

## COMMENT

### THE DOLLAR STORE CONUNDRUM

MADLINE EHLINGER\*

Dollar stores are everywhere. Unlike big-box stores like Walmart or Target, these small box stores slot neatly into local downtowns, urban and rural alike. Because of the ease with which these stores can set up shop, the majority of Americans live less than five miles from a dollar store franchise. Opening at an impressive and alarming rate across the county, localities have stopped to question whether the dollar stores are worth their dollar price tags.

Many local zoning boards have decided that the answer to that question is undoubtedly no, coming to several important conclusions. Dollar store entry leads to their local grocer's exit, resulting in a loss of both jobs and access to produce and other fresh food. Crime rates climb steadily upwards in the immediate vicinities of where the shops open. In the wake of these realizations, scholars have conducted studies to determine if these conclusions are empirically supported. The majority of these studies have answered that inquiry affirmatively, bolstering the local conclusions further.

Beneath the obvious and increasingly statistically proven negative trends lies something more sinister. This Comment argues that dollar stores are part of our country's longstanding history of local race-based exclusionary zoning. That history resulted in today's affordable housing crisis, which has cemented both race-based and income-based inequality nationwide. This Comment aims to demonstrate the parallels between the affordable housing crisis and the dollar store invasion, arguing that the two crises are cut from the same cloth.

Dozens of local zoning boards across the country have passed zoning ordinances aimed at stopping the dollar store spread. This Comment argues that the solution lies in statewide action and legislation, attacking the problem from a necessarily higher level. Although the actions of localities are commendable and potentially impactful, the solution to the dollar store invasion cannot come wholly from local zoning—the very process that arguably gave birth to the dollar store rise to begin with. The host of issues associated with dollar stores are only becoming more pressing, demanding a statewide response. This response is necessary not only to address the immediate concerns of the dollar store spread, but also to remedy the decades-long injustice caused by exclusionary zoning. Just as states have belatedly

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stepped in to address the affordable housing crisis, states must take action to cure the dollar store conundrum.

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## INTRODUCTION

Dollar General “is proud to be America’s neighborhood general store” with “more than 20,000 convenient, easy-to-shop stores in 48 states.”<sup>1</sup> Dollar Tree, while “[i]n the midst of massive growth,” maintains the mission of giving its customers “extreme value at low prices” within its 8,000 stores.<sup>2</sup> As of 2022, these two corporations provided the United States with more than 34,000 dollar stores—more locations than Walmart, Target, Starbucks, and McDonald’s combined.<sup>3</sup> As their name suggests, dollar stores, also known as “small box stores,” pride themselves on offering low prices for everyday products such as

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1. *About Us*, DOLLAR GENERAL, <https://www.dollargeneral.com/about-us> (last visited Oct. 26, 2024).

2. *About Our Brands*, DOLLAR TREE, <https://corporate.dollartree.com/about-our-brands/dollar-tree> [<https://perma.cc/C4BA-3SAY>].

3. STACY MITCHELL, KENNEDY SMITH & SUSAN HOLMBERG, INST. FOR LOC. SELF-RELIANCE, *THE DOLLAR STORE INVASION: COMMUNITIES ARE IN REVOLT, BUT THE CHAINS’ PREDATORY TACTICS ALSO CALL FOR FEDERAL ACTION 5* (2023). Dollar Tree also owns Family Dollar, the third major dollar store chain in the United States. *Id.*

snacks, cleaning supplies, beauty products, and more.<sup>4</sup> However, these stores come with a larger cost than their dollar price tags would suggest.

Today, seventy-five percent of Americans live within five miles of a dollar store.<sup>5</sup> Dollar stores appear most frequently in municipalities with a significant Black population and a large percentage of the population living below the poverty line.<sup>6</sup> At first glance, it seems natural that stores offering low prices would be found most frequently in communities of lower socioeconomic status. However, the correlation between the number of dollar stores in a community and the number of social and economic issues plaguing that community suggests that dollar stores are a cause rather than merely a symptom of those problems.<sup>7</sup>

Perhaps the most glaring correlation is the somewhat counterintuitive relationship between dollar stores and “food deserts.”<sup>8</sup> How does dollar store entry actually worsen a community’s food access? The answer lies in competition between traditional grocers and dollar stores. Research demonstrates that (1) dollar stores tend to open in markets where “supermarkets exist and competition is high”;<sup>9</sup> (2) dollar store entry leads to a “clear downward trend” in the number of supermarkets that are able to survive that new source of competition;<sup>10</sup> and (3) dollar store entry in a community already lacking supermarket access results in that community being more likely to remain without a supermarket in the future.<sup>11</sup>

Overall, when a dollar store enters an already food-insecure community, it is more likely that people in that community will continue to lack access to a grocery store.<sup>12</sup> Research shows that “markets lose one grocery store for every three new dollar stores.”<sup>13</sup> The proliferation of dollar stores—paired with the exodus of grocery stores—results in a marked decrease in fresh produce spending wherever the dollar stores set

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4. DOLLAR GENERAL, *supra* note 1.

5. El Hadi Caoui, Brett Hollenbeck & Matthew Osborne, *The Impact of Dollar Store Expansion on Local Market Structure and Food Access* 30 (June 3, 2024) (unpublished manuscript) [hereinafter *Impact of Dollar Store Expansion*], <https://ssrn.com/abstract=4163102>.

6. *Id.* at 12.

7. Tess Britton, *The Paradox of Economic Insecurity Caused by Dollar Stores*, MICH. J. ECON. (Nov. 18, 2020), <https://sites.lsa.umich.edu/mje/2020/11/18/the-paradox-of-economic-insecurity-caused-by-dollar-stores/>.

8. *See infra* Section I.A.

9. Lauren Chenarides, Clare Cho, Rodolfo M. Nayga, Jr. & Michael R. Thomsen, *Dollar Stores and Food Deserts*, APPLIED GEOGRAPHY, Sept. 2021, at 21.

10. *Impact of Dollar Store Expansion*, *supra* note 5, at 17.

11. Chenarides, Cho, Nayga, Jr. & Thomsen, *supra* note 9, at 21.

12. *Id.*

13. *Impact of Dollar Store Expansion*, *supra* note 5, at 31.

up shop.<sup>14</sup> This result follows from dollar stores' lack of fresh produce, as only a fraction of the tens of thousands of stores offer fresh food.<sup>15</sup>

In addition to their impact on food availability, dollar stores are closely linked to other social and economic issues including unsafe working conditions, increased criminal activity, and a decrease in retail employment opportunities. Both Dollar General and Dollar Tree have been slapped with millions of dollars in penalties concerning workplace conditions following inspections carried out by the U.S. Department of Labor.<sup>16</sup> Moreover, dollar stores frequently find themselves as crime “magnets” as a result of executives explicitly disavowing increased security measures in the face of a troubling trend of on-site robberies and violent crimes.<sup>17</sup> Finally, dollar stores remain profitable by hiring few retail employees, resulting in a retail employment decrease of over seven percent on average in rural areas when a new dollar store location opens.<sup>18</sup>

In the face of the host of issues that have followed the rapid expansion of dollar stores, dozens of municipalities have passed local zoning ordinances to stop the spread of dollar stores in their communities.<sup>19</sup> These ordinances tackle the spread from a variety of avenues, including instituting a complete moratorium on new dollar stores, requiring that no new locations open within two miles of an

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14. *Id.* at 4.

15. *Id.* at 8; Lauren Debter, *How Dollar General Is Spreading Like Hot Gossip in Tiny Towns Across the Country*, FORBES (May 20, 2022, 6:30 AM), <https://www.forbes.com/sites/laurendebter/2022/05/20/dollar-general-opening-new-stores-across-small-town-america> [<https://perma.cc/CRL6-9LBA>].

16. Press Release, Occupational Safety & Health Admin., *Nine Inspections in Four States Find Dollar General Exposed Workers to Obstructed Exits, Fire, Electrical Hazards; Carry \$3.4M in New Penalties* (May 23, 2023) [hereinafter *Press Release, OSHA Fines Dollar General*], <https://www.osha.gov/news/newsreleases/national/05232023-0>; Press Release, Occupational Safety & Health Admin., Department of Labor *Announces Corporate-Wide Settlement Agreement with Dollar Tree, Family Dollar To Address Hazards at Thousands of US Stores* (Aug. 23, 2023), <https://www.osha.gov/news/newsreleases/national/08232023>.

17. Alec MacGillis, *How Dollar Stores Became Magnets for Crime and Killing*, PROPUBLICA (June 29, 2020, 6:00 AM), <https://www.propublica.org/article/how-dollar-stores-became-magnets-for-crime-and-killing> [<https://perma.cc/2NB9-AKG2>].

18. Keenan Marchesi, Rigoberto Lopez & Sandro Steinbach, *Dollar Store Expansion, Food Retail Competition, and Rural Employment* 2–3 (Ass'n for Soc. Econ. Ann. Meeting, 2023), [https://ageconsearch.umn.edu/record/329895/files/Steinbach\\_Manuscript.pdf](https://ageconsearch.umn.edu/record/329895/files/Steinbach_Manuscript.pdf) [<https://perma.cc/SK3E-GKT6>]. Independent grocers are three times more likely to exit due to dollar store entry in rural, compared to urban, census tracts. *Id.* at 3.

19. Julia McCarthy, Darya Minovi & Chelsea R. Singleton, *Local Measures To Curb Dollar Store Growth: A Policy Scan*, 14 NUTRIENTS, no. 15, Aug. 2022, at 1, 2.

existing store, and conditioning permits on a percentage of the store being dedicated to fresh food.<sup>20</sup> Proponents of measures designed to slow the persistent flood of dollar stores point to the local concerns explored above, such as unequal fresh-food access, safety issues, and economic considerations.<sup>21</sup> In contrast, opponents of the push to curb dollar store growth point to the fact that often dollar stores are the only retailer willing and able to open in preexisting food deserts, filling a so-called “food-access gap.”<sup>22</sup>

Zooming out beyond the purely local effects of dollar stores reveals that the stores slot neatly into the United States’ troubled history of exclusionary zoning, which has resulted in massive economic consequences nationwide.<sup>23</sup> Dollar stores, on the whole, are not popping up in affluent neighborhoods.<sup>24</sup> They are opening at an alarming rate in the low-income communities where people who were priced out of those affluent neighborhoods due to restrictive, exclusionary local zoning regulations—resulting in a lack of affordable housing—have settled.<sup>25</sup> In cities across America, the disproportionate effect of exclusionary zoning on people of color is undeniable.<sup>26</sup> Dollar stores capitalize on that disparity by targeting those very communities, urban and rural alike.<sup>27</sup>

This Comment argues that states should use their broad police power to preempt local zoning ordinances by passing legislation that addresses the pressing socioeconomic consequences of dollar store expansion. Part I of this Comment explores the effects of the persistent growth of dollar stores across the country by presenting empirical evidence published in multiple studies on the subject. It then goes on to survey local responses to the spread, presenting an overview of the municipal zoning ordinances passed in an effort to address the problem. Next, Part II gives a brief overview of the exercise of state preemption. It explains the rise of local zoning power and the more recent trend of invoking state preemption when a pressing issue with statewide implications presents itself. It

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20. *Id.*

21. *See infra* text accompanying note 83.

