EQUITABLE HOUSING INSTITUTE

Promoting housing stability, fairness and affordability by combating exclusionary practices

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Costs and benefits of a general ban on regulatory barriers to housing opportunities

We have extolled the benefits of enacting a statutory ban on regulatory barriers to housing opportunities (*e.g.*, exclusionary zoning), statewide or even nationwide. Banning those overly restrictive practices would lead to a major expansion of the deficient housing supply across the United States. It also would lead to the end of the extraordinary, long-term inflation in housing costs, now a nationwide crisis.

Among the questions that predictably will be asked about proposed new, remedial legislation are how it would affect the amount of public and private spending and the volume of litigation. This report provides rough estimates of the costs of administering and enforcing a general, statutory ban on regulatory barriers to housing opportunities, and private sector costs. It also compares the costs to the legislation's expected benefits.

Our analysis focuses on effects of the model statute we have proposed to ban regulatory barriers to housing opportunities comprehensively, nationwide. The model statute is the Economic Fair Housing Act (EFHA). [1] It would add those economically discriminatory barriers to the list of banned practices under the federal Fair Housing Act.[2]

Based on our analysis, a nationwide ban on exclusionary government housing practices would not cause a substantial increase in overall government spending or litigation, and it would produce enormous, net benefits for private citizens—financial and otherwise. That would be true even if fair housing spending doubled the level of current spending under the federal Fair Housing Act. But an EFHA would have tremendous benefits even without the kind of government spending that is devoted to administering and enforcing the federal Fair Housing Act.

A comprehensive ban on regulatory barriers to housing opportunities could be enacted in slightly different form at the state or local level. We have examined what a state-level

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[1] *See, e.g.,* EHI, *Discussion Draft EFHA* (Sept. 2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EFHA--EHI_draft_9-2023-anno-S-web.pdf.]

[2] 42 U.S.C. §§ 3601-3619 (Apr. 11, 1968, as amended). That statute addresses discrimination based on race, color, religion, sex, handicap, familial status, and national origin.

EFHA would cost in one fairly representative state (Colorado). We find no indication that there would be more than a minor increase in the state's spending or judicial caseload related to fair housing—even if both were doubled due to an EFHA. The benefits of a statewide ban on regulatory barriers to housing opportunities appear greatly to outweigh the costs.

It may be less challenging to get a more limited ban enacted, at least initially—such as a ban on exclusionary zoning regulations. The various cost and benefit factors would be somewhat reduced as a result. However, the benefits of even a limited ban appear to greatly outweigh the costs.

In this report, we first summarize the benefits of a comprehensive ban on regulatory barriers to housing opportunities. Second, we discuss the costs of such a federal ban, in terms of its effects on public and private spending and the volume of litigation. Third, we will analyze the effects that a state-level comprehensive ban might have, based on one, fairly representative state (Colorado). Fourth, we will give our conclusions.

Benefits of comprehensive ban

As mentioned, a statutory ban on regulatory barriers to housing opportunities (*e.g.*, exclusionary zoning) predictably would result in a much-improved supply of housing across the United States [3] and bring about the end of the nationwide affordability crisis.[4]

Exclusionary zoning and other regulatory barriers to housing opportunities have been chief causes of the mounting loss of housing affordability in the United States since at least the 1980s.[5] Local governments have a vast array of regulatory tools that have been used to frustrate the development of needed housing.[6]

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[3] *See, e.g.*, Equitable Housing Institute (EHI), *Can the vast range of regulatory barriers to housing opportunity be deterred by an Economic Fair Housing Act (EFHA)? ("Vast range*") (2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EFHA_v_vast_range_of_RBHOs-EHI-web.pdf.

[4] As to the current dimensions of the crisis, *see, e.g.*, Joint Ctr. for Housing Stud. of Harv. U. ("Harv. JCHS"), *The State of the Nation's Housing 2024* ("SONH 2024"), p. 1 (2024); *See, e.g.*, Emily Badger and Eve Washington, *The Housing Shortage Isn't Just a Coastal Crisis Anymore*, NY Times (July 14, 2022), posted at: https://www.nytimes.com/2022/07/14/upshot/housing-shortage-us.html.

[5] Major studies have confirmed that the increasing land-use restrictions on housing development are the likely cause of housing production lagging increasingly behind job creation in wealthy, urban areas over the last 40 to 50 years. *See generally, e.g.*, EHI, *Toward a comprehensive ban on exclusionary housing practices*, pp. 8-9 (2019) (discussing Ganong-Shoag and Hsieh-Moretti studies), posted at: https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI-Toward-comprehensive-ban-tech_edits-10-2020.pdf. The natural result is unnecessarily high housing cost inflation.

[6] In addition to zoning regulations, those tools include:

- growth controls (such as housing production moratoriums, growth caps, and phasing schedules);
- building and housing code requirements;
- subdivision controls;
- development-related fees (such as for capital facilities, and development impacts, as well as for plan reviews, permits and inspections);

Numerous state supreme courts have declared exclusionary zoning illegal, [7] and other regulatory barriers to housing opportunities were ruled unlawful by the New Jersey Supreme Court in the landmark *Mount Laurel II* decision.[8] However, there is such a wide array of barriers, they are so firmly established, and they have been so difficult to challenge, that the courts have not been able to bring them under control.[9]

Recently, new zoning and land use reform measures have been enacted in several states and a number of the nation's major cities, including efforts to allow aimed at allowing "missing middle" forms of housing in the nation's predominant type of residential zoning—single-family zoning.[10] That zoning category generally has prevented the inclusion of in-law suites, duplexes and other forms of "missing middle" housing in the urban and suburban neighborhoods it controls.[11]

Despite the progress on some "missing middle" measures and the increasing public support for allowing denser housing development in metropolitan areas,[12] the nation's housing affordability crisis predictably will continue for the foreseeable future—unless major regulatory barriers to housing opportunities are neutralized.[13] Housing prices

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- development exactions (such as the required dedication of land to the public, the construction or maintenance of public infrastructure, or the provision of public services, as implicit conditions of approval of a housing development);
- unnecessary delays and impediments to obtaining "ministerial" permits (those that government must grant when certain objective criteria are met), and
- undue administrative burdens on affordable housing management.

