
NOTE

**STOP SUBSIDIZING THE SUBURBS:
PROPERTY TAX REFORM AND ENDING
EXCLUSIONARY ZONING**

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ABSTRACT

Current residential land use in the United States has been disastrous for the environment. Land use is largely regulated by local zoning laws, and in many states, property taxes are set at a local level as well. The relationship between the two is complex, but put simply, having both policy tools in the hands of local governments creates problematic incentives. Jurisdictions often use land use laws to protect their tax base, and one way to do this is to engage in exclusionary zoning. Exclusionary zoning codes prioritize large single-family homes, which leads to suburban sprawl. Sprawl, in turn, has negative environmental consequences by increasing reliance on cars, requiring extra heating and cooling services for single-family homes, and other harmful externalities. Additionally, lower-income people of color bear the brunt of these harmful effects due to both historic and current transportation policies. However, property tax reform would reduce incentives for communities to engage in exclusionary zoning by making it less lucrative to exclude apartments. Thus, the reform proposed in this Note is to set property tax rates at the statewide level rather than at the local level in order to shift incentives that impact zoning. Although there are potential political and social drawbacks that make change challenging, property tax reform is a promising means to both ease and prevent sprawl. Property tax reform would thus eliminate one of the root causes of environmental harms: the fact that the current tax code and local government structure incentivize bad land use decisions.

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INTRODUCTION

Climate change is one of humanity's greatest challenges and combatting it will require dramatic adaptive measures throughout society. Alongside technological, political, and economic reforms, this Note explores how land use can be improved as part of such adaptation. One way to decrease emissions—a primary cause of climate change¹—is by changing financial incentives to promote better land use decisions. Local property taxes, currently responding to local financial considerations, have been disastrous for the environment because they can incentivize environmentally harmful development at the expense of non-local residents. These property taxes are also a significant part of a larger system of economic factors, federal subsidies, and state and local zoning regulations. Together, this structure has enabled

¹ See *Climate Action Fast Facts*, U.N., <https://www.un.org/en/climatechange/science/key-findings> (last visited Apr. 9, 2023); see also NOAH KAZIS, *ENDING EXCLUSIONARY ZONING IN NEW YORK CITY'S SUBURBS* 8 (2020) (discussing how the United Nations have identified land use reform as an important step in lowering emissions).

residential segregation and sprawl and, with that, led to dangerous climate and environmental justice issues.

Localized property tax regimes incentivize the use of zoning by wealthy communities to restrict access to that community to only wealthy people. By only allowing large single-family houses, a town can ensure that their tax base is large, and therefore their property tax rate can remain low.² Financial considerations, including those that are impacted by property taxes, are therefore a causal factor of overly restrictive zoning, wherein towns will pass land use laws that essentially ban affordable housing.³ This pattern is repeated throughout suburban America, but is especially acute in the wealthy suburbs of high growth cities such as New York and San Francisco.⁴ These wealthy suburbs exclude any type of affordable housing, leaving the town with enough high value homes that when taxed at a low rate are able to provide enough revenue to fund high-quality government services.

The history of zoning sheds light on the relationship between zoning codes and racial segregation. In the late 1800s, as the Reconstruction Era came to a close, white populations across America tried to expel African American residents from their neighborhoods through a variety of means. These efforts included unpunished terroristic harassment through the use of the legal system, including disenfranchisement and targeted laws.⁵ Many municipalities had large populations of African Americans and were unable to completely expel those residents by such means, so they created a series of land use laws that would ensure separate spheres and zoning laws that explicitly prohibited integration.⁶ However, the Supreme Court struck down explicitly racial zoning laws in 1917 in *Buchanan v. Warley*, under a theory that it violated freedom to contract.⁷

In place of expressly segregationist zoning, communities utilized exclusionary zoning to place their communities out of the financial grasp of lower income people of color. However, exclusionary zoning creates a litany of harms on the environment and minority communities located outside the restricted communities. Exclusionary zoning also generates environmental

² See KAZIS, *supra* note 1, at 18–19 (2020) (noting the financial incentives that localized property taxes create to use zoning codes to limit development: suburban towns will exclude affordable housing to maintain or reduce per-capita tax burdens).

³ See *id.* at 15–16, 18–19.

⁴ See *id.* at 13–14 (citing Joseph Gyourko et al., *The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index 22* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26573, 2019), <https://www.nber.org/papers/w26573.pdf>).

⁵ See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 38–42 (2017).

⁶ See *id.* at 44–45.

⁷ See *id.* at 45; *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).

harms by prioritizing single-family homes and, thus, generating sprawl.⁸ Sprawl and low-density development increase emissions.⁹ Crucially, this segregated development leads to an inequitable distribution of environmental toxins.¹⁰ As aforementioned, many exclusionary zoning codes were enacted with racist intent to perpetuate residential segregation,¹¹ and today concentrate poverty. Residential segregation creates low-income communities of color that lack access to political power.¹² As a result, these communities are unable to keep polluting industrial activity out of their communities, and environmental harms, along with the accompanying public health consequences, disparately impact residents in these communities.¹³

This Note argues that shifting to statewide property taxes will create better land use incentives. Part I of this Note outlines the connection between localized property tax regimes and exclusionary zoning. Parts II and III trace the climate change and environmental justice impacts of property taxes. Part IV discusses why local governments are unlikely to reform the problem themselves. Part V surveys federal, state, and local land use reform efforts, most of which target exclusionary zoning directly. This is particularly relevant as the Biden administration is pushing reform at the federal level, and, more promisingly, as states are taking action to preempt local zoning laws. Part VI makes the case for property tax reform. Part VII discusses whether or not reform is possible. This Note concludes that despite challenges in affecting reform through the judiciary or legislative processes, property tax reform offers an avenue to ease and prevent sprawl by minimizing the incentives to utilize local zoning regulations to benefit one jurisdiction at the expense of others.

⁸ See KAZIS, *supra* note 1, at 7–8, 15.

⁹ See *id.* at 7–8.

¹⁰ See Myron Orfield, *Segregation and Environmental Justice*, 7 MINN. J.L. SCI. & TECH. 147, 147–48 (2005).

¹¹ See KAZIS, *supra* note 1, at 12.

¹² See Orfield, *supra* note 10, at 152–53.

¹³ See *id.*

I. PROPERTY TAXES AND EXCLUSIONARY ZONING

A. Property Tax Overview

Property taxes are an important source of revenue for local governments. Such taxes are paid based on the value of an individual's property.¹⁴ Most often, property taxes are levied on the value of real property, such as land.¹⁵ A property tax levied on real property taxes two things: the value of the land and the value of structures, usually buildings, on the land.¹⁶ Property tax calculation is complicated, but in general, a local government at the town or county level will set a property tax rate, called a mill rate, and multiply that by the assessed value of the property divided by 1,000 to determine an individual's tax liability.¹⁷ Property tax calculation will depend on state and local laws and practices, and there is no uniform system of property tax calculation.¹⁸ Property taxes differ from most other taxes because the local government is involved in setting the property tax rate, unlike income taxes or sales taxes which are more often determined at the state level.¹⁹

¹⁴ See Julia Kagan, *Property Tax: Definition, What It's Used For, How It's Calculated*, INVESTOPEDIA (Apr. 13, 2022), <https://www.investopedia.com/terms/p/propertytax.asp>.

¹⁵ See *id.*

¹⁶ See Julia Kagan, *Ad Valorem Tax: Definition and How It's Determined*, INVESTOPEDIA (Apr. 5, 2022), <https://www.investopedia.com/terms/a/advalemortax.asp>.

¹⁷ See Katie Ziraldo, *Property Taxes: What They Are and How to Calculate Them*, ROCKETMORTGAGE (Aug. 25, 2022), <https://www.rocketmortgage.com/learn/property-tax>. For information about how property taxes are calculated in Connecticut, a state heavily reliant on property taxes, see *Connecticut Property Tax Calculator*, SMARTASSET (Dec. 21, 2022), <https://smartasset.com/taxes/connecticut-property-tax-calculator>.

¹⁸ See *Property Tax Calculator*, SMARTASSET (Dec. 21, 2022), <https://smartasset.com/taxes/property-taxes#6sKYV1zgQQ> (allowing users to compare property tax rates between states, cities, and counties across the country).

¹⁹ See *State and Local Backgrounders*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-revenues> (last visited Apr. 9, 2023) (quantifying revenues of different taxes at different levels of government, as well as providing explainers on different types of taxes); see also William A. Fischel, *Fiscal Equalization and the Median Voter: The Simple Analytics of School-Finance Reform 20–21* (Lincoln-GW Prop. Tax Roundtable, Working Paper, 2008) [hereinafter Fischel, *Fiscal Equalization*], https://bpb-us-e1.wpmucdn.com/sites.dartmouth.edu/dist/6/2312/files/2021/03/fiscal_equalization_and_median_voter.pdf. Fischel notes that there is no inherent reason for this structure. Local governments are only allowed to levy taxes they have been given the power to levy. The state can give local governments the power to create an income tax, but states have rarely done so.

Property taxes can disincentivize productive behavior.²⁰ By increasing taxes when a person makes improvements on their property, the government decreases incentives to build. The desire to avoid paying additional taxes can manifest on a scale from simple underinvestment to fraud; for example, the governor of Illinois was enmeshed in scandal during his campaign when it was revealed that he once removed all the toilets from one of his mansions so it would be assessed as uninhabitable.²¹ Assessment is a constant battle within the domain of property taxes, both for governments seeking to raise consistent revenue, and for individuals seeking lower assessments to decrease their tax burden.²² Overall, in a jurisdiction where property values are high, it will be easier to raise significant funds from property taxes.

Property tax revenues are important for state and municipal governments to fund services in the United States; in 2018, roughly 30 percent of state and local tax revenue was from property taxes.²³ On average, local governments rely more heavily on property tax than do state governments.²⁴ Local governments used property taxes to raise about “half of their own-source general revenue” in 2017.²⁵ The revenue from property taxes is generally used to fund local government functions such as water, sewer, and, especially, school systems.²⁶ Thus, although citizens may want to keep taxes low, they also want to raise revenue for certain services from which they and their community can benefit. This tension can create incentives that pressure individuals and municipalities to use land use laws to their benefit.

B. Property Taxes, Zoning, and the Role of Local Governments

The fact that local, as opposed to state, governments often levy property taxes contributes to the decentralization of power and facilitates more

²⁰ See Charles L. Hooper, *Henry George*, ECONLIB, <https://www.econlib.org/library/Enc/bios/George.html> (last visited Apr. 9, 2023).

²¹ See Laurel Wamsley, *Illinois Governor Candidate Removed Mansion's Toilets to Dodge Taxes, Report Finds*, NPR (Oct. 3, 2018), <https://www.npr.org/2018/10/03/654201077/illinois-gov-candidate-removed-mansions-toilets-to-dodge-taxes-report-finds> (while this was a political scandal, Governor Pritzker has denied any illegality); Bruce Rauner, *Porcelain Prince*, YOUTUBE (June 19, 2018), <https://www.youtube.com/watch?v=G-N4fu2uA-A>.

²² See Glenn W. Fisher & Robert P. Fairbanks, *The Politics of Property Taxation*, 12 ADMIN. SCI. Q. 48, 50–55 (1967).

²³ See Raemeka Mayo et al., *Annual State and Local Government Finances Summary: 2018*, U.S. CENSUS BUREAU (Oct. 1, 2020), https://www2.census.gov/programs-surveys/gov-finances/tables/2018/alfin_summary_brief.pdf.

²⁴ See *The State of State (and Local) Tax Policy*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/how-do-state-and-local-property-taxes-work> (last visited Apr. 9, 2023).

²⁵ See *id.* (noting how other revenue comes from intergovernmental transfers).

²⁶ See *id.*

responsibility for those municipalities. A helpful case study for how property taxes work is Connecticut.²⁷ Each town in Connecticut has its own property tax rate.²⁸ This system results in over 150 local governments raising and spending revenue in order to individually provide services.²⁹ A town can choose to set higher property taxes and provide more services, or it can decide to set lower taxes and provide fewer services.

Decentralized systems of power have several important benefits. Charles Tiebout argued that these local governments would have to compete with each other to be attractive places to live;³⁰ residents could choose to live in jurisdictions which provide the services they want, at the tax price they are willing to pay.³¹ Tiebout's theory suggests that a decentralized system incentivizes efficient packages of taxes and services as each municipality competes to attract and retain citizens.³² If a jurisdiction is spending too much money on services that are not actually desired, or if they are spending too little, citizens will move away from the jurisdiction.³³ This model relies on a variety of assumptions that break down in the real world. One of the most obvious ways the model breaks down is if citizens cannot move freely between jurisdictions.³⁴ While they might not cite it explicitly, many wealthy jurisdictions seemingly recognize the insight of Tiebout's theory and have enacted barriers to entry by outlawing apartments so only those who can afford the taxes on large single-family homes can move in.

