](https://www.wsj.com/articles/real-estate-developers-rush-to-capitalize-on-tax-incentive-1538229600?mod=article_inline).

46. Ruth Simon & Peter Grant, *Opportunity-Zone Funds Are Off To A Slow Start, Lagging Behind Heady Expectations*, WALL STREET JOURNAL (Oct. 2, 2019), <https://www.wsj.com/articles/opportunity-zone-funds-are-off-to-a-slow-start-lagging-behind-heady-expectations-11571742002>.

47. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 5 (2015).

48. Neumark & Simpson, *THE HANDBOOK OF REGIONAL AND URBAN ECONOMICS*, Volume 5B, p. 1198.

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Often, there is an underlying motivation to redistribute jobs and income to places where “jobs are scarce and incomes are low.”<sup>49</sup> Under these earlier programs, designation typically stemmed from defined characteristics such as population size, poverty rate, and unemployment rate.<sup>50</sup> Businesses within these areas qualified for a number of benefits to incentivize location within the Zone and hiring of individuals who lived in the Zone.<sup>51</sup> However, research into the effects of these programs has been mixed with little consensus on their actual benefits.<sup>52</sup>

These previous efforts can be logically divided into three incentive categories: employment, purchase, and capital investment.<sup>53</sup> However, none of these approaches truly encouraged businesses to relocate into designated zones and hire workers in those areas.<sup>54</sup> The prior incentive structures failed to provide a direct incentive for investing in new businesses and infrastructure.<sup>55</sup> Moreover, the prior approaches ignored many potential sources for investment and incentive structures, as there was no incentive for investors to exit their existing investments and use the gains to reinvest.<sup>56</sup> Additionally, there was no structure to involve financial intermediaries, like banks and venture capital funds, in investing.<sup>57</sup> Such funds would have been able to deploy large resources into the designated areas.<sup>58</sup> Therefore, the inconclusive and sometimes disappointing previous incentive approaches, based on results of the studies evaluating previous legislations, may be attributable to a misalignment of incentives, rather than a flaw in the objective of targeting assistance to distressed areas.<sup>59</sup>

*A. Empowerment Zones and Enterprise Communities*

In 1993, President Clinton signed the Omnibus Budget Reconciliation Act of 1993.<sup>60</sup> The Act<sup>61</sup> authorized a community and economic development program

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49. *Id.* at 1212.

50. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 5 (2015).

51. *Id.* at 6.

52. *Id.*

53. *Id.* at 12.

54. *Id.*

55. *Id.*

56. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 15 (2015).

57. *Id.* at 15-16.

58. *Id.*

59. *Id.* at 16.

60. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

61. *Id.*

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called The Empowerment Zone and Enterprise Cities Demonstration Program.<sup>62</sup> Under the program, Empowerment Zones were created in select cities eligible for special federal attention in order to help alleviate economic distress.<sup>63</sup> The first 104 Zones were implemented in 1994, with another forty-five created in 1999.<sup>64</sup> Fifty-one more Zones were designated in 2000.<sup>65</sup> This program was described as a way to “create jobs and business opportunities in [the] most economically-distressed areas of inner cities” through tax incentives and additional social service funding.<sup>66</sup> The dual purpose -business development and social services- differentiated this legislation from prior government actions, which only served to provide social services.<sup>67</sup> It added a “free market approach” to community development.<sup>68</sup>

Under the Empowerment Zone legislation,<sup>69</sup> the United States Department of Housing and Urban Development and the Department of Agriculture designated the Zones eligible to receive a variety of benefits.<sup>70</sup> In order to earn designation, the community was required to meet specific criteria regarding size, population, and poverty levels.<sup>71</sup> In addition, to be nominated, the state and local governments were required to present a plan detailing the current available resources, and how the plan would be further monitored.<sup>72</sup>

Unlike the current Opportunity Zone legislation,<sup>73</sup> these incentives were focused on the hiring of Zone residents, rather than the realization of capital gains.<sup>74</sup> Their benefits included (1) larger grants for social services, (2) regulatory waivers, and (3) allowing employers to receive wage tax credits for hired Zone-resident employees.<sup>75</sup>

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62. Audrey G. McFarlane, Article, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 295 (1999).

63. *Id.*

64. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT’L L. 159, 172-173 (2003).

65. *Id.*

66. Audrey G. McFarlane, Article, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 295-96 (1999).

67. *Id.* at 297.

68. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 686 (2007).

69. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

70. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT’L L. 159, 172 (2003).

71. *Id.*

72. *Id.*

73. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

74. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 686-87 (2007).

75. *Id.* at 687.

