

 ORIGINAL

FILED

03/27/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0039

DA 24-0039

IN THE SUPREME COURT OF THE STATE OF MONTANA

MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC,

Plaintiff / Appellee,

v.

STATE OF MONTANA,

Defendant.

FILED

MAR 27 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Appeal from the Montana Eighteenth Judicial District Court

Gallatin County

Hon, Mike Salvangi, DV-16-2023-1248

LAND USE CONSULTANTS' BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
THE PLAINTIFF

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INTEREST OF THE AMICUS CURIAE

Amicus curiae represents legal and policy experts versed in matters of land use regulation, planning, and public policy as they apply to the State of Montana and other areas.

STATEMENT OF THE CASE

Montanans Against Irresponsible Densification LCC (“MAID”) filed a facial challenge to four laws, SB 323 MT (2023), SB 382 MT (2023), SB 528 MT (2023), and SB 245 MT (2023) (“contested laws”), passed by the 2023 Montana Legislature in the 18th Montana District Court. MAID asserts that the laws, which are directed at promoting affordable housing, do not satisfy the rational basis standard. Specifically, MAID argues that the contested laws fail to meet the Rational Basis standard because they are arbitrary and capricious. Additionally, MAID asserts that the contested laws do not meaningfully contribute to increasing the supply of affordable housing.

SUMMARY OF THE ARGUMENT

This brief informs the specific issue of whether the contested laws improve housing affordability. This brief explains why laws promoting density, accessory dwelling units, and abolishing single-family zoning do not improve affordability. This brief also discusses how the agendas behind these laws have influenced the debate surrounding this legislation in Montana. Finally, this brief will present alternatives that can create a system of land use policy that protects property owners and the public while providing for increased affordable housing.

ARGUMENT

1. Density does not improve housing affordability.

Density advocates assert that an increasing density will result in more affordable housing. *See e.g.* ShelterWF, www.shelterwf.org (2024). However, evidence contradicts this claim. Wendell Cox, *Higher Urban Densities Associated with the Worst Housing Affordability*, *New Geography*, <https://www.newgeography.com/content/007221-higher-urban-densities-associated-with-worst-housing-affordability> (2021); *See also Appendix A.*

Data from urban areas in the United States demonstrates that whenever a jurisdiction constrains growth to promote density housing affordability declines substantially.

Quigley and Rosenthal observe:

In a study of post-World War II growth patterns in the United Kingdom . . . found that so-called urban containment policies tend to increase the long-run price of buildable residential land and finished housing. J. M. Quigley & L. A. Rosenthal, *The effects of land use regulation on the price of housing: What do we know? What can we learn?*, *Cityscape*, 69-137 (2005).

Policies directed at increasing density through abolishing single-family zoning and permitting Accessory Dwelling Units (ADUs) do not improve housing affordability. D. Ramsey-Musolf, *Accessory dwelling units as low-income housing: California's Faustian bargain*, *Urban Science*, 2(3), 89 (2018). There are a number of factors that contribute to this conclusion. The first is infrastructure cost. Dense areas require more expensive infrastructure. Joshua Utt and Wendell Cox, *The Costs of*

Sprawl Reconsidered: What the Data Really Show, Heritage Institute, <https://www.heritage.org/report/the-costs-sprawl-reconsidered-what-the-data-really-show> (2004). This applies to both the cost of constructing multifamily housing, Gerard Mildner, *Density at any cost*, Portland State University (2014); *See Appendix B*, and the cost of maintaining infrastructure J. I. Carruthers & G. F. Ulfarsson, *Urban sprawl and the cost of public services*. *Environment and Planning B: Planning and Design*, 30(4), 503-522 (2003). Second, density does not improve affordability because constraining the supply of buildable land reduces the supply and increases the price. This constraint of supply affects all types of housing. Livable California, Vancouver's Smartest Planner, Prof. Patrick Condon, Says Upzoning is a Costly Mistake 2/6/21, <https://www.livablecalifornia.org/vancouver-smartest-planner-prof-patrick-condon-calls-california-upzoning-a-costly-mistake-2-6-21/> (2024). Additionally, constraining the supply of buildable land incentivizes real estate speculation and further drives up prices. Paul Cheshire, *Urban containment, housing affordability and price stability-irreconcilable goals*, SERC Policy Paper 4, London School of Economics, https://eprints.lse.ac.uk/59240/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_LSE%20Spatial%20Economic%20Research%20Centre_SUNAINA%20SERC_sercpp004.pdf (2009).