22. Chenarides, Cho, Nayga, Jr. & Thomsen, *supra* note 9, at 21.

23. *See infra* text accompanying notes 129–131.

24. *See supra* text accompanying note 6.

25. *See infra* text accompanying notes 125–128.

26. *Id.*

27. *See infra* text accompanying notes 41–43; *see also infra* text accompanying notes 158–161; Sarah Nassauer, *How Dollar General Became Rural America’s Store of Choice*, WALL ST. J. (Dec. 15, 2017, 12:00 PM), <https://www.wsj.com/articles/how-dollar-general-became-rural-americas-store-of-choice-1512401992>. Dollar General’s Chief Executive Todd Vasos stated that “[t]he economy is continuing to create more of our core customer,” insinuating that a bad economy is good for Dollar General’s business. *Id.*

specifically focuses on a recent socioeconomic crisis—the affordable housing crisis—and explains how state legislatures responded to the issue by preempting exclusionary local zoning ordinances and strongly incentivizing the availability of denser housing. Finally, in Part III, this Comment urges a similar response at the state level to the proliferation of dollar stores. It argues that local zoning boards are ill-equipped to deal with this national crisis and that state legislatures should provide guidance by preempting local zoning ordinances with a comprehensive, statewide response.

### I. THE DOLLAR STORE SPREAD AND LOCAL ZONING RESPONSES

This Part proceeds in two sections. Section A details what exactly the dollar store effect looks like. First, it explains the impact that the stores have on food availability by exploring how traditional grocers react to dollar store entry. This section also takes a closer look at which communities and demographics are most affected by the dollar store boom. Next, it explores several non-food-related effects associated with dollar stores. Specifically, it analyzes the economic impacts and safety consequences of dollar store entry. Section B surveys actions of local zoning boards in municipalities across the country. It details several of the ordinances passed in recent years in response to rapid dollar store growth.

#### A. *The Food Desert Effect*

Food deserts are communities in which thirty-three percent or more of the population lives over “1 mile (urban areas) or more than 10 miles (rural areas) from the nearest supermarket or grocery store.”<sup>28</sup> Dollar stores are by no means the only cause of food deserts, but their entry into a given market sharply decreases that market’s odds of ever attracting and retaining a grocery store.<sup>29</sup> On average, roughly one grocery store closes for every three dollar stores that open, when measuring from zero to two miles from the new dollar store.<sup>30</sup> Traditional grocery stores, which operate with profit margins between only one and three percent, simply cannot compete.<sup>31</sup> The inability to remain viable likely stems from

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28. RENÉE JOHNSON & NYAH STEWART, CONG. RSCH. SERV., IF11841, *DEFINING LOW-INCOME, LOW-ACCESS FOOD AREAS (FOOD DESERTS)* (2021).

29. Chenarides, Cho, Nayga, Jr. & Thomsen, *supra* note 9, at 13.

30. Impact of Dollar Store Expansion, *supra* note 5, at 30–31.

31. Janet Nguyen, *How Do Grocery Stores Make Money When Their Profit Margins Are So Low?*, MARKETPLACE (May 13, 2022), <https://www.marketplace.org/2022/05/13/how-do-grocery-stores-make-money-when-their-profit-margins-are-so-low> [<https://perma.cc/CQ3S-34HE>].

the fact that food is the most commonly purchased good at dollar stores.<sup>32</sup> Moreover, the food that is sold at dollar stores is the very food that yields the highest profit margins for grocers—prepackaged and processed foods.<sup>33</sup> This troubling food accessibility trend is heightened further when considering the broader socioeconomic effect. Low-income households respond to this trend by spending around fifteen percent less on fresh produce, while high-income households remain unaffected.<sup>34</sup>

A recent study explored a counterfactual world in which dollar stores did not expand after 2010.<sup>35</sup> The results indicated that this “hypothetical world” would contain fifty-four percent more grocery stores and the distance to the nearest grocery store would decrease by thirty percent on average.<sup>36</sup> Importantly, this positive trend of grocery store and fresh produce expansion would be felt most in low-income, minority communities.<sup>37</sup> Nutritional inequality would be somewhat alleviated in a world where dollar stores stopped expanding, with these communities having to travel almost a mile less to reach a grocery store *and* spending almost ten percent more on fresh produce.<sup>38</sup>

However, proponents of dollar stores, especially those in rural municipalities, point to the fact that the stores provide affordable food access in places where more traditional food retailers could not even consider opening.<sup>39</sup> The reason that dollar stores can afford to fill this gap comes down to their low cost of operation, accomplished in part by a dense system of distribution centers and many dollar stores’ failure to

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32. KENNEDY SMITH, INST. FOR LOC. SELF-RELIANCE, 17 PROBLEMS: HOW DOLLAR STORE CHAINS HURT COMMUNITIES 2 (2023).

33. *Id.*

34. Impact of Dollar Store Expansion, *supra* note 5, at 4–5.

35. El Hadi Caoui, Brett Hollenbeck & Matthew Osborne, Dynamic Entry & Spatial Competition: An Application to Dollar Store Expansion 34–43 (June 21, 2024) (unpublished manuscript) [hereinafter Dynamic Entry & Spatial Competition], <https://ssrn.com/abstract=4872647>.

36. *Id.*

37. *Id.* at 36.

38. *See id.* at 43–45; *see also* Impact of Dollar Store Expansion, *supra* note 5, at 31.

39. *See, e.g.,* Michael Corkery, *Will a Dollar General Ruin a Rural Crossroads?*, N.Y. TIMES (June 2, 2023), <https://www.nytimes.com/2023/06/02/business/dollar-general-ebony-virginia.html>. In the rural Virginia town of Ebony, a municipality with a more than fifty percent Black population, residents began to spar when the county board voted to approve the opening of a Dollar General. *Id.* While the local general store owner was concerned for his business’s viability, a resident who owned the land where the new Dollar General would be built was happy to see the dollar store opening, as it would provide “a convenient and affordable place to shop.” *Id.* The dispute led to a lawsuit over whether the approval of the Dollar General violated the town’s comprehensive zoning plan. *Id.*

offer produce.<sup>40</sup> The fact that three-quarters of Dollar Generals are in rural communities of 20,000 or fewer residents is not accidental.<sup>41</sup> Dollar General uses an algorithm to help it decide where to open new stores.<sup>42</sup> The algorithm considers factors like population, population density, and even mobile device data that tells the company both how far customers in a prospective market drive to get to other stores and which stores they visit.<sup>43</sup>

Studies point to the reality that dollar stores may be filling the aforementioned food gap.<sup>44</sup> Rural areas have seen dollar stores more than double their market share since 2008.<sup>45</sup> In that time, rural residents decreased their food budget at grocery stores while increasing the amount spent on food at dollar stores, likely because the convenience of the nearby dollar store took away the need to drive to the farther away grocery store.<sup>46</sup> The studies on this shift concluded that dollar stores act competitively, as traditional retailers are wont to do, and may push out local grocers.<sup>47</sup> However, they may also fill a food gap where traditional grocers likely could not survive. Regardless of the ultimate effect, dollar stores are quickly becoming the food retailer of choice—or by default—for large swaths of rural America. And the food sold by these dollar stores lacks nutritional value when compared with grocery store offerings.<sup>48</sup>

### *B. The Safety and Economic Effects*

Another reason that dollar stores are able to operate so inexpensively, allowing them to open where other retail stores could not survive, is the companies' policy of lean staffing and minimal security. Dollar stores tend to be more thinly staffed than grocery stores, which employ twenty percent more hourly employees than Dollar General for

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40. Britton, *supra* note 7.

41. Debter, *supra* note 15.

42. *Id.*

43. *Id.*

44. Chenarides, Cho, Nayga, Jr. & Thomsen, *supra* note 9, at 21.

45. Wenhui Feng, Elina T. Page & Sean B. Cash, *Dollar Stores and Food Access for Rural Households in the United States, 2008–2020*, 113 AM. J. PUB. HEALTH 331, 334 (2023).

46. *Id.* at 333; Impact of Dollar Store Expansion, *supra* note 5, at 21–22.

47. Chenarides, Cho, Nayga, Jr. & Thomsen, *supra* note 9, at 21.

48. See Feng, Page & Cash, *supra* note 45, at 334 (citing concerns voiced by public health advocates about the nutritional deficiencies of dollar store food selections and studies confirming “that the foods and beverages sold in dollar stores tend to be lower in nutrients and higher in calories”).



every ten million dollars in sales.<sup>49</sup> Most Dollar Generals only have two or three employees working at one time, while managers work alone in the opening hours.<sup>50</sup> In 2020, Dollar General paid those “hourly employees an average of \$9.68 per hour.”<sup>51</sup> That put the chain’s “median employee salary . . . in the bottom 10 percent” for cashiers, based on statistics made available by the U.S. Department of Labor’s Bureau of Labor Statistics.<sup>52</sup> As recently as 2022, over ninety percent of Dollar General employees still took home under fifteen dollars per hour.<sup>53</sup> Other large retail chains, such as Amazon and Target, have raised minimum wages to *start* at fifteen dollars per hour.<sup>54</sup>

Dollar stores have also been hesitant to increase security measures in the face of mounting criminal activity over concerns that any increase in security costs would adversely affect the stores’ financial condition.<sup>55</sup> Dollar stores, as thinly staffed chains dealing primarily in cash, are easy and attractive targets for robberies.<sup>56</sup> From 2016 to 2020, six employees at Dollar General stores were killed as a result of armed robberies.<sup>57</sup> Between 2014 and 2021, 156 people were killed in dollar stores while another 329 were injured.<sup>58</sup> Dayton, Ohio, is an example of this trend, with a total of eighty-six robberies at just seven Dollar General locations between 2016 and 2019.<sup>59</sup> Twenty-nine percent of commercial robberies in the city arose from incidents at Dollar Generals alone.<sup>60</sup>

As dollar store growth has exploded, scholars have begun to research this violent trend. A 2024 study used Chicago as a sample to

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49. Mitchell, Smith & Holmberg, *supra* note 3, at 15.

