

Testimony of Sheryll Cashin,

Carmack Waterhouse Professor of Law, Civil Rights and Social Justice, Georgetown University

House Financial Services Subcommittee on Housing, Community Development, and Insurance
Hearing: “Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and
Opportunity”

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Good afternoon. As a law professor, author, and former White House staffer in the Clinton Administration, I have spent nearly three decades grappling with the issue of US residential segregation – its origins, persistence, and calamitous effects in producing racial and economic inequality. My most recent book, *White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality* (2021) reflects these decades of examination and analysis. It argues that we have a system of residential caste, in which government over-invests and excludes in affluent white spaces, and disinvests, contains, and preys on people in high poverty Black neighborhoods. These are the extremes of American residential caste. But everyone who cannot afford to buy their way into high-opportunity neighborhoods is harmed by this system. People of all colors who are trapped in concentrated poverty are harmed the most. They are systemically denied meaningful opportunity for social mobility, no matter how hard they work to escape. In the book I show that residential caste is animated by three anti-Black processes: boundary maintenance, opportunity hoarding, and stereotype driven surveillance.

Boundary maintenance is a polite phrase for intentional state action to create or maintain racial segregation. The dominant response to at least 6 million Black “Great migrants” moving north and west to escape Jim Crow in the 20th century was to contain them in densely populated Black neighborhoods and to cut those neighborhoods off from essential public and private investment that was and is regularly rained down on majority white areas. In addition to racially

restrictive covenants, mob violence, mortgage redlining, and racial discrimination in housing sales and rentals, exclusionary zoning was a key tool for creating and insulating predominantly white neighborhoods. Exclusionary zoning was first sanctioned by the U.S. Supreme Court in 1926 in the case of *Village of Euclid v. Amber Realty*. The Court explicitly endorsed the idea that certain uses of land, like duplexes, were “parasitic” on single-family homes and the people who lived there. In ensuing decades, thousands of new suburban governments would form, enabling middle and upper-class whites to wield the zoning power to exclude certain types of housing, particularly rental apartments, and therefore exclude unwelcome populations. Fast-forward to today and where high levels of Black segregation persist, researchers have found that it was actively promoted by zoning laws that restricted density and by high levels of anti-Black prejudice, particularly in places with large numbers of Blacks with lower incomes and education levels than most whites. (See Douglass S. Massey and Jacob S. Rugh, “Segregation in Post-Civil Rights America,” *Du Bois Review* 11, no. 2 (2014), 205.) And, according to a stunning, [geographically mapped analysis produced by the New York Times](#), ***“It is illegal on 75 percent of the residential land in many American cities to build anything other than a detached single-family home.”*** (Emily Badger and Quoc Trung Bui, “Cities Start to Question an American Ideal: A House With a Yard on Every Lot,” *New York Times*, June 18, 2019, emphasis added.) That figure is even higher in many suburbs and newer Sun Belt cities.

This hearing is about exclusionary zoning, which necessarily concerns local zoning power. But it is important to recognize the singular, outsized role of the federal government in creating and continuing America’s separate and unequal residential landscape. Federal government mandated redlining, marking Black neighborhoods as “hazardous” and cutting Black residents out of its largest wealthy building subsidies (HOLC, FHA and Veterans Administration

insured mortgage lending). Federal government through its mortgage underwriting rules, insisted that lenders insert racially restrictive covenants in deeds. Federal government spent billions for “urban renewal” to displace Black occupied housing and paid cities to build high-rise public housing that intentionally placed Black and white tenants in separate and unequal housing projects. These policies created iconic Black “ghettos” that exacerbated white flight and resistance to having Black neighbors. Federal government paid for and acquiesced in an interstate highway program laid to create racial barriers in cities and facilitate easy exit from cities to majority white suburbs. (For a detailed overview of this federal history see Sheryll Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (2004), Chapter Three.)

