

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

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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.¹ 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.²

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.³

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

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

² 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>

³ 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.⁴

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."⁵

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.⁶

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

⁴ 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>

⁵ 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/>.

⁶ 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.⁷

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.⁸ 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.⁹ 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.¹⁰ 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.¹¹

⁷ 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>

⁸ Kahlenberg, “Hearing from Low-Wage Working Mothers.”

⁹ “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).

¹⁰ “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/>.

¹¹ 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.¹² 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.¹³

These efforts also command brought 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.¹⁴

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.¹⁵

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."¹⁶

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>

¹² 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/>

¹³ 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>

¹⁴ 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

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

¹⁶ See Reconciliation Legislation of the Budget Committee, Title IV – Committee on Financial Services, Subtitle B – 21st 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.¹⁷

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.¹⁸

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.¹⁹ 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.”²⁰ Class discrimination helps explain why, despite a

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

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

¹⁸ 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).

¹⁹ 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/>

²⁰ 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.²¹

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.²² 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.²³ 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.”²⁴ 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.²⁵ 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.²⁶

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.

²¹ 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>

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

²³ Tom Loftus, Memorandum to Author, June 8, 2020.

²⁴ Ibid.

²⁵ 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).

²⁶ 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.²⁷

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.

²⁷ 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