50. Debter, *supra* note 15.

51. Letter from Sen. Patty Murray, Chair, U.S. Senate Comm. on Health, Educ., Lab. & Pensions, to Todd Vasos, CEO, Dollar Gen. Corp. (Apr. 22, 2002). Senator Murray sent letters to both Dollar General and Dollar Tree, requesting information about the corporations’ working conditions and demanding improved conditions moving forward. *Id.*

52. *Id.*

53. *Company Wage Tracker*, ECON. POL’Y INST., <https://www.epi.org/company-wage-tracker/> [<https://perma.cc/A87A-QMAV>] (Apr. 2022). Of that group of employees, 22% took home less than ten dollars per hour. *Id.* By way of comparison, 51% of Walmart’s employees and only 3% of Target’s employees took home under fifteen dollars per hour during the same time period. *Id.*

54. Debter, *supra* note 15.

55. Dollar Gen. Corp., Annual Report (Form 10-K), at 11 (Mar. 24, 2017).

56. Nathaniel Meyersohn, *Dollar General Is Cheap, Popular and Spreading Across America. It’s Also a Robbery Magnet, Police Say*, CNN, <https://www.cnn.com/2020/06/26/business/dollar-general-robberies> [<https://perma.cc/V458-JFAJ>] (June 26, 2020, 12:24 PM).

57. *Id.*

58. Mitchell, Smith & Holmberg, *supra* note 3, at 16.

59. Meyersohn, *supra* note 56.

60. *Id.*

determine whether patterns of violent crime were in fact correlated with dollar store entry.<sup>61</sup> The author found that “there is, on average, a 21.5% increase in the number of total violent crimes after dollar store openings in their immediate vicinity.”<sup>62</sup> That impact is felt most in low-income communities.<sup>63</sup> The direct impact these stores have on crime is made undeniable by the study’s finding that once a dollar store closes, the violent crime levels in the vicinity drop to the levels that existed before the store opened.<sup>64</sup> The study’s author urged policymakers to heed the results of these findings by “requiring dollar stores to increase their security efforts in exchange for obtaining a business license.”<sup>65</sup> While dollar stores are certainly not alone as crime-attracting retailers, both their lack of security and cash-heavy business model make them particularly vulnerable crime targets.<sup>66</sup>

In addition to property and violent crimes, the Occupational Safety and Health Administration (OSHA) proposed \$3.4 million in penalties against Dollar General in 2023 for safety violations, adding to the \$21 million already proposed against the chain since 2017.<sup>67</sup> The penalties stemmed from nine inspections conducted in Maine, North Dakota, Ohio, and Wisconsin in 2022.<sup>68</sup> The inspections uncovered numerous workplace safety violations, including inaccessible exit routes and fire extinguishers, toxic vapor exposure to employees, unsafe electrical cords, and crushing hazards.<sup>69</sup> OSHA characterized these violations as

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61. Eun Jin Shin, *Are Dollar Stores Magnets for Violent Crime? Evidence from Chicago*, 60 URB. AFFS. REV. 1540, 1540 (2024).

62. *Id.* at 1569.

63. *Id.* at 1570.

64. *Id.* at 1569.

65. *Id.* at 1570.

66. Mary Hanbury, *A Dollar General Store Was Robbed 4 Times in 3 Months, and Critics Say It Shows How Discount Chains Put Their Staff at Risk*, BUS. INSIDER (Oct. 23, 2021, 6:54 AM), <https://www.businessinsider.com/dollar-store-staff-danger-crime-hotspots-discount-chains-retail-2021-10> (suggesting “that it’s easier for someone to rob a dollar store than to rob a Walmart, which has more staff and, often, security guards that dollar stores rarely have”); *see also* MacGillis, *supra* note 17 (reporting that officers from the Dayton Police Department urged dollar store cashiers to quickly move cash from the register to a safe).

67. Press Release, OSHA Fines Dollar General, *supra* note 16.

68. *Id.*

69. *Id.*

“willful, repeat and serious.”<sup>70</sup> Dollar Tree was also fined repeatedly for similar violations, leading to \$14 million in fines since 2017.<sup>71</sup>

The safety violations and substandard working conditions have led to litigation nationwide. In 2023, Dollar General’s own shareholders sued the corporation in federal court, alleging that the company repeatedly failed to remedy the safety violations that resulted in the millions of dollars in OSHA penalties.<sup>72</sup> The complaint also pointed to the sparsely staffed stores, citing the six employee deaths that occurred as a result.<sup>73</sup> The shareholders involved in the suit accused Dollar General of putting profits above employee safety.<sup>74</sup> Dollar Tree has also faced lawsuits and was cited \$1.5 million in penalties by the Massachusetts Attorney General in 2022.<sup>75</sup> The penalties arose from over 3,900 violations of state meal break laws across Massachusetts’ one hundred Dollar Tree locations, as a result of which employees did not receive meal breaks due to chronic understaffing.<sup>76</sup>

### *C. Local Responses to the Dollar Store Effect*

In the face of these mounting issues, local governments have taken it upon themselves to find a solution in the form of zoning ordinances and restrictions. Zoning, put simply, regulates what can be done with real property in various sections (zones) of a given municipality.<sup>77</sup> This includes what uses—ranging from residential to commercial to industrial—are allowed, as well as more specific regulations such as building size or height.<sup>78</sup> Since the early twentieth century, zoning has

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70. Chris O’Malley, *Shareholder Sues Dollar General After OSHA Assesses \$15M in Safety Fines and Says Chain ‘Puts Profits over People,’* LAW.COM (Feb. 3, 2023, 7:15 AM), <https://www.law.com/corpocounsel/2023/02/03/shareholder-sues-dollar-general-after-osha-assesses-15m-in-fines-and-says-chain-puts-profits-over-people/> [<https://perma.cc/325K-JNAX>].

71. Michael Corkery, *Dollar General Is Deemed a ‘Severe Violator’ by the Labor Dept.,* N.Y. TIMES (Mar. 28, 2023), <https://www.nytimes.com/2023/03/28/business/dollar-general-osha-fines.html>.

72. O’Malley, *supra* note 70.

73. *Id.*

74. *Id.*

75. Press Release, Maura Healey, Mass. Att’y Gen., *Family Dollar Cited \$1.5 Million for Thousands of Meal Break Violations at Massachusetts Locations* (Feb. 2, 2022), <https://www.mass.gov/news/family-dollar-cited-15-million-for-thousands-of-meal-break-violations-at-massachusetts-locations>.

76. *Id.*

77. SONIA A. HIRT, *ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND-USE REGULATION* 3 (2014).

78. *Id.* at 32.

primarily been left in the hands of local governments.<sup>79</sup> Local governments are empowered to use their police power to zone in the interests of “health, safety, morals, or the general welfare of the community.”<sup>80</sup> Municipalities around the country have used this power to increase zoning regulations and restrictions on dollar stores.

Between 2018 and 2022, more than fifty local governments turned to zoning to address the rapid spread of dollar stores in their communities.<sup>81</sup> The methods used can be broken down into three main categories: (1) temporary moratoriums on new dollar store construction; (2) distancing requirements between dollar store locations; and (3) incentives for fresh-food availability.<sup>82</sup> The zoning ordinances tend to be accompanied by a statement of purpose, with predominant purposes being increasing access to healthy food, supporting local grocery stores and the local economy, and improving safety and reducing crime.<sup>83</sup>

Texas—home to over 1,800 Dollar Generals alone—has seen multiple municipalities respond to the state’s dollar store spread with zoning ordinances regulating expansion.<sup>84</sup> Mesquite, Texas, passed an ordinance in 2018 after a community health assessment found that residents in its underserved neighborhoods “face[d] increasing threats to sufficient access to fresh . . . produce” as the number of dollar stores had quadrupled since 2008.<sup>85</sup> The ordinance orders that all dollar stores must be at least five thousand feet (or about one mile) apart.<sup>86</sup> Additionally, the ordinance instructs the city council to at least consider both the potential impact on local grocers and whether or not the proposed store is within a food desert.<sup>87</sup> Importantly, any dollar store granted a permit has to stipulate to ten percent or more of the store’s floor area being devoted to fresh produce, meat, and dairy.<sup>88</sup>

Georgia—home to over one thousand Dollar Generals alone—also saw responses to the spread at the local level.<sup>89</sup> DeKalb County, Georgia, began by issuing a total moratorium on new dollar store construction

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79. *Id.* at 35.

80. *Id.*

81. McCarthy, Minovi & Singleton, *supra* note 19, at 2; Mitchell, Smith & Holmberg, *supra* note 3, at 4.

82. McCarthy, Minovi & Singleton, *supra* note 19, at 2, 5.

83. *Id.* at 1, 6.

84. Dollar Gen. Corp., Annual Report (Form 10-K), at 21 (Mar. 24, 2023) [hereinafter Dollar General 2023 Annual Report].

85. Mesquite, Tex., Ordinance 4583 (July 16, 2018).

86. *Id.*

87. *Id.*

88. *Id.*

89. Dollar General 2023 Annual Report, *supra* note 84, at 21.

within county limits in 2019.<sup>90</sup> After the moratorium took effect in January 2020, the County retained Georgia State University to study the socioeconomic effects of the stores in its territory.<sup>91</sup> The study found that crime increased within one hundred feet of dollar stores and that the presence of stores was significantly correlated with both property and violent crime.<sup>92</sup> Crime rates were particularly startling in areas where dollar stores were clustered together.<sup>93</sup> Additionally, the study found that dollar stores negatively impacted median home values, while grocery stores had the opposite effect.<sup>94</sup>

Based on the results of the study, DeKalb County amended its zoning ordinances in 2022 to require a minimum distance of one-half mile between dollar stores.<sup>95</sup> The ordinance also includes supplemental regulations of the stores' operations.<sup>96</sup> It requires that ten percent of every store be devoted to fresh food.<sup>97</sup> Moreover, to address the criminal activity that the study found to be significantly correlated with dollar stores, the ordinance states that the entire premises must be monitored by security cameras at all times in addition to being adequately illuminated after sunset.<sup>98</sup>

These examples of zoning ordinances are far from the only local legislative responses to dollar stores. Similar measures have been taken by municipalities in states including Ohio, Michigan, and Oklahoma.<sup>99</sup> The variety of states that have seen their counties, cities, and towns pass ordinances aimed at regulating dollar stores speaks to the enormous presence stores like Dollar General and Dollar Tree have across the county. The novelty of these local responses leaves their effectiveness—though not their motivation and purpose—uncertain. A large majority of

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90. Press Release, DeKalb Cnty., Ga., DeKalb County Passes Text Amendments to the Zoning Ordinance To Manage the Growth of Small Box Discount Retail Stores (Jan. 26, 2023), <https://www.dekalbcountyga.gov/news/dekalb-county-passes-text-amendments-zoning-ordinance-manage-growth-small-box-discount-retail> [https://perma.cc/XC5Y-FP6W].

