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Written Testimony Supporting House Bill 5361, An Act Concerning Public Access to Certain Coastal Resources

Senator Cassano, Representative McCarthy Vahey, Ranking Members Hwang and Zullo, and distinguished members of the Planning and Development Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this written testimony in support of House Bill 5361, An Act Concerning Public Access to Certain Coastal Resources.

To create an equitable world for people of all races, the ACLU-CT believes that we must address racism in all its forms. Access to places of leisure like public beaches and swimming pools have long been sites of discrimination.¹ Although racial discrimination in beach access is typically associated with the de jure segregation of southern beaches, Connecticut has its own history of pervasive discrimination. Fair beach access is an issue that has haunted Connecticut for too long, with restrictive policies that are grounded in politics and discrimination.

Private beach associations were created in Connecticut in the 1880s when the General Assembly approved a charter that granted a limited structure of self-governance to a group of wealthy families with vacation homes in Old Saybrook.² Charters of this kind multiplied as Connecticut's coastline was developed during the

¹ Jeff Wiltse, *America's Swimming Pools Have a Long, Sad, Racist History*, WASH. POST (June 10, 2015), available at <https://www.washingtonpost.com/posteverything/wp/2015/06/10/americas-swimming-pools-have-a-long-sad-racist-history/>; Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934 (2015), available at https://openyls.law.yale.edu/bitstream/handle/20.500.13051/10194/47_124YaleLJ1934_April2015_.pdf?sequence=2.

² Andrew W. Kahrl, *Free the Beach*, BOS. REV. (May 21, 2018), available at <https://bostonreview.net/articles/andrew-w-kahrl-free-beach/>.

early twentieth century.³ Nestled in these charters were restrictive covenants that banned non-members from accessing the beaches, public spaces, and sometimes streets, of the association.⁴ Even more nefarious, these restrictive covenants typically restricted the alienation of property to Black and Jewish people.⁵ Predominantly white, wealthy coastal towns, too, restricted the access of public beach to residents.⁶ While these restrictions are not facially discriminatory like those in Jim Crow laws,⁷ they still result in a discriminatory effect.⁸ By the 1960s, the number of restrictive beach ordinances swelled to a level such that the *New York Times* reported it had “become virtually impossible for a city-dweller” access nearby beaches.⁹

Just like the beaches of the south, Connecticut’s coastline became a site for civil rights activism in the late 1960s and 1970s.¹⁰ For several years, Ned Coll’s Hartford-based Revitalization Corps¹¹ bussed thousands of children from cities to public-in-name-only and private beaches and demanded a right to access the space.¹² Coll’s buses were often met with hostility, ultimately exposing the severity of unequal access to Connecticut’s coastline. Ultimately, this attempt to democratize Connecticut’s beaches resulted in little change. In the decades since the 1970s, income inequality in Connecticut has sharply increased, with the Bridgeport-Stamford-Norwalk metropolitan area becoming one of the most unequal areas in the nation.¹³ There, the

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See *id.*; Andrew W. Kahrl, *Who Will Get to Swim This Summer?*, N.Y. TIMES (June 28, 2020), available at <https://www.nytimes.com/2020/06/28/opinion/coronavirus-openings-summer-beaches.html>.

⁷ Cf. *Jim Crow at the Beach: An Oral and Archival History of the Segregated Past at Homestead Bayfront Park*, NAT’L PARK SERV. (Dec. 2012), available at https://home.nps.gov/subjects/southfloridacollections/upload/BISC00413_JimCrowattheBeach_508Comp.pdf.

⁸ See Schindler, *supra* note 1.

⁹ See Kahrl, *supra* note 2.

