ARTICLES

The Case Against the Case for Zoning

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INTRODUCTION

American zoning regulations typically limit density - that is, the number of houses and apartments that can be placed on one parcel of land.[1] In an 2020, Professor Christopher Serkin published the article entitled *A Case for Zoning*,[2] where Serkin wrote that these restrictions limit housing supply and thus raise urban housing costs,[3] forcing Americans to live in automobile-dependent suburbs, thereby increasing greenhouse gas emissions and their negative environmental impacts.[4] Serkin further notes that a "consensus is therefore building, at

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1. *See infra* notes 23–26 and accompanying text.
2. Christopher Serkin, *A Case For Zoning*, 96 NOTRE DAME L. REV. 749 (2020).
3. *Id*. at 767.
4. *Id*. at 764.

least among academics and elite activists, that zoning is a problem to be overcome."[5]

Serkin admits that zoning should be at least somewhat more flexible.[6] But on balance, Serkin defends anti-density zoning, asserting that the current system:

1) preserves community character,[7]
2) prevents population growth from overburdening infrastructure,[8]
3) preserves property values and neighborhood stability,[9]
4) allocates the costs of growth to developers,[10]
5) has contributed to the rebirth of American cities,[11] and
6) is necessary to prevent homeowners from creating restrictive covenants which might be even less flexible than zoning.[12]

Serkin's arguments are important for a few reasons. First, Serkin is one of the nation's leading land use scholars: he is a co-editor of a leading casebook on land use law and has published extensively in leading law reviews.[13] Second, while other commentators seek to deny the link between housing supply and high housing costs,[14] Serkin candidly admits that zoning raises housing costs,[15] but argues that the negative effects of zoning are partially outweighed by other considerations. Finally, Serkin essentially argues for the status quo, or at least for more modest reforms than other commentators. Thus, his arguments may be more noteworthy than those in support of politically impractical reforms.

The purpose of this Article is to evaluate Serkin's arguments and examine their repercussions. Part I of the Article describes anti-density zoning and its negative side effects, and Parts II-VII discuss each of Serkin's justifications for the status quo. In Part VIII, I offer conclusions drawn from this examination, finding that Serkin's defenses of zoning are not entirely persuasive. For example, Serkin claims that zoning protects community character by limiting change: but since people priced out of expensive neighborhoods or suburbs are forced to move to another area and change the character of the latter place, zoning merely shifts the

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5. *Id.* at 751.

6. *See Id.*, *supra* note 2, at 753 (property owners "should expect some reasonable amount of change.") Serkin does not describe how much change is "reasonable."

7. *Id.* at 771-75.

8. *Id.* at 772-73.

9. *Id.* at 776-78.

10. *Id.* at 781.

11. *Id.* at 786-93.

12. *Id.* at 793-98.

13. Christopher Serkin, VANDERBILT LAW SCHOOL, at https://law.vanderbilt.edu/bio/christopher-serkin. Moreover, while some commentators attempt to deny the relationship between housing supply and housing costs, Serkin admits that zoning raises housing costs, and nevertheless defends anti-density zoning. *See supra* note 3 and accompanying text (describing Serkin's view).

14. *See infra* notes 59–60 and accompanying text (discussing arguments relevant to issue).

15. *See supra* note 3 and accompanying text.

burden of change rather than eliminating change.[16] Serkin suggests that anti-density zoning prevents infrastructure from being overloaded, but this too is a "beggar thy neighbor" argument because people priced out of an expensive area with restrictive zoning might move to a cheaper neighborhood or suburb and burden the infrastructure of the latter place.[17] Serkin writes that zoning allows local governments to push the costs of housing growth to developers,[18] but the anemic growth of the U.S. housing supply[19] suggests that such growth has largely not occurred.

More broadly, even if anti-density zoning creates the benefits claimed by Serkin, the broader question remains: what results should we value? Serkin points out that zoning increases property values,[20] but that is exactly the problem. The benefits of zoning are outweighed by the social costs of high rents and housing prices. When housing costs increase, some people are unable to afford housing in the areas where they can find suitable jobs, others must foul the air by driving long distances to reach housing they can afford, and the poorest are unable to find any housing at all: side effects that are more important than whether someone's street looks the same as it did in 1990. To the extent that state and local governments continue the status quo these problems are likely to multiply, as housing becomes scarcer and rents and home prices continue to rise.

I. ZONING AND ITS DISCONTENTS

One traditional defense of low-density zoning is that it is necessary to protect residents from harmful activities such as industrial pollution.[21] But if this was the case, zoning would not be terribly sophisticated: there would be a zone or two for industry and other pollution-generating commercial activities, and another for housing. In reality, zoning does not just regulate *whether* land is used for commerce or housing; instead, zoning also limits the *amount* of housing that can be built on a residential parcel of land. For example, the city of Jacksonville, Florida has a dozen districts zoned for low-density housing,[22] five different districts for

16. *See* Part IIA *infra*.
17. *See* Part III *infra*.
18. *See* Part V *infra*.
19. *See infra* notes 172–90 and accompanying text.
20. *See* Part III *infra*.
21. *See* Serkin, *supra* note 2, at 752 (zoning originally "focused on keeping industry and intensive land uses out of residential neighborhoods" but admitting that history of zoning "tinged if not saturated with racism and classism"); Solangel Maldonado, *Sharing A House But Not A Household: Extended Families and Exclusionary Zoning Forty Years After Moore*, 85 FORDHAM L. REV. 2641, 2643 (2017) (earliest zoning laws "sought to protect residential areas from pollution, unsanitary conditions, and industrial nuisances"); Klaus Philipsen, *How Will Technology Change Cities?*, 7 U. BALT. J. LAND & DEV. 91, (2017) (Zoning's "initial purpose was to segregate polluting and noisy manufacturing industries from residential sections of town").
22. Jacksonville Code of Ordinances, § 656.305(A). ("Jacksonville Code").

medium-density housing,[23] and two high-density districts.[24] New York City's zoning code now contains 200 categories for residential areas.[25]

Because zoning codes are so complex, landowners who wish to build more houses or apartments on their land will often need to request a rezoning - that is, an amendment of the zoning code to recategorize their land into a more permissive, higher-density zone.[26] Whenever a rezoning is proposed, land use law typically requires the city to notify the landowner's neighbors.[27] In some municipalities, applicants for rezoning must affirmatively solicit input from neighbors.[28]

State zoning enabling acts typically require public hearings on rezoning applications.[29] These public hearings are often sparsely attended.[30] A 2020 study of commenters in Massachusetts zoning proceedings showed that homeowners were markedly overrepresented among the commenters.[31] The same study showed that 82 percent of commenters lived in the same census tract (i.e. neighborhood) as a proposed housing development.[32] Only 15 percent of commenters supported new housing proposals.[33] This is not surprising; homeowners have a strong incentive to oppose new housing and population density,[34] partially because any increase in the supply of housing might reduce housing costs and thus affect the value of

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23. *Id*. at § 656.306(A) (6–10).

24. *Id*. at 656.306(A)(2–3) (In addition, the city has overlay districts applying separate regulations for certain neighborhoods). *See, e.g*., ch. 656, subparts I-S.

25. *See* Serkin, *supra* note 2, at 761. In addition, zoning codes often contain subdivision requirements that are separate from the rest of the code and overlay zones for individual neighborhoods or blocks. *Id*.

26. *See* Jacksonville Code *supra*, note 22 at 656.311. (describing rezoning procedure); *Zoning Changes to Allow for Higher Residential Density*, LOCAL HOUSING SOLUTIONS, available at https://perma.cc/NK78-9HF6 (suggesting that higher density will often require rezoning).

27. *See, e.g.,* Stewart E. Sterk, *Structural Obstacles to Settlement of Land Use Disputes*, 91 B.U. L. REV. 227, 238 (2011) ("Before a municipal body may affect any kind of zoning change . . . neighboring landowners must generally receive notice of the proposed change" followed by public hearings).

28. *See* Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083, 1091–92 (2021) (in Cambridge, Mass., applicants for zoning changes must solicit input from neighbors, and must also report to city on "all outreach conducted, and meetings held [and] shall describe all issues raised by community members and shall describe how the proposal responds to those issues").

29. *Id*. at 1089–91.

30. *See* Katherine Levine Einstein, *Neighborhood Defenders*, 135 POLI. SCI. QUAR. 281, 289 (2020) (citing example of apartment project that generated sixty comments).; Ally Schweitzer, *In Montgomery County, "Neighborhood Defenders" Fight to Maintain Suburban Status Quo,* Dcist, (Apr. 5, 2022), https://perma.cc/DN9W-WDCR (when 34 community members testified in opposition to new townhouses, county reduced number of new housing units permitted).

31. Einstein, *supra* note 30, at 101. Commenters were also older and whiter than the population as a whole. Id. at 101, 103.

32. *Id*. at 102.

33. *Id*. at 106–07.

34. *See* Roderick M. Hills & David Schleicher, *The Steep Costs of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing*, 77 U. CHI. L. REV. 249, 269 (2010) (landowners "seeking to change zoning designations face opposition from neighbors who typically oppose any *rezoning that increases density"*) (emphasis added).

their property,[35] and sometimes because of more nebulous concerns such as community character.[36]

City governments often favor the interests of these "Not In My Back Yard" ("NIMBY") activists, as homeowners are generally more wealthy and longer-tenured residents of an area, making them a politically potent group.[37] In some cities, city council members have veto power over zoning changes in their ward, thus giving neighbors of new housing further power over zoning.[38] Even where city governments support new housing, NIMBY activists can use litigation or the threat thereof to delay construction; landowners who are unwilling to waste time and money on such litigation may abandon a housing project, or may build fewer housing units than planned in order to settle a lawsuit.[39]

Zoning regulations have become stricter in recent decades,[40] especially in the most expensive metropolitan areas.[41] For example, before 1961, New York City

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35. *See* William A. Fischel, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND USE POLICIES, 230 (Cambridge, 2001) ("existing residents [of many neighborhoods] worry that higher-density development of any sort will devalue their own homes").

36. *See* Bradley Karkkainen, *Zoning: A Reply to the Critics*, 10 J. LAND USE & ENVTL. L. 45, 69, 73 (1994) (NIMBYs correctly believe that changes in density or land use will alter "intangible qualities such as neighborhood ambiance" and that such changes mean that "the neighborhood is taking the first step toward becoming something other than the neighborhood where [the residents] chose to live"). *See also* MICHAEL LEWYN, GOVERNMENT REGULATION AND SUBURBAN SPRAWL: THE CASE FOR MARKET URBANISM 85–86 (2017) (noting that NIMBYs also claim that new housing will create new traffic and burden neighborhood infrastructure and describing these as "beggar thy neighbor" arguments because if high housing costs force development to shift into politically powerless areas or areas with no neighbors nearby, *those* areas will suffer from increased traffic and burdened infrastructure).

37. *See* Fischel, *supra* note 36 at 94 ("it is not just that local taxes, schools, and zoning laws affect home values. It is that fact that makes homeowners organize to be masters of taxes, schools, and zoning").

38. *See* David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1710–11, 1710 n. 156 (2013).

39. *See* Einstein, *supra* note 31, at 101.