91. DEAN DABNEY, LEAH E. DAIGLE & MICHELLE EICHINGER, EVALUATION OF SMALL BOX DISCOUNT RETAILERS AND NEGATIVE OUTCOMES IN UNINCORPORATED DEKALB COUNTY (2021).

92. *Id.* at 5, 27.

93. *Id.* at 6, 24.

94. *Id.* at 41.

95. DEKALB CNTY., GA., CODE OF ORDINANCES § 27-4.2.60(B) (2022).

96. § 27-4.2.60(C)(1).

97. § 27-4.2.60(C)(1)(a).

98. § 27-4.2.60(C)(1)(c).

99. McCarthy, Minovi & Singleton, *supra* note 19, at 5–6.

these ordinances are prospective only, suggesting that more sweeping statewide legislation may be necessary to address existing stores.<sup>100</sup>

## II. STATE PREEMPTION: THE LIMITS OF LOCAL ZONING

While zoning is traditionally governed at the local level, state police power gives state legislatures broad authority to regulate for the well-being of their citizens, so long as that regulation promotes interests of safety, health, or overall general welfare.<sup>101</sup> State governments can and have stepped in when pressing socioeconomic issues, which require more sweeping statewide responses, present themselves.<sup>102</sup> This police power is vast and has historically been upheld by the courts so long as the state legislature can articulate a reasonable, non-arbitrary reason for a given regulation.<sup>103</sup> Between 2018 and 2021, dollar stores such as Dollar General and Dollar Tree made up one-half of all retail stores that opened in the United States.<sup>104</sup> That number is staggering and speaks to a problem that is far from localized. State legislatures need to respond by issuing statewide regulations of dollar stores that preempt local land-use control, using local models as templates.

This Part proceeds in two sections. First, it gives an overview of the interplay between local zoning control and subsequent state preemption. It begins by explaining the origins of local zoning power before exploring when and why states may step in to help with regulation. Second, this Part takes a closer and more critical look at the troubling history surrounding the rise of local zoning power. Using that same critical lens, it then analyzes just how that power led to both the affordable housing crisis and, arguably, the dollar store explosion.

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100. See Mesquite, Tex., Ordinance 4583 (July 16, 2018) (only restricting permitting of future dollar stores). *But see* DEKALB CNTY., GA., CODE OF ORDINANCES § 27-4.2.60(C)(1) (2022) (imposing regulations on security and safety measures of already existing dollar stores).

101. Daniel B. Rodriguez, *The Inscrutable (Yet Irrepressible) State Police Power*, 9 N.Y.U. J.L. & LIBERTY 662, 662 (2015).

102. Jennifer M. Morgan, *Zoning for All: Using Inclusionary Zoning Techniques To Promote Affordable Housing*, 44 EMORY L.J. 359, 372–73 (1995).

103. *Id.* at 364.

104. Impact of Dollar Store Expansion, *supra* note 5, at 2.

A. A Brief History of Local Zoning Control and State Preemption

The famous case of *Village of Euclid v. Ambler Realty Co.*<sup>105</sup> solidified the constitutionality of local zoning control in 1926.<sup>106</sup> In *Euclid*, the Supreme Court upheld a local zoning ordinance that created a use-based system of districts, despite the resulting detriment to private industry and the limitation on building apartment complexes.<sup>107</sup> In the years surrounding *Euclid*, then-Secretary of Commerce Herbert Hoover was working on promulgating what would become the first Standard State Zoning Enabling Act in response to urban growth across the nation.<sup>108</sup> The final version of the Act was published in 1926, in tandem with *Euclid*.<sup>109</sup> It encouraged local governments to zone “[f]or the purpose[s] of promoting health, safety, morals, or the general welfare of the community.”<sup>110</sup>

The Act has since been used as a model for local zoning power across the country.<sup>111</sup> However, the Act was not created as a comprehensive solution to each and every issue—past, present, or future—that a growing community may face. Rather, the Act was created to respond to the particularized issue of urban growth in the 1920s, evidenced by its focus on preventing conflicting land-use issues.<sup>112</sup> The Act laid the groundwork for extensive local control and discretion over land use and zoning decisions.<sup>113</sup> That discretion has resulted in zoning issues which states have felt the need to correct.<sup>114</sup>

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105. 272 U.S. 365 (1926).

106. *Id.*; see also Brian J. Connolly & David A. Brewster, *Building a More Equitable Land Use Regulatory System: Toward a Twenty-First-Century Zoning Enabling Act*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 493, 497 (2021).

107. *Euclid*, 272 U.S. at 390–95. In *Euclid*, the village council adopted an ordinance that “regulat[ed] and restrict[ed] the location of trades, industries, apartment houses, two-family houses, [and] single family houses,” in addition to regulating the height and size of structures. *Id.* at 379–80. Amber Realty Company challenged the ordinance because it restricted the company’s ability to build and operate. *Id.* at 382. The Supreme Court found that despite the detriment to Amber Realty, the ordinance was neither arbitrary nor unreasonable and was a “valid exercise of authority.” *Id.* at 397.

108. Connolly & Brewster, *supra* note 106, at 495–96.

109. *Id.* at 497.

110. *Id.* at 496 (first alteration in original) (quoting A STANDARD STATE ZONING ENABLING ACT § 1 (ADVISORY COMM. ON ZONING, DEP’T OF COM. 1926)).

111. Stuart Meck, *Model Planning and Zoning Enabling Legislation: A Short History* 3 (Am. Plan. Ass’n, Working Paper No. 462/463, 1996).

112. Connolly & Brewster, *supra* note 106, at 495–96; see also Richard H. Chused, *Euclid’s Historical Imagery*, 51 CASE W. L. REV. 597, 599 (explaining that the 1920s were a time of “[c]haos in America’s developing urban centers” as “American cities grew like wildfire”).

113. Connolly & Brewster, *supra* note 106, at 497.

114. See, e.g., Morgan, *supra* note 102, at 372–73.

State preemption of local zoning allows states to step in when local zoning, aggregated and compounded, creates an effect that is no longer truly “local” in nature. Preemption of local laws at the state level is traditionally upheld by the courts if the state can (1) articulate a statewide interest supporting the regulation, and (2) demonstrate that local control will have rippling implications beyond the boundaries of the municipality itself.<sup>115</sup> Land use and zoning are areas in which courts have consistently upheld the validity of state preemption, due to the broad effects that even local zoning decisions can have statewide.<sup>116</sup> Local land-use control has been shown to have wide-ranging impacts, affecting areas such as the housing market, greenhouse gas emissions, and the larger statewide and national economies.<sup>117</sup> One specific land-use issue that has evoked the need for state preemption of local zoning bears strikingly similar socioeconomic consequences to the dollar store crisis: the affordable housing crisis.

*B. The Affordable Housing Crisis and the Rise of State  
Zoning Preemption*

*Euclid* was a landmark case in many ways, and the Standard State Zoning Enabling Act was in some ways a positive grant of zoning power to local governments. However, both the Act and *Euclid* have long been criticized for giving local governments the tools to use zoning as a mechanism to further racial disparity and income inequality.<sup>118</sup> Even before *Euclid* was decided and the Act was passed, local and state governments used zoning to subtly enforce racial residential segregation.<sup>119</sup> Secretary of Commerce Hoover created an Advisory

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115. See Kenneth Stahl, *Home Rule and State Preemption of Local Land Use Control*, 50 URB. LAW. 179, 183 (2020).

116. *Id.* at 183–84. Professor Stahl further suggests that local zoning even has implications on the national and international levels. *Id.*

117. See *id.* at 184 n.16. For example, a 2019 study suggested that loosening restrictive land use and housing regulations in major U.S. cities would result in an 8.9% greater GDP output and an \$8,775 boost in average wages. Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, AM. ECON. J., Apr. 2019, at 1, 25–26.

118. Michael Kim, *Exclusionary Zoning: How the United States Government Circumvented Prohibitions on Racial Zoning Through the Standard State Zoning Enabling Act*, 48 J. LEGIS., no. 1, 2021, at 124, 132; see also Chused, *supra* note 112, at 613–14. The author explains that the *Euclid* opinion “politely” furthered racist ideologies through subtle yet implicitly racist remarks. See Chused, *supra* note 112, at 613. The majority, “without ever mentioning race, immigration, or tenement houses,” used “code words that had the same impact.” *Id.* at 614. The result was judicially approved racial covenants and “isolated residential zones for the rich.” *Id.*

119. See Kim, *supra* note 118, at 132. Kim points to the fact that many ordinances in the early twentieth century were designed to “maintain the character of a



Committee on Zoning that, intentionally or not, by publishing the Act gave more steam to local efforts to cement residential segregation.<sup>120</sup> Practically speaking, the Act legitimized a “class-based economic zoning system” that furthered racial housing segregation by allowing municipalities to zone with discriminatory intent so long as that intent was not made explicit.<sup>121</sup>

When it decided *Euclid*, the Supreme Court solidified the constitutionality of local zoning ordinances by stating that they are only unconstitutional if they are “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”<sup>122</sup> However, given the majority’s reference to apartment complexes as “mere parasites[s]” at a time when apartments were closely correlated with lower socioeconomic demographics,<sup>123</sup> some have suggested that what the Court really meant was that zoning ordinances are constitutional so long as they do not explicitly state their racist underpinnings.<sup>124</sup>

Regardless of the intent behind the Court’s decision or the Act, the decades-long effect of local zoning control on racial housing disparity and economic inequality is undeniable. A 2018 study showed that municipalities with more zoning restrictions on housing tend to have higher housing prices, population growth that lags behind demand, and housing equity that favors “older, richer buyers.”<sup>125</sup> When people cannot afford to live in municipalities with zoning regulations that discourage denser housing, those people “locate in places where wages and prices are lower, reducing America’s overall economic output in the process.”<sup>126</sup> Given the reality that Black and other minority households are, on the whole, not as wealthy as their White counterparts,<sup>127</sup> those

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neighborhood.” *Id.* That phrase was often a thinly veiled attempt at excluding low-income Black households from certain neighborhoods. *Id.*

120. *Id.* at 132–33. The Committee was comprised of many prominent political figures who were outspoken proponents of segregation. *Id.* at 133–34.

121. *Id.* at 132–34.

122. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

123. *Id.* at 394.

124. *E.g.*, Kim, *supra* note 118, at 137–38.

