No. 16-1137

IN THE

Supreme Court of the United States

616 CROFT AVE., LLC, *et al.*,

Petitioners,

v.

CITY OF WEST HOLLYWOOD, CALIFORNIA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF OF SCHOLARS OF LAND USE REGULATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

ANDREW M. GROSSMAN
Counsel of Record
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1697
agrossman@bakerlaw.com

Counsel for the Amici Curiae

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* SCHOLARS OF LAND USE REGULATION

Pursuant to Supreme Court Rule 37.2(b), Scholars of Land Use Regulation ("Scholars") respectfully move for leave to file the attached brief as *amici curiae* in support of the Petitioners.

In accordance with Rule 37.2, counsel for the Scholars provided Petitioners and Respondent timely notice of their intent to file the attached brief. Petitioners have consented to the filing and a copy of Petitioners' letter is on file with the Clerk's Office. Respondent, however, declined to consent.

The interests of the Scholars arise from their expertise as researchers and academics in the fields of regulatory economics, land use, and zoning. They seek to inform the Court of the economic consequences of inclusionary zoning and research demonstrating that inclusionary zoning policies operate as conditional extractions for property development under this Court's precedents.

The Scholars have no direct interest, financial or otherwise, in the outcome of this case. Their sole interest in filing this brief is to alert the Court of academic research that will underscore the significance—both legal and practical—of the constitutional questions at issue in this Petition.

For the foregoing reasons, the Scholars respectfully request that they be allowed to participate in this case by filing the attached brief.

Respectfully submitted,

ANDREW M. GROSSMAN
Counsel of Record
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, DC 20036
(202) 861-1697
agrossman@bakerlaw.com

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QUESTION PRESENTED

This brief addresses the following question:

Whether a legislatively mandated permit condition intended to further affordable housing satisfies the nexus and proportionality requirements established in *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) when it serves to make housing *less* affordable.

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae are researchers and academics who are experts in the fields of regulatory economics, land use, and zoning. They seek to inform the Court of the economic realities of inclusionary zoning, including research demonstrating the failure of inclusionary zoning to achieve its purported goal, making housing more affordable. Given the increased prevalence of inclusionary zoning policies, they believe that this case provides an appropriate vehicle for the Court to clarify that inclusionary zoning is not exempt from the limits on conditional exactions for property development recognized by this Court's precedents.

The *amici curiae* are:[2]

Robert Ellickson is Walter E. Meyer Professor Emeritus of Property and Urban Law and Professorial Lecturer in Law, Yale Law School. His books in-

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[1] Pursuant to Rule 37.6, counsel for the *amici curiae* certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than the *amici curiae* or their counsel made a monetary contribution intended to fund the brief's preparation or submission. Pursuant to Rule 37.2, counsel of record for Petitioners and Respondent received notice of *amici curiae*'s intent to file this brief at least ten days before the due date. Only Petitioners consented to the filing of this brief, and a copy of Petitioners' letter of consent is on file with the Clerk's Office.

[2] Institutional affiliations are provided for identification purposes only. The views expressed in this brief are those of the *amici curiae*, and not necessarily their institutions.

clude *Land Use Controls: Cases and Materials* (4th ed. 2013, with Vicki L. Been, Roderick M. Hills, Jr., and Christopher Serkin), *Order Without Law: How Neighbors Settle Disputes* (1991) (awarded the Order of the Coif Triennial Book Award in 1996), and *Perspectives on Property Law* (4th ed. 2014, with Carol M. Rose and Henry E. Smith).

Emily Hamilton is policy research manager for the State and Local Policy Project at the Mercatus Center, an economic-research institute at George Mason University. She has written widely on land-use regulation in Mercatus Center publications and on the Market Urbanism website.

Sanford Ikeda is Professor of Economics at the State University of New York, Purchase College. He is an expert on the economy of cities and the author of *Dynamics of the Mixed Economy: Toward a Theory of Interventionism* (1996).

Christopher Koopman is Senior Research Fellow and Director of the Technology Policy Program at the Mercatus Center. His research and commentary has appeared in the *Wall Street Journal*, *New York Times*, *Washington Post*, *USA Today*, *Bloomberg*, and *NPR*.

Thomas Means is Professor of Economics at San Jose State University. He has published on the consequences of inclusionary zoning in the *Journal of Public Finance and Public Choice*.

Adam Millsap is Research Fellow for the State and Local Policy Project at the Mercatus Center. His research on urban development and growth has been published in *Papers in Regional Science*.