40. *See* Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENV'L. L. 217, 222 (2018); PETER GANONG & DANIEL SHOAG, WHY HAS REGIONAL INCOME CONVERGENCE IN THE U.S. DECLINED? 15–16 (2015), https://scholar.harvard.edu/files/shoag/files/why_has_regional_income_convergence_in_the_us_declined_01.pdf [https://perma.cc/TVH7-LEG3] (growth in land use litigation as evidence of increased regulation). There are a variety of possible explanations for this trend, none of which are mutually exclusive. For example, William Fischel suggests that rising inflation and pro-homeowner tax laws made housing a better investment in the 1970s, thus giving homeowners an incentive not only to buy houses but to limit housing supply in order to keep property values rising. *See* M. NOLAN GRAY, ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT 64 (Island Press 2022) (describing argument) Robert Ellickson suggests that the rise of the environmental movement led to anti-growth sentiments; for example, California responded to the rise of the environmental movement by passing the California Environmental Quality Act, which has been used to block new housing. *See* ROBERT C. ELLICKSON, AMERICA'S FROZEN NEIGHBORHOODS THE ABUSE OF ZONING 42 (Yale University Press 2022). In older cities, the rise of the historic preservation movement has led to similar results. *Id.* at 145–46. In some cities, policymakers thought there would be little demand for new housing, and thus saw no reason not to downzone. *See, e.g.,* Eric Kober, *Zoning That Works*, CITY JOURNAL, https://www.city-journal.org/nyc-zoning-reform-needed-for-housing-growth [https://perma.cc/Y8PE-UD2J] (New York City downzoned in 1961 because "planners thought that the city wasn't going to grow significantly in the foreseeable future and didn't need zoning that accommodated big population gains"). In addition, rising housing costs may have created a vicious

was zoned to allow housing for 55 million people.[42] After a 1961 rezoning, the city was zoned to allow housing for only 12 million people.[43] As a result of this change, developers had to assemble nearly twice as much land to build the same number of housing units,[44] causing a massive decrease in building activity. In 1961, the city awarded just over 59,000 building permits for multifamily construction.[45] By contrast, between 1964 and 1969, the number of building permits issued never exceeded 17,100.[46] As a result of this massive downzoning,[47] Manhattan's zoning is now so strict that 40 percent of its buildings could not be built under the current zoning code.[48] Inflation-adjusted New York rents rose by 60 percent between 1960 and 2016, although household incomes grew by only 18 percent, a direct result of the forced reduction in housing density.[49]

Similarly, in 1960, Los Angeles was zoned to allow enough housing for 10 million people.[50] But because the city gradually limited density over the following

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circle: as new market-rate housing gets more expensive, even renters start to blame rising costs on new housing, increasing political support for zoning and causing costs to rise still further. *See infra* notes 159–63 and accompanying text (renters are more hostile to new construction in expensive cities); *infra* notes 58–59 (criticizing claims that new housing does not reduce costs).

41. *See* Einstein *supra*, note 31, at 12, *supra* notes 25–28 (describing zoning changes in New York, San Francisco and Los Angeles, and pointing out that these are among most expensive U.S. cities).

42. *See* Frank S. Kristof, *Housing: Economic Facets of New York City's Problems, in* AGENDA FOR A CITY: ISSUES CONFRONTING NEW YORK 297, 328 (Lyle C. Fitch and Annmarie Hauck eds., 1970).

43. *Id*.

44. *Id*. at 329.

45. *Id*. at 330.

46. *Id*. Housing supply has only partially recovered: the number of permits has exceeded 32,000 for only one of the past 20 years. *See* NEW YORK CITY RENT GUIDELINES BOARD, 2021 HOUSING SUPPLY REPORT 17 (2021), https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2021/06/2021-HSR.pdf [https://perma.cc/ZW5V-WRKF]. Moreover, the latter figure is not comparable to the data discussed above, because it includes building permits for single-family houses. Such permits comprised 37.3 percent of all 2019 permits. *Id*. at 18.

47. A downzoning is a zoning change that reduces the allowable density of a parcel of land or otherwise reduces the intensity of land use. *See* Smith Inv. Co. v. Sandy City, 958 P.2d 245, 248 n.1 (Utah Ct. App. 1998) (defining term as "process by which zoning changes reduce an area's density level or limit the intensity of [development on] designated land.") (citation omitted).

48. *See* Quoctrung Bui, Matt A.V. Chaban, & Jeremy White, *40 Percent of the Buildings in Manhattan Could Not Be Built Today*, N.Y. TIMES (May 20, 2016), https://www.nytimes.com/interactive/2016/05/19/upshot/forty-percent-of-manhattans-buildings-could-not-be-built-today.html [https://perma.cc/N8GA-5LS8].

49. *See* Emily Nonko, *In New York City, Rising Rent has Outpaced Housing Growth Since 1960*, CURBED NEW YORK (June 28, 2016), https://ny.curbed.com/2016/6/28/12051870/nyc-rent-income-growth-charts [https://perma.cc/JV7W-QQH9]. Since then, rents have continued to rise. *See StreetEasy Data Dashboard*, STREETEASY, https://streeteasy.com/blog/data-dashboard/?agg=Median&metric=Asking%20Rent&type=Rentals&bedrooms=Any%20Bedrooms&property=Any%20Property%20Type&minDate=2016-01&maxDate=2022-12&area=NYC [https://perma.cc/QQG9-KUZR] (last visited Apr. 2, 2023) (citywide median asking rent rose from $2,862 in January 2016 to $3,400 in December 2022).

50. *See* Greg Morrow, The Homeowner Revolution:Democracy, Land Use and the Los Angeles Slow-Growth Movement, 1965–1992 3 (2013) (Ph.D. dissertation, University of California, Los Angeles) (eScholarship.org).

decades, the city is currently zoned to house just over 4 million people.[51] In Los Angeles, as in New York, housing supply stagnated: between 1990 and 2006, the city's population increased by almost 500,000, while only 75,854 housing units were built.[52] Between 1960 and 2016, inflation-adjusted rents have risen by 55 percent, while incomes increased by only 13 percent.[53] And in 1978, San Francisco reduced the number of housing units allowed by zoning by 180,000, creating a one-third drop in the city's potential for growth.[54] Rents there doubled between 2000 and 2017.[55]

In addition to directly restricting housing supply, cities also obstructed new housing by adding additional layers of review to the zoning process. For example, New York has created community planning boards that have the right to review rezoning applications.[56] Other cities, such as Washington D.C. and Atlanta, have similar boards.[57]

The explosion of anti-density zoning has had a variety of negative side effects. Because scholarly evidence overwhelmingly shows that new housing lowers rents,[58] it follows that anti-density zoning, by limiting the number of houses and

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51. *Id.*

52. *Id.* at 60.

53. *See* Andrew Woo, *How Have Rents Changed Since 1960?*, APARTMENT LIST: APARTMENT LIST BLOG (June 14, 2016), https://www.apartmentlist.com/rentonomics/rent-growth-since-1960 [https://perma.cc/GY6U-49Z7].

54. *See* Hunter Oatman-Stanford, *The Bad Design That Created One of America's Worst Housing Crises*, FAST CO. (Sept. 28, 2018), https://www.fastcompany.com/90242388/the-bad-design-that-createdone-of-americas-worst-housing-crises.

55. *See* COMPASS, THE SAN FRANCISCO APARTMENT BUILDING MARKET (Oct. 2022), https://www.bayareamarketreports.com/trend/bay-area-apartment-building-market [https://perma.cc/88L2-HL2J] (rent rose from $1874 in 2000 to $3326 in 2017). By contrast, rents nationwide grew by a little over 30 percent. *See* PEW CHARITABLE TRUSTS, AMERICAN FAMILIES FACE A GROWING RENT BURDEN 6–7 (2018), https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden_report_v2.pdf. [https://perma.cc/6VA9-2AKT].

56. *See* Wendell Pritchett and Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. 467, 495 (2018).

57. *See* Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Com'n, 88 A.3d 697, 704 (D.C. 2013) (holding that zoning commission must give "great weight" to Advisory Neighborhood Commission's zoning views); Moore v. Maloney, 253 Ga. 504, 505, 321 S.E.2d 335, 336-37 (1984) (noting opposition of city's "neighborhood planning unit" to rezoning, but not commenting on degree of weight to be given to its views); City of Atlanta, *Neighborhood Planning Unit*, http://www.atlantaga.gov/index.aspx?page=739 (describing the city's Neighborhood Planning Unit system). [https://perma.cc/5PQ9-RPQH]. *Cf.* Serkin, *supra* note 2, at 761-62 (describing other factors that have made zoning more complex, such as state-mandated environmental review and historic preservation laws).

58. *E.g.,* Brian Asquith et. al., *Supply Shock Versus Demand Shock: The Local Effects of New Housing in Low-Income Areas* 2, at https://direct.mit.edu/rest/article/doi/10.1162/rest_a_01055/100977/Local-Effects-of-Large-New-Apartment-Buildings-in (reporting that even in low-income areas, new housing reduces rents in the blocks closest to such housing) [https://perma.cc/G35D-LNSK]; Cristina Bratu et. al., *City-wide effects of new housing supply: Evidence from Moving Chains*, https://www.doria.fi/handle/10024/181666 (finding a similar pattern in a European city) [https://perma.cc/4VYK-7394]; Bethel Cole-Smith and Daniel Muhammad, *The Effect of an Increasing Housing Supply on Housing Prices* 2 (Apr. 2020), https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Housing%20Supply%20Bethel%20Cole%20Smith%20April%202020.pdf (if housing supply had not

apartments that can be built, limits housing supply and thus increases housing costs.[59] For example, as noted above,[60] New York, San Francisco and Los Angeles have made zoning more restrictive in the late twentieth century, and are all located in the most expensive regions in the United States: metropolitan New York has the highest rent per square foot in the nation, San Francisco is second, and Los Angeles is fifth. [61] By contrast, regions with high levels of housing growth tend to have lower housing costs.[62] But even in relatively low-cost regions, zoning regulation reduces housing supply compared to a free market.

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increased in Washington, D.C. during 2010s, rents would have been 5.84 percent higher than they were) [https://perma.cc/VB4B-ERKC]; Xioadi Li, *Do New Housing Units In Your Backyard Raise Your Rents?* 1, (Oct. 26, 2019), https://docs.wixstatic.com/ugd/7fc2bf_ee1737c3c9d4468881bf1434814a6f8f.pdf (in New York City, for every 10 percent increase in the housing stock, rents fell by 1 percent compared to areas without new housing); Kate Pennington, *Does Building New Supply Cause Displacement?, The Supply and Demand Effects of Construction in San Francisco*, 5 (2020) https://www.gwern.net/docs/economics/2020-pennington.pdf (monthly rents fall by 1.2-2.3 percent in San Francisco within 500 meters of a new project) [https://perma.cc/ZMG4-3VAE]; *Cf.* Shane Phillips et. al., *Research Roundup: The Effect of Market-Rate Development on Neighborhood Rents*, (Feb. 17, 2021) https://www.lewis.ucla.edu/research/market-rate-development-impacts/ (summarizing relevant research in more detail, including studies that are less conclusive than those cited above) [https://perma.cc/P83S-8L83].

59. *See* Serkin, *supra* note 2, at 767 (admitting the point). I note that some commentators argue, for a variety of reasons, that new construction will not reduce housing costs. As I have explained elsewhere, these arguments are meritless. *See* Michael Lewyn, *Downtown Condos for the Rich: Not All Bad*, 51 NEW N.M. L. REV. 400, 415–22 (2020). In particular, one argument against new construction is that because big-city land is limited, there will never be enough to meet demand and to bring down costs. This claim is wrong because a city can always create land by allowing landowners to build more housing units on a piece of land than existed before. *Id.* at 415–16. It has also been argued that because new housing tends to be expensive than older housing, new housing does not make housing more affordable. This argument is wrong because when higher-income households move from old housing to new housing, they make the older housing available to less affluent households, who in turn make their own housing available to still less affluent households, thus reducing rents for all. *Id.* at 416–18 (describing argument in more detail, as well as relevant scholarship). A third argument is that new housing creates demand for housing, thus preventing housing costs from ever falling. But if this argument was correct, places with high levels of growth would have the highest rents- a result inconsistent with reality. *Id.* at 419–20. A fourth argument is that that if a city allows more housing on a parcel of land, the land will become more desirable and land costs will increase, thus raising rents. But if this argument was true, cities that made zoning more restrictive would cause land costs to go down, thus causing rents to go down- a result inconsistent with the data. *Id.* at 420–21 (citing examples); *supra* notes 43–56 and accompanying text (describing results of restrictive zoning in New York, Los Angeles, and San Francisco).

60. *See supra* notes 43–50 (New York), 451–54 (Los Angeles), 55–56 (San Francisco) and accompanying text.

61. *See* Geoff Boeing and Paul Waddell, *New Insights Into Rental Housing Markets Across the United States: Web Scraping and Analyzing Craigslist Market Listings* 14–15, https://www.researchgate.net/publication/306400541 [https://perma.cc/6UZX-CMFN]; *Cf.* Serkin, *supra* note 2, at 766 (comparing sales prices in most expensive cities to those in other American cities).

62. *E.g.*, Edward Glaeser et. al., *Why is Manhattan So Expensive? Regulation and the Rise in House Prices* 28–29 (Nat'l Bureau of Econ. Rsch., Working Paper No. 10124, 2003) https://www.nber.org/system/files/working_papers/w10124/w10124.pdf (describing data showing correlation between amount of regulation and housing costs) [https://perma.cc/DWY9-N47A]; Lewyn, *supra* note 45, at 419–20 (lower housing costs in high-growth cities).

