

**ZONED OUT: EXAMINING THE IMPACT  
OF EXCLUSIONARY ZONING ON PEOPLE,  
RESOURCES, AND OPPORTUNITY**

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**VIRTUAL HEARING**  
BEFORE THE  
SUBCOMMITTEE ON HOUSING,  
COMMUNITY DEVELOPMENT,  
AND INSURANCE  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTEENTH CONGRESS  
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## **ZONED OUT: EXAMINING THE IMPACT OF EXCLUSIONARY ZONING ON PEOPLE, RESOURCES, AND OPPORTUNITY**

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**Friday, October 15, 2021**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HOUSING,  
COMMUNITY DEVELOPMENT,  
AND INSURANCE,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 12 p.m., via Webex, Hon. Emanuel Cleaver [chairman of the subcommittee] presiding.

Members present: Representatives Cleaver, Velazquez, Sherman, Beatty, Green, Vargas, Lawson, Axne, Torres; Hill, Posey, Hollingsworth, Rose, Steil, and Taylor.

Ex officio present: Representative Waters.

Chairman CLEAVER. The Subcommittee on Housing, Community Development, and Insurance will come to order.

I now recognize myself for 4 minutes for an opening statement, and then I will recognize the ranking member of the subcommittee for 5 minutes.

I am very much interested in this topic. I started out in my political career as a member of the City Council of Kansas City, and I served my second term on the City Council as the Chair of the Planning and Zoning Committee, and, of course, that is where I learned about how human beings act when you start dealing with zoning.

Right now, we still have what we had back in the 1980s when I chaired the Planning and Zoning Committee in Kansas City, which is that everybody wanted everything that could be brought into a city, just not near their own home, and that created all kinds of problems, including problems of affordability. And right now, the price of housing is a national crisis, and many observers and experts believe this is worse than it has been at any point in our history.

If you look at the data from the Census Bureau and the Department of Housing and Urban Development (HUD) in August of this year, the median sale price of new residential homes in the United States was about \$390,000. That is an all-time national high. The price of housing has been pushed upwards, with upward pressure on rents, and the dream of homeownership has, of course, moved

further and further away from the majority of the people who are now not homeowners.

So across the entire country, we are having problems. And if you look at our first responders, they can no longer afford to live in the communities they protect, because far too many teachers and firefighters and police officers cannot afford to pay the real estate prices where they are living. Only one of the country's largest 50 metro areas, Pittsburgh, requires less than 30 percent of a starting teacher's salary for housing. From an economic lens, the affordable housing crisis is a supply-and-demand problem. The supply of housing, and particularly affordable housing, has not kept pace with the demand.

Data from the United States Census Bureau and HUD also demonstrate that the most recent decade, extending from January 2010 through November 2019, saw fewer housing units started—and this is terrible—than any any decade since at least the 1960's by a wide margin. And while the housing market is desperately in need of more new homes, the development of new homes in the lower end of the market, low-income and first-time homebuyers, has become particularly grim.

We will get into this a lot more as we move along, but I would like to now recognize the ranking member of the subcommittee, Mr. Hill, for 5 minutes.

Mr. HILL. Thank you, Chairman Cleaver. And thanks for convening this hearing. I appreciate the leadership of Chairwoman Waters and Ranking Member McHenry as well.

Local zoning practices, especially in our largest cities in the country, are among the many government regulations that make it more expensive to find a place to live in the United States. In hearing after hearing in this committee, we have heard how housing affordability is ultimately about housing supply; there are simply more people who want to buy a home or rent an apartment than there are homes available. The same applies to the rental market.

Artificial barriers and certain local development policies can make it even more difficult and expensive to build new houses or apartments, impeding the kind of market-driven behavior between buyers and sellers that could help bring the cost of housing down.

Imposing new government mandates like inclusionary zoning and rent control, or increasing Federal housing assistance to subsidize down payments really doesn't do anything to address that underlying supply-and-demand imbalance in many markets. Instead, it shifts the costs of building new housing units to residents through higher rents, taxes, and Federal subsidies.

Instead, I believe we should be looking at ways to incentivize localities with high housing demand to produce more units and make it easier and less expensive to build housing across that development process, from permitting, to planning, to construction. If homeownership is a bipartisan goal, then we ought to be looking at how housing regulations are making homeownership more unattainable for thousands of Americans in both rural and urban areas.

I look forward to hearing from our witnesses today the ways in which the Federal Government can help ease some of these local regulatory and zoning barriers to lower the cost of building new

housing units, and address some of the root causes related to housing supply.

I thank my friend from Kansas City for his leadership, and I am proud, here in central Arkansas, to represent a market where the median home price is \$156,800. We are at about \$101 a square foot. Our property taxes are 0.68 percent. And so, we invite all of America to move to central Arkansas where housing is affordable, both for rental purposes and purchase purposes.

And, again, I think you do have to approach this—and you know this from being a mayor, Mr. Chairman—about how it really is essential to give access, and I thought your discussion about different zoning characteristics on multifamily, small board of scale versus single family owner, of course, was constructive. But it is a complicated issue, and I look forward to the testimony today.

I yield back.

Chairman CLEAVER. Thanks for your information, Mr. Ranking Member.

I will now recognize the Chair of the full Financial Services Committee, Chairwoman Maxine Waters from California.

Chairwoman WATERS. Thank you very much, Mr. Chairman, for holding this hearing. This is very important.

In America today, our ZIP Code preordains our access to jobs, homeownership, affordable rent, and a child's access to quality education. It began with enslaving, and later segregating, my ancestors, stripping our indigenous brothers and sisters from their land, and redlining people of color out of homeownership, and it continues today with restrictive and exclusionary zoning policies.

Communities across this country continue to use zoning and local control as a dog whistle to preserve the racial residential segregation which contributes to the undersupply of housing. We must ensure that every family in America has access to the communities of their choice.

I look forward to our expert witnesses for their testimony today. Again, I thank you for holding this hearing, and I yield back the balance of my time.

I yield back.

Chairman CLEAVER. Thank you, Madam Chairwoman, for your comments today.

We now welcome the testimony of our distinguished witnesses: Sheryll Cashin, the Carmack Waterhouse Professor of Law, Civil Rights and Social Justice at Georgetown University; Richard D. Kahlenberg, a senior fellow from The Century Foundation; Dora Leong Gallo, the president and CEO of A Community of Friends; Thomas Silverstein, the associate director of the Fair Housing & Community Development Project at the Lawyers' Committee for Civil Rights Under Law; and Dr. Emily Hamilton, a senior research fellow and the co-director of the Urbanity Project at the Mercatus Center at George Mason University.

Our witnesses are reminded that their oral testimony will be limited to 5 minutes. You should be able to see a timer on your screen that will indicate how much time you have left, and a chime will go off at the end of your time. I would ask that you be mindful of the timer, and quickly wrap up your testimony if you hear the

chime, so that we can be respectful of both the witnesses' and the subcommittee members' time.

Ms. Sheryll Cashin, you are now recognized for 5 minutes.

**STATEMENT OF SHERYLL CASHIN, CARMACK WATERHOUSE  
PROFESSOR OF LAW, CIVIL RIGHTS AND SOCIAL JUSTICE,  
GEORGETOWN UNIVERSITY**

Ms. CASHIN. Thank you very much.

I want to begin by associating myself with the comments of Chairwoman Waters, and my comments are in that spirit. I have spent nearly 3 decades grappling with U.S. segregation and how it produces racial inequality. My most recent book, "White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality," reflects these decades of examination. It argues that we have a system of residential castes in which government over-invests and excludes in affluent White spaces and disinvests and contains and, frankly, preys on people in high-poverty Black neighborhoods.

These are the extremes of American residential castes, but everyone who cannot afford to buy their way into high-opportunity neighborhoods is harmed by this system. The poor especially are systematically excluded from the opportunity for social mobility, no matter how hard they work to escape.

Exclusionary zoning was first sanctioned by the U.S. Supreme Court in 1926, in which it endorsed the idea that even duplexes were, "parasitic on single family homes and the people who live there." In ensuing decades, thousands of new suburban governments formed, enabling middle-class and upper-class Whites to wield the zoning power to exclude certain types of housing, particularly rental apartments, and, therefore, exclude unwelcome populations.

Fast forward to today, and where high levels of Black segregation persists, researchers have found that it was actively promoted by zoning laws that restricted density, and by high levels of anti-Black prejudice. According to a stunning geographically-mapped analysis recently produced by The New York Times, it is illegal on 75 percent of the residential land in many American cities to build anything other than a detached single-family home. That figure is even higher in many suburbs and newer suburban belt cities.

A recent study released by an institute at UC Berkeley found that we are getting worse. About 81 percent of large and medium-sized metro areas were more segregated in 2019 than they were in 1990. The most persistent type of neighborhoods today are affluent White spaces and concentrated poverty neighborhoods, and the boundaries of these neighborhoods is hardening. That means it is harder to get into places of high opportunity and, frankly, it is harder to get out of the hood.

The past and present of federally-backed segregation policies inform the legal and moral case for congressional action to disrupt exclusionary zoning. I cover that history quickly in my written testimony.

Suffice it to say, intentional segregation of Black people in the 20th Century shaped living patterns for everyone. The infrastructure for maintaining segregation lives on: racial steering by REAL-

TORS; discrimination in mortgage lending; exclusionary zoning; government-subsidized affordable housing that concentrates poverty; local school boundaries that encourage segregation; and continued resistance to racial integration by many Americans.

So, in considering policy options, please first acknowledge that the main reason exclusionary zoning persists is the vested interests and expectations of people who live in poverty-free havens. In so-called blue California where Democrats are in charge, despite a grave housing and homelessness crisis, the State was only able to take the baby step of opening single-family neighborhoods to duplexes.

If Congress wants to disrupt nearly a century of exclusionary zoning, serious pressure and accountability are required. I recommend not just spending incentives to repeal exclusionary zoning, but pressure on localities to adopt well-designed, inclusionary zoning ordinances, the best example of which is the highly successful mandatory ordinance of Montgomery County, Maryland. This extremely diverse, wealthy suburban county has no pockets of concentrated poverty, and poor children have more access to well-integrated schools because of it.

In conclusion, I recommend that Federal housing, community development, and infrastructure funds should be conditioned on localities adopting inclusionary zoning ordinances that actually affirmatively further fair housing.

Thank you.

[The prepared statement of Ms. Cashin can be found on page 32 of the appendix.]

Chairman CLEAVER. Thank you very much, Ms. Cashin, for your testimony.

Mr. Kahlenberg, you are now recognized for 5 minutes.

**STATEMENT OF RICHARD D. KAHLENBERG, SENIOR FELLOW,  
THE CENTURY FOUNDATION**

Mr. KAHLENBERG. Good afternoon, Chairman Cleaver, Chairwoman Waters, Ranking Member Hill, and all of the members of the subcommittee. Thank you for holding this important hearing on exclusionary zoning. I am Richard Kahlenberg, a senior fellow at The Century Foundation, where I conduct research on housing and education policy.

It is my testimony that local zoning policies that prohibit multi-family dwellings are driving up housing prices, fueling racial and economic segregation, and limiting the opportunity for millions of children and families to achieve the American Dream. There is much that Congress can do to fix this, including adopting a new economic fair housing act, which I will discuss in a moment.

I call local exclusionary policies, “the walls we don’t see,” because they are less visible to the public than other forms of discrimination. Most Americans today understand that it was wrong for White mobs to scream at young Black children trying to attend desegregated schools in the South in the 1960’s. Many of us know the Norman Rockwell painting of Ruby Bridges, a small Black child who had to be escorted by large FBI agents to her elementary school in New Orleans because White people objected to her presence based on the color of her skin.

But in 2021, local governments continue to erect less-visible walls that keep low-income and working-class families, many of them families of color, from living in safe neighborhoods with good schools.

As Professor Cashin noted, in most American cities zoning laws prohibit the construction of relatively affordable homes, duplexes, triplexes, quads, and larger family units on three-quarters of residential land.

There are millions of modern-day Ruby Bridges whose lives are hurt by exclusionary zoning. I interviewed, for example, Kiara Cornelius, a low-wage single mother, who a few years ago was living in South Columbus, Ohio, and was looking for better schools, and a safer neighborhood for her kids. She told me that she did not allow her children to walk to their grandmother's house just a couple of blocks away because it was dangerous to do so. She drove them instead.

Now, one might look at Ms. Cornelius's predicament and say that her exclusion from better opportunities was simply a reflection of the workings of the free market in housing, but in the Columbus suburbs, bans on construction of duplexes and triplexes and apartment buildings keep people like Ms. Cornelius zoned out by government's fiat.

So, what can be done? In my written testimony, I discuss a number of possible reforms, including the committee's Unlocking Possibilities Program, which would represent one of the most significant Federal efforts to curtail exclusionary zoning in decades, and deserves strong support. But Federal carrots should be supplemented by Federal sticks to add heft to the effort at, by the way, a much more modest cost than incentive programs.

In particular, Congress should create a private right of action, comparable to the one found in the 1968 Fair Housing Act, to allow victims of economically discriminatory government zoning policies to sue in Federal Court, just as victims of racial discrimination currently can. I call this proposal an economic fair housing act. The original 1968 Fair Housing Act was a monumental advance for human freedom and helped produce a 30-percent decline in Black/White segregation since 1970. But at the same time, income segregation has more than doubled during this period. Part of the problem, as Harvard's Michael Sandel has noted, is that highly-educated elites may denounce racism and sexism but are unapologetic about their negative attitudes towards the less-educated.

Now, for important historical reasons, being a class snob is not held in the same disrepute as being a racist. But in the context [inaudible] Black families and working-class families of all races are held in such low regard that the State is somehow justified in sponsoring laws that make it illegal for anyone to build the types of housing these families can afford.

An economic fair housing act would make it clear that economic discrimination is wrong, whether or not it has a disparate impact on people of color, but the act would also reduce racial segregation by helping low-income plaintiffs of color who now face stiff evidentiary burdens under disparate impact law to prevail in court.



Once again, thank you for this opportunity to discuss the ways to reduce barriers that artificially separate Americans and hurt our country.

Thank you.

[The prepared statement of Mr. Kahlenberg can be found on page 46 of the appendix.]

Chairman CLEAVER. Thank you very much.

Ms. Dora Leong Gallo, you are now recognized for 5 minutes.

**STATEMENT OF DORA LEONG GALLO, PRESIDENT AND CEO, A  
COMMUNITY OF FRIENDS**

Ms. GALLO. Good afternoon, Chairman Cleaver, members of the subcommittee, and Chairwoman Waters. Thank you for this opportunity to testify today.

My name is Dora Leong Gallo, and I am the president and CEO of A Community of Friends, a nonprofit affordable housing development corporation based out of California. We have a very specific mission of ending homelessness for people, individuals, and families affected by mental illness.

In the past 33 years, we have completed 51 apartment buildings throughout Los Angeles and Orange County, including 2 buildings in San Diego County, and currently, we operate 43 buildings housing over 2,500 individuals, including over 600 children.

As a nonprofit organization serving people with disabilities, I have seen firsthand how government regulation and control of land use, through a process called zoning, can be used to both stimulate or slow down the development in communities and/or use to exclude certain people in populations from living in certain communities. And although local governments' authority to regulate land use is granted by State Governments, the development of affordable housing has inherently been a local process. For decades, zoning was controlled at the neighborhood level, but this trend has been changing, given the crisis many communities face with lack of affordable housing.

And in the context of building supportive housing to end homelessness, A Community of Friends has often encountered opposition from community members using zoning and discretionary approvals to block housing for people experiencing homelessness, who are disproportionately people of color. For instance, in Los Angeles, 40 percent of those who are homeless are Black, yet Black people make up only 9 percent of L.A. County's population.

Discrimination against people with mental illness is repeatedly couched in land use terms. This housing project is too dense. It is too out of character with the neighborhood. It has insufficient parking and will generate traffic. Cities frequently bow to the pressure to preserve the status quo, leading to continued discriminatory practices and continuing the racial inequities in housing.

California's environmental review process further challenges supportive housing projects. California has the California Environmental Quality Act, known as CEQA, which was intended to analyze and mitigate the environmental harm of public projects. But it has been weaponized over the past decade to delay or stop affordable and supportive housing projects that require government approvals.

Twice in 2018, A Community of Friends faced legal challenges on environmental grounds for 2 supportive housing projects for veterans that we proposed, even when, on one project, only 49 units were proposed in a site zoned for over 100 units. We prevailed in both lawsuits, but the result was an almost 4-year delay on each project, a significant increase in costs as funding commitments were deobligated and construction costs increased, and dozens of homeless individuals and families, including veterans, were not able to access this affordable housing with onsite supportive services that the two projects could have provided.

The Federal Government has a role to play in zoning reform. HUD should continue researching regulatory barriers and advancing solutions to overcome them. HUD's Regulatory Barriers Clearinghouse is a valuable resource for identification of barriers and solutions to housing productions and preservation.

HUD should also continue its implementation of Affirmatively Furthering Fair Housing regulation and develop programs using a carrot-and-stick approach to ensure compliance with this provision of the Fair Housing Act of 1968.

Congress also has a pivotal role to play. The Build Back Better plan pending before Congress includes the Unlocking Possibilities Program, which was previously mentioned. This grant program will incentivize local governments to improve housing strategies, reform zoning practices, and streamline local regulations. It will be particularly useful to small communities that may lack the resources capacity to conduct housing needs assessments and to develop those concrete steps necessary to eliminate barriers to produce affordable housing and advance fair housing.

Additionally, Congress should propose legislation or regulations that link Federal funding to Affirmatively Furthering Fair Housing rules, consider Federal legislation to prohibit State and local governments from putting roadblocks in the way of increasing affordable housing and fostering inclusive communities, and make rental assistance universally available to households in need and to prohibit source-of-income discrimination.

Thank you for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Ms. Gallo can be found on page 37 of the appendix.]

Chairman CLEAVER. Thank you, Ms. Gallo. Thank you very much.

Mr. Thomas Silverstein, you are now recognized for 5 minutes.

**STATEMENT OF THOMAS SILVERSTEIN, ASSOCIATE DIRECTOR, FAIR HOUSING & COMMUNITY DEVELOPMENT PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

Mr. SILVERSTEIN. Thank you.

Chairwoman Waters, Chairman Cleaver, Ranking Member Hill, and members of the subcommittee, thank you for the opportunity to testify today regarding the harmful impact of exclusionary zoning, as well as strategies for mitigating those harms.

My name is Thomas Silverstein, and I am the associate director of the Fair Housing & Community Development Project at the

Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee is a national civil rights organization created at the request of President John F. Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination.

Exclusionary zoning is a widespread practice that plays a significant role in the perpetuation of residential racial and economic segregation, and the housing affordability crisis. Although high-cost, coastal metropolitan areas garner the lion's share of the attention in conversations about exclusionary zoning, it is a nationwide problem, and some of the country's most extreme zoning restrictions are found in suburban jurisdictions in the Midwest and the Deep South.

When we talk about exclusionary zoning, it is important that we be precise in our language. Although the roots of modern zoning are unquestionably in early 20th Century attempts to segregate communities, not all zoning restrictions are exclusionary in practice. Indeed some, such as provisions that prevent heavy-polluting industrial facilities from being sited near homes, can be salutatory.

For others, including residential density restrictions, the context matters. Essentially, if such restrictions are preventing low-income people of color from moving to an area with high housing costs, then those restrictions are exclusionary. If, however, notwithstanding similar restrictions, an area is racially and ethnically diverse and housing costs are within reach for low-income households, those same restrictions are not perpetuating exclusion in practice.

This distinction has ramifications for the policy debate about zoning at the Federal, State, and local levels. Working in collaboration with a broad coalition of civil rights, community organizing, and affordable housing groups brought together by the Alliance for Housing Justice, we developed a set of eight principles to guide Federal action around exclusionary zoning.

We recommend that Federal action: one, focus on areas that are actually exclusionary; two, require an equity analysis to increase impact and avoid unintended consequences; three, prioritize the development of deed-restricted affordable housing, including units for extremely low-income households; four, evaluate municipalities' lending and land-use actions holistically; five, protect tenants from displacement; six, ensure that historically-disinvested communities of color have equitable access to Federal funds; seven, identify funding sources that will actually incentivize meaningful change; and eight, obligate municipalities to maintain data and report on their progress.

Most of the recent proposals for Federal action around exclusionary zoning have involved carrots rather than sticks, and for such proposals, these principles are particularly important. With that said, a more forceful approach may be warranted due to the fact that the municipalities with the most exclusionary zoning are among those least likely to currently receive or to heavily rely upon Federal funds.

Because zoning regulation and indeed residential construction activity are forms of economic activity that clearly have significant effects on interstate commerce, Congress' power to act is, likewise, clear.

Additionally, the Federal Government has a strong interest in stopping exclusionary zoning from underlining both the efficiency and the efficacy of its investments in affordable housing development.

While Congress determines how to address the problem of exclusionary zoning comprehensively, Congress should urge the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of Justice (DOJ), to make better use of their existing powers. HUD, through both its Fair Housing Act enforcement role, and its power as a grant administrator, can already take action to reduce exclusionary zoning by filing Secretary-initiated discrimination complaints, and by holding up localities' block grant funds over dubious civil right certifications, including those involving Affirmatively Furthering Fair Housing.

DOJ has a special statutorily-defined role in investigating and bringing enforcement action under the Fair Housing Act to end exclusionary zoning. The DOJ is more powerfully-situated than are private plaintiffs to bring suit because it does not face the same barriers to establishing standing. Although there have been several successful lawsuits challenging exclusionary zoning over the years, standing doctrine has been the primary reason why such cases have not been more frequent and is, therefore, the reason why the Fair Housing Act has not had as much of a deterrent effect as it should.

And the Lawyers' Committee for Civil Rights Under Law and the Alliance for Housing Justice stand ready to serve as resources to the subcommittee as it contemplates Federal action to address the critical problem of exclusionary zoning.

Thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Silverstein can be found on page 54 of the appendix.]

Chairman CLEAVER. Thank you very much.

And now, Dr. Hamilton, you are recognized for 5 minutes.

**STATEMENT OF EMILY HAMILTON, SENIOR RESEARCH FELLOW, URBANITY PROJECT, MERCATUS CENTER AT GEORGE MASON UNIVERSITY**

Ms. HAMILTON. Thank you, Chairwoman Waters, Chairman Cleaver, Ranking Member Hill, and members of the subcommittee.

I am Emily Hamilton, a senior research fellow at the Mercatus Center at George Mason University, where I am co-director of the Urbanity Project.

My remarks today will focus on three points:

First, as this committee's leadership and other witnesses have said, local zoning rules needlessly increase the cost of housing for millions of Americans.

Second, a Federal grant program targeted at the right localities can help alleviate these problems.

And third, a Federal grant program can only succeed if funds are disbursed on the basis of housing market outcomes.

To my first point on zoning and housing affordability, many local rules limit the amount of housing that can be built, and increase the cost of housing that is permitted. These rules are typically codi-

fied in a municipality zoning code. They include apartment bans, requirements that each new house sit on a large lot, and minimum parking requirements. Such rules increase the cost of building housing, particularly in places where land is expensive.

Under current zoning policies, half of American renters are rent-burdened. For many families, there is too little left for other necessities once rent is paid. The percentage of renters who are rent-burdened has increased over the past decades, reflecting the rising cost of exclusionary zoning.

To my second point on the importance of targeting the right jurisdiction for reform, Members of Congress from both parties have introduced bills in the House and the Senate intended to reduce exclusionary zoning, reflecting a growing bipartisan consensus on the need for land-use reform.

Several proposals to date would target reform among Community Development Block Grant (CDBG) grantees. Unfortunately, CDBGs do not reach all of the localities that enforce zoning codes. In particular, many suburbs in high-wage regions where reform is most urgently needed are not entitlement communities. In order to effectively encourage zoning reform, any new program Congress considers creating should include all of the localities that enforce zoning rules as eligible grantees.

And now, my final point on the importance of rewarding jurisdictions based on housing market outcomes. A successful zoning reform program must reward localities for the right outcomes, namely, permitting abundant housing construction. A proposal recently considered by this committee would, instead, fund planning exercises for potential reforms to exclusionary zoning. Sadly, past experience shows that plans to improve housing affordability often sit on local government shelves without actually leading to any zoning changes or to new housing.

Other recent proposals in Congress would, instead, reward localities for adopting specific policies intended to improve housing affordability, such as increasing the amount of land where multi-family housing could be permitted, or reducing parking requirements.

Although this approach is better, it still does not necessarily reward localities for actually making more housing feasible to build if, as often happens, localities make housing that appears legal to build on paper, difficult to build in practice.

Instead of rewarding localities for promising to permit more housing eventually or for adopting policies that may not result in more housing construction on the ground, Congress could, instead, adopt a competitive grant program that ranks localities according to their housing market outcomes. Such a program would reward growth, with the most exclusionary localities receiving nothing.

My colleague and I have developed one formula that could enable such a program by ranking high-demand localities primarily according to their rate of housing construction, and lower-demand localities primarily according to the prices of their new construction.

In conclusion, the particulars of a grant program intended to encourage zoning reform would need to be debated, but a successful program must reward the correct metric in the correct jurisdic-

tions, actual housing market outcomes in the localities that enforce zoning rules.

Thank you. And I look forward to your questions.

[The prepared statement of Dr. Hamilton can be found on page 43 of the appendix.]

Chairman CLEAVER. Thank you, Ms. Hamilton, and I would like to thank all of the witnesses.

