

# WHEN YIMBY IS NOT ENOUGH: THE NEED FOR LIMBY – LOCALS IN MY BACKYARD

*Kevin Frazier, J.D., M.P.A.\**

## I. INTRODUCTION

For too long, the importance of a hometown has been understated and understudied. Our democracy is premised on strong, small, geographical communities. The crafters of our Constitution assumed and accounted for elected representatives having strong ties to small communities and fiercely advocating for their neighbors.<sup>1</sup> Centuries later, the strength of our communities continues to influence the caliber of democracy and the possibility of achieving individual aspirations. That strength is waning.

The nationalization of everything, which describes the increasingly national focus of news media, political parties, and civic discourse, and the absence of locally oriented alternative institutions and forums, has been accelerated by the ease with which some of us can work, shop, and live with few, if any, connections to our physical community.<sup>2</sup> As some Americans become less attached and, eventually, less willing to assist their neighbors, some of those neighbors will suffer immensely – as will our democracy, which was intended to operate as place of compromise among the competing interests of many views emerging from small districts rather than as a battleground for two ideologies.

For many Americans, especially those with less formal education, the strength of their community and their ability to remain in such a community is essential to their social, emotional, and financial well-being. This article advocates for YIMBY (Yes, In My Backyard) housing proponents to become stalwarts of LIMBY (Locals In My Backyard). Locals, here, refers to individuals born to a community (“true locals”) or who have established roots in a community through long periods of residency there (“adopted locals”).

---

\* Mr. Frazier currently serves as clerk to Montana Supreme Court Chief Justice Mike McGrath. He holds a J.D. from the University of California, Berkeley, School of Law, an M.P.A. from the Harvard Kennedy School, and a B.S. in Economics from the University of Oregon. Beginning the 2023 Academic Year, he will serve as a Visiting Professor at the Knudson School of Law at the University of South Dakota. He is profoundly grateful for the support of his fiancé, Dalton Fusco, as well as for the scholars who helped motivate me to write this paper including, but not limited to, Rafael Carbonell of the Harvard Kennedy School and Kathryn Abrams of the UC Berkeley School of Law.

<sup>1</sup> See, e.g., James Madison, *The Federalist* No. 10 (detailing how the structure of the U.S. Congress accounted for representatives having ties to their respective local communities).

<sup>2</sup> See *infra* VI. THE DEMOCRATIC IMPORTANCE OF LIMBY.

This shift in thinking – from YIMBY to LIMBY – will strengthen our democracy and provide housing for those most in need of remaining connected to their community.

LIMBY is a new and necessary way of thinking about affordable housing. Policies designed to increase affordable housing have failed for two reasons: first, policymakers paying inadequate consideration to the implementation of those policies; and second, those same officials insufficiently analyzing how those policies would affect current residents.<sup>3</sup> As a result of those failures, current residents have found it harder and harder to stay in their adopted or original hometowns. Even cities that have received praise for passing purportedly impactful affordable housing policies have seen locals flee to cheaper jurisdictions. Policymakers must do more than just think about increasing the supply of housing; they must also weigh the extent to which those new units will allow current residents to stay in their hometowns.

The first part of this article analyzes the current housing markets in Bend, Oregon and Boise, Idaho to show that Americans with excess income and wealth are forcing residents of those communities to move away from where they possess support systems critical to personal well-being and where they have the sort of local knowledge that's essential to being a good citizen. The second part reviews housing policies, with a focus on those enacted by City of Portland and the State of Oregon, to reveal how they have failed to increase supply and to halt the displacement of residents. The third part dives into the especially damaging effect that short term rentals (STRs) have had on the ability of Americans to stay put. The fourth part recommends policies that give residents more choice as to whether they stay in their community or not while also making the housing market more equitable. The fifth part briefly discusses the legality of such policies. Sixth, and finally, the article concludes with a reminder of the importance of strong, small, geographical communities.

## II. HOUSING IN THE 21<sup>ST</sup> CENTURY: LOCAL RESIDENTS ARE INCREASINGLY LOSING THEIR HOMETOWNS

If voting by feet can be trusted, then Americans are very much in favor of staying in their adopted or original hometowns. “Three-quarters of adults say it is at least somewhat important to them personally to live in a community where family is nearby, including 36% who say it is very

---

<sup>3</sup> See Joe Cortright, *Inclusionary Zoning: Portland's Wile E. Coyote Moment Has Arrived*, City Observatory (Mar. 9, 2021), <https://cityobservatory.org/inclusionary-zoning-portlands-wile-e-coyote-moment-has-arrived/>

important,” according to a May 2022 Pew poll.<sup>4</sup> In recent decades, Americans lived with comparatively less fear of being involuntarily ejected from their hometowns due to housing costs.<sup>5</sup> In other words, most Americans had the option to stay put, if they wanted to do so – and many decided just that. Back in 2008, excluding military and education, 37 percent of Americans had never resided outside of their hometown.<sup>6</sup> More recently, as of 2015, the “typical” American adult lived less than twenty miles away from their mom.<sup>7</sup> Surely, in some cases, many of these Americans would have preferred to live elsewhere. Generally, though, a hometown carries benefits, such as the possibility of free childcare provided by loved ones and knowledge of local issues, that no other place can provide (without paying for those benefits or spending enough time in that area to acquire those benefits). What’s important for this article, however, is the fact that in prior decades fewer Americans felt forced to look for a new community.<sup>8</sup> Geographic stability and predictability allows residents to make investments in themselves and in their community that may have positive externalities; all else equal, the law and public policy should favor such externalities.

The ability to choose your geographic community or to remain in your current one can be imperative to an individual’s well-being. The ability to reside in our hometowns comes with tremendous emotional, social, and financial benefits.<sup>9</sup> Emotionally, our hometowns contain the memories of friendships made, neighborhoods formed, and maturation completed. Socially, hometowns are where our social capital may be at its highest: there, you can rely on friends, neighbors, and your doctor (whom you’ve seen for decades) to help you out on a moment’s notice, to vouch for you when that job opportunity comes up, and to support you in other professional and

---

<sup>4</sup> Kiley Hurst, *More Than Half of Americans Live Within an Hour of Extended Family*, PEW RESEARCH CENTER (May 18, 2022), <https://www.pewresearch.org/fact-tank/2022/05/18/more-than-half-of-americans-live-within-an-hour-of-extended-family/>

<sup>5</sup> See Sophie Kasakove, *With Cases Piling Up, an Eviction Crisis Unfolds Step by Step*, THE NEW YORK TIMES (Nov. 7, 2021), <https://www.nytimes.com/2021/11/07/us/evictions-crisis-us.html> (reporting a spike in concerns among Americans about the possibility of being evicted).

<sup>6</sup> Paul Taylor et al., *American Mobility: Who Moves? Who Stays Put? Where's Home?* PEW RESEARCH CENTER (Dec. 29, 2008), <https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2010/10/Movers-and-Stayers.pdf>.

<sup>7</sup> Quoctrung Bui and Claire Cain Miller, *The Typical American Lives Only 18 Miles From Mom*, THE NEW YORK TIMES (Dec. 23, 2015), <https://www.nytimes.com/interactive/2015/12/24/upshot/24up-family.html>.

<sup>8</sup> Kasakove, *supra* note 5.

<sup>9</sup> See generally Rainesford Stauffer, *The Case for Moving Back to Your Hometown*, THE ATLANTIC (May 6, 2021), <https://www.theatlantic.com/family/archive/2021/05/move-back-hometown-big-city-small-town-success-failure/618819/>.

personal endeavors.<sup>10</sup> Relatedly, hometowns are often where our financial security is highest given the social capital that exists there and the availability of familial and formal financial support when times get tough.<sup>11</sup>

Yet, more and more Americans are losing the ability to decide where they call home. Certain Americans in certain parts of the country have accumulated sufficient economic resources to move anywhere (and, in many cases, push anyone out).<sup>12</sup> Geographically, these Americans tend to live in "[b]ig, techy metros like San Francisco, Boston, and New York with populations over 1 million" people where the economy has "flourished" since the end of the Great Recession.<sup>13</sup> Median income in these areas grew from \$54,000 in 2008 to \$61,000 in 2018.<sup>14</sup> Comparatively, the median income outside of these bubbles started at \$55,000 in 2008 before declining by \$2,000 to \$53,000 in 2018.<sup>15</sup>

Demographically, white Americans are likely to have higher incomes and greater wealth – and, therefore, more means to move to more places – than non-white Americans.<sup>16</sup> More elderly Americans also demonstrate more control over their location when compared to members of younger generations. Older Americans with greater savings have had more success in controlling their choice of community. Consider that, of all homeowners,<sup>17</sup> Americans in the 65-and-over cohort constitute a third of homeowners and are acquiring homes at a faster rate than younger Americans.<sup>18</sup>

Academically, Americans with more formal education are more likely

---

<sup>10</sup> Bui & Miller, *supra* note 7.

<sup>11</sup> See, e.g., Jonathan Mintz, *Neighborhood Financial Services Study: An Analysis of Supply and Demand in Two New York City Neighborhoods*, New York City Department of Consumer Affairs at 10 (June 2008) (summarizing how residents in New York City neighborhoods often rely on neighbors for short-term loans and financial advice)

<sup>12</sup> Even before lifestyle migration took off during the pandemic, specific groups of Americans were disproportionately being displaced by individuals with enough income to choose where they would like to live. From 2000 to 2013, at least 135,000 black and Hispanic residents were uprooted from their local community due to an influx of wealthy individuals moving into the area. Jason Richardson et al., *SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES*, National Community Reinvestment Coalition at 4 (Mar. 19, 2019).

<sup>13</sup> Clara Hendricksen et al., *Countering the Geography of Discontent: Strategies for Left-behind Places*, BROOKINGS (Nov. 2018), <https://www.brookings.edu/research/countering-the-geography-of-discontent-strategies-for-left-behind-places/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDERAL RESERVE (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

to live outside of their hometowns than those with, for example, a high school degree or less.<sup>19</sup> Only fourteen percent of Americans without a high school degree live away more than an hour's drive from any extended family.<sup>20</sup>

Yet, as the supply of housing stagnates with respect to demand and the cost of housing soars,<sup>21</sup> low-income Americans may have no other choice than to move away from where their social and human capital is the highest. White, educated Americans residing in economically prosperous cities (“WEEMs” – White, Educated Elders in Metros) have the greatest ability to move to a new community or to choose to stay put, due to their financial situation.<sup>22</sup> For WEEMs, rapidly rising housing prices represent a financial inconvenience. However, for non-WEEMs, an increase in rent can force life-altering decisions such as moving away from loved ones. Unfortunately, more and more Americans are confronting economic headwinds that may force them to look elsewhere for a community to call home.<sup>23</sup>

Housing as an asset has become too financially lucrative to expect that lower-income individuals in many communities will ever have a chance to remain in their hometowns. Sixty-seven of the top 100 housing markets experienced record-high appreciation at some point in 2021 and, among the other thirty-three markets, home prices increased by at least nine percent.<sup>24</sup> Similarly, rents for apartments in professionally managed properties jumped by nine percent in the first quarter of 2022 when compared to the year prior.<sup>25</sup> To make matters worse, the supply of homes for sale and rental units reached all-time lows in recent years. For example, rental vacancy rates in the professionally managed apartment stock hit an all-time low of less than five percent in the third quarter of 2021.<sup>26</sup>

---

<sup>19</sup> Hurst, *supra* note 4 (reporting that nearly a third of all individuals with graduate degrees live without any extended family within an hour's drive).

<sup>20</sup> *Id.*

<sup>21</sup> Conor Dougherty and Ben Casselman, *We Need to Keep Building Houses, Even if No One Wants to Buy*, NEW YORK TIMES (July 23, 2022), <https://www.nytimes.com/2022/07/23/business/housing-market-crisis-supply.html> (providing an overview of reasons for an extensive housing shortage that has caused housing prices to increase).

<sup>22</sup> See *supra* notes 12-19 and accompanying text.

<sup>23</sup> Alvin Chang, *Those Who Leave Home, and Those Who Stay*, VOX 8:17 AM (Jul. 25, 2018), <https://www.vox.com/policy-and-politics/2017/6/15/15757708/hometown-stay-leave> (reporting that buying a home is one of the main reasons people move, which demonstrates that the housing shortage is forcing locals priced-out of their communities to gaze at the markets in other locations).

<sup>24</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* 10 (2022), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_State\\_Nations\\_Housing\\_2022.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf)

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.*

## A. Locals Have Already Been Displaced from Communities Without LIMBY Policies

The LIMBY policies presented in this article can help the remaining Americans push back against those with the capacity to push them out of their communities. Unfortunately, many Americans in communities such as Bend, Oregon and Boise, Idaho have already lost their ability to stay put.

### 1. Overview of Bend, Oregon

Bend, Oregon locals have recently experienced the financial pressure and displacement caused by an influx of WEEMs. In the 1990s, less than 21,000 people resided in the then-sleepy mountain town.<sup>27</sup> The city's growth then accelerated in periods of substantial in-migration.<sup>28</sup> During the four-year period between 2007 and 2011, 1,694 Californians moved to the area. Locals sensed that their community had become a target of folks looking for a change of scenery.<sup>29</sup> Then, another wave came between 2012 and 2014 and deepened that sense. The majority of the 3,411 new residents to Deschutes County (of which Bend is the county seat) came from California.<sup>30</sup> By 2015, the once-21,000-person town became a city of more than 84,000 – an increase of 410%;<sup>31</sup> Californians made up 16% of that growth.<sup>32</sup>

The resulting unease felt by locals, however, has yet to manifest in responsive policies meant to prioritize locals staying in their community.<sup>33</sup> Consequently, the California in-migration culminated in many locals having to find a new place to call home. The locals that withstood the surge in population faced an unfortunate side effect of being lucky enough to remain in Bend – an inadequate and expensive housing market that made it particularly difficult to stick around

Different policies could have mitigated the displacement of Bendites – a decade ago, Bend's housing market was in a very different place. Back in 2012, Bend had a surplus of 1,486 housing units according to the Up for

---

<sup>27</sup> Ken Maes, *Bendifornia: What's Driving the Northern California Migration*, Oregon Business (Nov. 5, 2015), <https://www.oregonbusiness.com/article/item/15244-bendifornia-what-s-driving-the-northern-california-migration>

<sup>28</sup> See Xiaomin Ruan et al., Population Res. Cen., *Coordinated Population Forecast for Deschutes County, Its Urban Growth Boundaries (UGB), and Area Outside UGBs 2015-2065* (2015), <https://www.bendoregon.gov/home/showpublisheddocument/30925/636312296303400000>.