The federal government still invests in segregation. To date, George Romney, Sen. Mitt Romney’s father, is the only HUD secretary to have pressured and penalized communities for exclusionary zoning laws and for refusing to build affordable, nonsegregated housing. For decades, both HUD and local governments regularly violated the Fair Housing Act of 1968 requirement that communities “affirmatively further” fair housing. For decades, HUD has distributed about \$5.5 billion annually in grants for community development, parceled among more than 1,000 local jurisdictions nationwide, with no meaningful accountability for promoting inclusive, integrated housing. The federal government also continues to concentrate poverty through the Low-Income Housing Tax Credit (LIHTC) program, its largest subsidy for affordable housing. Each year the LIHTC funnels about \$10 billion for affordable housing construction, and only 17 percent of those units get built in high-opportunity neighborhoods with high-performing schools, low crime, and easy access to jobs. That keeps Americans who need affordable housing concentrated in the same low-opportunity areas.

This history *and present* of federal-backed segregation inform the legal and moral case for congressional action to disrupt exclusionary zoning and residential caste. Intentional segregation of Black people in the 20th century shaped development and living patterns *for everyone* and put in place an infrastructure for promoting and maintaining segregation that lives on. Racial steering by realtors who nudge homebuyers into segregated spaces, discrimination in mortgage lending, exclusionary zoning, a government-subsidized affordable housing industrial complex that concentrates poverty, local school boundaries that encourage segregation, plus continued resistance to integration by many but not all white Americans — all are forms of racial boundary maintenance today.

The negative effects of systemic exclusion are clear. As demonstrated by Harvard economist Raj Chetty and others, segregated communities tend to rate low on social mobility for poor children. (See Raj Chetty and Nathaniel Hendren, “The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates,” May 2015, available at https://scholar.harvard.edu/files/hendren/files/nbhds_paper.pdf.) And the gap in life expectancy between blacks and whites in very segregated cities can rise to more than 20 years because of increased exposure to trauma, lead poisoning, allergens in poor-quality housing, fast-food “swamps” and healthy-food deserts. Meanwhile, residents of exclusionary affluent spaces rise on the benefits of concentrated advantages, from excellent schools and infrastructure to job-rich social networks to easily accessible healthy food. Less understood is the fact that the government-created segregation *facilitates* poverty-free affluent white space, by concentrating poverty elsewhere.

In considering policy options that Congress might pursue it is important to acknowledge that the main reason exclusionary zoning persists is the vested interests and expectations of

people who live in poverty-free havens. Government at all levels has catered to these expectations. And again, another reason for persistent exclusion, at least in some places, is high levels of anti-Black prejudice. In California, a so-called blue state where ostensibly liberal Democrats are in charge, despite a grave housing crisis and abundant problems with homelessness, the state was only able to take the baby step of opening single-family neighborhoods to duplexes. So, if Congress wants to disrupt a near century of exclusionary zoning, serious pressure and accountability are required. Congress and the executive branch also must atone for the federal legacy of promoting segregation.

It bears remembering that in the face of Southern massive resistance to school integration, school districts did not begin to desegregate with alacrity until the Johnson Administration threatened to withhold federal education funds pursuant to Title VI of the Civil Rights Act of 1964 (or they were ordered to do so by a federal court). I recommend not just spending incentives to deregulate or repeal exclusionary zoning ordinances but serious pressure on localities to adopt locally designed *inclusionary* zoning ordinances -- like the highly successful mandatory ordinance Montgomery County, Maryland has had in place for five decades. Because Montgomery County requires that all new development above a certain size include affordable units and sets aside some of those new units for residents of public housing, this extremely diverse, wealthy suburban county has no pockets of concentrated poverty and poor children have more access to integrated, well-resourced schools.

In conclusion, I recommend that federal housing and community development and infrastructure funds should be conditioned on localities adopting inclusionary zoning ordinances and/or actually “affirmatively furthering fair housing.”