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Attorneys for Intervenor Shelter WF, Inc.

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

MONTANANS AGAINST IRRESPONSIBLE
DENSIFICATION, LLC,

Plaintiff,

vs.

STATE OF MONTANA,

Defendant,

and

SHELTER WF, INC.,

DAVID KUHNLE,

CLARENCE KENCK,

MONTANA LEAGUE OF CITIES AND TOWNS,

Defendant-Intervenors.

Cause No.: DV-16-2023-0001248DK

**DECLARATION OF EMILY HAMILTON
IN SUPPORT OF SHELTER WF, INC.**

1. My name is Emily Hamilton. I am a resident of Virginia, and I submit this declaration in support of Shelter WF’s briefing at the summary judgment stage of this case and in defense of the laws challenged by this lawsuit.

2. As I will explain below, a wide and growing body of evidence consistently supports two fundamental conclusions:

- a. Exclusionary zoning limits housing construction; and
- b. New housing construction improves housing affordability.

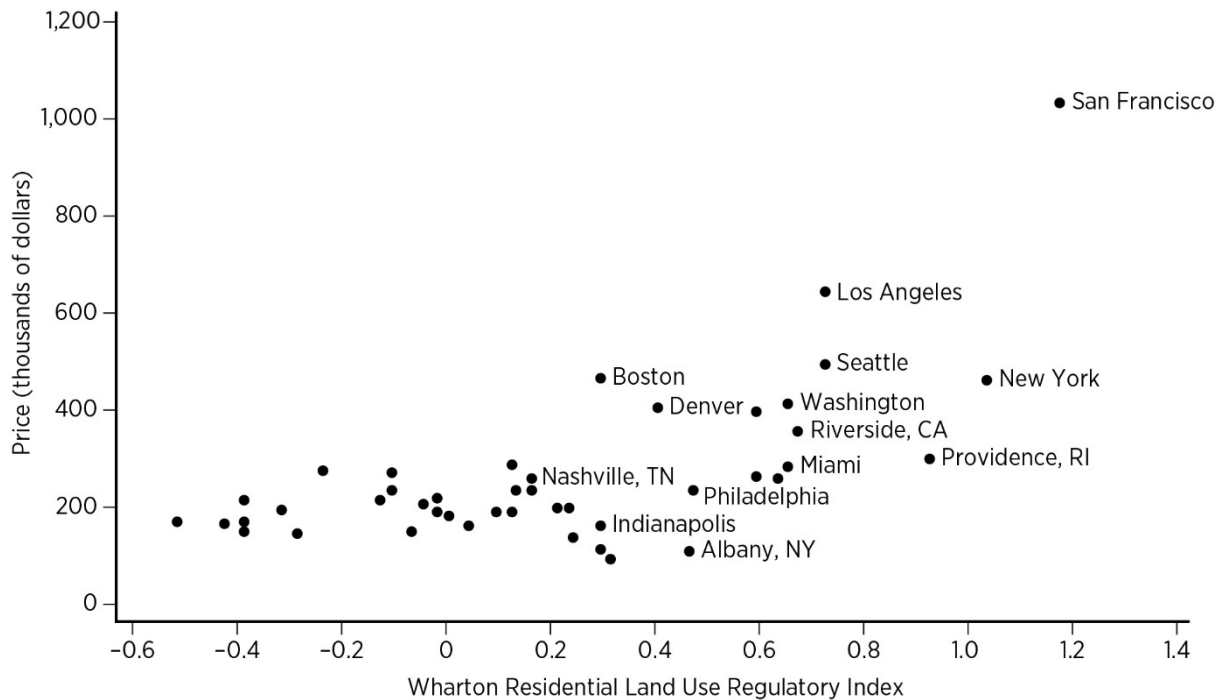
3. I am a Senior Research Fellow and Director of the Urbanity Project at the Mercatus Center at George Mason University. I am a housing economist, and my research focuses on the effects of land use regulations on housing affordability. I have testified before several state legislatures as well as the U.S. House of Representatives. I serve on the advisory boards of *Cityscape*, a journal published by the Department of Housing and Urban Development. I received my PhD in economics from George Mason University.

4. I am familiar with many of the laws challenged by this litigation because I had the privilege of serving on the Governor's Housing Task Force and contributed to the three task force reports that have informed some of Montana's recent housing reforms.

5. I am also familiar with much of the policy rationale behind this legislation because I specialize in studying the effects of state limitations on local zoning authority. For example, 2023's Senate Bill 528 reflects best practices in state policy intended to make it feasible for homeowners to build accessory dwelling units. *See, e.g., A Taxonomy of State Accessory Dwelling Unit Laws*, Emily Hamilton and Abigail Houseal (Mercatus Policy Brief, Mercatus Center at George Mason University, March 30, 2023), available at <https://www.mercatus.org/research/policy-briefs/taxonomy-state-accessory-dwelling-unit-laws-2024>.