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The legislation<sup>76</sup> provided for three further tax-incentive categories, based on labor, capital, and financing.<sup>77</sup> The primary incentives were tax based, as they established special employee deductions, advantages for equipment purchased for use in Zone businesses, and tax free interest in private activity bonds.<sup>78</sup> More specifically, the legislation<sup>79</sup> granted \$3,000 in wage credits for the first \$15,000 that a business in the Zone paid an employee, the ability to deduct \$37,500 in investments in depreciable property during the first year, \$15,000 in tax credits for training and educational programs, and the ability to be financed through tax exempt facility bonds, which was available to companies with thirty-five percent of its employees being Zone residents and that generate eighty-nine percent of their gross income from operations within the Zone.<sup>80</sup>

In addition, the program provided one hundred million dollars in social service block grants.<sup>81</sup> These grants could be used for community development initiatives like drug treatment, job training and counseling, and programs that fostered entrepreneurship.<sup>82</sup> Further, these grants could also create community centers, scholarship funds, or serve as loans for home purchases.<sup>83</sup> In order to counteract misuse of the legislation's<sup>84</sup> benefits, the tax and social service benefits were available only to new and expanding businesses within the Zone.<sup>85</sup> Further, businesses that relocated to outside of the Zone lost their eligibility to receive the tax and social service benefits.<sup>86</sup>

In Baltimore, the program was used to stimulate the creation and growth of small businesses and jobs at local businesses.<sup>87</sup> The social service benefits were used to provide for loans, business counseling, and job training.<sup>88</sup> As of June 2002, fifty-two loans had been closed which led to a projected creation of 1,348 jobs.<sup>89</sup> Further, home

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76. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

77. David Dante Troutt, Article, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 Harv. C.R.-C.L. Rev. 427, 484 (2000).

78. *Id.* at 484-85.

79. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

80. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT'L L. 159, 172 (2003).

81. David Dante Troutt, Article, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 Harv. C.R.-C.L. Rev. 427, 484 (2000).

82. *Id.* at 485.

83. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT'L L. 159, 172 (2003).

84. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

85. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT'L L. 159, 172 (2003).

86. *Id.*

87. *Id.* at 174.

88. *Id.*

89. *Id.*



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ownership grants were given to over 450 Zone residents to pay closing costs.<sup>90</sup> Eighty-four percent of these grants went to first-time homeowners, with nearly half of the recipients being single women with children.<sup>91</sup> One neighborhood planning council in Baltimore instituted a community-policing program with a mobile police van, upgrading lighting, and surveillance cameras.<sup>92</sup> The crime rate in that neighborhood dropped seventeen percent in the subsequent two-year period and overall crime within the Empowerment Zone dropped forty-one percent from 1994 to 2001.<sup>93</sup>

Critics of this program believe that the initiative was more of a political statement than an investment in poor communities.<sup>94</sup> They note that the “unproven assumption is that economic development is synonymous with job creation” and that job creation automatically leads to improved welfare of its residents.<sup>95</sup> To further this ideal, critics note that the program measures success based on completion of projects, rather than looking at progress made towards economic wealth parity.<sup>96</sup> The program has been further criticized as providing too few incentives, as the provided incentives only benefited profitable businesses, which were often viewed as an unlikely dynamic due to the downtrodden nature of the Empowerment Zone.<sup>97</sup> Critics and supporters of the program agree that funding had been inadequate.<sup>98</sup> Later Government Accountability Office analyses about the effectiveness of the program failed to reach a conclusion due to poor data collection by the agencies responsible for program administration.<sup>99</sup>

#### *B. Renewal Communities and the New Market Tax Credit*

In 2000, President Clinton enacted the most successful of the federal programs for stimulating investment in economically distressed areas,<sup>100</sup> the Consolidated

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90. Kara Lamb, Note, *Revitalization From The Inside Out: The Attempts to Move Towards an Urban Renaissance in the Cities of the United States and the United Kingdom*, 19 CONN. J. INT'L L. 159, 174 (2003).

91. *Id.*

92. *Id.*

93. *Id.*

94. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 687 (2007).

95. *Id.*

96. *Id.*

97. David Dante Troutt, Article, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 Harv. C.R.-C.L. Rev. 427, 486 (2000).

98. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 687 (2007).

99. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 8 (2015).

100. *Id.* at 9.

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Appropriations Act,<sup>101</sup> which included the Community Renewal Tax Relief Act that provided over \$25 billion in tax incentives.<sup>102</sup> This tax credit provides individual and institutional investors with a thirty-nine percent tax credit against their federal tax liability for their service in providing loans, investments, and financial counseling to distressed areas.<sup>103</sup> The credit is claimed incrementally over seven years.<sup>104</sup> A five percent credit is allowed for each of the first three years of the investment, and a six percent credit is given for the following four years.<sup>105</sup> This incremental credit is most effective for patient investors, as they must hold their investment for seven years to obtain the entire tax credit.<sup>106</sup>

President Clinton and a Republican-led Congress championed this legislation<sup>107</sup> as a bi-partisan economic stimulus package.<sup>108</sup> After months of drafting and negotiation, President Clinton and Republican Speaker of the House J. Dennis Hastert presented this initiative to promote economic growth in low-income communities.<sup>109</sup> The Republican House initiative created Renewal Communities, which would provide tax breaks on capital gains as well as wage credits for employers.<sup>110</sup> The Clinton Administration's portion of the initiative created New Markets Tax Credits, American Private Investment Companies, and New Market Capital Firms.<sup>111</sup> Through the program, investment companies and venture capital firms would work to promote private investment and increase the availability of these funds in distressed communities.