See, e.g., EHI, *Vast renge, supra* n. 3, p. 2. EHI, *Discussion Draft Economic Fair Housing Act (EFHA), annotated*, pp. 3-4 (Sept. 2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EFHA--EHI_draft_9-2023-anno-S-web.pdf

[7] *See, e.g.*, EHI, *"Missing middle" housing and the Economic Fair Housing Act* (*"Missing middle housing"*), pp. 4-5 (Sept. 2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/Missing_middle_and_EFHA.EHI.pdf; EHI, *Exclusionary Housing Policies*, posted at https://www.equitablehousing.org/background/exclusionary-housing-practices.html.

[8] *Southern Burlington Co. NAACP v. Mount Laurel ("Mount Laurel II"),* 92 N.J. 158, 456 A.2d 390, 415 (1983) (local land use "regulations that do not provide the requisite opportunity for a fair share of the region's need for low- and moderate-income housing conflict with the general welfare and violate the state constitutional requirements of substantive due process and equal protection").

[9] *See, e.g., Vast range, supra n.* 3; EHI, *Making challenges to exclusionary housing practices feasible: The role of attorney's fees awards*, p. 16 (2019), posted at https://equitablehousing.org/images/PDFs/PDFs--2018-/Attys-fees-in_housing-related_litigation_EHI-memo-final.pdf.

[10] *See, e.g.*, EHI, *Missing middle housing*, *supra* n. 7.

[11] *See, e.g., id*, at p. 3, n. 16, citing Sage Computing, Inc., *Accessory Dwelling Units: Case Study*, p. 1 (June 2008) (report published by U.S. Dep't of Housing and Urban Development, Office of Policy Development and Research (PDR)).

[12] *See, e.g.*, EHI, *Public opinion and zoning reform* (Sept. 2024), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/Public_opinion_and_zoning_reform.EHI_final-web.pdf.

[13] Those barriers reflect the ambivalence of many voters toward new housing in their vicinity. For example, most Americans own their homes, and most homeowners routinely resist substantial, new residential development in their area. *See, e.g.*, John Infranca, *Differentiating Exclusionary Tendencies*, 72 FLA. L.

continue to rise well ahead of overall inflation. The Consumer Price Index housing cost index ("shelter") increased 4.9 percent over the year ending in October 2024, accounting for over 65 percent of the total increase in core inflation.[14]

The EFHA would be the first comprehensive, statutory prohibition on regulatory barriers to housing opportunity. It would take advantage of the much stronger remedies under most fair housing laws than have been applied to economic discrimination in housing to date.[15]

Also, unlike under current fair housing laws, there would be no need for a victim of economic discrimination to present sophisticated proof of a disparate impact based on race, gender, disability or other protected, non-economic factor. It would be sufficient to show that an unjustified governmental practice contributes to the lack of suitable housing affordable to lower-income people who work in the local jurisdiction or have some other important reason to live there.[16] In addition, more unjustified governmental practices could be prohibited by rule, without needing specific evidence of adverse effects in each case.

An EFHA would benefit members of minority groups in particular, because a disproportionate number of them have low incomes. They often have difficulty showing that they are victims of housing discrimination under the difficult proof requirements of current fair housing laws. By halting the excessive inflation due to inadequate supply, an EFHA would be much more effective than current laws in alleviating the disparate economic impacts of regulatory barriers to housing opportunities on minority group members and low- and moderate-income Americans generally.[17]

An EFHA would have enormous financial benefits for Americans. For example, the authors of one recent, landmark study of land use restrictions found that the "creeping web" of exclusionary zoning and similar regulatory barriers:

REV.. 1271, 1273 (2020) (quoting WILLIAM A. FISCHEL, ZONING RULES!, pp. 300-301 (Lincoln Inst. of Land Policy, 2015)) ((the major financial stake that most homeowners have in their homes drives them to "worry excessively about infill developments that would make for less commuting and more convenient homes and jobs for most residents.").

[14] U.S. Bureau of Labor Statistics, *Consumer Price Index - October 2024*, posted at https://www.bls.gov/news.release/cpi.nr0.htm#. Housing inflation continued to be close to twice the rate of overall inflation in October 2024—0.4% versus 0.2% in the "all items" index. *Id.*

[15] *See generally, e.g.*, EHI, *Toward a comprehensive ban on exclusionary housing practices*, pp. 9-12 (2019), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI-Toward-comprehensive-ban-tech_edits-10-2020.pdf.

[16] Federal law already prohibits government from creating or applying any sort of practice that has a disparate impact based on race, gender, disability, or certain other non-economic characteristics, and that is not strictly necessary. *See, e.g., Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project (ICP)*, 576 U.S. 519, 539 (2015).

[17] *See, e.g.*, EHI, *How an Economic Fair Housing Act would affect minority group members* (June 2023), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2021-/Minority_group_members_and_EFHA.EHI.pdf.