Even if a city grants most landowners' attempts to rezone for additional density, some rezoning requests are denied, and even successful applicants might be deterred from building new housing by the expense of the rezoning process or might build less housing than planned in order to have their rezoning application accepted.[63]

When rents are high, not all renters can easily move to a less expensive city or suburb: instead, some become homeless. One academic study divided the nation's metro areas into three clusters: those with above-average housing costs, those with average housing costs, and those with below-average housing costs.[64] The study found that the high-cost cluster includes just 13.8 percent of Americans but 45.7 percent of the nation's homeless population.[65] By contrast, the lowest-cost cluster had 34.4 percent of U.S. population but only 13.4 percent of the nation's homeless population.[66] Moreover, because Black and Hispanic communities are historically more impoverished[67] than white communities, any zoning policies that increase housing costs have disproportionately negative effects on them. For example, if zoning causes home prices to increase by 20 percent, fewer members of these minority groups can purchase homes.

Higher housing costs affect not just the poor, but the economy as a whole. In the mid-twentieth century, workers could better their fortunes by moving from low-wage regions (such as the rural South) to higher-wage regions.[68] But because the high housing costs of cities like New York and San Francisco nullifies the increased wages, it no longer makes economic sense for many workers to move

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63. Admittedly, local governments approve the majority of rezoning petitions. *See* Lydia Lo and Yonah Freemark, *Influencers, Bias and Equity in Rezoning Cases* 4 (Nov. 2020) https://www.urban.org/sites/default/files/2022-11/Influencers%2C%20Bias%2C%20and%20Equity%20in%20Rezoning%20Cases.pdf (most developer-initiated rezonings in Louisville, Kentucky are approved) But even in low-cost cities, some rezonings are rejected by local government, and even rezonings that are ultimately approved are the subject of extensive discussion between applicants and municipal bureaucrats. *See* Lo and Freemark, *supra* at 4 (a minority of rezoning applications rejected, but others approved after negotiation); Boeing and Waddell, *supra* note 62, at 24-25 (Louisville rents lower than in majority of cities). So even if a rezoning request is approved, the city might force an applicant to build less housing than originally desired. *See, e.g.*, Sam Mellins et al., *City Council Moves Forward with Gowanus Rezoning After Slashing Affordable Housing,* THE CITY, Oct. 27, 2022, https://perma.cc/Q5DP-F5RM (one New York City rezoning approved, but "will likely produce dozens fewer units" than the original proposal).

64. *See* Chris Glynn et al., *Inflection Points in Community-Level Homeless Rates*, 15 THE ANNALS OF APPLIED STATISTICS, no. 2, June 2021, at 1037, 1039, 1049 (describing three clusters).

65. *Id.* at 1049.

66. *Id.* Of course, housing cost burdens are not limited to the homeless, or even to the poor. *See* Serkin, *supra* note 2, at 767 (more than one-third of U.S. households paid over 30 percent of incomes for housing, and in New York City, nearly 50 percent of middle-income households are similarly cost-burdened).

67. *See* John Creamer, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups,* U.S. CENSUS BUREAU (Sept. 15, 2020), https://perma.cc/57WS-KS6D (in 2019, Hispanic poverty rate was just over 15 percent and Black poverty rate was over 18 percent; by contrast, White poverty rate was only 7.3 percent).

68. *See* Serkin, supra note 2, at 768.

to those cities.[69] If fewer people can afford to move to find jobs in expensive cities, the labor pool to fill such jobs is smaller, which means that weaker candidates fill those jobs, impairing national productivity.[70] Economist Bryan Caplan has estimated that if post-1960 zoning regulations in just three cities (New York, San Jose and San Francisco) had been as permissive as zoning in the average U.S. city, U.S. gross national product would be 36 percent higher.[71] Caplan admits that his view is not the consensus view; however, other economists have estimated that zoning reduces economic growth by 2 to 9 percent.[72]

Anti-density zoning is also environmentally harmful. Density restrictions mean that fewer people can live within walking distance of shops, jobs, or public transit: if most people will walk five blocks to a supermarket, and the surrounding neighborhood is zoned for twenty residences per block, one hundred households in each direction can walk to the supermarket. By contrast, if the same area is zoned for four residences per block, only twenty households in each direction can walk to the supermarket. If an entire city is zoned for such low densities, most of the city's residents cannot live within walking distance of anything but other houses. Residents of these low-density areas must therefore drive to most destinations, contributing to global warming and other forms of pollution.[73]

In dense-but-expensive cities, the high rents caused by strict zoning ensure that some people who wish to live in those cities cannot afford to do so.[74] People priced out of those cities move to less expensive suburbs, or to a less expensive city where car ownership is a necessity.[75]

II. PRESERVING COMMUNITY STABILITY AND CHARACTER

Serkin argues that "[o]ne of the principal uses of zoning is to create and maintain stable community character."[76] Any increase in a neighborhood's density

69. *Id.*

70. *Id.*

71. *See* Bryan Caplan, *Hsieh-Moretti on Housing Regulation: A Gracious Admission of Error,* THE LIBRARY OF ECONOMICS AND LIBERTY (April 5, 2021), https://perma.cc/K3M5-VX8X.

72. *Id.*

73. *See* Serkin, *supra* note 2, at 764.

74. *Id.* at 768.

75. The three U.S. cities with the most rapid population growth (as measured by the number of residents added between 2017 and 2018) are Phoenix, San Antonio, and Fort Worth. See *Fastest Growing Cities Primarily in the South and West*, U.S. CENSUS BUREAU (May 23, 2019), https://perma.cc/8LLY-MJGD. In all three cities, fewer than 5 percent of commuters used public transit to get to work. See *American Community Survey*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/ [hereinafter "ACS"] (follow hyperlink; search for "Table S0802"; select "Filters"; select "Geography;" select "Metropolitan/Micropolitan Statistical Area"; select the referenced cities; select from dropdown menu above the data set "2019: ACS 5-Year Estimates Data Profiles"). By contrast, in New York City a majority of commuters used public transit, as did just over a third of San Francisco commuters. *Id.* Dense cities like New York and San Francisco tend to have lower levels of transportation-related carbon emissions than fast-growing low-density cities. *See infra* notes 122–24 and accompanying text. Thus, population shifts from dense cities to cheaper low-density cities is likely to increase carbon emissions.

76. *See* Serkin, *supra* note 2, at 771.

changes that character,[77] as does any aesthetic change in the neighborhood's buildings.[78] Serkin concedes that new housing might not make a neighborhood objectively less desirable,[79] but notes that such housing might change a neighborhood's "appeal to in-place residents who sought a particular set of characteristics"[80] and thus burdens those residents.[81] Serkin therefore suggests that incumbent residents' interest in avoiding this intangible burden justifies anti-housing zoning.[82] On the other hand, increasingly high rents caused by restrictive zoning may also change community character, by changing a neighborhood's social character. Moreover, any public interest in preserving a neighborhood's physical character may be outweighed by other policy goals.

A. COMMUNITY CHARACTER ZONING IS COUNTERPRODUCTIVE

Anti-density zoning may preserve the physical character of the neighborhood, but in doing so, it changes community character in other ways. As noted above, density restrictions, by restricting housing supply, are likely to increase rents and other housing costs.[83] As rents increase, some people who could afford to live in a neighborhood can no longer do so, meaing that such zoning changes the character of a community by changing who can live there. For example, suppose that in 1960, neighborhood X was a bohemian neighborhood, full of recent high school and college graduates holding their first low-paying jobs. A few decades later, the city downzones the area, ensuring that the housing supply can never rise to meet demand. As a result, housing costs in neighborhood X explode, thus reducing the ability of non-wealthy persons to move into the neighborhood. Obviously, sky-high rents and a wealthy population are themselves a change in neighborhood character, perhaps even more of a change than the occasional new building.

New York's West Village neighborhood is a real-life example of such neighborhood change. In the early twentieth century, the West Village was, according to one neighborhood group, "known as a bohemian enclave with. . . low rents."[84] As recently as 1980, the neighborhood was only slightly more expensive than the

77. *Id*.
78. *Id*. at 774.
79. *Id*. at 771.
80. *Id*.
81. *Id*.
82. *Id*. at 772 ("Change in the character of a place therefore imposes burdens on in-place property values in ways that zoning can reduce.")
83. *See supra* notes 59–63 and accompanying text.
84. *Greenwich Village History*, VILLAGE PRESERVATION, https://perma.cc/NP3Q-C62C. *Cf.* Susannah Jacob, *What happened to the West Village?,* THE NEW YORK REVIEW (Oct. 9, 2019), https://perma.cc/QL5W-A2GD (area was "a home for artists, dockworkers and immigrants"); *New York City Market Analysis*, THE NEWS et. al. (1943, https://perma.cc/QCC3-G4BY (dividing Manhattan into twenty-four neighborhoods, and finding that as of 1943, ten had higher median family expenditures than Greenwich Village area, which includes west Village).

average Manhattan neighborhood.[85] Since then, the city repeatedly downzoned this neighborhood.[86] In fact, the West Village has actually *lost* some housing units, because landowners have turned some small apartment buildings into houses that accommodate only one family.[87]

Census Bureau data suggests that as a result of these trends, the West Village may now have *fewer* housing units than it had in 2011,[88] and that only 13.8 percent of its housing was built after 1970.[89] Today, the West Village is now one of Manhattan's most expensive neighborhoods: a search on one website revealed that about ninety percent of available one-bedroom apartments were being offered for over 4 thousand per month.[90] In the similarly tony Upper East Side, fewer than half of available apartments were equally expensive.[91] As a matter of common sense, it seems likely that the high level of rent impacts who can live in

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85. *See* Allen J. Proctor & Kathleene K. Donahoo, *Neighborhood Changes in New York City During the 1970s: Are the "Gentry" Returning?,* 8 FED. RSRV. BANK OF N.Y. Q. REV. 38, no. 4, Winter 1983-84, at 44 (median monthly rent in four West Village census tracts ranged from $261 to $358; median citywide rent was $264, and rent in richest part of Upper East Side was over $500).

86. *Far West Village contextual downzoning approved,* CITYLAND, (N.Y. L. Sch./N.Y. City Land Use News and Legal Rsch.), Nov. 15, 2005, at https://www.citylandnyc.org/far-west-village-contextual-rezoning-approved/ (describing 2010 downzoning); New York Law School, *Far West Village rezoning approved*, CITYLAND, Nov. 15, 2005, https://perma.cc/R5RG-UD32 (describing 2005 downzoning). In addition, neighborhood activists persuaded the city to designate many neighborhood buildings as historic landmarks, which means that landowners cannot alter the exteriors of those buildings without government permission. *See* Jacob, *supra* note 84; Save America's Clocks, Inc. v. City of New York, 124 N.E.3d 189, 193 (N.Y. 2019) (describing criteria used by Landmarks Preservation Commission in deciding whether to allow demolition). To the extent that landmarking limits landowners' ability to alter or demolish buildings in order to allow more housing units, it may function as a sort of downzoning.

87. *See* Jacob, *supra* note 84 (suggesting that such alterations created over 300 single-family houses).

88. In particular, according to the American Community Survey, zip code 10014 (which contains most of the West Village) had roughly 21,394 housing units in 2011, and 21,261 in 2019. However, these Census estimates have a margin of error of roughly 400-500 housing units, so it is possibly that housing supply grew slightly rather than declining slightly. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "filters"; select "geography;" select "ZIP Code Tabulation Area"; select "New York"; select "ZCTA5 10014"; select from dropdown menu above the data set "2011: ACS 5-Year Estimates Data Profiles" and "2019: ACS 5-Year Estimates Data Profiles") ; *Compare* Map of Zip Code 10014, GOOGLE MAPS, http:/maps.google.com (search for "10014, New York, NY") *with* Map of West Village, New York, NY, GOOGLE MAPS, http:/maps.google.com (search for "West Village, New York, NY) (zip code 10014 and "West Village, New York, NY" overlap considerably).

89. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "Filters"; select "Geography;" select "ZIP Code Tabulation Area"; select "New York"; select "ZCTA5 10014"; select from dropdown menu above the data set "2019: ACS 5-Year Estimates Data Profiles").

90. *See* Streeteasy, https://streeteasy.com (visited Jan. 25, 2023). (67 of 73 apartments rented for at least $4000, and 35 rented for $5000 or more).