<sup>29</sup> Aaron West, *Migration Numbers Show Continuing 'Californication' of Bend*, AP News (Sept. 19, 2016), <https://apnews.com/article/b15514226f4e406b858a704c98a53ea9>

<sup>30</sup> *Id.*

<sup>31</sup> Maes, *supra* note 27.

<sup>32</sup> *Id.*

<sup>33</sup> See *infra* notes 48-51 and accompanying text.

Growth Housing Underproduction dataset.<sup>34</sup> Then, a switch flipped, and the attempted policy solutions did not emerge in time to keep locals in town.<sup>35</sup> Demand to live in the area soared and the housing stock has lagged woefully behind. In 2013, there was a shortage of 2,803 units of housing.<sup>36</sup> By 2019, the shortage had grown to 6,550.<sup>37</sup> The housing shortage worsened during the COVID-19 pandemic.<sup>38</sup> In the summer of 2020, as a consequence of insufficient supply and growing demand, home sale prices in Bend increased by 15 percent.<sup>39</sup>

Many locals have felt pressure to move out due to the resulting unaffordability of housing in the area; indeed, a share of them have already succumbed to that pressure and moved away from the place they called home. A survey of Bend residents (Bendites) by the Bend Chamber of Commerce revealed that two-thirds of residents knew someone who had left the city because of the unaffordability of housing.<sup>40</sup> The affordable housing manager at the City of Bend admitted that the city is struggling to make enough space for folks, like essential workers, to stay in town.<sup>41</sup>

To Bend's credit, it has tried to make it easier for locals to stay in the city by accelerating efforts to increase affordable housing.<sup>42</sup> More than 1,000 units were added between 2020 and 2022 and the city anticipates the creation of an additional 1,600 units in the near future.<sup>43</sup> However, even if the city succeeds in creating new housing, there are no policies in place to increase the odds of that housing ending up in the hands of locals.<sup>44</sup> Instead, WEEMs will likely win in head-to-head contests against Bend residents over any

---

<sup>34</sup> Up for Growth, *2022 Housing Underproduction Dataset*, <https://www.upforgrowth.org/form/underproduction-data-download> (last visited Aug. 27, 2022) [hereinafter, Up for Growth].

<sup>35</sup> See *infra* notes 48-51 and accompanying text.

<sup>36</sup> Up for Growth, *supra* note 34.

<sup>37</sup> *Id.*

<sup>38</sup> Noah Chast, *Bend Says It's 'Ahead Of The Curve' in Battling Housing Crisis, Compared to Other Oregon Cities*, KTVZ (July 14, 2022, 4:51 PM), <https://ktvz.com/news/2022/07/14/bend-ahead-of-the-curve-in-battling-housing-crisis-compared-to-other-oregon-cities/>.

<sup>39</sup> Laurel Brauns, *The Bubble That Won't Burst*, The Source Weekly (Oct. 7, 2020), <https://www.bendsource.com/bend/the-bubble-that-wont-burst/Content?oid=13398133>.

<sup>40</sup> *Bend Chamber Workforce Housing Initiative*, Bend Chamber, <https://bendchamber.org/workforce-housing-initiative/> (last visited Aug. 27, 2022).

<sup>41</sup> Brauns, *supra* note 39.

<sup>42</sup> Chast, *supra* note 38.

<sup>43</sup> *Id.*

<sup>44</sup> See generally *Affordable Housing, City of Bend*, <https://www.bendoregon.gov/government/departments/economic-development/affordable-housing-program> (last accessed Sept. 16, 2022) (containing no policies specifically tailored to assisting natives to Bend or long-term residents in their respective efforts to stay in Bend).

houses that come onto the market.<sup>45</sup> Nationally, out-of-state migrants to new communities similar to Bend may have as much as \$200,000 more in their housing budget, which allows them to outbid locals.<sup>46</sup> In Boise, the average out-of-state buyer has a budget of \$738,000 whereas the average local has a budget of just \$494,000.<sup>47</sup>

To Bend's discredit, this issue has been on the horizon for a long time. In 2016, for example, a state economist pointed out that "meaningful contributors to [Bend's] local workforce were being priced out of the local housing market."<sup>48</sup> Moreover, even professionals earning well above a median wage at that time lacked the financial resources to purchase a home in the area going for the median price.<sup>49</sup>

Furthermore, some of the policies under consideration by the City may diminish what makes Bend such a special place to call home in the first place. For instance, the head of the Bend Chamber of Commerce has advocated for expansion of the urban growth boundary (UGB) around the city.<sup>50</sup> The UGB, when compared to jurisdictions with few, if any, restrictions on sprawl, encourages denser development and ensures that the outdoor areas unique to Central Oregon remain protected. So far, state officials have denied efforts by Bend to spread out (rather than build up).<sup>51</sup> If city officials rush to expand the UGB without instituting any policies to prioritize locals when it comes to affordable housing, then the resulting housing will only diminish outdoor recreation while perpetuating the displacement of locals.

Other policy ideas to address the housing crisis in Bend similarly do not prioritize locals and will likely have unintended negative consequences. For instance, some officials have championed the legalization and rapid development of accessory dwelling units ("ADUs") as a meaningful way to increase the supply of affordable housing.<sup>52</sup> So far, ADU policies have lacked

---

<sup>45</sup> See, e.g., Conor Dougherty, *The Californians Are Coming. So Is Their Housing Crisis.*, N.Y. Times (Feb. 21, 2021), <https://www.nytimes.com/2021/02/12/business/economy/california-housing-crisis.html>.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Damon Runberg, *Revisiting "Who Can Afford Housing in Bend?"*, Southern Oregon Business Journal (June 9, 2021), <https://southernoregonbusiness.com/revisiting-who-can-afford-housing-in-bend/>.

<sup>49</sup> *Id.*

<sup>50</sup> Bola Gbadebo, *Bend Chamber Leads Initiative to Address Housing Affordability, Availability*, KTVZ, <https://ktvz.com/news/bend/2021/10/26/bend-chamber-convenes-business-coalition-in-bid-to-create-more-workforce-housing/>.

<sup>51</sup> See Brauns, *supra* note 39 ("Adding to the shortage is the fact that there was very little building in Bend at all between 2008 and 2016 as the city struggled to get a new UGB expansion approved by the state[.]").

<sup>52</sup> Gbadebo, *supra* note 50.



any sort of bias toward helping locals stay put.<sup>53</sup> And, where ADUs have been a focus of housing advocates, they have yet to report real changes in affordability and supply.<sup>54</sup> One last shortcoming – discussion of ADUs takes up valuable political resources with little return on investment.<sup>55</sup> Every new policy idea requires countless hours of public consultation, city development of new permitting processes, and city development of new forms, etc.

Action for action’s sake – by touting the merits of ADUs, for instance – will do nothing to help locals remain in Bend. Nor will such action help the displacement of other aspects of what makes Bend special. Right now, locals are being forced to rely on their deep roots to find affordable housing. One local – Justin – attributes his continued presence in Bend to the fact that through “friends of friends” he has avoided the local rental market.<sup>56</sup> Justin’s dedication to Bend illustrates the lengths locals will go to stay close to their roots and to their community. However, for folks who have yet to forge friendships with homeowners, the discovery of housing through social connections is unlikely, which explains why so many Bend locals were displaced.

The experience of other locals, such as my friend, McKyla, reveals the limits of deep roots when it comes to helping locals withstand the pressures exerted by WEEMs moving into Bend. McKyla grew up in Bend, had family and friends in Bend, and worked for the local library. Her boyfriend had similarly deep roots. Despite their efforts to save, which included living with McKyla’s parents for more than a year, they could not compete against WEEMs in the housing market. Ultimately, McKyla had to move to Portland, Oregon – effectively trading the comfort of her hometown for a home she could actually afford.

The upshot of these stories is that Bend is increasingly home to WEEMs who can afford the high cost of living.<sup>57</sup> Meanwhile, former Bend

---

<sup>53</sup> See generally *Accessory Dwelling Unit Quick Reference Guide*, City of Bend (Sept. 9, 2022) (restating City of Bend guidance and laws – none of which requires specific efforts to prioritize Bendites when selecting sellers or tenants).

<sup>54</sup> See Kathleen Gallagher, *ADUs Could Help Solve Hawaii's Homeless Issue, but the Sewers Need to be Fixed First*, Pacific Business News, <https://www.bizjournals.com/pacific/blog/2015/12/adus-could-help-solve-hawaii-homeless-issue-but.html>; Noelle Fujii-Oride, *ADUs Seemed Like a Simple Solution to Hawai'i's Housing Crisis*, Hawaii Business Magazine (June 1, 2022), <https://www.hawaiibusiness.com/accessory-dwelling-units-adu-affordable-housing-hawaii-real-estate/>.

<sup>55</sup> See Fujii-Oride, *supra* note 54 (describing the resources expended by government officials to push for policies allowing for ADU development).

<sup>56</sup> Brauns, *supra* note 39.

<sup>57</sup> Damon Runberg, *Central Oregon Migration Patterns BEFORE the Onset of the Pandemic*, State of Oregon Employment Department (Feb. 11, 2022), <https://www.qualityinfo.org/-/central-oregon-migration-patterns-before-the-onset-of-the->

locals are looking for new homes in new places. A failure to pass LIMBY policies in one community, such as Bend, results in the displacement of locals who then end up displacing locals in other communities. Boise, Idaho is currently struggling against this kind of secondary displacement – where residents are trying to figure out how to stay put as WEEMs and displaced locals from California, Oregon, and Washington seek their own slice of a finite Boise.<sup>58</sup>

## 2. Overview of Boise, Idaho

An Idahoan making minimum wage would need to work more than 80 hours every week to afford to a fair-market one-bedroom apartment. A report by the National Low Income Housing Coalition specified that the state's minimum wage would need to double and then some – to \$18.87.<sup>59</sup> from its current \$7.25.<sup>60</sup> – to allow a person to afford a one-bedroom home without being rent burdened (i.e., spending more than 30% of their income on housing). Consider that 19,000 people in Idaho work in retail and earn \$14.42 per hour.<sup>61</sup> Many of these people have no chance at staying in their hometown when outsiders from California and elsewhere are coming to town with cash offers and deep savings. The tenuous hold locals have on their home is even more shaky in one part of Idaho – Boise.

Population growth in the Boise area resulted in an increase in rent of twenty percent in just one year.<sup>62</sup> Unsurprisingly, many residents now find themselves in an untenable position: stay and pay more than fifty percent of their income on rent, or leave and move away from their community.<sup>63</sup> The folks causing this displacement threat are generally not from Idaho – instead, they tend to fit the WEEM profile. As of 2016, more than one in five new

---

pandemic [hereinafter, Runberg BEFORE].

<sup>58</sup> *See id.*

<sup>59</sup> *How Much Do You Need to Earn to Afford a Modest Apartment in Your State?*, National Low Income Housing Coalition at 22 (2022), <https://www.nlihc.org/oor> (last visited Aug. 27, 2022).

<sup>60</sup> *Wage & Hour FAQs*, Idaho Dept. of Labor, <https://www.labor.idaho.gov/dnn/Businesses/Idaho-Labor-Laws/W-H-Frequently-Asked-Questions-FAQs#:~:text=What%20is%20the%20minimum%20wage,90%20calendar%20days%20of%20employment> (last visited Aug. 27, 2022).

<sup>61</sup> Shaun Goodwin, *Over 136,000 Idahoans Can't Comfortably Afford to Live. Here's How Much They Need to Make*, Idaho Statesman (Aug. 26, 2022), <https://www.idahostatesman.com/news/business/article264063196.html#storylink=cpyhttps://www.idahostatesman.com/news/business/article264063196.html>.

<sup>62</sup> Kimber Wymore, *High Rent, Low Pay, and No Where to Go: The Affordable Housing Crisis*, Boise State University (n.d.), <https://www.boisestate.edu/presidents-writing-awards/high-rent-low-pay-and-no-where-to-go-the-affordable-housing-crisis/>

<sup>63</sup> *Id.*

residents to Idaho came from California.<sup>64</sup> Relatedly, Los Angeles, Seattle, and Portland – all places struggling with affordable housing – export the majority of new Boise residents.<sup>65</sup>

The sustained population growth combined with the unrealized investment in the housing stock has put Boise in an even worse housing situation than Bend; Boise is 13,000 units of housing short of the existing demand.<sup>66</sup> The resulting housing pressure has made the entire region unaffordable for those seeking to stay in their hometown. Not only is Boise one of the top twenty-five metro areas to which people moved from even pricier cities, its surrounding cities, like Nampa, Meridian, and Caldwell, are growing at an even faster rate.<sup>67</sup> So, if you were born in Boise, but were displaced by a Bend resident who was forced out by a Berkeley resident, you may have to move away from your home region – not just your hometown.