> has smothered wage and gross domestic product growth in American cities by a stunning 50 percent over the past 50 years. Without these regulations, our research shows, the United States economy today would be 9 percent bigger — which would mean, for the average American worker, an additional $6,775 in annual income.[18]

Rigorous recent studies have found a large and growing disconnect between housing prices and the costs of construction in many major metropolitan markets of the United States, which has created an increasing financial burden to the average American. For example, landmark studies done by leading economists Edward Glaeser and Joseph Gyourko found that zoning and other governmental land use restrictions clearly are causing unduly high housing prices in many metropolitan areas across the United States.[19]

The data in a 2003 Glaeser-Gyourko study indicates that by 2000, that problem was affecting not just coastal metropolises such as Los Angeles, San Francisco, Seattle, New York and Boston—where the phenomenon first appeared—but many important interior markets as well. Examples of the latter were Ann Arbor, Atlanta, Austin-San Marcos, Charlotte, Denver, Fort Lauderdale-Miami, Norfolk, Salt Lake City, and Phoenix.[20] As mentioned, affordability problems have spread to the level of a nationwide crisis since then.[21]

Costs of a comprehensive federal ban

The Fair Housing Act, to which a federal EFHA would be an amendment, is administered by the Department of Housing and Urban Development (HUD). The Fair Housing Act is enforced by HUD, the Department of Justice (DOJ), and the federal courts.

We estimate that in FY2023 (the latest year for which full information is available), total federal spending under the Fair Housing Act was not more than 0.00275% of overall federal spending ($1 for at least every $36,387 spent).[22] ("Spending" here includes all

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[18] Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, New York Times (Sept. 6, 2017), posted at https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html.

[19] *See, e.g.*, Edward L. Glaeser, *et al., Why have housing prices gone up?* NBER Working Paper 11129, p. 5 (2005) (housing prices are unnecessarily high where the non-structure component of the value of an ordinary house exceeds 40 percent).

[20] Edward L. Glaeser, *et al., The Impact of Building Restrictions on Housing Affordability*, Economic Policy Review, Federal Reserve Bank of New York, Table 2 (June 2003), posted at https://www.newyorkfed.org/research/epr/03v09n2/0306glae.pdf.

[21] *See, e.g.*, SONH 2024, p. 1; Badger and Washington, *supra*, n. 4.

[22] *See, e.g.*, USASPENDING.gov, FY2023 *Obligated Amount, data as of September 29, 2023*, available at https://www.usaspending.gov/explorer/agency. Overall, the federal government spent roughly $9.3 trillion in FY2023. *Id.*

authorized disbursements, including amounts which the government becomes obligated during the year to pay in the future.)[23]

We also looked at FY2019 HUD spending for comparison. That was the last year of the first Trump Administration before the COVID-19 emergency upended government operations and spending. In FY2019, spending under the Fair Housing Act was roughly the same share of HUD's spending and overall federal spending as in FY2023 (see discussion below, pp. 10-11).

Effect of lower federal spending for an EFHA

An EFHA actually would have enormous benefits, even without doubling the level of federal spending that is devoted to the Fair Housing Act. As discussed below, most of that spending is for HUD's Fair Housing Activities program, which consists basically of two major grant initiatives. One of those initiatives assists state and local fair housing programs, and the other assists the fair housing efforts of private organizations.

Spending for HUD's Fair Housing Activities program amounted to $193.2 million for FY2023, which by our rough estimate is about 75% of total federal spending under the Fair Housing Act that year. (See discussion of sources of Fair Housing Act-related spending, below at pp. 7-11).

Some fundamental objectives of an EFHA could be attained without adding that same level of federal spending. Among its basic purposes are: (1) to clarify that exclusionary zoning and other regulatory barriers to housing affordability are unlawful; and (2) to provide for victims of those economic barriers a feasible (including affordable) legal remedy for them.

A crucial remedy under the Fair Housing Act and other federal anti-discrimination statutes is the discretionary authority of the judge to order reimbursement, by a party found responsible for unlawful discrimination, of the legal expenses of proven victims of that discrimination.[24] Other relief also may be available, including actual damages to the complainant, civil penalties and injunctive relief.[25]

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[23] *See, e.g.,* USASPENDING.gov, definition of "obligation," posted at https://www.usaspending.gov/federal-spending-guide?glossary=/. Actual outlays tend to be somewhat less. For example, actual outlays for Fair Housing Activities were about $92.8 million, which was $14.4 million less than the authorized spending level for those activities. *See, e.g*., *HUD 2025 Congressional Justifications*, p. 33-1, posted at https://www.hud.gov/sites/dfiles/CFO/documents/FY_2025_Congressional_Justification_v3_E-File.pdf, We will give the total spending level authorized, including obligations, where that figure is available.

[24] 42 U.S.C. §§ 3612(p), 3613(c)(2), 3614(d)(2).

[25] *See generally, e.g.*, EHI, *Toward a comprehensive ban on exclusionary housing practices,* pp. 9-12 (2019), posted at https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI-Toward-comprehensive-ban-tech_edits-10-2020.pdf. The evidence indicates that attorney's fees provisions have greatly increased the ability of low- and moderate-income Americans to remedy discrimination under the Fair Housing Act and numerous other federal civil rights statutes. *See generally, e.g*., EHI, *Making challenges to exclusionary housing practices feasible—the role of attorney's fees awards* (2019), posted at:

Such remedies may be pursued before HUD, DOJ, or through private lawsuits.[26] So, many economically discriminatory governmental housing practices could be corrected by low- and moderate-income victims directly, using Fair Housing Act procedures, without as much additional federal spending as is provided to help combat violations of the current Fair Housing Act.

