Protecting Freedom, Mobility, and Affordable Homeownership

The American Dreamer

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Supreme Court Affirms Unfair Housing Rules

Nearly lost in the debate over Obamacare and gay marriage was a Supreme Court ruling over housing regulations that could have serious impacts on American cities and suburbs. The ruling allows the Department of Housing and Urban Development (HUD) to declare any city to be guilty of housing discrimination based solely on the racial make-up of the city. If your city or suburb does not have the same mix of races as your metropolitan area, even if no one had intentionally discriminated, HUD can order it to build high-density housing, apply for low-income housing grants, or order landlords to accept section 8 renters (which is supposed to be voluntary).

Do you live in a middle-class suburb of single-family homes? Then your community is almost certainly in violation of the Fair Housing Law as interpreted by HUD, which says that any city that doesn't have a perfect balance of races is automatically considered discriminatory. The Supreme Court agrees.

Under the theory of "disparate impact," HUD is forcing communities of single-family homes to build "affordable" (meaning subsidized) high-density housing. This subsidized development is in Seattle. Flickr photo by Oran Viriyincy.

This ruling is based on a theory called "disparate impact," which says that any policy that might conceivably work unfavorably against any minority is unfair. Supposedly, for example, large-lot zoning discriminates against blacks and Latinos because their median incomes are lower and thus they would have a more difficult time purchasing a lot.

"Stop calling it fair housing law," says Cato Constitutional scholar Walter Olson. "If it was ever a matter of fairness, it isn't now." The Supreme Court making, rather than interpreting, law. Olson notes that Justice Ginsburg admitted, "If we're going to be realistic about it…in 1968, when the Fair Housing Act passed, nobody knew anything about disparate impact." Yet she sided with the majority.

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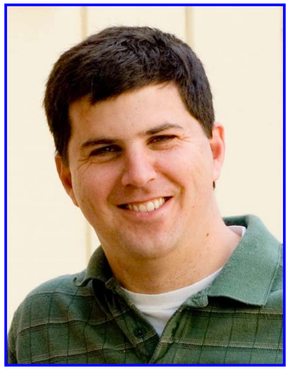
From the President



I am pleased to report that, in the past few months, American Dream Coalition members have helped stop two more wasteful light-rail and transit projects around the country.

Maryland Governor Larry Hogan just announced he was cancelling a light-rail project in Baltimore. While he didn't cancel another light-rail project in Washington, DC suburbs, he gave it so little state support—$168 million out of $1.5 billion needed—that he might as well have cancelled it. ADC's Randal O'Toole helped local activists oppose these projects.

In Spokane, Washington the local transit agency wanted to increase sales taxes to buy 120-passenger buses for $1.2 million each to run on a route that its own planners said would attract an average of 3.5 passengers at a time. ADC member and Washington Policy Center staff member Bob Pishue helped persuade voters to reject this plan.

The American Dream Coalition's annual conference in Austin, Texas, this November 6-8 will provide people with the tools they can use to fight such wasteful projects. I hope to see you there and to see more groups achieve similar successes.

Butch Porter (wdporter@gmail.com)

Congress: Still Gridlocked on Transportation After All These Years

Despite Republican control of both the House and Senate, Congress remains gridlocked over highway and transit funding. Normally, Congress passes laws authorizing the gas tax and defining how it will be spent every six years. But since the last six-year law expired in 2011, it has passed more than 30 two-month to two-year extensions of the law. The most recent extension, passed at the end of May, expires at the end of July, and few see any hope for a longer bill at that time.

The obstacle is that, since 2007, Congress has been spending more money than it collects in fuel taxes and other highway user fees. This has forced it to transfer close to $70 billion in general funds to the Highway Trust Fund, and the deficit continues at about $12 billion a year. Debate over these deficits have led to three factions, none of which have a majority.

The first—call them the tax-and-spend liberals—want to end deficit spending by raising the gas tax. A 7- to 10-cent increase would cover all current deficits and, after adjusting for inflation, would be no more than the gas tax was the last time it was increased in 1994. Of course, some want an even larger increase so they can spend more on light rail and high-speed rail.

The second faction—call them the deficit spenders—don't want to raise the gas tax but neither do they want to reduce spending. This group includes the Obama administration as well as many House and Senate leaders such as Mitch McConnell, John Boehner, and Paul Ryan.