125. Edward Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply*, J. ECON. PERSPS., Winter 2018, at 3, 26.

126. *Id.*

127. For example: “In 2021, the typical White household had 9.2 times as much wealth as the typical Black household . . . .” RAKESH KOCHHAR & MOHAMAD MOSLIMANI, PEW RSCH. CTR., WEALTH SURGED IN THE PANDEMIC, BUT DEBT ENDURES FOR POORER BLACK AND HISPANIC FAMILIES 15 (2023), [https://www.pewresearch.org/wp-content/uploads/sites/20/2023/12/RE\\_2023.12.04\\_Race-Wealth\\_Report.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2023/12/RE_2023.12.04_Race-Wealth_Report.pdf) [<https://perma.cc/M96T-4NUX>]. That same year, fewer than half of Black households were in middle (between \$41,700 and \$667,500) or upper (more

minority households likely make up the majority of people relocating to places with lower wages.<sup>128</sup>

In the wake of the Act, *Euclid*, and the following decades of constitutionally legitimized exclusionary zoning, an affordable housing crisis was born that had astounding consequences for not only municipalities and individual states, but for the country as a whole.<sup>129</sup> In 2016, the Obama Administration drew attention to the housing crisis and the negative nationwide effects local zoning control could create.<sup>130</sup> In a report highlighting municipalities that had taken positive steps to expand housing availability, the Administration noted that restrictive local zoning regulations not only “jeopardiz[e] housing affordability for working families,” but also “increas[e] income inequality . . . and stifl[e] GDP growth by driving labor migration away from the most productive regions.”<sup>131</sup>

In addition to nationwide economic effects and the disparate impact on lower-income households as a whole, the lack of affordable housing even affects the health of those struggling to find housing. A recent study showed a correlation between states that preempted inclusionary zoning (zoning that would allow for denser, more affordable housing) and the quality of the medical care and health of those states’ citizens.<sup>132</sup> The study surveyed adults living in states that preempt inclusionary zoning and states that do not, finding that “9 percent of the study population reported delaying medical care due to cost and 19 percent reported poor or fair self-rated health.”<sup>133</sup> Notably, “[t]he prevalence of these two outcomes was significantly higher in preemption states compared to non-preemption states.”<sup>134</sup>

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than \$667,500) wealth tiers, whereas more than seventy percent of White households were within the middle and upper wealth tiers. *Id.* at 3, 16–17.

128. Connolly & Brewster, *supra* note 106, at 493, 498–99.

129. See *supra* text accompanying notes 118–128; see also *America’s Affordable Housing Crisis: Challenges and Solutions: Hearing Before the S. Comm. on Fin.*, 115th Cong. 92 (2018) (explaining that research shows increasing rent costs and a lack of affordable housing led to a GDP loss of almost two trillion dollars between 1964 and 2009).

130. See THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 2 (2016), [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing\\_Development\\_Toolkit%20f.2.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf) [<https://perma.cc/5RA4-7BJA>].

131. *Id.*

132. COURTNEE MELTON-FANT, NAT’L LEAGUE OF CITIES, THE RELATIONSHIP BETWEEN STATE PREEMPTION OF INCLUSIONARY ZONING AND HEALTH 4–5 (2021), <https://www.nlc.org/wp-content/uploads/2021/10/Preemption-Brief-1-The-Relationship-Between-State-Preemption.pdf> [<https://perma.cc/V2XZ-JD2W>].

133. *Id.* at 3–4.

134. *Id.*

In recent years, more states have begun to explicitly preempt local zoning regulations with the goal of remedying the affordable housing crisis. California—a state that found that ninety-eight percent of its localities did not have sufficient housing to meet their people’s needs in 2018—is one state that has stepped up to the plate to intervene in the crisis.<sup>135</sup> In 2021, California passed Senate Bill 9, which “requires ministerial approval” of proposed housing developments with “no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both.”<sup>136</sup> The bill is designed to allow a lot originally zoned for only a single-family home to instead contain up to four units of housing.<sup>137</sup> Nebraska is another state that has passed legislation aimed at preempting local restrictive zoning.<sup>138</sup> The Municipal Density and Missing Middle Housing Act requires cities with a population of 20,000 or more to report their efforts to increase affordable housing through their zoning codes.<sup>139</sup> If a city fails to develop a plan, it is required to allow denser housing on lots zoned for single-family homes.<sup>140</sup>

California and Nebraska are far from the only states moving to preempt exclusionary local zoning at the state level.<sup>141</sup> Aside from state preemption, some scholars have even gone so far as to suggest that a new, reformed Standard State Zoning Enabling Act must be promulgated to right the wrongs of the first.<sup>142</sup> The affordable housing crisis is a stunning example of the havoc that can ensue when local governments

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135. John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. 823, 849 (2019).

136. CAL. DEP’T OF HOUS. & CMTY. DEV., SB 9 FACT SHEET 2 (2024), <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/sb-9-fact-sheet.pdf> [<https://perma.cc/V43Q-QSYB>]; see S. 9, 2021–22 Leg., Reg. Sess. (Cal. 2021), 2021 Cal. Stat. 4129–37.

137. See CAL. DEP’T OF HOUS. & CMTY. DEV., *supra* note 136, at 2.

138. *Developments in the Law—State Preemption of Local Zoning Laws as Intersectoral Climate Policy*, 135 HARV. L. REV. 1592, 1603 (2022).

139. *Id.*

140. *Id.*

141. Infranca, *supra* note 135, at 860–70. California, Oregon, Washington, and Vermont are examples of states that have passed legislation to make sure that accessory dwelling units are more routinely allowed under local regulations. *Id.* In 1972, Massachusetts passed the Massachusetts Comprehensive Permit Act to give affordable housing developers the right to appeal a locality’s decision to deny them a permit. *Id.* at 837–38. The Housing Appeals Committee may overturn the decision if it finds “that the regional need for housing is not outweighed by local concerns.” *Id.* at 838. Additionally, in 2004, Massachusetts created a program that financially incentivizes localities to allow more denser, affordable housing. See *id.* at 855.

142. Connolly & Brewster, *supra* note 106, at 500–01.

are given decades-long unbridled discretion to make zoning decisions and regulations in an effort to “maintain the character” of their towns.<sup>143</sup>

The affordable housing crisis, brought about by many years of rampant exclusionary zoning, is arguably one cog in the massive machine that has given rise to the dollar store boom. People are priced out of their homes, priced out of affluent towns with better job opportunities, and priced out of the chance to earn a competitive wage.<sup>144</sup> These are many of the people shopping at dollar stores.<sup>145</sup> These are the people who suffer from dollar stores’ subpar employment practices, their violent crime, and their limited food selection. The people who need reformatory state preemption in the realm of housing are the same people who need reformatory state preemption in the realm of the dollar store crisis.

*C. The Affordable Housing Parallel: Why State Action Is Necessary  
To Address the Dollar Store Boom*

No large stretch of the imagination is required to see the obvious parallels between the affordable housing crisis, for which states have belatedly stepped in, and the dollar store crisis. Both have implications far beyond their respective spheres, urging states to be more proactive in their efforts to counteract the effects of the dollar store boom than they were in the face of the affordable housing shortage.<sup>146</sup> The affordable housing crisis is not a crisis limited to increasing affordable homes so that more people have a place to put their heads at night. It is a crisis

143. See *supra* note 119; see also RICHARD D. KAHLBERG, THE CENTURY FOUND., AN ECONOMIC FAIR HOUSING ACT 3–7 (2017), <https://production-tcf.imgix.net/app/uploads/2017/08/09133724/an-economic-fair-housing-act.pdf> [<https://perma.cc/V5GF-UN4X>]. Kahlenberg explains that exclusionary zoning ordinances are “sometimes referred to as ‘snob zoning’ rules.” *Id.* at 3. This snob zoning takes the form of local ordinances that ban building more affordable and denser apartment complexes, reserving a given zone for only “detached, single-family homes.” *Id.* at 3–4. Many of these ordinances have overtly racist histories. *Id.* at 4. Although explicitly racist zoning ordinances were held to be in violation of the Fourteenth Amendment in *Buchanan v. Warley*, 245 U.S. 60 (1917), *Euclid*’s upholding of exclusionary economic zoning provided a perfect run-around. See *id.* at 6–7. Kahlenberg reasons that “[t]he Court gave no consideration to the people, of all races, who could not afford single-family houses and were thus, by government edict, excluded from entire neighborhoods.” *Id.* at 7.

144. See *supra* text accompanying notes 125–128.

145. See *infra* text accompanying notes 158–161; see also Dollar General 2023 Annual Report, *supra* note 84, at 7 (defining the chain’s “core customers” as “low and fixed income households”). But see Cork Gaines, *Inflation Pushed the Wealthy To Shop at Dollar Stores. Now Even Those Places Are Seeing People Get Tighter with Their Money*, BUS. INSIDER (Sept. 27, 2023, 1:11 PM), <https://www.businessinsider.com/inflation-is-so-bad-wealthy-shopping-at-dollar-stores-2023-9> (reporting that inflation caused an influx in higher income customers for both Dollar General and Dollar Tree).

146. See *supra* Section II.B.

about remedying our country's long history of racial and income inequality.<sup>147</sup> Dollar stores both profit from and capitalize on this inequality, tying the two crises together.<sup>148</sup>

The dollar store expansion heightens many issues akin to those associated with the affordable housing crisis, including an increase in income, race, and nutritional inequalities as a result of negligent and ultracompetitive business practices.<sup>149</sup> Additionally, the dollar store industry, much like the housing industry, risks creating sweeping effects on the nationwide economy as a result of its low wages, low employment numbers, and effects on independent retailers.<sup>150</sup> This Comment argues that, much like the affordable housing crisis, states can effectively respond to the dollar store crisis through preemption of local zoning and legislative incentives to stop the spread.

State preemption of dollar store growth has the potential to curb the negative effects dollar stores create in both rural and urban parts of the country. First, preemption could remedy the negative employment trends spurred by dollar stores in rural areas. Additionally, statewide regulation could aid municipalities in their efforts to reduce the crime associated with dollar store entry in urban and rural areas alike.<sup>151</sup> Lastly, preemption could work to curb an urban retail trend that—just like the trend of local exclusionary zoning—contributes enormously to our country's longstanding issues of racial disparity and income inequality.<sup>152</sup>

Rural local economies are uniquely harmed by the spread of dollar stores. “The grocery retail industry is a vital source of income and employment in rural America.”<sup>153</sup> Dollar stores specifically target those rural areas of America, threatening the pre-existing independent grocery retailers.<sup>154</sup> Independent grocers “are 2.3% more likely to exit after dollar store entry.”<sup>155</sup> This exit effect is most pronounced in rural parts of the country, with exit probability being three times higher in rural areas compared to urban ones.<sup>156</sup> Grocery store exit, caused by dollar

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147. See *supra* Section II.B.