Sources of Fair Housing Act-related federal spending

HUD Office of Fair Housing and Equal Opportunity (FHEO)

FHEO carries out HUD's Fair Housing Activities program. Authorized spending for Fair Housing Activities totaled $106.2 million in FY2023.[27] Fair Housing Activities consist basically of two grant programs:

1. The Fair Housing Assistance Program (FHAP) which provides funding to state and local agencies to help them administer fair housing laws that have rights and remedies substantially equivalent to those provided by the Fair Housing Act. [28]
2. The Fair Housing Initiatives Program (FHIP) supports private, nonprofit fair housing organizations' efforts to provide public education and outreach to the public and housing providers, and to enforce the Fair Housing Act by investigating alleged violations.[29]

In addition, $87.0 million was authorized for salaries and related expenses of FHEO staff nationwide in FY2023.[30]

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https://www.equitablehousing.org/images/PDFs/PDFs--2018-/Attys-fees-in_housing-related_litigation_EHI-memo-final.pdf.

[26] *See, e.g., id.*

[27] *See, e.g.*, USASPENDING.gov, *FY2023 Obligated Amount, Fair Housing Activities (HUD)*, available at https://www.usaspending.gov/explorer/agency.

[28] HUD, *Fair Housing Assistance Program (FHAP)*, posted at https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP#FHAP4 (accessed Nov. 9, 2024). Authorized spending for FHAP was about $28 million for FY2023. *See, e.g.*, USASPENDING.gov, *FY2023 Obligated Amount, Fair Housing Activities (HUD)*, available at https://www.usaspending.gov/explorer/agency.

[29] *See, e.g.*, National Fair Housing Alliance (NFHA), *Fair Housing Programs*, pp. 1-2 (2021), posted at https://nlihc.org/sites/default/files/AG-2021/07-02_Fair-Housing-Programs.pdf. For FY2023, authorized spending for FHIP was about $71.5 million. *See, e.g.*, USASPENDING.gov, *FY2023 Obligated Amount, Fair Housing Activities (HUD)*, available at https://www.usaspending.gov/explorer/agency. Another significant Fair Housing Activity is the National Fair Housing Training Academy, whose authorized spending totaled $6 million that year. *Id.*

[30] HUD, *FY2024 Congressional Justifications*, p. 32-2, posted at https://www.hud.gov/program_offices/cfo/reports/fy24_CJ. (By comparison, authorized spending for salaries and expenses of HUD personnel overall was $1.77 billion that year. *Id.*, p. 34-1.) *See, e.g., Salaries and expenses of HUD Office of General Counsel, 2022-2024*, posted at https://www.hud.gov/sites/dfiles/CFO/documents/2024_CJ_S_E_Template_Office_of_General_Counsel_2.pdf.

Office of General Counsel and Office of Adjudicatory Services

We have made rough estimates of the portion of the spending that is devoted to Fair Housing Act issues within those two offices, based on readily available government statistics. The Office of General Counsel (OGC) represents HUD in litigation and enforcement actions under the Fair Housing Act. We will assume that Fair Housing Act issues account for as much as 20% of the spending for that office, although it also has a host of other responsibilities.[31]

Overall budget authority for salaries and related expenses of the Office of General Counsel in FY2023 was $125 million.[32] Thus, we estimate that the portion related to the Fair Housing Act might have been less than or equal to (≤) $25 million.

We further assume that Fair Housing Act issues account for up to half of the spending for HUD's Office of Adjudicatory Services. That branch consists of HUD's administrative judges, who conduct its hearings and other proceedings regarding alleged violations of the Fair Housing Act and deal with many other contested matters for the agency.[33]

Overall budget authority for salaries and related expenses of the Office of Adjudicatory Services in FY2023 was almost $1.9 million.[34] Thus, we estimate that the portion related to the Fair Housing Act would have been ≤ $950,000.

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[31] OGC provides legal opinions, advice, and services with respect to all departmental programs and activities in HUD Headquarters and its field offices. Included are activities such as public housing, Housing Choice Vouchers, planning and community development programs (CDBG, etc.), HUD's many other housing programs, the Federal Housing Administration (FHA), the Federal National Mortgage Association (Fannie Mae) and the Government National Mortgage Association (Ginnie Mae). *See, e.g.*, HUD, *FY2024 Congressional Justifications*, p. 38-1 to 38-2, posted at https://www.hud.gov/program_offices/cfo/reports/fy24_CJ; *OGC Legal Opinions and Guidance*, posted at https://www.hud.gov/program_offices/general_counsel/legalopinionsmain.

[32] HUD, *FY2024 Congressional Justifications*, p. 38-1 posted at https://www.hud.gov/program_offices/cfo/reports/fy24_CJ.

[33] That office sometimes is referred to as the Office of Hearings and Appeals (OHA). HUD's Administrative Law Judges (ALJs) deal most frequently with allegations of: violations of the Fair Housing Act; fraud in HUD administered programs; and failure to comply with requirements of HUD subsidized programs. Other HUD Administrative Judges (AJs) deal with various contract issues related to HUD programs and those of certain other federal agencies. *See, e.g.*, HUD, *Office of Hearings and Appeals*, https://www.hud.gov/oha.

[34] *Id.*, p. 35-13, posted at https://www.hud.gov/program_offices/cfo/reports/fy24_CJ.

(The Office of General Counsel provides legal opinions, advice, and services with respect to all HUD programs and activities in Headquarters and throughout the United States. The Office of Adjudicatory Services houses HUD's administrative judges, who conduct hearings and make determinations on formal complaints or adverse actions initiated by HUD based on alleged violations of federal statutes such as the Fair Housing Act, and regulations thereunder. HUD, *FY2024 Congressional Justifications*, pp. 38-1, 35-13, posted at https://www.hud.gov/program_offices/cfo/reports/fy24_CJ.)

On those assumptions, total HUD spending under the Fair Housing Act was as much as $219.1 million in FY2023. That amount was less than 0.26% of HUD's total spending that year, which was $84.5 billion.[35] Even if Fair Housing Act-related spending were doubled due to the EFHA, it would account for less than 0.52% of HUD's overall spending in FY2023 (or $1 of every $194 the agency spent).