Densifying existing communities is prohibitively expensive compared to expanding into undeveloped land since existing infrastructure is often built to accommodate only a certain population density. Gerard Mildner, *Density at any cost*,

Portland State University (2014). In many instances densifying existing urban areas to accommodate a higher density will result in infrastructure costs higher than the value of any housing that is added. Although arguments can be presented for densifying areas where there is no buildable land to expand into, for the majority of areas in Montana there is ample land. Only .2% of Montana's land area is “urban space”. United States Census, *A state-sorted list of all 2020 Census Urban Areas for the U.S., Puerto Rico, and Island Areas first sorted by state FIPS code, then sorted by Urban Area Census (UACE) code*, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>, (2024). Considering this, to claim that densification is a logical policy is erroneous.

Also, density does not reflect what most people demand. Multiple surveys have consistently noted that people prefer single-family housing. Specifically, 80% of respondents prefer single-family housing. Rose Quint, *What home buyers really want*, National Association of Homebuilders, (2021). Promoting multifamily and ADUs as being a primary solution to the demand for housing does not reflect what the majority of people want. Research shows that promoting density does not increase the supply of affordable housing. V. Calder, *Zoning, land-use planning, and housing affordability*, Cato Institute Policy, Analysis (823), (2017).

Assumptions are made about densification that do not reflect the reality of people's lives or the current economy. For example, many density advocates claim that if people live in dense areas, they will not use personal automobiles. M. Curry, *Induced Demand Is Hard to Explain – But It's Crucial to Get It*, Cal Streets Blog,

<https://cal.streetsblog.org/2022/03/02/induced-demand-is-hard-to-explain-but-its-crucial-to-get-it>, (2024). However, data suggest that even in dense areas the majority of people still drive. For example, *Appendix C*, describes the total transportation profile for the European Union.

Density advocates do not contemplate how creating a system dependent upon walking or public transportation or increasing congestion limits people's access to both jobs. One study noted the number of jobs available to someone with access to an automobile is substantially greater than someone who relies on public transportation. Center for Transportation Studies, *COVID-19 pandemic substantially changed commuting patterns, job access*, University of Minnesota, (2023).

2. ADUs do not improve housing affordability

ADUs do not improve housing affordability. Research on ADUs has demonstrated that ADUs have little effect on improving housing affordability. D. Ramsey-Musolf, *Accessory dwelling units as low-income housing: California's Faustian bargain*, *Urban Science*, 2(3), 89 (2018).

Proponents of ADUs claim that ADUs increase the supply of affordable housing. This assertion is qualified by several factors that make it invalid. First, permitting ADUs does not imply that they will be rented at an affordable rate. Research on the impact of permitting ADUs in California noted that although the number of housing units technically increased, very few if any ADUs were rented out at an affordable rate *Id.* Additionally, permitting ADUs does not imply that they will

be built. One study involving New Hampshire cities observed that laws permitting ADUs resulted in few units being constructed. Boyajian, Lyla. *Accessory Dwelling Unit Research Brief*, University of New Hampshire (2024). Also, ADUs tend to be smaller and not attractive to people with families. One housing advocate observed:

Whatever the jurisdiction's size limitations, the fact is ADUs are typically built as either studios or 1-bedrooms. For example, in California, which has more ADUs than any other state (30 percent of the 1.5 million total units), 86 percent of the renter-occupied ADUs have no more than two people living in them. While smaller units are needed, they won't be enough on their own, and in many places larger families face a particularly acute housing crunch. These size constraints mean families with children usually can't fit in ADUs, if they can even afford them—and they often can't. In San Diego, one builder was allowed several development perks, such as waived infrastructure fees and setback variances, by the San Diego Housing Commission based on a commitment to keeping the units "rent restricted" by commission-set standards. Even so, the developer was able to charge \$2,000 per month for a 480-square-foot ADU. In Vancouver, British Columbia, ADUs (called "laneway homes") are incredibly popular and easy to permit. They're also fairly small, ranging from 600 to 900 square feet, and expensive, renting for about \$3,000 per month. Selby King, *Why ADUs can't solve the nation's housing crisis*, Shelterforce, <https://shelterforce.org/2022/05/17/why-adus-cant-solve-the-nations-housing-crisis/>, (2024).