91. *See id.* (only 135 Upper East Side one-bedroom apartments, out of 287 available one-bedroom apartments, rented for over $4000) *Cf.* Amy Plitt, *The Richest Neighborhoods in New York City,* CURBED (Dec. 27, 2019, 10:44 AM), https://ny.curbed.com/2017/6/27/15881706/nyc-richest-neighborhoods-manhattan-brooklyn [https://perma.cc/24Z5-MQJ8] (listing both West Village and Upper East Side as among richest areas). By contrast, in 1980 the Upper East Side was significantly more expensive. *See* Proctor & Donahoo, *supra* note 85 (median rents in four West Village census tracts were $261, $289, $312, and $358 per month; by contrast, median rents in four Upper East Side census tracts were $377, $384, $448 and over $500).

the West Village, which in turn impacts the character of the community.[92] If zoning has contributed to this increase in rent, it has changed the character of the West Village.

Zoning supporters argue that even if anti-housing zoning changes the social character of existing neighborhoods, it still protects those neighborhoods by preserving their *physical* character. But restrictive zoning does change the physical character of less restrictive neighborhoods. Here's why: suppose people priced out of the West Village move to suburb Y, causing new housing to be built in suburb Y to accommodate them. That housing changes the character of Y, just as new housing in the West Village would change the character of the West Village. Thus, anti-density zoning is a "beggar thy neighbor" policy; it does not end the alleged problem of physical community change, but instead merely shifts that problem from one community to another. In other words, even if we pretend that physical change is a nuisance, density restrictions do not end the nuisance: instead, such rules are a tool for some neighborhoods to inflict that nuisance on others.

B. COMMUNITY CHARACTER ZONING IS UNJUSTIFIED

Serkin's emphasis on a community's physical character rests on an implicit assumption that homeowners' expectations of an unchanged neighborhood outweigh the high rents, homelessness, and environmental degradation caused by restricted density. This assumption is refuted by proponents: social justice, environmentalism, and libertarianism, each of which offer an alternative path forward for zoning regulation.

1. Equity and Social Justice[93]

The American Planning Association ("APA"), a national association of urban planners,[94] recently issued a policy guide claiming that "[p]lanning for equity is intended to challenge those planning practices that . . . disproportionately impact

92. *See* Jacob, *supra* note 84 (describing long-run changes in West Village). I note, however, that demand as well as supply affects rents. Thus, it is not clear to what extent the West Village's rising rents were caused by increased demand rather than by stagnant supply.

93. Because various sources treat the terms "social justice" and "equity" as identical, I will do so here. *See, e.g.*, Matthew N. Metz and Janelle London, *Governing the Gasoline Spigot: Gas Stations and the Transition Away from Gasoline*, 51 ENV'T. L. REPORTER 10054, 10059 (2021) (asserting that gas stations have negative "Equity and Social Justice" impacts because they tend to be near Black neighborhoods, without distinguishing between the two phrases); Lynn Ross et al., *Planning for Equity Policy Guide*, AMERICAN PLANNING ASS'N 4, (May 14, 2019), https://planning.org/publications/document/9178541/ [https://perma.cc/5BFC-8KCA] ("Applying principles of equity is an ethical responsibility. The goal of social justice is not met when underserved populations shoulder the weight of untenable living conditions. . .") [hereinafter *APA Equity Guide*].

94. *See About APA,* AMERICAN PLANNING ASS'N, https://planning.org/aboutapa/ (describing organization).

and stymie the progress of certain segments of the population more than others".[95] The guide adds that the APA seeks social justice by planning "for the needs of the disadvantaged and [promoting] racial and economic integration."[96] In the urban planning context, "social justice" and "equity" require land use policies that do not disproportionately harm Americans who are already disadvantaged, such as persons with lower incomes.[97]

Serkin admits that anti-density zoning increases housing costs by restricting housing supply.[98] To the extent that this is the case, such zoning, like a regressive tax, disproportionately harms the poor because it raises the cost of housing in ways that do not reflect consumers' ability to pay that cost.[99] To the extent that anti-housing zoning increases rents, it nudges some low-income people into homelessness;[100] to the extent that such zoning increases the price of for-sale housing, it prevents other lower-income people from being able to afford homeownership. Because Black people are disproportionately more likely to become homeless[101] and statistically less likely to own homes,[102] policies that increase housing costs are likely to have an especially negative impact upon Black populations. Thus, anti-density zoning is inequitable.

One might argue that anti-housing zoning is analogous to a service which protects all citizens, because it protects the character of poor areas as well as rich ones. But even within poor areas, there are winners and losers. People who can afford to purchase housing benefit from rising costs, because even if they must leave their area, they can obtain a higher sale price. Some renters might benefit as well from preservation of a neighborhood's character – but only if they can easily afford to stay in a neighborhood when rents rise. The latter group excludes the poorest and least financially stable households. Because low-income renters tend to move more frequently than other Americans,[103] they are less likely to benefit

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95. *APA Equity Guide*, *supra* note 93, at 3.

96. *Id.* at 4.

97. *Id.* at 8 (criticizing environmental policies that disproportionately affect low-income households, as well as "communities of color, tribal nations, and immigrant communities")

98. *See* Serkin, *supra* note 2, at 767.

99. *Cf. Felder v. City of Portsmouth*, 114 N.H. 324 A.2d 708, 711 (N.H. 1974) (characterizing regressive tax as one that "falls most heavily on those with the least ability to pay") (citations omitted).

100. *See supra* notes 49–50 and accompanying text (showing link between high housing costs and homelessness).

101. *See* Joy Moses, *Demographic Data Project: Race, Ethnicity, and Homelessness*, HOMELESSNESS RSCH. INST. 1-2, https://endhomelessness.org/wp-content/uploads/2019/07/3rd-Demo-Brief-Race.pdf [https://perma.cc/PP2M-DTFM] (black people comprise 13 percent of population and 40 percent of homeless; Hispanics are also overrepresented among homeless but to lesser extent).

102. *See* Michele Lerner, *Report: Overall U.S. Homeownership Rate Rises, But Drops Among Blacks*, WASH. POST (Mar. 19, 2020, 5:30 AM), https://www.washingtonpost.com/business/2020/03/19/report-overall-us-homeownership-rate-rises-drops-among-blacks [https://perma.cc/BAF2-U523] (over 70 percent of white households own homes, as opposed to just over 40 percent of Black households).

103. *See* Yang Jiang et. al., *Basic Facts About Low-Income Children*, NAT'L CTR. FOR CHILDREN IN POVERTY 6, (Feb. 2016). ("adolescents living in low-income families were about two times as likely as other children to have moved in the past year"); Heather Koball et al., *United States Demographics of*

from the character of their existing neighborhood, and more likely to seek shelter in another neighborhood - an effort that is likely to prove more difficult if rents are higher.[104]

Moreover, the poorest renters are especially unlikely to benefit from preservation of existing neighborhoods' character. If, as suggested above,[105] high rents cause some people to become homeless, those people are obviously unable to benefit from the character of *any* neighborhood. Presumably, renters who become homeless are more disadvantaged than other low-income renters. It logically follows that zoning provisions that increase rents are generally inequitable.

2. The Environmentalist Perspective

From an environmentalist perspective, anti-density zoning is obviously harmful, because residents of low-density areas tend to drive more than residents of more compact places, thus increasing greenhouse gas emissions.[106] Such restrictions are especially harmful in expensive but walkable cities such as New York, because people priced out of those places may move to more automobile-dependent suburbs that offer more square footage for their money.[107]

Low-Income Children, NAT'L CTR. FOR CHILDREN IN POVERTY, (Apr. 2021), https://www.nccp.org/demographic/ [https://perma.cc/G52Z-FLRT] (20 percent of children in low-income families moved in a year, as opposed to 14 percent of children in other families); Robin Phinney, *Exploring Residential Mobility Among Low-Income Families*, 87 SOC. SERV. R. 780, 780 (2013) ("low-income households move more frequently than other households"). It is also the case that Black people move more frequently than white people. *See* U.S. CENSUS BUREAU, *Subject Tables*, tbl. S0701 (2019), data.census.gov/table?q=S0701&tid=ACSST5Y2021.S0701 (9.4 percent of Black people moved within same county in 2019 compared to 6.8 percent white people: Black and white people moved between counties and states at roughly the same rate).

104. It could be argued that restrictive zoning protects poor areas from gentrification. This argument does not justify the status quo, for three reasons. First, even if this argument is correct, it does not justify restrictive zoning in nonpoor neighborhoods. Moreover, this claim is based on the assumption that gentrification is so common that it justifies policies that would otherwise be regressive- but in fact, gentrification of the poorest areas is fairly rare. Out of the 1100 urban census tracts with poverty rates over 30 percent in 1970, two-thirds still had similar poverty rates in 2010, and only 100 now have poverty rates below the national average. *See* Joe Cortright and Dillon Mahmoudi, *Lost in Place: Why the persistence and spread of concentrated poverty-not gentrification-is our biggest urban challenge*, CITY OBSERVATORY12–14, (Dec. 2014).

Finally, the anti-gentrification argument for zoning is based on the assumption that new housing increases rents- an assumption inconsistent with most recent research. *See* Kristof, *supra* note 42; John Infranca, *Differentiating Exclusionary Tendencies*, 72 FLA. L. REV. 1271, 1289–90 (2020) (describing research).

105. *See* Glynn, *supra* notes 65–67 and accompanying text (areas with higher housing costs tend to have more homelessness).

106. *See* Caplin, *supra* note 72 and accompanying text; Table 1 *infra*. and accompanying text.

107. *See* Caplin, *supra* notes 72–73 and accompanying text; Colin Robert, *Should You Drive Until You Qualify For A Mortgage?*, THE TRUTH ABOUT MORTGAGE, April 27, 2018, at https://www.thetruthaboutmortgage.com/should-you-drive-until-you-qualify-for-a-mortgage/ (phrase "drive till you qualify" refers to fact that housing cheaper far from cities).

If residents of high-cost regions move instead to lower-cost cities and the suburbs of those lower-cost cities, this too is likely to increase greenhouse gas emissions, because high-cost regions tend to have lower per-capita greenhouse gas emissions than the rest of the nation. The five U.S. regions with the highest rents per square foot are New York, Boston, San Francisco, Honolulu, and Los Angeles.[108] A study by Harvard economist Edward Glaeser and UCLA economist Matthew Kahn found that these regions emitted fewer greenhouse gases than other large metropolitan regions. In particular, New York City, the most transit-oriented region in the United States,[109] had the lowest level of automobile-related carbon dioxide emissions among sixty-six regions surveyed.[110] Boston had the fourth lowest level of automobile-related emissions,[111] Los Angeles had the sixth lowest, and San Francisco had the eighth lowest.[112]

Glaeser and Kahn also calculated overall carbon costs per region, including not only auto-related emissions, but also emissions related to electricity and home heating. They found that even when these costs were included, three of these high-cost metropolitan areas (Boston, Los Angeles and San Francisco) were among the ten lowest-emitting regions.[113]

By contrast, high-emission regions tend to have lower rents: among the five regions with the highest emission levels (Memphis, Oklahoma City, Nashville, Birmingham and Houston)[114] none were among the twenty most expensive metropolitan areas (as measured by rent per square foot).[115] Four of the five have below-average rents, and three (Memphis, Oklahoma City, and Birmingham) are among the ten cheapest large metropolitan areas.[116] To the extent that high rents encourage Americans to move from high-cost cities to low-cost cities, those high rents also encourage people to move to high-emissions cities and their suburbs.

Environmental damage from low-density, sprawling development are not limited to those caused by climate change. A study by the Environmental Protection Agency concluded that if five to ten percent of regional housing and employment was shifted from automobile-dependent suburbs to walkable, transit-accessible

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108. *See* Boeing and Waddell, *supra* note 59, at 24–25.

109. *See* Wendell Cox, *Major Metropolitan Commuting Trends: 2000-2010, available at* http://www.newgeography.com/content/002500-major-metropolitan-commuting-trends-2000-2010.

110. *See* Edward L. Glaeser and Matthew Kahn, *The Greenness of Cities*, 67 J. URBAN ECON. 404, 410, (2010), at https://www.socsci.uci.edu/~jkbrueck/course%20readings/glaeser-kahn.pdf. Even when public transit-related carbon dioxide emissions are added to this figure, New York's per-household emissions level of 24,467 was below the national median for driving-related emissions alone (26,744).