I now recognize the distinguished Chair of the Full Committee, Chairwoman Maxine Waters.

Chairwoman WATERS. Thank you very much, Mr. Chairman.

I do have a question for Professor Cashin.

Your recent book, "White Space, Black Hood," focuses on Black/White residential segregation. When it comes to exclusionary zoning, should the focus be broader to include, for example, economic class and other racial and ethnic groups who are disproportionately locked out of housing opportunities? In many communities, the U.S. Census racial distinction of, "other," has been growing over the years and the residential [inaudible]—

Ms. CASHIN. I think I got the essence of the chairwoman's question, if you would like me to address what I heard.

Chairman CLEAVER. Let's wait just a second or 2 just to—she froze, so maybe they will get it. I want to make sure she can hear your response, if possible.

Well, we can move on and come back.

Chairwoman WATERS. Why can't they hear me?

Chairman CLEAVER. We can now.

Chairwoman WATERS. Okay. Thank you.

Professor Cashin, I don't know if you heard my question. Let me give it to you again.

Ms. CASHIN. Thank you.

Chairwoman WATERS. Your recent book, "White Space, Black Hood," focuses on Black/White residential segregation, but when it comes to exclusionary zoning, should the focus be broader to include, for example, economic class and other racial and ethnic groups who are disproportionately locked out of housing opportunities? In many communities, the U.S. Census racial distinction of, "other," has been growing over the years, and the residential segregation between White individuals and those who racially identify as, "other," has also been growing. What does this tell us about modern trends in residential segregation, and how policymakers should be viewing these issues?

Ms. CASHIN. The short answer, Madam Chairwoman, is yes, all groups can and should benefit from disrupting exclusionary zoning and putting serious pressure, particularly on high-opportunity neighborhoods, to adopt inclusionary zoning ordinances where they actually build their fair share of affordable housing. But the title of my book and my analysis really underscores that the residential system of separate and unequal neighborhoods that we have was born of anti-Black prejudice, born of containing the more than 6 million great migrants who left the South.

And so, it took 7 decades to create this structure, heavily-sponsored and initiated by the Federal Government. The containment of Black people, and the fear of Black people, is why we have persistent residential segregation.

And I think we just have to be honest in acknowledging that history, acknowledging what we are up against in trying to disrupt it.

Chairwoman WATERS. Thank you very much.

I had a conversation recently with a Member of Congress. I have a big housing bill inside the reconciliation bill, and in that, I have dedicated a significant amount of money for vouchers. And he said, "You should not have that much money for vouchers because they can't spend them. There are not enough places for them to even acquire, and so you should reduce the amount." I said, "No, we are going to build more affordable housing in the National Housing Trust Fund."

So what we are basically facing, I think, is where are they going to be able to build this additional housing, because of what we are talking about here today. And I think I have targeted about \$36 billion for the National Housing Trust Fund in order to build more affordable units. But the question becomes, are we going to be stymied in our efforts to build more affordable housing because of this residential zoning discrimination?

Ms. CASHIN. God bless you. I hope you prevail, Madam Chairwoman.

Chairwoman WATERS. I am listening to you very carefully, and you are absolutely right. The government created this discrimination, and we have the opportunity to undo it. And it is going to take courage and it is going to take pressure on the locals and all of the homeowners' associations that organize around making sure that they are not exercising, "Not in My Backyard (NIMBY)." And so, it is going to be a lot of work. And, of course, we are going to be accused of trying to disregard residential neighborhoods where people have invested, and that all of these people coming in from the outside, people who don't look like us just cannot come to our neighborhoods.

I will tell you, when you are in these fights, they turn the tables on you and us, and they call us racist. And so, it is going to be a lot of work.

Thank you for being here today. And thank you for all of your knowledge on this subject. I appreciate you very much.

Mr. Chairman, I yield back the balance of my time.

Ms. CASHIN. Thank you.

Chairman CLEAVER. Thank you, Madam Chairwoman.

The Chair now recognizes the distinguished gentleman from Little Rock, Arkansas, Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman, again for the subcommittee, and it is an excellent panel with a lot of good perspective, and I am grateful for everybody's participation.

Ms. Hamilton, I was very interested in your study and your formula idea, and your research shows how local zoning and regulatory decisions can raise the cost of new housing that I addressed in my opening statement. In the Baltimore-Washington region, for example, your research shows a price increase of 1 percent per year in localities that have adopted inclusionary zoning policies.

Can you explain that and give us some background, please?

Ms. HAMILTON. Thank you, Ranking Member Hill. I appreciate the question.

I am not optimistic about the potential for inclusionary zoning to solve the problems of exclusionary zoning. Typically, inclusionary zoning relies on density bonuses that localities provide to developments that include below-market-rate units. The problem with using inclusionary zoning as a solution to exclusionary zoning is that the tool that gives these density bonuses their value is exclusionary zoning itself. Without underlying exclusionary zoning, inclusionary zoning would be a clear tax on new housing construction, and taxing what we are trying to see in more abundance is not the right policy. It can never undo the harms of exclusionary zoning.

And as you said, I have studied inclusionary zoning in the Baltimore-Washington region. Montgomery County, Maryland, is often rightfully heralded as potentially the greatest success of inclusionary zoning, but even there, less than 4 percent of the housing stock is made up of inclusionary zoning units.

So, this policy has never been proven to be a tool that can provide anywhere near enough housing abundance for those households who need it.

Mr. HILL. Thank you. And I think that is a key point.

You also mentioned, I think, a good point—and Chairman Cleaver and I have talked about CDBG issues before, as the committee is considering some things there—about entitlement cities that obviously get a direct CDBG allocation, but a lot of suburban cities, or peripheral counties to an urban area don't. They typically get CDBG passthroughs maybe from a State Government, and I say maybe.

Can you talk about how your formula would adapt for that, for somebody who is not an entitlement city?

Ms. HAMILTON. That is correct. I would argue that instead, the correct universe of localities that should be eligible for a Federal carrot to reform exclusionary zoning should be all of the localities that are in the building permit survey conducted by the Census Bureau and HUD. Those are all of the localities that currently engage in land use planning and issue building permits, whereas CDBGs exclude, in particular, high-wage suburbs of high-wage regions. And this problem is the most acute in the northeast.

Mr. HILL. Yes, that is something that came out in our CDBG hearing, where we had this pre-1940 housing stock issue that dates from the 1970's in the CDBG formula, which really doesn't reflect reality. At the time, we were looking at 1930 and 1940 data, because we wanted to offer poorer cities some ability to improve housing stock. I get that. But now, we are 50 years later, and it seems to me a rule like that would absolutely be prejudiced against a city like Los Angeles, for example, whose 1940 housing stock wouldn't reflect one iota to its 2021 housing stock. So, that is very interesting.

What cities do you think do a good job in getting housing practices to bring new developers, new users of land bank properties in urban areas? Do you have a city in mind that has done a good job there?

Ms. HAMILTON. That is not my favorite approach. Instead, I would highlight localities that have engaged with exclusionary zon-



ing across broader areas of land, for example, Seattle's urban villages approach to up-zoning or minimum lot sizes in Houston.

Thank you.

Mr. HILL. Good. Thank you so much. That was very interesting, and I appreciate all of our panelists.

Chairman Cleaver, I yield back to you. And, again, I have to put in my bid for no more online hearings. We were disrupted listening to our leader, the Gary Gensler hearing was a disaster, and the markup was challenging. So I want to urge my colleagues to support going back to in-person hearings.

Thank you so much. And I yield back.

Chairman CLEAVER. Thank you, Ranking Member Hill.

The Chair now recognizes the esteemed Representative from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. And thank you for holding this important hearing on exclusionary zoning.

I would like to address my first question to Mr. Silverstein. Residents and homeowners in the neighborhoods of East New York that I represent have been working with community-based organizations to form a community land trust.

First, can you explain how community land trusts enable local residents to take ownership of buildings and homes in order to keep their neighborhoods affordable?

And, second, can you please explain the importance of having community land trusts in place prior to any up-zoning to mitigate the risk of speculation and gentrification?

Mr. SILVERSTEIN. Thank you, Congresswoman Velazquez.

Community land trusts are a critical tool for producing and preserving long-term affordable housing. In a community land trust, typically for a period—the land is owned by the community land trust, which is an entity itself, usually a nonprofit, and subject to a 99-year ground lease. Individual units, which could be apartments or they could be single-family homes, it can vary based on the context, would be occupied by residents and subject to affordability restrictions. And this 99-year ground lease structure can allow for the gradual accumulation of some home equity by residents so that wealth is built, but it also doesn't allow for unlimited accumulation in order to guard against speculation and rapidly increasing housing costs.

And actually, the House Financial Services markup for the Build Back Better reconciliation bill includes significant funding for community land trusts.

Ms. VELAZQUEZ. That is great.

Mr. SILVERSTEIN. When you have zoning proposals to increase density in low-income communities of color either in a localized way or as part of the broader-based, re-zoning plan, you can, as an intended or unintended consequence, rapidly increase land values and home values in that neighborhood running the risk of displacement. That is part of why it is important to prioritize these up-zoning efforts in higher-income areas. But if land is placed in a community land trust prior to re-zoning, then that 99-year ground lease structure provides a check against speculation and rapidly increasing prices, so that longtime community residents have the op-

portunity to benefit from the new investment that may be made in their communities, especially in places like East New York.

Ms. VELAZQUEZ. Okay. Great. Thank you.

And how can we, here at the Federal level, help encourage more communities and neighborhoods to form community land trusts?

Mr. SILVERSTEIN. Absolutely. Thank you, Congresswoman Velazquez.

I think there are a few key pieces. The first piece is funding. Certainly, additional funding for community land trusts is vital to the effort to grow a community land trust model, as well—and I am not an expert on this issue in particular, but through the Government-Sponsored Enterprises (GSEs) and the Federal Housing Administration (FHA), there may be some financing barriers that are more difficult for community land trusts or other shared equity models to navigate than for more traditional types of affordable housing, making it easier for community land trusts to access financing.

And also, there is the question of the availability of land, so encouraging local governments to, for instance, deed tax foreclosed properties or other surplus land to a community land trust would be an important step to take as well.

And then, of course, as is consistent with the subject of this whole hearing, you need the zoning to be appropriate for the type of housing, and even some small business development that the community land trust is seeking to engage in.

Ms. VELAZQUEZ. Thank you so much.

Mr. Chairman, I yield back.

Chairman CLEAVER. The gentlewoman yields back.

The Chair now recognizes the distinguished Mr. Posey for 5 minutes.

Mr. POSEY. Thank you very much, Mr. Chairman, and thank you for holding this hearing.

To say I am very disappointed to hear one of our witnesses stereotype and blame REALTORS for creating a problem by steering is offensive and not accurate. REALTORS, of which I am one, adhere to a very strict code of ethics, a very strong code of ethics. If they don't do that, they are not REALTORS. I would ask the witness who made that statement if she would like to communicate with me offline and to provide me with some evidence of the steering that she claims was caused by REALTORS.

Dr. Hamilton, I really like your concept of rankings. How would you rate programs that provide incentives for affordable housing within low- to moderate-income neighborhoods compared to those programs that rely on zoning reform and relocating families to new neighborhoods?

Ms. HAMILTON. Representative Posey, thank you for the question.

I would argue that both pieces are important. On the one hand, exclusionary zoning reform is the first step toward allowing more abundant, lower-cost housing to be built; but on the other hand, that is not a sufficient policy to help the country's lowest-income households in the near term in particular. So, I think certainly subsidies to those lowest-income households that can be used in those households' neighborhoods of choice are appropriate. But I would err on the side of granting beneficiaries the most freedom in determining where they would like to live that best meets their own

needs and pointing out that any subsidies will go further in localities where exclusionary zoning is not a serious burden relative to those localities where it is a burden.

Mr. POSEY. Very good. Thank you.

What should our priorities be if we want to have the most impact and accessibility to affordable housing?

Ms. HAMILTON. The barriers to housing construction vary widely across the country. In a dense old city, the most important barriers are very different than in a fast-growing suburb; but across the country as a whole, I would argue that minimum lot size reform is the most important reform to permitting more lower-cost housing to be built quickly. Parts of the country have lot size reforms that are severely out of line with what the market is currently providing. In New England, in particular, it is not uncommon to see 2-, or even 5-acre lot-size requirements.

Mr. POSEY. Okay. Most simply put, making housing more affordable depends on lowering the costs of constructing new houses?

Ms. HAMILTON. That is right.

Mr. POSEY. Market prices of housing are determined at the new housing margin of the market. What should we do to reduce the cost of building new and single-family housing?

Ms. HAMILTON. Most importantly, addressing the regulatory barriers that without doing so, more Federal funding will simply increase the cost of the existing housing stock, without permitting that funding, as well as private funding to housing to go toward lower costs and a more abundant housing supply.

Mr. POSEY. We all want to assess the accessibility, especially low- to moderate-income families. Tell us what your research suggests are the best strategies to make affordable housing available for the lowest-income families.

Ms. HAMILTON. I mentioned Houston as a potential model earlier. No locality in the U.S. does everything right in land use regulation, I would argue. But Houston has a lot of lessons to teach other localities. They are widely recognized for permitting abundant green field development, which is true; but, additionally, Houston permits multifamily housing at a high rate. It has no areas of the City where local regulations prevent multifamily housing, and its minimum lot size reform that I mentioned earlier has resulted in the construction of tens of thousands of new townhouses, which are relatively affordable relative to single-family development in some of its highest-demand neighborhoods.

Mr. POSEY. Thank you. I really appreciate your detailed answers.

And I see my time is about to expire, Mr. Chairman. Thank you again. I yield back.

Ms. HAMILTON. Thank you.

Chairman CLEAVER. The gentleman yields back.

The Chair now recognizes the esteemed gentleman from Houston, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I greatly appreciate the opportunity to be heard.

I do live in Houston, and we do not have zoning in Houston, Texas, and while that can benefit a good many people, it also has a downside to it. I happen to have had the opportunity to serve as a judge of a small claims court, and we had persons who have had,

unfortunately, structures erected on property near their homes that was not suitable. And when you don't have zoning, you then have restrictive covenants, and getting those covenants enforced can be quite challenging, especially for a person with a modest income.

I am interested in hearing from some of our panelists about these restrictive covenants that are not enforceable. I am talking about those that can benefit a person, if you have one. In a good many places, the covenants are not enforceable because they have not been honored over the years and, as a result, you can't enforce the covenant.

So, who would like to be the first to say a word about this problem that we have when we don't have zoning, and we cannot enforce covenants because of a lapse of activity over the years?

Ms. HAMILTON. Representative Green, I will offer a brief answer, since I have mentioned Houston. Certainly, Houston has seen the emergence of restrictive covenants, particularly in its single-family neighborhoods, in the absence of local zoning.

Certainly, zoning does have benefits for those who don't want to see change in their neighborhoods as land prices rise and demand for housing increases as well. I would argue, though, that these benefits of zoning are outweighed by zoning's costs in terms of housing affordability and opportunities for people to live in the neighborhood or region of their choice.

Mr. GREEN. You mention the lot size, and you mention that in Houston, we have done well with lot sizes. Since I live here, I guess my best evidence would be by experiences and what I have seen. Explain to me what you mean by the lot sizes in Houston, because I see still large acreage for single homes.

Ms. HAMILTON. Thank you, Representative.

In 1998, Houston reduced the minimum lot size for development within its I-610 inner loop from 5,000 square feet down to 3,500 square feet and, in some cases, down to 1,400 square feet, when specific requirements are met.

And this has resulted in the construction of detached and attached townhouses in many of the city's neighborhoods, particularly those neighborhoods closest to downtown job centers. This has helped provide a lower-cost type of housing construction relative to large-lot single-family developments.

Private covenants may remain a barrier to townhouse construction in plenty of parts of the City, but the reform that local policymakers implemented has, nonetheless, resulted in the construction of tens of thousands of new units that would have been impossible to build otherwise.

Mr. GREEN. Since I have a bit of time left, and we have had a lot of excellent questions, I am going to go a little bit offline with this question.

I see a lot of people just outside my window in my congressional office who have made their home the overpass. There are efforts afoot to relocate people from the overpasses, and there is always a movement to place them in a certain area if at all possible.

What have you seen across the country in terms of helping people to move from the overpasses to someplace that we would call a home? How is that working?

Ms. Hamilton?

Ms. HAMILTON. Thank you again, Representative.

I would point out that homelessness is not highest in the parts of the country where poverty is highest. It is instead highest in parts of the country where exclusionary zoning rules are most binding. Subsidies and other interventions for homeless individuals are needed to help them in the near term, but, again, zoning is a relevant component.

Mr. GREEN. Thank you.

I yield back, Mr. Chairman. Thank you very much.

Chairman CLEAVER. The gentleman yields back.

The Chair now recognizes Mr. Steil for 5 minutes.

Mr. STEIL. Thank you. Thank you very much, Mr. Chairman. I appreciate everybody being on the call and at the hearing here today.

I think we have had a lot of good dialogue here about what is really driving up the costs and how we get Americans into housing and, in particular, what the role of zoning is in adjusting these costs. We often see that several of our biggest cities, Democratic-controlled cities, across the United States have really strict zoning rules and regulations that seem to be driving up the costs.

And I think it is something that we don't spend enough time looking at and thinking about, when you look at the cost of housing in New York City and Los Angeles, and what the role of local regulation is on this, and what role these demand-side subsidies would have inside the overall cost of housing in the context of not really addressing the supply-side issue in many of our nation's largest cities, again, in particular, New York City and Los Angeles, which both have supply-side constraints on housing, often through local zoning requirements, coupled with some of the highest housing costs in the United States of America.

Ms. Hamilton, as you may know, the Majority has passed about \$300 billion in new housing spending through this committee, and most of the money would go towards demand-side subsidies. And, based on today's conversation, it seems pretty clear that the core problem that we are facing in the market is really this supply-side issue. In many places, supply is tight and limited by overbearing regulations that make this housing development uneconomical or, in some cases, actually impossible.

Could you give us some insight into what would happen if the Federal Government just throws billions and billions of dollars more into the market on the demand side with limited supply?

Ms. HAMILTON. Thank you, Representative Steil.

Certainly, that is a very real concern about expanding current Federal housing subsidies, is that, in particularly the most exclusionary regions, those subsidies will simply increase the cost of a relatively fixed stock of housing rather than leading to overall abundance and the opportunity for more people to live in the location of their choice.

There are examples where we see Federal subsidies working well, leading to the construction of low-cost multifamily housing, from which the beneficiaries are intended to benefit, and that is a positive outcome. But it is not the norm, due to local exclusionary zoning rules. And it is not—

Mr. STEIL. Ms. Hamilton, this format is just terrible. I can't wait until we are in person again for all of our hearings. But let me dive in on that, because I think what you are bringing up is really important.

There is a great study out there from 2018 which shows that regulations can add up to \$93,000 of costs on a home, where a single-family home price is now maybe just under \$400,000 in the median. And, effectively, all of these regulations and zoning function almost like a new tax on new housing, which moves us in the wrong direction.

And one of the things I don't think we discuss enough is, who is footing the bill for this, right? Are certain groups uniquely impacted by what I call NIMBYism of all of these local zoning rules and regulations?

Ms. HAMILTON. Yes. Low-income households are those who are most burdened with the cost of exclusionary zonings. And to the extent that additional subsidies will increase the price of market-rate housing, which is what the vast majority of Americans of all income levels live in, additional—

Mr. STEIL. So, is it fair to say that some of our biggest Democrat-run cities that are putting in all of these regulations and controlling the supply are actually clobbering the low-income households? That is your take on this?

Ms. HAMILTON. Certainly.

Mr. STEIL. Yes. It is mine too. It is one of the big frustrations that I have here, is we only look at increasing demand-side money, spending taxpayer dollars from all across the nation, and really not addressing the supply-side issue in some of our biggest Democratic-run cities.

You share that frustration, it sounds like, Ms. Hamilton.

Ms. HAMILTON. I do. Thank you.

Mr. STEIL. Could you maybe just add a little more, in particular on what we could be doing on the zoning side as it relates to this government funding, if you would?

Ms. HAMILTON. I would support a flexible grant program that gives our local policymakers wide freedom in what they spend the grant money on—that is nonetheless defensible purposes. Because the purpose of these grants is to encourage regulatory reform, not to fund specific programmatic outcomes.

Mr. STEIL. I appreciate that.

Cognizant of my time, Mr. Chairman, I appreciate you holding today's hearing, and I will yield back.

Chairman CLEAVER. I thank the gentleman for his questions.

Let me just make a correction for the record.

In 2019, Newsday published the, "Long Island Divided" series. It was an exhaustive, 3-year investigation into racial discrimination in home buying on Long Island. And they deployed actors to conduct fair lending testing, which involved the use of hidden cameras. Many of you may have seen this on TV. They recorded meetings with real estate agents. And this is one of the many fair housing testing investigations.

And it confirmed longstanding findings over the decades showing that in nearly a quarter of the tests—24 percent—agents directed Whites and minorities into different communities through house

listings that had the earmarks of steering—the “unlawful sorting of homebuyers based on race or ethnicity.” That is a direct quote.

The Chair now recognizes the eminent Representative from Ohio, Mrs. Beatty.

Mrs. BEATTY. First of all, let me say good afternoon, and thank you, Chairman Cleaver, and thank you, Ranking Member Hill.

My first question is for Ms. Cashin. Historically, zoning has been used by city and local governments as a tool to segregate Americans. And that segregation got us into parts of towns that were known as Black neighborhoods or wealthy neighborhoods or even Jewish neighborhoods, et cetera. Remnants of racial and ethnic discrimination persist in cities today and communities all around the country. And that is what we are hearing today.

And from these discriminatory zoning and segregation policies of the past, the Civil Rights Act has outlawed intentional discrimination. But how do our current zoning policies and other local housing ordinances remain a tool for discrimination and segregation, in your opinion?

Ms. CASHIN. Thank you, Congresswoman, for that question.

Racial exclusionary zoning was struck down by the Supreme Court. So, obviously, even though many exclusionary zoning ordinances, when they were passed, were animated by anti-Black prejudice and continue to be, they use racially neutral tools to exclude people who cannot buy very expensive, large-lot, large homes.

You can zone, particularly in newer communities, only for large-lot, expensive housing. You can require certain types of materials. You can have nothing in your zoning code that provides for multi-family living, not even market-rate apartments, right? And, now, all of these ostensibly racially neutral things disproportionately exclude people of color.

Mrs. BEATTY. Okay. Thank you.

Mr. Silverstein, while zoning reform and redevelopment can expand housing opportunities for low- and middle-income Americans, if the right safeguards are not in place and the right incentives are not in place, it can exacerbate the lack of affordable housing and lead to gentrification.

What are some of the things that the Federal and local government [inaudible] affordable instead of building more luxury condos like we are seeing in Washington, D.C., and here in Columbus, Ohio?

Mr. SILVERSTEIN. Absolutely. Thank you for the question, Congresswoman Beatty.

I think there are a few pieces of this. First, to the extent that localities are taking on zoning reform specifically in response to Federal incentives or requirements—and Congress is designing those Federal incentives and requirements—it should be clearly baked in that the purpose of the zoning reform is to increase the supply of deed-restricted affordable housing.

That does not mean that there wouldn't be any market-rate housing, some of which may be luxury housing produced as a result in addition, in the context of a mixed-income development. There is certainly a place for that, and those market-rate units could help cross-subsidize affordable housing units in addition to being paired with a subsidy. But, basically, at the level of policy design, you ab-

olutely want to make sure that your overriding purpose is on creating more affordable housing.

Second, there is an enforcement side to this. If a jurisdiction is engaging in targeted up-zoning that is predictable, and is likely to cause displacement, that, just as much as exclusionary zoning, raises questions about Fair Housing Act compliance. HUD and DOJ have an enforcement role to play in looking at those types of practices. And, certainly, that is something that I think you can—

Mrs. BEATTY. I am going to have to interrupt, because my time is almost up, but I get the gist of it, and I want to thank you.

As we look at Build Back Better, in light of what most of the folks have said who have testified, and also from the questions from my colleagues on both sides of the aisle, a lot of this confirms what Chairwoman Waters has been saying: We need to make sure that, as a top priority, housing is well-funded in these packages that we are going back on the House Floor and we are voting for. We must not cut those dollars. We must include housing at the highest amount in both of our bills when we come back on reconciliation and infrastructure.

Thank you, and I yield back.

Chairman CLEAVER. The gentlewoman yields back.

The Chair now recognizes the notable Representative John Rose for 5 minutes.

Mr. ROSE. Chairman Cleaver, and Ranking Member Hill, thank you for holding this hearing. And thank you to our witnesses for your time and your expertise on this Friday afternoon.

The supply of homes for sale at the end of August 2021 totaled 1.29 million units, down 1.5 percent from July, and down 13.4 percent from August of last year, according to the National Association of REALTORS.

Housing supply is failing to keep up with the demand, and it is resulting in dramatically higher prices for homes. Therefore, it is critical that we have affordable housing options for families across the nation.

In Tennessee's Sixth Congressional District, which I represent, 12.9 percent of total occupied housing units are manufactured homes. Manufactured housing is the most affordable homeownership option available nationwide for minorities, underserved and low-income borrowers. According to U.S. Census data, 90 percent of new homes under \$75,000 are manufactured housing.

Dr. Hamilton, many cities and towns ban manufactured homes as a permitted use in residential zones and relegate them to a special overlay zone in one small area of the community. This often eliminates affordable homeownership in areas of opportunity in that community.