In addition to tax policies, most local governments have very broad, and often absolute, power to control the private development within their jurisdiction through zoning laws.³⁵ Zoning is intended to reduce externalities

²⁷ Connecticut will often be used as an example throughout this Note. The state relies heavily on property taxes to fund local services, and so it is a particularly stark example of the trends that will be explored in the Note. See Jared Bennett, *Connecticut is in Crisis – And Its Troubles are Hardly Unique*, HUFFPOST (July 25, 2018), https://www.huffpost.com/entry/connecticut-economic-crisis-inequality_n_5b575490e4b0de86f49100ad/amp.

²⁸ See CONN. OFF. POL'Y & MGMT., FY2021 MILL RATES (2019), <https://portal.ct.gov/-/media/OPM/IGPP-Data-Grants-Mgmt/2019-GL-2021-Mill-Rates-11102020.pdf> [hereinafter "CT Mill Rates"].

²⁹ See Bennett, *supra* note 27 (noting that Connecticut's towns are independent, relying on their own revenue, rather than state revenue, and providing their own services. This can lead to duplication of services, for example Connecticut has 110 911 call centers whereas California has 5).

³⁰ See Clayton P. Gillette, *Fiscal Home Rule*, 86 DENV. U. L. REV. 1241, 1242 (2009).

³¹ See *id.* at 1242–43.

³² See *id.*

³³ See *id.*

³⁴ See *id.* at 1243.

³⁵ See William A. Fischel, *Fiscal Zoning and Economists' Views of the Property Tax* 7 (Lincoln Inst. of Land Pol'y, Working Paper No. WP14WF1,

and does so by organizing how land can be used, thereby creating orderly development.³⁶ However, towns—with the support of residents—have often repurposed zoning powers, either purposefully or accidentally, to use them as tools of exclusion. Single-family zoning is one such example.³⁷ If a town has a zoning code that only allows single-family homes, only those who can afford to purchase and pay taxes on single-family homes will be able to move there. Other regulations, such as parking requirements or minimum lot sizes, also raise the price of housing.³⁸ Higher housing costs will make it difficult for less wealthy people to move to a jurisdiction. Zoning codes therefore end up furthering racial segregation.³⁹

C. Exclusionary Zoning

In place of explicitly racial zoning outlawed by the Supreme Court in the beginning of the twentieth century, municipalities began devising a new way to ensure segregation: exclusionary zoning.⁴⁰ Planners realized that areas could be zoned exclusively for single-family homes, which would not run afoul of the Court's edict, but could ban almost all non-white people, who were generally low-income and living in multifamily housing, from moving into the newly-zoned neighborhood.⁴¹ The federal government further explicitly encouraged local governments to create zoning codes that would preclude non-white people from moving to white neighborhoods.⁴² Thus,

2013) [hereinafter Fischel, *Fiscal Zoning*], https://www.lincolnst.edu/sites/default/files/pubfiles/2355_1695_Fischel_WP14WF1.pdf. Local governments do not inherently have the power to enact zoning codes. States have passed enabling acts to formally give that power to local governments. *See id.* at 5–8.

³⁶ *See* Amnon Lehavi, *Zoning and Market Externalities*, 44 *FORDHAM URB. L.J.* 361, 361, 365–70 (2017).

³⁷ *See* Jacqueline Rabe Thomas, *Separated by Design: How Some of America's Richest Towns Fight Affordable Housing*, *PROPUBLICA* (May 22, 2019), <https://www.propublica.org/article/how-some-of-americas-richest-towns-fight-affordable-housing>.

³⁸ *See, e.g.*, Paavo Monkkonen et al., *Built-Out Cities? How California Cities Restrict Housing Production Through Prohibition and Process* 3 (Univ. Cal. Berkeley Turner Ctr. for Hous. Innovation, Working Paper, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3630447; Hannah Hoyt & Jenny Schuetz, *Parking Requirements and Foundations Are Driving up the Cost of Multifamily Housing*, *BROOKINGS INST.* (June 2, 2020), <https://www.brookings.edu/research/parking-requirements-and-foundations-are-driving-up-the-cost-of-multifamily-housing>.

³⁹ *See* KAZIS, *supra* note 1, at 6–7, 27–28.

⁴⁰ *See* ROTHSTEIN, *supra* note 5, at 48.

⁴¹ *See id.* at 48–49.

⁴² *See id.* at 50–52.

while exclusionary zoning is facially neutral, it has had a disparate racial impact, and many such laws were enacted with racist intent.⁴³

Despite the disparate impact of exclusionary zoning, the Supreme Court has not taken an active role in ending it. In the case that established the constitutionality of zoning, *Village of Euclid v. Ambler Realty Co.*, the court called multifamily housing “a mere parasite,” allowing zoning codes to keep these developments away from single-family housing.⁴⁴ The Supreme Court took up a direct challenge to exclusionary zoning in the 1977 case *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,⁴⁵ where an affordable housing developer attempted to build low-income housing in the largely white Village of Arlington Heights but was unable to do so because the Village denied a rezoning request from single- to multifamily housing.⁴⁶ The Court acknowledged the circuit court’s conclusion that keeping a largely white town zoned for single-family housing, thereby prohibiting the construction of any low-income housing, would have racially disparate effects as African American families experience disproportionate need for low-income housing.⁴⁷ The Court even noted that some of the opposition to the rezoning concerned adding racially integrated housing to the area.⁴⁸ However, the Court ultimately upheld the exclusionary zoning because it was not primarily enacted to exclude racial minorities.⁴⁹

D. Incentives to Enact Exclusionary Zoning Codes

Property taxes indirectly contribute to broader incentives to use zoning codes to maximize home values. The development and current practices of exclusionary zoning can be understood in part as racist attempts to avoid integration, but also in part by looking at economic incentives. In essence, zoning laws are used to limit the ability of the population to vote with their feet. Here, a return to Tiebout’s theory is helpful. Imagine a high-tax city with poor services is located next to a low-tax suburb with excellent services. Tiebout’s model would posit that people in the former district should vote with their feet and move to the more desirable—i.e., low cost and high service provider—location.⁵⁰ But zoning laws constrain the central mechanism by which Tiebout posited people could shop among the districts:⁵¹ when access

⁴³ See *id.* at 48–50, 52–54.

⁴⁴ See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394–95 (1926).

⁴⁵ See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 252 (1977).

⁴⁶ See *id.* at 254–55.

⁴⁷ See *id.* at 259.

⁴⁸ See *id.* at 257–58.

⁴⁹ See *id.* at 269–71.

⁵⁰ See Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUD. 205, 205 (1975).

⁵¹ See *id.* at 205–06.

to a desirable community is constricted by only allowing single-family homes in the zoning code, only those who are able to spend a lot on housing will be able to move there.⁵² For example, in many high-opportunity suburbs in New York and Connecticut, only those willing to spend enough money to purchase a large single-family home will be allowed to move in.⁵³ Zoning laws therefore have the effect of segregating society by class and race,⁵⁴ and the richest citizens can hoard access to the highest-opportunity municipalities.

Land use constraints can be used not only to limit access to the most desirable jurisdictions, but also to increase the desirability of jurisdictions. There are two main ways to do this: improving school quality and maintaining low taxes. Local governments can use their power to zone combined with their power to set tax policy to accomplish their goal of improving the appeal of their municipalities.

First, perhaps the most important service a local government provides is public schools. This is partly because school can be important for outcomes later in life, potentially impacting college attendance, earnings, and incarceration rates.⁵⁵ But school quality also contributes to financial well-being of those living in the jurisdiction, specifically in regard to their property values.⁵⁶

Public schools are linked to both zoning and property taxes because the cost of providing education is dependent on the number of students in the school and paid for largely by property taxes. Residents often treat new developments that will bring children into the district skeptically.⁵⁷ As a result, they sometimes limit development or extract concessions from large projects,⁵⁸ like multifamily developments. This effort may be motivated not only by a desire to keep school quality high for its own sake, but also for its impact on property values.⁵⁹ Potential buyers may confuse correlation with

⁵² See *id.* at 206.

⁵³ See, e.g., Thomas, *supra* note 37; see KAZIS, *supra* note 1, at 14–17. Both sources show that by limiting almost all affordable housing, these towns exclude many people who would want to move there.

⁵⁴ See, e.g., JONATHAN ROTHWELL, HOUSING COSTS, ZONING, AND ACCESS TO HIGH-SCORING SCHOOLS 1–5 (Brookings, 2012); KAZIS, *supra* note 1, at 11–13; Thomas, *supra* note 37.

⁵⁵ See Eric A. Hanushek & Steven G. Rivkin, *School Quality and the Black-White Achievement Gap* 2–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 12651, 2006).

⁵⁶ See Donald Haurin & David Brasington, *School Quality and Real House Prices: Inter- and Intrametropolitan Effects*, 5 J. HOUS. ECON. 351, 363 (1996).

⁵⁷ See Fischel, *Fiscal Zoning*, *supra* note 35, at 19.

⁵⁸ See *id.*

⁵⁹ See *id.* at 18–19.

causation and over-value such high-performance schools.⁶⁰ A school district that only educates the children of high-income parents—although the empirical evidence regarding its ability to increase home values is lacking⁶¹—may still be perceived as adding value since students graduate with higher test scores and attend selective colleges.⁶²

Furthermore, many of these concerns over school quality may also be pretextual, as many white people hold racist assumptions about school quality. Increases in Black representation in largely white schools has been shown to impact perceived quality of the school system, and to lead more white families to exit the public school system.⁶³

The second way zoning influences the bundle of tax and spending services is by keeping property tax rates low. When property taxes fund the local government,⁶⁴ all kinds of land use decisions become intertwined with the fiscal well-being of existing residents. Imagine a homeowner voting on a zoning resolution. If the new zoning code reduces the value of a house across town, then those residents will pay less in property taxes. To make up the difference in revenue, the property tax rate must be raised. Thus, residents are incentivized to enact zoning codes that will keep the value of the other town residents' houses high.

The most common way zoning laws are used to keep property taxes low is by prioritizing single-family homes. Local governments generally view large single-family homes as contributing a significant amount in taxes, while they view apartments as contributing fewer tax dollars per capita and straining

⁶⁰ See, e.g., Atila Abdulkadiroglu et al., *The Elite Illusion: Achievement Effects at Boston and New York Exam Schools* 1–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 17264, 2011), <https://www.nber.org/papers/w17264>; Stacy Dale & Alan B. Krueger, *Estimating the Return to College Selectivity Over the Career Using Administrative Earnings Data* 1–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 17159, 2011), <https://www.nber.org/papers/w17159>. The findings of both studies suggest that elite schools are elite in general because they select the highest performing students, not because they add value. The Dale & Krueger study found that for most entrants to elite colleges the value add is negligible, with an important exception that those colleges did boost earnings for racial/ethnic minorities whose parents had little education.

⁶¹ See Abdulkadiroglu et al., *supra* note 60, at 1–4.

⁶² See *id.* at 1–4.

⁶³ See Kimberly A. Goyette et al., *This School's Gone Downhill: Racial Change and Perceived School Quality Among Whites*, 59 SOC. PROBS. 155, 155–56, 170–71 (2012).

⁶⁴ It is important to note that there is nothing special about property taxes other than the fact that they differ at a very local level. Ohio allows local governments to set local income taxes, although few districts in Ohio have chosen to heavily rely on income tax revenue due to the ease of income tax avoidance. If each town set its own income tax, it would create similar incentives to exclude poorer residents. See Fischel, *Fiscal Equalization*, *supra* note 19, at 20–21.

local services.⁶⁵ However, the truth is likely more complicated, and adding multifamily housing may not actually shrink the tax base in proportion to spending on the margins.⁶⁶ Thus, while on the margins multifamily housing may be unfairly viewed as a fiscal burden, there are reasons to prioritize low-density housing.⁶⁷ As an extreme example, imagine a town entirely composed of mansions. As each property has an extremely high valuation, the tax rate would be very low. A zoning map could be used as a tool to keep that town's tax base very high. In other words, zoning would allow wealthy residents to opt out of redistributive taxes. These residents could come together and create enclaves where taxes are low and services are high. Poorer people would want to vote with their feet and move in but would be unable to do so because of zoning laws.