111. *Id.* Providence and Philadelphia were second and third lowest respectively. *Id.*

112. *Id.* The Glaeser and Kahn study did not include data for Honolulu.

113. *Id.* (San Francisco had second lowest yearly carbon dioxide cost, Los Angeles fifth lowest, Boston ninth lowest). New York ranked twenty-first best out of 66th regions, due to high home heating emissions. *Id.*

114. *Id.*

115. *See* Boeing & Waddell, *supra* note 62, at 25–25.

116. *Id.* (out of almost 60 metropolitan areas, Houston ranked no. 23 and Nashville no. 31).

locations, several forms of pollution would be reduced.[117] For example, if 17 percent of Boston's development was shifted to walkable locations, emissions of carbon monoxide, volatile organic compounds, and nitrogen oxide[118] would be reduced by between 4.8, 5.5 and 8.1%,[119] respectively. This is a direct result of shorter vehicular trips.[120]

In turn, reduced pollution would improve human health. One study found that if vehicle miles traveled in the eleven largest Midwestern regions decreased by ten percent, the resulting decline in particulate matter[121] pollution would lead to 525 fewer pollution-related deaths and an even larger reduction in the number of hospital admissions.[122]

It could be argued that even if residents of dense places drive less, more compact development increases pollution by increasing traffic congestion.[123] But if this argument were true, the lowest-density regions would have the lowest levels of automobile-related carbon emissions. This is not the case. Table 1 compares regional automobile use and carbon emissions.

117. *See* U.S. Environmental Protection Agency, *Measuring the Air Quality and Transportation Impacts of Infill Development* 11, at https://www.epa.gov/sites/production/files/2014-01/documents/transp_impacts_infill.pdf ("Infill").

118. *See* Rachel H. Cease, *Adverse Health Impacts of Grandfathered Power Plants and the Clean Air Act: Time To Teach Old Power Plants New Technology*, 17 J. NAT. RESOURCES & ENVTL. L. 157, 160 n. 24 (2002-03) (volatile organic compounds can cause cancer, while nitrogen oxide and carbon monoxide may cause lung damage).

119. *See* Infill, *supra* note 117, at 19. *See also* Todd Litman, *Can Smart Growth Policies Conserve Energy and Reduce Emissions?* 5–8, at http://vtpi.org/REQJ.pdf (discussing numerous other studies).

120. *Id*. at 22. *See also* Litman, *supra* note 119, at 5–8. 5–8, at http://vtpi.org/REQJ.pdf (discussing numerous other studies linking sprawl with pollution).

121. See Am. Trucking Ass'ns., Inc. v. EPA, 283 F.3d 355, 359 (D.C. Cir. 2002) (particulate matter is "all solid particles and liquid droplets found in air" and is "associated with a range of adverse health effects such as coughing, shortness of breath, aggravation of existing respiratory conditions like asthma and chronic bronchitis, increased susceptibility to respiratory infections and heightened risk of premature death").

122. *See* Maggie L. Grabow et. al., *Air Quality and Exercise-Related Health Benefits from Reduced Car Travel in the Midwestern United States*, 120 Env't Health Perspect 68 (2012).

123. *See* JOEL KOTKIN, THE HUMAN CITY: URBANISM FOR THE REST OF US 191 (2016) ("Increased densities, for example, increase congestion and create more 'stop and go' conditions that ultimately add to emissions. . . fuel consumption per kilometer (and thus GHG emissions) rises nearly 50 percent as arterial street traffic conditions deteriorate").

TABLE 1:

DENSITY AND EMISSIONS: THE TEN MOST AND LEAST DENSE METROPOLITAN AREAS (MINIMUM POPULATION ONE MILLION)

	Density per square mile[124]	Automobile-related carbon emissions per household[125]
Most dense		
New York	32,351	18,081
San Francisco	12,144	23,970
Los Angeles	12,113	23,553
Chicago	8613	24,278
San Jose	8417	23,649
Boston	7980	22,870
Philadelphia	7773	22,784
Miami	7395	24,187
San Diego	6920	24,774
Las Vegas	6527	24,257
Least dense		
Louisville	2477	27,880
Memphis	2372	28,440

124. *See* UNITED STATES CENSUS BUREAU, *Patterns of Metropolitan and Micropolitan Population Change, 2000 to 2010 Tables*, UNITED STATES CENSUS BUREAU (2010) https://www.census.gov/data/tables/time-series/dec/c2010sr-01.html [https://perma.cc/Y2VV-CTAD] (click "Chapter 3 data" link, then go to "Population-weighted density, 2010"; data includes smaller metropolitan areas as well) ("Weighted Density"). *Cf.* Chris Bradford, *Weighted densities of the big four Texas MSAs*, AUSTIN CONTRARIAN (Sept. 10, 2012), https://www.austincontrarian.com/austincontrarian/2012/09/weighted-densities-of-the-big-four-texas-msas.html [https://perma.cc/FWD6-A5KS] (explaining "weighted density" concept and its usefulness; weighted density means "average density of the census tracts within the metropolitan area, weighted by population – e.g., a census tract with 10,000 residents counts twice as much as a census tract with 5,000 residents.") I note that I have not included Jacksonville (one of the least dense regions) in Table 1, because Glaeser and Kahn, *supra* note 111, at 410, did not supply emissions data for that region.

125. Glaeser & Kahn, *supra* note 110, at 410 (measured in pounds).

TABLE 1: CONTINUED		
	Density per square mile[124]	Automobile-related carbon emissions per household[125]
Kansas City	2326	28,763
Indianapolis	2285	29,222
Richmond	2175	29,459
Atlanta	2173	29,425
Charlotte	1881	30,820
Raleigh	1850	29,922
Nashville	1695	30,495
Birmingham	1314	30,041

As Table 1 shows, each of the ten most dense metropolitan areas has under 25,000 pounds of carbon emissions per household, while each of the least dense metropolitan areas has over 27,000 pounds of emissions per household. Even if dense regions are more congested, the negative effects of low density outweigh the positive effects of low traffic congestion.[126]

3. The Libertarian Perspective

From a libertarian perspective, almost all forms of zoning are inappropriate. A core libertarian idea is the "non-aggression principle" – that each person should

126. On the other hand, one Australian study suggests that Australian central city residents emit more carbon than suburbs. AUSTRALIAN CONSERVATION FOUNDATION, *Consuming Australia*: *Main Findings,* https://d3n8a8pro7vhmx.cloudfront.net/auscon/pages/1433/attachments/original/1477284331/res_Atlas_Main_Findings.pdf?1477284331 [https://perma.cc/ATC4-Q8J4]. But even the authors of the study do not claim that city life is inherently more polluting. Instead, they suggest that Australian urban areas are wealthier than their suburbs, causing their inhabitants to consume more. *Id.* at 10 ("the opportunities for relatively efficient, compact living appear to be overwhelmed by the energy and water demands of modern urban living, such as air conditioning, spa baths, down lighting and luxury electronics and appliances. . . These trends in are closely correlated with wealth. Higher incomes in the inner cities are associated with higher levels of consumption across the board"). An official of the group sponsoring the study therefore concluded that "Eco-footprints in suburban areas in Australia are lower than in the urban core *in spite of, not because of,* lower residential densities." Tim Halbur, *Smart Growth and Australia* (Feb. 15, 2010), http://www.planetizen.com/node/42941 [https://perma.cc/MMR2-X8D8] (quoting Charles Berger, Director of Strategic Ideas at Australian Conservation Foundation). *Cf.* Michael Lewyn, *Attacking Smart Growth*, 33 TOURO L. REV. 769, 782, 783 n. 101 (2017) (discussing other studies in more detail).

be able to do as they please if it does not harm others.[127] It follows from this that landowners should be able to build as many houses or apartments on their land as they wish, and that the government should have no right to prevent such construction.[128]

One might argue that a change in a neighborhood's physical character is a form of aggression because some of the building's neighbors might find it subjectively unappealing.[129] Such an argument, however, proves too much. If new residents of a different religion or race move to a neighborhood, they change the character of a community just as new buildings do: for example, a neighborhood that is dominated by Orthodox Jews will feel different from a secular neighborhood, because such a neighborhood will contain restaurants that observe Jewish dietary law, and will contain shops that close on the Jewish Sabbath.[130] If anything that changes community character is an aggression justifying government regulation, such demographic change is also an aggression justifying government interference - a result that would obviously be inconsistent with our civil rights jurisprudence.

Anti-density zoning is wrong from a social equity perspective, as it harms the poor by limiting housing supply, and thus, increase housing costs. Anti-density zoning is wrong from an environmentalist perspective because it increases suburban sprawl, car commuting, and all the environmental problems caused by car commuting. Anti-density zoning is also wrong from a libertarian perspective because it limits landowners' rights.

So how much zoning reform is needed? I think the correct answer depends on which of these perspectives we value most. If our first priority is environmental – limiting pollution from car traffic – the right answer is to eliminate density restrictions in areas where future residents can use non-automotive transportation such as in the core city of a metropolitan area, or parts of a city or region served by public transit.[131] If our top priority is to instead lower housing costs for all or to

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127. *See* Andy Loo and Walter Block, *The Political Philosophy of Impersonation: A Libertarian Analysis*, 36 J. LAW & COM. 45, 47 (2017).

128. *Cf.* Internet Encyclopedia of Philosophy, *Libertarianism*, https://iep.utm.edu/libertar/ [https://perma.cc/E7Q3-2DVA] (libertarians differ among themselves, but generally agree that "most, if not all, of the activities currently undertaken by states should be either abandoned or transferred into private hands" and that the only clearly legitimate activities of government are those which protect citizens against coercion by other citizens such as police, courts and the military).

129. One might also argue that increased population brings the more tangible harm of overcrowded infrastructure to a neighborhood. This argument will be addressed in Part III *infra*.

130. *Cf.* Kenneth A. Briggs, *South Fallsburg's Summer Crowd Has Changed- And So Has The Town*, NEW YORK TIMES, (Aug. 7, 1976), https://www.nytimes.com/1976/08/07/archives/south-fallsburgs-summer-crowd-has-changed-and-so-has-the-town-south.html#:~:text=The%20dramatic%20change%20in%20the,slump%20in%20the%20resort%20industry. [https://perma.cc/W4UB-HMVP] (describing changes in upstate New York town caused by growth of Hindu and Orthodox Jewish populations).

131. *Cf.* Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 TEMPLE L. REV. 1093, 1109 (2007) (suggesting that a "state or regional government could allow unlimited density within a growth boundary or (more narrowly) within the city limits of a regional core city").

increase landowners' liberty, a better solution is the abolition of anti-density zoning. For example, a state zoning enabling law could be amended to provide that even though government may be allowed to separate housing from other land uses, it is no longer allowed to discriminate between types of housing or housing of different density levels.[132]

III. RELIEVING THE BURDEN ON INFRASTRUCTURE

Serkin suggests that zoning might prevent infrastructure from being overloaded. His most prominent example[133] is transportation infrastructure: he notes that "[f]ights over new development often involve vociferous objections by neighbors to burdens on traffic"[134] and that by slowing down population growth, anti-housing zoning protects property owners from change resulting from increased traffic.[135]

This argument, however, proves too much. Every new resident of a city or neighborhood somehow burdens transportation infrastructure because every new resident adds either one driver to the roads, one pedestrian to the sidewalks, or one rider to local public transit. If cities were to exclude new housing on the basis of it potentially increasing the burden on infrastructure, no new housing would be allowed anywhere.

Moreover, Serkin admits that his argument is essentially a "beggar thy neighbor" argument: he writes that zoning "can push the burden of growth onto other places."[136] If City A excludes new residents and those residents move to city B,

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132. *Id*. at 1107–08 (suggesting idea).