This faction may actually include a majority in Congress, but they can't agree on where the money should come from. Obama wants to increase taxes on American corporations with foreign operations, but Republicans oppose that. Some House leaders want to increase oil & gas production on federal lands and spend the revenues on roads, a policy called "drill for roads," but many groups oppose more oil wells

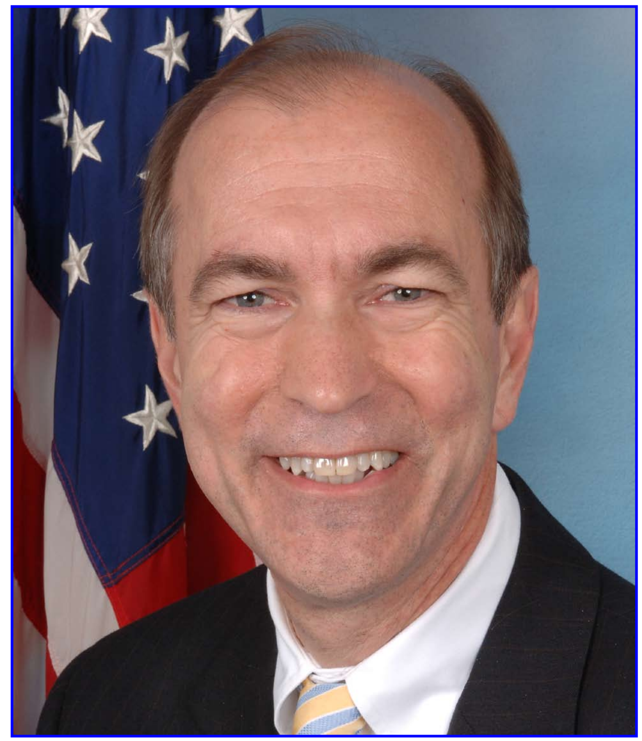
Representative Earl Blumenauer (D-OR) wants to end deficits by raising gas taxes to cover current levels of spending.

on public lands.

The third faction—call them the deficit hawks—wants to reduce spending to bring it in line with actual revenues. Many of the deficit hawks would like to see transportation devolve to the states. Others propose to stop funding transit with gas taxes, since the amount that goes to transit and other non-highway programs is approximately equal to the annual deficit.

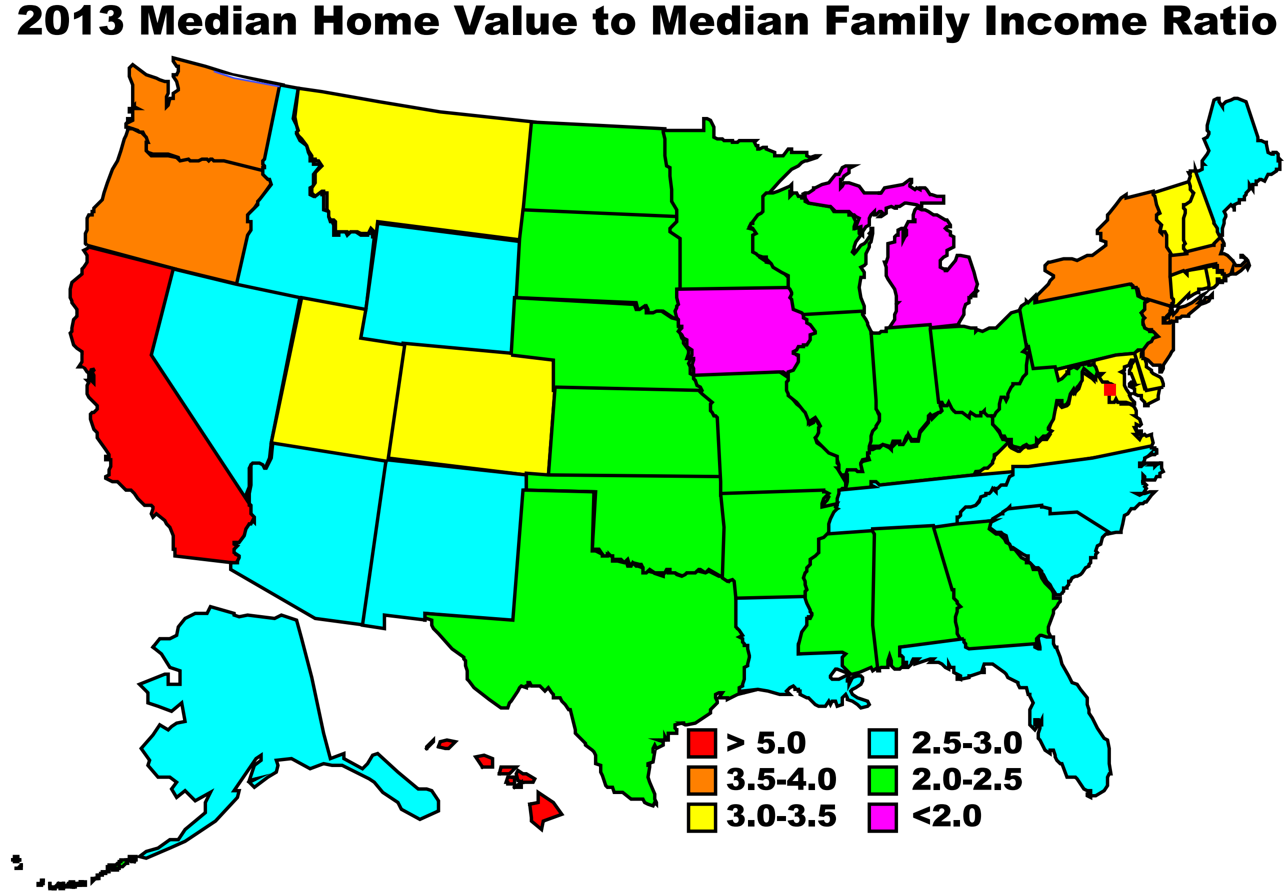
One thing is certain: Congress must return the Highway Trust Fund to a pay-as-you-go system, in which spending is no more than revenues. The 2005 bill's mandate to increase spending each year even if revenues did not increase is what led to the current problem in the first place. A true pay-as-you-go system could be achieved either by raising fuel taxes or cutting spending. Once Congress returns to that system, the pressure would be off to increase taxes or to find other ways to fund increased spending in the future.