DOJ spending

We have estimated DOJ spending to enforce the Fair Housing Act, based on the Department's caseload figures. DOJ became a party in 31 new cases involving the Fair Housing Act during FY2023.[36] Overall, DOJ became a party in 133,434 new cases during that period.[37]

So, new Fair Housing Act cases constituted only 0.02% of the total number of cases in which DOJ became a party that year. Thus, Fair Housing Act cases appear to account for a very minor portion of DOJ's authorized spending (which was $55.6 billion for FY2023).[38]

Federal Court spending

Fair Housing Act cases also appear to account for a very minor proportion of the federal courts' budget, based on court caseload statistics. Only 0.27% of the cases filed in U.S. District Courts in the year ending on June 30, 2023 (which included nine months of FY2023),[39] concerned federal housing and/or accommodations statutes (976 of 362,866 cases).[40] And not all those 976 cases involved the Fair Housing Act.[41]

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[35] *See, e.g.,* USASPENDING, *supra* n. 22.

[36] U.S. Dep't of Justice, Civil Rights Div., *Housing and Civil Enforcement Cases*, posted at https://www.justice.gov/crt/housing-and-civil-enforcement-cases. DOJ became party in five other housing and accommodations cases during the year that did not involve the Fair Housing Act. *Id.*

[37] United States Attorneys' Annual Statistical Report, Fiscal Year 2023, Tables 1, 4, posted at https://www.justice.gov/usao/media/1343726/dl?inline. Among the total of 133,434 new cases were 69,588 civil cases, 49,913 criminal cases in U.S. District Courts, and 13,933 cases in U.S. Magistrates' Courts. *Id.*

[38] *See, e.g.,* USASPENDING.gov, *FY2023 Obligated Amount, Department of Justice*, available at https://www.usaspending.gov/explorer/agency.

[39] FY2023 covered October 1, 2022 through Sept 30, 2023.

[40] U.S. District Courts, *Civil Cases Commenced, Terminated, and Pending During the 12-Month Period Ending June 30, 2023*, Table C-1, posted at https://www.uscourts.gov/statistics/table/c-1/statistical-tables-federal-judiciary/2024/06/30; U.S. District Courts, *Criminal Defendants Commenced, Terminated, and Pending (Including Transfers), During the 12-Month Periods Ending June 30, 2023 and 2024*, Table D, posted at https://www.uscourts.gov/statistics/table/d/statistical-tables-federal-judiciary/2024/06/30. That table "includes defendants in all cases filed as felonies or Class A misdemeanors, but includes only those defendants in cases filed as petty offenses that were assigned to district judges rather than magistrate judges." *Id.*

[41] Of 40 lawsuits filed by DOJ under the federal courts' housing and accommodations classification in FY2023, 31 involved the Fair Housing Act and 9 did not. DOJ enforces the Fair Housing Act through the

The federal courts were appropriated a total of $9.2 billion for FY2023.[42] Even if a *pro rata* share of the federal judicial budget were assigned to its housing and accommodations caseload (0.27% of the total for the year ending on June 30, 2023), and even if all those cases were assumed to be Fair Housing Act-related, the cost to federal courts would be $24,806,817.

Total estimated Fair Housing Act-related spending for FY2023 & FY2019

Adding together our rough estimates of Fair Housing Act-related spending in FY2023 by HUD (≤ $219.1 million), DOJ (≤ $11.7 million), and the federal courts (≤ $24.8 million), the total is not more than $255.6 million—and it probably is substantially less. Even if the total were fully $255.6 million, that would constitute only 0.00275% of federal spending in FY2023 ($1 for at least every $36,387 spent). So, even if Fair Housing Act-related spending were doubled due to the EFHA, that amount still seems minor compared to the huge economic benefits to Americans generally that the statute would provide.[43]

As mentioned, we compared HUD's spending in FY2023 spending to FY2019 and found that Fair Housing Act-related spending accounted for roughly the same share of HUD's total spending and overall federal spending. In FY2019, using the same assumptions we made above regarding salaries and expenses, Fair Housing Act-related HUD spending totaled as much as $160.6 million.[44] That spending accounted for $1 of every $390 that HUD spent (0.26%).

Housing and Civil Enforcement Section of its Civil Rights Division. *See, e.g.*, U.S. Dep't of Justice, Civil Rights Div., *Housing And Civil Enforcement Section Overview*, https://www.justice.gov/crt/housing-and-civil-enforcement-section-overview.

Other housing-related statutes enforced by that same Section of DOJ include Title II of the Civil Rights Act of 1964 (which prohibits discrimination in public accommodations), the Equal Credit Opportunity Act, the Violence Against Women Act, the Servicemembers Civil Relief Act, and the Religious Land Use and Institutionalized Persons Act. U.S. Dep't of Justice, Civil Rights Div., *Housing And Civil Enforcement Section Overview*, https://www.justice.gov/crt/housing-and-civil-enforcement-section-overview. The Servicemembers Civil Relief Act generates a substantial number of housing and/or accommodations cases annually.

[42] Of that, the courts were given discretionary budget authority of $8,461.5 million and mandatory budget authority of $761.4 million. *See, e.g.*, Congressional Research Service, *Judiciary Appropriations, FY2024*, pp. 5, 9 (May 29, 2024); United States Courts, *Funding and Budget – Annual Report 2023*, https://www.uscourts.gov/statistics-reports/funding-and-budget-annual-report-2023#:~:text=In%20December%202022%2C%20the%20President,were%20at%20the%20statutory%20maximums;

[43] Fair Housing spending is part of the federal discretionary budget. Total discretionary spending in FY2023 was roughly $1.7 trillion. So, spending pursuant to the Fair Housing Act comprised about $1 of every $7,759 in federal discretionary spending (approximately 0.13% of discretionary spending). *See, e.g.*, USASPENDING, *supra* n. 22.