Under the House Bill,<sup>112</sup> the Secretary of the United States Department of Housing and Urban Development was authorized to designate up to forty Renewal Communities from areas nominated by state and local governments.<sup>113</sup> At least twelve of these designated communities must be in rural areas.<sup>114</sup> To be designated,

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101. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

102. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 692 (2007).

103. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 9 (2015).

104. *Id.*

105. *Id.*

106. *Id.*

107. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

108. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 691 (2007).

109. *Id.*

110. *Id.* at 692.

111. *Id.*

112. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

113. H.R. Rep. No. 106-1033 (2000) (Conf. Rep.).

114. *Id.*

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there are some area income related criteria the Zone must meet<sup>115</sup> including a poverty rate of at least twenty percent.<sup>116</sup> In urban areas, at least seventy percent of the households must have incomes below eighty percent of the median household income of the local jurisdiction.<sup>117</sup> Further, within the area the unemployment rate must be at least 1.5 times that of the national unemployment rate.<sup>118</sup> Lastly, the area must be one of “pervasive poverty, unemployment, and general distress.”<sup>119</sup> There are no geographic size limitations placed on these Zones.<sup>120</sup> However, there are population-based restrictions.<sup>121</sup> Each Zone in a metropolitan area must have a minimum population of four-thousand and a maximum population of two-hundred-thousand, while Zones in any other area need a population of at least one-thousand.<sup>122</sup> When state and local governments propose an area to be considered for the legislative benefits, they must promise to take four of the following actions: “(1) a reduction of tax rates or fees; (2) an increase in the level of efficiency of local services; (3) crime reduction strategies; (4) action to remove or streamline government regulations; (5) involvement by private entities and community groups . . .; and (6) the gift (or sale at below fair market value) of surplus realty by the State or local government to community organizations or private companies.”<sup>123</sup> The parallel legislation in the Senate authorized the Secretaries of the United States Department of Housing and Urban Development and Department of Agriculture to designate up to thirty Zones, with at least six in rural areas.<sup>124</sup> The eligibility criteria for these Senate authorized Zones mirrors those of the House-authorized Zones.<sup>125</sup>

Under the New Markets Program,<sup>126</sup> investors invest in the Renewal Communities through designated private investment entities.<sup>127</sup> This can be through private for-profit entities, as well as traditional public sector entities.<sup>128</sup> It has been speculated

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115. *Id.*

116. *Id.*

117. *Id.*

118. H.R. Rep. No. 106-1033 (2000) (Conf. Rep.).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. H.R. Rep. No. 106-1033 (2000) (Conf. Rep.).

125. *Id.*

126. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

127. Janet Thompson Jackson, Article, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through The New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 662-663 (2007).

128. *Id.* at 692-93.

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that by encouraging private sector participation, the program can be more effective, as private entities more often operate more efficiently than public entities.<sup>129</sup>

For investors, investing in a Renewal Community through a private investment entity before December 2009 brings three distinct benefits.<sup>130</sup> First, they pay a zero percent capital gain rate.<sup>131</sup> Second, they receive a Renewal Community employment credit.<sup>132</sup> Lastly, they earn a commercial revitalization deduction.<sup>133</sup> More than half of the investments spurred by this initiative were for development or leasing of real estate, rather than for operating businesses.<sup>134</sup> This preference is due to the fact that real estate investments more easily fall into compliance with the program's regulations and location requirements.<sup>135</sup> Moreover, real estate investments have a longer time frame, and therefore can use the tax credit throughout the entirety of the seven-year incremental credit allocation.<sup>136</sup>

The results of this initiative have been mixed. According to the Local Initiative Support Corporation, \$31 billion has been invested into the program.<sup>137</sup> These investments have been used to foster small business growth, assist small manufacturers, as well as to build schools, health centers, child centers, and shopping areas.<sup>138</sup> Seventy-five percent of projects undertaken under this legislation<sup>139</sup> have been conducted in communities with poverty rates of over thirty percent.<sup>140</sup> In addition, for every \$53 of private sector investment, there was an additional \$47 of investment from other sources, including \$23 of investment from public sources.<sup>141</sup> According to a Government Accountability Office study, almost ninety percent of investors say that but for the credit, they would not have made the capital investment.<sup>142</sup> A study conducted in 2013 by the Urban Institute came to a slightly more nuanced conclusion: that sixty-four percent of the projects would not have happened at the same time and in the same place absent the legislation,<sup>143</sup> but in only

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129. *Id.* at 693.