Idahoans simply lack the financial resources to compete with outsiders. For this reason, it is not enough simply to increase supply; policymakers must also help locals tap into that supply. One Boise State University student concerned about this issue wrote that “[d]ata reported in 2017 from the Bureau of Labor Statistics reported Boise wages rose 1.9 percent, while the population rose 2.6 percent and the cost of housing rose 3.3 percent.”<sup>68</sup> A survey of rental prices conducted by Apartment List shows that the housing market changes during the pandemic exacerbated the economic pressures on locals – between March of 2020 and August of 2022, rents in Boise increased by 45.3%.<sup>69</sup>

The need for LIMBY policies in Idaho has never been higher. This is a need that Idahoans have been aware of, as evidenced by the Housing Trust Fund established in 1992 by the Idaho State Legislature.<sup>70</sup> The Fund – a

---

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *See* Up for Growth, *supra* note 34.

<sup>67</sup> Erika Bolstad, ‘Let’s Try Something New’ Meets the National Housing Squeeze, *Pew* (July 18, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/18/lets-try-something-new-meets-the-national-housing-squeeze>.

<sup>68</sup> Wymore, *supra* note 62.

<sup>69</sup> Apartment List Research Team, *Apartment List National Rent Report*, Apartment List (Aug. 30, 2022), <https://www.apartmentlist.com/research/national-rent-data> (Boise-specific information was obtained by using the Apartment List City-Level Rent Estimates tool to select Boise).

<sup>70</sup> Kelcie Moseley-Morris, *Idaho’s Housing Trust Fund was Empty for 30 Years. That May Soon Change*, *Idaho Capital Sun* (Jan. 4, 2022), <https://idahocapitalsun.com/2022/01/04/idahos-housing-trust-fund-was-empty-for-30-years-that-may-soon-change/#:~:text=Idaho%20established%20a%20state%20Housing,empty%20for%20nearly%2030%20years>.

LIMBY policy – was meant to match funds for federal affordable housing programs. However, the legislature never put any money into the fund.<sup>71</sup> So, though the state legislature recognized the value of limiting involuntary displacement, it failed to assist locals seeking to stay put.<sup>72</sup> Absent a meaningful intervention in the immediate future, many Idahoans stand to be displaced – especially locals in Boise.

## B. The Displacement of Locals Results in Significant Social Costs

Displacement has a cascading effect: locals displaced from their hometowns by WEEMs end up displacing others. More than fifty percent of Californians have considered leaving the state because of high housing prices.<sup>73</sup> Wherever they go, they drive up the housing prices by bringing new demand to an area that likely already had a shortage of housing. Consequently, locals in that area are forced to look for new communities. The result is a seemingly unstoppable displacement of individuals from their hometown across the US that will continue unabated unless new policies and priorities take hold.

When WEEMs start arriving in a community or state, policymakers in those areas are often caught flatfooted. Montana provides an example. From 2010 to 2020, the population of Montana increased by ten percent.<sup>74</sup> During that same window, the number of housing units only increased by seven percent.<sup>75</sup> Where housing prices have soared in the Treasure State, locals have had to detach their roots and try to make it work in another place – either elsewhere in Montana or further afield. My uncle Paul,<sup>76</sup> for instance, lived in Bozeman – a particularly popular destination for WEEMs – for decades.<sup>77</sup> By the early 2010s, he was priced (forced) out and uprooted to a community more than thirty miles from where he had spent decades making friends and connections.

Locals of mountains towns in nearby states have also been forced on their heels by in-migrations of WEEMs. In Frisco, Colorado, city officials

---

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Alix Martichoux, *53 Percent of Californians Want to Leave the State, According to New Survey*, SFGate (Feb. 13, 2019), <https://www.sfgate.com/expensive-san-francisco/article/move-out-of-bay-area-california-where-to-go-cost-13614119.php>

<sup>74</sup> *Montana Housing Shortage*, Pew Charitable Trusts (Nov. 29, 2021), [https://leg.mt.gov/content/publications/fiscal/2023-Interim/November-2021/Horowitz\\_Montana\\_HousingShortage\\_29Nov2021.pdf](https://leg.mt.gov/content/publications/fiscal/2023-Interim/November-2021/Horowitz_Montana_HousingShortage_29Nov2021.pdf).

<sup>75</sup> *Id.*

<sup>76</sup> For privacy reasons, my uncle's name has been changed.

<sup>77</sup> Sarah Vowell, *My Beloved College Town Has a Problem: It's Too Popular*, N.Y. Times (May 12, 2021), available at: <https://www.nytimes.com/2021/05/12/opinion/bozeman-montana-housing.html>

estimate that forty-five percent of its homes are “vacant second homes.”<sup>78</sup> So while WEEMs look for convenient ski cabins, everyone else is scavenging and scrabbling for any chance to stay put. The huge percentage of Frisco’s housing stock effectively catering to out-of-town interests has had a devastating effect on locals. One coffee shop owner discussed the fact that her employees have to sleep in their cars or in the woods.<sup>79</sup> Other residents describe neighborhoods that lack any sense of community because so many of the homes lack residents for parts of the year.<sup>80</sup>

Some small business owners have tried to provide workforce housing on a small scale by, for instance, buying apartments and renting them below market rate to their employees.<sup>81</sup> But that strategy has a number of flaws, including, but not limited to the following: it relies on the good graces and financial means of small business owners; it may result in employees feeling forced to work for the same business; and, it only addresses one part of the larger crisis of preventing displacement. Efforts by small business owners and others to keep locals in town would be easier if WEEMs resisted the temptation to turn the town’s limited housing stock into stock homes or vacation rentals.<sup>82</sup> The resulting increase in housing supply would increase the odds of locals having a chance at finding a home of their own – odds that would further increase if officials enacted LIMBY policies that gave those locals a leg up in the market.

Another reason for officials proactively passing LIMBY policies is that displacement has exponential costs. When a community welcomes thousands of new residents, many current residents may end up on the streets before they find a new community to call home. For instance, according to the Annual Homeless Assessment Report in 2020, between 2007 and 2020 Montana experienced a 146% increase in the number of chronically homeless people.<sup>83</sup> These individuals have fewer and fewer places to go, all else equal,

---

<sup>78</sup> Luke Vidic, *With 45% of Properties Used as Second Homes, Frisco Officials Brainstorm Plans for Workforce Housing Improvements*, Summit Daily (June 20, 2022), <https://www.summitdaily.com/news/with-45-of-properties-used-as-second-homes-frisco-officials-brainstorm-plans-for-workforce-housing-improvements/>.

<sup>79</sup> Jonathan Ellsworth, *Mountain Town Economics, Pt 1: Affordable Housing, Short-Term Rentals, & More (Ep.177)*, Blister (Aug 9, 2021), <https://blisterreview.com/podcasts/mountain-town-economics-affordable-housing-short-term-rentals-more-ep-177>.

<sup>80</sup> *Id.*

<sup>81</sup> Anna P. Kambhampaty, *Workers in the Catskills Can’t Find Housing. Bosses are Trying to Help*, N.Y. Times (Aug. 19, 2022), <https://www.nytimes.com/2022/08/19/realestate/hudson-valley-housing-workers.html> (describing numerous instances of small business owners creating their own housing solutions for employees).

<sup>82</sup> See *supra* notes 78-79 and accompanying text.

<sup>83</sup> Meghan Henry et al., *The 2020 Annual Homeless Assessment Report to Congress*,

as WEEMs arrive. As the number of individuals experiencing homelessness increases, city budgets feel the strain; by way of example, each homeless person in Billings costs over \$15,000 per year in public services.<sup>84</sup> The proactive enactment of LIMBY policies can reduce these costs. When Denver invested in housing to assist locals in desperate need of shelter to stay in town, benefits of the investments more than offset costs that would have been spent on local emergency services.<sup>85</sup>

An influx of new residents may place too high of a demand on public services, especially those public services performed by former locals who were displaced by the new residents. Montana again provides a case study: a Missoula hospital has dealt with staffing troubles caused by workers living further and further away from town because of the absence of affordable housing.<sup>86</sup> To stem these costs, policymakers must pass policies specifically designed with LIMBY in mind, rather than copying failed policies that have gained headlines but done little to reduce displacement.

### III. CURRENT AFFORDABLE HOUSING POLICIES HAVE FAILED

A litany of policies exist that aim to make housing more affordable and, as an intentional or unintentional byproduct, help locals stay in place. However, these policies are not sufficient to reduce the nationalization of everything and to increase the odds of locals not being displaced. First, a lot of these policies simply do not work. Moreover, many of these policies have no explicit preference for locals and, consequently, do little to increase the density of people most likely to prioritize community matters over national ones.<sup>87</sup> Analysis of policies in Portland, Oregon shows both of these shortcomings. Prior to addressing what policies could reduce the displacement of locals, we must first understand why current affordable housing policies fall short.

Affordable housing policies in the City of Portland and the State of Oregon receive a lot of press as innovative steps forward.<sup>88</sup> But a glimpse at

---

HUD (Jan. 2021) at 68, <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

<sup>84</sup> Brenda Beckett, *Welcome Home Billings*, City of Billings at 5 (n.d.)

<sup>85</sup> See generally *Denver Permanent Supportive Housing Pay for Success Project*, Government Performance Lab at the Harvard Kennedy School, [https://govlab.hks.harvard.edu/files/govlabs/files/denver\\_psh\\_pfs\\_project\\_feature.pdf?m=1549048848](https://govlab.hks.harvard.edu/files/govlabs/files/denver_psh_pfs_project_feature.pdf?m=1549048848)

<sup>86</sup> Emily Schabacker, *Montana Hospitals Facing Unprecedented Financial Crisis*, Billings Gazette (Aug. 14, 2022), [https://billingsgazette.com/lifestyles/health-med-fit/montana-hospitals-facing-unprecedented-financial-crisis/article\\_951729e0-1a7c-11ed-86cd-c74d25b44229.html#tracking-source=mp-homepage](https://billingsgazette.com/lifestyles/health-med-fit/montana-hospitals-facing-unprecedented-financial-crisis/article_951729e0-1a7c-11ed-86cd-c74d25b44229.html#tracking-source=mp-homepage)

<sup>87</sup> See *infra* notes 89-96 and accompanying text.

<sup>88</sup> See, e.g., Catie Gould, *Affordable Housing in Oregon is About to Catch a Big Break*

the housing market and state of community in Portland makes clear that these policies are not having nearly a large enough effect on increasing the supply of affordable housing nor assisting locals. As of May 5, 2022, despite years of passing and implementing the policies discussed below, Portland and Oregon still faced severe housing crises.<sup>89</sup>

In 2019, Oregon Governor Kate Brown signed a bill altering zoning laws in towns with more than ten thousand residents to mandate that duplexes and fourplexes could be built in areas zoned for single-family homes.<sup>90</sup> While advocates are still optimistic that the law could substantially increase the supply of housing in the state, that increase has not materialized fast enough to prevent the displacement of Portlanders today.<sup>91</sup> And, even if new units eventually materialize, there is no guaranteeing that locals of Portland or Oregon will benefit from that increase. No prior increase to the supply of housing has been reserved for locals at the greatest risk of displacement.<sup>92</sup>

In 2016, Portland's City Council passed an inclusionary zoning (IZ) law that required all new apartment buildings with more than twenty units to reserve a percentage of their units for low- and moderate-income housing.<sup>93</sup> Apparently to avoid this requirement, developers responded by simply not making any buildings with twenty or more units. Once the requirement was fully in force, the total number of units development dropped by about two-thirds.<sup>94</sup> This lack of developer interest is reflected in permit applications as well: since the new requirements went into place, applications have dropped

---

from *Parking Mandates*, Strong Towns (July 13, 2022), <https://www.strongtowns.org/journal/2022/7/13/affordable-housing-in-oregon-is-about-to-catch-a-big-break-from-parking-mandates> (outlining myriad affordable housing interventions in the Portland metro area).

<sup>89</sup> Julie Sabatier, *Outlook for Affordable Housing in Oregon Could be Getting Worse*, OPB (May 5, 2022), <https://www.opb.org/article/2022/04/27/outlook-for-affordable-housing-in-oregon-could-be-getting-worse/>.

<sup>90</sup> Abe Asher, *How Will Oregon Address Its Growing Affordable Housing Crisis*, Portland Mercury (Nov. 26, 2021), <https://www.portlandmercury.com/Housing/2021/11/26/37064855/how-will-oregon-address-its-growing-affordable-housing-crisis>; H.B. 2001, 80th OR. Leg. Ass. (2019).

<sup>91</sup> *See id.* (“[T]he effects of those policy changes to increase housing density may not be entirely apparent for years, and thousands of Oregonians are facing housing instability today.”); *see also* Anthony Dedousis, *Single-Family Zoning and Exclusion in L.A. County: Part 1*, City Observatory (May 24, 2021), [https://cityobservatory.org/la\\_exclusion\\_pt1/](https://cityobservatory.org/la_exclusion_pt1/) (discussing how reform of single-family zoning in Los Angeles could eventually result in more affordable housing).

<sup>92</sup> *See* Asher, *supra* note 90.

<sup>93</sup> Joe Cortright, *Inclusionary Zoning: Portland's Wile E. Coyote Moment Has Arrived*, City Observatory (Mar. 9, 2021), <https://cityobservatory.org/inclusionary-zoning-portlands-wile-e-coyote-moment-has-arrived/> [hereinafter, Cortright Wile]; PORTLAND, OR., Code § 30.01.120 (2016).

<sup>94</sup> *Id.*

from more than 6,000 per year, in both 2016 and 2017, to about 2,600 in 2020.<sup>95</sup> Absent the city taking immediate action to relax the IZ requirements, developers appear likely to continue refraining from constructing buildings with twenty or more units – hindering their ability to add to the City’s housing supply and, therefore, keeping rents high.

While Portland and Oregon have taken action on housing, it is not the sort that will likely aid locals because the actions taken thus far have focused on increasing homeownership without paying sufficient consideration to the identity of the eventual homeowners. Officials eager to assist locals must acknowledge the main flaw with many affordable housing policies so that they can begin to select policies better suited to the goal of keeping true and adopted locals in town. Ironically, the main flaw with several affordable housing policies is their focus on increasing access to homeownership. While this seems like a laudable goal, economist Joe Cortright points out that “[s]teps to amplify demand in a surging market tend to drive prices up further, which further enriches incumbent homeowners at the expense of first-time buyers.”<sup>96</sup> In other words, “Promoting homeownership primarily helps those who are selling homes, not those who are buying them.”<sup>97</sup>

Unfortunately, officials have not only insisted on enforcing outdated and inadequate affordable housing policies, but they have also failed to stem other threats to the ability of locals to stay in town: namely, short-term rentals.