Westport, Connecticut is a good example of exclusionary zoning in action. It is a town with a low property tax rate.⁶⁸ Westport's school system is rated one of the best in Connecticut.⁶⁹ The combination of exemplary services and below-median property tax rate is very attractive, and according to Tiebout's model, many people would want to move there. Yet the population of Westport is small, with about twenty-seven thousand people.⁷⁰ It is likely that many more would move there, but they cannot due to land use constraints.⁷¹ Westport has built "invisible walls" that keep people out; most of the town is zoned for single-family homes only.⁷² In fact, about 90 percent of zoned land statewide is zoned for single-family housing.⁷³ Similarly positioned jurisdictions also use their local powers to zone and set taxes in order to maximize the well-being of current residents, even though it leads to an inequitable distribution of public services overall.

Thus, the ultimate goal, or at least the result, of creating exclusive high-service and low-tax communities is that property values in those

⁶⁵ See KAZIS, *supra* note 1, at 17–19.

⁶⁶ See *id.* at 18–19 (discussing whether or not opposition to multifamily housing is actually in the resident's best fiscal interest).

⁶⁷ See *id.* at 18.

⁶⁸ See CT Mill Rates, *supra* note 28 (the mill rate, which is a tax rate using a property's assessed value, in Westport is 18.07, well below the Connecticut median mill rate of 31.49).

⁶⁹ See *Connecticut's Top School Districts*, BACKGROUNDCHECKS.ORG, <https://backgroundchecks.org/top-school-districts-in-connecticut.html> (last visited Apr. 9, 2023).

⁷⁰ See *QuickFacts: Westport Town, Fairfield County, Connecticut*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/westporttownfairfieldcountyconnecticut> (last visited Apr. 9, 2023).

⁷¹ See Thomas, *supra* note 37.

⁷² *Id.*

⁷³ See Sara C. Bronin, *Zoning by a Thousand Cuts*, 50 PEPP. L. REV. 1, 4–5 (2023).

communities will be very high. Economist William Fischel provides an explanation of the incentives for residents of a town to use land use laws to impact property values in his book, *The Homevoter Hypothesis*.⁷⁴ He argues that homeowners will pay incredibly close attention to local government, land use law, and the provision of local services because all of these factors affect home values.⁷⁵ Home values are incredibly important to people because homes are large and vulnerable assets.⁷⁶ When residents limit the supply of housing in low-tax, high-service jurisdictions, the values of their homes will skyrocket. The protection of property values is a key legal justification for exclusionary zoning practices. Both the major Supreme Court cases discussed, *Euclid* and *Village of Arlington Heights*, seemed to recognize this motivation. The Court's reasoning in *Euclid* was that introducing multifamily housing would be akin to a nuisance and destroy the desirability of single-family homes.⁷⁷ The District Court in *Village of Arlington Heights* found that citizens were concerned with protecting their property values rather than acting with intent to discriminate, and the Supreme Court upheld the District Court's determination that the Village had legitimately denied a rezoning for a multifamily development since, in its view, there was insufficient proof of malintent.⁷⁸ Local property taxes further encourage using land use laws to increase home values because an increase in home value does not lead to a large increase in taxes. Essentially, this also prevents redistribution if homeowners are successful in raising home values.

II. THE ENVIRONMENTAL HARMS OF EXCLUSIONARY ZONING

The harms of exclusionary zoning are not limited to disparate economic impact, as exclusionary zoning creates a litany of environmental harms as well.⁷⁹ Specifically, the practice of banning any kind of multifamily

⁷⁴ See generally WILLIAM A. FISCHER, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES* (2001).

⁷⁵ See *id.* at 4–7, 10–11.

⁷⁶ See *id.* at 11–12.

⁷⁷ See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

⁷⁸ See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 259, 270–71 (1977).

⁷⁹ There is a robust literature surrounding the economic harms of exclusionary zoning, but this Note will focus largely on the environmental harms. For a discussion of broader economic harms see generally, for example, Matthew Resseger, *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders* (Nov. 26, 2013) (unpublished manuscript) (on file with Harvard University Department of Economics), https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf; Jonathan Mahler, *The Case for the Subway*, N.Y. TIMES MAG. (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/magazine/subway-new-york-city-public->

housing by enacting strict zoning laws produces significant negative environmental externalities.⁸⁰ Notably, this type of exclusionary zoning is a major contributor to climate change by inducing sprawl.⁸¹ By segregating society by class and race, exclusionary zoning also creates environmental injustices.⁸²

A. Exclusionary Zoning and Climate Change

The key mechanism by which exclusionary zoning contributes to climate change is by increasing suburban sprawl. People living in cities generally have lower emissions than those living in the suburbs.⁸³ However, if an area is zoned for single-family housing, the community must build outward rather than building upwards with apartments.⁸⁴ Thus, exclusionary zoning precludes the conditions necessary to make environments more urban by limiting density and the benefits that accompany it.

There are three main reasons that land use restrictions, which force more people to live in the suburbs rather than urban areas, increase emissions. First, people living in cities produce lower emissions from transportation.⁸⁵ Transportation is the number one source of greenhouse gas (GHG) emissions in the United States, and this is largely due to emissions from vehicles.⁸⁶ The farther apart residents live, the more they must drive, which increases greenhouse gas emissions.⁸⁷ Sprawl also undermines public transit, which requires a certain amount of density.⁸⁸ Without reliable public transit, and with many individuals living at a distance from errands and jobs, conditions are created for the automobile culture that pervades the United States.⁸⁹

transportation-wealth-inequality.html; Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 AM. ECON. J. 1, 1–3 (2019).

⁸⁰ See KAZIS, *supra* note 1, at 7–8.

⁸¹ See *id.*

⁸² See Julia Mizutani, Note, *In the Backyard of Segregated Neighborhoods: An Environmental Justice Case Study of Louisiana*, 31 GEO. ENV'T L. REV. 363, 363–65 (2019).

⁸³ See David Owen, *Green Manhattan*, NEW YORKER (Oct. 10, 2004), <https://www.newyorker.com/magazine/2004/10/18/green-manhattan>.

⁸⁴ See KAZIS, *supra* note 1, at 7–8, 42.

⁸⁵ See *id.* at 7–8.

⁸⁶ See *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Apr. 9, 2023).

⁸⁷ See KAZIS, *supra* note 1, at 7–8.

⁸⁸ See Leah Binkovitz, *Excerpt: Many Cities Have Transit. How Many Have Good Transit?*, KINDER INST. FOR URB. RES. (Nov. 13, 2018), <https://kinder.rice.edu/urbanedge/excerpt-many-cities-have-transit-how-many-have-good-transit>.

⁸⁹ See EDWARD GLAESER, *TRIUMPH OF THE CITY* 165–67, 174–77 (2012).

Second, city dwellers use less energy to heat and cool their homes than suburban residents.⁹⁰ Energy-saving benefits are lost when people are spread out because there are increased living areas and greater heat loss.⁹¹ For example, city dwellers tend to live in smaller houses, which require less energy to heat and cool.⁹² Furthermore, heating apartments is more energy efficient because apartments insulate each other and heat lost from one apartment can serve to heat another.⁹³

Finally, by pushing people away from city centers, more natural areas are subject to development, reducing the size of natural environments.⁹⁴ The loss of nature carries negative environmental consequences unrelated to climate change. For example, it can impact water quality by increasing paved areas and runoff.⁹⁵ In California, residential development patterns have pushed new homes into wildfire zones, a phenomenon that when compounded by climate change leads to increased damage from wildfires.⁹⁶ The loss of natural habitats also leads to increased emissions as suburban development requires deforestation which destroys important carbon-sequestering organisms.⁹⁷ Overall, land use reform is important to decrease emissions. Eliminating sprawl will be an important step towards a greener society.

B. Exclusionary Zoning and Environmental Justice

Vernice Miller-Travis, one of the pioneers of environmental justice, has remarked that one cannot understand environmental injustice without looking at racist land use practices.⁹⁸ As mentioned, exclusionary zoning is one such practice as it segregates society by class and race. It also creates large areas near cities, disproportionately populated by rich white landowners, where no industry can exist since only single-family homes are allowed. Consequently, exclusionary zoning contributes to the conditions that force minority communities to bear the brunt of heavily polluting land uses.

⁹⁰ See KAZIS, *supra* note 1, at 7–8; Owen, *supra* note 83.

⁹¹ See KAZIS, *supra* note 1, at 7–8; Owen, *supra* note 83.

⁹² See KAZIS, *supra* note 1, at 7–8; Owen, *supra* note 83.

⁹³ See KAZIS, *supra* note 1, at 7–8; Owen, *supra* note 83.

⁹⁴ See REID EWING ET AL., *ENDANGERED BY SPRAWL: HOW RUNAWAY DEVELOPMENT THREATENS AMERICA'S WILDLIFE* 7–13 (2005).

⁹⁵ See KAZIS, *supra* note 1, at 8.

⁹⁶ See David Wallace-Wells, *California's Last Fire Season Was a Historic Disaster. This One Might Be Worse*, N.Y. Mag.: INTELLIGENCER (June 16, 2021), <https://nymag.com/intelligencer/2021/06/why-2021-could-be-californias-worst-fire-season-ever.html>.

⁹⁷ See Lauren Bennet, *Deforestation and Climate Change*, CLIMATE INST. (Apr. 18, 2017), <http://climate.org/deforestation-and-climate-change>.

⁹⁸ See CLIFFORD VILLA ET AL., *ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION* 448 (3d ed. 2020).

Residential segregation creates specific neighborhoods with high concentrations of people of color living in poverty, and those communities are singled out as areas in which to locate environmental hazards.⁹⁹ This is caused mainly through the disproportionate siting of disamenities in low-income communities of color.¹⁰⁰ Studies have shown that race is the most important variable for predicting where hazardous waste sites are located, though income level is also predictive.¹⁰¹ To take one example, of the nine million people living near “commercial hazardous waste facilities” across the country, a disproportionate percentage are African American, Hispanic, or Asian/Pacific Islander.¹⁰²

There are disputes over the causality of siting hazards in minority and low-income areas, but under any theory exclusionary zoning would exacerbate environmental injustice. Vicki Been has posited that environmental hazard siting may come first and then people of color move in after land values decrease since they are disproportionately low-income.¹⁰³ If Been’s minority move-in thesis is correct, exclusionary zoning would exacerbate the issue. That is because exclusionary zoning further limits choices for residency for low-income families.¹⁰⁴

Exclusionary zoning also forces low-income communities of color to bear a disproportionate burden from environmental harms by limiting the degree to which negative externalities can be distributed equitably. Namely, wealthy communities can use zoning to keep unwanted land uses out of the suburbs.¹⁰⁵ For example, Guilford, Connecticut—a self-described “residential and summer community”¹⁰⁶—is about 90 percent white and is wealthier than the average town in Connecticut.¹⁰⁷ In 2017, U-Haul proposed building a new storage facility in Guilford on land on which it was already operating a smaller

⁹⁹ See Orfield, *supra* note 10, at 147–53; Mizutani, *supra* note 82.

¹⁰⁰ See Mizutani, *supra* note 82, at 363–65, 374–75, 386.

¹⁰¹ See, e.g., ROBERT D. BULLARD ET AL., TOXIC WASTES AND RACE AT TWENTY: 1987–2007, at x (2007).

¹⁰² See *id.* at 52.

¹⁰³ See Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 YALE L.J. 1383, 1387 (1994); see also Manuel Pastor, Jr. et al., *Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice*, 23 J. URB. AFFS. 1, 1 (2001).

¹⁰⁴ See KAZIS, *supra* note 1, at 8.

¹⁰⁵ See C. Lowell Harriss, *Property Taxation: What’s Good and What’s Bad About It*, 33 AM. J. ECON. & SOCIO. 89, 95 (1974).

¹⁰⁶ *Town of Guilford*, TOWN OF GUILFORD, CT, https://www.guilfordct.gov/town_of_guilford/index.php (last visited Apr. 9, 2023).

¹⁰⁷ For town demographics, see *Guilford, Connecticut: CERC Town Profile 2017*, CT DATA COLLABORATIVE, <https://s3-us-west-2.amazonaws.com/cerc-pdfs/2017/guilford-2017.pdf> (last visited Apr. 9, 2023).

storage site.¹⁰⁸ The Planning and Zoning Commission (PZC) was met with vociferous opposition, with intense pressure put on individual members of the PZC.¹⁰⁹ Community members expressed objections to light pollution and trucks a U-Haul facility might bring to an already commercial area.¹¹⁰ However, the true roots of the objection to the development might have been deeper, as a letter to the editor opposing the U-Haul facility noted, “[W]e are inviting a boa constrictor into a quiet backwater. Once one comes, others will follow.”¹¹¹ Wealthy towns can ensure that very little polluting activity is sited within them by strongly opposing even the smallest externalities.