148. See *supra* text accompanying notes 6–7; Nassauer, *supra* note 27.

149. See *supra* Part I and text accompanying notes 6–7.

150. See *supra* Part I.

151. The previously cited study on the correlation of dollar stores with violence in Chicago aptly pointed out that broader security regulation of the stores “has the dual benefit of directly targeting the issue of security while also potentially curbing the expansion of dollar stores by adding to their operational costs.” Shin, *supra* note 61, at 1570.

152. See *infra* text accompanying notes 158–162.

153. Marchesi, Lopez & Steinbach, *supra* note 18, at 17 (citation omitted).

154. *Id.* at 17–18; see Debter, *supra* note 15.

155. Marchesi, Lopez & Steinbach, *supra* note 18, at 18.

156. *Id.*

store entry, results in a decrease of rural retail employment by 7.1%, perhaps due in part to dollar stores' practice of hiring very few employees to operate each of their locations.<sup>157</sup> This statewide rural trend should not be left to individual municipalities to fix.

Though the employment effect is pronounced in rural areas, the effect is not purely rural nor race neutral. Professor Jerry Shannon analyzed dollar store growth in the United States by examining twenty-seven major metropolitan areas, including Chicago, Denver, Boston, and Detroit.<sup>158</sup> He found "a significant association between proximity to dollar stores and patterns of racial segregation in major metropolitan areas."<sup>159</sup> Professor Shannon's research shows that urban dollar store growth—which happens most prominently in urban communities of color—"contribut[es] little to local economic development and fail[s] to address racialized economic disparities."<sup>160</sup> He also suggests that corporations such as dollar stores exploit "a racialized labor force" and "reinforce long histories of racial segregation."<sup>161</sup> Much like the rural employment trend, this is a trend that calls for a state legislative response.

Professor Shannon's research demonstrates the startling parallel between exclusionary zoning (resulting in the affordable housing crisis) and dollar store growth in the exact communities that were and are most harmed by that exclusionary practice.<sup>162</sup> Apart from the economic inequality and racial disparity furthered by both exclusionary zoning and dollar store growth, these practices also contribute to negative health and safety landscapes in marginalized communities across America. Dollar stores may fill a food gap, but they do so with a limited selection of food lacking in fresh options, furthering nutritional inequality.<sup>163</sup> Moreover, the dollar store slotted to fill that gap may become a crime magnet.<sup>164</sup>

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157. *See id.* at 18. The authors explain that dollar store entry differs from the entry of big-box stores such as Walmart, which have been shown to pose somewhat less of a threat to rural employment levels. *Id.* at 9–10.

158. Jerry Shannon, *Dollar Stores, Retailer Redlining, and the Metropolitan Geographies of Precarious Consumption*, 111 ANNALS AM. ASS'N GEOGRAPHERS 1200, 1204 (2021).

159. *Id.* at 1212.

160. *Id.* at 1213.

161. *Id.* at 1201, 1213 (citation omitted).

162. Professor Shannon's research revealed that dollar stores are correlated with "racially and economically segregated metropolitan landscapes" and "reinforce[] these divisions." *Id.* at 1204. These divisions are in large part due to the rise of judicially validated exclusionary zoning. *See* KAHLBERG, *supra* note 143, at 17 (citing to studies that show a direct link between exclusionary zoning and both income and racial segregation).

163. *See supra* Section I.A and text accompanying note 15.

164. *See supra* Section I.B.

Notably, both exclusionary zoning practices and dollar store growth are linked to limited access to healthy food.<sup>165</sup> However, studies have not conclusively shown that the limited access to fresh food “significantly affects food intake.”<sup>166</sup> Nonetheless, it is undisputed that dollar stores offer less fresh food than traditional grocers while simultaneously pushing those traditional grocers out of business.<sup>167</sup> Given the fact that dollar stores are correlated closely with urban communities of color,<sup>168</sup> the people affected by that lack of fresh-food access are many of the people most prominently affected by exclusionary zoning.<sup>169</sup> Uncertainty over whether a lack of access to fresh-food affects food intake misses the larger issue of giving all people, regardless of their race or income, equal access to fresh food. It is a poor excuse to not even attempt to achieve more equity in the food retail landscape across the county.

People of color and low socioeconomic status have been pushed out of areas with adequate healthy food access due to exclusionary zoning, and dollar stores serve to exasperate that inadequacy. Subsequently, dollar stores have the effect of attracting crime and increasing workplace safety violations in those very communities already burdened by our country’s history of exclusionary zoning. Addressing the dollar store crisis should not be seen as a movement separate from the one already in motion to address the housing crisis. The issues are closely related, and both call for a statewide response.

### III. LEARNING FROM LOCAL ZONING AND THE HOUSING CRISIS: WHAT STATES CAN DO

The exclusionary local zoning practices of the past century have resulted in negative racial and economic effects across the country due to a lack of affordable housing that in many ways was intentionally—or at the very least thoughtlessly—created.<sup>170</sup> Now, dollar stores are threatening to do the same thing. The increase in nutritional, racial, safety, and economic inequalities due to the dollar store spread have already begun.<sup>171</sup> Localities around the country have recognized these

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165. MICHAEL LENS, HEALTH AFFAIRS, LOW-DENSITY ZONING, HEALTH, AND HEALTH EQUITY 3–4 (2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210907.22134/listitem/health-affairs-brief-zoning-health-equity-lens-1632509318030.pdf>; *see supra* Section I.A.

166. LENS, *supra* note 165, at 3.

167. *See supra* Section I.A.

168. Shannon, *supra* note 158, at 1212–13.

169. *See Kim, supra* note 118, at 138; Shannon, *supra* note 158, at 1212–13.

170. *See supra* note 143.

171. *See supra* Part I.

trends, resulting in a rising number of local zoning ordinances aimed at remedying the situation.<sup>172</sup>

Regulating dollar stores at the state level is admittedly complicated. Dollar stores may be filling a necessary gap in isolated, rural communities by giving residents access to household goods and food that they would otherwise have to drive a substantial distance to access.<sup>173</sup> However, as more research is published regarding the effect dollar stores have on the viability of traditional grocers, the gap-filler argument against dollar store restrictions becomes less persuasive.<sup>174</sup> Additionally, the quasi-filling of a food gap is merely one factor in favor of letting dollar stores continue to spread without regulation. The factors in favor of dollar store regulation include protecting worker safety, decreasing violent crime, increasing fresh-food access, supporting local economies and the larger national economy, and remedying the income and race-based harms that exclusionary local zoning has inflicted on communities across the country.

These potential benefits of state legislative intervention should overcome concerns about any complications that may arise in the course of statewide preemption of local zoning. The police power of a state is, as the name suggests, a power. But it can and should be viewed also as a responsibility to the people living in that state. States are empowered to use their police powers to regulate for the general welfare.<sup>175</sup> Dollar stores put the general welfare of the public at risk for a variety of reasons, ranging from food disparity to an uptick in crime to adverse employment consequences.<sup>176</sup> State preemption of local dollar store regulation gives states a legitimate chance to remedy those general welfare issues. In the past two decades, public health scholars have begun to urge states and localities to use zoning to “promote public health.”<sup>177</sup> Given the courts’ long history of upholding state preemption regarding land use,<sup>178</sup> state legislators should build on this sound recommendation by passing

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172. See *supra* Section I.C.

173. See *supra* Section I.A.

174. See *supra* Section I.A.

175. See *supra* Part II.

176. See *supra* Part I.

177. See, e.g., Joel S. Hirschhorn, *Zoning Should Promote Public Health*, AM. J. HEALTH PROMOTION, Jan. 2004, at 258, 258–60 (arguing that focusing on the “built environment” and zoning in a pedestrian friendly manner is critical to public health in the United States); see also Joseph Schilling & Leslie S. Linton, *The Public Health Roots of Zoning: In Search of Active Living’s Legal Genealogy*, 28 AM. J. PREVENTIVE MED., no. 2, 2d Supp. 2005, at 96, 102 (arguing that, because states have broad police power that is customarily shown great judicial deference, state zoning regulation should take public health into account and focus on health-conscious city designs).

178. See *supra* text accompanying notes 115–117.



legislation that regulates dollar stores not only in the interest of public health, but in the interests of public safety, positive employment trends, and nutritional equality.

Statewide regulation of dollar stores is a natural extension not only of statewide responses to the affordable housing crisis, but of the modern trend of thoughtful and intentional community development as a whole. Regulation in this area is happening at the local, state, and national levels. Hartford, Connecticut, added a bus route to improve job and shopping access, providing increased access to grocery stores and fresh food.<sup>179</sup> Wisconsin provides a Community Development Investment Grant to help both urban and rural communities develop in the interests of job growth and downtown revitalization.<sup>180</sup> A bill was introduced in the U.S. Senate in 2024 to require all states to create “complete streets programs.”<sup>181</sup> A complete street is defined as “a public road that provides safe and accessible options for multiple travel modes for people of all ages, abilities, and disabilities.”<sup>182</sup> The goal of the bill is to improve “pedestrian, bicycle, and public transit” nationwide.<sup>183</sup> Dollar store regulation at the state level presents another opportunity for impactful community development.

This Part presents several possible solutions on the state legislative level to remedy the effects of dollar stores by preempting local zoning authorities’ decisions to indiscriminately say yes to any dollar store that wants to open up shop. The proposed state legislation urged in this Part draws on recent local zoning ordinances and restrictions aimed at curbing dollar store growth to craft novel and impactful solutions. Additionally, the solutions are inspired by state legislative preemption of local exclusionary housing practices along with state incentives to increase affordable housing. The solutions are mindful of feasibility and attempt to provide state legislatures around the country with regulatory options that are practicable and implementable.

#### *A. Incentivization Through State-Funded Grocery Stores*

As part of the effort to increase the availability of denser, more affordable housing to counter the negative effects of exclusionary zoning,

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179. ROBERT WOOD JOHNSON FOUND., *IMPROVING ACCESS TO HEALTHY FOODS: A GUIDE FOR POLICY-MAKERS* 6 (2007), <https://hdl.handle.net/10244/596> [https://perma.cc/P5K8-ULS8].

180. *Community Development Investment Grant*, WIS. ECON. DEV., <https://wedc.org/programs-and-resources/community-development-investment-grant> [https://perma.cc/Z48W-5VSU].

181. Complete Streets Act of 2024, S. 3670, 118th Cong. (2024).

182. *Id.* §§ 2(b)(1), 3.