At the Federal level, how can we encourage communities to expand zoning, including manufactured homes, to increase affordability, especially in areas of opportunity near good-paying jobs, high-quality schools, and other amenities?

Ms. HAMILTON. Thank you, Representative Rose. I certainly agree on the importance of manufactured homes as one piece of the solution to permitting abundant low-cost housing.

Some States have taken an approach of requiring their localities to permit manufactured homes on all residential lots across the



State, Nebraska being one example. But I would argue that State policy or Federal policy intended to increase the availability of manufactured homes needs to go further, addressing rules like minimum lot-size requirements that make manufactured homes often not make sense, when the differential between the lot and the cost of the house is too large to be a logical market outcome.

Mr. ROSE. You mentioned the size of the lot. And I want to ask a follow-up question, but let me stay on point here for a second.

Statute requires HUD, when allocating grant money like CDBG or HOME Program funds to communities, to ensure those communities have manufactured housing considered as part of their affordable housing plans. HUD has not utilized this part of the law, and many communities exclude manufactured housing in their zoning plans. This eliminates a potential rich source of affordable homeownership for many parts of the country.

How can HUD compel communities to include manufactured housing in their comprehensive housing plans?

Ms. HAMILTON. HUD could certainly go further to act on that language. But I would argue that real change must come from Congress and members of this committee changing the statutes that HUD works with to provide them with more teeth to compel local zoning reform.

Mr. ROSE. Very good.

I mentioned that I want to get your opinion on a situation—we see a lot of people moving to Tennessee from higher-cost areas like California and the Northeast. And one of the land use planning issues that is maybe particular to Tennessee, although maybe other rural States face this, is that in Tennessee, you can avoid local planning commissions if the lot sizes that you subdivide property into are 5 acres or larger.

Tennessee has another curiosity—they require a 50-foot access strip to a public road. And it creates a situation where we are seeing some very difficult subdivisions happening, where you have these 50-foot strips making their way back into larger tracts of property.

Have you seen that problem? And what is your opinion about the long-term implications of this land that is divided into these very narrow strips for access purposes, and for purely meeting the zoning requirement?

Ms. HAMILTON. Representative, that is an excellent example of the interaction of the many regulations that local governments enforce sometimes leading to outcomes that just don't make sense and constrain housing construction as a result. That is why I would focus on rewarding housing-market outcomes rather than specific policy changes.

Mr. ROSE. Thank you.

I see that my time has expired, Mr. Chairman, so I yield back.

Chairman CLEAVER. The gentleman yields back.

The Chair now recognizes the celebrated Representative from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. I love to celebrate any party we celebrate.

I want to thank you and the ranking member, Mr. French Hill, a good friend, and especially Chairwoman Maxine Waters, because

I think that this is a very, very important issue, the affordability of housing, but it is also a very complicated one, just to be frank.

I was on the San Diego City Council for about 7 years, and I sat on two committees mostly: the Public Safety Committee; and the Land Use and Housing Committee. And on the Land Use and Housing Committee, I got to know a little bit about San Diego and how it is built.

Every city is different, but basically we are constrained by—you can't go south because it is a different country; it is Mexico. You can't go west because it is the ocean. East, interestingly, you bump into mountains, and it is very difficult and expensive to build into mountains. And going north, you hit Camp Pendleton, which is a military base, and we like it and we don't want to change that. We need to train our Marines there.

So you are really constrained in this area, and almost all of the available land for development is used. Now, you have to have density, and I think density is very, very important. That is where, of course, zoning comes in.

But we have had some experiments here that have gone very badly. For example, I think everyone tried to do the right thing back in the 1960s and said, the center part of the city, an area that was a little bit older, with housing that was over 50-years-old, we are going to allow for the change in zoning, and allow up to 6 units in a single-family neighborhood. And, of course, they thought it would be a great idea because it was fairly close to the downtown, there were transportation quarters there, and there was also housing, but the housing was dilapidated. It needed some changes because it was 50-years-old. But they thought it was a good idea.

What happened was, instead, you got a lot of people who came in and did what they called the, "Huffman Six-Pack." They bought the single-family house, they basically scraped it, and they built the ugliest possible square box with six units there. In the front, instead of having grass and a place to park, it was all cement, and you just simply parked your car. And it destroyed those neighborhoods. It really did.

I was on the Public Safety Committee, and I can tell you that most of the problems that we had in those neighborhoods was what came out of those Huffman Six-Packs. So, they changed the zoning again not to allow that, which was too bad, because I think it really was the character of what they built—not the density, but what they built. They built it as cheaply and as badly as they possibly could just to squeeze money out of it.

Now, we are building areas with much more density than that, much more than six units, and it is done right. They don't just scrape the front yard. You had one area; you park underneath the building. You go up a number of spaces. It is more expensive to build like that, but it is a better building.

Anyway, I mention that because it is not so easy just to simply change, and it is not always racism either. Interestingly, in this neighborhood, most of the people are people of color. So, they are not against people of color moving in. They are just saying, don't build, like they built before, those Huffman Six-Packs. It destroyed the neighborhood.

Does anyone have a comment on that?

Because, again, I believe in density. I think density is good. But you can't just build the crappiest possible building there, because it does destroy those neighborhoods.

How about Professor Cashin? Any comment on that?

Ms. CASHIN. Can you hear me?

Mr. VARGAS. Yes. Absolutely.

Ms. CASHIN. Okay. Part of the reason why I support strongly encouraging communities to adopt their own inclusionary zoning ordinance is that it can be tailored to their individual circumstances. In the process of doing that, hopefully all of the constituencies in the community get to participate in shaping what that looks like. It is not for the Federal Government to say what it should look like.

But the point is that communities, and, yes, including a lot of Democrat-run cities, need to get going on a vision of inclusion, where people of all colors, races, and economic circumstances can live together more densely and more affordably.

I love the idea of creating more micro-housing, and allowing manufactured housing to come in. But strongly incentivizing, enforcing Affirmatively Furthering Fair Housing (AFFH), putting pressure on localities to innovate and build cities and communities of the future that include and work for everyone.

Mr. VARGAS. My time is up. And I agree with you. The only thing is, I think the product is important too, what you build. Because if you build a crappy building, that does, in fact, create problems for everybody, especially if you want to create more density.

And, again, Vienna is one of the most dense places in the world, and it is the most livable city. Density is good; it just has to be done right.

Thank you very much. I yield back, Mr. Chairman.

Chairman CLEAVER. The gentleman yields back.

The acclaimed Floridian, Mr. Lawson, is now recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman. And I want to thank you for having this hearing. And I want to thank the panel for being here today. It is a very important issue.

In only 12 counties in America can a full-time worker earning State or Federal minimum wage afford a one-bedroom home. According to this report, in no State at all can a person earning minimum wage afford a two-bedroom apartment. [inaudible] Have another detrimental effect, delaying homeownership, long the symbol of the American Dream.

In my district in Duval County, in order to afford a moderate two-bedroom home, renters need to earn \$18.62 an hour. That is \$10.53 more than the State minimum wage and about \$2 more than what the average renter in Jacksonville earns.

Ms. Gallo, putting the minimum-wage issue aside, how can localities better encourage development to increase the production of affordable units targeting extremely low-income households?

Ms. GALLO. Thank you for the question.

This is the reason why demand programs are just as important as supply. Because the income level for many communities is exactly as you quoted in the, "The Gap" report from the National Low

Income Housing Coalition, which many of us read and assess and develop programs from and recommend policies to.

Supply and demand are both complicated issues, and you cannot address one without the other. What you are referring to is when people's incomes are so low, there have to be programs to provide opportunities for people to pay just 30 percent of their income for rent. So, the voucher program is critically important.

At the same time, there needs to be programs to increase the production of housing so that supply is not so constrained that the cost continues to go up. And that is where—I think one of the Members talked about it—billions of dollars going to construction is absolutely necessary.

The Low Income Housing Tax Credit Program is one very key program that can facilitate the development of affordable housing for people at the extremely low-income housing level. In fact, over its history, it has developed millions—I think it is 3 million—units across the country.

So, I would encourage the Members of Congress to continue to pay attention to those programs. There are various proposals before you that would increase the allocation of tax credits to develop extremely low-income housing. And then, keep the focus on the Housing Voucher Program and being able to provide those vouchers universally to everyone who needs them.

Mr. LAWSON. Okay. Thank you very much.

And, as a follow-up, Mr. Silverstein, can zoning reform alone resolve affordability and equity concerns?

Mr. SILVERSTEIN. Thank you, Congressman Lawson.

No, zoning reform on its own cannot resolve the affordability crisis, and it certainly can't do so in a way that centers racial equity.

Zoning reform is one critical piece of a broader strategy. It has to be strategic and targeted in how zoning reform is crafted. And it also has to be paired with actual investments in subsidized housing, such as those included in the Build Back Better reconciliation package.

And I would say quickly on one point, the investment in Housing Choice Vouchers is not, strictly speaking, just a demand-side measure. Most new affordable housing that is built to reach extremely low-income households includes Housing Choice Vouchers that have been project-based.

So, I don't think that we should buy into a strict dichotomy between Housing Choice Vouchers as a demand-side program and the other investment as being supply-side. Housing Choice Vouchers can play on both sides of that line.

Mr. LAWSON. Okay.

With that, I yield back, Mr. Chairman.

Chairman CLEAVER. The gentleman yields back.

The Chair now recognizes the notable New Yorker, Mr. Torres.

Mr. TORRES. Thanks, Mr. Chairman.

The United States has been and continues to be zoned for segregation. Exclusionary zoning produces and perpetuates housing segregation by race and class, which in turn produces and perpetuates school segregation by race and class.

Ours is a nation that preaches equal opportunity but often practices segregation. And the research of Professor Raj Chetty has per-

suasively shown that ZIP Code is often destiny, and that where you live often determines your opportunity and mobility.

My first question is about one of the most egregious forms of exclusionary zoning, single-family zoning. This question is for Sheryll Cashin and Thomas Silverstein, and it is a yes-or-no question. Is single-family zoning a violation of the Fair Housing Act?

Ms. CASHIN. I am going to say, "yes." I would have to explain why, but I am going to say, "yes," and leave you your time, sir.

Mr. TORRES. Mr. Silverstein, your opinion?

Mr. SILVERSTEIN. I am going to say, "often," and I would have to explain why.

Mr. TORRES. Okay.

Ms. Hamilton, your testimony and your exchange with Congressman Steil, in my opinion, set up a false choice between housing supply and housing subsidy. It is not an either/or proposition. We need greater housing supply to ensure a sufficient quantity of housing, and we need a greater housing subsidy to ensure sufficient affordability of housing.

The Build Back Better Act envisions an historic expansion of Section 8 vouchers, which would make housing units affordable that would otherwise be unaffordable to the lowest-income Americans.

So, we disagree on the question of housing subsidy, but I have a question regarding housing supply. You have spoken about the need for land use reform through incentives. I am admittedly skeptical about the effectiveness of incentives. It seems to me that an exclusive community that is determined to remain exclusive is unlikely to be swayed by incentives.

So, what reason is there to think that incentives would be effective at effectuating the kind of land use reform necessary for addressing the affordability crisis?

Ms. HAMILTON. Thank you, Representative. I agree that incentives are not sufficient to encourage local zoning reform, particularly because the problem is most severe in high-tax-base localities where these Federal grants are going to be least effective.

For that reason, I think any program that does use incentives must be designed in order to be as effective as possible, recognizing that ultimately, reforms must come from the local or State levels, in some cases, rather than relying on the Federal purse strings.

Mr. TORRES. It seems to me the proper response to exclusionary zoning is not incentives, but the proper response is robust enforcement of the Fair Housing Act.

I have a question for Mr. Kahlenberg. I admire your research on segregation. And, in the time of gentrification and speculation, there is an understandable concern that more development would likely lead to displacement rather than desegregation. In your opinion, how do we best structure development to ensure desegregation instead of the displacement that many fear?

Mr. KAHLENBERG. Thank you for the question, Congressman Torres. I have two thoughts on that issue.

First of all, I think there is good evidence that exclusionary zoning, in general, causes more gentrification and displacement. That is to say, when individuals who might purchase a home in a middle-class neighborhood cannot afford to because of exclusionary zoning, that leads them to choose to go into a neighborhood that

is gentrifying and, thereby, displace people who are living there. So, that is part of the issue.

The other is that I think we have learned from California and elsewhere that zoning reform that only provides up-zoning without protections for individuals who may face displacement is wrong, and it is politically unfeasible as well.

And so, I would agree with Professor Cashin, who has emphasized the importance of exclusionary measures when there is an area that is being up-zoned, and associated measures to make sure that there is not expansive displacement.

Mr. TORRES. Is there a locality that you feel represents the right model of affordable and sustainable and equitable development?

Mr. KAHLENBERG. I think we are still searching for that perfect model.

Mr. TORRES. Okay.

I see my time has expired. Thank you, Mr. Chairman.

Chairman CLEAVER. Thank you, Mr. Torres.

Before I begin my questioning, I want to place into the record a letter from the National Multifamily Housing Council, without objection. And this letter is dated October 15, 2021. Without objection, it is so ordered.

I would like to just have a quick conversation with two of our witnesses, Mr. Kahlenberg and Ms. Gallo.

Can you, in just a few words, speak to me please about the difference between segregation and gentrification? Either one, or both of you.

Ms. GALLO. Segregation is what we have been talking about in terms of the consequences of zoning practice throughout this country, when you are deliberately creating situations where people, particularly people of color and lower-income people, cannot live in certain areas and the decisions to allow that to happen are essentially sanctioned through policies and programs. So, zoning is one practice where you have certain people not being able to live somewhere because of, for instance, the single-family zoning conversation.

Gentrification happens when we have people displaced from communities who have traditionally lived there for a long time, and it happens from up-zoning practices that are not done correctly. Gentrification is when neighborhoods start to change from a predominantly low-income community to one that has higher prices for homes, both rental and sales, and causes the people who live there to no longer afford to live there.

That is my layman's definition, practicing affordable housing development.

Chairman CLEAVER. Mr. Kahlenberg?

Mr. Kahlenberg, are you still with us?

Well, let's continue this. As I mentioned, I chaired the Planning and Zoning Committee when I was on the city council in Kansas City. And one of the problems that just drives me crazy is, we have an historic west side which has been primarily an Hispanic area for 100 years—in fact, we have an Hispanic community center, the Guadalupe Center, that has been there for 100 years—but, all of a sudden, most Hispanics cannot live there anymore because of

what has happened with the gentrification. And only the long-timers can afford to still live in that neighborhood.

And so, I am obviously necessarily concerned, when you look at minorities' rate of homeownership, and compare Black and Brown homeownership with White homeownership, which is exploding at about 75 percent.

The Urban Institute has recommended that policymakers create more opportunities for affordable homeownership and reform local zoning laws. Land use policies need to be reformed, building codes that inhibit affordability housing and development. And we need to create a means of reducing the racial homeownership gap.

But I don't know if any of those things we did can halt it if people, Mr. Kahlenberg, are moving in and they have a significant income level over the existing residents. So what is that? Is that segregation, financial segregation, or is it still gentrification, as Ms. Gallo mentioned?

Mr. KAHLENBERG. I apologize, Chairman Cleaver. I have been having connectivity issues, so I am not sure that I got all of the question.

But the question of gentrification and displacement is a central one. I think we want to see some movement where there are neighborhoods where there is going to be a nice and healthy economic mix, but we have to have those protections in place to make sure that there is not displacement.

But I apologize, because I didn't get most of your question.

Chairman CLEAVER. I get excited about some areas in Kansas City, Missouri, that are now becoming diversified; they are racially mixed. But many of the homeowners in those areas are saying to me, "Look, we are going to get priced out of here, it is just a matter of time." And they are saying, "This is going to become another segregated neighborhood, and we will have to move out of here. Because the people who are moving in have higher incomes, and they are moving in, and rehabbing the older homes."

And I am not sure that there is a zoning law that can touch this issue. So, I am looking for the housing intelligentsia to give me the solution to this issue.

Mr. KAHLENBERG. I would say that Philadelphia is one of the leaders on this issue, where they are taking steps to make sure that there are supports for those who were longtime residents in the community that are not displaced. So, that is one model to look at.

Ms. GALLO. And I would add, the community land trust conversation we had earlier is something that should be pursued in areas that are facing gentrification.

Chairman CLEAVER. Okay.

We appreciate all of the witnesses. Thank you very much for providing us with, I think, some tremendously important information.

Let me now recognize, before I close the hearing out, the ranking member, Mr. Hill.

Mr. HILL. Chairman Cleaver, thank you. This has really been an interesting hearing. I thought it was an excellent give-and-take discussion, so thanks for holding it.

I just had a quick question before we wrap up, since we are not able to see each other in person. We haven't had a hearing on the

oversight of the secondary mortgage market, particularly Fannie Mae and Freddie Mac, since December of 2018. I wanted to put that on your radar and see if you would agree with me to perhaps urge our Full Committee Chair that we do that.

Chairman CLEAVER. Yes, we actually need to do that, especially now that there is a new head of the Federal Housing Finance Agency (FHFA). So, I think it would be a good time for us to have that hearing.

Mr. HILL. Thank you. And I yield back to my friend.

Chairman CLEAVER. We will talk with you about that later.

I would like to thank again all of the witnesses, and thank the distinguished ranking member.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

If there are no other questions or important people coming forth, the eminent Members of Congress are now dismissed for lunch. This hearing is now adjourned.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]



# **A P P E N D I X**

October 15, 2021

**Testimony of Sheryll Cashin,**

Carmack Waterhouse Professor of Law, Civil Rights and Social Justice, Georgetown University

House Financial Services Subcommittee on Housing, Community Development, and Insurance  
Hearing: “Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and  
Opportunity”

October 15, 2021, 12 p.m. ET.

Good afternoon. As a law professor, author, and former White House staffer in the Clinton Administration, I have spent nearly three decades grappling with the issue of US residential segregation – its origins, persistence, and calamitous effects in producing racial and economic inequality. My most recent book, *White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality* (2021) reflects these decades of examination and analysis. It argues that we have a system of residential caste, in which government over-invests and excludes in affluent white spaces, and disinvests, contains, and preys on people in high poverty Black neighborhoods. These are the extremes of American residential caste. But everyone who cannot afford to buy their way into high-opportunity neighborhoods is harmed by this system. People of all colors who are trapped in concentrated poverty are harmed the most. They are systemically denied meaningful opportunity for social mobility, no matter how hard they work to escape. In the book I show that residential caste is animated by three anti-Black processes: boundary maintenance, opportunity hoarding, and stereotype driven surveillance.

Boundary maintenance is a polite phrase for intentional state action to create or maintain racial segregation. The dominant response to at least 6 million Black “Great migrants” moving north and west to escape Jim Crow in the 20<sup>th</sup> century was to contain them in densely populated Black neighborhoods and to cut those neighborhoods off from essential public and private investment that was and is regularly rained down on majority white areas. In addition to racially

restrictive covenants, mob violence, mortgage redlining, and racial discrimination in housing sales and rentals, exclusionary zoning was a key tool for creating and insulating predominantly white neighborhoods. Exclusionary zoning was first sanctioned by the U.S. Supreme Court in 1926 in the case of *Village of Euclid v. Ambler Realty*. The Court explicitly endorsed the idea that certain uses of land, like duplexes, were “parasitic” on single-family homes and the people who lived there. In ensuing decades, thousands of new suburban governments would form, enabling middle and upper-class whites to wield the zoning power to exclude certain types of housing, particularly rental apartments, and therefore exclude unwelcome populations. Fast-forward to today and where high levels of Black segregation persist, researchers have found that it was actively promoted by zoning laws that restricted density and by high levels of anti-Black prejudice, particularly in places with large numbers of Blacks with lower incomes and education levels than most whites. (See Douglass S. Massey and Jacob S. Rugh, “Segregation in Post-Civil Rights America,” *Du Bois Review* 11, no. 2 (2014), 205.) And, according to a stunning, [geographically mapped analysis produced by the New York Times](#), “***It is illegal on 75 percent of the residential land in many American cities to build anything other than a detached single-family home.***” (Emily Badger and Quoc Trung Bui, “Cities Start to Question an American Ideal: A House With a Yard on Every Lot,” *New York Times*, June 18, 2019, emphasis added.) That figure is even higher in many suburbs and newer Sun Belt cities.

This hearing is about exclusionary zoning, which necessarily concerns local zoning power. But it is important to recognize the singular, outsized role of the federal government in creating and continuing America’s separate and unequal residential landscape. Federal government mandated redlining, marking Black neighborhoods as “hazardous” and cutting Black residents out of its largest wealthy building subsidies (HOLC, FHA and Veterans Administration

insured mortgage lending). Federal government through its mortgage underwriting rules, insisted that lenders insert racially restrictive covenants in deeds. Federal government spent billions for “urban renewal” to displace Black occupied housing and paid cities to build high-rise public housing that intentionally placed Black and white tenants in separate and unequal housing projects. These policies created iconic Black “ghettos” that exacerbated white flight and resistance to having Black neighbors. Federal government paid for and acquiesced in an interstate highway program laid to create racial barriers in cities and facilitate easy exit from cities to majority white suburbs. (For a detailed overview of this federal history see Sheryll Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (2004), Chapter Three.)

The federal government still invests in segregation. To date, George Romney, Sen. Mitt Romney’s father, is the only HUD secretary to have pressured and penalized communities for exclusionary zoning laws and for refusing to build affordable, nonsegregated housing. For decades, both HUD and local governments regularly violated the Fair Housing Act of 1968 requirement that communities “affirmatively further” fair housing. For decades, HUD has distributed about \$5.5 billion annually in grants for community development, parceled among more than 1,000 local jurisdictions nationwide, with no meaningful accountability for promoting inclusive, integrated housing. The federal government also continues to concentrate poverty through the Low-Income Housing Tax Credit (LIHTC) program, its largest subsidy for affordable housing. Each year the LIHTC funnels about \$10 billion for affordable housing construction, and only 17 percent of those units get built in high-opportunity neighborhoods with high-performing schools, low crime, and easy access to jobs. That keeps Americans who need affordable housing concentrated in the same low-opportunity areas.

This history *and present* of federal-backed segregation inform the legal and moral case for congressional action to disrupt exclusionary zoning and residential caste. Intentional segregation of Black people in the 20th century shaped development and living patterns *for everyone* and put in place an infrastructure for promoting and maintaining segregation that lives on. Racial steering by realtors who nudge homebuyers into segregated spaces, discrimination in mortgage lending, exclusionary zoning, a government-subsidized affordable housing industrial complex that concentrates poverty, local school boundaries that encourage segregation, plus continued resistance to integration by many but not all white Americans — all are forms of racial boundary maintenance today.

The negative effects of systemic exclusion are clear. As demonstrated by Harvard economist Raj Chetty and others, segregated communities tend to rate low on social mobility for poor children. (See Raj Chetty and Nathaniel Hendren, “The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates,” May 2015, available at [https://scholar.harvard.edu/files/hendren/files/nbhds\\_paper.pdf](https://scholar.harvard.edu/files/hendren/files/nbhds_paper.pdf) ) And the gap in life expectancy between blacks and whites in very segregated cities can rise to more than 20 years because of increased exposure to trauma, lead poisoning, allergens in poor-quality housing, fast-food “swamps” and healthy-food deserts. Meanwhile, residents of exclusionary affluent spaces rise on the benefits of concentrated advantages, from excellent schools and infrastructure to job-rich social networks to easily accessible healthy food. Less understood is the fact that the government-created segregation *facilitates* poverty-free affluent white space, by concentrating poverty elsewhere.

In considering policy options that Congress might pursue it is important to acknowledge that the main reason exclusionary zoning persists is the vested interests and expectations of

people who live in poverty-free havens. Government at all levels has catered to these expectations. And again, another reason for persistent exclusion, at least in some places, is high levels of anti-Black prejudice. In California, a so-called blue state where ostensibly liberal Democrats are in charge, despite a grave housing crisis and abundant problems with homelessness, the state was only able to take the baby step of opening single-family neighborhoods to duplexes. So, if Congress wants to disrupt a near century of exclusionary zoning, serious pressure and accountability are required. Congress and the executive branch also must atone for the federal legacy of promoting segregation.

It bears remembering that in the face of Southern massive resistance to school integration, school districts did not begin to desegregate with alacrity until the Johnson Administration threatened to withhold federal education funds pursuant to Title VI of the Civil Rights Act of 1964 (or they were ordered to do so by a federal court). I recommend not just spending incentives to deregulate or repeal exclusionary zoning ordinances but serious pressure on localities to adopt locally designed *inclusionary* zoning ordinances -- like the highly successful mandatory ordinance Montgomery County, Maryland has had in place for five decades. Because Montgomery County requires that all new development above a certain size include affordable units and sets aside some of those new units for residents of public housing, this extremely diverse, wealthy suburban county has no pockets of concentrated poverty and poor children have more access to integrated, well-resourced schools.

In conclusion, I recommend that federal housing and community development and infrastructure funds should be conditioned on localities adopting inclusionary zoning ordinances and/or actually “affirmatively furthering fair housing.”

**Testimony of  
Dora Leong Gallo  
President & Chief Executive Officer  
A COMMUNITY OF FRIENDS**

**to the  
House Committee on Financial Services  
Subcommittee on Housing, Community Development, and Insurance**

**“Zoned Out: Examining the Impact of Exclusionary Zoning on  
People, Resources, and Opportunity”  
Virtual – October 15, 2021**

**Introduction**

Mr. Chair and members of the Committee, thank you for this opportunity to provide testimony to the Subcommittee on Housing, Community Development, and Insurance on the impact of zoning practices on people, resources and opportunity.