Additionally, the commute necessitated by suburban sprawl—generated by exclusionary zoning—increases reliance on highways,¹¹² and perpetuates environmental inequities in transit.¹¹³ Highways are disproportionately sited through communities of color across the country, and were historically purposefully located in African American neighborhoods.¹¹⁴ Areas near highways have higher levels of pollution.¹¹⁵ By creating a system where richer white communities live far away from their jobs and drive every day through communities of color, the negative externalities of driving are disparately felt in low-income minority communities.

A key tenet of environmental justice is increasing the participation of low-income communities of color in environmental decision-making

¹⁰⁸ See *Neighbors Move to Appeal Guilford PZC U-Haul Decision*, ZIP06 (July 17, 2018), <https://www.zip06.com/news/20180717/neighbors-move-to-appeal-neighbors-move-to-appeal->.

¹⁰⁹ See *id.* (noting that at a well-attended public meeting there were signs keeping track of which PZC members had voted yes or no).

¹¹⁰ See *id.* (noting the signs at the meeting argue the building will be “too big, too bright, too many trucks”).

¹¹¹ Susan Nichols, *Letter to the Editor: P&Z Committee Should be Courageous and Vote no to U-Haul*, NEW HAVEN REG. (May 22, 2018), <https://www.nhregister.com/opinion/article/Letter-to-the-Editor-P-Z-Committee-should-be-12932157.php>.

¹¹² See, e.g., KAZIS, *supra* note 1, at 7; GLAESER, *supra* note 89, at 175–77; Changyeon Lee, *Metropolitan Sprawl Measurement and Its Impacts on Commuting Trips and Road Emissions*, 82 TRANSP. RSCH. PART D 1, 1 (2020).

¹¹³ See THOMAS W. SANCHEZ ET AL., MOVING TO EQUITY: ADDRESSING INEQUITABLE EFFECTS OF TRANSPORTATION POLICIES ON MINORITIES 24 (2003) (noting how inequitable citing of highways has led to more pollution in communities of color).

¹¹⁴ See Deborah Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1265, 1267–68 (2020) (highlighting the racism inherent in the development of the American highway system).

¹¹⁵ See *Research on Near Roadway and Other Near Source Air Pollution*, EPA, <https://www.epa.gov/air-research/research-near-roadway-and-other-near-source-air-pollution> (last visited Apr. 9, 2023).

processes,¹¹⁶ but exclusionary zoning is an impediment to this goal. An important causal factor of the disparate placement of environmental harms in vulnerable communities is that it is less costly for polluting firms to enter these areas, and residents often have less political power.¹¹⁷ Zoning further exacerbates this political and environmental inequality through property taxes. For example, in contrast to Guilford, people of color in Connecticut live disproportionately in cities, which have higher property taxes.¹¹⁸ This means the cities are in greater need of commercial activity to raise revenue,¹¹⁹ which makes it more difficult to oppose a development that has harmful externalities with the same zeal. In other words, when property taxes are low, more businesses want to come in, and the towns can be choosier and pick businesses with fewer associated environmental harms. However, a town more desperate for property tax revenue may not be able to afford to exclude polluting businesses. Beyond economic reasons, racism has also made zoning a more helpful political tool for white communities.¹²⁰ Many zoning codes historically have been protective of white communities while allowing disproportionate harms in African American communities.¹²¹ The Supreme Court held in *Euclid* that zoning should separate use types, which generally meant it was easier to put nuisances next to other nuisances.¹²² This led to communities of color being seen by industrial polluters as the “path of least resistance,” as there was already industrial activity there.¹²³ Zoning may seem like a neutral tool, but allowing exclusionary zoning codes ensures that polluting activities will be concentrated in vulnerable communities.

III. THE ENVIRONMENTAL HARMS OF PROPERTY TAXES

The manner in which state and local governments administer property taxes carries negative consequences beyond incentivizing exclusionary zoning. There are specific environmental externalities incentivized by property taxes that are worth addressing, over and above outlawing exclusionary zoning. First, property taxes create incentives to push

¹¹⁶ See *Learn About Environmental Justice*, EPA (Sept. 6, 2022), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

¹¹⁷ See Mizutani, *supra* note 82, at 366.

¹¹⁸ See *infra* Part III.B.

¹¹⁹ See, e.g., Greg Bordonaro & Matt Pilon, *Hartford's Exorbitant Commercial Property Tax Curbs Economic Growth*, CT MIRROR (July 9, 2019), <https://ctmirror.org/2019/07/09/hartfords-exorbitant-commercial-property-tax-curbs-economic-growth> (reporting on how cities like Hartford have a difficult time attracting economic activity due to high property taxes).

¹²⁰ See Mizutani, *supra* note 82, at 363, 367–68.

¹²¹ See *id.* at 366–68.

¹²² See *id.*

¹²³ See *id.* at 370–71.

development away from city centers.¹²⁴ Additionally, the reliance on wealth to fund municipal services has serious consequences for environmental justice. Namely, jurisdictions without a wealthy tax base will have difficulty raising enough revenue to fund sewer systems and other environmental amenities. These effects will be especially pronounced when there are stark differences among local property tax rates.

A. Property Taxes and Sprawl

Property taxes likely contribute to sprawl, independent of zoning, and therefore play a part in climate change for the same reasons laid out in Part II. The strength of the incentive will depend on the state's property tax regime, but there are some general trends. Property taxes encourage building on land further away from the city center, where there will generally be lower tax rates, and therefore lower costs to the builder.¹²⁵ Property taxes also encourage smaller buildings and discourage developers from making improvements on the land—such as apartment buildings.¹²⁶ These elements overlap to generate a system that encourages sprawl at the expense of climate-friendly development.

Property taxes encourage building outwards from the city rather than upwards.¹²⁷ For example, imagine two suburbs, A and B, that are identical except that Town A is thirty minutes away from a city and Town B is an hour away. Town A, due to its proximity to a city, will have a higher value, and thus a higher property tax. Town B will seek to draw residents away from Town A, and will incentivize those individuals to move by offering a tax break to build in Town B. Therefore, while there would still be many reasons to build in Town A, the favorable tax policy will incentivize development in Town B, leading to more driving and suburban sprawl.

Property taxes also discourage building upwards by taxing improvements on the land. As economist Henry George noted, a property tax punishes intensive uses by taxing improvements built on top of land, so a holder of very valuable land is incentivized not to develop it.¹²⁸ There are other competing incentives, and the profit individuals can make from developing the land may be greater than the increase in taxes they will incur—for example, constructing an apartment building and generating rental income. However, even if individuals develop the land, they are more incentivized to build less expensive single-family homes, rather than an apartment building. Like most taxes, property taxes will not discourage all investment activity, but

¹²⁴ See KAZIS, *supra* note 1, at 7, 18–19.

¹²⁵ See Harriss, *supra* note 105, at 95.

¹²⁶ See Henry George, *Land and Taxation: A Conversation Between David Dudley Field and Henry George*, N. Am. Rev. (1885), reprinted in THE COMPLETE WORKS OF HENRY GEORGE: OUR LAND AND LAND POLICY 221, 222 (1911).

¹²⁷ See Harriss, *supra* note 105.

¹²⁸ See George, *supra* note 126, at 222.

will influence development of new homes on the margin.¹²⁹ As a result, almost any property tax encourages minimal improvements on the land, which further leads to sprawl as people seek to build low-cost homes.

The distortionary effects of property tax on development are especially pronounced when property tax rates are different in various localities. If two towns are identical, but one town has a lower property tax rate, this would incentivize development in the town with a lower property tax rate. This is a pattern seen in many states that have high property taxes set at the local level. For example, in Connecticut, property tax rates are generally higher in more urban areas, because the tax base is less wealthy, and lower in the suburbs;¹³⁰ this encourages more building in the suburbs. Property taxes are only one of many factors that determine where development occurs, but they are important on the margin due to their effect in encouraging suburban living.

B. Property Taxes and Environmental Justice

Local property taxes are often inequitable because they link revenue for services with the wealth of the tax base; thus, lower wealth will lead to less revenue for government services,¹³¹ including environmental protection. The most significant concern with property tax is that it requires a certain level of wealth within the tax base to adequately fund the government.¹³² Since wealth is highly correlated with race in America,¹³³ differential property taxes create

¹²⁹ See Byron Lutz, *Quasi-Experimental Evidence on the Connection Between Property Taxes and Residential Capital Investment*, 7 AM. ECON. J. 300, 300–03 (2015) (noting how a decrease in property tax burden led to an increase in demand for housing).

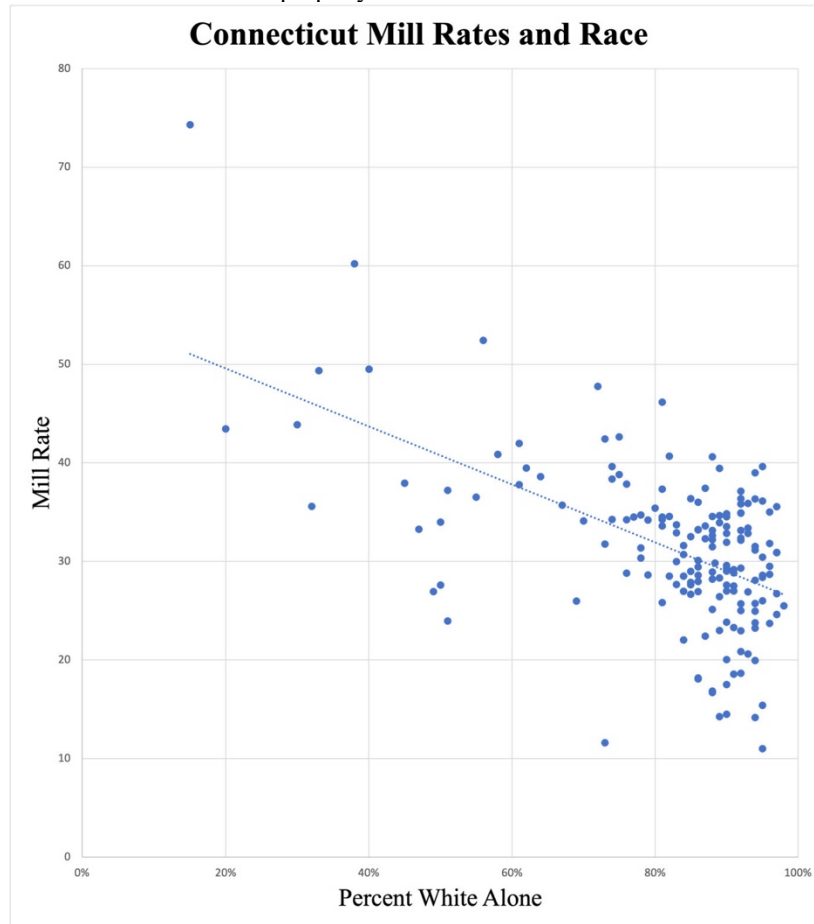
¹³⁰ See CT Mill Rates, *supra* note 28, for the property tax rates of various localities, and note that suburban areas have lower property tax rates than cities such as New Haven, Bridgeport, Waterbury, and Hartford. For more information regarding these inequities see generally Keith M. Phaneuf, *Another Year, Another Plea to Fix the Property Tax System. Liberal Group Wants to Change Tax System in Connecticut*, HARTFORD COURANT (Dec. 19, 2021), <https://www.courant.com/politics/hc-pol-1000-friends-connecticut-property-tax-20211219-zbhbc4qx2zan3edaklvtwh2lhq-story.html>.

¹³¹ See Orfield, *supra* note 10, at 151–52.

¹³² See Keith M. Phaneuf, *Municipalities Say CT's Property Tax System Is Unsustainable*, CT MIRROR (Sept. 12, 2016), <https://ctmirror.org/2016/09/12/municipalities-say-cts-property-tax-system-is-unsustainable> (discussing these dynamics in the context of Connecticut); see Orfield, *supra* note 10, at 151–52 (discussing the difficulty for a government without a large tax base to provide services).

¹³³ See Kriston McIntosh et al., *Examining the Black-white Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap>.

well-funded white communities and poorly funded communities of color.¹³⁴ In Connecticut, as seen in the graph below, the demographic makeup of a town is correlated with how high the property tax rate will be, and whiter communities have lower property tax rates.¹³⁵



¹³⁴ See Laura Meckler, *Report Finds \$23 Billion Racial Funding Gap for Schools*, WASH. POST (Feb. 26, 2019), https://www.washingtonpost.com/local/education/report-finds-23-billion-racial-funding-gap-for-schools/2019/02/25/d562b704-3915-11e9-a06c-3ec8ed509d15_story.html.

