In the

Supreme Court of Virginia

At Richmond

CoA No. 1638-23-3

YELLOW MOUNTAIN VILLAGE MOBILE HOME PARK ASSOCIATION and TANYA WILSON,

Petitioners,

– v. –

YELLOW MOUNTAIN MHP, LLC,

Respondent.

PETITION FOR APPEAL

Jarryd Smith, VSB#92530
LEGAL AID SOCIETY OF ROANOKE VALLEY
541 Luck Avenue, Suite 118
Roanoke, Virginia 24016
Telephone: (540)-344-2087
Facsimile: (540) 342-3064
Email: Jarryd@lasrv.org

Brandon L. Ballard, VSB #95346
LEGAL AID SOCIETY OF EASTERN VIRGINIA
125 St. Paul's Boulevard
Suite 400
Norfolk, Virginia 23510
Telephone: (757) 648-1241
Facsimile: (757) 622-8102
Email: brandonb@laseva.org

Counsel for Petitioners

CP COUNSEL PRESS (800) 4-APPEAL • (811183)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

INTRODUCTION

Owners of manufactured homes own the home in which they reside but rent the lot upon which their home is placed. Because of the financial and practical difficulties with moving manufactured homes, those who purchase them do so with the expectation they will live at that location for an extended period of time. When they must relocate, many manufactured home owners are forced to sell the home to their landlord for far less than what they paid.

Recognizing the unique circumstance manufactured home owners occupy relative to residential tenants and other homeowners, the General Assembly enacted the Manufactured Home Lot Rental Act ("MHLRA"), Va. Code §§ 55.1-1300 *et. seq.* Chief among the MHLRA's protections is its guarantee that manufactured home owners must be offered a one-year lease term with a "fixed rent." Va. Code §§ 55.1-1301(A); 55.1-1302(A)-(B).

The decision rendered below by the Court of Appeals—the first appellate decision to squarely address the MHLRA in its near half-century of existence[1]—eviscerated these two statutory rights. The court held a landlord may increase rent upon 60 days' notice at any time during a lease's one-year term. *Yellow Mountain Vill. Mobil Home Park Ass'n v. Yellow Mountain MHP, LLC*, 82 Va. App. 207, 216–

[1] In 1988, this Court addressed the MHLRA only to the extent it bore on the question of whether the Virginia Fair Housing Act "applie[d] to the rental of space in a mobile home park." *Hudler v. Cole*, 236 Va. 389, 390 (1988).

19 (2024) ("*Decision*"). If a tenant refuses to assent to the increase, the purported one-year lease terminates after 60 days. *Id*. Among other errors, the court failed to account for Va. Code § 55.1-1302(B), which specifies a notice of any change to a one-year lease's terms may only go into effect upon the lease's expiration. Faring no better is the court's construction of "fixed rent" as requiring a rent that is merely "ascertainable" by a "formula." Every technical- and general-use dictionary confirms that "fixed" signifies the noun it modifies is not subject to change or fluctuation. Effectively, the court rewrote the MHLRA to merely guarantee manufactured home owners the right to a bi-monthly lease with a fixed rent.

The decision below threatens to adversely impact not only the hundreds of thousands of manufactured home owners in Virginia,[2] *see* The Manufactured Home Community Coalition of Virginia, *An Assessment of Central Virginia's Manufactured Housing Communities* 5 (Nov. 2016), https://perma.cc/B4P6-KFB5, but also any legislation that a judge determines "would infringe upon the right of Virginians to freely contract with each other." *Decision*, at 219 (citations omitted). The court's application of this substantive canon of construction portends uncertainty for legislation touching on all aspects of economic activities.

For these reasons, the Court of Appeals' decision merits review by this Court.

[2] Throughout this Petition, the term "tenant" will be used interchangeably with the phrase, "manufactured home owner." *Accord* Va. Code § 55.1-1300 (defining "tenant" and "manufactured home owner.").

ASSIGNMENTS OF ERROR[3]

1. The Court of Appeals and Circuit Court for the County of Roanoke erred by upholding the lease's terms, which allow for a mid-lease term rent increase, as they violate the MHLRA's requirement, codified at Va. Code §§ 55.1-1301 and 55.1-1302, that landlords must offer manufactured home owners a one-year lease term with a "fixed rent." [Preserved at R. 109, 125–26, 157–58, 161–62, 165–66; Opening Brief of Appellants, at 3–9; *Decision*, at 216–19].

