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**Testimony of Deborah Ibonwa, Maine Equal Justice
In support of LD 2003 “An Act To Implement the Recommendations of the
Commission To Increase Housing Opportunities in Maine by Studying Zoning
and Land Use Restrictions”**

Good Morning, Senator Daughtry, Representative Sylvester and members of the Committee on Labor and Housing. My name is Deborah Ibonwa, and I am a Policy and Legal Advocate at Maine Equal Justice (MEJ). We are a civil legal services organization, and work with and for people with low income, seeking solutions to poverty through legislative advocacy, administrative advocacy, and legal representation. Thank you for the opportunity to testify today in support of LD 2003.

MEJ supports this bill because it will expedite the creation of affordable housing. As we all know, the need for affordable housing has never been greater. In Maine, we are facing a housing crisis that stems, in huge part, from the challenges of building the housing that we need. This is a direct result of the exclusionary zoning policies that have been pervasive in our state for decades. Zoning decisions having been left to localities without any sort of check on that power to ensure that all Mainers are being housed. As a result, we are now left with an unprecedented level of people who are homeless and a shortage of thousands of rental units. We also have households who are housing insecure because they pay an unsustainable amount of their income on rent. Faced with this housing crisis it is critical we act now.

I. What LD 2003 Does:

The bill implements the nine recommendations that resulted from the work of

the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions. This was a bipartisan and diverse group of housing experts, that were tasked by this legislature with proposing solutions to this very immediate crisis we are having. Of those nine, the recommendations that Maine Equal Justice believes will have the most significant and/or immediate impact are:

- Affirmatively further fair housing by prohibiting exclusionary zoning within the Maine Human Rights Act.
- Requiring towns to allow accessory dwelling units on lots that are zoned for single family housing.
- Providing technical assistance to municipalities in furthering fair housing
- Establishing a three-year density incentive program in order for towns to increase housing stock
- Thoughtfully and effectively increases housing stock
- Prohibits growth caps
- Requires towns to allow any affordable housing that is built after 4/20/22 to have a dwelling unit density of at least 2 1/2 times the density that is allowed in the zone for other dwelling units and prohibits towns from requiring more than 2 off-street parking spaces for every 3 units.
- Creates a statewide board that would review local zoning decisions on zoning permits to ensure that any denial does not contradict the anti-exclusionary language in the Maine Human Rights Act that would be implemented through the bill.

II. Why the Committee Should Vote in Favor of LD 2003

A. Maine is in the midst of an affordable housing crisis

Even before the pandemic, thousands of Mainers struggled month in and month out to afford rent and stay housed, as well as to find housing. Currently in Maine, the National Low Income Housing Coalition estimates that Maine has 54 housing units for every 100 extremely low-income families (whose incomes are at or below the poverty guideline or 30% of their area median income (AMI))¹. We have a shortage of 19,031 affordable rental homes,² and as of January 2020, Maine had

¹ National Low Income Housing Coalition, *2021 Maine Housing Profile*. (Updated on 03/16/2021). <https://legislature.maine.gov/doc/6960>

² National Low Income Housing Coalition, *Housing Needs by State: Maine*. Accessed on (Jan. 23, 2022).

about 2,097 people experiencing homelessness on any given day.³ Of that total, 260 were family households, 103 were Veterans, 139 were unaccompanied young adults (aged 18-24), and 248 were individuals experiencing chronic homelessness.⁴

The pandemic has pushed Maine’s housing affordability problems to a crisis point. While Maine’s low-income tenants have been suffering in the recession and the pandemic, business has been booming in Maine’s real estate market. Property values have increased during the pandemic in every county across the State. The Maine Association of Realtors reported a 22% increase in median sales price between Fall 2019 and Fall 2020, with a 27% increase in the number of units sold.⁵ Recent data has shown that the typical “winter slow down” in Maine’s real estate activity isn’t happening this year.⁶ Gains are expected to continue, fueled in part by out-of-state buyers moving to Maine.⁷

While so many people are buying new Maine homes, many Mainers are struggling to stay in theirs. Increasing property values are linked to gentrification. Gentrification is a process which displaces low-income community members, usually renters, when more affluent people move in. Gentrification is spurred by speculation in the real estate market which incentivizes landlords to raise rents and/or evict tenants to pursue higher-end development. This is occurring not only in Maine’s cities, but also in rural parts of the State.⁸ We must confront the fact that gains for some result in losses for others and take steps to end the rental housing crisis.