Given that most ADUs are associated with an existing single-family home, ADUs present a challenge since the homeowner must also be a landlord. Given that most homeowners have little experience with property management, the idea that they will make good landlords must be questioned. Some housing advocates have expressed skepticism of the idea of "small landlords":

Adding landlord responsibilities on top of development and construction is daunting enough to deter many homeowners from considering renting to an arm's-length tenant. . . . To lower-income homeowners . . . landlord duties are not only intimidating, they can be financially devastating if done improperly. "If you're not in this business, you can get really hurt by not knowing enough about the laws and the timelines for when things need to happen," . . . "There are a lot of things you have to know, and you almost feel like you need an attorney sometimes to meet those timelines or you can get sued. *Id.*

The impact of ADUs on infrastructure must be questioned. Infrastructure must be adequate to accommodate the additional residents. Even if the initial cost of adding an ADU is low, it is necessary to contemplate the costs associated with increased infrastructure use. It can be concluded that ADUs are not a realistic solution to increasing the supply of affordable housing.

3. Abolishing Single Family zoning does not improve housing affordability

Single-family zoning does not improve housing affordability. The lack of a relationship between single-family zoning and affordability can be demonstrated through data on affordability in the U.S: Affordability data from 1953 through 2023, *Appendix D* notes that for the majority of this period, house prices were stable and affordable despite the single zoning pervading.

Only after the 2000s and various finance-driven real estate bubbles did house prices increase. What this suggests is that since single-family zoning pervaded during this period, there is little correlation between single-family zoning and housing affordability. Additionally, communities that try to increase density are often the least affordable. *Appendix E*, details the Case-Schiller Index, median house

price/median income, for selected jurisdictions practicing urban containment and densification compared to the national average.

There are also reasons for single-family zoning that are both in the homeowner's and the public's interest. Single-family zoning originated from a desire of homeowners to have consistency in the type of building and use of the areas in which they lived *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926). Also, standards relating to lot sizes, setbacks, and parking requirements logically provide for infrastructure.

Contrary to the density advocate's claim, single-family zoning is neither racist or elitist. First, both race-based zoning and racially restrictive covenants have long been unconstitutional. Race-based zoning was banned in *Buchanan v. Warley* 245 US 60 (1917), and race-based covenants were banned in *Shelley v. Kraemer*, 334 U.S. 1 (1948). Second, people of color also prefer single-family housing. One survey conducted by the National Association of Homebuilders noted the strong preference of people of color for single-family housing:

[M]inorities are responsible for driving the increased interest in suburban living. Among Asian home buyers, the share in favor of a suburban location jumped nine points to 71% as a direct result of COVID-19, while also rising seven points among African-American and six points among Hispanic buyers. The share only increased one point among Caucasian buyers. Rose Quint (2021).

Efforts at forcing density have had a disproportionately negative effect on lower-income people and people of color. For example, the National Community

Reinvestment Coalition observed that African American homeownership was lowest in Portland Oregon, a city that practices densification. National Community Reinvestment Coalition, National Community Reinvestment Coalition, NCRC 2020 Home Mortgage Report: Examining Shifts During COVID-19, <https://ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/> (2024).

When we consider Montana, it is obvious that there is no shortage of land. Only .2% of Montana is urban space. United States Census, (2024). Theoretically, Montana could accommodate multiple times its current population, housing them all in single-family housing on large lots without substantially impacting open space. We can compare Montana to California since they are approximately the same size. Montana currently has 1.4 million residents while California has 39 million residents. *Id.* California despite having approximately 35 times the population is less than 5% urban land. *Id.*

4. The motives behind the contested laws must be questioned.

There are financial or ideological motives behind those who advocate for density. It can be demonstrated that the bias resulting from the financial or ideological interests of density advocates frustrates the pursuit of housing affordability.

5. *Financial motives of density advocates*

Financial interests represent individuals who desire profit from residential real estate. This is evidenced through the promotion of policies that remove community-based and logical regulations in favor of deregulation that advantages investors. As

noted above, ADUs or densification does not improve housing affordability.

However, these policies do increase the number of potential speculative investments.

For example, in an article by density advocates Market Urbanism, delineates the profitable investment logic of buying single-family homes and adding ADUs. J.

Fong, *Entrepreneurs and the Changing Political Economy of Housing*, Market

Urbanism, <https://marketurbanism.com/2022/04/06/entrepreneurs-and-the-changing-political-economy-of-housing/> (2024); *See also Appendix F.*

The current rhetoric of densification also serves the interest of investors by ignoring the infrastructure costs to society as well as the opportunity costs of destroying existing desirable housing or not expanding into areas that could be built on. These costs represent an externality that is borne by the public who must pay a higher price for lower-quality housing.