¹³⁵ For the raw data used to create the graph, see CT Mill Rates, *supra* note 28. For demographic data, see *Population by Race by Town*, CONN. DATA COLLABORATIVE, <http://data.ctdata.org/visualization/population-by-race-by-town?v=table&f={ }> (last visited Apr. 9, 2023). The graph elides some of the complexity of identity but uses census data and self-identified “white-alone” populations and compares that to mill rates. Each dot represents one town.

If a town is predominantly low-income, people will likely live in inexpensive houses, and it will be hard to collect enough revenue from property taxes to adequately fund the government. This is a self-reinforcing problem: once it is difficult to collect revenue, quality of services, especially schools, will decrease, lowering property values and forcing property tax rates to go up. People who can afford to move to a lower tax rate jurisdiction, usually the suburbs, will leave, and revenues will fall even further. This is called a revenue hill and makes it very difficult for low-income communities to raise sufficient funds from taxes.¹³⁶

If some local governments—predominantly those serving low-income communities of color—are underfunded, they will not be able to provide adequate environmental protection to their citizens. The Flint Water Crisis is a tragic example of this cycle of disinvestment and the environmental consequences of an underfunded city in part due to the lack of wealth of its tax base.¹³⁷ Reliance on property taxes is by no means the only reason the Flint crisis occurred, but it was a contributing factor.¹³⁸ White flight, subsidization of suburban life, and disinvestment in the city all led to decreased tax revenue, which led to a budget crisis.¹³⁹ The loss of the tax base made it more difficult to maintain services, upgrade infrastructure, and protect health.¹⁴⁰ Although Flint is a tragic and notable case of this cycle manifesting itself, it is by no means unique, and many other cities face similar funding constraints that could create similar disasters.¹⁴¹

IV. IMPEDIMENTS TO LOCAL GOVERNMENT REFORM OF LAND USE

There is an institutional design problem that leads to the environmental harms discussed in previous sections of this Note because not everyone impacted by local land use decisions is involved in the decision-making process. Allowing more apartment buildings, especially in the suburbs of the most productive cities, would increase social welfare by decreasing GHG emissions, lowering housing costs,¹⁴² and creating economic growth by allowing more people to move near jobs.¹⁴³ However, homeowners in places

¹³⁶ See Gillette, *supra* note 30, at 1254.

¹³⁷ See ANNA CLARK, *THE POISONED CITY: FLINT'S WATER AND THE AMERICAN URBAN TRAGEDY* 5, 8–9 (2018).

¹³⁸ See *id.* at 5.

¹³⁹ See *id.* at 4, 8–9.

¹⁴⁰ See *id.* at 8–9.

¹⁴¹ See *id.* at 8.

¹⁴² See KAZIS, *supra* note 1, at 5–8, 40 (discussing how land use reforms would both lower housing prices and decrease emissions).

¹⁴³ See, Hsieh & Moretti, *supra* note 79, at 1–2, 32 (regarding the effects building apartments could have on productivity and economic growth).

with exclusionary zoning have no incentive to change zoning laws to allow apartments if they believe doing so will cause them harm.

At least theoretically, however, there may be an opportunity to incentivize current owners to allow apartments through private bargaining. Take, for example, a group of potential residents who want to move into a wealthy exclusionary suburb but are unable to afford million-dollar single-family homes and want to build an apartment building. They can pool their money and offer to pay all the homeowners in the town a fee in exchange for modifying the zoning rules. If the new potential residents gain more value from the apartment building than it costs the current homeowners, the two sides should reach a deal, and the apartment building should be built. The theoretical framework of private actors bargaining with each other in order to arrive at a socially optimal outcome is known as Coasean bargaining.¹⁴⁴ In fact, one of the theoretical justifications for zoning laws wherein new development can only occur after the landowner has negotiated with the jurisdiction is that it can allow Coasean bargains.¹⁴⁵

Of course, private bargaining to adjust zoning would have coordination issues on both sides. It would be impossible for the future residents to individually bargain with each homeowner. To solve this problem, both sides must empower a representative to negotiate for them.¹⁴⁶ For the future tenants, the developer acts as a negotiator. The developer can offer to pay current owners through fees or taxes in exchange for changes in zoning, but rather than paying each owner individually, homeowners are represented by their local government.¹⁴⁷ The local government can accept the deal offered by the developer if the fees are high enough. The new apartment building could moderately lower home values, but it could also bring increased revenue for social services if the fee is high enough. In essence, current homeowners, through elected representatives, could accept a deal where they are compensated to let new people into the jurisdiction.

The problem with relying on local governments and developers to engage in Coasean deal-making is that it is difficult to assemble all the people who are affected by zoning reform. In this theoretical deal, no one is representing all the families living next to the highway that will now face more pollution as people live further away from their jobs. The renters in the next town over who could have had lower rent if the region's housing supply was increased are similarly unrepresented. Thus, since no single entity can adequately represent all the beneficiaries and conceptualize all the potential benefits, a Coasean deal will be impossible. This problem highlights a larger

¹⁴⁴ See *Coase Theorem: What It Means in Economics and Law, With Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/coase-theorem.asp> (last visited Apr. 9, 2023). For Coase's original formulation of the theorem, see generally R. H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960).

¹⁴⁵ See David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1682 (2013).

¹⁴⁶ See *id.* at 1680–83.

¹⁴⁷ See *id.*

difficulty of a decentralized system of land use planning: each local government will only be concerned with the effects of their zoning plan on their own local residents. But all these decisions have regional effects that should not be ignored. As a result, a higher level of government, either state or federal, will likely need to be involved to ensure the impacts of land use decisions are considered holistically.

V. FEDERAL AND STATE ZONING REFORM TO END EXCLUSIONARY ZONING

One way to reform land use is to directly reform zoning laws. From a policy perspective, there are promising fixes to unjust exclusionary zoning. The federal government could preempt local zoning, condition funds on zoning reform, or adjust underlying incentives. Perhaps most promisingly, state governments could preempt local zoning. The most significant problem with any option is not that the solutions would be technically challenging, but that they would be politically difficult to execute. At each level of government, there are political impediments and entrenched interests that make reform difficult.

A. The Federal Government's Relationship to Local Zoning

The federal government has some limited policy tools to impact zoning either through new legislation or through executive action. Exclusionary zoning is an area where activists concerned about racial justice, affordable housing, and climate change have put pressure on the current president.¹⁴⁸ The Biden administration has identified that infrastructure and land use generally are tied to racial equity, and are striving to end the practice of large areas of land zoned exclusively for single-family homes.¹⁴⁹ Yet, despite the concern, it may be difficult for the Biden administration to take action that would directly solve the problem. The administration could push for legislation that would outlaw exclusionary zoning practices, but it is an open constitutional question whether the federal government could more directly preempt local exclusionary zoning laws.¹⁵⁰ While it is likely the

¹⁴⁸ See Richard D. Kahlenberg, *Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning*, CENTURY FOUND. (Apr. 18, 2021), <https://tcf.org/content/report/tearing-walls-biden-administration-congress-can-reduce-exclusionary-zoning/?session=1>.

¹⁴⁹ See *Fact Sheet: The American Jobs Plan*, WHITE HOUSE (Mar. 31 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan>.

¹⁵⁰ See Kevin Erdmann et al., *The Link Between Local Zoning Policy and Housing Affordability in America's Cities*, MERCATUS CTR. (March 2019), <https://www.mercatus.org/research/policy-briefs/link-between-local-zoning-policy-and-housing-affordability-americas-cities>; see also Michael H. Schill, *The Federal Role in Reducing Regulatory Barriers to Affordable Housing in the*

federal government would have the authority to preempt local zoning laws, it would be politically difficult because land use has so traditionally been under local control.¹⁵¹ More indirect ways of encouraging inclusion have been used instead.¹⁵²

B. Federal Government Executive Action

The Biden administration will most likely discourage exclusionary zoning by conditioning funding rather than through direct preemption. As part of the American Jobs Act, the administration notes it plans to “invest[] \$213 billion to produce, preserve, and retrofit more than two million affordable and sustainable places to live,” while pairing “this investment with an innovative new approach to eliminate state and local exclusionary zoning laws.”¹⁵³ The administration called on Congress to create a grant program to condition these funds on zoning reforms.¹⁵⁴ This approach of conditioning funds on reform is similar to a rule promulgated by the Obama administration, the Affirmatively Furthering Fair Housing Rule (AFFH), although that rule primarily required information about plans to reform land usage rather than specific action.¹⁵⁵ These reforms seek to incentivize, rather than force, jurisdictions to reform their zoning practices.

The problem with these approaches is that they depend on the strength of the stick or carrot held by the federal government. The federal government has been loath to use robust measures to end exclusionary zoning. The Obama administration struggled to desegregate the New York City suburbs despite attempts to use the Fair Housing Act to increase multifamily housing in white communities.¹⁵⁶ The Trump administration’s Housing and Urban Development (HUD) Secretary, Ben Carson, suggested conditioning Community Development Block Grant Funding (CDBG) on municipalities

Suburbs, 8 J.L. & POL. 703, 709–16 (1992) (explaining how federal preemption of state and local zoning laws would be allowed under the Commerce Clause, relying on older interpretations of the Commerce Clause).

¹⁵¹ See Schill, *supra* note 150, at 709–16, 726–29.

¹⁵² See *id.* at 707–09.

¹⁵³ *Fact Sheet: The American Jobs Plan*, *supra* note 149.

¹⁵⁴ See *id.* This is a similar idea to a bill sponsored by Cory Booker and James Clyburn that Biden supported during his presidential campaign. See Kahlenberg, *supra* note 148.

¹⁵⁵ See Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272, 42,275 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, 903).

¹⁵⁶ See generally Nikole Hannah-Jones, *Soft on Segregation: How the Feds Failed to Integrate Westchester County*, PROPUBLICA (Nov. 2, 2012), <https://www.propublica.org/article/soft-on-segregation-how-the-feds-failed-to-integrate-westchester-county>.

ending exclusionary zoning laws.¹⁵⁷ But this path forward might lack bite, as communities that practice exclusionary zoning are disproportionately high-income and therefore receive less funding from CDBG grants.¹⁵⁸

Another path forward would be a broader use of enforcement authority from the 1968 Fair Housing Act. Immediately following the passage of the Fair Housing Act, the Department of Housing and Urban Development implemented a bold plan to integrate the suburbs by rejecting all applications for water, sewer, and highway funding that came from communities where local policies fostered segregated housing.¹⁵⁹ Political backlash from white communities fearing integration quickly killed the initiative, and similar efforts have not been attempted since.¹⁶⁰ Tools available to the executive branch of the federal government are limited by potential legal challenges and political norms.

C. Federal Government Tax Policy

The federal government impacts land use by subsidizing home ownership through the tax code, but this is a policy area that is difficult to reform. There are a variety of financial interventions that lower the cost of owning a home: the government decreases risk to loan originators, insures some mortgages, and allows homeowners to write off interest payments on mortgages.¹⁶¹ These subsidies are massive in scale; the mortgage interest deduction subsidy for the wealthiest ten percent is more than the entire federal subsidy of low- and moderate-income housing.¹⁶² Such interventions are a contributing factor to exclusionary zoning.¹⁶³ These subsidies push more people to buy homes, which may create more voters who are motivated to keep housing prices high.¹⁶⁴

¹⁵⁷ See Jenny Schuetz, *HUD Can't Fix Exclusionary Zoning by Withholding CDBG Funds*, BROOKINGS (Oct. 15, 2018), <https://www.brookings.edu/research/hud-cant-fix-exclusionary-zoning-by-withholding-cdbg-funds>.

¹⁵⁸ See *id.*

¹⁵⁹ See Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, PROPUBLICA (June 25, 2015), <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law> [hereinafter Hannah-Jones, *Living Apart*].

¹⁶⁰ See *id.*

¹⁶¹ See Clarissa Hayward, *Why Does the U.S. Use Public Revenue to Support Private Home Ownership?*, WASH. POST (Apr. 15, 2015), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/04/15/why-does-the-u-s-use-public-revenue-to-support-private-home-ownership>.

¹⁶² See *id.*

¹⁶³ See William A. Fischel, *The Rise of the Homevoters: How the Growth Machine Was Subverted by OPEC and Earth Day* 1, 4, 15–16 (Dartmouth Coll. Econ. Dep't, Working Paper, 2016) [hereinafter Fischel, *Rise of the Homevoters*].