¹⁰ *Id.*

¹¹ The Revitalization Corps offered programs that ranged from tutoring low-income children, job placement, free lunches, and housing advocacy. *Id.*

¹² *Id.*

¹³ Estelle Sommeiller, Mark Price & Ellis Wazeter, *Income Inequality in the U.S. by State, Metropolitan Area, and Country*, ECON. POL’Y INST. (June 16, 2016), available at <https://www.epi.org/publication/income-inequality-in-the-us/>; see also Jason R. Abel & Richard Deitz, *Some Places are Much More Unequal Than Others*, LIBERTY ST. ECON., FED. RES. BANK N.Y. (Oct. 7, 2019), available at <https://libertystreeteconomics.newyorkfed.org/2019/10/some-places-are-much-more-unequal-than-others/>; see also Alana Semuels, *The Epicenter of American Inequality*,

average income of the top 1 percent of people is 73 times the average of the bottom 99 percent.¹⁴ The instruments of segregation, beginning with the racist and anti-Semitic restrictive covenants of the early twentieth century, remain impressed upon our public beaches, resulting in a culture of exclusion. While cities have been forced to shutter public parks, playgrounds, beaches, and swimming pools in low-income areas, municipal public beaches sustain parking fees that charge non-residents hundreds of dollars more than residents, who are more likely to be people of color from cities lacking beach access.¹⁵

The notion of beaches as public property is ancient, linked to the public trust doctrine originating in second-century Roman jurisprudence:¹⁶ Justinian was the first to explicitly record the right of the public to access the seashore.¹⁷ Since its ancient roots, the common law has entrenched the application of the public trust doctrine to beaches.¹⁸ In Connecticut, the line between public and private beach property is demarcated at the high tide mark, with the state recognizing swimming and recreation as legitimate uses of public trust land.¹⁹ In 2001, the Connecticut Supreme Court recognized that public beaches are traditional public forums for expressive speech activities protected by the First Amendment of the U.S. Constitution and the free speech and assembly provisions of the Connecticut Constitution.²⁰ In spite of this,

ATLANTIC (Sept. 23, 2016), available at <https://www.theatlantic.com/business/archive/2016/09/fairfield-county/501215/>.

¹⁴ Sommeiller, *supra* note 13.

¹⁵ For example, Westport charges non-residents \$775 for a summer parking pass—15.5 times more than the \$50 its residents pay. Fairfield charges non-residents \$275 for a summer pass, while residents pay \$25. Keith M. Phaneuf, *Beach Parking Fees Will Be Up For Debate Again, Advocates Vow*, CT MIRROR (Aug. 16, 2021), available at <https://ctmirror.org/2021/08/16/beach-parking-fees-will-be-up-for-debate-again-advocates-vow/>; see also Kahrl, *supra* note 2.

¹⁶ James L. Huffman, *The Public Trust Doctrine: A Brief (and True) History*, 10 GEO. WASH. J. ENERGY & ENVIRO. L. 15 (2019), available at <https://gwjeel.com/wp-content/uploads/2019/09/Huffman-Article.pdf>; Coastal States Organization, *Putting the Public Trust Doctrine to Work* 1 (2nd ed. 1997).

¹⁷ THOMAS COLLETT SANDARS, *THE INSTITUTES OF JUSTINIAN* 73 (1867).

¹⁸ See *Ill. Cent. R.R. v. Illinois*, 146 U.S. 387, 435, 452–56 (1892) (recognizing applications of the public trust doctrine to navigable waters and fishing).

¹⁹ Matthew Ranelli, *Public Right of Access to Beaches*, OFF. LEG. RES. REP. (Dec. 3, 1999), available at <https://www.cga.ct.gov/PS99/rpt/olr/htm/99-R-1150.htm>; Kahrl, *supra* note 2.

²⁰ *Leydon v. Greenwich*, 257 Conn. 318, 318 (2001); see also Christopher Reinhart, *Supreme Court Case on Access to a Greenwich Beach*, OFF. LEG. RES. REP. (Aug. 9, 2021), available at <https://www.cga.ct.gov/2001/rpt/2001-R-0631.htm>.

beach access in Connecticut is as exclusive as it was when Ned Coll's first bus departed Hartford in 1971. Stark differences between resident and non-resident pricing mean that Black and brown people are disproportionately more likely to pay hundreds of dollars just to enjoy shoreline leisure, something that is just much their right as anyone else in Connecticut.

The ACLU-CT strongly supports House Bill 5361 as an essential measure to confronting a deep history of racial discrimination in Connecticut's public spaces. Access to the shoreline by Connecticut residents should not be determined by zip code, and instead should be open to all. As such, the ACLU-CT urges this Committee to support House Bill 5361.