

## PROTECTING PROPERTY OWNERS AND HOUSING AFFORDABILITY IN TENNESSEE

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Thank you, Chair Bell, vice chairs Rose and White, and members of the committee.<sup>1</sup> I am Emily Hamilton, a senior research fellow at the Mercatus Center at George Mason University, where I am codirector of the Urbanity Project, researching housing affordability and the causes and consequences of land use restrictions. The Mercatus Center is dedicated to advancing knowledge relevant to current policy debates. Toward this end, its scholars conduct independent, nonpartisan analyses of legislation, rules, and proposals. My remarks today will focus on three points:

1. Local zoning restrictions contribute to a housing affordability problem facing a large portion of Tennessee households.
2. Under the status quo, local policymakers have an incentive to implement policies that restrict housing supply and make housing more expensive.
3. By requiring local governments to compensate property owners for the loss of development rights and reduction of property values caused by new zoning rules, the Private Property Protection Act would create opportunities for more new housing construction at lower prices.

### ZONING AND HOUSING AFFORDABILITY

Across Tennessee, inflation-adjusted house prices have increased by nearly 50 percent since 2000.<sup>2</sup> Nearly 40 percent of the state's low-income households that rent are housing cost burdened.<sup>3</sup> This means they spend more than 30 percent of their income on rent, often leaving them without enough money left over for other necessities.

The housing affordability problem is the result of population growth meeting local zoning rules that limit housing construction and raise the price of the housing that does get built. All Tennessee localities

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1. This testimony has been adapted from Emily Hamilton, "Protecting Property Owners and Housing Affordability" (Testimony before the Colorado Senate Committee on State, Veterans, and Military Affairs, Mercatus Center at George Mason University, Arlington, VA, February 8, 2022).

2. Zillow, "ZHVI All Homes (SFR, Condo/Co-op) Time Series, Smoothed, Seasonally Adjusted (\$)" (dataset), accessed March 30, 2022, <https://www.zillow.com/research/data/>.

3. "Housing Needs by State, Tennessee," National Low Income Housing Coalition, accessed March 30, 2022, <https://nlihc.org/housing-needs-by-state/tennessee>.

have rules that limit multifamily construction, enforce minimum-lot-size requirements, and mandate parking minimums. Each of these rules contributes to the cost of new housing.

Housing affordability challenges are not an inevitable result of population growth. It is only within the past few decades, as local land use restrictions and housing approval processes have become more burdensome, that house prices have consistently risen faster than construction costs across the country.<sup>4</sup> Many Tennessee localities have repeatedly downzoned their land, reducing their property owners' rights to build housing.

### INCENTIVES TO LIMIT HOUSING CONSTRUCTION

The costs of new housing construction are local, often falling on people who live directly next to a new development. But the benefits of new housing are widespread. Primarily they go to people who will live in the new homes. These people may not even be residents of the locality where the new housing will be built at the time that it is proposed.<sup>5</sup> As a result, local policymakers tend to place greater weight on the costs of housing construction than the benefits. They regularly pass rules that chip away at property owners' rights to build new housing.

Because most states permit local officials to restrict development rights without compensating property owners for doing so, local officials face little downside to implementing stricter zoning rules over time. State policymakers therefore have a role to play in protecting property owners' development rights and legalizing housing construction.

### PUTTING A PRICE ON PROPERTY RIGHTS

Currently, Tennessee's property owners have little recourse when their local policymakers pass zoning rules that take away their development rights and reduce their property values, unless the rules leave their properties with no economic value at all.<sup>6</sup> But the Private Property Protection Act would offer property owners a simple path to seek recourse if new land use restrictions reduce their property values.

This bill would change the calculus facing the policymakers who determine land use regulation at the local level. It would require them to weigh the benefits of new land use restrictions against the fiscal cost of implementing them, rather than considering the benefits of new zoning restrictions in isolation.

In Arizona, a similar law has contributed to local officials refusing to pursue proposals for downzoning when the costs to taxpayers of these proposals became clear.<sup>7</sup> It has helped to prevent the expansion of zoning rules that stand in the way of relatively low-cost housing construction. Legislation that stands in the way of downzoning will make housing in Tennessee more affordable than it would be without this protection of development rights.

### CONCLUSION

Protecting development rights and housing affordability go hand in hand. Offering property owners a reasonable path for receiving compensation when their development rights are taken away can be expected to protect opportunities for new housing construction at lower prices than under current law.

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4. Joseph Gyourko and Raven Molloy, "Regulation and Housing Supply," in *Handbook of Regional and Urban Economics*, ed. Gilles Duranton, J. Vernon Henderson, and William C. Strange, vol. 5, *Handbook of Regional and Urban Economics*, ed. J. Vernon Henderson et al. (Amsterdam and Oxford: North Holland, 2015), 1291–92.

5. Roderick J. Hills Jr. and David Schleicher, "Balancing the 'Zoning Budget,'" *Regulation* 34, no. 3 (2011): 24–32.

6. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992).

7. Braden Boucek, Emily Hamilton, and Kimberly Hermann, *Legislative Exits from the Land Use Labyrinth* (Washington, DC: Regulatory Transparency Project of the Federalist Society, 2021).