Financial interests are also advantaged by promoting density. Specifically, constraining the supply of buildable land creates an opportunity for speculation within those areas. Especially, individual home buyers must pay a premium for housing within an urban boundary while speculators can buy large swaths of land outside of an urban boundary and then charge a significant premium for that land once it is zoned to be within the high-density area. A similar logic applies to ADUs and densifying existing areas since the potential to densify a single-family house will then add a premium to the price of the house and lot. The premium will be of little value to a prospective homeowner but will result in an opportunity for an investor.

Wendell Cox, *The consequences of urban containment*, New Geography, <https://www.newgeography.com/content/003928-the-consequences-urban-containment>, (2024).

It is also possible to attribute financial motives to density advocates by considering who funds them. Both Americans for Prosperity and the Frontier Institute are conservative think tanks who advocate for density. Americans for Prosperity is funded by the conservative Koch brothers. Factcheck.org, *Americans for Prosperity*, www.factcheck.org/2024/01/americans-for-prosperity-7/, (2024). According to their Form 990, Americans for Prosperity received \$108 million in contributions in 2022, I.R.S. Form 990, *Americans for Prosperity*, (2022), while the Frontier Institute received \$330,000 in contributions in 2022, I.R.S. Form 990, *Frontier Institute*, (2022), from “undisclosed donors”. Influence Watch, *Frontier Institute*, <https://www.influencewatch.org/non-profit/frontier-institute/> (2024). The Koch brothers have substantial real estate holdings and stand to profit from advocating for densification policies. C. Moris, *Koch Industries is gobbling up real estate*, Fortune, (March, 2021).

6. Ideological motives of density advocates

Many density advocates possess highly ideologically motivated views of what the world should look like. Specifically, density advocates generally view low-density development, single-family housing, and automobile use as being undesirable social ills. For example, one publication promoting density described low-density suburban housing as the “Devil’s Density.” Environmental Protection Agency, *Essential Smart*

Growth Fixes for Urban and Suburban Codes, 47, 11, “Avoid the Devil’s Density” (2009); *See also Appendix G*. This view contradicts what the majority of Americans find desirable. Density advocates often describe their idealized communities in vague terminology such as being “vibrant”, “livable”, “environmentally friendly”, and “resilient” without providing specific justification for what defines these adjectives. ShelterWF, (2024). Density advocates also advocate for similarly vague positions regarding rural development. Such groups often claim to promote “open space” and prevent “sprawl.” *Id.* However, there is a tremendous degree of ambiguity with these descriptors. For example, there is no one definition of what constitutes “sprawl”. A. Von Hoffman, *The Historical Origins and Causes of Urban Decentralization in the United States*, Joint Center for Housing Studies Harvard University, (2002).

Whether it is financial or ideological motivations, both groups through their policy positions or monetary interests demonstrate motives other than a desire for objective policy.

7. Alternatives to forced density exist

Alternatives to the contested laws should be considered. For alternative policies to be viable they must conform to accepted principles of land use and a comprehensive understanding of public policy and law. Most acknowledge that land use law should not be monolithic in its mandates. One discussion of this is the Ruckleshaus study of Washington’s Growth Management Act (GMA). Growth Management Act, R.C.W, 36.70A (2024); William D. Ruckleshaus Center, *A roadmap to Washington’s future*,

https://s3.wp.wsu.edu/uploads/sites/2180/2019/07/A-Road-Map-to-Washington-Future_Final-Report_6.30.19-1.pdf (2015). The study was conducted by Washington State University and University of Washington researchers. The Ruckleshaus study evaluated the performance of the GMA. The GMA which was enacted in 1991 required counties in Washington state create a comprehensive plan. When we look at the impact of the GMA it is obvious that the top-down nature of the law has hurt affordability and increased the social divide between rural and urban areas. The Ruckleshaus study conducted interviews with stakeholders throughout Washington. The study found a pervasive theme, namely, that most people were not supportive of the top-down nature of the GMA. Most people felt that policy should be bottom-up and flexible. An excerpt from the Ruckleshaus study summarizes these conclusions:

At nearly every workshop and interview participants made the statement, 'one size does not fit all' when referring to the current growth planning framework. Many participants said that to reflect the different circumstances, assets, challenges, opportunities, and priorities in the diverse regions of the state, the growth planning framework may warrant a realignment of state, regional, and local roles in planning and a greater range of local choices, financial tools, and regulatory flexibility. Most participants said that the controversy and litigation inherent in the growth planning framework is a result of different views about the local versus state role in planning. Many participants said the original intent of Washington's planning system was to be "bottom up," with maximum discretion reserved to counties and cities, and that the state's role was to primarily be a provider of resources and guidance, rather than a "top-down" enforcer of state rules. . . Many rural area participants said that the rigorous GMA planning requirements were originally drafted to respond to growth pressures in rapidly-growing urban counties and cities along Interstate 5, but that this is not needed in rural counties and small towns. Many participants from rural counties and small towns said that the challenge in their jurisdictions was not how to manage rampant growth, but how to manage to grow. They said that their local conditions could not be accounted for in the current planning framework, that it limits

innovation and options for achieving the locally desired outcomes. Among the examples they cited were the GMA's provisions for Local Areas of More Intensive Rural Development (LAMIRDs) which they said were overly restrictive. Some said the LAMIRD rules create "economic sinkholes" that inhibit innovation and economic vitality and deprive counties of needed revenues. Some suggested that rural counties be allowed to opt out entirely of the GMA . . . Other participants focused on how to create a better fit between the GMA and the unique needs and circumstances of rural counties and small towns. Some suggested the creation of a GMA variant for rural counties that some called "GMA light" or "GMA 2.0." This concept would create a different alignment between the state and local roles and could incorporate several ways to create a better fit for rural counties. . . Overall, they said such an approach would provide rural counties and small cities a better balance of certainty and flexibility. . . . With regard to the state's nine urban counties, some participants said that due to the complexity, pace and scale of their growth challenges, these urban regions may warrant more detailed planning requirements, different fiscal tools, and closer coordination with state agencies than their rural counterparts. Some said that if future reforms to the growth planning framework are needed to meet the needs of these urban regions, it should not be presumed that the same need applies to the rural regions. They said that application of the "one size does not fit all" principle would suggest tailoring any future reforms to the GMA, or other parts of the planning framework, to fit the respective needs of the state's urban and rural regions. William D. Ruckleshaus Center, *A roadmap to Washington's future*, https://s3.wp.wsu.edu/uploads/sites/2180/2019/07/A-Road-Map-to-Washingtons-Future_Final-Report_6.30.19-1.pdf, 48-50, (2015).

Alternative policies should not reflect narrow financial interests and vague ideological notions of what society should look like. Instead, policy should be inclusive, vetted with diverse perspectives, and rooted in an understanding of competing social, economic, and environmental interests. Although the current zeitgeist of land use policy is to push for density and to villainize both single-family housing and automobile use alternative policies have been proposed. For example, legislation proposed in the 2021 legislative session aimed to create a procedurally

balanced empirically based land use policy. *See* H.B. 529, MT (2021); H.B. 528, MT(2021); H.B. 570 MT(2021). Also, a significant element within the planning community takes an approach to planning that is flexible and inclusive of different types of development. Berger, A., & Kotkin, J. (Eds.), *Infinite suburbia*. Chronicle Books, (2018).

Policies directed at increasing the supply of affordable housing must consider all actors and be based upon objective information such as market demand and the supply of buildable land rather than narrowly focusing on development styles that represent only a small niche of the built environment. Also, for a policy to be viable it must consider and balance the interests of both landowners and the public. The challenged laws fail to accomplish those goals since they fail to acknowledge that homeowners have an interest in the character of their neighborhood.

It is also likely that if implemented the challenged laws will only further complicate efforts at providing affordable housing. Although many of the proponents of these laws are likely well-intentioned, the lack of contemplation and development of the laws represents a fatal flaw in their design. For example, if zoning mandates uses that do not mirror or even acknowledge a community consensus what is there to stop regulations from mandating uses that depart even further from what a community deems desirable? Similarly, these laws do not contemplate that procedures already exist such as seeking variances under M.C.A. 76-2-223 (2024). Such variances are granted by elected officials and made in consideration of public as

well as local planning authority input. Given this incongruence, it should be acknowledged that the contested laws do not contemplate how to adjust established practices to meet new goals.

Also, the challenged laws do nothing to articulate what balance community interests should play in shaping the character of a neighborhood or community. Instead of presenting a system as to how to reconcile the competing interests of landowners and the community the challenged laws simply ignore this debate. Rather than ignoring such conflicts, effective policy must attempt to address the conflicts that have arisen under the existing system and improve the system whether it be regulatory or procedural to resolve these conflicts. One approach to addressing this would be to develop a system of “contiguous rights” *See Appendix H.* or variable interests in land that is adjacent to an individual parcel.

