

My name is Richard S. Cody. I am an attorney in private practice, I live in Mystic, and I own a house where I live that was legally permitted, by zoning, to be used as a three family in the 1970s. The house is listed on the national register of historic places. I attended the hearing on this proposed bill, Raised Bill 86, AN ACT CONCERNING THE FIRE SAFETY CODE AND ONE, TWO AND THREE-FAMILY DWELLINGS, and testified in support. I write to comment upon it further and upon the testimony that I listened to that day.

The proposed bill merely lessens the onerous fire code requirements for three family dwellings. It takes these out of the inappropriate category of high rise apartment buildings and puts them with two and one-families. It also gives the fire marshals needed authority to adjust the code to protect against the fire code's effect of bringing about the deterioration and destruction of historic structures.

The reason for the proposal is easy to see. The testimony at the hearing was clearly in support of it. The ordinary three family owners cannot reasonably afford to retrofit their buildings so as to comply with code requirements that are applicable to commercial, high-rise apartment buildings. And, where the structure is of historic preservation value - many of these are - the fire code requires that valuable historic features be utterly and permanently destroyed. An historian testified that the income generated by the three families is exactly what saves these historic structures in Connecticut from being permanently lost to the next generation. He said that historic homes were built larger than is typical today, and were converted many years ago to generate a little extra income for the owners to help in the upkeep. You also heard professionals testify that, due to the disproportionate and expensive fire code requirements for these uses, many three families are either being destroyed or being converted to two families in order to escape this burden - and that the loss of the income from the third unit is crippling moderate-income property owners. Keep in mind, many of these three families are owner occupied and were acquired as part of a modest retirement plan. Many of the owners are of small to moderate means, retired on fixed incomes, and rely greatly upon this income. One widow testified that the sudden order she received - compliance in 30 or so days - requires tens of thousands of dollars to comply with, and that was only starters. At about \$600 a unit in monthly net income, it would take years to recapture that investment. Starting at age 65, she may lose all practical value for the rest of her ordinary life span.

I pointed out in my brief testimony that one of the units in my house is about 600 square feet. It has eight - 8! - perfectly safe ways out, yet, because the code categorizes it with large, commercial apartment buildings, the fire code still requires \$30-40,000 in modifications. I will have to tear out beautiful plaster walls, banisters, cabinetry, hardwood trim, and hand-made doors. Also, I was told that because it egress from a second floor I must either spend \$15,000 on an exterior sprinkler system for that 600-square foot unit (with the 8 ways out), or board up windows, in complete disharmony with preservation standards, on a home that is on the national register of historic places. Rhetorically, if one can choose between spending \$300 at Home Depot on some plywood to board up windows, or \$15,000 on a sprinkler system for little to no real

effective purpose (what with 8 ways out), what do you think this person will do? The bottom line is that the code is grossly over burdening and provides no reasonable case-by-case relief to prevent these circumstances. It is simply bureaucratic overkill for these three-families.

By bringing three families into the already existing category of two and single family dwellings, the bill does not exempt three families from fire protection measures. They still have to comply with what two-families are required to do, such as, extinguishers, smoke and carbon monoxide detectors, alarms, and other less- expensive but purely adequate safety measures. The legislature drew a line many years ago at two families, but one cannot find in the legislative record exactly why. We have to presume the line was drawn based largely on economic factors affecting those homeowners. At that time, nobody knew just how onerous the fire code would become. Keep in mind that the fire code keeps getting revised, and the provisions become more and more expensive. Unlike many other statutes that impose standards, like zoning and some environmental regulations, there is no grand-fathered status; each new code revision requires compliance.

Nearly anything can be justified in the name of "public safety." The legislature already found that two families meet "public safety" with lesser standards. Now, however, it's clear that the balance tipped too far, and that it's crushing middle to lower income people who invest this way. The fire code unjustifiably overwhelms these uses, and is hopelessly inconsistent with the important state purpose in preserving historic structures.

Lastly, there is a narrative that is being raised of different concern. State criminal prosecutors testified against this bill. This leads one to ask a simple question. What does criminal law enforcement have to do with this proposed bill? What the prosecutors say is that they are concerned that they will not be able to "inspect" three family and above dwellings if the law is changed, just as they can't inspect two and one families. We all know that an inspection of private property by a government officer, inside a house, is what is called a governmental search. You may ask yourself, if no crime has been committed, and the government merely wants to check to see that you are complying with the law by going house-to-house, doesn't the government need a warrant under the 4th Amendment? As early as 1967, in Camera v. Municipal Court, 387 U.S. 523 (1967), the United States Supreme Court ruled that warrantless searches of private residences on the grounds of public health safety and welfare are unconstitutional; in fact, the very issue in that case was of inspections for fire code compliance. Thus, these searches are *per se* unconstitutional. This is a topic of which I have familiarity, as I briefed and argued *Chmurynski v. Robbins*, 303 Conn. 676 (2012). In that recent case the Connecticut Supreme Court ruled that for a governmental search to be conducted of a residence to check for zoning compliance, there must be probable cause. The mere inspection scheme is not sufficient, and so the case follows *Camera*.

Setting aside the obvious problem that this legislation already creates two classes of citizens, one class being those with 4th amendment rights who live in two or single

family places, and another class of persons who must live in three family structures and above, who don't have the same rights, what the prosecutors argued during the hearing on the proposed bill is what they call their "right" for government agents and officers to enter, annually, houses, to go door-to-door and "inspect" your living rooms, kitchens and your bedrooms, that is, all of the places where you and every US citizen spend and share the most personal, private and intimate moments, on the excuse of public safety. The officers can take notes of what they observe, and these notes become public information subject to disclosure under the Freedom of Information Act. This is absolutely chilling. Consider it: House to house searches conducted in the name of public safety. A reference to the past 100 years of history may give one perspective on this viewpoint: The United States defeated several governments that acted that way.

The bottom line as to this bill: The proponents of this bill do not think that this issue raised by the state prosecutors is one that dovetails into the legitimate public interests advanced by the proposed bill, but is, instead, spillover from aggressive prosecutorial interests in investigating crime. That should be a discussion held elsewhere.