Benjamin Powell is Professor of Economics at Texas Tech University and Director of the Free Market Institute. He is the co-editor of *Housing America: Building Out of a Crisis* (Randall G. Holcombe & Benjamin Powell eds., 2009).

Edward Stringham is Davis Professor of Economic Organizations and Innovation at Trinity College. He is the author of *Private Governance: Creating Order in Economic and Social Life* (2015).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court's decisions in *Nollan*, *Dolan*, and *Koontz* establish that, when jurisdictions condition building permits on exactions from developers, those exactions must have "a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2591 (2013). That rule is being broadly circumvented through the use of "inclusionary zoning" policies that require developers to set aside a proportion of the housing units they develop for below-market-rate sales or (as the Petitioners did here) pay a fee in lieu of such sales. Despite that such policies are conceptually and economically indistinguishable from the sort of exactions at issue in *Nollan*, *Dolan*, and *Koontz*, the lower courts have been inconsistent in subjecting them to the scrutiny those decisions, and ultimately the Fifth Amendment, require.

Economic research instructs that affordable housing exactions imposed in the name of "inclusionary zoning" do not satisfy the *Nollan*/*Dolan*/*Koontz* standard. Inclusionary zoning exactions have no nexus with any state interest in housing affordability because they serve to reduce housing supply and increase housing prices relative to what would otherwise prevail. For the same reason, they are also disproportionate to any impact of development, lacking the requisite "reasonable relationship" to affordable-housing goals. *See Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994). Indeed, the economic evidence is clear that inclusionary zoning policies help few low-income households and only add to the harms of exclusionary zoning for the majority of low-income households. Although well-intentioned, these policies do not advance the government's identified interest of increasing access to housing for displaced and lower income individuals.

The Court should grant certiorari to resolve the confusion in the lower courts over inclusionary zoning policies and ensure that these exaction schemes are subject to appropriate constitutional scrutiny.

ARGUMENT

I. The Inclusionary Zoning Rules in Places Like West Hollywood Are an Exaction on New Housing Construction, No Less Than Those in *Nollan* and *Dolan*

Inclusionary zoning refers to municipal policies that require real estate developers to set aside a certain percentage of units to be leased or sold at below-market rates. Often, these units are required to be within the same development as the new market-rate units. In some jurisdictions, including West Hollywood, developers may provide below-market-price units at a separate site or pay fees-in-lieu of the units themselves.

California jurisdictions have been leaders in adopting inclusionary zoning policies, but these kinds of policies are becoming increasingly prevalent across the country, with more than 500 jurisdictions having adopted them.[3]

Such policies are, in economic terms, exactions on the use of property. That is apparent when develop-

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[3] Compiling data on exactly which of the country's 39,044 jurisdictions have inclusionary zoning rules on the books presents a challenge for researchers, but one estimate puts the number of jurisdictions with inclusionary zoning requirements at over 500. *See* Steve Butler, *Inclusionary Zoning: One Approach to Create Affordable Housing*, MRCS Insight Blog (Nov. 23, 2016), http://mrsc.org/Home/Stay-Informed/MRSC-Insight/November-2016/Inclusionary-Zoning-for-Affordable-Housing.aspx?feed=blogs.

ers must, as a condition for developing their property, set aside a certain portion of the development for below-market sale, which is no different in form or result from requirements to set aside greenway or parkland as in *Dolan*. And in jurisdictions where developers pay fees in lieu of setting aside affordable units, the condition amounts of an exaction is perfectly apparent, as the Court explained in *Koontz*.

In economic terms, these kinds of exactions, whether in kind or in cash, are indistinguishable from those at issue in *Nollan*, *Dolan*, and *Koontz*. As in those cases, inclusionary zoning policies impose an exaction on developers that they are required to pay in exchange for building permits. Accordingly, as in those cases, the developer exactions imposed under inclusionary zoning policies must be subject to the Fifth Amendment's nexus and proportionality requirements.

II. Inclusionary Zoning Fails To Satisfy the Fifth Amendment's "Essential Nexus" and "Rough Proportionality" Requirements

The term "inclusionary zoning" is deceptive. It suggests that the policy has opposite outcomes relative to the suite of policies that are considered "exclusionary zoning." Exclusionary zoning refers to rules that drive up housing costs in a city or neighborhood, making the area unaffordable to low- or moderate-income households. These rules include minimum lot sizes, maximum density rules, and prohibitions on multifamily housing. While inclusionary zoning requires something different from developers (i.e., the provision of certain units of below-market-rate housing in new developments), it also reduces the rate of housing construction and contributes to making real estate markets unaffordable to low- and moderate-income households. Instead of furthering the stated goal of increasing affordable housing, inclusionary zoning requirements undermine it.