#### IV. OFFICIALS HAVE FAILED TO LIMIT AIRBNB-INDUCED DISPLACEMENT

Airbnbs, Vacation Rentals by Owner (VRBOs) and other short-term rentals (STRs) have had a particularly negative impact on locals and their ability to avoid displacement. A few examples help make clear how STRs have put undue pressure on non-WEEM locals to move out of their hometowns. In Los Angeles, just nine of the city’s ninety-five neighborhoods accounted for 73% of Airbnb’s revenue in the area, according to a 2015 study.<sup>98</sup> Rents in these Airbnb-centric neighborhoods increased by 16% from 2013 to the third quarter of 2014, whereas the average rent increase for the remainder of the neighborhoods only increased by 12% over the same time

---

<sup>95</sup> *Id.*

<sup>96</sup> Joe Cortright, *Who Got Trillions? We Found the Real Speculators Profiting from Higher Housing Costs*, City Observatory (May 5, 2021), <https://cityobservatory.org/who-got-trillions-we-found-the-real-speculators-profiting-from-higher-housing-costs/> [hereinafter, Cortright Trillions].

<sup>97</sup> *Id.*

<sup>98</sup> Roy Samaan, *Airbnb, Rising Rent, and the Housing Crisis in Los Angeles*, LAANE (Mar. 2015) at 18 (Table 1), <https://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf>.



period.<sup>99</sup> Locals to these neighborhoods who faced any sort of financial hardship have likely had to flee for cheaper pastures. It is not just locals of LA who deserved more from their officials with respect to limiting STR-induced displacement.

The *Source Weekly*, a local paper in Bend, Oregon, methodically describes how STRs can hasten the displacement of locals:<sup>100</sup>

While city and county officials have taken numerous steps over the years to address housing and homelessness, there's one opportunity that we see rarely discussed: Short-term rentals. Those who live in some of the inner neighborhoods of the west and east sides have already seen "neighbors" replaced by "guests" over the years, and with the advent of sites such as Airbnb, it's easier than ever for a homeowner to swap what could be housing for locals with a glorified hotel accommodation for tourists. Right now, the City of Bend has over 1,000 active short-term rental licenses, required for those renting whole-house rentals for more than 30 days per year. In 2020, 115 new short-term rental land use permits were issued in Bend. If each of those homes had a conservative estimate of two long-term residents in it, it means that last year, housing for around 200 Bendites went away. In total, thousands of Bendites would have housing if those houses were treated like homes and not hotels.

This editorial helps clarify why policymakers cannot let economic development opportunities cloud their vision from seeing the dust of locals having to flee. Officials must do a better job of weighing the costs and benefits of development and displacement. Up to this point, policymakers have tipped the scales too far toward the benefits of development without adequately considering the effects of displacement on locals.

STRs have immense economic benefits for both the “host” and other locals in the community. One study of full-time Airbnb listings in Manhattan’s Lower East Side calculated that those listings earned two to

---

<sup>99</sup> *Id.* at 19.

<sup>100</sup> Editorial Board, *In a Housing Crisis, Put the Focus Back on Locals*, *Source Weekly* (Apr. 21, 2021), <https://www.bendsource.com/bend/in-a-housing-crisis-put-the-focus-back-on-locals/Content?oid=14482177>.

three times the median long-term rent.<sup>101</sup> Clearly, owners have a strong interest in switching their homes to this model. Cities also have an interest in the proliferation of such arrangements, assuming they have some passed some policy taxing such rentals.<sup>102</sup> If this assumption holds true, then the city receives substantial tax revenue that can be used to support a litany of projects, including projects focused on locals. In Frisco, Colorado, for example, revenue raised from taxes on STRs goes toward workforce housing development.<sup>103</sup> The case can also be made that STRs guests have a lot to offer local businesses. Tourists, after all, inevitably spend money at such establishments during their stays.<sup>104</sup>

However, STRs can also undeniably displace locals. The displacement effect of in-migration is especially pronounced in neighborhoods with a high percentage of housing units operating as STRs.<sup>105</sup> More generally, studies tracking the spread of STRs in Boston and the U.S. as a whole have demonstrated links between the concentration of STRs and rising rents that exacerbate displacement. The Boston study specifically estimated that if Airbnb offerings continued to expand at the same rate as they did in 2015 over the course of the next three years, then monthly rents in Boston would be as much as \$178 higher per month starting in January of 2019 than if no Airbnb activity occurred in the city.<sup>106</sup> On an annual basis, that increase amounts to more than \$2,100 – a jump that would surely cause displacement given that just a \$100 increase in median rent can result in a nine percent spike in homelessness.<sup>107</sup> Notably, the results of the Boston

---

<sup>101</sup> David Wachsmuth and Alexander Weisler, *Airbnb and the Rent Gap: Gentrification Through the Sharing Economy*, ENV'T & PLAN., Feb. 2018, at 20.

<sup>102</sup> See, e.g., Mary Jane Belleza, *New Montana Tax Impacts Short Term Lodging Facilities*, KULR (June 5, 2019), [https://www.kulr8.com/news/money/new-montana-tax-impacts-short-term-lodging-facilities/article\\_fe4c0ab2-880c-11e9-9060-878461d2b191.html](https://www.kulr8.com/news/money/new-montana-tax-impacts-short-term-lodging-facilities/article_fe4c0ab2-880c-11e9-9060-878461d2b191.html) (describing the impact of state taxes on short term rentals and the revenue they raise).

<sup>103</sup> *Short-Term Rental Taxes and Payments*, TOWN OF FRISCO, COLORADO, <https://www.frisco.gov/departments/finance/sales-and-lodging-tax/short-term-rental-license-application-process/short-term-rental-tax-information/> (last visited Oct. 11, 2022) (summarizing the purpose of a tax passed in April of 2022).

<sup>104</sup> See Josh Bivens, *The Economic Costs and Benefits of Airbnb*, ECON. POL'Y INST., Jan. 30, 2019, at 10-13 (listing examples of several studies documenting the spending habits of Airbnb visitors).

<sup>105</sup> See, e.g., Agustin Cocola-Gant, *Holiday Rentals: The New Gentrification Battlefield*, SOCIO. RSCH. ONLINE, Aug. 2016, at 2, 4 (Describing how, in the Gothic Quarter of Old Town in Barcelona, 16.8% of the homes are listed on Airbnb, and how, in a survey of forty-two Old Town residents, all but two reported issues of displacement such as tenant expulsions.).

<sup>106</sup> Mark Merante and Keren Mertens Horn, *Is Home Sharing Driving up Rents? Evidence from Airbnb in Boston*, WORKING PAPER 2016-03, 2016, at 3.

<sup>107</sup> *How COVID-19 Could Aggravate the Homelessness Crisis?*, GOV'T

study do not suggest that Airbnb users are just really excited about the Red Sox – the nationwide study estimated that “home-sharing through Airbnb alone is responsible for about 20 percent of the average annual increase in U.S. rents.”<sup>108</sup> The Boston study also illustrates the fact that the biggest beneficiaries of the fees earned through STRs are not individuals struggling to get by and trying to increase their income by occasionally listing their property; instead, listings from commercial operators account for a significant amount of listings on any one night.<sup>109</sup>

Officials in cities around the world have realized the negative impact on rents caused by STRs as well as the main beneficiaries – not locals – and, belatedly, are taking policy action. Cities have attempted to mitigate the negative effects of STRs – namely, removing housing stock from the market – by adopting policies designed to limit their effect on displacement by removing housing stock from the market.<sup>110</sup> Amsterdam caps how many days a year a host can rent out their entire home.<sup>111</sup> Singapore sets a minimum rental period of six consecutive months for public housing.<sup>112</sup> In Palma, the mayor banned short-term flat rentals.<sup>113</sup> Although all of these policies purport to address the negative effects of STRs on the housing market, none of these policies are perfect.

When STR regulations go too far, they may stifle development that, if implemented under LIMBY policies, might reduce the displacement of locals. Research published in the Harvard Business Review concluded that “[o]n average, a 1% increase in Airbnb listings led to a 0.769% increase in permit applications, suggesting that Airbnb can play a major role in supporting local real estate markets and thus boosting local tax bases.”<sup>114</sup> Since some development – through the creation of more housing – can actually reduce displacement of locals, communities should carefully evaluate whether their STR regulations will hinder the real estate market over the long term by creating too much of a disincentive for the construction of new housing.

---

ACCOUNTABILITY OFF. (Aug. 25, 2020) <https://www.gao.gov/blog/how-covid-19-could-aggravate-homelessness-crisis>.

<sup>108</sup> Ron Bekkerman et al., *Research: Restricting Airbnb Rentals Reduces Development*, HARVARD BUS. REV (Nov. 17, 2021) <https://hbr.org/2021/11/research-restricting-airbnb-rentals-reduces-development>; see Kyle Barron et al., *Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb*, SSRN (Mar. 4, 2020), (finding that annual Airbnb growth in a zipcode accounts for “about one fifth of actual rent growth[.]”).

<sup>109</sup> Mertante, et al., *supra* note 106 at 3, 19.

<sup>110</sup> See Daniel Guttentag, *What Airbnb really does to a neighbourhood*, BBC (Aug. 30, 2018), <https://www.bbc.com/news/business-45083954>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Bekkerman et al., *supra* note 108.

STR regulations designed to limit the displacement of locals will consider a variety of factors including, but not limited to, who is doing the hosting (i.e., corporate entity, non-local, local), how frequently they are hosting, where they are hosting, the density of STRs in specific locations, and all economic and cultural side effects of STRs.<sup>115</sup> After these factors have been analyzed, the resulting regulation should be evaluated from the perspective of current and future generations of true and adopted locals. The first iteration of the resulting regulation may not weigh each of these factors appropriately, thereby causing unintended side effects. Therefore, it is imperative that the government body issuing the regulation also appropriates funds for the study of the regulation and writes a sunset provision into the regulation so that a regulation capable of improvement does not perpetually remain on the books without being improved. With sufficient data, community input, and willingness to experiment, a community can ensure that STRs do not result in the involuntarily displacement of locals.

#### V. POLICIES TO INCREASE SUPPLY AND DECREASE INVOLUNTARY DISPLACEMENT

Policies intended to increase the ability of locals to control whether and when they move away will only succeed in doing so if they address the specific reasons why true and adopted locals move away from their hometowns. In some cases, such tailoring will require doing more than just identifying true and adopted locals, but also determining who among those locals is truly at risk of displacement. Obviously, some affluent locals, perhaps WEEMs who moved to an area and have been there for a sufficient time to become an adopted local, most likely do not need financial assistance to stay in their community. From the stories of folks like Justin, the Bend resident who couch surfed in light of surging rents, it becomes clear that the locals that LIMBY policies have in mind are those in need of financial support and assistance navigating the housing market. This support can come in a variety of forms.

##### A. Rent Control Versus Housing Vouchers

“Direct, immediate, subsidized interventions like housing vouchers and rent-controlled units,” according to Abe Asher of the Portland Mercury, “would help people get back into housing quickly.”<sup>116</sup> Vouchers and rent-

---

<sup>115</sup> See Mertante et al., *supra* note 106 at 22 (listing factors policymakers may consider when evaluating certain STR regulations).

<sup>116</sup> Asher, *supra* note 90 (summarizing the recommendations of Mike Wilkerson, partner and director of analytics at ECONorthwest).

controlled units would bring the effective monthly rent payment down for locals. This would save them from facing the full brunt of increases in rent caused by the arrival of numerous outsiders.

Of these two policy alternatives, housing vouchers are likely better in the long term with respect to both retaining locals and mitigating any negative effects from the policy. Rent control, by comparison, may actually result in less affordable housing over the long term. Though rent control can effectively protect those fortunate enough to live in a rent-controlled apartment, it has some unacceptable side effects. For instance, rent control incentivizes tenants to never move from that apartment. This permanence is good for the current generation of locals but may not assist younger ones.<sup>117</sup> Rent control also limits the amount of rent that landlords receive and, therefore, what they can invest in maintenance and improvements to the building. A lower maintenance budget can result in decay and fewer quality buildings for younger generations of locals to eventually move into.<sup>118</sup>

Relative to rent control, economists generally agree that housing vouchers present a more efficient response to preventing the displacement of locals.<sup>119</sup> Several factors explain the superiority of housing vouchers. Governments can narrowly tailor housing voucher amounts to market conditions at the neighborhood level,<sup>120</sup> thus reducing the odds of providing a local with too much or too little support to stay in their hometown. The central role that local governments play in distributing housing vouchers also reduces waste and increases the odds of support going to the appropriate families because local officials have more and better information about the people and markets in their community when compared to broadly applicable policy changes instituted at the state or federal level.<sup>121</sup> Housing vouchers also provide the recipient with a high degree of flexibility in selecting the apartment or home of their choice because the vouchers are not building-specific.<sup>122</sup> This is a marked improvement over rent control mechanisms which, as described above, do not incentivize the building owner to conduct

---

<sup>117</sup> See Michael Hendrix, *Issues 2020: Rent Control Does Not Make Housing More Affordable*, MANHATTAN INST. (Jan. 8, 2020), <https://www.manhattan-institute.org/issues-2020-rent-control-does-not-make-housing-more-affordable>.

