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Hon. Cristin McCarthy Vahey, Co-Chair
Hon. Steve Cassano, Co-Chair
Planning and Development Committee, Connecticut General Assembly

RE: HB 6107 SUPPORT
HB 6611 SUPPORT
HB 6612 SUPPORT WITH AMENDMENTS
HB 6613 SUPPORT
SB 1026 SUPPORT WITH AMENDMENTS
SB 1027 OPPOSE

My name is Anika Singh Lemar. I am a Clinical Professor of Law at Yale Law School. For over fifteen years, I have studied and written about land use planning laws across the country while also practicing law, representing homeowners, municipalities, businesses, and not-for-profit organizations. I submit this written testimony today to urge you both to support housing diversity and opportunity in Connecticut and to promote licensed home-based child care.

You have the opportunity today to support housing diversity and opportunity, to support the local governments authorized to exercise Connecticut's zoning authority, and to clarify for those local governments their obligation to zone in furtherance of the general welfare and otherwise consistently with state law. HB 6107, HB 6611, and HB 6613 all clarify the minimum requirements of towns charged with implementing the State of Connecticut's power to zone. SB 1026, amended as advocated in written testimony submitted by the Partnership for Strong Communities, would ensure that commissioners and board members charged with enforcing land use and zoning law are trained to do so. I endorse testimony submitted by the Partnership for Strong Communities and Open Communities Alliance in connection with these four bills. I also endorse testimony submitted by All Our Kin in connection with HB 6612, which I support with amendments. I write separately, however, in an effort to dissuade legislators and members of the public from certain pervasive myths that appear to be dominating the conversation about much-needed zoning reform in Connecticut.

The United States constitution vests the general police power in states which, pursuant to that general police power, exercise a broad range of governing authority. Local governments do not, however, have any inherent vested authority. Instead, they derive the totality of their powers from state governments. States can and do grant powers to local governments. Here in Connecticut, that grant can occur in the State's constitution or, more frequently, state legislation about a given issue. With respect to any grant of authority from the state to the locality, state courts interpret the scope of the granted authority and how much power it gives the local government.

Connecticut grants to localities the power to zone in the state's Zoning Enabling Act, Chapter 124 of Title 8 of the Connecticut General Statutes. The Act literally enables local governments to zone. Without that statutory grant of authority, local governments have no authority to zone.

While the State of Connecticut delegates the power to zone to local governments, that delegation is not unconditional. Towns must zone in accordance with the requirements of Title 8, Chapter 124 of the Connecticut General Statutes. Over the years, the State has frequently refined and revised the parameters of local zoning authority. Unfortunately, towns today too often act in defiance of Section 124, for example, by ignoring its mandates that each town zone in accordance with regional, not local need, "promote housing choice and economic diversity," and "encourage the development of housing opportunities, including opportunities for multi-family dwellings."¹

The stubborn refusal by many of our towns to permit the creation of low-cost housing – whether or not subsidized – has kept supply low and prices high.² Nearly a quarter of Connecticut renters are severely housing cost-burdened, nearly half are housing cost-burdened and, despite slow or no population growth, Connecticut's vacancy rates are among the lowest in the nation.³

Since World War II, Connecticut's suburbs have seen greater growth in jobs and market rate housing than have our cities. But those suburban towns, using restrictive zoning codes, prohibit the development of low-cost housing. The Brookings Institute has found that our zoning codes are more restrictive here in Connecticut than anywhere else in the nation.⁴

Connecticut's most-restrictive-in-the-nation local zoning choices have statewide, and even national, impact.⁵ Local zoning choices inflate regional and statewide housing prices.⁶ Local zoning choices stymie economic growth. And local zoning choices perpetuate and entrench segregation.⁷

This is no more a fight about local control than the Civil War or the backlash against the Civil Rights Movement were fights over states' rights. Just as segregationists couched their support for hereditary inequality in states' rights, today's exclusionary zoners couch their support for

¹ Connecticut General Statutes Section 8-2.

² Edward L. Glaeser and Joseph Gyourko, *The Impact of Zoning on Housing Affordability*, Harvard Institute for Economic Research (2002).

³ Partnership for Strong Communities, *Housing Data Profiles*; United States Census Bureau *Housing Vacancies and Homeownership* (2020).

⁴ Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, Brookings Institute (2012). These findings are echoed in recent work from my colleague Robert Ellickson.

⁵ Chang-Tai Hsieh and Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 *American Economic Journal: Macroeconomics* 2 (April 2019).

⁶ As an economist might put it, local zoning has "extraterritorial effects on metropolitan housing prices." William A. Fischel, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 *Urban Studies* 317, 317 (February 2004). I am not an economist so I might instead put it, "what happens in Greenwich does not stay in Greenwich."

⁷ Jessica Trounstine, *The Geography of Inequality: How Land Use Regulation Produces Segregation*, *American Political Science Review* (2020).

hereditary inequality in local control. Defenders of exclusionary zoning seek to defend one thing: exclusionary zoning.

The fact is that land use planning and zoning are powers that belong to the State of Connecticut. The State has seen fit to delegate that authority to local governments provided local governments exercise that authority in a manner consistent with state law. Local governments in Connecticut have routinely flouted both state and federal law in their exercise of zoning authority.⁸ While I personally would endorse the state stripping zoning power from towns, none of the bills before you do that. Instead, they seek to clarify the scope of the state's delegation of power to towns, in the hopes that if the scope of that delegation is clarified, towns might stop undermining economic activity and entrenching segregation here in Connecticut. The bills before you today seek to provide more guidance, more facts, and more training to local zoning officials, in an effort to help those zoning officials do their job.

For the last fifty years, exclusionary zoning has dominated land use decision-making in the coastal United States. As a result, in places like Connecticut, "high prices have little to do with conventional models with a free market for land... [instead] zoning and other land use controls play the dominant role in making housing expensive."⁹ The overregulation of land and resulting dysfunctional housing market have given rise to households fleeing to places with lower housing costs. The entire national economy has suffered the results.¹⁰ Here in Connecticut, we are perhaps the poster child for this phenomenon, having magically brought together the twin evils of astronomical housing costs and stagnant growth. In recent years, states as diverse as Oregon, California, New Jersey, Vermont and Massachusetts have sought to provide greater guidance and parameters to the local governments that exercise their zoning powers.¹¹ These states are trying not to be the next Connecticut – simultaneously stagnant and unaffordable.

These are reasonable and necessary reforms. The hyperbolic response to which you are subjected today ought to look familiar to students of American history. "Jim Crow zoning," as one local zoning expert describes it, is receiving exactly the same defense Jim Crow itself did. Lies and deranged frenzy are the textbook response to any efforts to desegregate our communities and bring opportunity to a wider swath of Americans. Let's do better, Connecticut.

Sincerely,



Anika Singh Lemar

⁸ Over the years, towns such as Orange, Darien, Fairfield, and Milford have all undergone investigations by federal fair housing enforcement agencies.

⁹ Glaeser and Gyourko, *supra* note 2.

¹⁰ Hsieh and Moretti, *supra* note 5.

¹¹ In recent years, Oregon and Vermont, by state statute, eliminated single-family only zoning statewide; in Massachusetts, a bipartisan bill signed into law earlier this year by a Republican governor, mandates by-right multifamily districts near transit; California and New Jersey require towns to zone for their fair share of housing development.