[44] That spending included about:

- $67,312,000 for Fair Housing Activities;
- $72,900,000 for salaries and related expenses of FHEO staff;
- (estimated 20% of) $97,800,000 of salaries and related expenses of HUD OGC staff; and

Overall, the federal government spent about $6.6 trillion in FY2019.[45] So, HUD spending pursuant to the Fair Housing Act comprised only $1 for at least every $41,105 in federal spending that year (0.0243%).[46]

Effects of EFHA on volume of federal litigation

Fair Housing Act cases account for only minor part of the federal courts' caseload. For the year ending on June 30, 2023, only 0.27% of the cases filed in U.S. District Courts (which included nine months of FY2023),[47] concerned federal housing and/or accommodations statutes (976 of 362,866 cases).[48] And close to 25% of those 976 cases did not involve the Fair Housing Act.[49]

As to HUD's caseload, an average of more than 8,800 complaints of Fair Housing Act violations were filed with the agency annually, from 2000-2019.[50] However, HUD

- (estimated 50% of) $1,588,000 for salaries and related expenses of OAS staff.

HUD, *FY2021 Congressional Justifications*, pp. 32-1, 49-1, 38-1, and 35-11, posted at https://www.hud.gov/sites/dfiles/CFO/documents/FY21_HUDCongressionalJustifications.pdf.

[45] *See, e.g., id.* (HUD, *FY2021 Congressional Justifications*)

[46] Total federal discretionary spending that year was roughly $1.3 trillion. *See, e.g., id.* So, spending for Fair Housing Activities comprised only about $1 of every $19,757 in federal discretionary spending (about 0.005% of discretionary outlays).

[47] FY2023 covered October 1, 2022 through Sept 30, 2023.

[48] U.S. District Courts, *Civil Cases Commenced, Terminated, and Pending During the 12-Month Period Ending June 30, 2023*, Table C-1, posted at https://www.uscourts.gov/statistics/table/c-1/statistical-tables-federal-judiciary/2024/06/30; U.S. District Courts, *Criminal Defendants Commenced, Terminated, and Pending (Including Transfers), During the 12-Month Periods Ending June 30, 2023 and 2024*, Table D, posted at https://www.uscourts.gov/statistics/table/d/statistical-tables-federal-judiciary/2024/06/30. That table "includes defendants in all cases filed as felonies or Class A misdemeanors, but includes only those defendants in cases filed as petty offenses that were assigned to district judges rather than magistrate judges." *Id.*

[49] Of 40 lawsuits filed by DOJ under the federal courts' housing and accommodations classification in FY2023, 31 involved the Fair Housing Act and 9 did not. DOJ enforces the Fair Housing Act through the Housing and Civil Enforcement Section of its Civil Rights Division. *See, e.g.*, U.S. Dep't of Justice, Civil Rights Div., *Housing And Civil Enforcement Section Overview*, https://www.justice.gov/crt/housing-and-civil-enforcement-section-overview.

Other housing-related statutes enforced by that same Section of DOJ include Title II of the Civil Rights Act of 1964 (which prohibits discrimination in public accommodations), the Equal Credit Opportunity Act, the Violence Against Women Act, the Servicemembers Civil Relief Act, and the Religious Land Use and Institutionalized Persons Act. U.S. Dep't of Justice, Civil Rights Div., *Housing And Civil Enforcement Section Overview*, https://www.justice.gov/crt/housing-and-civil-enforcement-section-overview. The Servicemembers Civil Relief Act generates a substantial number of housing and/or accommodations cases annually.

[50] *See, e.g.*, Data.gov, *Fair Housing Act Cases Filed by Year and State with the Bases and Outcomes – 2000-2019* (March 1, 2024), posted at https://catalog.data.gov/dataset/fair-housing-act-cases-filed-by-year-and-state.

(through its administrative law judges) issued less than 37 charges per year on average during that period—0.021% of those complaints (one charge per every 241 complaints).[51] The other charges generally were disposed of before the charging stage.[52]

Effects on private citizens, including landlords and property owners

In addition to the potential cost for taxpayers, there are prospective costs of an EFHA for landlords and property owners generally. However, landlords already must comply with the Fair Housing Act and many other housing regulations. And while on average it costs at least $225 - $300 per hour to hire a landlord-tenant lawyer, this is a necessary expense for most landlords or realty companies, even without an EFHA.[53]

Enactment of an EFHA will expand greatly the housing sector of the economy—including greatly increased business opportunities for home builders, property owners and realtors—as well as opportunities for suitable housing.[54] As discussed above, activity in that sector has been severely limited by exclusionary housing practices of local

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[51] *See, e.g., id.*

[52] *Id.* HUD dismissed 48% of those fair housing complaints on the grounds that they had "no reasonable cause" under the Fair Housing Act. Another 22% were resolved by conciliations or settlements. In addition, 13% were administratively closed, and 11% were withdrawn after resolution. *Id.* (percentages calculated by EHI).

[53] Martindale-Nolo Research. *How Much Does a Landlord-Tenant Lawyer Cost?*, LAWYERS.COM (updated May 29, 2024) (those dollar amounts, based on a 2018 survey, "are still close to what you'll find in the current market, though inflation has caused some lawyers to boost their hourly rates. . . . The average fees tend to be higher in states with huge metropolitan areas."), posted at https://www.lawyers.com/legal-info/real-estate/landlord-tenant-law/how-much-does-a-landlord-tenant-lawyer-cost.html.