<sup>118</sup> *Id.*

<sup>119</sup> Will Fischer, *Housing Vouchers Work: Efficiently Helping Families Afford Homes*, CTR. ON BUDGET & POL'Y PRIORITIES (May 2, 2017), <https://www.cbpp.org/blog/housing-vouchers-work-efficiently-helping-families-afford-homes#:~:text=Vouchers%20reduce%20rents%20for%20low,also%20comes%20with%20cost%20control> ("Vouchers reduce rents for low-income families at a lower cost to the government than other forms of housing assistance.").

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

maintenance and improvements.

A community seeking to empower locals to voluntarily remain in their hometown could establish a housing voucher program with the intent of keeping locals in the community. Eligible recipients could prove their status as a “local” as defined by the issuing government and sufficiently demonstrate a financial need for the voucher. The issuing government would then provide the voucher on an annual basis and update the voucher amount to reflect changing market conditions. The net effect would be the retention of more locals without discouraging development.

The obvious source of funding for housing vouchers and other programs meant to further financially bolster locals comes from a surprising, but understandable and justifiable place: current homeowners. At this point in the article, some readers may have perceived it as furthering the stereotype that the biggest and sole bogeymen in the affordable housing conversation are corporate entities and short-term rentals; that perception must be corrected – it is imperative to point out that the people benefiting the most from the current housing situation are pre-existing homeowners. Increasing taxes on current homeowners can go a long way toward helping those struggling to stay put in the community they call home, as established by the following five premises provided by economist Joe Cortright:<sup>123</sup>

- First, the value of residential property in 2020 increased by \$2.2 trillion.
- Second, older, white, higher income households disproportionately received those gains.<sup>124</sup>
- Third, tax exemptions for capital gains for owner-occupied homes prevented the preponderance of those gains from being taxed.
- Fourth, the gains that homeowners received greatly exceeded the profits collected by developers, foreign investors, or Wall Street home buyers.<sup>125</sup>

---

<sup>123</sup> Cortright Trillions, *supra* note 96.

<sup>124</sup> Cortright’s analysis of Federal Reserve data led to his estimation that “households headed by a person aged 55 and older own 56 percent of all residential housing wealth in the US.” From that estimate and the specified premises, he stated that it’s a “fair guess that these older homeowners reaped most of the gain in home values” in 2020. Cortright also noted that “highest income 20 percent of the population owns 59 percent of all the residential housing value in the US.” That means that approximately \$1.2 trillion in gains from increasing home values went to the top fifth of the population. *Id.*

<sup>125</sup> *The New York Times* reported that Wall Street backed investors own about \$60 billion in single family real estate, which does not amount to much given the \$35 trillion of residential investments in the US. Francesca Mari, *A \$60 Billion Housing Grab by Wall Street*, N.Y. Times (Mar. 4, 2020), <https://www.nytimes.com/2020/03/04/magazine/wall->

- Fifth, as home prices rise and members of generations buy those homes, older generations become the beneficiaries of an intergenerational transfer of wealth from young to old.<sup>126</sup>

The funding to implement LIMBY policies could come solely from putting a little more financial pressure on the folks most benefiting from an unacceptable status quo – yes, you, homeowners. This source of funding will be sustainable for at least the short- to medium-term based on historical positive trends and projected increases in residential values.<sup>127</sup> Communities can develop several means to retrieve financial support from homeowners for LIMBY policies. For instance, fees can be retrieved upon any home sale or on an annual basis, akin to a property tax.<sup>128</sup> Or, in states like Oregon, where caps have been set on property taxes, those caps can be lifted so that taxes can be more responsive to market conditions and societal needs.<sup>129</sup>

#### B. Deed Restriction Programs, Trust Funds, and No-Cost Solutions

Such fees could also support innovative approaches such as deed restriction programs.<sup>130</sup> One example of this approach is Crested Butte’s “Good Deed” program, in which the community pays homeowners to put a deed restriction on their property such that, upon a sale, the home cannot not be used for anti-LIMBY purposes – in other words, purposes unaligned with

---

street-landlords.html; Cortright Trillions, *supra* note 96.

<sup>126</sup> Economists Ed Glaeser and Joseph Gyourko stated that “[b]ecause homeowners tend to be older while renters are younger, the limited growth in housing supply has created an intergenerational transfer to currently older people who happened to have owned in the relatively small number of coastal markets that have seen land values increase substantially.” Ed Glaeser and Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 *J. Econ. Perspectives* 3, 21 (Winter 2018).

<sup>127</sup> See, e.g., Molly Grace, *Home Value Appreciation: Homeowner Expectations Vs. Reality*, Rocket (Aug. 21, 2022), <https://www.rockethomes.com/blog/housing-market/home-value-appreciation> (evaluating home value appreciation over time through analysis of federal and commercial data).

<sup>128</sup> See, e.g., Brauns, *supra* note 39 (outlining Oregon Governor Kate Brown’s proposed real estate sales tax for homes sold for more than \$500,000. The proposal failed but other states could learn from the legislation when developing their own policies).

<sup>129</sup> See *id.* (detailing the creation of a cap on property taxes in Oregon); see also Tam Moore, *Oregon’s Flawed Property Tax System Is a Choice*, *The Oregon Way / KATU* (Sept. 11, 2021), <https://katu.com/news/local/opinion-oregons-flawed-property-tax-system-is-a-choice> (summarizing potential means for reform to property tax caps).

<sup>130</sup> Mark Reaman, *CB Council Review Town Housing Goals and Direction*, *Crested Butte News* (June 1, 2022), available at: <https://crestedbuttenews.com/2022/06/cb-council-reviews-town-housing-goals-and-direction/>

keeping locals in their community.<sup>131</sup> Some deed restriction programs explicitly give preference to buyers already living or working in the community, and others set a formula for the resale price at future sales. Such formulas tie the future price to area median income, for example, to prevent prices from getting out of control.<sup>132</sup> Generally, deed restrictions have the greatest impact in communities where “large amounts of assistance are needed to bring home prices within reach of low- and moderate-income families, and where rapid increases in home prices are expected.”<sup>133</sup> This category includes Bend, Boise, Bozeman, and other metropolitan areas experiencing WEEM in-migration and the effects of STRs on local housing markets.

Unsurprisingly, absent enforcement, homeowners attempt to avoid the restrictions. Officials in the county home to Crested Butte estimated that nine percent of deed restricted units did not comply with the restrictions.<sup>134</sup> Proactive, low-cost steps, such as communities filing liens in addition to restrictions on the deed, can increase the odds of subsequent purchasers being adequately informed of the limitation.<sup>135</sup>

Communities should also consider whether state law imposes any limits on such programs. Perpetual deed restrictions tend to succeed when it comes to preserving the long-term affordability of housing.<sup>136</sup> However, many states limit deed restrictions to a defined period of time.<sup>137</sup> In the event that a community considering implementing a deed restriction program resides in a state with limits on deed restrictions, this community would likely benefit from working with similarly situated communities to reform the law.

Finally, funding from fees and/or taxes on homeowners could serve as a source of funds for the community to lend to locals to purchase homes. Imagine a community creating a trust fund meant to supplement the offers made by locals attempting to buy their first home in their hometown. This financial boost would help locals compete with individuals from parts of the nation with vastly more financial resources and who have the capacity to make deals in cash far above the seller’s asking price.<sup>138</sup>

---

<sup>131</sup> *Id.*

<sup>132</sup> *Deed-restricted Homeownership*, Local Housing Solutions (n.d.), <https://localhousingsolutions.org/housing-policy-library/deed-restricted-homeownership/> [hereinafter, Housing Solutions].

<sup>133</sup> *Id.*

<sup>134</sup> Reaman, *supra* note 130.

<sup>135</sup> Housing Solutions, *supra* note 132.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> See, e.g., Rob Rogers, *Out-of-Staters Buying More Homes in Billings Sometimes Sight Unseen, Sometimes with Cash*, Billings Gazette (May 27, 2020), <https://billingsgazette.com/news/local/out-of-staters-buying-more-homes-in-billings->



Such funds could also be used to assist renters. One more time – think back to Justin in Bend. When Justin finally found a place to rent during the Summer of 2020, he realized he had insufficient savings to cover the high initial costs; the landlord was asking for first and last months' rent, as well as a deposit.<sup>139</sup> In total, Justin needed more than \$5,000 up front to rent that home.<sup>140</sup> Most folks do not have easy access to that kind of cash.<sup>141</sup> Communities could reduce the hurdle posed by initial costs by lending money to locals. Additionally, communities could also regulate the extent to which a landlord can impose such high costs, which would come at no direct cost to the community.

Other policies require little to no funding. For instance, a community could take steps to tip the scales in favor of locals in the open market. Communities could mandate that sellers state a minimum, binding price available first to locals for a certain period of time – if any local meets that price (and other qualifications), then the seller would be bound to sell the home.<sup>142</sup> Alternatively, as discussed below, communities could limit or ban the number and type of units that could be offered as STRs, thereby (at least in the short term) preserving more units of housing for sale to locals who intend to reside in the unit.

The status quo approach to affordable housing will not sufficiently protect locals on the verge of displacement. Current policies either do not work, do not consider locals, do not have a chance of impacting things in the short run, or a combination of those shortcomings. Locals need immediate and tailored relief. Therefore, community leaders must champion the sort of policies described in the second part of this section. Otherwise, communities will continue to fill up with out-of-towners who have no interest in doing anything other than acting on self-interest and the national news.

---

sometimes-sight-unseen-sometimes-with-cash/article\_11b1381e-574c-5f2d-a0e6-d0b13dd3f9ab.html.

<sup>139</sup> Brauns, *supra* note 39.

<sup>140</sup> *Id.*

<sup>141</sup> See, e.g., Emmie Martin, *This Chart Shows How Much Money Americans Have in Savings at Every Age*, CNBC, <https://www.cnbc.com/2019/03/11/how-much-money-americans-have-in-their-savings-accounts-at-every-age.html> (Nov. 23, 2020, 11:30 AM) (reporting that, among Americans thirty-four and younger, couples *without children* have an average of \$4,727 in savings).

<sup>142</sup> See Ward Village, *Reserved Housing in Ward Village Helps Generations of Kama'āina Families Buy Homes in Honolulu*, PAC. BUS. NEWS (July 15, 2022), <https://www.bizjournals.com/pacific/news/2022/07/15/reserved-housing-in-ward-village-helps-generations.html> (providing a related example of such a policy – simply reserving homes for local resident buyers).

## VI. THE LEGALITY OF LIMBY POLICIES

## A. Legality of Policy Preferences for Locals

Before continuing this investigation of LIMBY policies, it is important to establish the legal legitimacy of the policies. Some readers may (reasonably) assume that legal barriers have prevented the implementation of LIMBY policies. However, it turns out that the law may pose less of a hurdle than many may have thought – as revealed by the legal analysis in this section. The following constitutional analysis pertains to a hypothetical community trust fund policy in which a city provides cash assistance to qualifying locals making offers on homes, one way in which local governments can reduce the odds of locals being displaced.

A community trust fund policy could be contested under the Privileges and Immunities Clause of Article IV of the U.S. Constitution, which protects non-residents from discrimination by a state.<sup>143</sup> According to the *Piper* test, “[a] State may discriminate against nonresidents only where its reasons are ‘substantial,’ and the difference in treatment bears a close or substantial relationship to those reasons.”<sup>144</sup> Under these rules, residents of the state in which the policy was enacted could not bring a Privileges and Immunities Clause claim. Article IV does not serve as a basis for residents to contest policies. The Privileges and Immunities Clause only protects non-residents against discrimination implicating fundamental privileges of citizenship.<sup>145</sup>

To prevail in a case challenging the constitutionality of a community trust fund policy, non-residents must show that the policy implicates a fundamental privilege of citizenship, which the U.S. Supreme Court has narrowly defined as the “right of citizens to ‘ply their trade, practice their occupation, or pursue a common calling.’”<sup>146</sup> Even if a regulation does implicate such a privilege, the intent of the law may result in the U.S. Supreme Court upholding the law despite its effects on out-of-state residents.<sup>147</sup> Only laws enacted for “the protectionist purpose of burdening out-of-state citizens” have been struck down by the U.S. Supreme Court.<sup>148</sup> However, since the interest of non-residents in this situation is purchasing a home, it is unlikely that they will be able to show the policy infringes on an

---

<sup>143</sup> See *Toomer v. Witsell*, 334 U.S. 385, 395, *reh’g denied*, 335 U.S. 837 (1948).

<sup>144</sup> *Sup. Ct. of N.H. v. Piper*, 470 U.S. 274, 288 (1985).

<sup>145</sup> See, e.g., *Haw. Boating Ass’n v. Water Transp. Facilities Div.*, 651 F.2d 661, 666, (9th Cir. 1981) (declining to extend Article IV protections to mooring fees).

<sup>146</sup> See *McBurney v. Young*, 569 U.S. 221, 227 (2013) (quoting *Hicklin v. Orbeck*, 437 U.S. 518, 524 (1978)).

<sup>147</sup> See *id.* at 227-30.

<sup>148</sup> See *id.* at 227-30. (citation omitted).

interest that is “basic to the maintenance or well-being of the Union.”<sup>149</sup> However, even if a court construed buying a home as covered by the Privileges and Immunities Clause, a state or city could persuasively argue that a LIMBY law such as a community trust fund does not have a protectionist purpose, but rather aims to assist locals in accessing the milestone of homeownership.<sup>150</sup> Therefore, the community trust fund policy will likely survive judicial scrutiny under the Privileges and Immunities Clause.

Opponents of the policy may claim that the government has an obligation to level the playing field for all people trying to live in the relevant jurisdiction. However, the Equal Protection Clause does not “demand that a statute necessarily apply equally to all persons.”<sup>151</sup> Similarly, it “does not require that things which are different in fact . . . to be treated as though they were the same.”<sup>152</sup> The *McGowan v. Maryland* court, when not addressing a policy affecting a fundamental right or a suspect class, further specified that “statutory discrimination will not be set aside if any state of facts reasonable may be conceived to justify it.”<sup>153</sup> If Bend, Boise, or Bozeman instituted our hypothetical policy, then the government would have no problem finding a state of facts to justify additional housing support for locals.

