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## **Century Foundation report highlights advantages and challenges of EHI's draft Economic Fair Housing Act**

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In April 2021, The Century Foundation (TCF), a major American think tank focusing on social policy, issued a report on several new legislative approaches to reducing exclusionary housing practices.<sup>1</sup> Among those approaches is the Equitable Housing Institute's (EHI's) initial draft Economic Fair Housing Act (EFHA).<sup>2</sup>

The TCF report highlights many advantages to an Economic Fair Housing Act, as well as five key challenges that such a proposal should address. TCF's report stems from a December 2020 Roundtable of housing and land use experts, which TCF hosted, and at which EHI presented its initial draft EFHA provisions.

The author of TCF's report, Senior Fellow Richard Kahlenberg, summarized its findings in an op-ed in the *New York Times*.<sup>3</sup> He argued that President Biden should go beyond his proposed, voluntary grant incentives and add an Economic Fair Housing Act to his housing agenda.<sup>4</sup> Previous, voluntary federal grant programs have not stemmed the tide of exclusionary policies or their mounting consequences.<sup>5</sup>

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<sup>1</sup> Richard D. Kahlenberg, *Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning* (The Century Foundation, April 18, 2021) ("*Tearing Down the Walls*"), posted at <https://tcf.org/content/report/tearing-walls-biden-administration-congress-can-reduce-exclusionary-zoning/>.

<sup>2</sup> *Economic Fair Housing Act of 2021: Partial Draft Bill and Comments*, Equitable Housing Institute (Nov. 30, 2020), posted at: [https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI\\_Economic\\_FHA\\_of\\_2021\\_draft-rev\\_11-30-20.pdf](https://www.equitablehousing.org/images/PDFs/PDFs--2018-/EHI_Economic_FHA_of_2021_draft-rev_11-30-20.pdf).

<sup>3</sup> Richard D. Kahlenberg, *Zoning Is a Social Justice Matter*, *New York Times*, April 20, 2021, A25; posted at: <https://www.nytimes.com/2021/04/19/opinion/if-you-care-about-social-justice-you-have-to-care-about-zoning.html>.

<sup>4</sup> Mr. Kahlenberg noted that President Biden's proposed American Jobs Act includes a \$5 billion "race-to-the-top" competitive grants program intended to spur local governments to eliminate exclusionary zoning and other unduly restrictive, housing-related policies. The Biden proposal would reward jurisdictions that voluntarily agree to drop unnecessarily large lot size requirements, mandatory parking requirements, and prohibitions on multifamily housing.

<sup>5</sup> Because participation in a competitive grant program would be voluntary, jurisdictions where there is strong opposition to dropping problematic zoning restrictions could choose not to participate. An example is the basic, housing-related federal grant program, the Community Development Block Grant Program (CDBG):

Mr. Kahlenberg noted that the statute envisioned by TCF and EHI is unique among major, current housing proposals in that it would: (1) ban exclusionary housing practices unlawful across the board, and (2) provide among its remedies a right of legal action by people discriminated against, comparable to the one that victims of racial discrimination currently can use under the 1968 Fair Housing Act. TCF's report analyzed those factors and numerous other advantages of an EFHA approach, such as that it:

- Negates the ability of powerful political interests to prevent needed reforms;
- Sends the message that such discrimination is not just poor policy but is illegal, which may help change the culture around exclusionary housing practices, just as the Fair Housing Act did for race-based housing discrimination;
- Aids state and local policymakers' efforts to correct exclusionary housing policies, by adding the prospect of a federal lawsuit that could be very costly to the jurisdiction and its taxpayers if those policies aren't corrected;
- Rests on exceptionally solid Constitutional grounds, such as the Commerce Clause;
- Involves comparatively little federal funding;
- Increases the effectiveness of Fair Housing Act protections for minority group members by improving their opportunities for housing mobility and integration, including in high-opportunity communities.<sup>6</sup>

Among the major challenges facing an EFHA, TCF's report noted the risk of displacement of low- and moderate-income urban dwellers due to gentrification—even as needed housing is added in their neighborhoods. EHI's recent report, *Approaches to resolving displacement concerns in gentrifying, urban neighborhoods*,<sup>7</sup> addresses that challenge in detail. The other four key challenges TCF identifies are that an EFHA should:

- Erect very clear guardrails that distinguish between legitimate and illegitimate zoning, to avoid misapplication by judges;
- Overcome powerful cultural attitudes that suggest that whereas racial discrimination is wrong, class discrimination is a part of life; and

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few of the nation's most exclusive communities (*i.e.*, those with high rents and little or no rental or multifamily housing) receive any Community Development Block Grant Program funding. And those that do can often afford to forego that funding when asked to reconsider exclusionary policies.

Solomon Greene and Ingrid Gould Ellen, *Breaking Barriers, Boosting Supply How the Federal Government Can Help Eliminate Exclusionary Zoning*, p. 11 (Urban Inst. 2020) (citing a study by economist Jenny Schuetz of the Brookings Institution).

<sup>6</sup> *Tearing Down the Walls*, pp. 29-33.

<sup>7</sup> *Approaches to resolving displacement concerns in gentrifying, urban neighborhoods*, Equitable Housing Institute (July 6, 2021), posted at: <https://www.equitablehousing.org/images/PDFs/PDFs--2021-/EHIResolving-city-displacement-concerns-7-6-21.pdf>.

- Avoid detracting from efforts to enforce the existing protections for minority group members under the FHA; and
- Be prepared for a harder road to enactment than less ambitious statutes (such as current proposals to create voluntary incentives for states and localities to do the right things, or to tie housing-related federal grants to certain anti-exclusionary actions).<sup>8</sup>

TCF also gave suggestions for overcoming those challenges.<sup>9</sup> During the rest of 2021, EHI will continue work on key challenges to enactment of an EFHA.

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<sup>8</sup> *Tearing Down the Walls*, pp. 33-34.

<sup>9</sup> *Id.* at 34-38.