130. H.R. Rep. No. 106-1033 (2000) (Conf. Rep.).

131. *Id.*

132. *Id.*

133. *Id.*

134. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 10 (2015).

135. *Id.*

136. *Id.*

137. *Id.* at 9.

138. *Id.*

139. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

140. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 9 (2015).

141. *Id.*

142. *Id.*

143. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

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half of those cases was the tax benefits a deciding factor in whether to invest.<sup>144</sup> Critics also note that while this legislation<sup>145</sup> has had some successes, it was not structured to induce large-scale investments needed to revitalize an entire community.<sup>146</sup> An Urban Institute Report found that roughly one-third of the projects were smaller than \$500,000 in size and nearly eighty-percent were under \$20 million.<sup>147</sup> Expected return on investment also faltered, as it decreased from 8.2 percent in 2003 to 6.8 percent in the years that followed.<sup>148</sup> When assessing the true impact of this legislation,<sup>149</sup> the Government Accountability Office was unable to determine the success of the program due to a lack of information about how much equity remained in the projects and the number of projects that ultimately failed.<sup>150</sup>

#### IV. CURRENT LAW

The concept of Opportunity Zone investing was introduced in a 2015 paper by the Economic Innovation Group<sup>151</sup> Their goal was to address the uneven economic recovery that had left many American communities in distress.<sup>152</sup> At that time, private sector investors, despite the prior programs, had little incentive to make new investments in economically-distressed areas.<sup>153</sup> In turn, Senator Tim Scott (Republican, South Carolina) and Senator Cory Booker (Democrat, New Jersey), with help from Representative Pat Tiberi (Republican, Ohio) and Representative Ron Kind (Democrat, Wisconsin), led a politically and regionally diverse coalition to spur such private sector investing.<sup>154</sup> As a result of their efforts, in December 2017, President Trump enacted the Tax Cuts and Jobs Act of 2017,<sup>155</sup> which introduced a new federal tax incentive to encourage investors with substantial unrealized capital

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144. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 9 (2015).

145. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

146. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 10 (2015).

147. *Id.*

148. *Id.* at 11.

149. Consolidated Appropriations Act of 2000, Pub. L. No. 106-554, 114 Stat. 2000.

150. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 10 (2015).

151. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019).

152. *Id.*

153. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 16 (2015).

154. *Opportunity Zones History*, ECONOMIC INNOVATION GROUP, <https://eig.org/opportunityzones/history> (last visited Oct. 13, 2019).

155. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

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gains to sell and reinvest in economically-distressed areas.<sup>156</sup> This tax incentive provides investors with a finite chance to invest, as the program expires in stages between in 2019 and 2026.<sup>157</sup> As such, it intends to spur long-term private sector investments in low-income communities nationwide.<sup>158</sup>

This new legislation is reminiscent of earlier tax legislation.<sup>159</sup> Like these earlier programs, this provision<sup>160</sup> provides tax incentives for investments made in certain areas and in a limited time frame.<sup>161</sup> Moreover, like prior programs, this initiative designates low-income census tracts as Opportunity Zones, through a state and local designation process.<sup>162</sup> However, unlike the prior programs, the Opportunity Zone program is based on “the self-directed investment of private capital with limited government oversight.”<sup>163</sup>

Investor participation in this program begins with realizing the capital gain from the sale or exchange of property.<sup>164</sup> The statutory limitations for these gains are broad; and any capital gain from the sale or property taxed as a capital gain is eligible for the subsequent investment benefits.<sup>165</sup> The deployment of capital gains is substantial, as some estimates opine that United States investors hold over \$6.1 trillion in unrealized capital gains.<sup>166</sup> This capital is a significant untapped resource for economic growth, as it is currently unused.<sup>167</sup> Further, after realizing the gain, the investor would have to invest in a Qualified Opportunity Fund, an investment vehicle organized for the purpose of investing in Opportunity Zone property,<sup>168</sup> within 180 days.<sup>169</sup> Such funds allow investors nationwide to pool their capital and deploy their

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156. BRETT MESSING, QUALIFIED OPPORTUNITY FUNDS: A TOOL FOR DE-RISKING PORTFOLIOS, 4 (2019).

157. *Id.*

158. Brad A. Molotsky, A.L.I., Presentation on Commercial Real Estate Leases: 2019 Federal Opportunity Zones and the Likely Increase in Real Estate Transactions in 2019 (June 2019).

159. *See infra* Section III.

160. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

161. Article, *In the (O)Zone: New Tax Program Guides Investor Capital To Areas of Need*, 68 RI BAR JNL 9, 13 (Jul./Aug. 2019).