The Equal Protection Clause of the Fourteenth Amendment is triggered when similarly situated people are treated differently.<sup>154</sup> When a state or local law affects a fundamental right or a member of a discrete, insular minority, then a court will apply a strict scrutiny standard of review in an Equal Protection analysis.<sup>155</sup> In other words, the court will determine whether the policy is narrowly tailored to advance a compelling government interest.<sup>156</sup> However, in most other cases, a court conducting an Equal Protection analysis will apply the lower standard of rational basis, under which the law must be reasonably related to a legitimate government purpose.<sup>157</sup> This lower standard increases the odds of the hypothetical policy surviving constitutional review.

The Supreme Court of the United States has so far only included race,

---

<sup>149</sup> See *Baldwin v. Fish and Game Comm'n.*, 436 U.S. 371, 389 (1978).

<sup>150</sup> See generally Joel Rakhimov, *On the Constitutionality of Charging In-state Tuition*, HARV. UNDERGRADUATE. L. REV. (2020), <https://hulr.org/fall-2020/on-the-constitutionality-of-charging-in-state-tuition> (summarizing the longevity of unsuccessful challenges to the constitutionality of providing resident students with lower tuition).

<sup>151</sup> *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966).

<sup>152</sup> *Id.* (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940)).

<sup>153</sup> *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961).

<sup>154</sup> *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 602 (2008).

<sup>155</sup> *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

<sup>156</sup> See *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987).

<sup>157</sup> See *Heller v. Doe*, 509 U.S. 312, 319–20 (1993).

national ancestry, ethnic origin, and alienage (with respect to state-level action, as opposed to federal action) within the category of a suspect class.<sup>158</sup> The Court has declined to expand that classification to include age, wealth, and people with mental disabilities.<sup>159</sup> Generally, a group will not be deemed as a suspect class where that group does not possess a trait that is immutable or unalterable.<sup>160</sup> It follows that potential homebuyers not identified as locals by a government enacting a LIMBY policy would likely not qualify as a suspect class. Their non-local status is neither immutable nor unalterable. Furthermore, since the Supreme Court has specified that wealth is not a suspect class,<sup>161</sup> a LIMBY policy limiting its financial support to locals earning less than a certain income per year would also be reviewed under rational basis. Therefore, an income-based form of differentiation would be constitutionally permissible.

Courts have already upheld policy preferences for local residents with respect to public housing. For example, the federal district court in *Langlois v. Abington Hous. Auth.* specified that public housing authorities could adopt residency preferences, such as a preference for locals, but cautioned that such a preference should be “adopted or implemented in accordance with an extensive list of nondiscrimination and equal opportunity requirements” in federal law.<sup>162</sup> The *Langlois* court additionally conditioned the legality of a preference for locals on the extent to which the government offered “a record of conditions and needs that demonstrate that a residency preference would correct [the] housing problems” motivating the underlying policy.<sup>163</sup> The condition set by the *Langlois* court, to the extent it applies to our hypothetical policy, would likely not be a problem for Bend, Boise, or Bozeman in developing a policy to favor locals. These communities have plenty of evidence to show why locals need additional support in the housing market.

However, governments seeking to implement a community trust fund or any related LIMBY policy should take affirmative steps to ensure that the policy is not adopted as a result of any discriminatory intent. If a policy has a disparate effect on race, then the court may start there in assessing if an underlying discriminatory intent motivated the adoption of the policy.<sup>164</sup> Courts will make a “sensitive inquiry into such circumstantial and direct

---

<sup>158</sup> See *Thompson v. Perry*, 80 F.3d 915, 928 (4<sup>th</sup> Cir. 1996), *cert. denied*, 519 U.S. 948 (1996).

<sup>159</sup> See, e.g., *Murgia*, 427 U.S. at 314–14 (explaining age is not a suspect class suspect to scrutiny).

<sup>160</sup> See *id.* at 312–14.

<sup>161</sup> See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 29 (1973).

<sup>162</sup> *Langlois v. Abington Hous. Auth.*, 234 F.Supp.2d 33, 68 (2002).

<sup>163</sup> *Id.* at 70.

<sup>164</sup> *Mhany Mgmt. Inc. v. County of Nassau*, 819 F.3d 581, 598 (2d Cir. 2016).

evidence as many be available.”<sup>165</sup> The extent to which a LIMBY policy may have a disparate effect on race varies from community to community based on the composition of that community as well as the community’s definitions of “local.” The odds of discriminatory intent serving as the implicit or explicit motive for any right to hometown policy can be diminished by adhering to the government’s normal policy-making procedures and developing a thorough record that indicates the government’s non-discriminatory purposes for the policy.<sup>166</sup>

Assuming governments sufficiently diminish concerns of any discriminatory intent, they can also bolster the legal rationale for group-specific zoning (i.e., zoning for locals) by citing related case law upholding housing policies intended to advance local interests, even at the expense of certain groups. Lower courts have specifically opted not to regard another group of residents with relatively few ties to the community – college students – as a suspect class.<sup>167</sup> They have denied students that status, in part, based on a lack of evidence that society has historically nor irrationally expressed prejudice against students<sup>168</sup> and, in part, on the fact that “[r]estrictions on activities generally engaged in only by teens or young adults have been upheld in other contexts.”<sup>169</sup>

For similar reasons, courts would likely not afford the protections provided by “suspect class” status to residents who have spent only a few years in a location and, therefore, are not regarded by the government as a “local.” Like college students, newcomers to a city “have not faced a long history of discrimination, are not an insular minority, and have not been classified according to an immutable trait acquired at birth.”<sup>170</sup> However, if a government opted to prefer only “true locals,” those born in the community, rather than a group including “adopted locals,” then a court might find it necessary to apply strict scrutiny on the basis that the location of one’s birth is an immutable trait acquired at birth.

Given that a suspect classification angle will likely fail, those challenging a community trust fund policy will then have to try to categorize it as affecting a fundamental right. This will prove to be difficult. “[T]he courts have held that these rights can be found in those explicitly enumerated

---

<sup>165</sup> *Id.*

<sup>166</sup> *See* Winfield v. City of New York, 2016 U.S. Dist. LEXIS 146919, 23, 2016 WL 6208564.

<sup>167</sup> *See* Fed. Hill Capital, LLC v. City of Providence, 2018 R.I. Super. LEXIS 14, 11 (collecting cases in which courts opted not to treat college students as a suspect class).

<sup>168</sup> *See, e.g.*, Bloomberg Landlords Ass’n v. Town of Bloomsberg, 912 F. Supp. 790, 805 (1995).

<sup>169</sup> *Id.* (collecting cases).

<sup>170</sup> SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla, 415 S.C. 72, 781 S.E.2d 115, 123 (S.C. 2015).

in the Bill of Rights, as well as other implied constitutional guarantees that are deemed fundamental to our society of ordered liberty.”<sup>171</sup> Courts inquiring into whether a right constitutes a “fundamental right” may also look to the “traditions and [collective] conscience of our people” to determine whether a right is “so rooted [there] . . . as to be ranked as fundamental.”<sup>172</sup> A few states, within the context of fundamental rights protected by their respective state constitution, have expanded this list of rights. For instance, Rhodes Island includes the rights of fishery and the privileges of the shore as fundamental rights.<sup>173</sup>

However, where a court can regard legislation as economic or social legislation, then it will most likely not regard it as implicating a fundamental right.<sup>174</sup> In *Village of Belle Terre v. Boraas*, the Court upheld a zoning ordinance that restricted occupancy of single-family homes to traditional families – defined as “one or more persons related by blood, adoption, or marriage, living and cooking together as a single household unit[.]”<sup>175</sup> Similar zoning ordinances restricting who can live in a certain kind of housing have also been upheld.<sup>176</sup>

Where such restrictions have been overturned under the Equal Protection Clause, the court’s determination has often been that the proposed restrictions did not rationally relate to the problems occurring in the relevant jurisdiction.<sup>177</sup> For instance, a Rhode Island court determined that town’s zoning law, which prohibited more than three unrelated individuals from sharing a residential unit, was unconstitutional under the Equal Protection Clause.<sup>178</sup> That court noted that the restriction contradicted the determinations of local officials with respect to necessary housing policies and were not crafted in response to any sort of crisis nor even a “substantial change in circumstances” that would warrant the restrictions.<sup>179</sup> The connection between LIMBY policies providing financial support to local homebuyers and the underlying crisis of displacement caused by the sudden proliferation of newcomers is surely strong enough to avoid being declared unconstitutional under the Equal Protection Clause. This likelihood is strengthened by the fact that the Supreme Court of the United States has permitted district courts to consider “local tradition and custom” in an equal

---

<sup>171</sup> Fed. Hill Capital, LLC, 2018 R.I. Super. LEXIS at 12 (internal quotations omitted).

<sup>172</sup> See *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

<sup>173</sup> R.I. Const. Art. I, §§ 16-17.

<sup>174</sup> See *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7-8 (1974).

<sup>175</sup> *Id.* at 1.

<sup>176</sup> See Fed. Hill Capital, 2018 R.I. Super. LEXIS at 15 (collecting cases).

<sup>177</sup> See generally *Distefano v. Haxton*, 1994 R.I. Super. LEXIS 98, 1994 WL 931006, 1 (R.I. Super. Dec. 12, 1994).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 38–39.

protection analysis.<sup>180</sup> Overall, courts will likely not find that there is a fundamental right of choice in housing; therefore, local governments are likely free to use LIMBY policies to assist locals in their aim to remain in their community.

The Fourteenth Amendment also prevents state or local governments from taking action in “an arbitrary or capricious fashion,” as doing so would violate a person’s substantive due process rights.<sup>181</sup> However, plaintiffs challenging legislation on substantive due process grounds will only succeed on such a claim if they can prove that the government’s action was “clearly arbitrary and unreasonable” as well as “having no substantial relation to the public health, safety, morals, or general welfare.”<sup>182</sup> Governments can reduce the odds of LIMBY policies being overturned on substantive due process grounds by following the same advice as for Equal Protection: follow the traditional policy-making procedures and develop an extensive record outlining the need for the policy.

#### B. Legality of LIMBY Policies Related to Short-Term Rentals

Short-term rentals displace locals, as discussed above. The emergence of Airbnb and other STR platform caught many cities off guard and, consequently, unregulated.<sup>183</sup> Now communities such as New Buffalo, Michigan are doing their best to stop the spread of these rentals given the deleterious impact of such rentals on locals seeking to stay put. When New Buffalo issued a moratorium on permits for STRs in the city,<sup>184</sup> resident property owners dragged the City into court – attacking the legality of the ordinance.<sup>185</sup> Some of those attacks were specific to the manner in which New Buffalo implemented the moratorium; others were grounded in the constitution and, therefore, are relevant to cities considering similar policies. Notably, the court did not find the latter arguments to be particularly

---

<sup>180</sup> *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

<sup>181</sup> *Sinaloa Lake Owners Ass’n v. City of Simi Valley*, 882 F.2d 1398 (9<sup>th</sup> Cir. 1989).

<sup>182</sup> *Id.*

<sup>183</sup> See, e.g., Times Editorial Board, *Editorial: Wrong Way on Airbnb*, L.A. Times (Apr. 30, 2015), <https://www.latimes.com/opinion/editorials/la-ed-rentals-airbnb-20150430-story.html> (describing Los Angeles as being “[c]aught off guard” by the popularity of “room-sharing services.”)

<sup>184</sup> David Johnson, *New Buffalo Short-Term Rental Ordinance Opposed, Supported and Approved*, Harbor County News (Dec. 4, 2021), [https://www.harborcountrynews.com/news/new-buffalo-short-term-rental-ordinance-opposed-supported-and-approved/article\\_2a0a138a-4f8c-11ec-a1e2-1b04b48b3b5c.html](https://www.harborcountrynews.com/news/new-buffalo-short-term-rental-ordinance-opposed-supported-and-approved/article_2a0a138a-4f8c-11ec-a1e2-1b04b48b3b5c.html).

<sup>185</sup> Jamie A. Hope, *New Buffalo’s Mayor Takes Hardball Approach to Short-Term Rentals*, Capitol Confidential (Mar. 18, 2022), <https://www.michigancapitolconfidential.com/new-buffalos-mayor-takes-hardball-approach-to-short-term-rentals>.

strong.<sup>186</sup>

First, the plaintiffs relied on the Commerce Clause to end the moratorium.<sup>187</sup> “When a law protects in-state economic interests and, as a result, imposes a burden on out-of-state competitors, a court will apply a Dormant Commerce Clause review,” according to the *Moskovic* court.<sup>188</sup> Courts will almost invariably invalidate state laws that “explicitly discriminate against interstate commerce.”<sup>189</sup> They will also strike down “laws that appear neutral but have an ‘impermissibly protectionist purpose or effect.’”<sup>190</sup> However, the *Moskovic* court did not think the Dormant Commerce Clause should invalidate the moratorium because, on its face, the moratorium treated residents and non-residents alike, as well as interstate and intrastate commerce.<sup>191</sup> The court also did not identify any discriminatory or protectionist intent on behalf of New Buffalo.<sup>192</sup>

Given its finding that New Buffalo’s moratorium on STR permits did not implicate the Dormant Commerce Clause’s prohibition on express protectionism, the court then considered if the undue burden test would render the moratorium unconstitutional.<sup>193</sup> Under that test, “laws will be upheld unless they impose burdens on interstate commerce that clearly exceed their local benefits.”<sup>194</sup> As applied to the moratorium, the court determined that it posed no undue burden “whatsoever” on interstate commerce.<sup>195</sup> The court supported this conclusion by pointing out that “the burden [created by the moratorium] is the same regardless of whether the homeowner or renter are from the state or not.”<sup>196</sup> It also noted that it had received no notice of any regulation that had been struck down under the Dormant Commerce Clause merely because it negatively affected business transactions that could involve out-of-state participants.<sup>197</sup>

The *Moskovic* court also doubted the strength of Equal Protection claims raised by the plaintiffs.<sup>198</sup> As discussed above in the analysis of the *Langlois* case, the *Moskovic* court noted that the plaintiffs would struggle to show that the moratorium implicated a fundamental right or affected a

---

<sup>186</sup> *Moskovic v. City of New Buffalo*, 2021 U.S. Dist. LEXIS 72576, at 8, (W.D. Mich. Apr. 15, 2021).