My name is Dora Leong Gallo and I am the President and Chief Executive Officer of A Community of Friends, a nonprofit affordable housing development corporation with the specific mission of ending homelessness for individuals and families affected by mental illness. Established in 1988, our organization (also known as ACOF) develops what is now called ‘permanent supportive housing’, combining affordable rental housing with on-site services for the most vulnerable in our community. In the past 33 years, we have completed 51 apartment buildings throughout Los Angeles and Orange County, including two buildings in San Diego County. Currently, we operate 43 communities, housing over 2,500 adults, including over 600 children.

As a nonprofit organization serving people with disabilities, I have seen firsthand how government regulation and control of land use, called zoning, can be used to either stimulate or slow down development in communities and/or used exclude certain people and populations from living in certain communities. In my testimony today, I will discuss A Community of Friends’ experience of being “zoned-out,” how exclusionary and restrictive zoning have impacted affordable housing development (making it impossible to address the housing needs for people who are homeless) and our struggle to fight against allegations that our housing does not fit the “neighborhood character” of communities, which is often coded language for discrimination for people experiencing homelessness with mental health disabilities.

**Effects of Restrictive and Exclusionary Zoning (on housing stability and racial equity)**

The affordable housing crisis we talk about today is not an accident. Rather, it is a predictable result of a decades-long set of housing policies that perpetuated segregation and racial inequality by preventing the development of affordable housing.

A century ago, institutions such as banks, realtors, and insurance companies enforced Federal discriminatory housing policies that ensured Black people and people of color could not reside in certain neighborhoods. Although the 1917 Supreme Court decision in *Buchanan v. Warley* prohibited race-based zoning, and subsequently the passage of the Fair Housing Act of 1968 made housing discrimination based on race, color, sex, religion, national origin, disability and familial status illegal, many municipalities continued to implement land use planning tools like zoning to determine where people can live and in what types of neighborhoods. These practices have led to substantial wealth gaps, unequal opportunities, and high rental costs burdens, as well as overcrowding and homelessness.

For instance, single-family zones are prevalent in many communities. Designating large swaths of land as single-family neighborhoods limits where multifamily developments can be built, making land costs higher. In the City of Los Angeles, residential development is permitted on approximately 56.2% of the City's land area. Of the residential land area, more than 70% of residential land is reserved for single-family housing, 12.3% is reserved for lower density multifamily, and only 17.3% permits higher density multi-family developments.<sup>1</sup>

Within these multifamily zones, cities and counties continued to include seemingly benign requirements such as density allowances, setbacks, and floor area ratios with the intent of protecting "neighborhood character", which is often code for excluding certain groups of people from living in a particular area, such as low-income people, people of color, and/or people experiencing homelessness. Other expensive and inefficient zoning practices that limit the feasibility of rental housing production include minimum parking requirements (even when developing for groups of people who are less likely to have cars, such as older adults or people with disabilities) and the and lack of by-right approval of housing proposals which leads to lengthy discretionary review processes by planning departments because no objective standards exist.

These restrictive and exclusionary zoning laws and practices further exacerbate the opportunities for people who are homeless to get back on their feet by limiting access and availability of affordable housing. As people of color are disproportionately represented among people who were homeless (more than half of the 580,000 people nationwide who were homeless in January 2020 were people of color)<sup>2</sup>, these practices perpetuate racial inequities and reinforce racial segregation.

### **Trends in Zoning Policies and Development Processes**

Although local governments' authority to regulate land use is granted by State governments, the development of affordable housing has always been an inherently local process. For decades zoning was controlled at the neighborhood level, but this trend has been changing given the crisis many communities face with the lack of affordable housing. While many communities impacted by the imbalance of supply and demand are increasingly seeking out solutions that point to zoning and other regulatory barriers as impediments to housing construction, when communities

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<sup>1</sup> City of Los Angeles Housing Element. Draft 2021-2029.

<sup>2</sup> U.S. Department of Housing and Urban Development's (HUD) 2020 Annual Homeless Assessment Report (AHAR) to Congress (Part 1)



do not act, the State has begun stepping in and asserting their pre-emption authority. This is happening nationwide in states as diverse as Arkansas, Oregon, Utah, Texas, and California.

Over the past five years, the California State legislature passed several laws to enable the construction of backyard units in single-family neighborhoods. Just this year, SB 9 was signed into law, which allowed homeowners to split their lot into two and build a duplex on each lot.

Other actions California has taken include legislation that approves housing projects in cities and counties that do not have approved Housing Elements, a planning document that addresses how localities will meet numeric targets for housing production determined by a regional housing needs assessment (SB35).

### **Effectiveness of Efforts to Reform Zoning Policies and Limitations of Reform**

California for the past half-dozen years has effectively undertaken multiple efforts to reform zoning policies. Legislation like SB 35 signed into law in September 2017 created and required a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment allocation.

Efforts like SB9 mentioned above and signed into law just last month that allows duplexes in single-family zones begin to knock down exclusionary walls, as well as efforts in Minneapolis, Denver, and the State of Oregon that completely do away with single family zoning. But if not fully vetted by policymakers, these reforms have the potential of not addressing the harm caused by exclusionary practices and instead fuel displacement and gentrification. For instance, while there are some guardrails in place under SB9, the protections in the bill to protect current tenants disappear after three years, and there are no requirements to ensure that rents will be affordable in the subsequent duplexes that are built.

The goal in zoning reform should not only be about doing no harm, but also to remedy past injustices. Reform must ensure that the class of people who were previously harmed will now benefit via more access and opportunity, and that investment (such as through increasing land value by increasing density) benefits the people in communities that have historically been disenfranchised.

In the context of building supportive housing to end homelessness, ACOF often encounters communities using zoning and discretionary approvals to block housing for people experiencing homelessness, who are disproportionately people of color. In Los Angeles, 40% of those who were homeless were Black, yet Black people make up only 9% of Los Angeles County's population.

Discrimination against people with mental illness are repeatedly couched in land use terms – the housing project is “too dense”, too “out of character with the neighborhood”, has insufficient parking, and will generate traffic. Cities frequently bow to the pressure to preserve the status quo, leading to continued discriminatory practices and continued racial inequities in housing.

Further challenging supportive housing projects is California's environmental review process. California's Environmental Quality Act (CEQA), intended to analyze and mitigate environmental harm of public projects, has been weaponized over the past decade to delay and/or stop affordable and supportive housing projects that require government approvals. Twice in

2018, ACOF faced legal challenges on environmental grounds for two supportive housing projects that we proposed, even when only 49 units were proposed on a site zoned for over 100 units.

ACOF prevailed in both lawsuits, but the result was almost a four-year delay on each project, a significant increase in costs as funding commitments were de-obligated and construction costs increased, and dozens of homeless individuals and families, including veterans, who were not able to access the affordable housing with onsite supportive services that the two projects would have provided.

#### **Federal Government's Role In Zoning Reform and Recommendations for Legislation**

Today, there is a much better recognition and acknowledgement among policymakers and the community that zoning is a government-sponsored tool that continues to exclude certain groups of people which prevents them from accumulating intergenerational wealth. As such, the Federal government has a role to play in zoning reform. In particular, the U.S. Department of Housing & Urban Development (HUD) has a long history of sponsoring research on regulatory barriers, and this research should continue. Its Regulatory Barriers Clearinghouse remain a valuable resource for identification of barriers and solutions to housing production and preservation.

HUD should also continue its implementation of Affirmatively Further Fair Housing (AFFH) regulation and develop programs using a carrot-and-stick approach to ensure compliance with this provision of the Fair Housing Act of 1968.

Congress has a pivotal role to play as well. Excitingly, the Build Back Better Plan pending before Congress includes the "Unlocking Possibilities" Zoning Program. This grant program will incentivize local government to improve housing strategies, reform zoning practices, and streamline local regulations. It is particularly useful to small communities that may lack the resources and capacity to conduct housing needs assessments and develop concrete steps to eliminate barriers to produce affordable housing and advance fair housing. I would like to present three other strategies for your consideration:

#### Link Federal funding to AFFH

In addition to grants, I urge Congress to propose legislation or regulations that link federal funding to Affirmatively Furthering Fair Housing rules. Offering housing funds to entice communities to eliminate exclusionary zoning and reduce barriers are ineffective for communities who have no desire to supportive affordable housing in their neighborhoods. Instead, I urge Congress to link transportation, economic development, parks, and school funding, as examples, to reducing barriers to creating affordable housing and ending discriminatory impacts of zoning rules.

### Inclusionary Zoning

In approximately 866 cities throughout the country, “inclusionary zoning” has been adopted to require the inclusion of affordable units in a market rate housing development.<sup>3</sup> In return, developers receive incentives to assist or encourage participation, such as a density bonus to allow the building of more units than zoning would allow. These programs vary tremendously depending on the local community, with some programs voluntary and others mandatory. Some programs require the affordable units to be located within the market-rate development and others allow the affordable units to be located off-site. Another feature of some programs is the ability to make an in-lieu fee payment instead of developing an actual affordable unit in the same building. All have different definitions of affordability based on median income level as well as different time periods for how long the unit must remain affordable.

While inclusionary programs have grown in popularity, as of 2017 eleven (11) states have adopted laws to pre-empt local governments from adopting mandatory inclusionary zoning programs or limit their discretion in designing such policies.<sup>4</sup> As Inclusionary Zoning is a tool to reverse discriminatory actions of the past in excluding people from certain neighborhoods and communities, such programs should be supported and not prohibited.

It is understood that local control over land use is a strong, long-standing principle in state-federal relations. However, the Federal government provides billions of dollars in subsidies through the low-income housing tax credit program and it should have a strong policy against state and local governments putting roadblocks in the way of increasing affordable housing and fostering inclusive communities. Congress should consider federal legislation to end this type of pre-emption.

### Expand Rental Subsidies and Ban Source of Income Discrimination

Lastly, exclusionary zoning has limited mobility of people of color and limited opportunities to build generational wealth. To encourage mobility and access to opportunities, I join with many others who call for Congress to provide Housing Choice Vouchers to everyone who qualifies, and to prohibit landlords from rejecting applicants who use vouchers to pay their rent.

Currently, due to inadequate funding, just 1 in 4 eligible households receives rental assistance. According to the Center for Budget and Policy Priorities (CBPP), this investment would “do more good than any other housing policy in the legislation to reduce homelessness and other hardships for people who struggle most to afford a home. It is estimated that making vouchers to everyone who is rent burdened would help roughly 1.7 million people, and some 71 percent of those assisted would be people of color.”

CBPP also states, “Expanding rental assistance would also sharply reduce racial disparities in poverty rates that lead to homelessness. For example, one study estimated that providing vouchers to all eligible households would reduce the number of people in poverty by 9.3 million. Poverty rates would drop for all racial and ethnic groups, but most sharply for Black and Latino households, reducing the gap in poverty rates between Black and white households by a third and

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<sup>3</sup> Kriti Ramakrishnan, Mark Treskon, and Solomon Greene, “*Inclusionary Zoning: What does the Research Tell Us About the Effectiveness of Local Action?*”, Urban Institute, January 2019

<sup>4</sup> Ibid

that between Latino and white households by nearly half. Vouchers can also give people of color, particularly Black and Indigenous people — whose housing choices have long been limited by segregation, redlining, and other structural racism — the option to live in a broader range of communities.”<sup>5</sup>

### **Closing Comments**

Thank you again for the invitation to provide testimony on the homelessness crisis in Los Angeles. A Community of Friends applauds all of you for your leadership and focus on addressing the persistent inequities in the housing market.

I recently spoke to a colleague about my opportunity to attend this hearing today and would like to end with his quote: *“Just as the affordable housing crisis is the predictable consequence of policy decisions made over decades, ending the crisis means unraveling these discriminatory policies. It will require peeling back zoning and land use policies that created and perpetuated segregation. It will require massive public investment in affordable housing production. It will require for-profit private developers to produce their fair share of affordable housing. It will require change in policy to ensure that every community is a community of choice, and it will require new laws to prevent obstructions from the past to continue.”*<sup>6</sup> I could not have said it any better. Thank you, Chairman Cleaver, for holding this hearing.

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<sup>5</sup> CBPP, “House Build Back Better Legislation Advances Racial Equity,” September 27, 2021

<sup>6</sup> Greg Spiegel, Inner City Law Center, October 8, 2021



## TESTIMONY

## ENCOURAGING LOCAL GOVERNMENTS TO LOWER THEIR BARRIERS TO HOUSING CONSTRUCTION

**Emily Hamilton**

*Senior Research Fellow, Urbanity Project, Mercatus Center at George Mason University*

Subcommittee on Housing, Community Development, and Insurance of the US House Committee on Financial Services  
Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity

October 15, 2021

Thank you, Chair Cleaver, Ranking Member Hill, and members of the subcommittee. I am Emily Hamilton, a senior research fellow at the Mercatus Center at George Mason University, where I am codirector of the Urbanity Project. My remarks today will focus on three points:

1. Local zoning rules needlessly increase the cost of housing for millions of American households.
2. A federal grant program targeted at the right localities can help alleviate these problems.
3. A federal grant program can only succeed if funds are disbursed on the basis of housing market outcomes rather than on the basis of plans or aspirations.

### PROBLEMS STEMMING FROM EXCLUSIONARY ZONING

Many local rules limit the amount of housing that can be built and increase the cost of housing that is permitted. These rules are typically codified in a municipality's zoning code. These rules include apartment bans, requirements that each new house sits on a large piece of land, and minimum parking requirements among others. Such rules increase the cost of building housing, particularly in places where land is expensive.<sup>1</sup>

Under current zoning policies, half of American renters are rent burdened; for many families, there is too little left for other necessities once rent is paid.<sup>2</sup> The percentage of renters who are rent burdened has increased over past decades, reflecting the increasing cost of exclusionary zoning.<sup>3</sup> Tragically, in

1. Emily Hamilton, "Land Use Regulation and Housing Affordability," in *Regulation and Economic Opportunity: Blueprints for Reform*, ed. Adam Hoffer and Todd Nesbitt (Logan, UT: The Center for Growth and Opportunity at Utah State University, 2021), 186.

2. Government Accountability Office, "Rental Housing: As More Households Rent, the Poorest Face Affordability and Housing Quality Challenges" (report no. GAO-20-427, Government Accountability Office, Washington, DC, May 2020). The US Department of Housing and Urban Development (HUD) defines "rent burdened" households as those that spend 30 percent or more of their income on housing.

3. Robert Collinson, Ingrid Gould Ellen, and James Ludwig, "Low-Income Housing Policy" (NBER Working Paper No. 21071, National Bureau of Economic Research, Cambridge, MA, April 2015).

For more information or to meet with the scholar, contact  
Mercatus Outreach, 703-993-4930, [mercatusoutreach@mercatus.gmu.edu](mailto:mercatusoutreach@mercatus.gmu.edu)  
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201

*The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.*

some of the regions where exclusionary zoning is rampant, homelessness rates are rising as families are increasingly shut out of the housing market entirely.<sup>4</sup>

#### TARGETING THE RIGHT LOCALITIES

Members of Congress from both parties have introduced bills in the House and Senate intended to reduce exclusionary zoning, reflecting a growing bipartisan consensus on the need for land use reform.

Several proposals to date would withhold Community Development Block Grants (CDBGs) from the most exclusionary localities or target CDBG grantees with new funding for reducing barriers to housing construction. Unfortunately, CDBGs do not reach all of the localities that enforce zoning codes. In particular, many suburbs in high-wage regions where reform is most urgently needed do not receive CDBGs.<sup>5</sup> In order to effectively encourage zoning reform, any new program Congress considers creating should include all of the localities that enforce zoning rules as eligible grantees.<sup>6</sup>

#### HOW TO STRUCTURE AN EFFECTIVE REFORM

In addition to reaching the correct set of grantees, a successful zoning reform program must reward localities for the right outcomes, namely permitting abundant housing construction. A proposal recently considered by this committee would instead fund planning exercises for potential reforms to exclusionary zoning. Sadly, past experience shows that plans to improve housing affordability often sit on local government shelves without actually leading to any zoning changes or new housing.<sup>7</sup>

Another proposal, considered by the 116th Congress, is the Housing, Opportunity, Mobility, and Equity (HOME) Act, which would be an improvement on the approach of funding planning activities. It would instead reward localities for adopting specific policies intended to improve housing affordability, such as increasing the amount of land where multifamily housing could be permitted or reducing parking requirements.

Though this approach is better, it still does not necessarily reward localities for actually making more housing feasible to build if—as often happens—localities permit multifamily housing only in locations where it would not be feasible to build or otherwise make housing that appears legal to build on paper difficult to build in practice.<sup>8</sup>

Instead of rewarding localities for promising to permit more housing eventually or for adopting policies that may not result in more housing construction on the ground, Congress could instead adopt a competitive grant program that ranks localities according to their housing market outcomes. Such a program would reward growth, with the most exclusionary localities receiving nothing. My colleague

4. John M. Quigley and Steven Raphael, "The Economics of Homelessness: Evidence from North America," *European Journal of Housing Policy* 1, no. 3 (2001): 323–36.

5. Jenny Schuetz, *HUD Can't Fix Exclusionary Zoning by Withholding CDBG Funds* (Washington, DC: Brookings Institution, 2018).

6. Emily Hamilton, "Opportunities for Better Federal Housing Policy: How the Biden Administration and Congress Can Improve Housing Affordability" (Policy Brief, Mercatus Center at George Mason University, Arlington, VA, January 2021).

7. For example, under the 2015 Affirmatively Furthering Fair Housing rule, HUD withheld CDBGs from localities that failed to adopt plans to affirmatively further fair housing. The rule resulted in localities and HUD passing planning documents back and forth until HUD determined that the document met the grantees' requirement to continue receiving CDBG funds. The rule failed to lead to local zoning reforms or increased housing construction.

8. Many localities have rules that appear to permit relatively low-cost housing construction while maintaining exclusionary zoning in practice. For example, Washington, DC, reformed its zoning ordinance to permit accessory dwelling units (such as basement apartments or backyard cottages) to be built across the city starting in 2016. Since then, fewer than 100 units have been permitted, in large part because accessory dwelling units that meet onerous zoning and building code requirements are prohibitively expensive for many homeowners to build.

Salim Furth and I have developed one formula that could enable such a program by ranking high-demand localities primarily according to their rate of housing permitting and lower-demand localities primarily according to the prices of their new construction.<sup>9</sup>

#### CONCLUSION

The particulars of a grant program intended to encourage zoning reform would need to be debated, but a successful program must reward the correct metric in the correct jurisdictions — actual housing market outcomes in the localities that enforce zoning rules — rather than plans to permit more housing in the future or tweaks to rules that may not actually result in more, lower-cost housing being built.

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<sup>9</sup>. Salim Furth et al., "HUD Can Use Housing Market Data to Inform Fair Housing Accountability" (Public Interest Comment, Mercatus Center at George Mason University, Arlington, VA, March 2020).

Zoned Out:  
Examining the Impact of Exclusionary Zoning on People,  
Resources, and Opportunity

Testimony before  
Subcommittee on Housing, Community Development and Insurance  
Committee on Financial Services  
United States House of Representatives

October 15, 2021

Richard D. Kahlenberg  
Senior Fellow and Director of K-12 Equity  
The Century Foundation  
2000 M Street, N.W., Suite 720  
Washington, DC 20036  
[Kahlenberg@tcf.org](mailto:Kahlenberg@tcf.org)



My name is Richard D. Kahlenberg. I am a senior fellow and the director of K-12 equity at The Century Foundation, where I conduct research on housing and education policy. The Century Foundation, an independent think tank, is deeply committed to fighting inequity in housing and education and has sponsored the Bridges Collaborative, a hub for 57 educational and housing organizations which are seeking to create racially and economically integrated communities throughout the country.<sup>1</sup> The views I express in this testimony are my own.

I want to thank Chairman Cleaver, Ranking Member Hill, and all of the members of this subcommittee for holding this important hearing on exclusionary zoning policies and for giving me the opportunity to testify today. Mr. Chairman, I know that addressing housing affordability and inequality has been a priority for you, for Chairwoman Waters, and for this committee, and I applaud you for your attention to these issues.

In this testimony, I will outline the harms imposed by exclusionary zoning, some promising reforms at the state and local level, and federal proposals to address the challenges.

### **The Walls We Don't See**

I call local exclusionary zoning policies, such as those that ban the construction of multifamily units or prohibit the construction of homes on modest sized lots “The Walls We Don't See” because they are less visible to the public than many other forms of discrimination.<sup>2</sup>

Most Americans today understand that it was wrong for white mobs to scream at young Black children trying to attend desegregated schools in the South in the 1960s. Many of us know the Norman Rockwell painting of six-year-old Ruby Bridges, a small Black child who had to be escorted by large FBI agents to her elementary school in New Orleans because white people objected to her presence based on the color of her skin.

But in 2021, local governments continue to erect less visible walls that keep low income and working-class families, many of them families of color, from living in safe neighborhoods with good schools. In most American cities, zoning laws prohibit the construction of relatively affordable homes — duplexes, triplexes, quads and larger multifamily units — on three-quarters of residential land.<sup>3</sup>

There are millions of modern-day Ruby Bridges whose lives are hurt by exclusionary zoning. Consider, for example, KiAra Cornelius, a low-wage single mother, who a few years ago was deeply unhappy about living in South Columbus, Ohio with her two children. She was frustrated with the low performance of the local schools and she worried about her family's safety. She

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<sup>1</sup> Bridges Collaborative, The Century Foundation. <https://tcf.org/bridges-collaborative/>

<sup>2</sup> See Richard D. Kahlenberg, “The Walls We Don't See: The Social Costs of Economic and Class Discrimination,” (Public Affairs Books, forthcoming). Portions of this testimony also draw from Richard D. Kahlenberg, “The ‘New Redlining’ Is Deciding Who Lives in Your Neighborhood,” New York Times, April 19, 2021. <https://www.nytimes.com/2021/04/19/opinion/biden-zoning-social-justice.html>

<sup>3</sup> Alex Baca, Patrick McAnaney, and Jenny Schuetz, “Gentle” density can save our neighborhoods,” Brookings Institution, December 4, 2019. <https://www.brookings.edu/research/gentle-density-can-save-our-neighborhoods/>

told me she did not allow her kids to walk to their grandmother's house a couple of blocks away because it was dangerous to do so. She drove them instead.<sup>4</sup>

One might look at Cornelius's predicament and say that her exclusion from better opportunities is simply a reflection of the workings of the free market in housing. If Cornelius only earned more, she could have access to a suburban neighborhood with strong schools and safe environments. What this thinking ignores, however, is that government-sponsored local zoning policies systematically distort the market to keep people like Cornelius out of neighborhoods with higher opportunities. In the Columbus suburbs, bans on the construction of duplexes, triplexes and apartment buildings keep people like Cornelius zoned out by government fiat. And even when multifamily units are permissible, other local policies often require builders to employ expensive siding that make housing inaccessible to people like Cornelius. These policies have an enormous impact. An important 2010 study of fifty metropolitan areas by Jonathan Rothwell of the Brookings Institution and Douglas Massey of Princeton University found that "a change in permitted zoning from the most restrictive to the least would close 50 percent of the observed gap between the most unequal metropolitan area and the least, in terms of neighborhood inequality."<sup>5</sup>

### **Blocking Opportunity**

Local government policies that exclude take a terrible toll, particularly on children. Research is clear that one of the very best ways to help low-income students, who are more likely to attend lower-quality schools, is to increase their opportunity to live in middle-class or mixed-income neighborhoods and attend mixed income schools rather than neighborhoods and schools with concentrations of poverty. Harvard University's Raj Chetty and colleagues, for example, have found that when low-income children move before age 13 to more affluent neighborhoods, their chances of going to college increase by 16% and their income as adults rises by 31%. Over a lifetime, that translates into \$300,000 in additional income.<sup>6</sup>

Having access to higher opportunity neighborhoods and schools can be even more effective than boosting educational spending, researchers have found. In Montgomery County, Maryland, the school board spent \$2,000 extra in high poverty schools, but a housing initiative -- which requires developers to set aside units for low-income families -- proved even more effective. Disadvantaged students attending good local schools cut the math achievement gap with their

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<sup>4</sup> See Richard D. Kahlenberg, "Hearing from Low-Wage Working Mothers: How a Housing Program in Ohio Connects Children to Better Schools," The Century Foundation, August 4, 2020. <https://tcf.org/content/report/hearing-from-low-wage-working-mothers-how-a-housing-program-in-ohio-connects-children-to-better-schools/?agreed=1>

<sup>5</sup> Jonathan Rothwell and Douglas Massey, "Density Zoning and Class Segregation in U.S. Metropolitan Areas," *Social Science Quarterly* 91, no. 5 (December 2010): 1123-43, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632084/>.

<sup>6</sup> Raj Chetty, Nathaniel Hendren, Lawrence Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment," NBER Working Paper 21156, May 2015, 2. The paper subsequently appeared in *American Economic Review* 106(4): 855-902, 2016, <https://opportunityinsights.org/paper/newmto/>.

middle-class peers in half between 2001 and 2007, according to a study by Heather Schwartz, a RAND Corporation researcher.<sup>7</sup>

KiAra Cornelius and her children in South Columbus saw first-hand the difference moving can make. With the support of a local nonprofit, Move to PROSPER, Cornelius was one of ten single mothers who had a chance to move to a higher opportunity neighborhood. Her children are now thriving in school. “It’s much, much better,” she says.<sup>8</sup> Move to PROSPER provided a catapult of sorts over the exclusionary walls built around Columbus, but the walls themselves remain in place.