<https://nlihc.org/housing-needs-by-state/maine>.

³ United States Interagency Council on Homelessness, *Maine Homelessness Statistics*. Accessed on (Jan. 23, 2022). [https://www.usich.gov/homelessness-statistics/me/#:~:text=As%20of%20January%202020%2C%20Maine,and%20Urban%20Development%20\(HUD\)](https://www.usich.gov/homelessness-statistics/me/#:~:text=As%20of%20January%202020%2C%20Maine,and%20Urban%20Development%20(HUD)).

⁴ Ibid.

⁵ See Glenn Jordan, *Maine Home Sales Continue to Break Records Despite Pandemic*, Portland Press Herald (Dec. 22, 2020), <https://www.pressherald.com/2020/12/22/maine-home-sales-continue-to-break-records-despite-pandemic/>; Maine Association of Realtors, *State of Maine Single Family Home Sales*. (Updated Dec. 31, 2020). <https://www.mainerealtors.com/wp-content/uploads/2021/02/StateofMaine20Data.pdf>

⁶ Edward D. Murphy, *Maine’s Housing Market Defies Typical January Drop, Builds on Red-Hot 2020*, Portland Press Herald. (Feb. 19, 2021). <https://www.pressherald.com/2021/02/19/maines-housing-market-posts-more-big-gains-in-january/>.

⁷ Id.

⁸ University of Maine School of Marine Sciences, *Fishing Communities Need to Prepare For Gentrification Challenges*. (Aug. 23, 2016). <https://umaine.edu/marine/2016/08/23/fishing-communities-need-prepare-gentrification-challenges-say-umaine-researchers-2/>; Megan Mayhew Bergman, ‘*We Have No Market But Lots of Lobsters*’: A Maine Lobsterwoman Fights For Her Livelihood, The Guardian. (July 23, 2020). <https://www.theguardian.com/environment/2020/jul/23/maine-lobsterwoman-coronavirus-climate-change>.

Maine’s tenants are in desperate need of affordable housing. The largest rental assistance program in the U.S., the Section 8 Housing Choice Voucher Program, only funds vouchers for 1 in every 5 families who are eligible for it. In Maine, there are 25,742 families on the waitlist for the program. The patchwork of other state and federally funded voucher programs serve only narrow subsets of Maine’s renter population.

Keeping Mainers in their homes is critical to support their economic security and personal wellbeing. Of all the things we can do to support families and individuals trying to rebuild their economic security post-pandemic, safe homes that are realistically affordable and don’t eat up the whole family budget are at the top of the list. LD 2003 is a step in the right direction to produce more quality, affordable homes throughout the state.

B. Exclusionary zoning violates the constitutional right to property, and this bill prohibits exclusionary zoning.

The crux of why there is a housing crisis today is because of exclusionary zoning. For centuries, localities have made decisions on zoning permits while prioritizing everything except making sure that all Mainers could afford to live there. Localities of course have a right to make zoning decisions, but that is not an absolute right. However, for decades this right has been treated and hailed as if it were an absolute right when in fact localities are subject to the state legislature and the Constitution of the United States, which provides that “.... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws”⁹ In addition, laws that have a disparate impact on a protected class may be prohibited by the Fair Housing Act of 1968.¹⁰

2003 provides a check to local control on zoning by affirmatively furthering Maine’s fair housing laws in the Maine Human Rights Act and prohibiting exclusionary zoning.

⁹ ACLU, *THE BILL OF RIGHTS TO THE U.S. CONSTITUTION*. Accessed on March 4, 2022. <https://www.aclu.org/other/bill-rights-us-constitution#:~:text=Fourteenth%20Amendment-.....,of%20the%20laws%20....>

¹⁰ See *Texas Department of Housing Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2504 (2015).

C. Exclusionary zoning violates people’s civil rights because it causes disparate impact and racial inequity.

Zoning policies that facilitate production of diverse housing stock is necessary to achieve racial equity. Black people make up 26% of the homeless population in Maine, while they only make up about 1% of Maine’s population. This means that there is 26 times as many Black people of the total population. This is in comparison to the data in the U.S., where Black people make up 40% of the homeless population, which is three times as many Black people living in the U.S. Statewide, 58% of renters are Black, 40% are Asian while 27.8% are White, and 70% of Black people rent as opposed to 30% of Black people that own. Approximately 27% of renter households are extremely low income).¹¹ Over 40% of households who rent pay more than 30% of their income in housing related costs. Maine renters’ median household income is 51% below homeowner households (\$35,103 renter vs. \$71,913 owner). Severely cost burdened poor households are more likely than other renters to sacrifice other necessities like healthy food and healthcare to pay the rent, and to experience unstable housing situations like evictions.¹²