Although not a tax in the legal sense, inclusionary zoning policies function as one in economic terms, raising the cost of other units in new developments. Just as taxing a good tends to reduce its supply and raise its price, inclusionary zoning reduces a real estate market's supply of new units and increases the price of housing.[4] Ultimately, by discouraging new development, inclusionary zoning undermines its stated policy goal, making a market's housing more expensive rather than less.

For that reason, inclusionary zoning policies cannot satisfy the Fifth Amendment's nexus and proportionality requirements. Inclusionary zoning is justified as a means of ensuring affordable housing because new infill development often eliminates existing, older, lower-cost housing units. While it may be true that new units are often more expensive than

[4] Recognizing that taxation will discourage supply of a good or service, economist Henry George advocated a land-value tax to replace all other forms of taxation because land is the one resource for which supply cannot be reduced in response to taxation. *See* Henry George, *Progress and Poverty* (1879).

the older units that they replace, new housing construction is actually essential to increase supply and therefore maintain affordability in the face of growing population and demand. New housing construction across a region thereby contributes to a real estate market's affordability, even if it appears to have the opposite effect at the project level.[5] Accordingly, policies that increase the cost of new construction, and thereby reduce supply, will tend to reduce affordability.[6]

Because developers are not compensated for providing housing at below-market rates, inclusionary zoning necessarily increases the cost of building new housing.[7] While developers will bear some por-

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[5] Stuart S. Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing?*, 104 Am. Econ. Rev. 687 (2014).

[6] Basic economic theory suggests that, except in few and rare instances, supply curves slope upward. That is, price and quantity are positively correlated. The supply curve of new housing construction is no different. When a price control caps prices at a level below what the market price would be, the result is a reduction in quantity supplied relative to a world without the price cap. In the case of inclusionary zoning's price control, the cap only applies to a percentage of the units in a jurisdiction. But inclusionary zoning results in a reduction of supply that affects the entire real estate market and therefore increases the price of all housing that is not subject to the cap.

[7] In some cases, jurisdictions create optional inclusionary zoning programs that developers are incentivized to participate in in exchange for tax credits or density bonuses. In these cases, inclusionary zoning is not an exaction and does not increase

tion of the cost of this exaction, given how highly competitive the construction industry is, that portion is likely to be small.[8] Instead the cost will be pushed backward to landowners and forward to the renters and homebuyers who purchase market-rate units.[9] Because of this, inclusionary zoning creates a disincentive for new supply: When regulations require developers to provide some units at below market rates, fewer projects will be profitable to build at all, and fewer housing units will be built.

A. Empirical Research Confirms That Inclusionary Housing Tends To Increase—Rather Than Decrease—Housing Prices

Few scholars have published studies on the effects of inclusionary zoning because of the difficulty of compiling data on municipalities' programs and accounting for the variation across programs. The studies that do exist measuring the effects of inclusionary zoning bear out economic theory: by creating an exaction on housing development, inclusionary zoning reduces housing supply and increases hous-

construction costs relative to a world without inclusionary zoning.

[8] Edward L. Glaeser, Joseph Gyourko, & Raven Saks, *Why Is Manhattan So Expensive? Regulation and the Rise in House Prices*, 48 J.L. & Econ. 331 (2005).

[9] Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 S. Cal. L. Rev. 1167 (1981).

ing prices relative to what would be seen absent these rules.[10]

One study of inclusionary zoning in California found that it caused prices to increase 2 to 3 percent faster relative to jurisdictions without the policy, and that inclusionary zoning reduced the rate of single-family housing starts (though not the rate of multifamily starts).[11] The authors characterize their findings: "The results are fully consistent with economic theory and demonstrate that inclusionary zoning policies do not come without costs."[12] Another study of California found that inclusionary zoning ordinances in California caused a 7 percent reduc-

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[10] Some case study research purports to demonstrate that inclusionary zoning does not reduce housing supply or increase the cost of market-rate development. *See, e.g.*, David Rosen, *Inclusionary Housing and Its Impact on Housing and Land Markets* (2004),
http://www.mumbaidp24seven.in/reference/Rosen2004.pdf.