### **Driving Up Housing Costs**

Economists from across the political spectrum agree that zoning laws that ban anything but single-family homes artificially drive up prices by limiting the supply of housing that can be built in a region. Just as OPEC increases oil prices by reducing supply, so do zoning laws increase housing prices by imposing a government limit on the number of units that can be built. Since passage of the United States National Housing Act of 1937, public policy has suggested that families should spend no more than 30 percent of their pre-tax income on housing. Yet, according to a recent report of Harvard’s Joint Center for Housing Studies, nearly half of all renters (21 million Americans) spend more than that—double the proportion in the 1960s.<sup>9</sup> While some of this affordability crisis can be chalked up to wage stagnation, it is also true that rents have been rising faster than other costs for decades.<sup>10</sup> At its extreme, the housing affordability crisis leads to eviction and homelessness. At a time when the Covid-19 pandemic has left many Americans jobless and people are struggling to make rent or pay their mortgages, it is incomprehensible that ubiquitous government zoning policies would be permitted to make the housing affordability crisis worse by driving prices unnaturally higher. Combatting exclusionary zoning and providing greater investments in publicly supported housing are the twin strategies necessary to address the affordable housing crisis.

### **Recent Local and State Change**

For decades, reforming exclusionary zoning was seen as a political “third rail.” But in recent years, a number of jurisdictions have heard from energized constituencies that are harmed by exclusionary zoning and won important victories. Single-family exclusionary zoning has been reformed in cities like Charlotte, North Carolina, Minneapolis, Minnesota, and statewide in Oregon and California, where government has legalized duplexes and other multifamily units.<sup>11</sup>

<sup>7</sup> Heather Schwartz, “Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland,” The Century Foundation, 2010. <https://production-tcf.imgix.net/app/uploads/2010/10/16005437/tcf-Schwartz-2.pdf>

<sup>8</sup> Kahlenberg, “Hearing from Low-Wage Working Mothers.”

<sup>9</sup> “Toward a comprehensive ban on exclusionary zoning practices,” Equitable Housing Institute, December 2019, <https://www.equitablehousing.org/images/PDFs/PDFs-2018-/Toward-comprehensive-ban-EHI-memo-final-2.pdf>, 2 (citing “The State of the Nation’s Housing 2018,” Harvard Joint Center for Housing Studies, 5).

<sup>10</sup> “Is the rent too high? Way more than 525,600 minutes of rent data,” The FRED® Blog, April 15, 2019, <https://fredblog.stlouisfed.org/2019/04/the-climbing-cost-of-renting/>.

<sup>11</sup> See Henry Grabar, “The Most Important Housing Reform in America Has Come to the South,” Slate, June 28, 2021. <https://slate.com/business/2021/06/charlotte-single-family-zoning-segregation-housing.html>; Richard D.

The movement to change zoning laws has created some interesting political bedfellows. Progressives have fought for these reforms as a matter of racial justice, housing affordability and environmental protection. But conservatives often support this type of reform as well, because they don't want government micromanaging what people can do on their own land.<sup>12</sup> At the national level, some conservatives have joined liberals in championing reforms like the Yes in My Backyard Act, which seeks to discourage exclusionary zoning.<sup>13</sup>

These efforts also command broad public support. In a 2019 Data for Progress poll, for example, voters were asked, "Would you support or oppose a policy to ensure smaller, lower-cost homes like duplexes, townhouses and garden apartments can be built in middle- and upper-class neighborhoods?" Supporters outnumbered opponents two to one.<sup>14</sup>

### Promising Federal Initiatives

The federal government has an opportunity, and an obligation, to build on local and state reforms. While zoning laws are locally constructed, the federal government has long cited its powers to regulate interstate commerce as a rationale for pursuing important aims: combating racial discrimination in zoning, protecting religious institutions from discriminatory zoning and overriding zoning laws to site cellphone towers.<sup>15</sup>

In December 2020, The Century Foundation assembled more than 20 of the nation's leading thinkers on housing — elected officials, civil rights activists, libertarians and researchers — to discuss several possible options, all of which are compelling and deserve support: (1) reinstating and strengthening the Obama Administration's 2015 Affirmatively Furthering Fair Housing rule that required local governments to begin taking steps to dismantle segregation; (2) reinstating President Obama's 2013 guidance making clear that unjustified policies that have a racially discriminatory "disparate impact" are illegal even absent discriminatory intent; (3) requiring states, cities and counties receiving existing federal funding for public infrastructure and housing to develop strategies to reduce exclusionary zoning; (4) providing incentives for reform, such as this Committee's proposed investment of \$4.5 billion to "Unlocking Possibilities Program."<sup>16</sup>

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Kahlenberg, "How Minneapolis Ended Single-Family Zoning," The Century Foundation, October 24, 2019. <https://tcf.org/content/report/minneapolis-ended-single-family-zoning/>; Laura Bliss, "Oregon's Single-Family Zoning Ban Was a 'Long Time Coming,'" CityLab, July 2, 2019; <https://www.bloomberg.com/news/articles/2019-07-02/upzoning-rising-oregon-bans-single-family-zoning>; and Conor Dougherty, "Where the Suburbs End: A single-family home from the 1950s is now a rental complex and a vision of California's future," New York Times, October 8, 2021. <https://www.nytimes.com/2021/10/08/business/economy/california-housing.html>

<sup>12</sup> Christian Britschgi, "Progressive Minneapolis Just Passed One of the Most Deregulatory Housing Reforms in the Country," Reason, December 10, 2018. <https://reason.com/2018/12/10/progressive-minneapolis-just-passed-one/>

<sup>13</sup> National Low Income Housing Coalition, "House Passes the 'Yes in My Backyard Act,'" March 9, 2020. <https://nlihc.org/resource/house-passes-yes-my-backyard-act>

<sup>14</sup> Peter Harrison and Henry Kraemer, "Homes for All" The Progressive 2020 Agenda for Housing, "Data for Progress May 2019. [https://www.filesforprogress.org/reports/homes\\_for\\_all.pdf](https://www.filesforprogress.org/reports/homes_for_all.pdf)

<sup>15</sup> Richard D. Kahlenberg, "Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning," The Century Foundation, April 18, 2021.

<sup>16</sup> See Reconciliation Legislation of the Budget Committee, Title IV – Committee on Financial Services, Subtitle B – 21<sup>st</sup> Century Sustainable and Equitable Communities, Section 40103 "Unlocking Possibilities Program,"

Unlocking Possibilities represents one of the most significant federal efforts to curtail exclusionary zoning in decades and deserves strong support.

### **An Economic Fair Housing Act**

The federal carrots provided in Unlocking Possibilities should also be supplemented by federal sticks, which would add heft to the effort and also are considerably less expensive to enact than incentive programs. In particular, Congress should create a private right of action — comparable to the one found in the 1968 Fair Housing Act — to allow victims of economically discriminatory government zoning policies to sue in federal court, just as victims of racial discrimination currently can do. I call this proposal an Economic Fair Housing Act.<sup>17</sup>

The 1968 Fair Housing Act was a monumental advance for human freedom, and the “disparate impact” tool associated with it can be an important lever to address exclusionary zoning that disproportionately hurts people of color. More funding should be provided for such efforts. But we need additional tools for two fundamental reasons: 1) economic discrimination is wrong, whether or not it results in a racially disparate impact; and 2) by removing the extra evidentiary burden of showing that economic discrimination disproportionately harms people of color, the chances of success for plaintiffs (including plaintiffs of color) will increase.

First, while exclusionary zoning laws are especially harmful to Black people, it is important to recognize that the discrimination is more broadly rooted in class snobbery, which helps explain why in virtually all-white communities like La Crosse, Wis., for example, efforts to remedy economic segregation have received strong pushback from upper-income whites, and why middle-class Black communities have sometimes shown fierce resistance to low-income housing.<sup>18</sup>

If race were the only factor driving exclusionary zoning, one would expect to see such policies most extensively promoted in communities where racial intolerance is highest, but in fact the most restrictive zoning is found in politically liberal cities, where racial views are more progressive.<sup>19</sup> As Harvard’s Michael Sandel has noted, social psychologists have found that highly-educated elites “may denounce racism and sexism but are unapologetic about their negative attitudes toward the less educated.”<sup>20</sup> Class discrimination helps explain why, despite a

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September 23, 2021, <https://docs.house.gov/meetings/BU/BU00/20210925/114090/BILLS-117pih-BuildBackBetterAct.pdf>

<sup>17</sup> Richard D. Kahlenberg, “An Economic Fair Housing Act,” The Century Foundation, August 3, 2017, <https://tcf.org/content/report/economic-fair-housing-act/>

<sup>18</sup> See Richard D. Kahlenberg, “Rescuing Brown v. Board of Education: Profiles of Twelve School Districts Pursuing Socioeconomic School Integration,” The Century Foundation, June 28, 2007, <https://production-tcf.imgix.net/app/uploads/2007/06/27235345/tcf-districtprofiles-2.pdf> (re white middle class resistance in La Crosse), and Roger Starr, “The Lessons of Forest Hills,” Commentary, June 1972

<https://www.commentary.org/articles/roger-starr-2/the-lesson-of-forest-hills/> (re Black middle class resistance in New York).

<sup>19</sup> Ilya Somin, “Why more liberal cities have less affordable housing,” Washington Post, November 2, 2014, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/11/02/more-liberal-cities-have-less-affordable-housing/>

<sup>20</sup> Michael J. Sandel, *The Tyranny of Merit: What’s Become of the Common Good?* (New York: Farrar, Straus & Giroux, 2020); and Toon Kuppens, Russell Spears, Antony S. R. Manstead, Bram Spruyt and Matthew J.



30 percent decline in Black-white residential segregation since 1970, income segregation has more than doubled.<sup>21</sup>

For important historical reasons, being a class snob is not held in the same disrepute as being a racist. But in the context of exclusionary zoning laws, the message of the racist and the class snob is cut from the same cloth: Black families and working-class families are held in such low regard that the state is somehow justified in sponsoring laws to make it illegal for anyone to build the types of housing they can afford. As we begin to come out of a pandemic in which grocery clerks, health care workers and truck drivers were recognized as everyday heroes, government discrimination against them must end. The Economic Fair Housing Act will make clear that state-sponsored economic discrimination is wrong, whether or not it has a racially disparate impact.<sup>22</sup> And because it is wrong, the law should apply in every town and state in the country — not just those that want to participate in the new Unlocking Possibilities Program.

A second reason to supplement disparate impact litigation strategies with a new Economic Fair Housing Act is to improve the chances that low-income plaintiffs of color will prevail. Under disparate impact, expert statistical studies are required to show the disproportionate impact on minority groups, which adds to the cost of litigation.<sup>23</sup> Tom Loftus of the Equitable Housing Institute notes, “Courts routinely have dismissed ‘disparate impact’ lawsuits where the plaintiffs failed to prove that minority group members were affected disproportionately by economic discrimination.”<sup>24</sup> One of the most extensive studies of disparate impact litigation, conducted by Stacy Seicshnaydre of Tulane University, found that in the 2000s, plaintiffs prevailed on appeal in disparate impact cases just 8.3 percent of the time.<sup>25</sup> By removing a hurdle in disparate impact litigation, the Economic Fair Housing Act could help address racial segregation housing, which has been identified as the central piece of unfinished business of the civil rights movement.<sup>26</sup>

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Easterbrook, “Educationism and the irony of meritocracy: negative attitudes of higher educated people towards the less educated,” *Journal of Experimental Social Psychology* 76 (2018): 429–47. [http://sro.sussex.ac.uk/id/eprint/71335/1/\\_smbhome.uscs.susx.ac.uk\\_ellenaj\\_Desktop\\_SRO\\_after%20august\\_Kuppens%20Educationism%20and%20the%20irony%20of%20meritocracy.pdf](http://sro.sussex.ac.uk/id/eprint/71335/1/_smbhome.uscs.susx.ac.uk_ellenaj_Desktop_SRO_after%20august_Kuppens%20Educationism%20and%20the%20irony%20of%20meritocracy.pdf).

<sup>21</sup> See John R. Logan and Brian Stults, “The Persistence of Segregation in the Metropolis: New Findings from the 2020 Census” Diversity and Disparities Project, Brown University, August 12, 2021, 2. <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report08122021.pdf> (finding the Black-White dissimilarity index, in which 100 is apartheid and 0 is perfect integration, declined from 79 in 1970 to 55 in 2020.) and Sean F. Reardon and Kendra Bischoff, “The Continuing Increase in Income Segregation, 2007-2012,” Stanford Center for Educational Policy Analysis, 2016. <https://cepa.stanford.edu/content/continuing-increase-income-segregation-2007-2012>

<sup>22</sup> Richard D. Kahlenberg, “An Economic Fair Housing Act,” The Century Foundation, August 3, 2017. <https://tcf.org/content/report/economic-fair-housing-act/>

<sup>23</sup> Tom Loftus, Memorandum to Author, June 8, 2020.

<sup>24</sup> Ibid.

<sup>25</sup> Stacy Seicshnaydre, “Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act,” *American University Law Review* 63, no. 2 (2013).

<sup>26</sup> Orlando Patterson, “The Long Reach of Racism in the U.S.,” *Wall Street Journal*, June 5, 2020. <https://www.wsj.com/articles/the-long-reach-of-racism-in-the-u-s-11591372542>

The Equitable Housing Institute has developed the Century Foundation's proposal into statutory language that I strongly encourage the Committee to consider.<sup>27</sup>

Once again, thank you for the invitation to address the deeply harmful practice of exclusionary zoning. I applaud this Committee for looking at steps that can be taken to tear down the government-sponsored walls that divide Americans by race and class and make housing less affordable for all.

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<sup>27</sup> Equitable Housing Institute, "Economic Fair Housing Act of 2021, Partial Draft Bill and Comments," November 30, 2020. [https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI\\_Economic\\_FHA\\_of\\_2021\\_draft\\_rev\\_11-30-20.pdf](https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI_Economic_FHA_of_2021_draft_rev_11-30-20.pdf)



**Testimony of Thomas Silverstein**

**Associate Director of the Fair Housing & Community Development Project at the  
Lawyers' Committee for Civil Rights Under Law**

**U.S. House of Representatives  
Subcommittee on Housing, Community Development, and Insurance of the  
House Financial Services Committee**

**Hearing on “Zoned Out: Examining the Impact of Exclusionary Zoning on People,  
Resources, and Opportunity”**

**October 15, 2021**



### *Introduction*

Chairman Cleaver, Ranking Member Hill, and members of the Subcommittee, thank you for the opportunity to testify today regarding the harmful impact of exclusionary zoning and strategies for mitigating its harms. My name is Thomas Silverstein, and I am the Associate Director of the Fair Housing & Community Development Project at the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee). The Lawyers' Committee is a national civil rights organization created at the request of President John F. Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination pro bono.

For decades, the Lawyers' Committee has advocated for fair housing through impact litigation, legislative and administrative advocacy, public education, and direct work advising states and localities on how to best meet their fair housing and community development requirements. While these issues have always been at the forefront of our work and are integral to achieving racial equality, they have become even more acute during the COVID-19 pandemic. The pandemic has underscored the need for all sectors of our society to address two pressing, interrelated crises: housing insecurity and structural racism. The problem of exclusionary zoning lies at the intersection of these two conditions because it is used to limit housing choices for low-income people of color. Although many think of zoning and land use regulation as inherently local issues, there is a great deal that the federal government can and should do to eliminate exclusionary zoning. Indeed, if the federal government does not act, the result will be the systematic undermining of our shared investments in affordable housing and combating climate change.

#### *I. What Is Exclusionary Zoning?*

In order to begin to address exclusionary zoning, it is critical that we understand the problem. Fundamentally, exclusionary zoning consists of land use regulations that have the *effect* of preventing low- and sometimes moderate-income people from living in either a municipality or a section of a municipality. Typically, due to persistent correlations between socioeconomic status and protected characteristics such as race under the federal Fair Housing Act, exclusionary zoning has the effect of disproportionately preventing Black and Latinx families from living in certain places. Exclusionary zoning can take the form of rules that make it impossible to build certain housing types that have higher density and therefore are more likely to be affordable than single-family houses. Additionally, exclusionary zoning can also take the form of permitting "market-rate" housing but not subsidized affordable housing. The rules that form the bedrock of exclusionary zoning can vary significantly, from prohibitions on multifamily housing to minimum lot or unit sizes to excessive setback requirements.

It is important to draw a distinction between exclusionary zoning as a practice and zoning as an overall concept. Although all zoning involves disallowing or "excluding" land uses that presumably could occur in the absence of regulation, not all zoning is exclusionary. Exclusionary zoning is about the exclusion of people through the exclusion of land uses, not the exclusion of land uses *per se*. At times, zoning can play a positive role and advance the general welfare, such as when heavy polluting industrial land uses are not allowed near peoples' homes. At times, its effect simply may not be exclusionary, such as when a low-income community of color is

primarily zoned for single-family homes and housing within that neighborhood is within reach for local residents.

## II. *What Is the Federal Government Doing and What Else Could It Do with Existing Authority?*

The current federal response to exclusionary zoning consists of two main features: (1) the federal Fair Housing Act and the roles of both the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ) in enforcing that law; and (2) HUD's oversight of its state and local government grantees' compliance with planning requirements that are conditions of receiving federal funds.

### a. Fair Housing Act Enforcement

Congress passed the Fair Housing Act in 1968 against the backdrop of uprisings in cities across the country in the aftermath of the assassination of Dr. Martin Luther King, Jr.<sup>1</sup> In doing so, Congress was in part reacting to the assessment of the National Advisory Commission on Civil Disorders – commonly known as the Kerner Commission – that attributed uprisings over the preceding years to entrenched residential racial segregation that federal policies helped create.<sup>2</sup> Congress intended the Fair Housing Act to *both* ban housing discrimination on the basis of race and other protected characteristics *and* to ameliorate these patterns of segregation.<sup>3</sup>

Under the Fair Housing Act, it is clearly established that exclusionary zoning and land use policies may be illegal either under an intentional discrimination standard – where the desire to excluded people based on race was a motivating factor behind the challenged decision or policy – or under a discriminatory effects standard.<sup>4</sup> The latter allows proof of a violation through evidence that a policy disproportionately harms a protected group or perpetuates residential segregation, combined with the absence of a substantial, legitimate, nondiscriminatory interest served by the policy that could *not* be served by an alternative policy with less discriminatory effect.<sup>5</sup>

Despite case law supporting these applications of the Fair Housing Act dating back to at least 1974 when the Eighth Circuit decided *U.S. v. City of Black Jack*, exclusionary zoning remains widespread and litigation challenges to exclusionary zoning are rare. This is the case

<sup>1</sup> 42 U.S.C. §§ 3601 *et seq.*; see also *History of Fair Housing*, U.S. Dep't of Hous. & Urb. Dev. (last visited Oct. 12, 2021), [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/aboutfheo/history](https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history).

<sup>2</sup> Report of the National Advisory Commission on Civil Disorders 1 (1968).

<sup>3</sup> *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972).

<sup>4</sup> See, e.g., *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 615, 619-20 (2d Cir. 2016) (affirming trial court decision that zoning decision was intentionally discriminatory and holding that plaintiffs had established a *prima facie* case of disparate impact); *Metro. Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1294 (7th Cir. 1977) (holding that a municipality's zoning policy would violate the Fair Housing Act if it effectively foreclosed the possibility of developing affordable housing within the community's boundaries); *United States v. City of Black Jack*, 508 F.2d 1179, 1188 (8th Cir. 1974) (holding that a city's zoning policies had an unjustified disparate impact on the basis of race); see also *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project*, 576 U.S. 519, 539-40 (2015) (stating that exclusionary zoning cases are at the "heartland" of Fair Housing Act jurisprudence).

<sup>5</sup> 24 C.F.R. § 100.500 (2013).

because it is extremely difficult for private parties – other than affordable housing developers – to establish standing to challenge exclusionary zoning.<sup>6</sup> Affordable housing developers are often reluctant to sue municipalities over exclusionary zoning or even to propose developments that may predictably run into zoning barriers and “not in my backyard” (NIMBY) opposition because their business is dependent upon municipal approval.

HUD and DOJ are ideally positioned to challenge exclusionary zoning. HUD has historically used its power to initiate complaints on behalf of the Secretary to attack exclusionary zoning,<sup>7</sup> and the Department should continue to do so with more frequency. DOJ plays a critical, statutorily mandated role in investigating zoning cases referred by HUD and represents the interests of the United States in litigation.<sup>8</sup> Unlike private parties whom the courts have held not to have a sufficiently concrete interest in seeing that federal laws such as Fair Housing Act are enforced, the United States has an unambiguous interest in rooting out any and all violations of the Fair Housing Act. Thus, DOJ is not meaningfully constrained by standing doctrine and can challenge exclusionary zoning in places where affordable housing developers are deterred from proposing projects as a result of extreme zoning barriers, often in combination with high land costs.

An illustrative example is the Village of East Hills in Nassau County, New York, approximately 20 miles east of Manhattan. Although there is no commuter rail station within the village’s boundaries, parts of the community are in close proximity to Long Island Railroad stations in neighboring Roslyn and Greenvale. Just 5.5% of the village’s population are Black and/or Latinx as opposed to 28.0% of the county’s population.<sup>9</sup> The median household income in the Village is \$224,583, nearly double the countywide figure of \$116,100.<sup>10</sup> The poverty rate is a microscopic 1.4%.<sup>11</sup> None of the Village’s zoning districts allow for multifamily housing, and nearly all of its northern half requires lot sizes of at least one acre.<sup>12</sup> In light of these zoning barriers, it is unsurprising that not one single Housing Choice Voucher family is able to live in

<sup>6</sup> See, e.g., *Warth v. Seldin*, 422 U.S. 490, 504-07 (1975); *Fair Housing in Huntington Committee v. Town of Huntington*, 316 F.3d 357, 363 (2d Cir. 2003).

<sup>7</sup> Conciliation Agreement between the United States of America, Department of Housing & Urban Development, Fair Housing & Equal Opportunity (Complainant) & the City of Ridgeland, Mississippi (Respondent), FHEO Case No. 04-16-4066-8 (Sep. 7, 2016), available at <https://www.hud.gov/sites/documents/FHEOCASE04-16-4066-8.PDF>.

<sup>8</sup> See 42 U.S.C. § 3610(g)(1)(C).

<sup>9</sup> 2015-2019 American Community Survey 5-Year Estimates, ACS Demographic & Housing Estimates (last visited Oct. 12, 2021), [https://data.census.gov/cedsci/table?q=dp05&g=0500000US36059\\_1600000US3622260&tid=ACSDP5Y2019.DP05&hidePreview=true](https://data.census.gov/cedsci/table?q=dp05&g=0500000US36059_1600000US3622260&tid=ACSDP5Y2019.DP05&hidePreview=true).

<sup>10</sup> 2015-2019 American Community Survey 5-Year Estimates, Selected Economic Estimates (last visited Oct. 12, 2021), [https://data.census.gov/cedsci/table?q=dp05&g=0500000US36059\\_1600000US3622260&tid=ACSDP5Y2019.DP03&hidePreview=true](https://data.census.gov/cedsci/table?q=dp05&g=0500000US36059_1600000US3622260&tid=ACSDP5Y2019.DP03&hidePreview=true).

<sup>11</sup> *Id.*

<sup>12</sup> Village of East Hills Code of Ordinances, Chapter 271: Zoning (last visited Oct. 12, 2021), <https://ecode360.com/6304209>; Village of East Hills, Zoning Map (last visited Oct. 12, 2021), <https://villageofeasthills.org/wp-content/uploads/2016/03/VEHZoningMap.pdf>.

this suburban community of 7,147 residents,<sup>13</sup> with sections within walking distance from a 50-minute commuter rail ride to Penn Station.

HUD and DOJ do not have the same constraints as an affordable housing developer who has to incur significant predevelopment costs in order to apply for a zoning change that would invariably be denied. Congress has already given HUD and DOJ the authority to act. They should do so and thereby send a strong message to so many exclusionary municipalities across the country like the Village of East Hills.

#### b. Grant Administration

HUD administers a variety of competitive and formula grant programs through local governments, which have zoning and land use regulatory authority, and states, from whose grants of power that local authority derives funding. The key formula grant programs are the Community Development Block Grant (CDBG)<sup>14</sup> and HOME Investments Partnerships (HOME)<sup>15</sup> programs. The Choice Neighborhoods Initiative (CNI), which facilitates public housing redevelopment, is the most significant current competitive grant program.<sup>16</sup> For formula grant programs, states, as well as municipalities of a certain size, are entitled to receive funds if they so choose, and the amount of those funds is based on factors like population, poverty, and characteristics of the existing housing stock.<sup>17</sup> As a condition of receiving these federal funds, grantees must submit a variety of plans, including a five-year Consolidated Plan, Annual Action Plan, and Consolidated Annual Performance and Evaluation Report (CAPER) on a regular basis, and these plans must contain certain required substantive information and certifications.<sup>18</sup> The submission of these plans is relevant to the question of exclusionary zoning.

Substantively, HUD regulations for the Consolidated Plan, found in part at 24 C.F.R. § 91.210(e) for local governments, require an analysis of barriers to affordable housing. In whole, the provision states that:

“The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.”