The challenged laws do not contemplate well-established policy analysis strategies that would help lawmakers and communities address the issue of providing their residents with attractive and affordable housing. For example, these laws do not contemplate well-established features of land use policy such as community input, site-specific infrastructure analysis, demand analysis, and community-level analysis. Although no regulatory framework will ever satisfy all stakeholders these laws take the state of land use policy in Montana in the wrong direction. Rather than abolishing single-family zoning or mandating ADUs, state-level policy could mandate that communities engage in an inventory analysis to determine what policies would be

justified in their community. Additionally, the conglomeration of interests that have promoted these laws has paid little or no attention to extending a rational planning process to rural areas where there is abundant land to expand on. Whether it is financially or ideologically unattractive to contemplate how better to facilitate development in rural areas, the current policies do little to take advantage of what clearly is an abundant resource in Montana. From this, it can be concluded that any rational land use policy should holistically and as objectively as possible contemplate policy from the perspective of a neutral arbiter rather than an advocate of a certain financial or ideological agenda. The challenged laws fail to do that.

8. Other challenges to housing affordability

Policy relating to affordability must also consider other factors that impact affordability beyond land use policy. Housing financialization whether it is speculative investors buying up owner-occupied properties or the proliferation of short-term rentals has had an effect on housing affordability. D. Anderson & S. Bokhari, *Real Estate Investors Are Buying a Record Share of U.S. Homes*, Refin, <https://www.redfin.com/news/investor-home-purchases-q4-2021/>, (2022).

For example, in 2022 43% of all single-family homes purchased in the Atlanta metropolitan area were purchased by investors. J. Adams, *Bad news for both metro areas home buyers and renters*, Fox 5 Atlanta, <https://www.fox5atlanta.com/news/bad-news-for-both-metro-atlanta-home-buyers-and-renters> (2022). Regardless of the efficacy of land use policy, without addressing

financialization it is unlikely that the housing affordability issue will be addressed in Montana.

The contested laws also do not contemplate well-studied policies relating to affordable housing. A review of academic literature on affordable housing concludes that policies including subsidies, vouchers, public housing, land trusts, and covenants designed to ensure affordability and owner-occupancy, are effective at promoting affordability. See T. Sinai & J. Waldfogel, *Do low-income housing subsidies increase the occupied housing stock?* *Journal of public Economics*, 89(11-12), 2137-2164, (2005); D. Carlson, R. Haveman, T. Kaplan, & B. Wolfe, *The benefits and costs of the Section 8 housing subsidy program: A framework and estimates of first-year effects.* *Journal of Policy Analysis and Management*, 30(2), 233-255, (2011); Center for Popular Democracy, *Social housing for all*, https://www.populardemocracy.org/sites/default/files/Social%20Housing%20for%20All%20-%20English%20-%20FINAL%203-21-2022_0.pdf (2022); The Affordable Housing Land Trust Act (AHLT Act), Maryland Code Annotated § 14-501, (2024); O.R.S. 456.270 (2024). These examples of policies highlight how the contested laws fail to contemplate policies available to help create affordable housing. Also, it is noteworthy that in some areas of Montana such as Bozeman, traditional planning approaches are already having a positive impact on affordability. For example, Maggie Collister as of September 2023, there is now a significant surplus of rentals in Bozeman as of September 2023. Maggie Collister, *Big Changes in Bozeman's*

Housing Market, Sterling CRE Advisors, <https://www.sterlingcreadvisors.com/big-changes-in-bozemans-housing-market/> (2024).

CONCLUSION

For the above reasons it can be concluded that the contested laws do not improve housing affordability. It should also be concluded that these laws need to be invalidated and replaced with ones that result from objective analysis and true public engagement and deliberation.

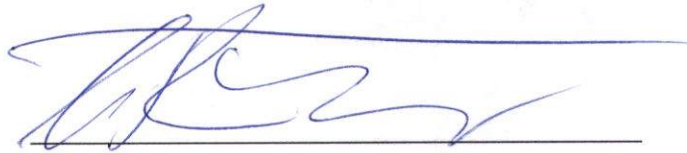
March 26th, 2024



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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the body of this brief contains 4,517 words, as calculated by Microsoft Word. The brief is double-spaced in size 14 Times New Roman Typeface.



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CERTIFICATE OF SERVICE

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