162. Brad A. Molotsky, A.L.I., Presentation on Commercial Real Estate Leases: 2019 Federal Opportunity Zones and the Likely Increase in Real Estate Transactions in 2019 (June 2019).

163. Article, *In the (O)Zone: New Tax Program Guides Investor Capital To Areas of Need*, 68 RI BAR JNL 9, 9 (Jul./Aug. 2019).

164. *Id.*

165. *Id.*

166. Brad A. Molotsky, A.L.I., Presentation on Commercial Real Estate Leases: 2019 Federal Opportunity Zones and the Likely Increase in Real Estate Transactions in 2019 (June 2019).

167. *Id.*

168. *Id.*

169. Marc Schultz, *10 Questions for Upcoming Opportunity Zone Guidance*, LAW 360, Sept. 06, 2018.

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resources into larger Opportunity Zone investments.<sup>170</sup> These funds must hold at least ninety-percent of their assets in Opportunity Zone property.<sup>171</sup>

The initial Opportunity Zone statute<sup>172</sup> left many uncertainties regarding the logistical operation of this program. Thus, the Internal Revenue Service and Treasury issued two sets of proposed regulations,<sup>173</sup> one in October 2018<sup>174</sup> and one in April 2019.<sup>175</sup> The Final Regulation issued in December 2019, addresses the many comments received in response to the two proposed regulations.<sup>176</sup> Most importantly, this Final Regulation<sup>177</sup> clarified which gains would be eligible for this special treatment.<sup>178</sup> This regulation<sup>179</sup> amends the general rule that only capital gain may be invested in a Qualified Opportunity Fund during the 180-day investment period by clarifying that only eligible gain taxable in the United States may be invested.<sup>180</sup> The regulation<sup>181</sup> further clarifies that if a taxpayer sells an asset on an installment method that gives rise to an eligible gain, the taxpayer may choose to defer each and every gain recognized over the period of years payments are received until the end of 2026.<sup>182</sup> Similar to the two Proposed Regulations,<sup>183</sup> this Final Regulation interprets the Opportunity Zone statute<sup>184</sup> in a taxpayer friendly way to encourage further investment.<sup>185</sup>

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170. Brad A. Molotsky, A.L.I., Presentation on Commercial Real Estate Leases: 2019 Federal Opportunity Zones and the Likely Increase in Real Estate Transactions in 2019 (June 2019).

171. Marc Schultz, *10 Questions for Upcoming Opportunity Zone Guidance*, LAW 360, Sept. 06, 2018.

172. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

173. David S. Miller et al., *Final Regulations on Opportunity Zones*, PROSKAUER TAX TALKS (Jan. 22, 2020) <https://www.proskauertaxtalks.com/2020/01/final-regulations-on-opportunity-zones/#:~:text=At%20least%2090%25%20of%20a,December%2031%20would%20be%20the>.

174. I.R.S. Notice Reg 115420-18 (Oct. 2018).

175. I.R.S. Notice Reg 115420-18 (Apr. 2019).

176. David S. Miller et al., *Final Regulations on Opportunity Zones*, PROSKAUER TAX TALKS (Jan. 22, 2020) <https://www.proskauertaxtalks.com/2020/01/final-regulations-on-opportunity-zones/#:~:text=At%20least%2090%25%20of%20a,December%2031%20would%20be%20the>.

177. T.D. 9889, 19 Treas. Dec. Int. Rev. 471 (2019).

178. Tony Nitti, *IRS Publishes Final Opportunity Zone Regulations: Putting It All Together*, FORBES (Dec. 23, 2019) <https://www.forbes.com/sites/anthonymitti/2019/12/23/irs-publishes-final-opportunity-zone-regulations-putting-it-all-together/#287cbbc02551>.

179. T.D. 9889, 19 Treas. Dec. Int. Rev. 471 (2019).

180. I.R.S. Press Release (Dec. 19, 2019).

181. T.D. 9889, 19 Treas. Dec. Int. Rev. 471 (2019).

182. Tony Nitti, *IRS Publishes Final Opportunity Zone Regulations: Putting It All Together*, FORBES (Dec. 23, 2019) <https://www.forbes.com/sites/anthonymitti/2019/12/23/irs-publishes-final-opportunity-zone-regulations-putting-it-all-together/#287cbbc02551>.

183. I.R.S. Notice Reg 115420-18 (Oct. 2018).

184. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

185. Blake Christian, *Opportunity Zone (OZ) Final Regulations & Frequently Asked Questions*, HOLTHOUSE CARLIN VAN TRIGT LLP (Dec. 23, 2019), <https://www.hcv.com/insights-alerts-Opportunity-Zone-Final-Regulations-FAQ.html>.