Furthermore, 24 C.F.R. § 91.215(h), which sets forth the requirements for the Strategic Plan component of the Consolidated Plan, states that:

<sup>13</sup> Picture of Subsidized Households, U.S. Department of Hous. & Urb. Dev. (last visited Oct. 12, 2021), <https://www.huduser.gov/portal/datasets/assthsq.html>.

<sup>14</sup> 42 U.S.C. §§ 5301 *et seq.*

<sup>15</sup> 42 U.S.C. §§ 12741 *et seq.*

<sup>16</sup> Choice Neighborhoods, U.S. Dep’t of Hous. & Urb. Dev. (last visited Oct. 12, 2021), [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/pl/cn](https://www.hud.gov/program_offices/public_indian_housing/programs/pl/cn).

<sup>17</sup> 42 U.S.C. § 5306; 42 U.S.C. § 12747.

<sup>18</sup> 42 U.S.C. §§ 5304, 5313.

“The consolidated plan must describe the jurisdiction's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing, as identified in accordance with § 91.210(e), except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph (h), as determined by HUD, the unit of general local government may submit its assessment submitted to the State to HUD and shall be considered to have complied with this requirement.”

Lastly, under 24 C.F.R. § 91.220(j), must include:

“Actions it plans to take during the next year to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing. Such policies, procedures and processes include, but are not limited to, land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment.”

Parallel provisions exist for state governments, who are also required to analyze and take action to ameliorate exclusionary zoning, among other barriers to affordable housing. HUD has the authority to reject a jurisdiction's Consolidated Plan or Annual Action Plan and thereby hold up its funding if the Department finds these components of the Consolidated Plan to be wanting or, if adequate at the planning stage, unimplemented. Needless to say, this is not the authority that HUD has asserted.

With respect to the certifications required of HUD formula grantees, the most significant ones related to exclusionary zoning are the civil rights certifications, including one that requires jurisdictions to affirmatively further fair housing (AFFH). These certifications are grounded in statute, but Congress has not defined the duty to AFFH, leaving HUD to fill that void through the following definition:

“Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.”<sup>19</sup>

Historically, HUD has required states and local governments to engage in fair housing planning as part of the process of demonstrating compliance with their AFFH duty.<sup>20</sup> However, due to

<sup>19</sup> 24 C.F.R. § 5.151.

<sup>20</sup> See, e.g., Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,271 (Jul. 16, 2015); Consolidated Submission for Community Planning and Development Programs, 60 Fed. Reg. 1,878, 1,905 (Jan. 5, 1995).

regulatory changes during the Trump Administration, no explicit fair housing planning obligation is currently in place.<sup>21</sup> Although this is likely to change in the near future, the more salient point for now is that state and local recipients of formula grants must promise that they will carry out their AFFH duty. Given the abundant research on the connection between exclusionary zoning and both patterns of segregation and disproportionate housing needs,<sup>22</sup> it is clear that the reduction or elimination of exclusionary zoning barriers would comport with jurisdictions' current AFFH obligations as construed by HUD.

Additionally, the certification requirements for receipt of formula grant funds also include certifications that grantees will comply with the non-discrimination provisions of the Fair Housing Act.<sup>23</sup> Courts have interpreted Fair Housing Act compliance as being a prerequisite for compliance with the duty to AFFH.<sup>24</sup> Thus, to the extent that exclusionary zoning – as described above – violates the Fair Housing Act, the practice can also render states and local governments ineligible for formula grant funds.

There are limitations on HUD's ability to use its authority as a grant administrator to effectuate progress in the fight against exclusionary zoning. The first is statutory. Under 42 U.S.C. § 12711, HUD is prohibited from establishing "any criteria for allocating or denying funds made available under programs administered by the Secretary based on the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction's duly established authority, and (2) not in violation of any Federal law." If a zoning or land use regulation does not violate the Fair Housing Act, this provision appears to prevent HUD from using its grant administration authority to order a change. If there is a violation of the Fair Housing Act, HUD would not be so barred, but, in the absence of litigation adjudicating whether a zoning or land use regulation violates the Fair Housing Act, it is predictable that HUD would be reluctant to exercise the full scope of its power.

The second limitation is relational. HUD's Office of Community Planning and Development (CPD), which is responsible for the administration of these grants, is widely perceived in the fair housing and civil rights field as prioritizing collegial relationships with its grantees over meaningful civil rights enforcement. Thus, there are often internal struggles between the more enforcement-oriented Office of Fair Housing and Equal Opportunity and CPD, which is both more powerful and more focused on customer service.<sup>25</sup> CPD tends to win those fights.

<sup>21</sup> Compare Preserving Community and Neighborhood Choice, 85 Fed. Reg. 47,899 (Aug. 7, 2020); *with* Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30,779 (June 10, 2021).

<sup>22</sup> Solomon Greene & Ingrid Gould Ellen, *Breaking Barriers, Boosting Supply: How the Federal Government Can Help Eliminate Exclusionary Zoning*, Urban Institute (Sep. 2020).

[https://www.urban.org/sites/default/files/publication/102963/breaking-barriers-boosting-supply\\_0.pdf](https://www.urban.org/sites/default/files/publication/102963/breaking-barriers-boosting-supply_0.pdf).

<sup>23</sup> 24 C.F.R. § 91.225(b)(6).

<sup>24</sup> *E.g.*, N.A.A.C.P., Boston Chapter v. Sec'y of Hous. & Urb. Dev., 817 F.2d 149, 154 (1st Cir. 1987).

<sup>25</sup> The Future of Fair Housing: Report of the National Commission on Fair Housing & Equal Opportunity 18-19 (2008), <https://lawyerscommittee.org/wp-content/uploads/2015/08/The-Future-of-Fair-Housing-National-Commission-on-Fair-Housing-and-Equal-Opportunity.pdf>.

Much less needs to be said about HUD's role in administering competitive grant programs. Typically, including with respect to the CNI program, HUD has broad discretion to establish application criteria for the notices of funding availability through which it awards funds.<sup>26</sup> HUD already incorporates requirements related to the duty to AFFH and broader civil rights compliance, but these criteria tend to lack specificity as to particular applications of the Fair Housing Act, such as in the context of exclusionary zoning.<sup>27</sup> Whether as threshold eligibility requirements or as competitive scoring points, HUD could use its leverage in awarding competitive grants to incentivize the amelioration of exclusionary zoning.

### *III. Context of Zoning Reform, the Limitations of Market-Based Solutions, and Urban Displacement*

Low-income communities of color, civil rights lawyers, and affordable housing developers have long been on the frontlines of the fight against exclusionary zoning. In recent years, however, a more libertarian, market-oriented zoning reform movement has emerged and is now attracting attention to its proposals in state houses and city halls across the country. In particular, the elimination of single-family zoning<sup>28</sup> and proposals to increase density near public transit service<sup>29</sup> have garnered significant attention. This yes-in-my-backyard (YIMBY) movement is not a monolith, but its limitations reemphasize the need to ground efforts to eradicate exclusionary zoning in principles of racial and economic justice.

Fundamental to the YIMBY worldview is the notion that inadequate housing supply is a primary cause of the housing affordability crisis and that easing or eliminating regulatory constraints on residential development, such as zoning, would alleviate the crisis by increasing supply.<sup>30</sup> Although YIMBYs would acknowledge that newly constructed housing is unlikely to be affordable to lower income households without government subsidy, they posit that, via a process called "filtering," lower income households may still benefit from new construction because higher income household will move out of older homes and the cost of those older homes will fall as sellers and landlord compete for new occupants.

While YIMBY policies may sound good on paper, there are holes in the narrative that are hugely consequential for low-income communities of color. First, although filtering is a real phenomenon, it can take decades for filtered housing to become available - though not necessarily affordable - to very or extremely low-income households making below 50% of the area median income for their metropolitan region, if indeed it ever does.<sup>31</sup> Thus filtering may

<sup>26</sup> FY 2021 Notice of Funding Availability (NOFA) Information, U.S. Dep't of Hous. & Urb. Dev. (last visited Oct. 12, 2021), [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/cn/fy20funding](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn/fy20funding).

<sup>27</sup> FY 2020 Choice Neighborhoods Initiative Implement Grant Program Notice of Funding Availability, U.S. Dep't of Hous. & Urb. Dev. (last visited Oct. 12, 2021), <https://www.hud.gov/sites/dfiles/PIH/documents/Full%20Announcement%20FR-6400-N-34.pdf>.

<sup>28</sup> Miguel Otárola, *Minneapolis Moves Forward by Allowing Triplexes Citywide*, StarTribune (Nov. 8, 2019), <https://www.startribune.com/minneapolis-moves-forward-with-allowing-triplexes-citywide/564664232/>.

<sup>29</sup> S.B. 827, Cal. Leg., 2017-2018 Sess. (2018), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB827](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB827).

<sup>30</sup> Jay Caspian Kang, *Want to Solve the Housing Crisis? Build More, and Build Higher*, N.Y. TIMES (Sep. 2, 2021), <https://www.nytimes.com/2021/09/02/opinion/housing-crisis-pandemic.html>.

<sup>31</sup> Miriam Zuk & Karen Chapple, *Housing Production, Filtering, and Displacement: Untangling the Relationships* 3-4 (May 2016).



ease the affordability crisis for middle-income (95-120% of area median income), moderate-income (80-95% of area median income), and sometimes even low-income (50-80% of area median income) households, but not for those currently experiencing the greatest need and highest risk of homelessness. Second, to the extent that filtering results in increased housing affordability for lower income households, the homes to which lower income households are afforded access are definitionally older and, in practice, likely to be less healthy, safe, and efficient. Third, although filtering typically reduces housing costs at the regional level, new development can increase housing costs in hyperlocal submarkets.<sup>32</sup> When this takes place in the context of low-income communities of color in the urban core, the result can be increased gentrification and displacement.

The YIMBY narrative also frequently misses the important and harmful role that exclusionary zoning can play in regional housing markets that are not supply-constrained. Some regions, whether through population loss due to lack of jobs or significant housing construction, do not have significant housing shortages. But exclusionary zoning is often common in these areas. Sometimes, it is not only common; it is actually more severe than in high-cost coastal markets. The outer suburbs of many industrial cities in the Midwest attest to this fact. In these areas, exclusionary zoning clearly retrenches residential racial segregation and reduces the options available to affordable housing developers for new construction, even if it does not exacerbate an absolute housing shortage.

In addition to these holes in the YIMBY narrative, those who identify as “market urbanists” often pair their advocacy of less restrictive zoning with opposition to policies that increase the supply of affordable housing and protect tenants through regulation. Inclusionary zoning and rent control are perhaps the two most notable policies that increase affordable housing.<sup>33</sup> There is, consequently, a risk that a critique of exclusionary zoning that centers the “regulatory” nature of zoning as the source of the practice’s ills could undermine housing and land use policies that are essential for meeting the need for safe, stable, affordable housing.

#### *IV. Principles for Equitable Zoning Reform*

Against this backdrop of rampant exclusionary zoning and potentially counterproductive proposals for how to end the practice, coupled with the Biden Administration’s proposal to pair increased affordable housing funding with incentives for zoning reform, the Alliance for Housing Justice – a collaboration between the Lawyers’ Committee for Civil Rights Under Law, PolicyLink, the Poverty and Race Research Action Council, Public Advocates, and the Right to the City Alliance – brought together a broad coalition of civil rights, community organizing, and affordable housing organizations to articulate a set of eight principles for equitable zoning reform. This coalition sent a letter, which is attached to this written testimony, to President Biden, HUD Secretary Marcia Fudge, Chairwoman Maxine Waters, and other key members of

<sup>32</sup> Anthony Damiano & Chris Frenier, *Build Baby Build?: Housing Submarkets and the Effects of New Construction on Existing Rents* (Oct. 16, 2020), <https://www.tonydamiano.com/project/new-con/bbb-wp.pdf>.

<sup>33</sup> Caleb Malik, *Rent Control Is Bad for Both Landlords and Tenants*, MARKET URBANISM (Apr. 2, 2016), <https://marketurbanism.com/2016/04/02/rent-control-bad-landlords-tenants/>.



Congress on June 23, 2021.<sup>34</sup> The letter recommends that federal action regarding zoning should (1) focus on areas that are actually “exclusionary,” (2) require an equity analysis to increase impact and avoid unintended consequences, (3) prioritize the development of deed-restricted affordable housing (including units for extremely low-income households), (4) evaluate municipalities’ zoning and land use actions holistically, (5) protect tenants from displacement, (6) ensure that historical disinvested low-income communities of color have equitable access to federal funds, (7) identify funding sources that will actually incentivize meaningful change; and (8) obligate municipalities to maintain data and report on their progress.

In light of the discussion of market-based approaches above, two principles in particular merit elaboration. First, the possibility that zoning reform might not focus on areas that are actually exclusionary is not an abstract risk. New York City is a prime example. The administration of current Mayor Bill de Blasio has made broad-based higher-density rezoning a focal point in its efforts to create more market-rate and affordable housing.<sup>35</sup> Although such upzoning can increase affordability and foster residential racial integration while posing minimal displacement risk when undertaken in disproportionately white higher income neighborhoods, the first several neighborhoods in which the de Blasio Administration implemented its policy were low-income communities of color such as East New York and East Harlem.<sup>36</sup> Rezoning of more affluent areas such as Gowanus and SoHo have only started to move forward this year as Mayor de Blasio prepares to leave office.<sup>37</sup> In low-income communities of color, rezoning has contributed to displacement, and the housing that it has produced – including many of the deed-restricted affordable units – has been beyond the means of many neighborhood residents.

Second, true to the historical roots of the movement to end exclusionary zoning, the development of deed-restricted affordable housing should be the primary focus of reform efforts. It is well-established that filtering will not result in housing affordability for very low- and extremely low-income households, and that government subsidies are required. Zoning reform efforts can prioritize the development of deed-restricted affordable housing through tools like overlay districts that entitle affordable housing developments to greater density than market-rate developments. Such policies can make it easier for affordable housing developers to compete for scarce buildable sites rather than compete with for-profit developers if these districts are upzoned for all multifamily development as-of-right. None of this is to suggest that there should not be unsubsidized units in developments that are facilitated by zoning reform. Any government that is designing a zoning reform proposal can establish acceptable proportions of affordable versus market-rate units in order for mixed-income developments to benefit from relaxed zoning. Additionally, government entities would be well-served by considering social housing models like those found in Vienna, Austria that are not means-tested and instead allow households at a

<sup>34</sup> *Principles for Equitable Zoning Reform*, ALLIANCE FOR HOUSING JUSTICE (June 23, 2021), <https://www.allianceforhousingjustice.org/post/zoning-equity>.

<sup>35</sup> *Zoning for Quality and Affordability*, NYC PLANNING (last visited Oct. 12, 2021), <https://www1.nyc.gov/site/planning/plans/zqa/zoning-for-quality-and-affordability.page>.

<sup>36</sup> Michelle de la Uz et al., *How the Gowanus Rezoning Could Push NYC Forward on Racial Equity*, CITY LIMITS (Sep. 21, 2021), <https://citylimits.org/2020/09/21/opinion-how-the-gowanus-rezoning-could-push-nyc-forward-on-racial-equity/>.

<sup>37</sup> *Id.*

wide range of income levels to pay a sustainable proportion of their income in rent.<sup>38</sup> An article discussing how to develop social housing in the United States without replicating some of the mistakes made in developing public housing is attached to this written testimony.

Many of the principles articulated in the letter are equally relevant to zoning reform proposals at the state and local levels, and some could apply whether the vehicle for zoning reform is an incentive grant program, as is currently under consideration in Congress, or a more prescriptive approach. It is worth noting that in reacting to proposals from the Biden Administration that were public at the time of the letter's drafting, the letter presupposes an incentive grant approach.

There are some benefits to a more prescriptive alternative approach. In order to ensure the efficacy of its investments in the supply of affordable housing and pursuant to its Commerce Clause powers, Congress clearly has the authority to regulate state and local zoning and land use regulation. Congress could, for example, pass a law stipulating that federally subsidized affordable housing developments are exempt from state and local land use regulation. Congress could do this either in a blanket manner or in a more narrowly tailored fashion whereby, for example, a development could include up to six stories and up to 100 units per acre without being subject to local zoning, but would not be entitled to unlimited density.

One benefit of the prescriptive approach is that it avoids some of the contradictions that the principles articulated in the coalition letter attempted to navigate. Namely, with a mandatory approach, it is not necessary to steer disproportionate resources for infrastructure, transportation, parks and recreation, and other public goods to the communities that need such federal funding the least in order to spur them to action.

#### *V. Catalyzing Private Enforcement*

In addition to comprehensive policy reform and the more robust exercise of the existing powers held by HUD and DOJ, another way in which the federal government could contribute to the fight against exclusionary zoning is by creating the conditions in which affordable housing developers would be more likely to propose projects in exclusionary areas. As discussed above, it is difficult for private plaintiffs to establish standing to challenge exclusionary zoning under the Fair Housing Act unless an affordable housing developer has proposed a zoning change and had their request rejected. Under current conditions, affordable housing developers have little incentive to incur substantial predevelopment costs for projects that they have good reason to believe will not be approved and for which litigation offers uncertain prospects of overturning any denial. But, as the example of the Low Income Housing Tax Credit (LIHTC) program illustrates, developers respond to incentives.<sup>39</sup> If affordable housing developers were more likely to receive government subsidy for proposals in exclusionary areas, they would, at a certain point, follow that money. Although many states do currently offer incentives for developments in

<sup>38</sup> See Saoirse Gowan & Ryan Cooper, *Social Housing in the United States*, PEOPLE'S POLICY PROJECT (2018), <https://www.peoplespolicyproject.org/wp-content/uploads/2018/04/SocialHousing.pdf>.

<sup>39</sup> See Jill Khadduri, *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans* (Feb. 2013), [https://www.abtassociates.com/sites/default/files/migrated\\_files/0b6a09dc-9a26-480d-9066-bc98a18e6fac.pdf](https://www.abtassociates.com/sites/default/files/migrated_files/0b6a09dc-9a26-480d-9066-bc98a18e6fac.pdf).

relatively low poverty areas, the amount of available resources and the magnitude of the incentives are insufficient to challenge zoning. Instead, developers search long and hard for sites that both entitle them to bonus points on their applications and that are already appropriately zoned. Many state housing finance agencies even undercut the efficacy of their incentives for developments in low poverty areas by requiring that LIHTC applicants have zoning approval prior to submitting their applications.

Operationalizing this approach could take many forms. State agencies that administer LIHTC could modify their incentives and requirements in order to push developers into exclusionary areas. Federally, the U.S. Department of the Treasury (Treasury) could publish guidance on the siting of LIHTC properties that, in turn, could push action at the state level. Congress, in providing additional financial resources for affordable housing, could create set-aside or separate pools of funding that would be dedicated to use in exclusionary areas.

In order to ensure that these types of shifts do not result in an imbalance in federal affordable housing resources such that lower income areas cannot compete, Congress should grow the total pie of affordable housing funding. As a society, we should not have to choose between building affordable housing in exclusionary areas, communities of color being threatened with gentrification, and disinvested areas that are not experiencing displacement pressure. We can and must be able to address all three at the same time. If federal policy changes the behavior of affordable housing developers such that they are more likely to apply for zoning changes in exclusionary areas, the resulting increase in Fair Housing Act litigation is likely to (1) result in more judgments and settlements requiring positive zoning changes in specific instances and (2) deter other local governments from denying zoning approval in the future due to the risk of significant financial liability.

## *VI. Conclusion*

Exclusionary zoning is a significant barrier to our societal efforts to foster integrated communities and increase housing affordability. Ending exclusionary zoning presents complex but solvable problems. At the same time, some proposed “quick-fix” solutions to exclusionary zoning risk causing significant unintended harm due to lack of careful geographic targeting and lack of sufficient focus on deed-restricted affordable housing. Congress, HUD, DOJ, and Treasury all have constructive roles to play in designing and implementing an effective federal response to exclusionary zoning. Key components of the federal response should include increased public and private Fair Housing Act enforcement, facilitated by greater incentives for affordable housing development in exclusionary areas; more rigorous block grant administration by HUD; and comprehensive policy reform, whether through a new incentive grant program or, preferably, direct requirements. Taken together, these interventions would help forge a more just and equitable society.



**June 21, 2021**

**President Joe Biden**

1600 Pennsylvania Ave.,  
Washington, DC 94801

**The Honorable Marcia Fudge**

Secretary of Housing & Urban Development  
Washington, DC 20410

**The Honorable Nancy Pelosi**

Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Chuck Schumer**

Majority Leader  
United States Senate  
Washington, D.C. 20510

**The Honorable Maxine Waters**

Chair, Financial Services Committee  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Sherrod Brown**

Chair, Banking Housing & Urban Affairs  
Committee  
U.S. Senate, Washington, D.C. 20510

**The Honorable David Price**

Chair, Subcommittee on Transportation,  
Housing & Urban Development  
House Appropriations Committee  
U.S. House of Representatives  
Washington, DC 20515

**The Honorable Brian Schatz**

Chair, Subcommittee on Transportation,  
Housing & Urban Development  
Appropriations Committee  
U.S. Senate  
Washington, DC 20510

**To:** President Biden, Secretary Fudge, Speaker Pelosi, Majority Leader Schumer, Chair Waters, Chair Brown, Chair Price and Chair Schatz:

We are writing on behalf of the undersigned civil rights, community organizing, and affordable housing advocacy organizations with regard to the American Jobs Plan's proposal to create a competitive grant program that would incentivize municipalities to change local zoning and land use policies. The undersigned organizations have been at the forefront of efforts to challenge exclusionary zoning through litigation, legislative reform, and advocacy for affordable housing. We are also committed to fighting the displacement of residents of low-income communities of color facing development pressures, which is an equally pressing racial and economic justice issue — but one that requires different tools.

There is a long history of local governments using restrictive zoning practices, from the explicit racial zoning outlawed by the U.S. Supreme Court in 1917 in *Buchanan v. Warley* to large minimum lot sizes and apartment bans, to exclude people of color and reinforce residential racial segregation. Accordingly, federal action to eliminate exclusionary zoning has the potential to significantly advance racial and economic justice. But, if improperly targeted, there is a risk that a new grant program could have unintended consequences, including increased displacement. This letter outlines the core principles that should inform the drafting of any federal legislation concerning exclusionary zoning. In brief, federal action should (1) focus on areas that are actually “exclusionary;” (2) require an equity analysis to increase impact and avoid unintended consequences, (3) prioritize the development of deed-restricted affordable housing (including units for extremely low-income households), (4) evaluate municipalities’ zoning and land use actions holistically, (5) protect tenants from displacement, (6) ensure that historical disinvested low-income communities of color have equitable access to federal funds, (7) identify funding sources that will actually incentivize meaningful change; and (8) obligate municipalities to maintain data and report on their progress.

#### I. Focus on Areas That Are Actually Exclusionary

The first key consideration for any legislative proposal is that it target zoning and land use regulations that actually exclude low-income people of color in practice. Exclusionary zoning is about the exclusion of people, not the exclusion of types of buildings or housing types. Answering whether single-family zoning in a particular neighborhood excludes low-income people of color requires knowing who lives in single-family homes in that neighborhood and how housing costs compare to costs regionally. In many predominantly Black and Latinx neighborhoods, there is no shortage of homes available for rents or monthly mortgage payments below subsidized rents under the Low-Income Housing Tax Credit program. In such neighborhoods, reducing barriers to higher density development is unlikely to increase access for low-income families and, instead, has the potential to fuel real estate speculation and displacement.

Zoning reforms that increase density must target higher-cost municipalities and neighborhoods, where the ability to build different housing types would make affordable housing feasible where it currently is not. In some places, entire municipalities may fit this bill—those that lack racially and socioeconomically diverse neighborhoods. In other areas, particularly in larger cities, there may be a mix of diverse neighborhoods where the effect of zoning changes will differ based on the make-up of the specific neighborhood; zoning reform could risk fueling profit-motivated development and displacement in some areas, while leading to meaningful inclusion in other, disproportionately white, neighborhoods. Areas targeted for higher density zoning should have high income levels, low poverty rates, and low levels of racial diversity.

## II. Require Equity Analysis to Increase Impact and Avoid Unintended Consequences

Building off of core Fair Housing Act principles, any federal legislation should mandate that local governments undertaking zoning changes carefully analyze the anticipated effects of zoning changes on communities of color through a process informed by robust community input. Such a requirement would serve several important purposes. First, it is essential to surface a community's particular needs, such as for units that are affordable to extremely low- or very low-income households among communities of color or for units with three or more bedrooms to accommodate large families without overcrowding. Without such an analysis, zoning and land use reform might result in the production of units that do not actually address patterns of exclusion, such as only one-bedroom apartments, below-market units that are still too expensive for those in need, or units that are not accessible to persons with disabilities. Second, an equity analysis would document that zoning changes actually target genuinely exclusionary areas, while not destructively intervening in non-exclusionary areas. Third, it would reduce the risk that changes would be based on outdated assumptions or conditions. For example, a historically exclusionary community may be experiencing "white flight" and the early stages of disinvestment while still being perceived as the homogeneous place it once was. Fourth, an equity analysis may identify policies that would undermine the efficacy of zoning changes. These might include policies that tie rezoning to residency preferences for affordable housing in exclusionary areas, thereby limiting access for people of color from outside of those areas, or disingenuous inclusionary zoning requirements that serve to make all development infeasible. Lastly, robust community input can help avoid the adoption of policies that are based on incomplete or outdated data that lacks local context and can help ensure that adopted policies are consistent with the needs of low-income communities of color. All of these challenges can and should be averted through careful planning.