183. *Id.* § 3(c).

some states have turned to incentives in the form of state funding.<sup>184</sup> Encouraging inclusive zoning through incentives, rather than strict regulations and dramatic mandates, may help maintain the norm of local zoning power and discretion while still allowing the state to step in and regulate at a deferential level.<sup>185</sup> Massachusetts, for example, created the Housing Choice Initiative program, which incentivizes municipalities to build more affordable housing developments by rewarding them with more state funding for local projects.<sup>186</sup>

A version of this incentive-based program could apply in the dollar store context. To incentivize local zoning boards to deny permits to Dollar General or Dollar Tree when the chains attempt to open yet another location, states could reward that decision by opening a state-funded and municipally owned grocery store in that municipality.<sup>187</sup> While public funding for “education, transportation, safety, and retirement” are accepted as normal, state funding for food is not.<sup>188</sup> Because food gaps and nutritional inequality are arguably “collective action problem[s],” extending public funding to food should not be seen as a radical public infringement on private industry.<sup>189</sup>

The concept of a state-funded grocery store is admittedly novel. However, the affordable housing shortage has forced states and municipalities to respond to that crisis in new and original ways, some of which may have seemed beyond the pale when they were introduced. For example, Boulder, Colorado, responded to the affordable housing shortage by developing its Permanently Affordable Homes Program.<sup>190</sup> This program was created in response to the fact that Boulder’s median

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184. See, e.g., *infra* note 186 and accompanying text.

185. Infranca, *supra* note 135, at 855.

186. *Housing Choice Initiative*, MASS.GOV, <https://www.mass.gov/orgs/housing-choice-initiative> (last visited Oct. 30, 2024); *Housing Choice Designation and Grants*, MASS.GOV, <https://www.mass.gov/housing-choice-designation-and-grants> (last visited Oct. 30, 2024).

187. A state-funded grocery store should be limited to municipalities which fall within the USDA’s definition of a food desert. By setting this limitation, the state would avoid spending unnecessary money in areas in which food access is already adequate.

188. Justin Sean Myers & Christine C. Caruso, *Towards a Public Food Infrastructure: Closing the Food Gap Through State-Run Grocery Stores*, 72 GEOFORUM 30, 32 (2016).

189. *Id.* The authors explain that states have created a “robust public infrastructure” through services such as public education, public transportation, and social security that are “integral to creating a basic standard of living.” *Id.* at 31–32. Publicly funded grocery stores, in ensuring food access to all people regardless of economic status or place of residence, are a natural extension of that goal. See *id.* at 31.

190. See *Permanently Affordable Homes Program*, CITY OF BOULDER, <https://bouldercolorado.gov/homeownership/permanently-affordable-homes-program> [<https://perma.cc/JH95-V6BD>].

home price is over one million dollars.<sup>191</sup> The City itself—not the owner—sells the home, setting the price at a permanently affordable level pursuant to an Affordability Covenant.<sup>192</sup> Each home is then made available only to interested buyers who make below a certain maximum income.<sup>193</sup> The City has a goal of making fifteen percent of all homes affordable by 2035 with the Program’s help.<sup>194</sup> As the dollar store crisis is one piece of the affordable housing puzzle, it too calls for a novel and somewhat radical response.

Chicago has taken steps to normalize state-funded grocery stores in recent years. Mayor Brandon Johnson issued a press release in September 2023 announcing a plan to explore opening a municipally owned grocery store.<sup>195</sup> Those involved in the project pointed out that a publicly owned grocery store is not so different than a public library or the postal service.<sup>196</sup> The plan was initiated to right the wrongs of historically exclusionary systems, of which exclusionary local zoning practices are certainly a part, that have resulted in inadequate food access across the city.<sup>197</sup> The press release cited the South Side and West Side of Chicago as those most lacking in food access.<sup>198</sup> Unsurprisingly, those exact areas are chock-full of dollar stores.<sup>199</sup>

A lesser version of this solution would entail incentivizing local zoning boards to deny dollar store permits by rewarding them with grant money aimed at opening local grocery stores. However, this version of state incentivization is less likely to be successful because grocers may be deterred by the risk of building “in high-poverty or low-population

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191. See Jennifer Meckles, *In Pricey Boulder, Affordable Housing Is a Path to Homeownership*, 9NEWS (May 18, 2022, 10:20 PM), <https://www.9news.com/article/news/local/boulder-affordable-housing-program/73-aacdf44e-e5f2-40d2-b545-4e1bb7a369df> [<https://perma.cc/LV5B-NANX>].

192. See CITY OF BOULDER, *supra* note 190.

193. *Id.* For example, a two-person household can make no more than \$141,095 to be eligible. *Id.*

194. See *Affordable Housing in Boulder*, CITY OF BOULDER, <https://boulder.colorado.gov/guide/affordable-housing-boulder> [<https://perma.cc/2WL4-XNPV>].

195. Press Release, Brandon Johnson, Mayor of Chicago, Mayor Johnson Announces the Exploration of a Municipally Owned Grocery Store, 1 (Sept. 13, 2023), [https://www.chicago.gov/city/en/depts/mayor/press\\_room/press\\_releases/2023/september/MayorJohnsonAnnouncesTheExplorationOfAMunicipallyOwnedGroceryStore.html](https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2023/september/MayorJohnsonAnnouncesTheExplorationOfAMunicipallyOwnedGroceryStore.html) [<https://perma.cc/86XT-CQ6W>].

196. *Id.* at 2.

197. See *id.* at 1–2.

198. *Id.* at 1.

199. Corli Jay & Ally Marotti, *What Dollar Stores Cost Chicago’s South and West Side Communities*, CRAIN’S CHI. BUS. (Sept. 11, 2023, 5:46 AM), <https://www.chicagobusiness.com/equity/dollar-stores-effect-chicago-communities>.

areas.”<sup>200</sup> Given the fact that dollar stores frequent those very high-poverty and low-population municipalities, grant money alone may not do enough to either close the food gap or disincentivize granting permits to dollar stores.<sup>201</sup> A prospective grocer’s concerns about sustained viability may not be quelled enough by a one-time grant in the face of a customer base facing continuing poverty.<sup>202</sup>

Overall, this incentive-based solution would help maintain the role of local governments in making zoning decisions for their communities while simultaneously allowing the state to take an appropriately involved role in zoning for the general welfare. This solution would be less suited to communities that lack the food desert designation, as the state-funded grocery store incentive would be unpersuasive in communities that already have adequate nutritional access. Properly implemented, legislation creating a state-funded grocery store incentive program would both decrease the number of dollar stores *and* proactively place a grocery store in communities classified as food deserts that desperately need one.

### *B. A Spatial Zoning Requirement*

While state-funded grocery store incentives may not be suited to non-food-desert municipalities, a requirement that new dollar stores be located a certain distance apart from existing stores would serve to proactively alleviate the rapid growth of dollar stores in both urban communities and municipalities that do not need a dollar store to fill a food gap. Local zoning ordinances across the country have employed this space-based restriction on granting permits to dollar stores.<sup>203</sup> Many of the municipalities which have imposed spatial requirements on dollar stores are urban, including Atlanta, Georgia; Akron, Ohio; and Tulsa, Oklahoma.<sup>204</sup>

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200. Lauren Azu & Joseph States, *Wisconsin’s ‘Food Deserts,’* ISTHMUS (Sept. 1, 2022, 6:00 AM), [https://isthmus.com/news/news/wisconsins-food-deserts/\[https://perma.cc/6NB2-SED9\]](https://isthmus.com/news/news/wisconsins-food-deserts/[https://perma.cc/6NB2-SED9]). Azu and States report that in 2015, ten percent of people living in Wisconsin resided in areas meeting the USDA’s food desert classification. *Id.* A small grocery store in a primarily Black and Hispanic neighborhood in Madison received a \$157,000 grant from the city, allowing it to fill the food gap. *Id.* However, that grocery store owner was unwilling to open a larger grocery store in another food-insecure Madison neighborhood, even with help from government grants, due to the financial risks involved. *Id.*

201. *See id.*

202. *See id.*

203. McCarthy, Minovi & Singleton, *supra* note 19, at 1.

204. *Id.* at 4, 6. These ordinances are all relatively new, having been passed in 2018 or later. *Id.* at 2. Due to their novelty, their success in alleviating the issues surrounding dollar stores has yet to be extensively studied. *See id.* at 11.

A state could pass legislation that imposes distancing requirements on new dollar stores, preempting a local zoning board's discretion to grant a permit to any dollar store franchise that applies for one.<sup>205</sup> This legislation could be made uniquely applicable to urban areas with a certain population density, being mindful of the fact that this sort of state preemption would be unhelpful—and potentially detrimental considering the prevalence of food gaps—in rural and sparsely populated communities. As states move to pass this type of legislation, local ordinances passed in municipalities around the country could serve as a template.

Atlanta, passed an ordinance, still in effect, that requires “small discount variety stores”—a category that includes dollar stores—to be at least one mile apart.<sup>206</sup> Cleveland, Ohio, also passed an ordinance with a distance requirement after placing a complete moratorium on new dollar store construction in order to study the effect of the chains on the community.<sup>207</sup> Cleveland found that dollar stores cluster in low-income areas and neighborhoods that are primarily Black—areas that typically lack any grocery store at all.<sup>208</sup> In response, Cleveland passed a zoning ordinance ordering that no new dollar store may be built if it is within two miles of an existing dollar store.<sup>209</sup>

Atlanta and Cleveland are just two examples of cities that have passed zoning ordinances with distancing requirements. States around the country should follow their example and consider passing statewide

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205. State preemption of local land use has historically been upheld, given the wide-ranging repercussions of local zoning decisions. *See supra* text accompanying notes 116–117. Given the dominance of dollar stores in the retail landscape, along with the increasingly obvious negative effects on crime, employment, and food access, state preemption in the form of distancing requirements seems likely to be found nonarbitrary, as is required under the police power doctrine. *See supra* text accompanying note 122.

206. Atlanta, Ga., Ordinance 19-O-1504 (Dec. 11, 2019); ATLANTA, GA., CODE OF ORDINANCES §§ 16-11.003(33), -13.003(38) (2024).

207. Press Release, Cleveland City Council, New Limitations on Building New Dollar Stores Near Existing Ones (Jan. 24, 2022), <https://www.clevelandcitycouncil.org/resources/news-media/new-limitations-building-new-dollar-stores-near-existing-ones> [https://perma.cc/ERL3-EK66].

208. Memorandum from the City of Cleveland Planning Comm'n on Small Box Discount Stores in Cleveland, OH – Ord. 816-2020, at 3–4 (Jan. 20, 2022), <https://www.clevelandcitycouncil.org/sites/default/files/816-2020%20Summary%20Official%20Small%20Box%20Discount%20Store%20Memo%20Update%202022.pdf> [https://perma.cc/RL4V-H2BJ].