Accordingly, when the pandemic caused many to lose their jobs or to work without quality healthcare on the front lines, especially Black and Brown people who made up many of our essential workers, Black people represented 3% of Mainers with COVID during the pandemic despite making up ~1% of the total population.¹³ Also, 16% of eviction households at Pine Tree Legal are people of color, and before the federal eviction moratoriums enacted during the pandemic, Black women had eviction filed against them at more than two times the rate of White renters. This is likely to be true again now that the moratoriums have been lifted.¹⁴

The disparity between the ability of White people to own a home and that of Black people to own a home is significantly worse than most parts of the country. In 2019, the homeownership rate for White people in the state was 73% in 2019, making White Mainers 43% more likely to own a home than Black people, only

¹¹ National Low Income Housing Coalition, *2021 Maine Housing Profile*. (Updated on 03/16/2021). <https://legislature.maine.gov/doc/6960>

¹² Ibid.

¹³ Maine Immigrants’ Rights Coalition, *COVID-19 Racial and Ethnic Disparities*. (Updated on Jan. 7, 2022). <https://maineimmigrantrights.org/covid-19-racial-and-ethnic-disparities/>

¹⁴ Yonah Freemark, *The Role of Race in Zoning: A History & Policy Review*. (Sept. 16, 2021). <https://legislature.maine.gov/doc/7081>

30% of whom own a home, according to the National Association of Realtors' analysis of U.S. Census Bureau data.¹⁵ Hispanic homeownership in Maine was 55 percent and Asian-American ownership was 77 percent.¹⁶ In fact, racial ownership percentages in Maine overall were higher in 2021 than the nationwide averages except for the rate for Black people, which was 12% points lower. Maine also has a history of “redlining” and excluding people of color from purchasing homes in suburban areas, as well as discriminating against POC home purchasers in general.¹⁷ In fact, Gerald Talbot, civil rights leader, and Maine’s first Black legislator, experienced this discrimination first-hand¹⁸ as did 41% of Black respondents to a National Association of Realtor’s study.¹⁹

Clearly, the lack of affordable units disproportionately impacts Black and Brown people and increases danger of eviction and worsening of public health, even during a global pandemic. Also, because many Black and Brown people cannot afford to buy single family homes, they are effectively excluded from living in areas that are in majority zoned for single family home use. MEJ, in fact, has heard reports from our community partners that assist our clients that people of color cannot move to areas where there is demand for a fresh workforce or where schools have better funding because those areas are zoned mostly for single family housing and people with low income cannot afford to buy single family homes. This cycle of facially neutral yet exclusionary local zoning control prevents people with diverse income levels to live anywhere they want and ultimately creates racial and income segregation throughout the state.²⁰ We need a process that makes it easy for affordable apartments and affordable houses to be developed all

¹⁵Lori Valigra, *Survey: Black homeownership in Maine lags low nationwide mark*. (Feb. 17, 2021). <https://bangordailynews.com/2021/02/17/business/survey-black-homeownership-in-maine-lags-low-nationwide-mark/>

¹⁶ Ibid

¹⁷ Andy O’Brien, *A Brief History on Racism & Discrimination in Maine 1630 – 1970*. <https://legislature.maine.gov/doc/7456>

¹⁸ Ibid

¹⁹ Lori Valigra, *Survey: Black homeownership in Maine lags low nationwide mark*. (Feb. 17, 2021). <https://bangordailynews.com/2021/02/17/business/survey-black-homeownership-in-maine-lags-low-nationwide-mark/>

²⁰ The use of racial covenants was prevalent until it was struck down by Court in *Shelley v. Cramer* in 1948, and legally banned with the enactment of the 1968 Fair Housing Act. Maine’s own Fair Housing Act was passed into law in 1965. When racial covenants were struck down in the mid-1960s cities began to use what are now modern-day exclusionary zoning regulations which are on their face racially neutral but cause disparate impact amongst communities. See Yonah Freemark, *The Role of Race in Zoning: A History & Policy Review*. (Sept. 16, 2021). <https://www.urban.org/research/publication/role-race-zoning-history-policy-review>; Matt Mleczko, *Land use policy and zoning: what we know and how we can do better*. (Sept. 16, 2021). <https://legislature.maine.gov/doc/7081>; and Eben Simmons-Miller. *Resistance In “Pioneer T Resistance In “Pioneer Territory””: The Maine NAACP and the Pursuit of Fair Housing Legislation*, p.88. (Jan. 1, 1997). <https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?article=1285&context=mainehistoryjournal>

throughout our state to start dismantling these exclusionary structures.