Congress will almost certainly pass another short-term extension at the end of July. Such short-term extensions create uncertainly for state transportation agencies and continue the perverse incentives that are found in the 2005 (and earlier) transportation law, such as the incentive created by the New Starts program for transit agencies to design the most expensive, rather than the most efficient, transit systems. Unless some way can be found to end the gridlock, Congress will probably continue passing such short-term extensions until Democrats take over, and what they pass is unlikely to make fiscal conservatives happy.



Representative Scott Garrett (R-NJ) believes that spending should be reduced to avoid deficits without raising taxes.

How Texas Keeps Housing Affordable



Texas is the nation's fastest-growing state, but it also has some of the most affordable housing in the nation. Affordability can be measured by dividing the median home value by the median family income. If the ratio is less than 3, then housing is fairly affordable. If it is more than 3, then it is likely there are land restrictions preventing homebuilders from meeting the demand for housing.

As shown on the map, median home values in California, Hawai'i, and the District of Columbia were more than 5 times median family incomes in 2013. No states had value-to-income ratios between 4 and 5, but 15 states were between 3 and 4. At less than 2.2, housing in Texas is more affordable than all but ten other states.

There's a strong correlation between unaffordability and smart-growth or other land-use restrictions. States in New England and on the Pacific Coast, including Hawai'i, have all passed strong growth-management laws, and these have made housing unaffordable. Florida repealed its growth-management law and so is becoming more affordable. Tennessee, however, may be going the other way as it has one of the newest growth-management laws.

For growth management to work, planners must be able to control development both in the cities and in the unincorporated lands outside of the cities. Fifty years ago, housing was affordable everywhere but Hawai'i, which began regulating unincorporated land in the early 1960s. In most other states, however, counties weren't even allowed to zone, so housing remained affordable even in California, New York, and other places that are regarded as expensive today.

Since the mid-1960s, most states passed laws authorizing or even requiring counties to zone all unincorporated lands. This gave planners opportunities to try to control where growth would take place. Most growth-management plans were written by metropolitan planning organizations, sometimes called councils of governments. These agencies could force counties and other local governments to comply with their plans by withholding federal transportation and other funds from communities that refused to cooperate.

Texas, however, is one state that has never allowed counties to zone. Counties have very minimal land-use authority, mainly limited to protecting land near rivers and streams. This means planners can't control rural lands, so if cities try to impose strict land-use controls, developers will just go outside the cities.