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## V. APPLICATION: BALTIMORE

### A. Baltimore as a Site for Economic Development

In Maryland, 149 tracts of land have been designated as Opportunity Zones.<sup>186</sup> Ninety-three percent of those Zones are in urban areas, while seven percent are suburban.<sup>187</sup> These Zones encompass 600,000 residents and 31,000 businesses.<sup>188</sup> It has the possibility to impact 475,000 jobs.<sup>189</sup> Of those 149 tracts designated as Opportunity Zones, only forty-two are in Baltimore City, Maryland.<sup>190</sup>

Baltimore is a city poised for growth. The population peaked in the 1950's at around 950,000 but now has a population of approximately 615,000.<sup>191</sup> Huge portions of the city stand vacant and ready for the types of revitalization discussed in all of the previous economic development legislation.<sup>192</sup> President Trump himself even noted the distressed state of the city when proclaiming it is a "disgusting, rat and rodent infested mess" and a "dangerous [and] filthy place."<sup>193</sup>

### B. Misuse of the Legislation: Port Covington

One of Baltimore's most notable Opportunity Zone development projects is on Port Covington and is controlled by Under Armour's billionaire former Chief Executive Officer, Kevin Plank.<sup>194</sup> In 2012, Plank-connected entities began buying waterfront property on a largely vacant area in the southern part of Baltimore.<sup>195</sup> Often, parcels were purchased using shell companies to hide the purchaser's true

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186. Rachel Reilly, Address at the Maryland Department of Housing and Community Development on Maryland Opportunity Zones (Oct. 7, 2019).

187. *Id.*

188. *Id.*

189. *Id.*

190. *Opportunity Zones, BALTIMORE DEVELOPMENT CORPORATION*, <http://baltimoredevelopment.com/opportunity-zones> (last visited Oct. 12, 2019).

191. Kevin Rector & Christine Condon, *Trump points to Opportunity Zones to argue he's helped cities like Baltimore. Are they making a difference?*, *BALTIMORE SUN*, Aug. 7, 2019, <https://www.baltimoresun.com/business/bs-bz-opportunity-zones-20190730-3b3koim5wfcovhnp6t32ja2h4m-story.html>.

192. *Id.*

193. Donald J. Trump (@realDonaldTrump), *TWITTER* (Jul 27, 2019, 4:14 AM), <https://twitter.com/realdonaldtrump/status/1155073965880172544?lang=en>.

194. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, *BALTIMORE FISHBOWL*, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

195. *Id.*



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identity.<sup>196</sup> Ultimately, Plank spent more than \$100 million in purchasing the land.<sup>197</sup> Today, Plank’s Sagamore Development controls roughly forty percent of the area that would, years after purchase, be designated as an Opportunity Zone.<sup>198</sup> Plank intends to use the land to develop a new headquarters for Under Armour, which currently employs 15,000 people.<sup>199</sup> Proponents of this development acknowledge that it “may be one of the only shovel-ready” projects in the country, which allows it to bring in capital and economic development to Baltimore.<sup>200</sup> Plank’s development partner, Marc Weller, reiterated this project will attract future investors.<sup>201</sup> This, he says, will “directly benefit all of the surrounding communities.”<sup>202</sup>

The controversy surrounding this project stems from the fact that the Port Covington area was, by definition, too wealthy to be considered an Opportunity Zone.<sup>203</sup> There is a second way in which a census tract can become an Opportunity Zone: by being adjacent to a low-income area.<sup>204</sup> However, this route was also inapplicable to Port Covington, as the adjacent area has a median family income nearly 160% of Maryland’s.<sup>205</sup> The third way a tract can qualify is by being “within” an Empowerment Zone.<sup>206</sup> Port Covington presumably satisfied this test, as digital map files used by the Treasury Department show that Port Covington overlaps with a neighboring tract that had once been designated an Empowerment Zone.<sup>207</sup> This overlap is a tiny parking lot beneath the I-395 highway that is about 0.001 of a square

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196. *Id.*

197. *Id.*

198. *Id.*

199. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, BALTIMORE FISHBOWL, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

200. Marc Weller, *Port Covington developer: Opportunity Zone criticism ‘entirely unfair’*, BALTIMORE SUN, June 25, 2019, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0626-opportunity-zone-20190624-story.html>.

201. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, BALTIMORE FISHBOWL, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, BALTIMORE FISHBOWL, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

207. *Id.*

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mile in size.<sup>208</sup> Formally, there are no regulations on how to interpret “within”, and therefore the agency decided that any overlap, regardless of size, was permissible.<sup>209</sup> However, this is further complicated by the fact that this overlap does not exist in reality, and only exists due to a mapping misalignment.<sup>210</sup>