## III. Prioritize the Development of Deed-Restricted Affordable Housing, Including Units for Extremely Low-Income Households

To combat exclusion, a central purpose of zoning reform must be to facilitate the development of deed-restricted affordable housing. Deed restrictions protect long-term affordability by imposing income eligibility requirements and restricting future rent levels or sale prices. In light of persistent correlations between race, ethnicity, and socioeconomic status, many people of color will benefit more from increased affordable housing development in exclusionary areas than from market-rate housing. This becomes even more evident when considering the housing needs of extremely low-income households (i.e., households whose income does not exceed the higher of the federal poverty guideline or 30% of the area median income). Moreover, in high-cost areas, new market-rate multi-family housing is generally still very expensive, even if it is slightly less expensive than single-family homes in the area. Therefore, zoning changes that broadly allow multifamily development without any requirements that they include a percentage of affordable units, even if appropriately targeted at exclusionary areas, will miss the mark.

Zoning reform will only be an effective tool for advancing racial and economic justice if reform focuses on affordable housing. Any efforts to increase the availability of “missing-middle” housing should be paired with homebuyer-assistance programs that are affirmatively marketed to moderate- and middle-income people of color who have been denied the wealth-building potential of homeownership, and “missing-middle” housing efforts must not be adopted at the expense of robust programs to increase the number of more deeply affordable homes.

There is a range of policy tools that can be used to pair zoning changes with affordable housing development. One option is the creation of affordable “overlay districts,” which apply across a broad geographic area and allow increased density only for development proposals that meet certain affordable or social housing requirements. Another option is well-designed inclusionary zoning requirements that mandate at least some of the housing in each new building is affordable. This approach is most effective in places where there is high demand and high prices for market-rate multifamily housing, a common feature of many exclusionary neighborhoods, which make it financially feasible to produce units for extremely low-income households without government subsidy. Lastly, zoning changes could target publicly-owned land that government agencies commit to lease or sell for free or at a below-market price to subsidize development of affordable housing. Local governments can also enact a policy of prioritizing lease or sale of public land to non-profit developers of affordable or social housing, including community land trusts and public housing authorities.

#### IV. Evaluate Municipalities' Zoning and Land Use Policies Holistically, Rather Than in Isolation

Municipalities should be evaluated holistically to ensure that municipalities are not able to identify some beneficial actions to access a generous new funding source while simultaneously using their zoning powers to undermine the goals of the federal program in other ways. For example, a city that upzones ten acres of land in an exclusive neighborhood while downzoning 20 acres nearby is, on balance, exacerbating exclusion rather than combatting it. Likewise, if a large city that includes both exclusive and inclusive neighborhoods adopts zoning changes that fuel displacement in diverse neighborhoods, no amount of upzoning in exclusionary neighborhoods can right that wrong. It would radically undermine the intent of federal zoning reform to only focus on the positive steps that municipalities take in response while ignoring actions that may circumvent the underlying purpose of the new incentive program. Likewise, actions that may superficially appear to increase opportunities for the development of affordable housing but that would either be fruitless in practice – such as selectively upzoning parcels that are unlikely to be redeveloped due to existing land uses – or that would result in the siting of affordable housing in isolated or environmentally unhealthy areas should not qualify municipalities for funds. Lastly, zoning and land use policies should also be evaluated in tandem with other housing and community development policies,

such local funding streams (or the lack thereof) for affordable housing and barriers to affordable housing development like requirements for the approval of a city council member in whose district a development would be located. Equitable zoning and land use policies are unlikely to lead to meaningful affordable housing production unless other necessary policies are in place, as well.

#### V. Protect Tenants from Displacement, Even in Exclusive Areas

Targeting zoning reform at exclusionary areas is critical to reducing the likelihood that zoning changes will result in wholesale displacement of vulnerable communities, but it is also important to protect individual low-income households from displacement pressures that may result from zoning or land-use decisions. Even areas that are exclusionary overall may nonetheless have small pockets of racial and socioeconomic diversity, perhaps as a result of past fair housing litigation or because a small landlord has decided to keep rents low to maintain long-term tenants. A variety of policy tools may be helpful in preventing the displacement of low-income tenants living in exclusionary areas. Such tools may include prohibitions on demolition of existing, occupied multifamily properties; prohibition or strict limitations on land use conversions of manufactured home communities; anti-harassment and retaliation protections; just cause eviction requirements; rent stabilization; right to counsel; source of income protections; and a tenant's opportunity to purchase. In the event that displacement does occur, tenants should have access to generous relocation assistance benefits, both in the form of financial payments and help locating and securing a new home in the community.

#### VI. Ensure Equitable Access to Federal Funds in Historically Disinvested Low-Income Communities of Color

Pursuing federal zoning reform through the exercise of Congress's Spending Clause power would raise significant equity concerns if it directed new resources only towards communities that currently have exclusionary zoning, without a way for historically disinvested communities to access funding. Areas with exclusionary zoning are generally highly resourced communities, supported by high property values and a robust tax base. Because, as discussed above, zoning reform should target areas that are actually exclusionary in order to avoid contributing to displacement, lower income communities could be ineligible for a funding stream that is specifically targeted at ending exclusionary zoning. To avoid this potential inequity of increasing funding only in areas that are already well-funded, Congress should create parallel grant programs that support neighborhood investments in low-income communities of color to build or replace infrastructure and to counter displacement pressures.

As an alternative approach, federal preemption of genuinely exclusionary zoning would not exacerbate resource disparities between highly resourced communities and historically disinvested low-income communities of color. Moreover, federal preemption of local zoning and land use regulation falls squarely



within Congress's Commerce Clause powers, and Congress has a proprietary interest in stopping the application of certain local zoning regulations to federally programs like the Low-Income Housing Tax Credit program.

#### VII. Identify Funding Sources that Will Actually Incentivize Meaningful Change

For an incentive program to succeed, careful consideration must be given to the types of funding that are used to motivate local actions. At a basic level, local jurisdictions must be sufficiently interested in the incentive funding to take actions that may be politically difficult. One key lesson our organizations have learned through work on local and state programs is that attempts to use affordable housing dollars to incentivize breaking down of exclusionary zoning and land use practices have failed. Exclusive municipalities are generally not interested in such funding, and it is also important to ensure that affordable housing is developed in these communities, whether or not a local jurisdiction chooses to participate in an incentive-based program. On the other hand, funding for local road maintenance, other local infrastructure, or local discretionary funding have proven to be much more effective in motivating local actions. Conditioning funding for states on meaningful state law exclusionary zoning reform, consistent with the principles articulated in this letter, would also be an important avenue for Congress to consider.

#### VIII. Obligate Municipalities to Maintain Data and Report on Their Progress

In exchange for valuable federal funds, municipalities must be expected to maintain data and report on their progress in implementing reforms. Some municipalities that have adopted inclusionary zoning have neglected to incorporate oversight and compliance monitoring into their programs, leading to significant questions about whether those programs are delivering on their promise. In addition to demonstrating to the federal government that local governments are truly eligible for funding, good data collection and reporting requirements should better position municipalities to enforce regulatory agreements for inclusionary developments.

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The federal government has historically played a significant role in promoting exclusionary zoning policies, and the federal government has an obligation to help end this practice. From supporting widespread adoption of the Standard Zoning Enabling Act by states in the early 1920s to the developing single-family zoning federal mortgage insurance underwriting guides that encouraged racially restrictive covenants, zoning has never been an exclusively local issue. The federal government has also played a significant role in past policies that have contributed to mass displacement of communities of color, most notably urban renewal under Title I of the Housing Act of 1949 and the construction of the interstate

highway system, which carved up many thriving urban neighborhoods. The federal government has an obligation to actively reverse this legacy.

By designing federal intervention around exclusionary zoning in adherence with the eight principles articulated in this letter, Congress can ensure that any reform efforts effectively address structural racism in federal housing policy. The undersigned groups would welcome the opportunity to engage with you regarding the development of legislation that embodies these principles.

If you have any questions or for additional information, please contact Liz Ryan Murray at Alliance for Housing Justice (L.RyanMurray@PublicAdvocates.org)

Sincerely,

National Organizations

A Community Voice	NAACP Legal Defense and Educational Fund, Inc. (LDF)
Action Center on Race and the Economy	
Alliance for Housing Justice	National Alliance for Safe Housing
Americans for Financial Reform	National Coalition for Asian Pacific American Community Development
Building Healthy Places Network	
Center for Popular Democracy	National Fair Housing Alliance
Center for Responsible Lending	National Housing Law Project
Equal Rights Center	National Low Income Housing Coalition
Housing Justice Center	People's Action
Housing Rights Initiative	Planners Network
Lawyers' Committee for Civil Rights Under Law	PolicyLink
Liberation in a Generation	Poverty and Race Research Action Council
Manufactured Housing Action (MHAAction)	Public Advocates
Mi Familia Vota	RESULTS
Right to the City Alliance	
Root and Rebound	

State & Local Organizations

Affordable Housing Network of Santa Clara County

Alabaster Box Collective

Alliance of Californians for Community Empowerment

American Constitution Society, ASU Student Chapter

Anthropocene Alliance

Beyond Inclusion Group

CAUSE

California Housing Partnership

Catholic Migration Services

Center for Fair Housing, Inc

Change on the Inside

Chicago Lawyers' Committee for Civil Rights

Chicago United for Equity

Chinatown Community Development Center

City Heights Community Development Corporation

Citizens Committee for Flood Relief

CNY Fair Housing

Collective Medicine

Community Health Councils

Congregations Organized for Prophetic Engagement

Cooper Square Committee

East Bay Housing Organizations

Eastside People's Intercultural Center

Eperanza Community Housing Corporation

Fair Housing Center of Central Indiana, Inc.

Fair Housing Partnership of Greater Pittsburgh

Fair Share Housing Center

FreshWater Accountability Project

Georgetown Open Space Committee

Hill District Consensus Group

HomeStart, Inc

Horizon Home Buyers, Inc..

Housing Action Illinois

Housing California

Housing Justice for All (New York State)

Housing Now! CA

Just Cities

Kheprw Institute

La Raza Community Resource Center

Law Foundation of Silicon Valley

Leadership Counsel for Justice and Accountability

Legal Aid Justice Center

Little Tokyo Service Center

Long Island Housing Services, Inc.

Louisiana Fair Housing Action Center

Make the Road Nevada

Malach Consulting	Public Interest Law Center
Massachusetts Fair Housing Center, Inc.	Public Justice Center
Massachusetts Law Reform Institute	RENA (Riverside Edgecombe Neighborhood Association)
Metropolitan St. Louis Equal Housing and Opportunity Council	Sacramento Housing Alliance
Mississippi Center for Justice	Save James Island
Mississippi Communities United for Prosperity (MCUP)	Schultz Family Foundation
MZ Strategies, LLC	South Bay Community Land Trust (SBCLT)
National Lawyers Guild — ASU Chapter	Southwest Fair Housing Council
Nobody Leaves Mid-Hudson	Strategic Actions for a Just Economy (SAJE)
Northwest Bronx Community & Clergy Coalition	T.R.U.S.T. South LA
Oakland Tenants Union	The Fair Housing Center of Southwest Michigan
Parable of the Sower Intentional Community Cooperative	The Public Interest Law Project
Partnership for Working Families	ThinkBox
Port Arthur Community Action Network (PACAN)	Todco/Build Affordable Faster CA
Portland Harbor Community Coalition	United Way Bay Area
Pratt Institute, graduate program in City and Regional Planning	Utah Center for Civic Improvement
Public Counsel	Venice Community Housing
Public Engagement Associates	Vermont Legal Aid
	Virginia Housing Alliance
	Washington Lawyers' Committee for Civil Rights and Urban Affairs
	West Boulevard Neighborhood Coalition
	Western Center on Law and Poverty
 <u>Individuals</u>	
Anna Kramer, Assistant Professor, Urban Planning Planners Network	David Smiley, Assistant Director, Urban Design Program Urban Design, GSAPP, Columbia University

Dr. Jackie Augustine, BluePrint Geneva

Emily Benfer, Visiting Professor of Law, Wake  
Forest University School of Law

Heather R. Abraham, Associate Professor of  
Law, State University of New York (SUNY) at  
Buffalo School of Law

Janevete Cole, Trustee,  
Alameda County Board of Education

Margaretta Lin, Lecturer, UC Berkeley Goldman  
School of Public Policy

Prescott Reavis, Founding Director, Kulima

Victoria Washington, District 3 Representative,  
Charlotte City Council

10/13/21, 12:12 PM

Decommodifying Housing Without Reproducing American Apartheid — Shelterforce

## Decommodifying Housing Without Reproducing American Apartheid

*Though the idea of social housing is gaining traction among advocates and policy experts, the path of least resistance for its production in the U.S. is also the path of the perpetuation of residential racial segregation.*

By Thomas Silverstein · December 7, 2018



Chain Link Skyline. Photo by n. via Flickr. CC BY-NC-ND 2.0

One of the ironies of housing justice work in 2018 is that, while a deeply hostile and incompetent federal administration plots the destruction of the housing safety net, the range of what is politically possible for policies to meet the United States' housing needs has moved sharply to the left.

After decades of focus on tax credits, vouchers, and inclusionary zoning, organizers and policy experts are shifting focus toward direct, public, or collective control of homes. The vehicles for this sort of development include community land trusts and public housing, both of which fall under the broader umbrella of social housing. It turns out that aspirations for taking the market out of housing provision were not reduced to rubble with the Pruitt-Igoe Towers in St. Louis in 1972.

As it increasingly influences housing policy, this turn is apt to cause no small amount of agita among civil rights advocates who have long fought to remedy the continuing effects of deliberate residential racial segregation. After all, federally sponsored racism permeated public housing with regard to its occupancy, location, and maintenance. Although residents managed to forge strong communities, much of what public housing authorities across the country produced in the wake of the National Housing Act of 1949 isolated residents from decent jobs, quality education, and basic health and safety. Why then would this society want to recreate those conditions?

The answer should be that it would be different this time around—in producing social housing that honors the fundamental right of all to a decent home, we will also respect the fundamental rights to education, health and safety, a living wage, and freedom from discrimination. There is, however, a substantial risk of those being empty words as the path of least resistance for social housing production in the U.S. is also the path of the perpetuation of residential racial segregation. At the same time, by understanding the structural reasons why that is the case, the opportunities to exploit gaps and fissures in those structures, and how segregation would threaten the sustainability of social housing, it is possible to build a case for racially integrated housing as a public good.

### The Path of Least Resistance: Land Availability, Land Costs, and Political Will

In the absence of concerted action, three principal factors are likely to steer commodified housing to low-income communities of color where residents are disproportionately isolated from decent jobs, quality schools, and basic health and safety. First, it typically seems as if developable land where construction would not fuel sprawl is concentrated in or adjacent to low-income communities of color. Second, acquisition costs for privately owned land are likely to be lower in those very same places. Third, over the long haul, local governments in disproportionately black and Latino central cities and inner ring suburbs, rather than heavily white, affluent suburbs, are more likely to have the political will to invest significant resources in the production of social housing.

### The Location of Developable Land

When selecting sites for the production of new housing, regardless of affordability, two categories of land tend to appear be the commonsense choice: land within the developed portion of a metropolitan region that has fallen into disuse, and undeveloped greenfields at the periphery of metropolitan regions. The former type of land, which can be industrial, residential, or commercial, tends to be located in or near low-income communities of color in central cities and declining inner-ring suburbs because of disinvestment and deindustrialization.

Formerly industrial land is often located in close proximity to logistical infrastructure such as rail hubs and ports and communities of color that often had no or lax zoning requirements. For residential land in particular, deliberate underinvestment in maintenance by absentee property owners and the discriminatory lending practices of financial institutions have played significant roles in increasing vacancy. By contrast, with some exceptions, greenfields are more likely to be located in predominantly white areas, but prioritizing development in those areas often has adverse environmental implications.

Areas with brownfields and housing that has deteriorated as a result of disinvestment offer some tradeoffs with respect to access to opportunity. On the one hand, access to high-performing schools and healthy environmental conditions is usually limited, while, on the other, proximity to

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## Decommodifying Housing Without Reproducing American Apartheid — Shelterforce

job centers is sometimes greater and transit access is usually better. The dimensions of opportunity that are most beneficial to individuals or families may vary based on each household's individual characteristics, with young children benefitting more from access to high-performing schools and young adults without children benefitting more from access to transportation and jobs.

**The Cost of Land**

Closely related to the availability of developable land is the cost of land. Controlling for current zoning regulations, land tends to be most expensive in affluent, predominantly white areas. There are partial exceptions to this norm in cities undergoing rapid gentrification, but any strategy to foster residential racial integration in decommodified housing will need to account for this obstacle. Patterns in ownership of land by public entities and public-spirited nonprofit organizations, such as religious congregations, exacerbate the problem.

In comparison to suburban municipalities, big city local governments are more likely to own land and to own it for a wider variety of purposes rather than just the more typical schools, parks, and emergency services. The greater the inventory a government holds, the more frequently a building will become obsolete, thus creating opportunities for adaptive reuse as social housing. Additionally, because of the pernicious effects of lending discrimination and broader economic insecurity as well as a lack of competition from private actors to purchase land, big city local governments are more likely to own individual small lots and structures through tax foreclosure.

The geographic distribution of land owned by nonprofit institutions that might have a mission-related motivation for contributing to social housing production is also skewed. Nonprofit service providers and advocacy organizations located in big cities may have surplus land. The location of religious institutions is more widely distributed, but land that is available for reuse is likely to be disproportionately located in big cities, both due to the relative age of physical structures and relocation by congregants. Accordingly, neither public land nor nonprofit institutional land is likely to offer a way out of the problem posed by higher land costs in affluent, predominantly white areas.

**Racism and Political Will**

It should also come as no surprise that affluent, predominantly white suburban communities are less likely to be supportive of the production of social housing within their boundaries than are big cities. Opposition occurring even within big cities tends to be concentrated in affluent, predominantly white neighborhoods rather than in low-income communities of color.

To the extent that it influences government actors, this predictable opposition has adverse implications for the donation of public land, zoning and land use approvals, and commitment of public funds to pay for acquisition and construction. Even if local politicians accept the case for social housing production, community opponents may have an effective veto over some bond financing necessary for development by way of the ballot box.

**Identifying and Exploiting Gaps in Exclusionary Structures**

The foregoing case for why building decommodified housing in low-income communities of color is the path of least resistance is a bit of a straw man and intentionally so. Closer scrutiny reveals that for each of the problems above—the availability of affordable, developable land and racially motivated community opposition—there are either exceptions to the rule or workarounds that diminish the significance of the problem. Understanding these problems can drive the field to engage in the creative, visionary thinking needed to avoid the reproduction of residential racial segregation.

**The Land Is There When You Look For It**

With respect to the availability of developable land, the overview above does not address how certain extant land uses that are concentrated in affluent, predominantly white suburbs are rapidly becoming obsolete. In 2017, Credit Suisse estimated that 20-25 percent of U.S. shopping malls would close by 2022. These shopping centers are spread across suburban areas, and, although it may be reasonable to expect closures to hit diverse inner-ring suburbs the hardest, the shuttering of some malls in historically exclusionary areas across many metropolitan areas is a near-inevitability.

Additionally, among malls that may be able to survive the proliferation of e-commerce, many are undergoing dramatic renovations along the "Town Center" model, which invites the inclusion of housing as part of a New Urbanist-inspired drive to create walkable mixed-use communities.



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Along similar lines, the U.S. is likely to see the closure of a significant number of golf courses across metropolitan regions in upcoming years. According to a study by Pellucid Corp., an industry group, there was an over 30 percent reduction in the number of regular golfers in the U.S. between 2002 and 2016. To an even greater extent than with respect to shopping malls, golf courses are concentrated in affluent, predominantly white suburban areas. These broad swaths of land present an opportunity for decommodified housing production for which there arguably is no parallel in low-income communities of color.

A final and more controversial source of developable land in affluent, predominantly white suburbs consists of the ubiquitous subdivisions that line these communities. Nassau County, New York is one of the foundational proving grounds for residential racial segregation in the U.S. The Town of Oyster Bay includes the most exclusionary areas, where roughly two-thirds of the housing units were built prior to 1960, and only about one in thirteen have been built since 1990. Older housing units in Oyster Bay tend to be relatively poorly constructed post-World War II homes. Although homeowners in places like Oyster Bay may have greater access to affordable home equity and refinance loans, there is very little architectural significance or expectation of high future demand that would prevent the reuse of this land.

**If Government Is an Active Partner, Cost Containment Is Feasible**

The conventional wisdom that land costs are higher in affluent, predominantly white areas is belied by the ways in which existing zoning controls intersect with cost. It is certainly true that in most metropolitan regions, the cost of land per unit of allowable density is most affordable in low-income communities. At the same time, it is also often true that the per-acre cost of land is actually lower in exclusionary suburbs. Government has the power to increase allowable density.

Typically, this would increase the value of the land that is upzoned, partially undermining the power of upzoning to decrease disparities in land costs between affluent suburbs and low-income cities and inner-ring suburbs. However, if the government assumes ownership of the land prior to upzoning (whether through property tax foreclosure, eminent domain, or consensual sale), it should be able to do so at a price point that reflects the value of the property at the lower density.

Though municipalities could similarly acquire higher density land in low-income communities of color and facilitate social housing development that is yet more dense, that practice could not match the gains in value added from suburban areas because the gap between the original density and the density of what is built would be smaller.

If the community land trust model, which does not necessarily require government support, is the dominant model of social housing production, the difficulty in overcoming higher per-unit land costs in affluent, predominantly white areas is not so easily solved. Unlike a local government producing housing directly, a community land trust, which owns land subject to deed restrictions and leases individual homes to low-income households for an extended period, typically 99 years, does not have zoning authority, and, unlike many municipalities, it does not have the power to simply ignore land use regulations when acting as a land user. That does not, however, mean that community land trusts are without options for precipitating the upzoning of land in suburban areas.

The federal Fair Housing Act has long offered an underused tool for attacking exclusionary zoning through litigation. The Fair Housing Act prohibits policies and practices that have unjustified discriminatory effects in addition to intentional discrimination. Since exclusionary zoning tends to have a disparate impact on Black and Latino households, the practice is often a violation. The primary reason why the threat of Fair Housing Act enforcement has not had as much of a deterrent effect as would be ideal is that it is very difficult to bring such cases unless a developer makes a failed attempt to secure a zoning change. Developers in the commodified market, both for-profit and nonprofit, generally are not inclined to take on the pre-development costs, lengthy process, and uncertain outcome that accompany such efforts. These deterrents should not be as determinative for mission-driven community land trusts.

Additionally, proponents of social housing production can advocate for policies that return land use regulatory authority in affluent, predominantly white suburbs from the local level to the state, which may be a friendly forum for upzoning attempts. New Jersey's Fair Housing Act and Massachusetts' Chapter 40B law both provide examples of how to achieve this.

The extent to which this is a realistic prospect will vary by state. It is hard to imagine state legislatures that have purposefully preempted local inclusionary zoning, like Tennessee or Indiana, forwarding affirmative legislation to undercut exclusionary zoning. At the same time, in order to overcome preemptive tax and expenditure limits that would prevent municipalities from adequately funding social housing and to beat back attempts by the real estate industry to stymie social housing, advocates will inevitably have to build power that can be exercised in currently unfriendly state legislatures and governors' mansions.





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Although it is difficult to imagine with the current administration and Congress, the federal government can also play a role through enforcement by the U.S. Department of Housing and Urban Development of its grantee local governments' duty to take proactive steps to foster residential integration or through legislation like that recently introduced by Senator Elizabeth Warren that would incentivize exclusionary local governments to adopt more inclusive zoning.

**Confronting Racism with Hard and Soft Power**

The litigation-based approach to lowering land costs for community land trusts in high opportunity areas discussed above also represents the most direct, albeit lengthy, way of reducing the role of racism in the siting of social housing. Smaller variations on the same theme of transferring power from local governments that are captive to the exclusionary interests of their constituents to institutions like state administrative agencies, state and federal courts, and regional or county governmental bodies also hold promise. Alliances between low-income communities of color and mostly white, middle-income suburbs that are straining under the weight of unsustainable costs because of municipal fragmentation could advance such policies.

Other state policies that could further common interests and cement the durability of an urban-suburban coalition include mechanisms for pooling property tax revenues regionally, laws that make annexation easier, and ones that make further incorporation of new municipalities and school districts more difficult.

Proponents of social housing can also make the affirmative case for why such development is in the best interests of nearly all segments of metropolitan society. In essence, advocates would seek to pit individuals and families up to the 90<sup>th</sup> percentile of household income (and perhaps the 98<sup>th</sup>) against economic elites. Although those in the top 10 percent (but not the 1 percent) have a different lived experience than the working class, there is a growing recognition that, in an era of intense and growing income inequality, their interests are increasingly more aligned with the working class.

While many upper-middle-class families saw their home equity and retirement savings wiped out by the Great Recession, they did not benefit from the golden parachutes provided to executives and institutional shareholders of financial services firms. Even if they rebounded more easily than working class people, their experience with the trauma that speculation-driven instability in the housing market predictably causes could lead them to view social housing as a bulwark of security.

The nationwide housing affordability crisis and generational shifts in preferences for denser housing also have the potential to play constructive roles. The shift toward deliberately socioeconomically integrated social housing with quality amenities, like that in Vienna, Austria, is a partial answer to the question of whether social housing can really be "for" the upper-middle class.