We have a serious lack of housing, especially affordable housing, because of exclusionary local zoning laws that ultimately has disproportionate effects on people with low income and Black and Brown Mainers.

D. Local zoning decisions need to be reviewed in order to prevent exclusionary zoning.

LD 2003 establishes a Permit Review Board that would review any denials that occur on the local level. Currently, the only check on local zoning decisions is the state courts, but it has been difficult to utilize the judicial system with vague fair housing language and with the level of deference that has been given to local control. This current system does not provide true due process for anyone who disagrees with local decisions, and LD 2003 provides that due process. MEJ supports the creation of a Permit Review Board, which LD 2003 proposes, as long as the board is representative of the interests of those who are impacted by the housing crisis the most. This change is necessary because it adds a checks and balances system to the zoning permit process that was not there before. These pieces of the bill are critical to protect the right to housing, the right to due process, and to ensure quality housing for *all* Mainers, everywhere in the state.

E. Example of Why Process Proposed by LD 1673 is Necessary

A recent example of the inequities and exclusionary effects of unchecked local control development is what happened in Cape Elizabeth in 2021. A proposed project would have created a 46-unit building at affordable prices in the city but was canceled by the developer because residents petitioned to have a referendum to reverse the City Council's decision to enable the project through zoning regulation amendments.²¹

Cape Elizabeth, is a city that hasn't had any affordable housing development in 50 years. In fact, Maine State Housing Authority's Government Relations Director said this about the town: "if you're a typical member of the workforce, you

²¹ Kelly Bouchard, *Affordable housing proposal in town center divides Cape Elizabeth*. (June 28, 2021). <https://www.pressherald.com/2021/06/28/affordable-housing-proposal-in-town-center-divides-cape-elizabeth/>

probably don't have much of a chance to live in this community in the absence of a project that might provide affordable housing.”²²

Ultimately, the developer decided to cancel the project for affordable housing rather than to fight a political campaign with local residents. The city council's decision to amend its zoning policies to allow more affordable housing could be reversed after the upcoming referendum. Local decisions such this should be reviewed by the state to ensure that they do not violate fair housing laws. LD 2003's Permit Review board provides this check on local control.

F. Conclusion

Traveling across Maine, it doesn't take long to notice the significant economic and racial segregation that persists in our state, much like the rest of the country. Low-income Mainers know especially what it's like to be forced to find housing in the most under-resourced communities, which often have substandard housing and limited economic opportunity. Research shows that mixed income communities are the healthiest communities.

Facilitation of more housing and housing that all Mainers can realistically afford is important because studies clearly show that housing developments indirectly attract new employers and/or businesses to town and creates access to better public services and economic opportunities. While zoning is usually thought of as a local issue, the state can set sensible standards across Maine's communities and ensure that towns act proactively to meet affordable housing needs. LD 2003 would make this possible.

This is not new, and this is of the most critical urgency. All over the country, states are taking steps toward removing zoning barriers that don't make sense and providing new incentives and technical support for communities to embrace change.²³ This includes New Hampshire, Massachusetts and Connecticut, all of which have established some form of a statewide committee that would review applications for affordable housing development.²⁴

²² Ibid

²³ Christian Britschgi, *2021 Was a Great Year for Zoning Reform*. (12.28.2021). <https://reason.com/2021/12/28/2021-was-a-great-year-for-zoning-reform/>,

²⁴ Brian Chen, *New Hampshire's Housing Appeals Board: A Surgical Approach to State Land-Use Intervention*. (May 11, 2021). <https://media4.manhattan-institute.org/sites/default/files/new-hampshires-housing-appeals-board-state-land-use-BC.pdf>

Step by step, these changes will create more opportunity for people with diverse economic and racial backgrounds to live where they couldn't afford to before, and gain access to the educational and employment opportunities that every Mainer should have. For these reasons, and for Mainers who are experiencing the housing crisis the most, Maine Equal Justice *urges* this committee to vote in favor of LD 2003.

Thank you for the opportunity to speak in support of this bill. I'm happy to answer any questions and can be available for the work session if helpful.