133. Serkin also invokes the specter of overcrowded schools as an argument for zoning. *See* Serkin, *supra* note 2 at 772 ("if more people move to take advantage of [a town's prestigious] schools than the system can handle, the resource that originally attracted people will degrade"). But this concern has less basis than Serkin's fear of traffic; over the past several decades, public school pupil-teacher ratios have nosedived, from 26.9 pupils per teacher in 1955 to 16 in 2017. *See* National Center for Education Statistics, *Digest of Education Statistics* tbl. 208.20. at https://nces.ed.gov/programs/digest/d21/tables/dt21_208.20.asp?current=yes [https://perma.cc/N92J-VJ7S]. Thus, it seems unlikely that school overcrowding is a common problem. Moreover, if pupil-teacher ratios were a major factor affecting the desirability of a school district, then urban school districts with high poverty rates and low graduation rates would have higher pupil-teacher ratios than more successful suburban districts. However, this is often not the case. For example, Washington D.C.'s school district has a pupil-teacher ratio of 12.9, while the suburban Fairfax and Loudoun County school districts in Virginia (which have significantly higher graduation rates) have a pupil-teacher ratio of just under 15, as does the Montgomery County, Maryland school district. In Georgia, the city of Atlanta has a ratio of 13.3, while affluent Cobb, Cherokee and Forsyth Counties have ratios ranging between 15 and 17. Indianapolis has a ratio of 12.7, while suburban Carmel has a ratio of 19. Seattle has a ratio of 17.3, while suburban Bellevue has a ratio of 18.8. *Id.* at tbl. 215.10 *See also* Google Maps, maps.google.com [https://perma.cc/PJ2S-UQRL] (showing location of suburbs mentioned above in relation to central city). It therefore appears that even if population growth increases an affluent school district's number of students, such population growth is unlikely to prevent the district from having high-performing students.

134. Serkin, *supra* note 2, at 773.

135. *Id*.

136. *Id*. at 775. Because of this burden-shifting, it cannot plausibly be argued that anti-housing zoning prevents population increases that are so large as to damage infrastructure. If city A allows

those residents burden City B's streets just as much as they would burden City A's. Just as a factory that sends noxious gases to a nearby house exports harmful pollution to that house, a city that excludes housing exports traffic to another city – hardly a desirable policy.

In fact, anti-housing zoning might *increase* regionwide traffic. Serkin suggests that "excluded residents will have to move further and further away from their jobs and schools, increasing vehicle miles traveled, commute times, and traffic burdens on everyone else."[137] If this is the case, traffic congestion is actually an argument *against* anti-density zoning, not an argument for the current system.

IV. PROTECTING PROPERTY VALUES

Serkin writes that zoning makes a town more stable by protecting property values.[138] He seems especially interested in the welfare of affluent suburbs; he notes that in a suburb with rich people and not-so-rich people, "people living in low-valued property with school-aged children receive an implicit subsidy from owners of high-valued property with fewer or no children in the public schools."[139] If this alleged subsidy grows too high, "people will predictably search for . . . [places] where a greater share of their property taxes go to services that benefit them directly."[140] He adds that zoning "by limiting or eliminating the lowest cost housing in a municipality",[141] helps towns "preserve the relative homogeneity of the community."[142] Serkin's argument is essentially that zoning is good because it creates segregation, which makes rich people happy enough not to move to another neighborhood or suburb.

Such economic segregation, of course, leads to racial segregation: because people of color (especially Black communities) have lower incomes than white communities, zoning laws that exclude the poor disproportionately exclude racial minorities and are thus contrary to the public policy against racial segregation.[143]

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almost no new housing while city B allows generous amounts of housing, the likely result is not that A and B both grow at an even rate; instead, a more likely result is that city A grows slowly, while city B's growth rate explodes.

137. *Id.*

138. *Id.* at 776.

139. *Id.* at 776–77.

140. *Id.* at 777

141. *Id.*

142. *Id.* at 778.

143. *See* Serkin, *supra* note 2, at 778 (claiming that zoning often based not on "racism or naked classism" but on "concern about the impact of property values."); Texas Dep't of Hous. and Cmty. Aff.s v. Inclusive Cmtys. Project, 576 U.S. 519, 540 (2015) (holding that Fair Housing Act allows claims for "disparate impact" against minorities, based partially on public policy against "segregated housing patterns") ("Inclusive Communities"). Serkin correctly notes that exclusionary policies are not always directly intended to exclude racial minorities. *See* Serkin, *supra* note 2, at 778 (claiming that zoning often based not on "racism or naked classism" but on "concern about the impact of property values.") But under current Fair Housing Act case law, practices that have a discriminatory impact against a racial group may, under certain circumstances, be illegal even if they are not motivated by racist intent. *See*

Such exclusion is another example of "beggar thy neighbor" zoning: if rich suburb A excludes poor household B, poor household B has to go somewhere. And if poor households must go to a less restrictive city or suburb, that municipality is saddled with many poor households, causing its tax base to decline.[144] Thus, anti-density zoning rewards the most segregationist towns, and punishes more diverse municipalities. From a social justice perspective, this system is obviously wrong, because it gives municipalities incentives to exclude the poor.[145] From a libertarian perspective, this system is equally noxious, because it rewards the towns with the strictest regulations.

Restrictive suburban zoning places core cities with large low-income populations in a no-win situation. If the city tries to imitate the suburbs by downzoning, (as has occurred in parts of high-cost cities such as New York, Los Angeles and San Francisco),[146] it risks creating high housing costs that leads to increased levels of homelessness.[147] In addition, if rents are too high, even middle-class people may leave cities in order to find cheaper housing.[148] But if a core city fails to exclude the poor while suburbs aggressively exclude them, the city also suffers: the city becomes a dumping ground for regional poverty, causing the middle and upper classes to flee.[149] Cleveland, Ohio presents an example of this worst-case scenario: the poverty rate within the Cleveland, Ohio city limits is more than

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Inclusive Communities, 576 U.S. at 539 (restrictive zoning that tends to exclude racial minorities is "at the heartland of disparate-impact liability"), *id.* at 540-44 (describing limits on disparate impact liability). More importantly, just because exclusionary policies do not violate the Fair Housing Act does not mean that they are equitable or otherwise desirable.

144. *See Montgomery Assocs. v. Twp. of Montgomery*, 149 N.J. Super. 536, 538-39 374 A. 2d 86, 87 (1977) (describing zoning that excludes the poor as "fiscal zoning" because it "excludes those individuals who would have a negative impact on the tax base").

145. Moreover, even if such segregation is rational for an individual suburb, it may be so harmful to the poor that it causes results that harm the entire region. For example, some studies suggest that racial segregation impairs the performance of African American students. *See* Nancy McArdle and Dolores Acevedo-Garcia, *Consequences of Segregation for Children's Opportunity and Well-Being* 11, https://www.jchs.harvard.edu/sites/default/files/a_shared_future_consequences_of_segregation_for_children.pdf [https://perma.cc/M86N-49SL] ("Numerous studies have shown the detriments of attending segregated, high-poverty schools on math and reading scores as well as on drop-out rates, while others have shown that black and Hispanic students exhibit improved achievement in integrated settings, while white students are not harmed") If segregation impairs school achievement, and lower school achievement leads to other negative long-run results, even the affluent may lose from segregation in the long run.

146. *See* Kristof *supra* notes 42–46 and accompanying text. Because some of these high-cost cities have grown in recent decades, Serkin argues that they actually benefit from zoning. *See infra* Parts VI-VII (addressing this claim).

147. *See* Glynn, *supra* notes 65–67.

148. *See* Caplin, *supra* notes 72–73, Serkin, *supra* notes 2, 77–78.

149. Although there is no way of knowing the causes of every household's residential choices, I assume for the purposes of this discussion that Serkin is correct in suggesting that well-off households tend to flee poorer households. *See supra* notes 140–43.

double that of the Cleveland metropolitan area,[150] As a result, the city has lost fifty-eight percent of its 1950 population.[151]

Either way, anti-density zoning drives middle-class Americans out of cities, either because the rent is too high (as in New York and San Francisco) or because suburban exclusion raises urban poverty rates, thus weakening urban tax bases (as in poorer cities like Cleveland). This suburban sprawl in turn is environmentally harmful: suburbs tend to be less dense than cities,[152] and tend to have less public transportation available.[153] As a result, suburbanites tend to drive more than city residents, and thus create additional pollution.[154]

Serkin admits that zoning in high-cost cities has become too restrictive.[155] Although he asserts that the law should protect homeowners' reliance on the status quo,[156] he adds that when homeowners' profits are "too large, more aggressive efforts to increase supply should be appropriate."[157] This attempt to split the difference would be more persuasive if zoning could fix itself: that is, if when housing costs grew, states or cities were likely to solve the problem by liberalizing zoning.[158]

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150. *See* Census Reporter, *Cleveland, OH*, https://censusreporter.org/profiles/16000US3916000-cleveland-oh/ [https://perma.cc/27YE-JCEW] (city poverty rate is 29.3 percent, while regional poverty rate is 13 percent).

151. *See* Michael B. Sauter, *These five cities have lost half or more of their populations since 1950*, USA TODAY (Jun. 11, 2019, 3:15PM), https://www.usatoday.com/story/money/2019/06/11/5-cities-have-lost-half-or-more-of-their-populations-since-1950/39557461/ [https://perma.cc/KPA6-D3XF] (citing other examples).

152. *See* Eric Eidlin, *What Density Doesn't Tell Us About Sprawl*, ACCESS, at https://www.accessmagazine.org/fall-2010/density-doesnt-tell-us-sprawl/ https://perma.cc/9W3F-5E4Z] (citing examples).

153. *See* Adie Tomer et. al., *Missed Opportunity: Transit and Jobs in Metropolitan America* 38–43, BROOKINGS, (May 2011) https://www.brookings.edu/wp-content/uploads/2016/06/0512_jobs_transit.pdf [https://perma.cc/WD46-PQTB] (comparing transit access in cities and suburbs).

154. *See* Caplin, *supra* notes 74, 107, 125–26 and accompanying text (describing relationship between density and automobile-related emissions); Glaeser and Kahn, *supra* note 114, at 415 (showing that in forty-six out of forty-eight metropolitan areas listed, suburbanites create more greenhouse gases than city residents).

155. *See* Serkin *supra* note 2, at 771–75.

156. *See* Serkin, *supra* note 2, at 785 (homeowners "can reasonably expect zoning to continue to limit supply").

157. *Id*. at 786.

158. On the other hand, some evidence supports the view that zoning reform is politically possible. Some cities and states have enacted modest zoning reforms- but most of these reforms have been designed to allow duplexes and triplexes in areas zoned for single-family housing. Infranca, *supra* note 105, at 1279-80; Daniel Herriges, *Will 2021 Be The Year Zoning Reform Reaches Critical Mass?,* STRONG TOWNS, (Mar. 4, 2021), https://www.strongtowns.org/journal/2021/3/4/will-2021-be-the-year-zoning-reform-reaches-critical-mass?utm_content=bufferb1726&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer&fbclid=IwAR3-Hu7zm_FT8h2hHGvSgtKMF5jj15iuS6fRas4kY2GAPW9BfUOcAwU27ko [https://perma.cc/G7GB-9AL6]. But it is not clear whether such small buildings will lead to a significant increase in housing supply. *See* Salim Furth, *Stuck in the (Missing) Middle*, MARKET URBANISM, (Sept. 8, 2020), https://marketurbanism.com/2020/09/08/missing-middle-critique/ (where land costs high, duplexes and triplexes unlikely to be profitable because not many housing units will be built in a small parcel of land, which means that costs per unit so high that they

Such a happy medium might not be politically possible. Evidence suggests that zoning has created a vicious circle: as zoning becomes more restrictive and rents explode, voters fearing higher rents blame new housing for housing costs, supporting anti-housing policies that cause rents to keep going up. A study by Harvard University fellow Michael Hankinson asked a national sample of homeowners and renters about their support for new residential buildings near their homes.[159] Renters in the least expensive cities were generally willing to support such housing near their apartments.[160] But in the most expensive quintile of cities (that is, those with average rent over $2,247)[161] renters, like homeowners, were *less* likely to support housing within 1/8 mile of their homes than similar buildings 2 miles away.[162] In other words, where rents are low, renters are willing to support new housing near their apartments, but where rents are high, renters tend to oppose new housing.[163] Thus, zoning might not be able to fix itself: once rents reach a certain level, political resistance to deregulation grows, causing local government to pump the brakes on what remains of regional housing supply.

A related argument is that homeowners have relied on zoning: Serkin writes that because homeowners "bought into a community with zoning [they] can reasonably expect zoning to continue to limit supply."[164] But this argument proves too much. If every homeowner must make a profit on their house, then home prices in high-cost places should *never* come down- a result that seems inconsistent with the public interest in lower housing costs. For example, if San Francisco house prices went down to 2010 levels, older buyers' reliance interest would still be satisfied (because their house is still worth more than the original sale price) but post-2010 buyers would still lose some money. Moreover, if reliance on an inequitable status quo justifies inequitable policies, a wide variety of inequitable policies would still be the law. For example, the U.S. would never have passed fair housing legislation because some homeowners might have bought houses in

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will not be profitable to build) [https://perma.cc/UKC6-Z9PH]; Michael Anderson, *We Ran The Rent Numbers on Portland's 7 Newly Legal Home Options,* SIGHTLINE INSTITUTE, (Aug. 1, 2021), https://www.sightline.org/2021/08/01/we-ran-the-rent-numbers-on-portlands-7-newly-legal-home-options/?fbclid=IwAR16pzSJAY5NYtMU74oC8pChhNsg7L5rZTfEvEkYWSKQgWtZsAMIh3MnWfQ (similar analysis, focused on Portland, Oregon).