6. Contrary to some of the arguments made by Montanans Against Irresponsible Densification in this case, substantial evidence demonstrates that a policy environment that facilitates significant market-rate housing construction improves housing affordability relative to

more constraints on housing construction. Cross-sectional data show a large, positive correlation between regulatory barriers to housing construction and house prices at the regional level, as shown in this graph:



Land Use Regulation and Housing Affordability in Regulation and Economic Opportunity: Blueprints for Reform, eds. Adam Hoffer and Todd Nesbit (Center for Growth and Opportunity at Utah State University, 2021), 186–202, available at <https://www.thecgo.org/books/regulation-and-economic-opportunity-blueprints-for-reform/land-use-regulation-and-housing-affordability/>.

7. The regulation index in the chart above includes zoning regulations and the costs and delays associated with permit approval processes. In a new working paper, researchers find that “the 25% reduction in approval time would increase the rate of housing production by a full 33.0%.” See *Development Approval Timelines, Approval Uncertainty, and New Housing Supply: Evidence from Los Angeles*, Stuart Gabriel and Edward Kung (June 18, 2024), available at <https://ssrn.com/abstract=4872147>.

8. Further, research shows that new construction improves housing affordability through a “filtering” process. When new housing is delivered to a market, it sets off a chain of moves. When people move into the new development, they free up other housing units, usually in the same region. More often than not, the people moving into the new housing are freeing up less desirable, less expensive housing. One estimate finds that this process causes the real income of residents of a given unit of housing to decline by 1.9 percent annually on average. Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing? Estimates from a ‘Repeat Income’ Model*, American Economic Review 104, no. 2 at 687–706 (February 2014).

9. Some scholars have raised the concern that while filtering improves regional housing affordability, new housing may raise prices in its submarket by improving nearby amenities. While this may happen in some cases, some high-quality causal estimates identify the opposite effect with evidence indicating that new construction leads to lower rents in its immediate surroundings relative to a control group. *See, e.g.,* Asquith, Mast, Reed, and Davin, *Supply Shock Versus Demand Shock: The Local Effects of New Housing in Low-Income Areas* (December 19, 2019) available at <https://ssrn.com/abstract=3507532>; Li, *Do new housing units in your backyard raise your rents?*, Journal of Economic Geography 22 at 1309–52, Li, X. (2022); and Pennington, Kate, *Does Building New Housing Cause Displacement?: The Supply and Demand Effects of Construction in San Francisco* (June 15, 2021). Available at SSRN: <https://ssrn.com/abstract=3867764>.

10. I have studied the effects of minimum lot size reform in Houston, a policy change which lowered minimum lot size requirements from 5,000 square feet to 1,400 square feet. This reform facilitated the construction of about 80,000 small-lot single-family houses, including in preexisting single-family neighborhoods where new subdivisions of existing lots result in two or more houses where one stood previously. Emily Hamilton, *Learning from Houston’s Townhouse*

Reforms Mercatus Policy Brief, Mercatus Center at George Mason University (April 11, 2023), available at <https://www.mercatus.org/research/policy-briefs/learning-houstons-townhouse-reforms>.

11. Housing options like small-lot single-family houses or duplexes can improve affordability where they're allowed, but in some respects accessory dwelling units offer an even more attractive option for relatively low-cost housing construction. Because accessory dwelling units are built on marginal land at the site of a single-family house, their land cost is zero. Survey research indicates that these units generally rent for hundreds of dollars less than apartment units in multifamily buildings in the same areas. Emily Hamilton, *Allowing Accessory Dwelling Units Would Contribute to Housing Affordability in North Carolina*, Mercatus Policy Brief, Mercatus Center at George Mason University (April 20, 2023), available at <https://www.mercatus.org/research/state-testimonies/allowing-accessory-dwelling-units-would-contribute-housing-4>.

12. My work on housing policy in Montana and across the country builds on a growing body of research suggesting the fundamental conclusions that 1) exclusionary zoning limits housing construction and 2) new housing construction improves housing affordability. This is supported by many authorities in the field, including the sources above, along with: Raven Molloy, "The effect of housing supply regulation on housing affordability: A review," *Regional Science and Urban Economics*, 2020; and, Been, Vicki and Ellen, Ingrid Gould and O'Regan, Katherine M., *Supply Skepticism Revisited* (November 10, 2023). NYU Law and Economics Research Paper No. 24-12, Available at <https://ssrn.com/abstract=4629628>.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 27, 2024, in Arlington County, Virginia.

/s/ Emily Hamilton
Emily Hamilton

CERTIFICATE OF SERVICE

I, Jesse C. Kodadek, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit in Support to the following on 12-10-2024:

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Electronically signed by Patti Gruwell on behalf of Jesse C. Kodadek

Dated: 12-10-2024