<sup>187</sup> *Id.* at 2.

<sup>188</sup> *Id.* at 8 (quoting *Garber v. Menendez*, 888 F.3d 839, 843 (6th Cir. 2018)).

<sup>189</sup> *Id.* (quoting *Garber v. Mendez*, 888 F.3d 838, 843 (6th Cir. 2018)).

<sup>190</sup> *Id.*

<sup>191</sup> *Moskovic*, 2021 U.S. Dist. LEXIS 72576 at 8.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 8.

<sup>194</sup> *Id.* at 9 (quoting *Garber v. Menendez*, 888 F.3d 839, 843 (6th Cir. 2018)).

<sup>195</sup> *Moskovic*, 2021 U.S. Dist. LEXIS 72576 at 9.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*



suspect class.<sup>199</sup> Furthermore, it was obvious to the court that New Buffalo had a rational basis for the moratorium on STR permits.<sup>200</sup> The city had documented its interest in monitoring the use of homes for STRs as well as its concern “for the well-being of the community.”<sup>201</sup>

Finally, one short paragraph was enough for the court to evaluate and reject the substantive due process claims raised in *Moskovic*.<sup>202</sup> Although the plaintiffs argued that the moratorium deprived them of their “right to operate their business [and] use their property” and that the city’s denial of their STR permits occurred without a “rational relationship to a legitimate government interest,”<sup>203</sup> the court disagreed and flatly stated, “Local governments have a legitimate interest in regulating the use of property within their jurisdiction . . . .”<sup>204</sup>

The holding in *Moskovic* should reassure cities considering taking actions to limit STRs that they likely can do so on legally strong ground. Like the City of New Buffalo, these communities should thoroughly document their rationale for whatever policy they opt to implement, and they should tailor their policy to avoid concerns about impermissible discrimination and interference with interstate commerce.

## VI. THE DEMOCRATIC IMPORTANCE OF LIMBY

### A. Displacement of Locals Diminishes the Vibrancy and Viability of Local Democratic Institutions

Municipal and local governments develop and defend the character of their community.<sup>205</sup> Community character forms from a combination of “sociocultural, economic, geographical, and environmental factors.”<sup>206</sup> External alterations to those factors can diminish the extent to which a community can cooperatively work towards a shared vision.<sup>207</sup> The result is a less cohesive community in which democracy breaks down.

The COVID-19 pandemic and the myriad political, cultural, and economic shifts it produced served as an external shock that rippled through communities of every size in every part of the country.<sup>208</sup> Communities that

---

<sup>199</sup> *Id.* at 10.

<sup>200</sup> *Id.* at 11.

<sup>201</sup> *Moskovic*, 2021 U.S. Dist. LEXIS 72576, at 11 (citation omitted).

<sup>202</sup> *Id.* at 11–12.

<sup>203</sup> *Id.* (citations omitted).

<sup>204</sup> *Id.* at 12.

<sup>205</sup> Sarah Swan, *Constitutional Off-Loading at the City Limits*, 135 HARV. L. REV. 831, 838 (“Municipalities carefully construct and fiercely protect their community character.”).

<sup>206</sup> *Id.*

<sup>207</sup> See *infra* notes 217–20 and accompanying text.

<sup>208</sup> See, e.g., Ellen Barry, *Drained by a Year of Covid, Many Mayors Head for the Exit*,

previously had succeeded in sustaining and protecting a distinct community character suddenly found themselves struggling to avoid a fractured existence. Kalispell, Montana regrettably serves as an example of such fracturing.

“Montanans used to live and let live. Today bitter confrontations dim Big Sky Country.”<sup>209</sup> In the article following this headline, journalist Lisa Rein described a community “desperate for unity” after having been “jittery for months.”<sup>210</sup> As evidence, Rein outlined a parade of pickup trucks full of Trump supporters passing regularly through town, neighbors being “cleaved” by differences in opinions on mask mandates, Facebook groups once reserved for conversations about nature being subsumed by politics and even “being ‘suspicious’ of the new people moving here,” and the suicides of nine teenagers in the span of a little more than a year.<sup>211</sup> From these events, Rein concluded that a community once capable of rallying together to solve problems was now at serious risk of letting any new “political issues” tear it apart.<sup>212</sup> The mayor even declared that his town was “going through a divorce.”<sup>213</sup>

How can representatives of such a community – one where national issues dominate and divide – effectively voice the needs and address the concerns of their constituents?

The nationalization of everything has broken down the protections that used to allow communities to remain intact. Rein attributes some of the discord in Kalispell to the fact that “national passions erupted” in the community.<sup>214</sup> Events in Washington, D.C., were given more attention and weight by more residents than the issues immediately before them and most applicable to the well-being of their community.

As has proven true in once cohesive communities across the U.S., these events “convuls[ed] everything from the school district and the public library to daily interactions” and were given airtime by “old-school Republicans, backers of [Trump], increasingly vocal Democrats and out-of-

---

N.Y. TIMES (Apr. 11, 2021), <https://www.nytimes.com/2021/04/11/us/covid-burnout-mayors.html> (reviewing how mayors in communities across the U.S. resigned from office due to the governing burdens imposed by COVID-19 and its effects).

<sup>209</sup> Lisa Rein, *Montanans Used to Live and Let Live. Today Bitter Confrontations Dim Big Sky Country*, WASH. POST (Oct. 25, 2021, 6:00 AM), [https://www.washingtonpost.com/politics/montana-extreme-trump/2021/10/22/0f82afbc-0037-11ec-a664-4f6de3e17ff0\\_story.html](https://www.washingtonpost.com/politics/montana-extreme-trump/2021/10/22/0f82afbc-0037-11ec-a664-4f6de3e17ff0_story.html).

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

state transplants.”<sup>215</sup> Local traditions gave way to national skirmishes, which require all participants to pick one side or the other. So, it comes as no surprise that one Kalispell resident concluded that “[t]here’s no middle anymore” and another asserted that “[t]he extremists have stolen everything.”<sup>216</sup>

People with new or relatively few ties to a community are less likely to invest in the perpetuation of local institutions, such as local newspapers, that are critical to our democracy.<sup>217</sup> It turns out WEEMs are especially unlikely to watch or read local news.<sup>218</sup> Thus, as WEEMs squeeze into new communities, they may not only displace locals but also deprive a local newspaper of subscribers.<sup>219</sup> The displacement of likely subscribers may contribute to the demise of local news and the role it plays in our democracy.

“In the 15 years leading up to 2020, more than one-fourth of the country’s newspapers disappeared,” writes Penelope Muse Abernathy of the University of North Carolina.<sup>220</sup> That depressing and troubling trend is accelerating: three hundred newspapers closed between 2018 and 2020, causing more than six thousand journalists to lose their professional roles.<sup>221</sup> Not only has the number of local papers dwindled, many of those remaining have been acquired by national media companies.<sup>222</sup> Whereas local papers used to have pages filled with distinct, hyperlocal content, individual papers under common national ownership now share a tremendous amount of content, which tarnishes the local product by making it “look and feel homogenized.”<sup>223</sup>

---

<sup>215</sup> Rein, *supra* note 209 (internal quotations omitted).

<sup>216</sup> *Id.*

<sup>217</sup> See generally, U.S. DEP’T OF LABOR, BUREAU OF LABOR STAT., USDL-16-0363, VOLUNTEERING IN THE UNITED STATES—2015 (2016), (disclosing survey findings that individuals with kids volunteer more in a community, which suggests they have more ties to the community and a greater interest in its well-being than those without kids or similar connections to their community).

<sup>218</sup> See also Michael Barthel et al., *Older Americans, Black Adults and Americans with Less Education More Interested in Local News*, PEW RSCH. CTR. (Aug. 14, 2019), available at: <https://www.pewresearch.org/journalism/>

2019/08/14/older-americans-black-adults-and-americans-with-less-education-more-interested-in-local-news/.

<sup>219</sup> See *id.*

<sup>220</sup> Penelope Muse Abernathy, *The Local News Landscape in 2020: Transformed and Diminished*, US NEWS DESERTS, <https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/the-news-landscape-in-2020-transformed-and-diminished/> (last visited Oct. 12, 2022).

<sup>221</sup> *Id.*

<sup>222</sup> See generally Benjamin LeBrun et al., *Buying the news: A quantitative study of the effects of corporate acquisition on local news*, New Media & Society (2022).

<sup>223</sup> See, e.g., Michael Hiltzik, *Local news decline takes big toll on society*, L.A. Times (Aug. 29, 2022), <https://www.latimes.com/business/story/2022-08-29/decline-of-local-news>.

The homogeneity of content from one newspaper to the next makes it easier than ever to follow national news: there is more of it and, in many cases it is of higher quality. Local newspapers (specifically, locally-owned-and-operated newspapers<sup>224</sup>) may not publish pieces likely to win any awards and may not do so until enough consumers deliberately choose to prioritize and financially support this source of news. Readers concerned about the cause and impacts of anti-LIMBY policies and market conditions ought to consider not only subscribing themselves but also gifting subscriptions to local papers to others in their community.

A vibrant local paper can raise awareness of locals facing displacement. Locals rely on community papers to “keep them informed, to keep their elected officials and business leaders honest, and to provide the glue that brings neighbors together as a community,” writes Michel Hiltzik.<sup>225</sup> In the absence of that glue, neighbors may not care if locals get displaced because – for them – their physical location has little impact on their daily activities. They can stay home to work, order food, and even socialize. The downstream effects of such a lack of engagement are significant. In a place without a local newspaper, the sense of community gets “sap[ped],” communal knowledge suffers “incalculable” losses, and voter turnout decreases;<sup>226</sup> additionally, people have to look for other sources of news.<sup>227</sup>

National issues and media are inherently devoid of local context.<sup>228</sup> If these issues get prioritized, then residents feel no need to understand how issues are playing out in their community. When local news organizations were more common and well-funded, communities could have forged a consensus around the right approach to mask mandates. In that setting, teachers such as Kari Elliott, who had served as a public school educator in Montana for nearly 30 years, would have had a meaningful voice in the process of reaching that local consensus.<sup>229</sup> As professionals like Elliott with vested stakes in local news and the local community get pushed out of those places due to a lack of LIMBY policies, national news and perspectives may

---

<sup>224</sup> See *id.* (mentioning that Gannett, a single company, owns more than 400 local weeklies and dailies in all but four states and that Lee Enterprises, another company, owns 77 newspapers in 26 states).

<sup>225</sup> *Id.*

<sup>226</sup> See *id.*

<sup>227</sup> See *id.*

<sup>228</sup> Sara Fischer, *The Local News Crisis is Deepening America's Divides*, Axios (July 4, 2022), <https://www.axios.com/2022/07/04/local-newspapers-news-deserts> (discussing how national news falls to fill the gaps in coverage when local news organizations leave a community).

<sup>229</sup> Rein, *supra* note 209 at 43.

fill the vacuum.<sup>230</sup> In Kalispell, many people opted to repeat nationally-oriented talking points they read on Facebook, Twitter, and the like. Still, the town had enough residents committed to the community to rebuke some efforts to rob the community of its cohesion – of the five challengers to community’s school board (all running in opposition to masks) only one succeeded.<sup>231</sup> Elliott attributed their losses to the fact that “[m]ost of the parents still trusted in the public schools.”<sup>232</sup> That sort of trust cannot be forged without a commitment to a community.

A commitment to a community can exist within a town or city of any size. Just as Kalispell residents have been rebuilding their cohesive community by resisting the temptation to nationalize everything and exploring LIMBY policies such as workforce housing,<sup>233</sup> residents of neighborhoods in big cities like San Francisco can start spending more time meeting people on their block (rather than online), picnicking in their local parks (rather than flying to other states), and attending Board of Supervisor meetings (rather than endlessly scrolling through Twitter and retweeting to show their partisan bona fides). Obviously, it will be harder for the numerous residents of San Francisco to be as cohesive as the residents of Kalispell who are fewer in number, but San Francisco would still be a much stronger community if its respective neighborhoods, such as the Sunset and the Mission, took meaningful steps to forge cohesive communities within the larger municipal context.

In the news vacuum left by the closing or nationalization of a local paper, there is no guaranteeing that community members will fill the gap with quality news. The co-founder of Report for America, Steven Waldman, noted that in many cases that gap is filled by “misinformation engines” operated by political insiders, ideologues, and corporate public relations departments.<sup>234</sup>

---

<sup>230</sup> See, e.g., Andre M. Perry, *Too Many Teachers Can’t Afford to Live Near Their Schools*, Brookings (June 20, 2019), <https://www.brookings.edu/blog/the-avenue/2019/06/20/too-many-teachers-cant-afford-to-live-near-their-schools/>; see also VOTE SD5 Students ARE the Future, Facebook (n.d.), <https://www.facebook.com/people/VOTE-SD5-Students-ARE-the-Future/100064831908839/> (indicating the willingness of the challengers to focus on non-local issues, such as critical race theory and the spread of communism).

<sup>231</sup> Rein, *supra* note 209 at 43.

<sup>232</sup> Rein, *supra* note 209 at 43; see generally Our Solutions, YIMBY Action (n.d.), <https://yimbyaction.org/2021/solutions/> (last visited Oct. 4, 2022) (demonstrating that supporters of affordable housing also prioritize high quality schools and community funding for schools).