Critics believe the Port Covington project is going to benefit high-income individuals at the expense of the low-income communities the legislation<sup>211</sup> was designed to help.<sup>212</sup> The Port Covington development project is focused towards millennials, and plans to feature offices, a hotel, apartments, and shopping, in addition to the new Under Armour headquarters.<sup>213</sup> Moreover, by including this census tract in the Opportunity Zone designation, the designation was taken from another tract.<sup>214</sup> When designating Port Covington as an Opportunity Zone, the Governor had to remove portions of the Brooklyn neighborhood from the program.<sup>215</sup> Brooklyn has a median family income one-fifth that of Port Covington.<sup>216</sup> The tract suffers from one of the highest drug and alcohol death rates in Baltimore, which in turn has “one of the highest drug fatality rates nationwide.”<sup>217</sup> Assisting areas like Brooklyn receive the economic development intended by the legislation would fit neatly into the purpose of this legislation.<sup>218</sup>

*C. Proper Application: Yard 56*

In stark contrast to the Port Covington project, there are other proper Opportunity Zone projects in development in Baltimore. One of the first is a shopping center, called Yard 56, in Greektown.<sup>219</sup> Located across from the Johns Hopkins Bayview

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208. *Id.*

209. *Id.*

210. *Id.*

211. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

212. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, BALTIMORE FISHBOWL, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. Jeff Ernsthause & Justin Elliott, *Opportunity Zones are meant to spur new investment in poor areas, but Port Covington could get a tax break*, BALTIMORE FISHBOWL, June 19, 2019, <https://baltimorefishbowl.com/stories/opportunity-zones-are-meant-to-spur-new-investment-in-poor-areas-but-port-covington-could-get-a-tax-break/>.

218. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

219. Matthew Rothstein, *Baltimore's First Opportunity Zone Investment Is A Greektown Shopping Center*, BISNOW, Jan. 15, 2019, <https://www.bisnow.com/baltimore/news/opportunity-zones/baltimore-first-opportunity-zone-investment-yard-56-shopping-center-96756>.

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Medical Center, the site when completed will contain 2.2 million square feet of retail, office, hotel, and residential space.<sup>220</sup> In early January 2019, developers announced it had reached an eighty percent lease of the space, and had signed a Chipotle, Panda Express, and a Brass Tap Craft Beer Bar in addition to a Streets Markets Café and LA Fitness Branch.<sup>221</sup> The size of Prudential Financial Impact Investments’ investment in the Yard 56 development has not been disclosed, but is estimated at \$77 million.<sup>222</sup> This development is located on the former site of the first Pemco International Factory, and is hopeful the tax benefits will offset the costs of the environmental remediation and urban decay.<sup>223</sup> Daryl Shore, the transaction lead at Prudential Financial Impact Investments, is quoted as viewing this development as a “once in a generation opportunity to remove a sign of urban decay immediately across the street from one of Baltimore’s most important institutions, while bringing needed services and jobs to a neglected area of Baltimore.”<sup>224</sup>

The project is praised for the services it is estimated to bring the surrounding residents. First, the development will not only alleviate the pre-existing environmental concerns, but will also replace it with fresh food and health-care services.<sup>225</sup> Second, the undertaking is expected to not displace any current residents and aims to create permanent jobs.<sup>226</sup> In order to do so, Prudential Financial Impact Investments has partnered with Civic Works, a chapter of YouthBuild, to provide internship experiences and job opportunities to otherwise out-of-school and unemployed youth to foster skill development for meaningful future employment.<sup>227</sup>

## VI. RATIONALE FOR THE ACT

The Opportunity Zone initiative has huge benefits for investors. It is the only part of the tax code where an investor could fully write off capital gains taxes.<sup>228</sup> There is no limit on the amount of capital gains that can be reinvested in Opportunity Zones.<sup>229</sup> Additionally, there is an unlimited amount of capital appreciation in an

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220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Prudential Financial Chooses Yard 56 For Its First Opportunity Zone Investment To Drive Catalytic Revitalization in Baltimore, Maryland*, MCB REAL ESTATE, Jan. 11, 2019, <https://mcbrealestate.com/prudential-financial-chooses-yard-56-for-its-first-opportunity-zone-investment/>.

225. Natalie Dolce, *GloveSt.com Highlights Yard 56 Opp Zone Project*, GLOBEST, Sept. 11, 2019, <https://www.globest.com/2019/09/11/globest-com-highlights-yard-56-opp-zone-project/>.

226. *Id.*

227. *Id.*

228. *I Is Anyone Actually Investing in Opportunity Zone Funds?*, INSTITUTIONAL INVESTOR, <https://www.institutionalinvestor.com/article/b1fjptxryzv07y/Is-Anyone-Actually-Investing-in-Opportunity-Zone-Funds> (last visited Oct. 13, 2019).