Stringham and Powell point out that Rosen errors in his argument that "housing price[s], be it rents or sale prices, are solely a function of market demand," ignoring the role of supply in determining market prices. In his study, Rosen argues that California jurisdictions with inclusionary zoning have experienced larger growth rates of housing stock relative to jurisdictions without it. Unlike more recent studies, Rosen failed to control for other factors that affect supply.

[11] Antonio Bento, Scott Lowe, Gerrit-Jan Knaap, & Arnab Chakraborty, *Housing Market Effects of Inclusionary Zoning*, 11(2) Cityscape 7 (2009).

[12] *Id.* at 7.

tion in housing stock and a 20 percent increase in home prices.[13]

A study of the effects of inclusionary zoning in the Boston area found that the implementation of inclusionary zoning rules has corresponded with higher housing prices and reduced construction rates during times of regional house price appreciation, but not during soft markets.[14] Times of high housing price growth are likely to correspond with the highest demand for housing and relatively affordable housing. The same study included an analysis of inclusionary zoning in the Bay Area and found that as with Boston, inclusionary zoning corresponds with more rapidly rising house prices during market appreciation, but that it appears to decrease prices during soft markets. All of these analyses relied on data on single family home sales, which, in the short run, may be less sensitive to inclusionary zoning policies than multifamily rental prices since inclusionary zoning most often applies to multifamily rental projects.

The data also reveal that, rather than making housing more accessible to low- and middle-income

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[13] Tom Means & Edward P. Stringham, *Unintended or Intended Consequences? The Effect of Below-market Housing Mandates on Housing Markets in California*, 30 J. Pub. Fin. & Pub. Choice 39 (2012).

[14] Jenny Schuetz, Rachel Meltzer, & Vicki Been, *Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States*, 48 Urb. Stud. 297 (2011).

households, inclusionary zoning generally achieves the opposite. In particular, it restricts housing supply and increases average housing costs. While inclusionary zoning provides large benefits for a small number of low- and (primarily) middle-income households, it drives up prices for others by reducing housing supply. Both inclusionary zoning and exclusionary zoning are regressive policies that make housing less accessible to a jurisdiction's most vulnerable residents.

Economists Edward Glaeser, Joseph Gyourko, and Raven Saks coined the term "zoning tax" to describe how zoning and other land-use regulations drive up housing costs. Rules including minimum lot sizes, minimum parking requirements, and historic preservation all contribute to a city's "zoning tax." They reasoned that because the construction industry is competitive with low barriers to entry, housing costs should be close to construction costs.[15] However, in their 2003 study of Manhattan, they find that the mean price of Manhattan condos is $468 per square foot, compared to a mean price of $200 per square foot for construction.[16] They attribute this large price difference to zoning, which restricts housing supply to a level below what we would see in a free market. New York is not the only city to have

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[15] Sanford Ikeda & Emily Washington, *How Land-Use Regulation Undermines Affordable Housing*, Mercatus Research (Mercatus Ctr. at George Mason Univ., Arlington, VA), Nov. 2015.

[16] Glaeser *et al.*, *supra* note 8.

substantial "zoning taxes," but also Boston, Los Angeles, Newport News, Oakland, Salt Lake City, San Francisco, San Jose, and Washington, D.C.[17] While the stated purpose of inclusionary zoning is to ameliorate the effects of these "zoning taxes" for low-income households, the reality is that these rules simply create an additional, costly layer on top of older regulations.[18]

B. Inclusionary Zoning Reduces Supply Elasticity, Which Increases Housing Costs

While new construction is often more expensive than existing homes, over time—as these once-new houses age—properties become less expensive and more available to lower-income residents. These homes have the potential to become market-rate affordable housing. Housing economists call this process "filtering." As Prof. Robert Ellickson explains, "the infusion of new housing units into a regional market sets off a chain of moves that eventually tends to increase vacancy rates (or reduce prices) in the housing stock within the means of low- and moderate-income families."[19]

Empirical research supports this "filtering" theory and demonstrates that new construction does depre-

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[17] *Id.*

[18] Inclusionary zoning has been implemented most frequently in coastal communities that have high "zoning taxes" due to their long histories of traditional, exclusionary zoning.

[19] Ellickson, *supra* note 9, at 1185.

ciate, becoming market-rate affordable housing over time. For rental housing, one estimate puts the inflation-adjusted filtering rate at between 1.8 and 2.5 percent annually.[20] In other words, a new apartment that costs $2,000 today might cost $1,400 in today's dollars 15 years from now. Over that same time period, the older apartment that costs $1,400 today can be expected to fall in price to $982. Over time, expensive new construction becomes affordable to a broader range of households. However, by reducing the supply of new construction, inclusionary zoning limits the potential for this filtering process to create broad-based housing affordability within a real estate market.