It is only a partial answer because there are other structural factors that might make the speculative housing market continue to seem like a better bet for those in the top 10 percent by household income. Though to a lesser extent than before passage of the 2017 tax bill, the federal tax code still incentivizes homeownership free from equity accumulation restrictions as a means for accumulating wealth and retirement security. Additionally, in the wake of a large-scale retreat from defined-benefit pensions and in light of Congress's continuing failure to increase Social Security benefits, there are ever-decreasing alternatives for achieving retirement security.

Although an upper-middle-class family may spend less of their income on housing costs if they reside in decommodified housing, the options of increasing their 401(k) contributions or independently playing the stock market may seem both less fruitful and more dangerous than continued participation in the speculative housing market. Thus, the indirect strategy of advancing retirement security by increasing Social Security benefits, requiring employers to offer defined benefit pensions, or both, would help push upper-middle-class families toward acceptance of decommodified housing as a good of value to them specifically.

The fundamental goal must be to engender the perception that social housing is a universal social good that, though it may provide disproportionate benefits to poor and working class people, helps all people regardless of income and wealth. This articulation of the goal illustrates why the adoption of certain established practices for diffusing opposition to affordable housing in affluent, predominantly white areas would be harmful. Chief among these are residency preferences or requirements, which may violate the Fair Housing Act and that limit (in part or in whole) occupancy to households that live or work in the community in which the housing is located. Although such policies may facilitate the broad spatial dispersion of social housing, that distribution would not signify residential racial integration if people of color cannot reside in housing in predominantly white areas in practice.

Additionally, whether through admissions preferences or targeted marketing to specific groups, a disproportionate focus on housing for seniors seeking to downsize and young people seeking to



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establish themselves come at the expense of housing families with children and thus could neutralize the integrative effect of social housing in predominantly white areas. Although stressing the needs of elders and young people who are from affluent, predominantly white communities may be an important part of the narrative as to why such housing is in the interest of residents, that should not translate into the actual exclusion of low-income people of color moving to those areas.

**Ensuring the Stability and Soundness of Decommodified Housing**

Although the imperative to take strategic action to ensure racial integration in social housing on civil rights grounds is clear, the relation between integration and the long-term stability of social housing is nearly as significant. One of the principal reasons why public housing in the U.S. is widely perceived as a failure is that it was chronically underfunded, leading to a spiral of habitability issues, increasing vacancies, and reduced revenue from rents. The lack of broad public support underlying that underfunding was, in part, the product of the racially biased perception that public housing was “for” a specific marginalized population and that others had little or no interest in its effective operation. By expanding the base of people who believe that social housing is “for” them and people close to them, it may be possible to prevent the reproduction of that pattern.

Another closely connected reason for the deterioration of public housing was that, contrary to some initial aspirations, deep income targeting led to a preponderance of extremely low-income residents. In 1999, at the beginning of the years-long process of demolishing the Robert Taylor Homes, just 15 percent of Chicago Housing Authority residents were employed, and the average head of household had an income of \$10,000. The amount of rent that a housing provider can collect from extremely poor households is much less than can be obtained even by moving slightly up the income scale.

That lack of revenue played a complementary role to that of insufficient government appropriations for maintenance and operations. If upper-middle class households can be drawn into social housing, that occupancy could play a similar role to the one it plays in private market housing featuring inclusionary set-asides of affordable units, effectively cross-subsidizing the residency of low-income households.

A perhaps underappreciated benefit of efforts to avoid the concentration of social housing in low-income communities of color is that doing so would free up vacant and underutilized land to meet local needs that may actually be more pressing than the need for shelter.

Racial disparities in access to amenities like green space, recreational facilities, and retail options that meet community needs like grocery stores, pharmacies, and hardware stores are products of racial segregation and subsequent neighborhood disinvestment. Making use of available land to fill gaps and reduce disparities in access may prove to be of more benefit than producing social housing locally.

As illustrated by a recent study in the Journal of the American Medical Association, converting vacant city lots into green space can improve the mental health of neighborhood residents. In the best case scenario, reducing the pressures that would tend to undercut the accrual of these types of benefits can be the result of prioritizing racial integration as a goal in social housing programs.

Social housing should be the future of housing in the U.S. True racial and economic justice depend on it. At the same time, the past track record of public housing in the U.S. has been one of stark racial segregation that has far-reaching negative consequences. There is a substantial risk that contemporary social housing efforts will reproduce those outcomes, but there are several windows of opportunity for orienting production toward racial integration as a core value. Doing so should enhance the long-term sustainability of social housing efforts and maximize the benefits of housing and broader community development efforts for residents of low-income communities of color.

**Thomas Silverstein**

Thomas Silverstein is counsel in the Fair Housing & Community Development Project of the Lawyers' Committee for Civil Rights Under Law.





October 15, 2021

The Honorable Emanuel Cleaver  
Chairman  
United States Subcommittee on  
Housing, Community Development and  
Insurance  
United States House of Representatives  
Washington, D.C. 20515

The Honorable French Hill  
Ranking Member  
United States Subcommittee on  
Housing, Community Development and  
Insurance  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Cleaver and Ranking Member Hill:

We write to applaud your focus on the subject of today's hearing, *Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity*. As the title of this hearing aptly highlights, exclusionary zoning has harmful impacts well beyond just constrained housing supply, reaching into almost every corner of communities across our nation. Without proactive leadership from policymakers, exclusionary zoning will continue to limit economic growth, restrict access to resources every household needs to thrive – including quality education and healthcare – and even harm our environment. NMHC and NAA echo the view of former Obama Administration advisor [Michael Stegman when he said](#) eliminating exclusionary land use regulations should be the civil rights issue of our time.

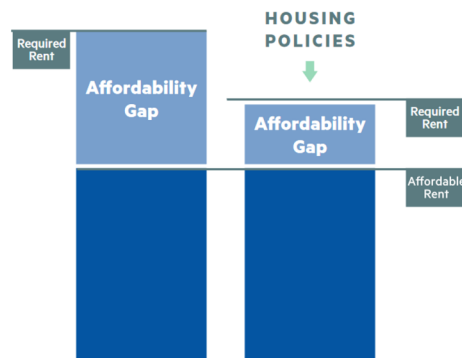
NAA and NMHC collectively represent the apartment industry that provides apartment homes for 40 million residents, contributing \$3.4 trillion annually to the economy. As previously noted in an [August 16, 2021, correspondence](#) from a group of housing and real estate organizations to Congress, we support the goals of legislation examined in today's hearing alongside a number of other bills aiming to address regulatory barriers and historic underinvestment in housing which has led to supply shortages and affordability pressure on our nation's renters. On behalf of our industry, our residents, and all the future apartment residents that stand to benefit from eliminating exclusionary zoning and other punitive regulations, we thank you for today's hearing.

Exclusionary zoning is just part of a mosaic of harmful policies that create barriers to the development of rental housing which is critical to addressing the nation's housing affordability challenges. Ultimately, these policies result in renter households absorbing undue costs, frequently imposed on the families in a community least able to afford them. A 2019 study by the Atlanta Apartment Association, HR&A and NAA entitled "[Drivers of Multifamily Housing Costs and Affordability in Atlanta](#)" found, among other conclusions, that neighborhoods with higher rents are overwhelmingly zoned for single-family housing. Further, prohibitive zoning that discourages multifamily development curbs the ability to normalize rent.

NMHC released its [Housing Affordability Toolkit](#) to highlight the impact of policies like exclusionary zoning, which restrict the supply of housing within a market, driving up



prices and limiting opportunities to thrive to a fortunate few. Policymakers have an opportunity not just to deconstruct a bad policy legacy from previous eras, but to also improve the market circumstances for millions of households by helping increase supply and drive down the cost of housing.



1

On June 17, 2021, senior White House officials, including Council of Economic Advisors Chairwoman Cecilia Rouse, [weighed in on this matter](#), noting the uniquely harmful impact of policies like exclusionary zoning on minority communities. They said, “Indeed, policies and practices exist today that are seemingly non-discriminatory on their face but still negatively affect many families of color, especially Black families. Many of these policies and practices have long-term impacts—from education to employment to business ownership to housing—that must be addressed.”

Rouse and her colleagues went on to highlight a fundamental principle of the relationship between housing and resident wellbeing, saying, “Exclusionary zoning laws have a profound impact on social welfare because *where* a family lives matters.” It is with this in mind NMHC and NAA have supported elements of President Biden’s infrastructure plan designed to encourage better zoning policy, including the \$5 billion competitive grant program to provide flexible and attractive funding to jurisdictions that take concrete steps to eliminate needless barriers to produce affordable housing and expand housing choices for people with low or moderate incomes.

The Administration has continued its leadership on this topic with the [September announcement](#) that HUD was developing a Housing Supply Toolkit to help guide future

<sup>1</sup> [The Housing Affordability Toolkit \(nmhc.org\)](#)



deployment of HUD resources to jurisdictions committed to addressing local regulatory barriers to housing. The Federal Housing Finance Agency (FHFA) is also exploring ways to identify markets impacted by exclusionary zoning using loan data.

In January, 2021, HUD released a report titled [\*Eliminating Regulatory Barriers to Affordable Housing\*](#), which accurately identified the practical impacts of exclusionary zoning. “While one often thinks of restrictive land use regulations in the context of highly regulated markets with high priced housing, many communities throughout the country limit the production of the “missing middle” housing, that set of diverse, unsubsidized housing options that blend into single family neighborhoods, ranging from bungalow courts, townhouses, duplexes to fourplexes, and courtyard apartments, which is necessary to meet the spectrum of housing needs.” The report went on to note, “This is a critical time to take action to increase housing production. As the COVID-19 response has reminded communities of the importance of nurses, teachers, first responders, grocery clerks, skilled laborers, factory workers, and janitors as neighbors, housing these essential front-line workers continues to be a challenge in much of the country. Starter homes, garden apartments, and other components of the “missing middle” housing are not being produced to satisfy demand. Allowing more building opportunities can serve as a stimulus for the construction industry.” The report also quoted Obama Administration FHA Commissioner Carol Galante from a New York Times article when she noted the elimination of regulatory barriers would, “get workers back to work, provide safe and affordable living for those hard hit by this pandemic and get property taxes and other revenue flowing.”

Communities across our nation are desperate for new housing, and policymakers at all levels of government can help meet this public need by confronting the numerous hurdles that can hinder development beyond just exclusionary zoning, including excessive entitlement expenditures and environmental site assessments; impact fees; inclusionary zoning mandates or rent control; and onerous building code requirements. Barriers like these and their negative effect on housing development are well documented in NAA’s [\*Barriers to Apartment Construction Index\*](#). Moreover, the collective impact of these barriers is insurmountable in many markets with [\*research by NMHC and the National Association of Home Builders showing\*](#) that on average, regulations comprise 32 percent of total development costs.

While we support additional funds for existing subsidy programs, we believe there must also be a focus on addressing the supply side of the equation. To that end, eliminating restrictive exclusionary zoning is an important part of that goal. Addressing onerous exclusionary zoning, streamlining the permit process and easing regulations could go a long way to address the housing affordability challenges faced by communities across the nation while making critical investments in infrastructure of all types. To that end, we urge lawmakers to craft legislation that will incentivize states and localities to:

- Reduce barriers;



- Streamline and fast track the entitlement and approval process;
- Provide density bonuses and other incentives for developers to include workforce units in their properties;
- Enable “by-right” zoning and create more fully entitled parcels;
- Defer taxes and other fees for a set period of time;
- Lower construction costs by contributing underutilized buildings and raw land;
- Create incentives to encourage higher density development near jobs and transportation

The apartment industry hopes eliminating exclusionary zoning can be a bipartisan effort and join with the Administration to help bring relief to communities experiencing the harmful effects of these punitive regulations. On behalf of the apartment industry and the millions of families who call an apartment home, we thank you for drawing attention to this critical challenge facing our nation’s housing market. We hope the recognition of exclusionary zoning, its legacy, its victims, and the vast potential we can unlock with its elimination will be an outcome of this hearing and look forward to working with Members to advance this goal.

Sincerely,

Cindy Chetti  
Senior Vice President, Government Affairs  
National Multifamily Housing Council

Gregory Brown  
Senior Vice President, Government Affairs  
National Apartment Association



October 15, 2021

The Honorable Maxine Waters  
 Chairwoman  
 U.S. House Committee on Financial Services  
 2129 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairwoman Waters:

Prosperity Now is providing the following comments to the Committee as additional information related to its hearing today Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity. Prosperity Now is pleased to see the Committee hold this hearing and we look forward to working cooperatively to advance housing opportunities for all, particularly for communities of color, for whom the ongoing pandemic has exposed the historical inequities in our housing ecosystem.

The Committee Memorandum lays out an excellent framework on the interconnected issues that would help local and state zoning reform advance housing equity across the country. Prosperity Now, a national nonprofit with extensive histories in housing policy and advancing racial equity, recognizes the need for comprehensive fair housing enforcement, impact assessments, and funding commitments to affordable housing development. We expressed strong opposition to the misguided initiatives of the previous administration to weaken or eliminate key federal tools such as the mandate to affirmatively further fair housing, codify the disparate impact standard, and enforcement of the Community Reinvestment Act. Prosperity Now is actively working to improve each of these tools through partnerships with Congress, the Administration, and colleagues across the nation. We have also expressed resolute support for the housing components of the Build Back Better plan.

Prosperity Now supports the four bills discussed in the memorandum, as well as other proposals such as the Neighborhood Homes Investment Act, Build More Housing Near Transit Act, and the Promoting Affordable Housing Near Transit Act.

While reforming zoning in local jurisdictions will not, on its own, lead to more affordable housing and opportunities, it is a necessary step, both politically and administratively, in many jurisdictions. For example, allowing for denser development in high-opportunity areas or in those well-served by transit can facilitate conversations about inclusionary zoning, affordable housing set-asides, reduced-cost development of public land and air rights as well as deed-restricted housing. It defies our recent history to assume that communities that oppose some measure of upzoning would readily embrace the comprehensive approaches detailed above. Prosperity Now believes that federal incentives, through grantmaking, legislation, and fair housing enforcement, are key to improving local and state land use frameworks.

**Prosperity Now**  
 1200 G Street NW  
 Suite 400  
 Washington, DC 20005

T 202.408.9788  
 E [hello@prosperitynow.org](mailto:hello@prosperitynow.org)

[prosperitynow.org](https://prosperitynow.org)



While many opponents of better land use and intentional affordable housing development frame the debate as an assertion of their own property rights, the groundwork for land use's nefarious history was established early last century. In 1922, Robert Whitten, president of the American City Planning Institute was clear: "Bankers and leading businessmen should live in one part of town; storekeepers, clerks, and technicians in another; and working people in yet others where they would enjoy the association with neighbors more or less of their own kind." This segregationist approach permeates our discussions today and poisons the debate.

In fact, the United States would benefit in many ways if we moved to a more economically and racially integrated housing ecosystem. Connecting families to employment, education, recreation, and other opportunities is a well-established approach to engendering community, reducing negative social and environmental outcomes, and improving public health and local economies. Such a transformation of our housing systems would not impede homeownership and its asset-building value. In fact, it would broaden access to homeownership, democratize community development, and enrich and strengthen American communities for all.

Thank you for the opportunity to address zoning and related affordable housing issues. Please contact Alejandra Montoya-Boyer at [amontoyaboyer@prosperitynow.org](mailto:amontoyaboyer@prosperitynow.org) or Doug Ryan at [dryan@prosperitynow.org](mailto:dryan@prosperitynow.org) with any questions. We look forward to the continued work of the Committee.

Sincerely,

Prosperity Now







October 15, 2021

The Honorable Maxine Waters  
Chairman, House Financial Services  
Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member, House Financial Services  
Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Emanuel Cleaver  
Chairman, House Financial Services  
Subcommittee on Housing, Community  
Development and Insurance  
U.S. House of Representatives  
Washington, DC 20515

The Honorable French Hill  
Ranking Member, House Financial Services  
Subcommittee on Housing, Community  
Development and Insurance  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Waters, Ranking Member McHenry, Chairman Cleaver, and Ranking Member Hill,

Thank you for the opportunity to provide a statement for the record for your hearing, *Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity*.

Up for Growth Action is a 501(c)(4) advocacy organization that advocates for federal policies that achieve housing equity, eliminate systemic barriers, and create more homes. Up for Growth Action, in concert with Up for Growth, an affiliated 501(c)(3) national, cross-sector member network, is committed to solving the housing shortage and affordability crisis through data-driven research and evidence-based policy.

As you know, the nation faces a severe housing crisis, driven in large part by an unprecedented shortage of homes. In the past decade, despite years of economic growth, housing starts approached the lowest levels in history. Exclusionary zoning, artificial barriers, and opposition from residents combined to create a 7.3 million home underproduction, as measured from 2000 to 2015 (Up for Growth, 2018). This severe shortage of housing has far-reaching consequences, including economic inefficiency and lowered GDP; cost burdening for families and individuals who are forced to pay high rents and transportation costs; racial and socioeconomic inequality; and environmental consequences as more people are forced to commute greater distances for work and social opportunities.

As the housing shortage grows, more households will struggle to afford homes – currently, 46 percent of renter households pay more than 30 percent of their income toward rent (JCHS, 2021). This cost burdening is unsustainable, but without an increase in supply, millions of Americans will be forced to continue to pay an outsized portion of their budget toward rent.

Among homeowners and renters nationwide, people of color experience cost burdening at a disproportionately higher rate. According to research from Harvard University's Joint Center for Housing Studies, 55 percent of Black renter households and 53 percent of Hispanic renter households are cost-burdened, compared to 43 percent of white households (JCHS, 2021). Historically, policies like redlining have limited black and brown communities' access to quality, affordable housing in the highest

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opportunity areas. This imbalance persists today, and housing is often an obstacle rather than an opportunity for growth. Quality housing in opportunity-rich communities is among the most urgent and important social equity issues the country faces.

In addition, consumer tastes have shifted over the past two decades and today there is far more demand for living in walkable urban neighborhoods than in the expansionary period following World War II. Existing exclusionary zoning and other restrictive land-use policies in these walkable, high opportunity and job-rich locations have limited the ability for builders to deliver housing in these places where housing is high in demand. This has the effect of driving up prices for scarce housing in walkable places and forcing individuals in search of affordable options to continue to commute long distances to jobs and opportunities. Research from University of California at Berkeley finds that the carbon footprint of households in the suburbs can be double or triple that of households in the urban core (Jones & Kammen, 2013).

#### **Addressing Exclusionary Zoning**

While a variety of factors have contributed to the current housing shortage and its resulting inequities, exclusionary zoning continues to prevent communities from addressing the housing shortage by restricting the quantity and types of homes that are legally permissible. Perhaps at no other time in U.S. history has housing been so difficult and expensive to build, and this is due in large part to a local land-use laws and regulations that prevent people of all incomes and backgrounds from living in safe, affordable homes near jobs, schools, and other resources found in livable communities. Changing these laws must become a national priority if we want to make housing more equitable, grow the economy and address other urgent challenges such as climate change.

To understand the scope of the challenge, research in Connecticut is illustrative. The state, which is the country's third smallest, has 2,620 zoning districts and 2 subdivision districts as identified by Desegregate Connecticut, an organization that created the first-ever zoning atlas, based on analysis of more than 32,000 pages of state zoning regulations. Their analysis found that only 2 percent of Connecticut land is available for multi-family homes, and a minimum 1-acre lot size is required for 80 percent of all single-family homes built in the state (Desegregate Connecticut, 2021).

This type of regulatory environment nearly always requires a land-use waiver to approve the development of new, affordable multi-family homes – a process that typically involves public hearings, at which point local NIMBY dynamics often come into play. And yet the question remains as to how states and the federal government may effectively address an issue that is almost exclusively in the regulatory domain of local cities, towns, villages, counties and regional jurisdictions.

Federal policymakers can look to recent policy actions taken by a small number of local jurisdictions to understand how powerful eliminating exclusionary zoning can be. In 2020 the City of Portland, Oregon passed the Residential Infill Project, a citywide zoning reform policy that allows for duplexes, triplexes, quadplexes, cottage homes, or a second accessory dwelling unit (ADU) on the vast majority of single-detached residential lots across the city.

Up for Growth analyzed the potential impact of the Residential Infill Project policy as part of its Housing Policy and Affordability Calculator. Up for Growth's analysis found that elimination of exclusionary zoning under Portland's policy will boost housing production by 1,500 units per year over a 3-year forecast period, reducing pressure on rent growth by 11%, compared to long-term baseline growth (Up for Growth, 2020).

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Portland today is among cities like Cambridge, Berkeley and Minneapolis that have eliminated exclusionary zoning and demonstrated impact of removing the largest barrier to the development of affordable housing. Recent action on the municipal level also proves that when zoning reform is addressed with common-sense, growth-oriented solutions, it can make a big difference.

That's why we believe strongly that federal legislation is necessary to support other states and cities that are striving to follow suit. Fortunately, there are several promising proposals pending action in Congress today that would address exclusionary zoning while preserving the flexibility for local policymakers to craft solutions tailored to their unique community needs.

#### **H.R. 2126, the Housing Supply and Affordability Act (Rep. Blunt Rochester)**

H.R. 2126, the Housing Supply and Affordability Act (HSAA), and the related Unlocking Possibilities Program (Section 40103 of the Build Back Better Act) will enable state and local communities to design and implement policies that will address the nation's housing shortage and affordability crisis.

The legislation enjoys bipartisan support in Congress and is backed by over 140 organizations nationwide working to restore access, equity, and sustainability to their communities' approach to housing. The program also offers a high return on investment, a targeted local approach, and provisions to ensure policy impact, transparency, and effective oversight. In short, the Housing Supply and Affordability Act is a good deal for local leaders and taxpayers, and the right thing to do for Americans who are struggling to afford housing.

The Housing Supply and Affordability Act creates a new planning grant program to support regions, states, cities, and tribes in their efforts to eliminate barriers and spur housing production, while preserving local and regional decision-making and housing policy implementation. The program encourages the adoption of pro-housing policies, plans and updated codes, and targets funding to areas most in need of housing and where the most significant imbalances exist between the number of jobs and the amount of available housing. It will spur regional planning and collaboration in multi-jurisdictional coalitions and prioritize funding for communities with existing public transportation options.

The program would take a giant leap toward supporting communities in their efforts to address historical injustices created by discriminatory housing policies such as lending redlines and the displacement of communities from restrictive zoning rules that limit the building of multi-family homes.

#### **H.R. 4351, the Yes in My Backyard (YIMBY) Act (Rep. Kilmer)**

Another critical legislative proposal, which also enjoys broad bipartisan support and the backing of more than 250 organizations nationwide, is the H.R. 4351, The Yes in My Backyard (YIMBY) Act. This bill was originally introduced in the 116th Congress and passed the House of Representatives on a unanimous consent vote in March 2020. The bill was reintroduced in May 2021 and is awaiting action from the House Financial Services Committee.

The YIMBY Act would encourage localities to eliminate discriminatory land-use policies and remove barriers that prevent needed housing from being built around the country. The YIMBY Act achieves these goals by requiring Community Development Block Grant (CDBG) recipients to report periodically on the extent to which they are removing discriminatory land use policies and implementing inclusive and affordable housing policies detailed by the bill.

We've all heard the saying that sunlight is the best disinfectant. In alignment with that sentiment, the YIMBY Act increases transparency in land use, zoning, and housing decisions; sheds light on

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exclusionary policies; and ultimately encourage localities to eliminate barriers to much-needed housing. The YIMBY Act requires localities to fully examine and disclose their housing policy decisions and provides localities a framework for smart policymaking and regulatory practices, thus promoting more inclusive development principles.

The YIMBY Act represents an important step in helping communities understand and decrease barriers to smart, inclusive growth and reducing the negative and cumulative impact of exclusionary housing policies. It is also a way to clearly demonstrate that the federal government takes seriously the challenges created by exclusionary zoning.

Requiring federal CDBG grant recipients to report on the extent to which they are eliminating exclusionary policies starts an important conversation that increases transparency in land use and housing policy. The YIMBY Act will help break down barriers to housing and pave the way for increased economic productivity. This important legislation provides a roadmap for communities to improve affordability and equity in housing.

#### **Call to Action**

Many members of this subcommittee are champions for nationwide pro-housing policies and are also cosponsors of both the YIMBY Act and the HSAA, and we thank you for your continued commitment to the issues of housing supply and affordability. We are particularly thankful to Chairwoman Maxine Waters for her vigorous defense of housing proposals in the current reconciliation package.

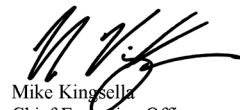
We agree with the Chairwoman that as negotiators begin exploring cuts to the Build Back Better Act package, that now is not the time for Congress to trade away programs that would empower states and local governments to address nation's housing crisis.

And yet there remains growing concern among housing advocates that the Unlocking Possibilities Program and other vital programs could end up being cut from the package. It was recently announced that bill authors are deciding whether to fund fewer programs or the same number of programs, but with reduced funding. No matter the direction Congress takes, the Unlocking Possibilities Program is worth preserving.

We would ask members of this committee to redouble efforts to preserve housing provisions in the reconciliation package, and encourage your colleagues do to the same. Hundreds of thousands of families across the country are counting on us to address a housing shortage that only grows more acute by the day.

Thank you for your leadership on this important issue and we look forward to working with you on policy solutions that encourage the development of more inclusive, equitable and affordable housing for America's low-income and working families.

Sincerely,



Mike Kingsella  
 Chief Executive Officer  
 Up for Growth Action

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