159. *See* Michael Hankinson, *When Do Renters Behave Like Homeowners?, High Rent, Price Anxiety, and NIMBYism*, HARV. JCHS (Feb. 2017), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_hankinson_2017_renters_behave_like_homeowners_0.pdf (working paper for Joint Center for Housing Studies of Harvard University.

160. *Id.* at 13 (in such cities, renters more likely to support housing within 1/8 mile of their homes than similar housing two miles away; by contrast, in both expensive and inexpensive cities, homeowners were less likely to support housing near them than faraway housing).

161. *Id.*

162. *Id.* (noting that among renters, there is a "12 percent decrease in support" for buildings 1/8 mile away, compared to buildings 2 miles away).

163. This portion of my Article is based on a longer article published in the Real Estate Law Journal, which discusses examples of anti-housing sentiment in New York and San Francisco. *See* Michael Lewyn, *Will Zoning Fix Itself?,* 50 REAL EST. L.J. 453, 462–65 (2021).

164. *See* Serkin, supra note 2, at 785.

reliance on the likelihood that their neighborhoods would be exclusively white and Christian.[165] In other words, the reliance interests of homeowners should not trump every conceivable public interest.

V. PASSING ON THE COSTS OF GROWTH

Serkin writes that zoning allows local governments to push the costs of growth to developers. For example, in exchange for the right to build, municipalities may impose "exactions, which are fees or dedications of land imposed as a condition of development."[166] Or the local government might negotiate more informally, allowing more density in exchange for "open space, road improvements, wastewater expansion, or any number of other items."[167] Ideally, municipalities defray increased infrastructure costs brought on by new housing by enlisting the developer to pay for the new infrastructure in exchange for an approved rezoning application.[168]

Where this is the case, everyone gets what they want: the municipality gets revenue, the developer gets to build new homes, and the residents of those new homes get a place to live (albeit at a higher cost than would otherwise be the case, if the developer can pass its costs to consumers).[169] Serkin adds that even if no fees are paid by the developer, local governments "can use zoning to push development to locations where it will impose fewer costs"[170] – a statement that implies that developers will ultimately find *someplace* to build, thus allowing housing supply to meet demand and preventing housing costs from rising too rapidly.

But the glacial pace of American housing supply growth suggests otherwise. During the 1970s, 17 million housing units were completed,[171]or roughly one unit for every 3.7 U.S. households.[172] During the 2000s, about 15.6 million units were completed,[173] or one for every 6.7 households.[174] During the 2010s, only

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165. *Cf.* Fair Housing Act, 42 U.S.C. 3601 (statute prohibits discrimination based on race, religion and several other categories).

166. *See* Serkin, *supra* note 2, at 778–79.

167. *Id.* at 779.

168. *Id.* at 781 ("new development can burden public services like roads, public schools, open space, and so forth" so exactions enable those costs to be shifted to developers).

169. *Id.* at 782 (such fees are "an implicit wealth transfer from newcomers to in-place property owners").

170. *Id.* ("A local government can use zoning to push development to locations where it will impose fewer costs, even if it is less desirable from a developer's perspective.").

171. *See* U.S. CENSUS BUREAU, NEW RESIDENTIAL CONSTRUCTION, (2019), at https://www.census.gov/construction/nrc/historical_data/index.html ("Housing Units Completed" table) [hereinafter NEW RESIDENTIAL].

172. In 1970, the U.S. had 63.4 million households. *See Number of Households in the U.S. from 1960 to 2020 (in millions),* STATISTA at https://www.statista.com/statistics/183635/number-of-households-in-the-us/ (last visited April 2023) [hereinafter Households].

173. *See* NEW RESIDENTIAL, *supra* note 171.

174. *See* Households, *supra*, note 172 (U.S. had 104.71 million households in 2000).

10.8 million units were completed,[175] or one for every 10.8 households.[176]

It could be argued that broader economic changes such as the 2008 economic downturn were primarily responsible for the decline of housing construction - but if this were true, construction of multifamily housing (which zoning often disfavors)[177] would have kept pace with single-family construction. In fact, construction of multifamily housing decreased far more rapidly than construction of single-family houses. While construction of single-family structures decreased by about 16 percent between 1973 and 2019,[178] construction of duplexes and other structures with two to four units decreased by over 90 percent,[179] and construction of structures with five or more units decreased by 55 percent.[180] And as supply has dwindled, housing costs have increased: between 1960 and 2014, median rents increased by 64 percent in real terms nationwide, while real household incomes increased by only 18 percent.[181]

Moreover, demand for rental housing may have increased more rapidly than demand for home ownership in recent years. The national home ownership rate declined from 69 percent at the end of 2005 to 65.5 percent at the end of 2021.[182] Even if the supply of single-family houses had kept up with demand, this would almost certainly not be true of multifamily housing.

The gap between demand and supply is even more overwhelming in high-cost regions. For example, in San Francisco, the core city in the second most

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175. *See* NEW RESIDENTIAL, *supra* note 171. The discussion above focuses on pre-2020 data to avoid possible effects of the COVID-19 pandemic. I note, however, that home construction has modestly increased between 2019 and 2022. *Id*. (total number of units completed increased from 1.25 million in 2019 to 1.39 million in 2022). But even if construction throughout this decade continued at the 2022 pace, there would still be only 13.9 million units completed in the 2020s, fewer than in the 2000s. *Id*.

176. *See* Households, *supra*, note 172, at 613 (U.S. had 117.54 million households in 2010).

177. *See* Hills & Schleicher, *supra* note 34 and accompanying text (zoning changes that increase density are especially controversial).

178. *See* NEW RESIDENTIAL, *supra*, note 171 (1.197 million completions in 1973, 903 million in 2019).

179. *Id*. (123,500 completions in 1973, 9000 in 2019, and no completion of over 11,000 units in any year after 2010).

180. *Id*. (779,800 completions in 1973, 342,900 in 2010). 1970s construction of such units averaged about 509,000 per year- higher than in any year since 1986.

181. *See* Woo, *supra* note 53. Purchase prices for houses have also increased rapidly. Between 1960 and 2020, the cost of the median house has increased from $92,000 to $298,600 – a 223 percent increase. *See* THE WORLD ALMANAC AND BOOK OF FACTS, 108, (SARAH JANSSEN, ED. 2021). *Cf*. U.S. CENSUS BUREAU, HISTORICAL INCOME TABLES-HOUSEHOLDS (2022), https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html [https://perma.cc/96DN-76FN] [hereinafter Table H-6] (during this period, median household incomes increased from $29,943 to $68,703, a 129 percent increase). However, homeowners' pain has been mitigated by declining interest rates, which have allowed homeowners to pay less for their homes than rising purchase prices would suggest. *See* Kevin Graham, *Historical Mortgage Rates from the 1970s to 2021: Averages and Trends For 30-Year Fixed-Rate Mortgages*, ROCKET MORTGAGE, https://www.rocketmortgage.com/learn/historical-mortgage-rates-30-year-fixed [https://perma.cc/76FT-LYP9] (Feb. 12, 2021) (describing trends).

182. *See* ST. LOUIS FED, *Homeownership Rate in the United States*, https://fred.stlouisfed.org/series/RHORUSQ156N [https://perma.cc/E2L7-ER6A] (last updated Jan 31, 2023).

expensive metropolitan area in the United States,[183] only 5.4 percent of housing units were built after 2010.[184] Housing construction grew even more slowly in most of San Francisco's suburbs.[185] By contrast, demand for housing appears to have increased significantly; regional employment increased by over 20 percent between 2010 and 2019.[186] This figure may actually understate demand growth in San Francisco, because some people who preferred that city or its suburbs might have chosen another region in order to avoid the region's high housing costs.

Similarly, in New York, the most expensive rental market in the United States,[187] housing supply grew at an equally glacial pace. In Manhattan, only 3.7 percent of housing units were built after 2010.[188] New York's suburbs were even stingier: for example, in Long Island's Nassau County, only 2.4 percent of housing was built after 2010, and in Westchester County north of the city, only 3 percent of housing was built after 2010.[189]

In sum, Serkin paints a pretty picture: municipalities negotiate with developers, developers pay for the infrastructure burdens they create, and everyone wins. The real story is a bit less appealing: housing often does not get built at all, resulting in higher housing costs.

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183. *See* Boeing and Waddell, *supra* note 62, at 24–25.

184. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "Filters"; select "Geography;" search "San Francisco city, California"; select from dropdown menu above the data set "2019: ACS 5-Year Estimates Data Profiles").

185. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "Filters"; select "Geography;" search "San Francisco city, California"; select from dropdown menu above the data set "2019: ACS 5-Year Estimates Data Profiles"). (similar percentages in some suburban counties were 4.5 percent in Sonoma County, 4.3 percent in Alameda, Contra Costa and Napa Counties, 4.2 percent in San Mateo County, and 2.1 percent in Marin County; two suburban counties, Santa Clara and Sonoma, had higher growth rates). *Cf.* Plan Bay Area 2050, *The Counties*, https://www.planbayarea.org/counties [https://perma.cc/R2RK-49VW] (listing counties in San Francisco region).

186. *See* BUREAU OF LABOR STATS., *Databases, Tables & Calculators by Subject*, https://data.bls.gov/pdq/SurveyOutputServlet [https://perma.cc/6LYD-Z43L] (labor force data for San Francisco-Oakland-Hayward, CA Metropolitan Statistical Area) (2.069 people employed in region in January 2010, while 2.54 million were employed in December 2019). *Cf.* Eric Kober: *The Jobs-Housing Mismatch: What It Means For U.S. Metro Areas*, 5–20, 6, (Manhattan Institute, Report July 2021) (using slightly different methodology, and concluding that jobs grew more than three times as rapidly as housing supply).

187. *See* Boeing and Waddell, *supra* note 62, at 24–25 (New York market had highest rent per square foot).

188. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "filters"; select "geography;" search "Manhattan borough, New York County, New York"; select from dropdown menu above the data set "2019: ACS 5-Year Estimates Data Profiles").

189. *See* ACS *supra* note 75 (follow hyperlink; search for "Table DP04"; select "Filters"; select "Geography;" search for referenced areas and select them to add filters; select from dropdown menu above the data set "2019: ACS 1-Year Estimates Data Profiles"). New York's urban outer boroughs also allowed minimal amounts of housing. The post-2010 percentage of housing stock ranged from 2.6 percent (Staten Island) to 4.9 percent (Brooklyn). *Id.* By contrast, in Houston, 12.5 percent of housing supply was built after 2010. *Id.*

VI. BENEFITTING CITIES

As noted above, restrictive zoning can benefit rich suburbs, but sometimes in ways that are harmful to cities: if the poor cannot live in suburbs, they will move to a core city.[190] As Serkin writes, if a city has a significant number of low-income residents, the city is more likely to spend money on government programs for the poor.[191] Where this is the case, "the tax burden on more affluent property owners becomes increasingly burdensome either because taxes go up, or because property tax revenues are used to fund services that are less important to them."[192] As a result, affluent homeowners move to exclusive suburbs where their funds are not be used to support the poor, causing urban tax bases to decline and cities to increase taxes in order to fund public services.[193]

But in recent decades, some core cities began to give affluent neighborhoods additional power to exclude new housing. For example, in 1989, New York amended its laws to give community boards more power over land use decision-making, creating easier means for neighborhood activists to limit housing supply.[194] Historic preservation has also proliferated; while New York once protected a few hundred buildings from development, the city's preservation laws now protect 25,000 buildings and 100 districts.[195] Serkin writes that because property values increased dramatically in historic districts and other tightly zoned neighborhoods,[196] these areas "were competitive with suburbs for mobile capital."[197] In other words, by causing housing costs to increase, zoning has "at least partially driven the reinvestment in cities."[198] Serkin seems to argue that high housing costs make cities richer and thus more desirable, by attracting homeowners who benefit from rising housing costs. [199]

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190. This appears to be a common pattern, since cities generally tend to be poorer than suburbs. *See* Rockefeller Foundation, *Suburban Poverty in the United States* 5, (Rockefeller Foundation, May 2017), (22 percent of urban population is poor, as opposed to 9 percent of suburban population); *supra* note 151 and accompanying text (for example, Cleveland far poorer than its suburbs); Inga Saffron, *Philadelphia didn't become America's poorest big city by chance. Here's how we fix it.*, JEVS HUMAN SERVICES (2020), https://www.jevshumanservices.org/philly-didnt-become-americas-poorest-big-city-by-chance-heres-how-we-fix-it/ [https://perma.cc/RJ93-359X] (similarly, Philadelphia has 23.3% poverty rate, while Philadelphia metro area has 12.6% poverty rate, partially because "suburban towns have used zoning to limit the availability of low-cost housing, effectively containing the poor in urban areas")

191. *See* Serkin, supra note 2, at 787.