These types of land-use regulations drive up housing costs by reducing housing supply elasticity.[21] Supply elasticity refers to the propensity for market actors to increase the supply of a good in response to a price increase. In a market with elastic supply, the price of a good may remain unchanged if supply increases simultaneously with demand. For example, Houston has a famously elastic housing supply because local rules place few restrictions on redevelopment within the city or new development on its

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[20] Stuart S. Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing? Estimates from a "Repeat Income" Model*, 104 Am. Econ. Rev. 687 (2014).

[21] Emily Hamilton, *Housing Prices Under Supply Constraints*, Panel Presentation at Chapman University (Feb. 23, 2017), http://www.chapman.edu/wilkinson/about/events/oc-2040.aspx.

outskirts. Between 1997 and 2007, Houston experienced rapid job and population growth relative to other large cities. But during this same time period, its median home prices stayed lower than the national average because of rapid housing construction.[22]

Houston stands in sharp contrast to cities, such as San Francisco, New York, and Los Angeles, that have experienced rapidly rising prices in the face of only small population increases.[23] Complex zoning rules and drawn-out approval processes have prevented developers in these cities from responding to an increase in housing prices with new housing construction. Because of these constraints, developers are not able to respond to increases in house prices by building new housing.

Affordable housing issues experienced in cities like San Francisco, New York, and Los Angeles are exacerbated by restrictive public policies. Rather than alleviate the problems that restrict new housing construction, and the subsequent filtering that occurs

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[22] Amber C. McCullagh & Robert W. Gilmer, *Neither Boom nor Bust: How Houston's Housing Market Differs from Nation's*, Houston Bus. (Fed. Reserve Bank of Dallas, Houston Branch), Jan. 2008, https://www.dallasfed.org/assets/documents/research/houston/2008/hb0801.pdf.

[23] Ralph McLaughlin, *Is Your Town Building Enough Housing?*, Trulia (July 19, 2016), https://www.trulia.com/blog/trends/elasticity-2016/.

within a housing market, inclusionary zoning creates additional constraints. This reduces cities' price elasticity of housing supply, and drives housing prices higher rather than achieving the goal of creating affordable housing.

C. Inclusionary Zoning Has Never Resulted in Large Numbers of Affordable Units and Provides Few Benefits to Low-Income Families

While the stated goal of inclusionary zoning policies is to increase access to affordable housing within a jurisdiction for low-income residents, these rules have never resulted in a large number of affordable units. One of the country's oldest inclusionary zoning programs is in Montgomery County, Maryland. After 30 years, the program has produced approximately 13,000 units, but the annual new construction of inclusionary zoning units amounts to only 15 percent of the number of households on the county's waiting list.[24] A local developer describes Montgomery County's program as "a drop in the bucket of housing demand."[25]

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[24] Dep't of Housing & Community Aff., *Focused Neighborhood Assistance Program: McKendree Neighborhood* (June 2012), https://montgomerycountymd.gov/DHCA/resources/files/mckendreereportoct.pdf.

[25] Emily Hamilton & Stephen Smith, *The Renewed Debate on Inclusionary Zoning*, Market Urbanism (Oct. 10, 2012), http://marketurbanism.com/2012/10/10/the-renewed-debate-on-inclusionary-zoning/.

While Montgomery County's inclusionary zoning program has failed to create a broadly affordable housing stock, it has been more successful than many other cities' programs have. In 2009, mandatory inclusionary zoning went into effect for all new developments with more than 10 units in Washington, D.C. Six years later, the program had produced just 211 below-market-rate units, less than one percent of the total housing units permitted during this time period.[26] The majority of these units are designed to be affordable to households making 80 percent of the area median income. The median income of households renting or purchasing the units created through inclusionary zoning was $56,266 and $59,768, respectively.[27] Not only the did the program completely fail to provide affordable housing to the city's low-income residents, but the units are available to households making more than the median household income in the United States!

This is not unique to Washington, D.C. As Prof. Ellickson has explained, inclusionary zoning tends not to benefit the low-income population that policymakers claim to support with this policy.[28] Rather, most

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[26] D.C. Dep't of Housing & Community Dev., *FY2015 Inclusionary Zoning Annual Report* (Dec. 2016), https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/2015%20IZ%20Annual%20Report%20Final%2012-14-16.pdf.