229. Kelly Frey, *Opportunity Zones: The Good, The Bad And The Ugly*, LAW 360, Jan. 29, 2019.

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Opportunity Zone investment that can be realized tax-free.<sup>230</sup> The tax savings associated with Opportunity Zone investments provides a competitive economic advantage.<sup>231</sup> Funding projects in areas deemed Opportunity Zones are therefore viewed as more valuable and more profitable than projects outside of these Opportunity Zones.<sup>232</sup> Opportunity Zones serve as more than a tax benefit, it provides an incentive for investors to build and locate a business but “who might not otherwise seek to make an impact in cities like Baltimore,” which could benefit greatly from new development but could not likely attract that development without government incentives.<sup>233</sup>

These tax-reliefs are granted while simultaneously providing revitalization to low-income areas.<sup>234</sup> Opportunity Zones make up over twelve percent of the poorer, underdeveloped, and highly unemployed tracts in the United States where over thirty-five million people reside.<sup>235</sup> These low employment areas have deleterious consequences on new generations of people born there, as they have fewer opportunities, which can be counteracted by enticing those economic opportunities into those areas.<sup>236</sup> There is difficulty associated with moving unemployed workers, in that so they often stay in place creating a vicious cycle of “persistently high unemployment in the same places.”<sup>237</sup> Opportunity Zones, in contrast, bring those opportunities to those unemployed residents.

## VII. CRITICISMS

However, regardless of the potential of sustainable economic change, there are many critics of this legislation.<sup>238</sup> On the investor side, many fear that this initiative is highly uncertain and is lacking essential guidance.<sup>239</sup> The existing tax structure was already complex, and this new tax initiative was initially added without thorough guidance on how to comply with it.<sup>240</sup> Investors, operating without complete certainty are left to either take “educated guesses” or wait for more government

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230. *Id.*

231. *Id.*

232. *Id.*

233. Marc Weller, *Port Covington developer: Opportunity Zone criticism 'entirely unfair'*, BALTIMORE SUN, June 25, 2019, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0626-opportunity-zone-20190624-story.html>.

234. Kelly Frey, *Opportunity Zones: The Good, The Bad And The Ugly*, LAW 360, Jan. 29, 2019.

235. *Id.*

236. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 3 (2015).

237. *Id.*

238. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

239. Kelly Frey, *Opportunity Zones: The Good, The Bad And The Ugly*, LAW 360, Jan. 29, 2019.

240. Jared Bernstein & Kevin Hassett, *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, 11 (2015).

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issued regulations.<sup>241</sup> Although there have been two rounds of government issued regulations to supplement this legislation,<sup>242</sup> investors still need more.<sup>243</sup>

More importantly, not all analysts believe that the Opportunity Zones legislation will accomplish a useful purpose. There is a disconnect between the unlimited size of the potential tax benefits and the unclear and undefined social benefits.<sup>244</sup> Further, many view this initiative as a way to push out, rather than uplift, existing communities.<sup>245</sup> Barbara Samuels, the managing attorney for the ACLU of Maryland’s Fair Housing Project has even stated that this program “was never really about the investment of capital in poor neighborhoods” and “not much is going to trickle down to the neighborhoods.”<sup>246</sup> Thus, she, and others, view this initiative as a hefty tax benefit for businesses disguised as a program for greater social benefit.<sup>247</sup>

### VIII. CONCLUSION

In conclusion, the use of legislation to foster economic development in exchange for investment subsidies is not new.<sup>248</sup> Regardless of the iteration, such legislation is subject to both criticism and praise.<sup>249</sup> However, when properly employed it can be used to make tangible changes in society while benefitting the investors who spurred the change.<sup>250</sup> Thus, it may have the potential to change a “rat-infested” city.<sup>251</sup> However, there is the danger that the benefit purchased for the city will carry an out-sized price tag for the federal government in lost tax revenue, that could be better used to create the desired social benefit directly.

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241. Kelly Frey, *Opportunity Zones: The Good, The Bad And The Ugly*, LAW 360, Jan. 29, 2019.

242. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

243. Kelly Frey, *Opportunity Zones: The Good, The Bad And The Ugly*, LAW 360, Jan. 29, 2019.

244. Lorraine Mirabella, *A big new federal tax break: Baltimore developers see hope for projects in Opportunity Zones*, BALTIMORE SUN, Oct. 26, 2018, <https://www.baltimoresun.com/business/bs-bz-opportunity-zone-investment-20180921-story.html>.

245. Kevin Rector & Christine Condon, *Trump points to Opportunity Zones to argue he’s helped cities like Baltimore. Are they making a difference?*, BALTIMORE SUN, Aug. 7, 2019, <https://www.baltimoresun.com/business/bs-bz-opportunity-zones-20190730-3b3koim5wfcovhnp6t32ja2h4m-story.html>.

246. *Id.*

247. *Id.*

248. *See infra* Section III.

249. *See infra* Section VI and VII.

250. *See infra* Section V.C.

251. Donald J. Trump (@realDonaldTrump), TWITTER (Jul 27, 2019, 4:14 AM), <https://twitter.com/realdonaldtrump/status/1155073965880172544?lang=en>.