¹⁶⁴ See *id.*

Policies that are broadly beneficial will not necessarily be popular. Ending federal subsidies to homeowners would likely redistribute wealth to renters and lower-income people—the Biden administration might be emboldened to do so since Biden was popular with lower income voters.¹⁶⁵ However, it may be difficult to garner support for complex changes to the tax code which also affect market incentives.¹⁶⁶ This challenge arises because people who currently take advantage of policies benefit directly from them, thus the concentrated benefits create a constituency that will oppose reform.¹⁶⁷ For example, if the Biden administration decides to remove the tax deduction on mortgage payments, the reform would upset everyone who files for that deduction. At the same time, this reform would be unlikely to excite a non-homeowner because even though their taxes are subsidizing homeownership, the causal link would not likely be immediately clear to them. Therefore, the voters that benefit from better land use laws are unlikely to reward the politicians who change the tax code, but those upset with paying higher taxes may shift their votes.

D. State Level Zoning Reform

State level reforms are the most promising resolution because, unlike the federal government, states can easily influence land use. Land use is normally a local decision in the United States because states have enabled localities to enact zoning ordinances.¹⁶⁸ However, states can revoke local control of land use, or perhaps more politically palatably, allow the retention of local control but outlaw the exclusionary practices that prevent new, affordable housing from being built.¹⁶⁹

Many states are passing laws that directly tackle exclusionary zoning. Connecticut recently signed HB 6107 into law, which, among other reforms, requires that municipalities allow accessory units in their zoning codes.¹⁷⁰ California recently passed SB 9 and SB 10, which allow duplexes in formerly single-family zoned homes and ease the regulatory requirements for

¹⁶⁵ See *National Exit Polls: How Different Groups Voted*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-president.html> (last visited Apr. 9, 2023).

¹⁶⁶ See Suzanne Mettler, *Reconstituting the Submerged State: The Challenges of Social Policy Reform in the Obama Era*, 8 *PERSP. ON POL.* 803, 803–04 (2010).

¹⁶⁷ See *id.*

¹⁶⁸ See *supra* Part I; Fischel, *Fiscal Zoning*, *supra* note 35, at 5–8.

¹⁶⁹ See generally KAZIS, *supra* note 1, at 21–42 (citing various examples of policies in other states that to which New York could look that would allow local control generally, but would allow for at least some construction of multifamily housing).

¹⁷⁰ See H.B. 6107, 2021 Gen. Assemb., Jan. Sess. (Conn. 2021).

multifamily developments, respectively.¹⁷¹ Despite these developments, the pace of reform is still not commensurate with the problem, and while zoning reform can help, it does not always translate to enough new housing to ease supply constraints.¹⁷²

Furthermore, there are two main issues that stymie state level reforms that directly preempt zoning. The first problem is that the majority of voters in a state may benefit from the status quo. Current zoning practices could be understood as a form of rent-seeking behavior by current homeowners.¹⁷³ Homeowners may be decreasing total social utility, but they are increasing their share of it. By enacting zoning codes that limit supply, the price of housing increases.¹⁷⁴ This distortion of the market transfers wealth from those who rent or do not own a home to those who do. Almost two thirds of Americans own a home,¹⁷⁵ and homeowners are more likely to vote than renters.¹⁷⁶ These homeowners will likely align to oppose any reform that significantly decreases their property values.

The second issue is that preempting zoning codes will not change the underlying incentives that create exclusion. A state that tries to encourage the building of affordable housing may end up playing whack-a-mole with localities who resort to ever cleverer ways to block new construction. Homeowners can use many different tools, such as environmental review laws, parking minimums, or lot size requirements if they cannot simply outlaw multifamily housing.¹⁷⁷ Towns sometimes choose to add affordability requirements that are so stringent that they make it difficult to build new

¹⁷¹ See Conor Dougherty, *Gov. Newsom Signs Two Laws to Ease California's Housing Crisis*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/09/17/business/newsom-california-housing-crisis.html>.

¹⁷² See Bronin, *supra* note 73, at 5–7.

¹⁷³ See Gillian B. White, *How Zoning Laws Exacerbate Inequality*, ATL. (Nov. 23, 2015), <https://www.theatlantic.com/business/archive/2015/11/zoning-laws-and-the-rise-of-economic-inequality/417360>.

¹⁷⁴ See KAZIS, *supra* note 1, at 5.

¹⁷⁵ See *Homeownership Rate in the U.S. 1990–2021*, STATISTA (Oct. 5, 2022), <https://www.statista.com/statistics/184902/homeownership-rate-in-the-us-since-2003>.

¹⁷⁶ See Chris Salviati, *Renters vs. Homeowners at the Ballot Box—Will America's Politicians Represent the Voice of Renters?*, APARTMENT LIST (Oct. 30, 2018), <https://www.apartmentlist.com/research/renter-voting-preferences>.

¹⁷⁷ See, e.g., Monkkonen et al., *supra* note 38 (explaining how parking minimums and lot size requirements are used to block housing); see also M. Nolan Gray, *How Californians Are Weaponizing Environmental Law*, ATL. (Mar. 12, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/signature-environmental-law-hurts-housing/618264> (explaining how environmental review laws are used to block housing in California).

housing.¹⁷⁸ Thus, while state level reforms that work around—but still allow—exclusionary zoning codes can be important, reforms should care about the financial incentives. If states pass property tax reform alongside zoning reform, jurisdictions may be less likely to undermine the goals of inclusion and greener development.

VI. THE CASE FOR PROPERTY TAX REFORM

Property tax reform would reduce incentives for communities to engage in exclusionary zoning by making it less lucrative to put up invisible walls.¹⁷⁹ In this way, the negative externalities of exclusionary zoning and property taxes can be addressed in one package. The simplest property tax reform would be to set a statewide rate. Rather than have each local government administer its own tax and keep that revenue, the state would set a single rate, collect all the money, and then distribute it. Such a reform would raise the tax rate in exclusionary communities, which would create pressure to add apartments. Furthermore, residents could no longer use zoning to protect their town's tax base. While there is no direct evidence that these reforms would reduce exclusionary zoning—changing incentives will not invariably lead to preferred policy outcomes—there is evidence that tax policy impacts land use decisions and similar interventions have had effects in the past.¹⁸⁰

A. Proposed Property Tax Reform

States should set one uniform property tax rate, rather than having each local government set individual tax rates. The property taxes a citizen pays would then no longer depend on the municipality in which they reside. Such a system, in concert with additional changes in zoning laws, would create better land use incentives in many states. However, this effect would not be uniform since states have different property tax systems and different ways of funding local services, such as schools.¹⁸¹ Additionally, some reforms only

¹⁷⁸ See Emily Hamilton, *Inclusionary Zoning Hurts More Than It Helps*, MERCATUS CTR. (Feb. 8, 2021), <https://www.mercatus.org/publications/urban-economics/inclusionary-zoning-hurts-more-it-helps> (demonstrating the dynamics by which affordability requirements raise the price of building new housing).

¹⁷⁹ This is not a totally new idea; there is a long tradition of using the property tax code to encourage better land usage. See, e.g., Alan E. Land, *Toward Optimal Land Use: Property Tax Policy and Land Use Planning*, 55 CALIF. L. REV. 856, 872–80 (1967). For the broader case that shifting incentives could encourage zoning reform, see Fischel, *Rise of the Homevoters*, *supra* note 163, at 14–16.

¹⁸⁰ See Lutz, *supra* note 129, at 300–03 (showing that a policy that de-links expenditures and taxes at the local level caused residential capital to reallocate geographically).

¹⁸¹ See NAT'L CONF. OF STATE LEGISLATURES, A GUIDE TO PROPERTY TAXES: THE ROLE OF PROPERTY TAXES IN STATE AND LOCAL FINANCES (2004),

partially shift funding responsibility from local governments to the state and decrease the importance of local property tax.¹⁸² Alternatively, a state can allow local governments to collect property taxes but force wealthier districts to redistribute their funds to poorer districts.¹⁸³ In general, reform should shift the burden of collecting taxes from local governments to states in order to effectuate changes in behavior.

B. The Effect of Property Tax Reform on Exclusionary Zoning

Property tax reform would significantly raise the property taxes of individuals in the most exclusive communities. In Connecticut, some of the most valuable land is located in the suburbs close to New York.¹⁸⁴ From the southwest corner of the state, there is easy access to New York City, and people can commute to work on public transport in under an hour.¹⁸⁵ These towns also have some of the lowest property tax rates in the state and exclusionary zoning codes.¹⁸⁶ Property tax reform would lead to increased taxing of these expensive and inaccessible towns.¹⁸⁷ The increased tax revenue would be redistributed to less wealthy districts.¹⁸⁸

Properly structured property tax reform would raise taxes on high-value homes in exclusionary communities. Some homeowners might want to

<https://www.scstatehouse.gov/Archives/CitizensInterestPage/PropertyTaxReform/NCSLGuidetoPropertyTaxes.pdf>.

¹⁸² See *id.* at 27–29 (describing a Michigan reform that lowered local property taxes but increased state spending on education).

¹⁸³ See Lutz, *supra* note 129, at 302–03 (describing a reform in New Hampshire where some towns received grants from the state and others received negative grants, or had to pay the state, in order to equalize school funding).

¹⁸⁴ Fairfield County is the closest county to New York City. See *State of Connecticut Towns Listed by County*, CONN. DEP'T LAB., <https://www1.ctdol.state.ct.us/lmi/misc/counties.asp> (last visited Apr. 9, 2023). Fairfield County also has the highest home values. See *Connecticut Housing Data*, CONN. DATA COLLABORATIVE, <https://housing.ctdata.org> (last visited Apr. 9, 2023).

¹⁸⁵ See *7 Reasons to Move to Greenwich Connecticut in 2022*, PREVU (Jan. 3, 2022), <https://www.prevu.com/blog/reasons-to-move-to-greenwich-connecticut>.

¹⁸⁶ See CT Mill Rates, *supra* note 28. New Canaan's mill rate is 18.16, Greenwich's rate is 11.59, and Westport's rate is 18.07. See also Thomas, *supra* note 37.

¹⁸⁷ See Lutz, *supra* note 129, at 307–09. After property tax reform in New Hampshire, towns with low tax rates saw an increase in taxes paid after equalization. If Connecticut implemented similar reform the towns with the lowest property tax rates would pay more in taxes.

¹⁸⁸ See Keith M. Phaneuf, *Another Year, Another Plea to Fix the Property Tax System. Liberal Group Wants to Change Tax System in Connecticut*, HARTFORD COURANT (Dec. 19, 2021), <https://www.courant.com/politics/hc-pol-1000-friends-connecticut-property-tax-20211219-zbhbc4qx2zan3edaklvtwh2lhq-story.html>.

sell and move to avoid the new high property tax, but they will bear the cost and have to sell for less money because any future buyer will also feel the tax increase.¹⁸⁹ Essentially, if an owner of a mansion wanted to avoid the tax increase, it would be difficult under current zoning laws.¹⁹⁰ It would be hard to sell the mansion to a new owner because of the onerous new property tax.¹⁹¹ Instead, the owner would be incentivized to change the zoning laws, break up and sell the parcel, and turn it into apartments to spread the property tax among multiple residents.¹⁹² Some wealthy people, however, may simply pay more taxes and continue excluding.

State property tax reform would also end municipalities' use of zoning as a mechanism to inflate their tax base. If a jurisdiction cannot set its own property tax rate, it would reduce the incentive to only let wealthy residents into the town. Shifting property tax rate collection from the local to the statewide level would decouple the district's funding from the wealth of its members.¹⁹³ This would remove a strong incentive to keep out developments and multifamily housing and would lower the fiscal stakes in zoning debates. Imagine Citizen A and Citizen B live across town from each other. In a localized property tax regime, Citizen A is deeply concerned with the property values of Citizen B. If a zoning change is proposed that will lower Citizen B's property value, Citizen A will either have to pay more in taxes, or the town will lose revenue. If the property tax is administered statewide, Citizen B's property values no longer affect Citizen A's tax rate or town services. There will still be strong exclusionary tendencies from property owners with which to contend, as owners will still have a lot of their wealth tied up in homes. However, this solution would decrease some of the town-wide opposition that animates zoning fights.

Setting a property tax rate at the state level would create better land use incentives, but the question remains whether these incentives would be strong enough to impact actual land usage. Two problems need to be overcome in order to achieve actual change. First, residents would have to want to turn their single-family home into apartments. Second, those residents would also have to convince the town to change its zoning laws, and there may remain sufficient opposition and status quo bias to stop rezoning efforts. That said,

¹⁸⁹ See Fischel, *Fiscal Equalization*, *supra* note 19, at 22.

¹⁹⁰ See Fischel, *Fiscal Zoning*, *supra* note 35, at 3.

¹⁹¹ See *id.*

¹⁹² See *id.* Fischel notes that zoning laws forbid a mansion owner from breaking up and selling the parcel, and assumes the owner will simply bear the cost. If the property tax increase is high enough though, there may be sufficient incentive to move homeowners to try to change zoning laws.