Among major Texas cities, Austin is the least affordable, with a value-to-income ratio of 3.2 compared with 2.8 in Dallas, 2.5 in Houston, and 2.1 in San Antonio. City-wide land-use controls have reduced Austin's affordability, but many of Austin's suburbs remain very affordable, so Austin can't be too restrictive or it will lose population to its suburbs.

Texas cities can annex unincorporated land without permission of the residents being annexed. While forced annexations are controversial, cities' ability to do this has minimized debates over growth management. In states where cities cannot do this, the cities have resorted to regional growth management to control their suburbs. So giving cities strong annexation authority may actually protect affordability.

Housing Ruling

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HUD is using the disparate impact theory to push an agenda that is quite different from making housing affordable to everyone. Instead, it is focused on high-density development—also known as "smart growth." Legally, this is based on two fallacious assumptions: first, that high-density development is less expensive than single-family homes when, if anything, it is actually more expensive per square foot. That means smaller single-family homes, not higher-density housing, would be a better way of reducing housing costs. Second, HUD's high-density housing mandates assume that it is somehow "fair" to force low-income people to live in apartments while higher-income people live in single-family homes so long as both are in the same community.

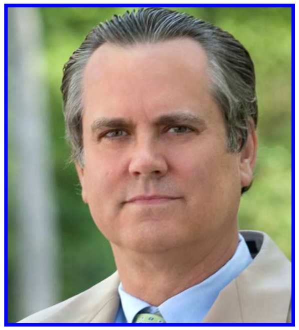
Here is an "affordable" development in Portland. Under the Supreme Court's new ruling, look for similar new developments in suburbs throughout the U.S.

The real problem with housing affordability is not at the community level but at the regional level where governments have imposed growth boundaries and other rules that create artificial scarcities of land and housing. Relieving these restrictions would go much further toward making housing affordable than forcing some communities to build high-density housing. The fact is that the very smart-growth policies that make housing less affordable are the policies supported and promoted by HUD.

Conference Speakers

Here are a few of the more than two dozen experts and the topics they will present at ADC's annual conference in Austin, Texas, November 6 through 8.

Scott Beyer of Market Urbanism on how markets can improve urban areas.

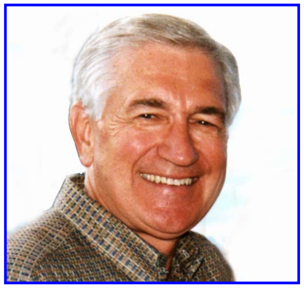


Robert Bradley, Institute for Energy Research, on the future of energy affordability.

Barbara Haselden on how No Tax for Tracks stopped light rail in St. Petersburg.

Geologist Ed Kilduff on how you can fight EPA wetlands rules.

TPPF's James Quintero on how Texas has kept housing affordable.



Jim Skaggs on the successful fight against light rail in Austin.

Membership & Conference Registration Form

You can join ADC, renew, order 2014 conference DVDs, or register for the 2015 Preserving the American Dream conference using this form or on-line. If you want to register for just part of the 2015 conference, or sign up spouses at a discounted rate, please use the on-line form.

❑ Yes! Please sign me up for the 2015 American Dream Conference. I am enclosing a check for:
- ❑ $229 early-bird rate (conference and meals; rate increases to $249 after October 16)
- ❑ $99 student/low-income (same meals)

❑ Please include me on the optional Friday tour, including lunch, for $50

Special dietary request: ❑ Kosher ❑ Vegetarian ❑ Vegan

❑ Please send me DVDs from the 2014 conference for ❑ $50 (members) or ❑ $100 (non-members)

❑ Please enter or renew my individual membership in the American Dream Coalition for $30

❑ Please enter or renew my group membership in the American Dream Coalition for $250

❑ I also want to contribute:
❑ $100 ❑ $1,000 ❑ $__________

❑ Enclosed is my check

❑ I will pay by Credit Card through PayPal using on-line registration at americandreamcoalition.org.

Name ______________________________

Address ______________________________

City ______________________________

State ____________ Zip ______________

Phone ______________________________

E-mail ______________________________

Please make checks payable to American Dream Coalition and send to ADC, P.O. Box 76, Camp Sherman, Oregon 97730. Full refunds will be provided if you cancel before September 4 or if someone else takes your place.

The **Crown Plaza Austin**, 6121 N IH-35, offers a conference rate of $119 per night for any nights from November 2 through 10 if you make reservations by October 16. To reserve rooms, call 512-323-5466 and specify you are attending the American Dream conference, or go on line and, when asked, enter "adc" in the "group code" field.