[27] *Id.*

[28] Ellickson, *supra* note 9.

inclusionary units are priced to be affordable to households making 80 to 120 percent of area median income. Using inclusionary zoning to provide housing for people making substantially less is infeasible. Requiring developers to provide units that are affordable to very low-income households would tend to make projects unprofitable, eliminating the new project that would house the affordable units. Inclusionary zoning provides large subsidies to the few middle-income households that receive them, and are not targeted at helping a region's truly low-income households.

III. Inclusionary Zoning Adds to the Harms of Exclusionary Zoning and Frustrates Socioeconomic Diversity

Historically, municipal policymakers have used exclusionary zoning as a tool to prevent people from accessing real estate markets on the basis of income, race, or other socioeconomic factors. While regulations were often enacted in the name of health or safety, they also achieved the goal of excluding people unable to afford housing of required minimum sizes.[29] In many instances, the exclusionary effect was intentional. Before the passage of the Civil Rights Act of 1968, some municipalities deliberately

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[29] *See* John M. Quigley & Larry A. Rosenthal, *The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?*, 8(1) Cityscape 69 (2005) (reviewing literature).

implemented regulations that prevented people from purchasing housing on the basis of race.[30]

While race-based zoning policies are no longer legal, exclusionary zoning policies remain on the books, making communities inaccessible to low- or middle-income individuals. Inclusionary zoning rules, like exclusionary zoning rules, increase the average cost of housing, so they further the effect of restricting households from accessing housing in highly regulated markets on the basis of socioeconomic factors.

It should be noted that housing affordability is not a problem in many parts of the country, but it is a problem in many of the country's most productive cities that are home to the greatest economic opportunity. This has obvious negative consequences for renters and first-time homebuyers in expensive real estate markets. It also reduces economic and geographic mobility.

The most productive cities are not the same cities that are experiencing rapid population growth.[31] In highly productive labor markets like the Bay Area and New York City, the past decades have seen rapid wage growth but slow population growth. Because

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[30] *See, e.g.*, Charles E. Connerly, *The Most Segregated City in America: City Planning and Civil Rights in Birmingham, 1920–1980* (2005).

[31] Ryan Avent, *The Gated City: How America Made Its Most Productive Places Ever Less Accessible* (2011).

developers face large regulatory barriers to increasing housing supply in these regions, the opportunities that these markets provide are restricted to those people who can afford to pay the requisite high housing prices.

This means that lower-income individuals are prevented from living where they could be most productive, and land-use regulations (including both exclusionary and inclusionary zoning) are a principal cause.[32] Chang-Tai Hsieh and Enrico Moretti demonstrate that land-use regulations reduce economic output and estimate that a reduction in land-use regulations could increase gross domestic product by 13.5 percent, an astonishing $1.95 trillion in 2009.[33] This increased output would benefit not only people who are able to move to productive cities due to an increase in housing, but also people across the country and around the world who would benefit from the increased innovation and improved business processes that would be possible if more people could live and work in the most productive cities.

The burden of restricted access to jobs in high-income, high-productivity cities falls hardest on low-income Americans. Because land-use regulations

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[32] Ikeda & Washington, *supra* note 15.

[33] Chang-Tai Hsieh & Enrico Moretti, *Why Do Cities Matter? Local Growth and Aggregate Growth*, NPER Working Paper Series (2015), http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1045&context=housing_law_and_policy.

have led to rapidly rising housing prices in the American cities with the best opportunities, people from lower-income states have fewer opportunities to move to the places where they have the best chances of improving their economic outlook.[34] Historically, cross-state income convergence has been an important factor in reducing income inequality among Americans. One estimate finds that if this convergence had "continued apace through 2010, the increase in hourly wage inequality from 1980 to 2010 would have been approximately 10% smaller."[35]

The term "inclusionary zoning" implies that it is a policy with the potential to mitigate the harms of exclusionary zoning, and its supporters suggest that it does. However, both economic theory and empirical evidence indicate that like exclusionary zoning, inclusionary zoning tends to reduce the supply of housing and increases prices relative to what we would see without it.

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[34] *Id.*

[35] Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?*, HKS Working Paper Series (July 2014),
http://papers.ssrn.com/sol3 /papers.cfm?abstract_id=2081216.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDREW M. GROSSMAN
Counsel of Record
BAKER & HOSTETLER LLP
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1697
agrossman@bakerlaw.com

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