192. *Id.*

193. *Id.*

194. *Id.* at 790.

195. *Id.* at 791.

196. *Id.* (citing example from Chicago).

197. *Id.*

198. *Id.* at 792.

199. *Id.* This might seem inconsistent with Serkin's statement that "density restrictions in urban zoning may push new development out into the suburbs." *Id.* at 765. But these ideas can be reconciled if rising housing costs attract the rich while repulsing the middle class.

On the other hand, more expensive cities may make expensive cities less desirable[200] by forcing some low-income renters into homelessness.[201] Between 2009 and 2019, the number of unsheltered homeless increased by 55 percent in New York City, 76 percent in San Francisco, and 124 percent in Los Angeles.[202] Moreover, overall poverty rates in high-cost cities continue to exceed those of their suburbs. For example, New York City's poverty rate is almost 40 percent higher than that of the overall New York region, and Boston's poverty rate is about twice as high.[203] Thus, it does not appear that zoning has been particularly successful in driving out the poor.

Admittedly, some high-cost cities did grow before the COVID-19 pandemic;[204] for example, New York City's population grew from 8.175 million in 2010 to over 8.8 million in 2020.[205] But some less expensive cities grew as well: for example, in Atlanta, (where median rents are less than one-third those of New York)[206] the

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200. *See, e.g.,* Lara Korte & Jeremy B. White, *Rising homelessness is tearing California's cities apart*, POLITICO, (Sept. 21, 2022), https://www.politico.com/news/2022/09/21/california-authorities-uproot-homeless-people-00057868 [https://perma.cc/8THG-336Z] (homelessness especially harmful in central cities; article cites Sacramento office building owner who claims that her tenant "afraid to come to work" because of homeless encampment, and states that rise of homelessness in San Francisco has led to "vandalism, littering, and frequently display of psychotic episodes").

201. *See supra* notes 65–66 and accompanying text (discussing link between high housing costs and high numbers of homeless in certain cities).

202. *See* SAMANTHA BATKO, ALYSE D. ONETO & AARON SHROYER, UNSHELTERED HOMELESSNESS: TRENDS, CHARACTERISTICS, AND HOMELESSNESS HISTORIES 14, https://www.urban.org/sites/default/files/publication/103301/unsheltered-homelessness.pdf [https://perma.cc/U38U-MTLU].

203. *See* Boeing and Waddell, *supra* note 62, at 8 (listing most expensive regions); ACS, *supra* note 75 (follow hyperlink; search for "Table S1701"; select "Filters": select "Geography"; search for the referenced cities and select to add as filters; select from dropdown menu above the data set "2019: ACS 1-Year Estimates Data Profiles") (New York City has 16 percent poverty rate, while New York-Newark-Jersey City metropolitan area has 11.6 percent poverty rate, city of Boston has 17.1 percent rate, while Boston-Cambridge-Newton region has 8.6 percent rate). However, expensive metro areas in the West have poverty rates only slightly lower than their central cities. *Id.* (San Jose has 7.1 percent poverty rate while San Jose-Sunnyvale-Santa Clara region has 6.3 percent rate; city of San Francisco has 9.5 percent poverty rate while San Francisco-Oakland-Berkeley region has 8.2 percent rate, and no data available for city of Honolulu).

204. And may grow in the future; even though some people left high-cost cities in 2020, at least one of those cities appear to have regained people in 2021. *See, e.g.,* TRD Staff, *New York City has largely regained residents who fled in the pandemic*, THE REAL DEAL, (Nov. 18, 2022) https://therealdeal.com/2021/11/18/new-york-city-has-largely-regained-residents-who-fled-in-the-pandemic/ [https://perma.cc/V88R-34ZD] (describing 2021 population growth in New York).

205. *See*, *Quick Facts, New York City, New York*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/newyorkcitynewyork [https://perma.cc/P7LZ-QS9T] (last visited Apr. 8, 2023). Similarly, population increased in other high-cost cities such as Boston, San Jose, San Francisco and Honolulu-although in none of these cities did population grow by over 10 percent. *See* Boeing and Waddell, *supra* note 62, at 25-25 (these regions were the only ones where rent exceeded $2 per square foot); *QuickFacts*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/US/PST045219 (last visited Apr. 8, 2023) (enter city name in internal search engine for population growth data).

206. *See* Boeing and Waddell, *supra* note 62, at 14 (regional median rent of $0.74 per square foot, less than one-third New York rent of $2.87 per square foot).

central city population grew by 18.7 percent.[207] Similarly, in Oklahoma City (which is only slightly more expensive than Atlanta)[208] the population increased by 17.4 percent.[209] So even if high-cost cities such as New York and San Francisco grew, their growth may not have been caused by rising housing costs.

In sum, Serkin implies that high urban housing costs actually encourage urban growth, because homeowners prefer to live in places where their homes are likely to become more expensive. But the positive impact of rising property values may be outweighed by the negative impact of unaffordable housing; it is unclear whether high-cost cities are still growing, and poor city residents who have stayed despite high housing costs are now more economically reliant on the city to provide for their basic needs.

VII. PREVENTING RESTRICTIVE COVENANTS

Serkin writes that if restrictive zoning did not exist, Americans would flee to communities governed by equally strict restrictive covenants.[210] This argument would make sense if zoning and covenants were mutually exclusive. But Serkin himself notes that an overwhelming majority of cities already have zoning,[211] and that the number of Americans living in covenant-governed communities rose from 2.1 million to 69 million in recent decades.[212] Zoning and covenants are not mutually exclusive: the existence of the former has not prevented the growth of the latter.

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207. *See Quick Facts, Atlanta city, Georgia*, U.S. CENSUS BUREAU, at https://www.census.gov/quickfacts/fact/table/atlantacitygeorgia/PST045219 [https://perma.cc/FX2T-BMMZ] (last visited Apr. 8, 2023) (increase from 420,003 to 498,715).

208. *See* Boeing and Waddell, *supra* note 59, at 24 (regional median rent of $0.77 per square foot).

209. *See Quick Facts, Oklahoma City city, Oklahoma*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/oklahomacitycityoklahoma/PST045219 [https://perma.cc/XHL9-MQNL] (last visited Apr. 8, 2023) (increase from 579,999 to 681,054).

210. *See* Serkin, *supra* note 2, at 794.

211. Serkin writes that Houston "is the only unzoned city in America', *id.* at 796, thus admitting that zoning is widespread. Serkin also claims that Houston's reliance on restrictive covenants has led to more sprawl than in other places; he points out that Houston is less dense than Miami, Philadelphia, Boston or New York. Id. at 796-97. But here, his choice of comparable cities biases his analysis; all four are among the most dense in the United States. *See supra* Table 1. Houston is in fact *more* dense than other Texas cities: Houston's weighted density is 4109 people per square mile, compared to Austin's 3131, San Antonio's 3475, and Dallas's 3909. *See* Weighted Density, *supra* note 125. Examination of Houston's unweighted density (that is, a measure of density that includes vacant land and does not weigh heavily populated areas more) yields similar results: the Houston region's unweighted density is slightly smaller than that of Dallas, but still far larger than that of Austin or San Antonio. *Id.* (Houston's unweighted density is 673 people per square mile, more than 50 percent more than Austin's unweighted density and more than double that of San Antonio). *Cf.* Bradford, *supra* note 125 (explaining difference between weighted and unweighted density).

212. *Id.* at 794. I note, however, that Serkin does not mention whether these figures include condominiums, which I suspect are more dense than communities dominated by single-family homes.

Moreover, covenant-governed communities are not easy to create. Covenants, as contracts, can only be created where all property owners consent to them.[213] This scenario is less likely to occur in an existing neighborhood than in a new subdivision where a seller can create covenants by including them in the initial buyers' deeds.[214] Developers can easily create such subdivisions only if they have vacant land on which to build. preferably on land where there are no neighbors nearby to attack rezonings.[215]

Finding such vacant land in a small city might not be difficult, but securing unused land in large metropolitan areas, such as San Francisco or New York City, might require people to endure extremely long commutes. For example, Nassau County, New York (an inner suburb of New York City) has a population roughly equal to that of Oakland County (an inner suburb of Detroit).[216] However, a recent Zillow.com search revealed that Oakland County had more than four times as many vacant parcels for sale.[217]

Serkin speculates that if zoning restrictions are altered to make housing more abundant and affordable, the rich will flee existing neighborhoods to create covenant-governed suburbs. But in some regions, developers and homeowners may have difficulty finding the land to achieve this goal.

CONCLUSION

Serkin has persuasively explained why it might be in the interest of an individual suburb or neighborhood to have anti-density zoning: by keeping prices high, such zoning protects homeowners from any possible form of unwelcome change and because zoning has existed for decades, these homeowners have arguably relied on the status quo.

But have our cities benefited? On the one hand, Serkin argues that ever-stricter zoning has given cities the ability to match suburbs blow for blow, by giving them the same right to exclude that their suburbs have. But this argument is speculative: although expensive cities generally gained population at the start of the

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213. *See Are your covenants at risk of expiring?*, LUEDER, LARKIN & HUNTER, https://www.luederlaw.com/are-your-covenants-at-risk-of-expiring/ [https://perma.cc/FU6E-A8NF] (last visited Apr. 8, 2023) (to "have restrictive covenants against the lots in [a] subdivision, you would need the signed consent of any lot owner who desires to have covenants against the owner's property.").

214. *See, e.g.,* Collins v. Rogers, 938 So.2d 379, 385 (Ala. 2006) (citing Sanborn v. McLean, 206 N.W. 496 (Mich. 1925)).

215. *See supra* notes 34–40 and accompanying text (new housing near existing housing tends to be controversial).

216. See *US County Populations 2023*, WORLD POPULATION REVIEW, https://worldpopulationreview.com/us-counties [https://perma.cc/RJ6J-QE2R] (last visited Apr. 8, 2023) (Nassau has 1.41 million inhabitants, and Oakland County has about 1.3 million).

217. *See Oakland County, MI Land*, ZILLOW, https://www.zillow.com/homes/Oakland-County,-MI_rb/ (last visited Apr. 8, 2023) (500 parcels for sale); *See Nassau County, NY Land*, ZILLOW, https://www.zillow.com/homes/Nassau-County,-NY_rb/ (last visited Apr. 8, 2023) (97 parcels for sale) (97 parcels listed).

twenty-first century, many low-cost cities have gained population as well. Serkin suggests that if anti-density zoning was abolished, development would flee to new subdivisions governed by strict restrictive covenants - but he admits that zoning has not prevented the growth of these subdivisions. Thus, it is unclear whether Serkin's speculation is correct.

Even if anti-density zoning creates beneficial results for a few neighborhoods or suburbs, such zoning has significant costs: in particular, zoning increases rents and other housing costs. If governments were as careful about zoning reform as Prof. Serkin would like, Americans would have a little more housing- but possibly not enough to meet demand or to keep housing costs from rising. By contrast, if governments reformed permissive zoning more radically, Americans would have significantly more housing- possibly enough to bring rents down.

The broader question is one of values: Serkin emphasizes the convenience of the affluent, and their apparent preference for the status quo. To the extent that cities and states follow Serkin's advice, existing homeowners will avoid the inconveniences caused by new neighbors. But does this outweigh the misery caused by anti-density zoning - the intolerably high rents paid by the middle class, the harms caused by racial and economic segregation, the homelessness among the poor, and the increased carbon emissions and car-choked highways caused by commuters fleeing high urban rents? Whose side are you on?