209. *Id.* at 1. Cleveland's Planning Commission was quick to point out that this distancing requirement by no means meant that dollar stores would disappear, as there were already “approximately 70 existing small box discount stores within Cleveland” at the time the ordinance was passed. *Id.* at 1, 5. The commission cited concerns about the effect even more dollar stores would have on local businesses and on the equity of the city's residents. *Id.* at 8.

legislation, limited to cities of a certain population with an already dominant dollar store presence, that preempts local zoning board discretion by requiring permits conditioned on the distance between the new location and an already existing one.<sup>210</sup> Each state could decide for itself what that distance should be, noting that local ordinances have required distances ranging from 2,500 feet to two miles.<sup>211</sup>

This form of preemption would by no means eradicate dollar stores from cities. States could limit the preemptive distancing requirement to cities that already have a certain number of dollar stores within city limits, perhaps limiting the legislation to cities in which a large part of the population already lives one-half mile or less from a dollar store. This kind of safeguard would prevent the denial of a dollar store permit in a location that might benefit from at least some form of increased access to food and household goods. At the same time, cities above the threshold created by the legislature would benefit from state zoning preemption as the number of dollar stores would be guaranteed to remain more stable, thereby avoiding an uptick in crime and at least opening the door (however slightly) to a full-service grocery store down the road.

### *C. Fresh-Food Requirements*

Another regulation that could be placed on dollar store permits, perhaps in addition to a spacing requirement, is a fresh-food requirement. Multiple municipalities around the country have attempted to incentivize dollar stores to provide a greater selection of fresh food and produce by denying permits to the stores unless they agree to dedicate a certain percentage of floor space to fresh food.<sup>212</sup> Permits of this kind are referred to as conditional use permits, meaning that a permit will only be granted if the applying business agrees to abide by a set of conditions imposed on the permit by the local zoning authority.<sup>213</sup>

Municipalities aiming to better regulate dollar stores frequently incentivize the stores to provide more fresh food by waiving the spacial zoning restriction for stores that agree to dedicate a certain percentage of shelf space to fresh food such as produce, dairy, and meat.<sup>214</sup> One municipality that passed such an ordinance is Melvindale, Michigan. After the city's only grocery store closed and a dollar store opened in its place, the City Council responded by passing an ordinance regulating

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210. McCarthy, Minovi & Singleton, *supra* note 19, at 5–6.

211. *Id.* at 5.

212. *See infra* text accompanying notes 214–218.

213. 101A C.J.S. *Zoning & Land Planning* § 256 (2024).

214. McCarthy, Minovi & Singleton, *supra* note 19, at 5–6.

dollar store permits.<sup>215</sup> The ordinance requires that a new location be at least 2,500 feet from an existing location unless the dollar store stipulates to fifteen percent or more of the floor space being dedicated to fresh food and produce.<sup>216</sup> Mesquite, Texas, took a similar step by requiring that a new dollar store be at least 5,000 feet apart from an existing location and agree to dedicate ten percent of its floor space to fresh food.<sup>217</sup> The city supported its ordinance by reasoning that “people choose among foods that are readily available and therefore healthy options should be at least as available and accessible as unhealthy ones.”<sup>218</sup>

Much like the spacing requirement, a conditional use permit imposed at the state level would not strip local zoning boards of their discretion to grant a permit to a dollar store. However, it would ensure that when a locality does grant a permit to another dollar store, that location will at least offer some form of fresh food. Dollar store entry leads to a reduction of money spent on fresh produce, and that reduction is felt most by low-income households.<sup>219</sup> Given this nutritional disparity, state legislatures can and should build on the momentum started by municipalities around the country by passing legislation aimed at equalizing food access.

A statewide conditional use permit conditioning dollar store entry on the store’s willingness to stipulate to a reasonable percentage of the floor space being dedicated to fresh food would be a step towards greater nutritional equality. However, this conditional use permit could be tailored to only apply to municipalities classified as food deserts. This more targeted approach, in contrast to a blanket statewide preemption, would ensure that the municipalities most in need of access to food would only see dollar stores opening that at least minimally cater to that need, while avoiding a potential challenge that the legislation is unreasonable.<sup>220</sup>

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215. Sue Suchyta, *Outgoing Melvindale Council Passes Ordinance To Limit Dollar Store Proliferation*, DOWNRIVER SUNDAY TIMES (Nov. 8, 2019), <https://www.downriversundaytimes.com/2019/11/08/outgoing-melvindale-council-passes-ordinance-to-limit-dollar-store-proliferation/> [https://perma.cc/8J5Z-AJP5].

216. *Id.*

217. Mesquite, Tex., Ordinance 4583 (July 16, 2018).

218. *Id.*

219. Impact of Dollar Store Expansion, *supra* note 5, at 31.

220. Statewide imposition of a conditional use permit premised on fresh-food availability may risk crossing *Euclid*’s “arbitrary and unreasonable” line, as the condition would necessarily apply to areas of a state that are not food deserts nor lacking in access to fresh food. *See Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

*D. State Level Security Regulation*

Other issues facing dollar stores, distinct from the issues related to food access, are workplace safety and crime. Though these issues differ in kind from nutritional inequality, the lack of adequate security on store premises and the failure to take employee safety seriously are no less pressing.<sup>221</sup> Just as conditional use permits can work to alleviate nutritional inequality through fresh produce requirements, they can also work to alleviate safety concerns through security and safety requirements.

Though only one municipality has conditioned dollar store entry on increased security measures, legislation at the state level ordering the same thing is not unprecedented.<sup>222</sup> In May 2023, Dollar General's own shareholders went against the urgings of the corporation's board of directors by voting to approve a proposal asking for an independent audit of workplace safety within the stores.<sup>223</sup> The vote followed millions of dollars in OSHA fines over workplace safety violations, which garnered Dollar General a spot on OSHA's "Severe Violators" list.<sup>224</sup> These workplace safety violations, coupled with a trend of violent crimes across the country, merit state legislative intervention.<sup>225</sup>

DeKalb County, Georgia, is unique in requiring that dollar stores be "monitored and recorded by security cameras at all times" and be "adequately illuminated from sunset to sunrise."<sup>226</sup> However, state

221. See, e.g., Press Release, Occupational Safety & Health Admin., Discounting Safety: Dollar Tree's History of Ignoring Workplace Safety, Hazards Continues with \$1.2M in Penalties at Two Family Dollar Stores in Ohio (Aug. 1, 2022), <https://www.dol.gov/newsroom/releases/osha/osha20220801-1> [<https://perma.cc/S2CL-ZEWV>]. The Assistant Secretary for Occupational Safety and Health stated that "Family Dollar and Dollar Tree stores have a long and disturbing history of putting profits above employee safety." *Id.* The two Ohio store inspections by OSHA stemmed from employee reports of dangerous working conditions. *Id.* The inspections found eight willful violations, two repeat violations, and one serious violation. *Id.*

222. DEKALB CNTY., GA., CODE OF ORDINANCES § 27-4.2.60(C)(1)(c) (2022).

223. Press Release, Domini Impact Investments LLC, Domini's Worker Safety Shareholder Proposal Is Approved, Prompting Progress at Dollar General (June 6, 2023), <https://www.domini.com/insights/dollar-general-worker-safety-proposal-approved/> [<https://perma.cc/6V33-9KY5>]; Alex Bitter, *Dollar General Investors Vote To Probe Worker Safety, After Years of Employee Complaints*, BUS. INSIDER (May 31, 2023, 9:55 PM), <https://www.businessinsider.com/dollar-general-investors-vote-to-investigate-worker-safety-at-stores-2023-5> [<https://perma.cc/BA2X-WN2Z>].

224. Corkery, *supra* note 71. Dollar Tree has also been assessed \$14 million in fines since 2017 but is not part of the Severe Violators Enforcement Program as of November 2024. *Id.*

225. See *supra* Section I.B.

226. DEKALB CNTY., GA., CODE OF ORDINANCES §§ 27-4.2.60(C)(1)(c), (2)(b) (2022).



legislatures should follow in its footsteps in the interests of general welfare and safety. State legislatures could pass legislation conditioning permits on a proposed dollar store agreeing to increase safety measures with security cameras and adequate illumination. OSHA's fines have been met with little action by corporations like Dollar General thus far, making state action all the more necessary.<sup>227</sup> Requiring security cameras would potentially work to dispel the "crime magnet" designation from dollar stores and protect employee and customer safety.

#### CONCLUSION

Local zoning control is not inherently negative, as it allows those closest to a municipality, its needs, and its issues to take appropriate action. However, local zoning control should not be treated as a barrier to state action when a larger statewide or nationwide issue comes to the fore. The dollar store boom is one of those issues. States waited too long to step in and remedy the negative economic and racial effects that flowed from local zoning boards consistently trying to "maintain the character" of their towns.<sup>228</sup> That delay helped usher in the affordable housing crisis, one of the most pressing and catastrophic issues facing today's state and national governments.<sup>229</sup> State legislatures should act more swiftly to avoid the dollar store spread similarly spiraling out of control.

Legislative inaction in the face of the dollar store boom is not an option. As the spread steadily continues, as it seems destined to do, a solution will not be one-size-fits-all. State legislatures have the benefit of watching the results of the recent ordinances passed by their cities and towns. Perhaps the distancing requirement will prove successful in an urban area, prompting statewide adoption for similarly situated cities. Or maybe the fresh produce requirement will be shown to alleviate nutritional inequality in small, rural areas, creating a template for statewide legislation. If the local ordinances are found to be largely

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227. Press Release, Occupational Safety & Health Admin., Penalties Mount: Fined More than \$15M Since 2017, Familiar Dollar General Safety Failures in 3 Inspections in Florida, Alabama, Add \$387K More (Jan. 26, 2023), <https://www.dol.gov/newsroom/releases/osha/osha20230126> [https://perma.cc/C5AP-GEYZ].

228. Kim, *supra* note 118, at 132.

229. A Pew Research Center study in 2022 reported that forty-nine percent of Americans consider the lack of affordable housing where they live to be a major problem, outpacing the percentage of people concerned about drug addiction, COVID-19, and crime. Katherine Schaeffer, *A Growing Share of Americans Say Affordable Housing Is a Major Problem Where They Live*, PEW RSCH. CTR. (Jan. 18, 2022), <https://www.pewresearch.org/short-reads/2022/01/18/a-growing-share-of-americans-say-affordable-housing-is-a-major-problem-where-they-live/> [https://perma.cc/XXL8-HLVC].

ineffective, a more radical solution in the form of state-funded grocery stores may be in order. Local zoning boards across the country have given states a head start. Now, it is time they follow their localities' leads.