¹⁹³ See, e.g., Fischel, *Fiscal Equalization*, *supra* note 19, at 23–24 (discussing the incentives that are created when districts have different tax rates, and reasoning from that example that those incentives would be destroyed if the tax rate is the same across an entire state); Phaneuf, *supra* note 188; NAT'L CONF. OF STATE LEGISLATURES, *supra* note 181, at 14.

property tax policy is often used to impact development, as there is an understanding that shifting incentives will change land usage. For example, many countries tax agricultural land at a lower rate than urban land to keep a tradition of land use they find beneficial.¹⁹⁴ The United States has many similar policies, and there is a long-accepted history that certain land uses should be encouraged by lowering local taxes.¹⁹⁵ The logic should hold in the reverse: higher property taxes should be used to discourage certain land uses. The reform would not end exclusionary zoning or sprawl overnight, but it would create financial penalties to communities that exclude. The consideration then becomes: would these financial penalties be strong enough to end exclusion?

C. Evidence from Previous Attempts at Property Tax Reform

A few states have implemented property tax reform, although often with the goal of creating equity in education.¹⁹⁶ The *Serrano* case in California is a famous and illustrative case of property tax reform as education reform.¹⁹⁷ Despite this property tax reform, however, parts of California still have serious land use problems.¹⁹⁸ However, California did not set a statewide tax rate to try to keep revenue from property taxing relatively stable. Rather, it severely limited the use of property taxes.¹⁹⁹ Thus, while the reform severed the connection between the wealth of the district and the tax base, the reform did not tax houses in exclusionary communities more. Vermont and New Hampshire have also both severed the connection between local property taxes

¹⁹⁴ See Joan Youngman & Jane Malme, *The Property Tax in a New Environment: Lessons from International Tax Reform Efforts*, (Int'l Stud. Program of the Andrew Young Sch. of Pol'y Stud., Working Paper No. 04-49, 2004), <http://fiscalresearchcenter.issuelab.org/resources/5305/5305.pdf>.

¹⁹⁵ See, e.g., Mabel Newcomer, *The Growth of Property Tax Exemptions*, 6 NAT'L TAX J. 116, 116 (1953); John K. Mullen, *Property Tax Exemptions and Local Fiscal Stress*, 43 NAT'L TAX J. 467, 467 (1990). Mullen notes there is some criticism that the broad nature of exemptions may be regressive and create difficulties for local governments to be adequately funded.

¹⁹⁶ See NAT'L CONF. OF STATE LEGISLATURES, *supra* note 181.

¹⁹⁷ See Stephen R. Goldstein, *Interdistrict Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and Its Progeny*, 120 U. PA. L. REV. 504, 504-06 (1972) (discussing how the *Serrano* case was viewed as the first step in a broader fight for equality in school funding).

¹⁹⁸ See Hsieh & Moretti, *supra* note 79, at 1-3 (using California and New York as prime examples of overly restrictive zoning).

¹⁹⁹ See MAC TAYLOR, COMMON CLAIMS ABOUT PROPOSITION 13, at 1-2 (2016) (explaining how Proposition 13 severely limited property taxes as a revenue source). See WILLIAM A. FISCHER, SERRANO AND PROPOSITION 13: THE IMPORTANCE OF ASKING THE RIGHT QUESTION 535-36 (2008) [hereinafter FISCHER, SERRANO AND PROPOSITION 13] for a discussion of how Proposition 13 passed in response to *Serrano*.

and school funding.²⁰⁰ Both states have passed state level reforms that preempt local bans of accessory dwelling units, and the Vermont State Senate has passed further reforms legalizing middle-density housing across much of the state.²⁰¹ However, because previous reforms were not focused on land use incentives, it is difficult to ascertain the effectiveness of more targeted property tax reform.

A recent study suggested that the New Hampshire housing market's land use patterns did change after a property tax reform undertaken in 1999, albeit subject to some important limitations.²⁰² Specifically, no major investment was made to the New Hampshire suburbs of Boston, Massachusetts.²⁰³ Although these areas were the densest areas of the state, they did not experience new housing investment because of strict land use controls that were untouched by the property tax reforms.²⁰⁴ However, the study did find that there were communities that saw a spike in building activity.²⁰⁵ Additionally, although the reforms did not decrease the exclusivity of the most exclusive communities, it had a general egalitarian effect; the mean municipality saw a fifteen percent decrease in tax burden, while the top ten percent of municipalities saw a tax increase.²⁰⁶ Property poor jurisdictions also received large grants which increased demand to live in these jurisdictions.²⁰⁷

There are significant differences between New Hampshire and the most exclusive states, as well as differences in the nationwide housing market, that suggest this study is not entirely applicable. The first difference is that there was ample land available for development in New Hampshire.²⁰⁸ Additionally, the housing market in the early 2000s, when the reform was passed, was completely different. Market conditions at the time may have been favorable toward developing in "low property wealth communities" due to subprime lending.²⁰⁹ Although this reform was undertaken under different circumstances and with different aims, this study remains useful for

²⁰⁰ See Joan Youngman, *School Finance and Property Taxes*, LINCOLN INST. OF LAND POL'Y, <https://www.lincolninst.edu/publications/articles/school-finance-property-taxes> (last visited Apr. 9, 2023); see NAT'L CONF. OF STATE LEGISLATURES, *supra* note 181, at 2, 3 (discussing how Vermont and New Hampshire are two of fifteen states that have a statewide property tax).

²⁰¹ See KAZIS, *supra* note 1, at 35–36.

²⁰² See generally Lutz, *supra* note 129.

²⁰³ See *id.*

²⁰⁴ See *id.* at 321.

²⁰⁵ See *id.* at 301.

²⁰⁶ See *id.* at 307.

²⁰⁷ See *id.* at 301–02.

²⁰⁸ See *id.* at 321.

²⁰⁹ See *id.* at 310.

demonstrating that a change in tax policy can dramatically impact the housing and development market.

VII. METHODS TO ACHIEVE PROPERTY TAX REFORM

Property tax reform is possible through both the political process and the courts. However, the legislative process creates more durable change. Legislative action is possible because there are strong constituencies that would support property tax reform and, if structured correctly, reform could benefit a majority of the population and garner additional support.²¹⁰ A legislature can set a statewide rate, collect the funds directly, and distribute those funds to local governments in an equitable manner.²¹¹ Additionally, legislatures can look to the incentives created by their current tax system and try to remove the ones that push jurisdictions to use land use laws in environmentally harmful ways. Reform may look different depending on the state, as each state has a different system of collecting property taxes and financing school systems.²¹² However, in general, reformers should push for greater centralization of property tax collection and for more analysis of the environmental impacts of the tax.

Property tax reform can also be, and has been, sought through judicial means. The problem with judicial action is that it can lead to backlash, and the court has control over the remedy. Additionally, the court is constrained by the legal system and may not be able to create a new tax system with the right incentives. This lack of flexibility would not serve reform goals. Thus, these drawbacks suggest legislative action is the preferable avenue for change because it would reduce backlash and could be better tailored to achieve policy goals.

A. The Coalitions that Would Support Property Tax Reform

A legislative approach to tax reform can bring together a variety of advocacy groups with related goals to strengthen their stance. Investing in strong coalitional politics is generally an advantageous approach because it makes reforms more likely to pass and enables activists to link justice with other goals. In Minneapolis, for example, activists campaigned for the elimination of single-family zoning in the city. While doing so, they both linked zoning reform to fighting climate change, and appealed to issues of

²¹⁰ See *infra* Part VII(a)–(b).

²¹¹ For examples of what reform could look like, see NAT'L CONF. OF STATE LEGISLATURES, *supra* note 181, at 26–33. The most similar reform to what this Note suggests was undertaken by Vermont. Vermont deemphasized, although did not eliminate, local property taxes by creating a statewide property tax and taking the revenue from the statewide tax and distributing it to jurisdictions that could not produce needed levels of revenue to adequately fund schools. See *id.* at 31–33.

²¹² See *id.* at 26.

housing affordability and reducing economic and racial segregation.²¹³ Furthermore, groups that focus on economic inequality should become supporters of property tax reform because they care about redistribution, and a system that shares property tax revenue enables the state to move funds around and invest where funds are needed.²¹⁴ In contrast, a local tax only allows investments in communities that can raise large sums of money. This feature of property tax reform also allows for another important reform group to join the coalition: school reform activists. Property tax reform is sometimes pitched as a means to create a more equitable school system.²¹⁵ Property tax reform thereby aligns the interests of environmental groups, racial equity advocates, and school reformers, which could be a powerful coalition to push for tax policy reform.

B. The Beneficiaries of Property Tax Reform

The most promising feature of property tax reform is that it could benefit most voters. Many states have highly regressive property tax systems, where lower- and middle-income residents pay at much higher rates than the wealthiest residents do.²¹⁶ For example, a 2014 study found that the average Connecticut resident paid the equivalent of 4.84 percent of their income in property taxes each year.²¹⁷ Residents whose income was in the ninetieth percentile or above paid on average 2.29 percent of their income in property taxes.²¹⁸ Those whose income was in the tenth to twentieth percentile paid over 15 percent of their income in property tax.²¹⁹ In fact, around 90 percent

²¹³ See Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning*, CENTURY FOUND. (Oct. 24, 2019), <https://tcf.org/content/report/minneapolis-ended-single-family-zoning>.

²¹⁴ See NAT'L CONF. OF STATE LEGISLATURES, *supra* note 181, at 14 (describing difficulties for cities without a large wealth base or areas with declining growth rates to raise revenue from property taxes, and how revenue sharing can ameliorate that issue).

²¹⁵ See Goldstein, *supra* note 197.

²¹⁶ See MEG WIEHE ET AL., *WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES* 21–23, 32–133 (6th ed. 2018) (noting that property taxes in general are regressive, as well as providing graphs showing property tax distributions from each state).

²¹⁷ See STATE OF CONN. DEP'T OF REVENUE SERVS., *CONNECTICUT TAX INCIDENCE 20–21* (2014). The report shows the property effective tax rate by income decile and population decile. Income decile separates the population into groups that make 10 percent of the state income. The highest decile will have fewer people as it has higher earners. Population deciles divide the population into 10 groups of equal size and stratify by income. Figures cited regard the population decile figures at 21.

²¹⁸ See *id.* at 21.

²¹⁹ See *id.* (data was not available for the lowest earning 10 percent).

of residents paid more than the average effective rate.²²⁰ This means that the property tax is regressive, and the burden of property taxes falls more heavily on the middle and lower classes.²²¹ Because property taxes are regressive, it is possible to construct reform that would keep revenue neutral, but would raise taxes on the wealthy and cut taxes on middle- and lower-income residents. A caveat exists, though: while lower property taxes would likely benefit renters, renters never see a bill for property taxes, and some academics have theorized that renters think they do not pay property tax.²²² If this were true, they may not support property tax reform. Despite renters' potential apathy towards reform, the potential benefits to many property owners, who are an influential voting group,²²³ make statewide property tax reform plausible.

C. Political Barriers to Property Tax Reform

Any reform will face some pushback from those that benefit from the status quo, and property tax reform is no exception. One main problem with reform is that as currently constituted property tax systems benefit the wealthy. As aforementioned, in Connecticut, the top ten percent of earners pay a lower-than-average effective rate.²²⁴ Given that the rich tend to hold outsized power in American politics,²²⁵ it may be difficult to raise their taxes even if it benefits a majority of lower-income voters. Still, property tax equalization can be a simple concept: rather than paying the mill rate set by a municipality, the state will set a number. If that number is lower than the local number for over half of voters, reform could stand a good chance of being successful.

Another obstacle is that land use battles may implicate schools and race. Fights over schools and race have been some of the most contentious political battles in modern American history.²²⁶ Property tax reform has been

²²⁰ See *id.*

²²¹ See *id.* at 14–15. It is important to note that while property taxes are regressive, not all Connecticut taxes are. For example, the Personal Income Tax is progressive. The tax system overall is slightly regressive.

²²² See Wallace E. Oates, *Property Taxation and Local Public Spending: The Renter Effect*, 57 J. URB. ECON. 419, 420–22 (2005).

²²³ See, e.g., Katherine Levine Einstein & Maxwell Palmer, *Land of the Freeholder: How Property Rights Make Local Voting Rights*, 1 J. HIST. POL. ECON. 499, 499 (2021).

²²⁴ See STATE OF CONN. DEP'T OF REVENUE SERVS., *supra* note 217, at 21.