<sup>233</sup> See, e.g., Heidi Desch, *Kalispell Council to Take Input on Workforce Housing Funding Proposal*, Daily Inter Lake (Sept. 19, 2022), <https://dailyinterlake.com/news/2022/sep/19/kalispell-council-takes-input-workforce-housing-fu/>.

<sup>234</sup> Steve Waldman, *Our Local-News Situation Is Even Worse Than We Think*, Columbia

These engines encourage the discord seen in places like Kalispell. LIMBY policies can help reverse the nationalization of news and of politics in general by helping the people most invested in a community stay in that community and participate fully in its democratic self-governance.

#### B. WEEMs with Political Agendas Heighten Extremism in Their New Communities

“The U.S. is becoming more geographically polarized. Red zip codes are getting redder and blue zip codes are getting bluer. And this is because people are purposefully moving to places that reflect their views,” observed National Public Radio’s Ari Shapiro in his introduction to a recent episode of *Consider This*.<sup>235</sup> Montana’s swing to the right and the bluing of Bend demonstrate this polarization. Like ecosystems disrupted by outside forces, the political equilibriums that had been achieved in Montana and Bend (equilibriums that locals appreciated) have been lost due to in-migration by individuals looking for (among other things) a political haven for their national ideological aims. For similar reasons, in places like Idaho, a community with a clear preference for one political party has become hyper-partisan due to outsiders self-selecting that location as the place to vigorously indulge their partisan preferences.

For Montanans, Idahoans, and Bendites, the result of in-migration is a more extreme bent in their political identity as well as a diminished focus on local issues. Although the Republican Californians that moved to Idaho and Montana did not do so because of the local flavor of Republicanism in those destinations, the new residents will vote straight tickets in local, state, and federal elections despite not having paid attention to political platforms related to local issues.

Bend provides an example of how new residents can insist on enforcing national perspectives on the local community and, over time, change the political identity of that community. For decades, Deschutes County leaned Republican.<sup>236</sup> Like other areas outside of the Portland bubble but relatively close to the western half of the state, it had a reputation for producing center-of-the-road elected officials.<sup>237</sup> The steady and substantial

---

Journalism Review (Feb. 25, 2022), [https://www.cjr.org/local\\_news/local\\_reporters\\_decline\\_coverage\\_density.php](https://www.cjr.org/local_news/local_reporters_decline_coverage_density.php).

<sup>235</sup> *Red Zip Codes Are Getting Redder, Blue Zip Codes Are Getting Bluer*, NPR (Feb. 21, 2022), <https://www.npr.org/transcripts/1081277034>.

<sup>236</sup> Rhea Panella and Barney Lerten, *For First Time, Deschutes County Democrats Slightly Outnumber Republicans*, KTVZ (Feb. 11, 2020), <https://ktvz.com/news/bend/2020/02/11/for-first-time-deschutes-county-democrats-slightly-outnumber-republicans/>.

<sup>237</sup> See Andrew Selsky, ‘No Way Out’: *Changing Demographics in Central Oregon*

influx of Californians changed the political orientation of Deschutes County politics. That tilt became a skew to the left in 2018 when the arriving Californians, who made up two-thirds of the area's in-migration that year, came from heavily Democratic areas of a state that votes deep blue on the whole.<sup>238</sup> The other arrivals that year came from other liberal bastions such as Seattle and Portland.<sup>239</sup> When a state economist reviewed the party registration information after this influx of outsiders, he speculated that the growth in the number of Democrats "could be a reflection of the political party affiliation of the new residents, rather than longtime locals shifting their party affiliation."<sup>240</sup>

It is not wrong for new residents to bring their political preferences with them nor is it wrong for them to be robust participants in their new home's civic arena. However, it seems problematic when those moving to an area do so in sufficient numbers to deny long-time locals the chance to have their views represented.

If Bend had LIMBY policies in place, then fewer Californians would have ended up in Central Oregon and the odds of the political character of the community remaining a little closer to its historical norm would have increased. Now, those local, moderate Bendites either have to move out (if they can afford to do so) to find an area that reflects their preferred political culture (which is hard to find) or stay (if they can afford to do so) and tolerate the changes imposed by new residents who never experienced the benefits or drawbacks of the Bendite culture.

As they have done in Oregon, WEEMs with ideological goals have also impacted Montana's politics. Although California has a reputation as a "blue" state, it appears that "redder" Californians have a particular interest in moving to Montana. The influx of conservative Californians may help explain why a historically "purple" Montana has gotten a lot redder in recent years. Billings Mayor Bill Cole has described the political leanings of new residents, by noting that many Californians perceive Montana as "more

---

*Underscore West Coast Political Shift*, Associated Press (Feb. 26, 2020), <https://www.statesmanjournal.com/story/news/politics/2020/02/26/>

changing-demographics-central-oregon-underscore-political-shift-gop-republicans-democrats/4878767002/. (Mark Hatfield, a pragmatic governor, was from Dallas, Oregon; Tom McCall, took over for Hatfield and followed his pragmatic ways, grew up in Prineville, Oregon; John Kitzhaber, yet another pragmatic governor, represented Roseburg, Oregon in the state legislature; Dave Frohnmayer, an even-keeled attorney general who almost became governor, was from Medford, Oregon; and, more recently, Bend residents had elected Cheri Helt, widely regarded as a moderate, as their state representative).

<sup>238</sup> See Runberg BEFORE, *supra* note 57 at 12.

<sup>239</sup> *Id.*

<sup>240</sup> Andrew Selsky, *Shifting Demographics Drive GOP Nosedive on US West Coast*, Associated Press (Feb. 27, 2020), <https://smdp.com/2020/02/27/shifting-demographics-drive-gop-nosedive-on-us-west-coast/> (quoting economist Damon Runberg).

red,”<sup>241</sup> and that is a selling point for at least some of the new residents.

Mayor Cole’s anecdotal report on the political leanings of new Montanans from California does have some empirical support. Considering the Republican Party’s historic and fervent opposition to taxes,<sup>242</sup> the fact that fifty-eight percent of Californians considering leaving their state identified high taxes as at least one reason for their move provides an indication as to the partisan leanings of new Montanans.<sup>243</sup> It is presumable that the people fleeing a high tax state would vote for policies that avoid a similar outcome in their new home.

Now that the scales have been tipped in places like Bend and states like Montana, researchers anticipate that they will continue to careen away from each community’s original identity. The author of “The Big Sort,” Bill Bishop, observed that “[g]roups of like-minded people tend to become more extreme over time in the way that they’re like-minded.”<sup>244</sup> The effect of outsiders skewing politics in one direction is to attract more like-minded outsiders, displacing original residents, unless officials take steps to help locals already invested in a community stay in that community. This has problematic national implications because more extreme political communities will elect hyper-partisan officials unlikely to compromise even when doing so may assist the nation.

## VI. CONCLUSION

LIMBY policies are not about forcing people to stay put, but instead giving more Americans the means to choose when and if they will move. Although living in one’s hometown offers many benefits, as discussed above, sticking around too long in certain communities can have negative effects on individuals as well as those around them. Some research suggests that locals in certain communities miss out on exposure to other people, culture, and experiences and, consequently, become insular.<sup>245</sup> Relatedly, economic

---

<sup>241</sup> Anna Cooban, *Conservatives Are Moving to Billings, Montana, from Coastal Cities to be Around People Who Share Their Views, the Mayor Says*, Insider (Aug. 2, 2021), <https://www.businessinsider.com/moving-to-montana-from-coasts-conservatives-republicans-billings-mayor-2021-8>.

<sup>242</sup> See Jonathan Chait, *For Republicans, the Time Is Never Quite Right to Tax the Rich*, Intelligencer (Apr. 1, 2021), <https://nymag.com/intelligencer/article/biden-tax-corporations-rich-republicans-infrastructure-congress.html> (referring to the Republican Party’s general and long-term opposition to taxation).

<sup>243</sup> Steven Malanga, *Calculating the Californication*, City Journal (Winter 2020), <https://www.city-journal.org/california-migration-politics>

<sup>244</sup> John Burnett, *The Widening Political Chasm Is Revealed in Real Estate Data*, NPR (Feb. 17, 2022), <https://www.kunc.org/2022-02-17/the-widening-political-chasm-is-revealed-in-real-estate-data>.

<sup>245</sup> Chang, *supra* note 23 (citing research by the Public Religion Research Institute on



analysis has shown that remaining in areas with concentrated poverty may hinder the health and economic well-being of community members.<sup>246</sup> Nevertheless, it is important that locals have the power to decide if the benefits of that community outweigh the drawbacks and, as a result, justify remaining in their hometown. Policymakers may want to encourage individuals in struggling communities to search for new homes, but neither the law nor any other force beyond an individual's control should compel them to leave.

Fortunately, community leaders are becoming aware of the value of LIMBY policies. A return to Bend, Oregon provides a great example of this awareness. A 2021 editorial by the Editorial Board of *The Source Weekly*, a local paper, made clear that locals are hungry for a leader brave enough to prioritize Bendites.<sup>247</sup> The *Source Weekly* editors laid a strong foundation for any leader seeking to champion LIMBY policies. They pointed out that displacement from the status quo was resulting in empty communities filled with STRs and failing businesses unable to recruit and retain workers.<sup>248</sup> They acknowledged that the actions necessary to advance that right might require “taking uncomfortable actions,”<sup>249</sup> and they advocated for density and other measures that would allow for sensible growth without diminishing the attributes that make the city so wonderful.<sup>250</sup> They also directly pointed out that favoring the interests of locals would come at an economic cost.<sup>251</sup> In other words, the editors of this local newspaper did nearly everything but coin the phrase “Locals In My Backyard.”<sup>252</sup>

It is past time for a movement in favor of LIMBY to take off. YIMBYs began the conversation by asking, “What do we need to build?” and answering, “Affordable housing.” LIMBYs need to ask and answer the next question, “Who are we building for?” The answer is already out there in places such as the *Source Weekly*'s editorial. Surely the folks at the *Source Weekly* are not alone in sensing that residents of communities like Bend are eager to see their local governments help them prevent the involuntarily displacement of locals. What is required for the proliferation of LIMBYism is what every movement needs: refinement of the message, dissemination of the message, and insistence on the message.

One starting idea: the housing crisis is not just an economics problem

---

some of the downsides of remaining in a specific and small community).

<sup>246</sup> *See id.* (“People who left the community they grew up in tend to be more educated and earn higher incomes.”)

<sup>247</sup> Editorial Board, *supra* note 100.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

– in fact, first and foremost, it is a people problem. How can we empower people to live and thrive in the communities of their choice? LIMBYism is about putting people at the heart of every affordable housing policy and making sure that everyone has a right to choose their hometown.

One starting place: Bentonville, Arkansas. Though Bentonville and its suburbs, such as Bella Vista, may not receive as much attention as mountain towns for being filled up by WEEMs and having locals pushed out, this slice of the state is facing the same pressures as Boise, Bozeman, and Bend. More specifically, the northwest corner of Arkansas has seen more housing dedicated to STRs as the popularity of its destination towns grows;<sup>253</sup> organizations are actively recruiting out-of-state visitors to become permanent residents;<sup>254</sup> and, drastic increases in the cost of housing.<sup>255</sup>

This region is ready for a LIMBY message. Stakeholders such as the Northwest Arkansas Council (NAC) know that a balance must be struck between recruit of new residents and retention of old ones. NAC’s most recent regional strategy document acknowledged that construction of affordable housing must occur to maintain the area’s quality of life.<sup>256</sup> YIMBYs would applaud NAC’s commitment to “[p]ut significant additional focus and investments on addressing the challenges of growth, providing affordable housing and preserving character and quality of life.”<sup>257</sup> After all, NAC is appropriately answering the question asked by YIMBYs – “What do we need to build?” However, what NAC and other stakeholders throughout the region need to answer next is “Who are they building for?” Right now, the answer appears to be high-skilled, out-of-town workers.<sup>258</sup> While some housing should definitely go toward outside talent, LIMBYs must also take action to ensure housing for locals remains a priority and becomes a reality.

Once the message of LIMBYism takes off in a place such as

---

<sup>253</sup> See News Release, *Foliage and Football Destinations Top Labor Day Weekend and Fall Travel in the US, Airbnb* (Aug. 16, 2022), <https://news.airbnb.com/foilage-football-and-fresh-water-destinations-top-labor-day-weekend-and-us-fall-travel-trends/> (listing Bella Vista as one of the top destinations for Airbnb guests in the Fall of 2022).

<sup>254</sup> See, e.g., *Life Works Here, Northwest Arkansas Council*, <https://findingnwa.com/incentive/> (touting the quality of life in the area and citing the increase in remote work as a reason for non-locals to move to the region).

<sup>255</sup> News Release, RE/MAX National Housing Report for May 2022, Re/Max (May 2022), [https://remaxnews.cdn.prismic.io/remaxnews/dcc12f52-08ec-4602-97b8-5c6247530877\\_May+2022\\_REMAXNHR\\_FINAL.pdf](https://remaxnews.cdn.prismic.io/remaxnews/dcc12f52-08ec-4602-97b8-5c6247530877_May+2022_REMAXNHR_FINAL.pdf) (reporting that Fayetteville, Arkansas had the second highest year over year increase in median sales price of homes among metro areas in the U.S.).

<sup>256</sup> *Northwest Arkansas Regional Strategy 2022-2026*, NWA at 2 (n.d) ([https://nwacouncil.org/wp-content/uploads/2022/07/NWAC\\_RegionalStrategy2022.pdf](https://nwacouncil.org/wp-content/uploads/2022/07/NWAC_RegionalStrategy2022.pdf)) (accessed on Sept. 21, 2022).

<sup>257</sup> *Id.* at 4.

<sup>258</sup> See generally *id.*

Bentonville, there is no stopping it. Locals of communities around the U.S. will realize they have a stake in their community that should not be susceptible to displacement by outside forces with few or no roots in that community. As that recognition spreads, more and more people will ask, “I know we’re building affordable housing, but who are we building for?”

\* \* \*