The U.S. Chamber Institute for Legal Reform released a report in 2020 indicating that small businesses bear a disproportionate share of commercial liability, compared to their larger counterparts. U.S. Chamber Inst. for Legal Reform (ILR), *Tort Costs for Small Businesses* (Dec. 2023), posted at https://instituteforlegalreform.com/wp-content/uploads/2023/12/Tort-Costs-for-Small-Businesses-12.5.23.pdf/. The EFHA will not create duties for the private sector, however. It will only address regulatory barriers created or maintained by government entities.

[54] *See, e.g.*, U.S. Dep't of Hous. & Urb. Dev. Off. of Pol'y Dev. & Rsch., *"Why Not in Our Community?" Removing Barriers to Affordable Housing*, p. 5 (2005) ("Regulatory mechanisms, such as restrictive zoning, excessive impact fees, growth controls, inefficient and outdated building and rehabilitation codes, multifamily housing restrictions, and excessive subdivision controls have . . . become more sophisticated and prevalent").

See, e.g., Consent Decree at 1-2, 7, *United States v. City of Arlington*, 4:22-CV-30-P (N.D. Tex. Jan. 18, 2022) (City settled and agreed to pay $395,000 in damages to developer after blocking the development of an affordable housing project for families with children), *Hand in Hand/Mano en Mano v. Town of Milbridge, Maine* No. 1:09-cv-287 (D. Me. Dismissed Mar. 16, 2010) (Town settled out of court after halting development on a proposed housing development for farmworkers and their families), Consent Decree, *United States v. City of Fairview Heights*, No. 00-331-MJR (S.D. Ill. Sep. 18, 2001) (City settled and agreed to pay $275,000 after denying a permit to build proposed apartment complex, which plaintiffs alleged was due to a fear of bringing African American tenants and children to the area).

governments.[55] An EFHA predictably would lead to significant financial gains for Americans generally (see discussion above, pp. 4-5).

Costs of a statewide EFHA

The costs of statewide EFHAs are beyond the scope of this report. We have found no source that collects cost information on the various states' fair housing programs—or those of local governments.

However, we looked into spending under one state's fair housing program—Colorado's. That state actually was the first one to enact a statewide fair housing law, in 1959.[56] Among the states, Colorado spends more than average, per capita, on housing and community development programs.[57]

We found no indication that enforcement of Colorado's housing discrimination statute would add more than a minor amount to the state's funding and caseload, even if they both were doubled due to the state's adoption of an EFHA.

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[55] *See, e.g.,* Equitable Housing Institute (EHI), *Emerging consensus recognizes importance of removing regulatory barriers to housing affordability* 3 (Dec. 2017) (virtual consensus has emerged recently among housing policymakers, that major reform of land use regulations is needed to combat severe consequences of exclusionary zoning and other exclusionary housing practices), posted at: https://www.equitablehousing.org/images/PDFs/Emerging-consensus-on-RBHAs.EHI-memo-final-2.pdf,

Examples of such practices that have been overturned through litigation under the current, limited Fair Housing Act include: Consent Decree at 1-2, 7, *United States v. City of Arlington, TX,* 4:22-CV-30-P (N.D. Tex. Jan. 18, 2022) (City agreed to pay $395,000 in damages to developer after blocking development of affordable housing project for families with children); *Hand in Hand/Mano en Mano v. Town of Milbridge, Maine* No. 1:09-cv-287 (D. Me., Mar. 16, 2010) (Town agreed to cease its moratorium on development of proposed housing development for farmworkers and their families), Consent Decree, *United States v. City of Fairview Heights*, No. 00-331-MJR (S.D. Ill. Sep. 18, 2001) (City agreed to grant building permit and pay $275,000 in settlement of complaint that its denial of permit to build proposed apartment complex was motivated by racial consideration). .

[56] *See, e.g.,* Colorado Civil Rights Div., *Housing Discrimination*, posted at https://ccrd.colorado.gov/housing-discrimination.

[57] Urban Institute, *State and Local Backgrounders, Housing and Community Development Expenditures,* posted at https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/housing-and-community-development-expenditures. Colorado is one of more than 30 states that currently is certified by HUD as being substantially equivalent to the federal Fair Housing Act in terms of rights and remedies, enforcement processes, and public education and outreach programs. HUD FHEO, *Fair Housing Assistance Program (FHAP) Agencies*, posted at https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHAP/agencies.

As a result, Colorado's program qualifies to receive federal fair housing grants and enter into contracts with HUD's FHEO *See* 42 U.S.C. §3616a(1) & (2). Also, complaints of alleged discriminatory housing practices in Colorado must be referred to the state's agency for investigation before FHEO takes any action on them. *See* 42 U.S.C. §3610(f)(1).

Colorado's housing discrimination statute is Colorado Revised Statutes (C.R.S.) § 24-34-502 ("Unfair housing practices"). Those provisions are part of the Colorado Anti-Discrimination Act (CADA).[58]

The state's Civil Rights Division (CCRD) is charged with enforcing Colorado's anti-discrimination laws in the areas of employment, housing and public accommodations.[59] CCRD investigates complaints of discrimination in those areas based on an individual's protected class status, such as sex, disability, sexual orientation, race, color, religion, national origin, age, or marital status.[60] It also administers public outreach and education programs including training in CADA.[61]

The appropriations for CCRD operations in FY2022-23 included $1,989,257 in new spending authority ("General Fund").[62] Colorado's total appropriations for its governmental operations ("General Fund") were $13.9 billion. So, CCRD's new spending authority for that year was about $1 of every $6,989 of Colorado's new spending authority overall.[63]

Housing discrimination issues accounted for only a fraction of CCRD's time and spending that year. Of 1492 discrimination complaints investigated by CCRD in FY2022-23, only 202 (14%) were about housing discrimination.[64]

Overall, we found no evidence that enforcement of Colorado's housing discrimination statute would contribute more than a minor amount to the state's spending and caseload, even if both doubled due to a state EFHA.