²²⁵ See G. William Domhoff, *Wealth, Income, and Power*, WHO RULES AM.?, <https://whorulesamerica.ucsc.edu/power/wealth.html> (last visited Apr. 9, 2023).

²²⁶ See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); Trip Gabriel & Dana Goldstein, *Disputing Racism's Reach, Republicans Rattle American Schools*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/2021/06/01/us/politics/critical-race-theory.html>.

viewed by some as a way to increase equity in schools.²²⁷ Because property taxes are so closely linked to school funding in states, a change to the way the tax is administered may be seen not only as a change in tax policy, but also as a change in education policy.²²⁸ Some voters may view property taxes as a direct fee for local services, and indeed, Fischel suggests as much in his analysis of Proposition 13 in California.²²⁹ In California, property tax reform severed the connection between property taxes and school funding.²³⁰ Additionally, attempts to end exclusionary zoning—which also ties into school reform—often quickly become explicitly or implicitly about race and integration.²³¹ However, this shift could be ripe for demagoguing. White communities have historically been vehemently opposed to any measures that “rob” them of local control, often worrying that a centralized, non-local governing body will force integration.²³² There is a lot of racist backlash that animates fights about land use,²³³ even in very liberal, northern areas.²³⁴ Any attempts to reform property taxes may encounter this issue.

Another impediment to reform is that policies that will help lower-income people of all races are often defeated by being framed as harming white voters.²³⁵ People of color are disproportionately low-income in America, although the majority of low-income people are white.²³⁶ A common tactic used by the wealthy to fight redistribution is to stoke racial resentment, by suggesting to white voters that government assistance is being given to the racially coded “underserving poor.”²³⁷ These tactics can be used to stop otherwise popular policies by framing them as helping minorities at

²²⁷ See Goldstein, *supra* note 197 (discussing how the *Serrano* case was viewed as a significant step in a broader fight for equality in school funding).

²²⁸ See FISCHEL, SERRANO AND PROPOSITION 13, *supra* note 199, at 536.

²²⁹ See *id.*

²³⁰ See *id.*

²³¹ See Hannah-Jones, *Living Apart*, *supra* note 159.

²³² See Erica Frankenberg, *The Impact and Limits of Implementing Brown: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama's Largest School District*, 11 ALA. C.R. & C.L.L. REV. 33, 108–11 (2019) (discussing how school desegregation efforts are defeated by appeals to conserve local control).

²³³ See Hannah-Jones, *Living Apart*, *supra* note 159 (noting how the federal government has been unable to overcome this backlash to enforce the Fair Housing Act).

²³⁴ See *Anti-Busing in the North*, EQUAL JUST. INITIATIVE (July 26, 2019), <https://eji.org/news/history-racial-injustice-anti-busing-in-the-north>.

²³⁵ See HEATHER MCGHEE, *THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER* 35–39 (2022).

²³⁶ See *id.* at 33.

²³⁷ See *id.* at 33–35.

the expense of white voters.²³⁸ Even modest reforms will face pushback on these grounds. Connecticut democrats have proposed a modest “statewide property tax,” which only applies a small rate to homeowners with valuations above \$430 thousand.²³⁹ Nonetheless, Senate Republicans organized against it, noting that taxes would go to the state to redistribute “your tax dollars to places such as Hartford and New Haven.”²⁴⁰ They characterized the statewide property tax as a middle-class tax increase that was set to distribute money to two majority-minority cities,²⁴¹ an incorrect assessment. Ultimately, backlash to land use reform efforts is inevitable. However, the barriers facing property tax reform are not insurmountable and should not be used as a reason to forgo these reforms.

D. Property Tax Reform Pursued Through the Courts

If property tax reform cannot be passed through the legislature, relief can be sought directly through the courts. Many redistributive policies do not have a plausible theory of implementation by a judge. However, a judge can order the redistribution of public funds through tax base sharing, which essentially allows litigators to raise taxes on the rich.²⁴² The seminal example of this is *Serrano v. Priest*, wherein plaintiffs asked the court to force California to redistribute funds from wealthier to less wealthy school districts.²⁴³ In *Serrano I*, the Supreme Court of California held that the disparities in revenue caused by municipal property taxes funding the school systems, and the impact of these disparities on educational outcomes on the basis of wealth, could be a violation of the Equal Protection Clause.²⁴⁴ The Supreme Court of the United States later heard a similar case in *San Antonio Independent School District v. Rodriguez*, coming to the opposite conclusion,

²³⁸ See *id.*; see also John Blake, *A Drained Swimming Pool Shows How Racism Harms White People, Too*, CNN (Mar. 6, 2021, 8:52 AM), <https://www.cnn.com/2021/03/05/us/heather-mcgee-racism-white-people-blake/index.html>.

²³⁹ Rich Scinto, *New Statewide Property Tax Proposed in CT: What to Know*, PATCH (Jan. 27, 2021, 3:32 PM), <https://patch.com/connecticut/across-ct/new-statewide-property-tax-proposed-ct-what-know>.

²⁴⁰ *Speak Out Against a Statewide Property Tax!*, STATE SENATOR KEVIN KELLY (Mar. 11, 2021), <https://ctsenaterepublicans.com/2021/03/speak-out-against-a-statewide-property-tax>.

²⁴¹ See *id.*; *QuickFacts: New Haven City, Connecticut*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/newhavencityconnecticut>; *QuickFacts: Hartford City, Connecticut*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/fact/table/hartfordcityconnecticut/PST045219>.

²⁴² See Fischel, *Fiscal Equalization*, *supra* note 19, at 29.

²⁴³ See Goldstein, *supra* note 197, at 510.

²⁴⁴ See *Serrano v. Priest*, 487 P.2d 1241, 1244, 1250, 1258–60 (Cal. 1971) (applying strict scrutiny both because it discriminated on the basis of wealth which was a suspect classification and because it concerned a fundamental interest).

and thereby foreclosing future challenges to school funding under the Fourteenth Amendment.²⁴⁵ Despite this setback, property tax reform was still achieved in California through the courts. *Serrano v. Priest* came back up to the Supreme Court of California, and in *Serrano II* the court invalidated the property tax funding scheme on the grounds that it violated the state constitution.²⁴⁶ Thus, while federal civil rights challenges might be difficult under equal protection, state constitutions can provide litigation hooks for property tax equalization.²⁴⁷

Additionally, while property tax is often thought of in the context of education reform, connecting it to land use decisions could be helpful for future litigation. There are arguments that inequalities in property tax valuations and rates could be a violation of the Fair Housing Act because of the disparate rates of foreclosure on African American homeowners.²⁴⁸ It is also worth noting that there are legal strategies aimed directly at attacking exclusionary zoning. In New Jersey, the court held that each municipality was required to provide a “fair share” of affordable housing.²⁴⁹ Property tax reform could therefore be pursued alongside other land use litigation strategies in order to ease burdens on exclusivity.

E. Drawbacks of Judicial Reform

Any discussion of property tax reform needs to seriously grapple with the policy outcomes seen in California. *Serrano v. Priest* was a case about school equalization, but there was some hope that exclusivity would be eased by severing the connection between the tax base and the school system.²⁵⁰ This has not been the case, as exclusivity actually increased.²⁵¹ This is, at least in part, because about one year after *Serrano II*, Proposition 13 was put on the ballot and it passed with 64.8 percent of the vote.²⁵² Proposition 13 severely limited revenues that could be raised by property taxes by capping the rate at one percent—with narrow exceptions—basing valuations on purchase prices rather than current prices, and creating an onerous amendment process that

²⁴⁵ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 55–59 (1973).

²⁴⁶ See *Serrano v. Priest*, 557 P.2d 929, 948–58 (Cal. 1976).

²⁴⁷ See, e.g., *Brigham v. State*, 692 A.2d 384, 386 (Vt. 1997) (holding that the state constitution was violated by inequalities in education funding).

²⁴⁸ See Bernadette Atuahene, “*Our Taxes Are Too Damn High*”: *Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 NW. U. L. REV. 1501, 1504–06, 1534 (2018).

²⁴⁹ See *S. Burlington Cnty. NAACP v. Township of Mount Laurel*, 336 A.2d 713, 724, 733, 745 (N.J. 1975). The *Mount Laurel* Doctrine has had success but has been difficult to implement. See Kahlenberg, *supra* note 148.

²⁵⁰ See Fischel, *Fiscal Zoning*, *supra* note 35, at 23.

²⁵¹ See *id.*

²⁵² See FISCHEL, SERRANO AND PROPOSITION 13, *supra* note 199, at 535.

required two thirds of voters to approve special taxes.²⁵³ Immediately after the passage of Proposition 13, property tax payments plummeted by about 60 percent.²⁵⁴

Despite some controversy among scholars, Fischel has argued that Proposition 13 should be viewed as a direct backlash against *Serrano*.²⁵⁵ He argues that residents viewed property taxes as a fee for local services, especially schools, and when *Serrano* severed that connection, they responded by eliminating the “property tax system for schools.”²⁵⁶ These voters were disproportionately in wealthy communities that would have seen a tax increase.²⁵⁷ This example highlights the non-permanence of court remedies, as court-ordered redistribution can create backlash.

Through voting, California residents scrapped the property tax system rather than accepting reform generated by the judiciary. This approach ensured there was no tax increase on the wealthiest suburbs, which could have increased pressure to densify. Instead, the new property tax regime locked people into their neighborhoods.²⁵⁸ The new valuation rules created a “disincentive to sell, since [homeowners]...cannot transfer the tax benefit to the next owner.”²⁵⁹ “[P]eople stay[ed] in their homes longer” as Proposition 13 created a disincentive to mobility.²⁶⁰ In many cases, it continued incentives to create scarcity. Once an owner owns a home, they have strong incentives to keep housing scarce, because it will drive the value of their home up but will not increase their tax bill. This system has been abused by absentee owners who sit on houses for years, passing them down to their heirs while paying little in taxes.²⁶¹ As a result, the backlash may have made California’s land use problems even more severe, and suggests legislative change is preferable for effective and stable tax reform.

²⁵³ Special taxes are funds that are raised for a specific purpose. See TAYLOR, *supra* note 199, at 2.

²⁵⁴ See *id.*

²⁵⁵ See Fischel, *Fiscal Zoning*, *supra* note 35, at 22–23.

²⁵⁶ See *id.*; see also FISCHEL, SERRANO AND PROPOSITION 13, *supra* note 199, at 536.

²⁵⁷ See FISCHEL, SERRANO AND PROPOSITION 13, *supra* note 199, at 536–38; Robert Lindsey, *5 Years After Property Tax Slash: Power Shifts to California Capital*, N.Y. TIMES (June 5, 1983), <https://www.nytimes.com/1983/06/05/us/5-years-after-property-tax-slash-power-shifts-to-california-capital.html>.

²⁵⁸ See David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 131 (2017).

²⁵⁹ See *id.*

²⁶⁰ See *id.*

²⁶¹ See Ed Kilgore, *Rich Absentee Landlords Who Inherited Properties Keep Making a Killing in California*, N.Y. MAG.: INTELLIGENCER (Aug. 18, 2018), <https://nymag.com/intelligencer/2018/08/rich-celebrity-landlords-benefit-from-californias-prop-13.html>.

CONCLUSION

In many ways, exclusionary zoning is an economically rational response to a tangled web of tax and social incentives created at every level of government. The same incentives that create pressure to exclude also create vociferous opposition against reform since there are benefits to those who live in exclusive areas. Additionally, current tax policy and regulations incentivize land use through zoning laws that maximize driving and energy costs, contribute to global warming, and create environmental injustices. It is hard to organize around this since there is no immediate and distinct villain, no greedy factory owner polluting. Instead, perversely, homeowners are internalizing negative externalities in the wrong direction, and are being pushed to harm the planet. The incentives currently in place, from the federal to the local level, block density to the great detriment of the environment. The easiest way to interrupt this catastrophic chain is by intervening at the beginning. Property tax reform is a chance to create good environmental incentives, alongside a popular policy: taxing the rich.

Property tax reform could shift damaging financial incentives, which could both help current reform efforts and preclude future bad land use decisions. Property tax reform is the most promising intervention because it appeals to the median voter, the middle-class homeowner, who can overwhelm the wealthy voters to generate change to their benefit and to the environment's benefit. Undoubtedly, any reform will face obstacles, as those who benefit from the status quo will try to convince everyone else that reform will hurt them. Here, those against property tax reform can appeal to fears of loss of local control and possibly stoke existing fears undergirded by racist and classist assumptions. By removing tax policy from local to state, tax reform can circumvent some of these issues by severing the link between municipal spending, schools, and property tax. Ultimately, rather than being rewarded, communities should be punished financially for exclusion and the environmental harms it creates.