Conclusions

Based on our rough estimates, the costs of an EFHA, its impact on judicial caseloads, and effects on property owners appear minor compared to the enormous cost savings and

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[58] Colorado Revised Statutes (C.R.S.) §§ 24-34-301 to 24-34-707.

[59] *See, e.g.*, Colorado Joint Budget Committee, *Appropriations Report, FY2022-23,* Part III-165, posted at https://leg.colorado.gov/publications/appropriations-report-fiscal-year-2022-23.

[60] *Colorado Civil Rights Division and Commission Annual Report, FY2023,* pp. 6, 12, posted at https://ccrd.colorado.gov/colorado-civil-rights-division-and-commission-annual-reports.

[61] *See, e.g., id.*, p. 9. (CCRD Annual) Colorado's Civil Rights Commission (CCRC) is an agency within CCRD. Among other things, it reviews appeals of cases investigated and dismissed by CCRD, initiates investigations regarding discrimination issues with broad public policy implications, and adopts rules and regulations that provide standards and guidelines regarding the state's statutes prohibiting discrimination. *See, e.g., id.*, p. 4.

[62] *See, e.g.*, Colorado Joint Budget Committee, *Appropriations Report, Fiscal Year 2022-23,* Part III-165, posted at https://leg.colorado.gov/publications/appropriations-report-fiscal-year-2022-23. CCRD's budget also included $678,990 in re-appropriated funds and $616,667 in federal funds. *Id.*

[63] *See, e.g., id.*, Part I-17, Table 6. (Jt Budget Comm)

[64] *Colorado Civil Rights Division and Commission Annual Report, FY2023,* pp. 6, 12, posted at https://ccrd.colorado.gov/colorado-civil-rights-division-and-commission-annual-reports

other benefits that such a statute would provide. A state EFHA predictably would result in a much-improved supply of housing and bring about the end of the housing affordability crisis in the state that adopts it. A federal EFHA would provide the same benefits nationwide.

An EFHA would have enormous financial benefits for ordinary Americans. For example, one recent, landmark study of land use restrictions found that the "creeping web" of exclusionary zoning and similar regulatory barriers were costing the average American worker about $6,775 in annual income, as of 2017. An EFHA would provide to victims of those barriers generally their first feasible (including affordable) means of getting the problems corrected and being reimbursed for their necessary expenses.

As to an EFHA's costs, we have estimated the effects on federal spending under the Fair Housing Act if that spending level were doubled due to the statute being amended to include an EFHA. The bulk of spending under the Fair Housing Act is for HUD's Fair Housing Activities program, which consists basically of two major grant programs. We estimate that HUD's Fair Housing Activities program accounted for almost 75% of HUD spending under the Fair Housing Act in FY2023.

Nevertheless, that year—the latest one for which full spending data is available—HUD's total authorized spending under the Fair Housing Act was less than 0.26% of HUD's total spending and only $1 of every $36,387 or more in federal spending that year. In FY2019—the last full fiscal year of the first Trump Administration before the COVID-19 emergency upended government operations and spending—authorized HUD spending under the Fair Housing Act was roughly the same proportion of the federal budget.

Even if Fair Housing Act-related spending were doubled due to that statute being amended to include an EFHA, that spending would account for little more than half a penny per dollar of HUD's overall spending. However, an EFHA actually would have enormous benefits, even without increasing spending nearly so much.

That's because the EFHA's basic goals include: (1) to clarify that exclusionary zoning and other regulatory barriers to housing affordability are unlawful; and (2) to provide for victims of those economic barriers a feasible (including affordable) legal remedy for them. Those goals can be achieved by the EFHA's provisions without extensive grant initiatives.

Other than HUD spending, the other basic sources of Fair Housing Act-related spending are by DOJ and federal courts. We have estimated DOJ spending to enforce the Fair Housing Act, based on the Department's caseload figures. New Fair Housing Act cases constituted only 0.02% of the total number of new cases in which DOJ became a party in FY2023. Fair Housing Act cases appear to account for a very minor portion of DOJ's authorized spending (which was $55.6 billion for FY2023).

Fair Housing Act cases also appear to account for a very minor proportion of the federal courts' budget, based on court caseload statistics. Only 0.27% of the cases filed in U.S.

District Courts in the year ending on June 30, 2023 (which included nine months of FY2023), concerned federal housing and/or accommodations statutes (976 of 362,866 cases). And almost 25% of those 976 cases did not involve the Fair Housing Act. Even if a pro rata share of the federal judicial budget ($9.2 billion for FY2023) were assigned to its housing and accommodations cases, and even if all those cases were assumed to be Fair Housing Act-related, the cost to federal courts would be $24,806,817.

As to an EFHA's effects of on home builders, property owners and realtors, it will lead to a tremendous expansion of the housing sector of the economy—including greatly increased business opportunities for those throughout the housing industry, as well as for people seeking suitable housing. Exclusionary zoning and other unjustified regulatory land use restrictions are thwarting the efforts of those who want to build, manage, or otherwise provide housing.

Although the costs of statewide EFHAs are beyond the scope of this report, we looked into spending under one state's fair housing program—Colorado's. We found no indication that enforcement of Colorado's housing discrimination statute would add more than a minor amount to the state's fair housing spending and caseload, even if they were doubled due to the state's adoption of an EFHA. Based on our investigation, the benefits of a general ban on regulatory barriers to housing opportunities, such as an EFHA, appear to greatly outweigh the costs.

EHI thanks former law clerk Rebekah Bass, George Washington University Law School Class of '24, for her excellent research on this topic.