2. The Court of Appeals' application of a statutory rule of construction that favors an interpretation upholding the 'freedom to contract' contravenes the MHLRA's plain text and, more broadly, threatens to upend the General Assembly's lawful regulation of tenancies and other economic activities. [Preserved at R. 109, 125–26, 157–58, 161–62, 165–66; Opening Brief of Appellants, at 3–9; *Decision*, at 219; Appellants' Petition for Rehearing En Banc, at 15–16].

STATEMENT OF FACTS

In 2022, tenants at the Yellow Mountain Mobile Home Park, on different dates after February 2022, signed one-year leases with the landlord, Yellow Mountain MHP, LLC ("Landlord"). *See* R. 3–13. The lease set the lot rents at $400 per month. *Id*. at 3. Because rent was "fixed" and the leases were for a one-year duration, no party disputes the lease thus far complied with Va. Code §§ 55.1-1301 and 1302. But

[3] The abbreviation, "AOE," stands for Assignment of Error.

the lease also grants Landlord unfettered discretion to increase the rent at any point during the lease's one-year term by providing a 60-day advance written notice. R. 4, ¶¶ 1(c)–(d). In the event such a notice of change is issued, the tenant may opt to terminate the lease within 60 days from the date on which they received the notice. *Id*. at ¶ 1(c) (providing Landlord may "at any time [] increase the monthly rental to an amount determined by Landlord, provided that Landlord gives to Resident written notice thereof at least sixty (60) days prior to the date on which such increase becomes effective, and . . . the Resident shall be entitled to terminate this lease by giving written notice . . . within said period[.]").

In November 2022, Landlord issued written notices that increased lot rents from $400 to $550—an increase of 37.5%—effective February 2023. *Id*. 16.

NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

Subsequently, the Yellow Mountain Village Mobile Home Park Association and Ms. Tanya Wilson, a tenant, (collectively, "Tenants") instituted two actions against Landlord in Roanoke County Circuit Court. R. 1–2 (Tenant Association's complaint); R. 76–78 (Tenant Association's amended complaint); R. 31–33 (Ms. Wilson's complaint). Tenants sought declaratory and injunctive relief, challenging Landlord's ability to increase lot rent before the expiration of their one-year lease terms. *Id*. Specifically, Tenants asserted the MHLRA prohibited lease provisions that allowed landlords to increase the lot rent mid-term. *Id*. The Roanoke County Circuit

Court granted Landlord's Motion for Summary Judgment, and Tenants timely noted and perfected their appeal. R. 165–68.

A panel of the Court of Appeals heard oral argument on August 6, 2024. On October 1, 2024, the panel affirmed the lower court. The panel first held the "lease itself unambiguously reserves the unilateral right to Landlord to raise lot rents mid-term, after giving 60 days' written notice to Tenants." *Decision*, at 215. The panel next held this lease provision did not violate Va. Code §§ 55.1-1301 and 55.1-1302 of the MHRLA. *Id*. at 216–19. The panel agreed with Tenants that a landlord must offer a one-year lease term with a fixed rent. *Id*. at 216. Yet the panel held Landlord's notice of a rent increase during the one-year lease term did not terminate the lease and thus complied with the one-year lease requirement in Va. Code § 55.1-1302(A). *Id*. at 216–17. As the panel put it, the lease "continue[d] in force until the conclusion of the one-year period" unless the tenant elected to terminate it. *Id*. at 217. Nor did the mid-lease term rent increase violate the "fixed rent" requirement under Va. Code § 55.1-1301(A). *Id*. at 217–19. Construing the phrase "fixed rent" as merely requiring a rent that is "ascertainable" by a "formula," the panel held the lease's rent remained "fixed" as it set rent at $400.00 and afforded Landlord the authority to "unilateral[ly] . . . increase the lot rent to a greater amount" upon 60-days' written notice. *Id*. at 218–19. Above all, the panel "declined to interpret [the MHRLA] . . .

in a way that would infringe upon the right of Virginians to freely contract with each other." *Id*. at 219 (citations omitted).

Tenants filed a petition for rehearing en banc on October 15, 2024, which the Court of Appeals denied on October 29, 2024.

STANDARD OF REVIEW

The assignments of error concern questions of law and statutory interpretation, which this Court reviews de novo. *E.g. Bank of the Commonwealth v. Hudspeth*, 282 Va. 216, 221 (2011).

ARGUMENT

I. Together, Va. Code §§ 55.1-1301(A) and 55.1-1302(A)-(B) unambiguously provide that landlords must offer a one-year lease with a "fixed rent" that does not vary or fluctuate during the lease's one-year term. (AOE I).

Va. Code 55.1-1301(A) states, in relevant part, that:

> The written rental agreement shall not contain any provisions contrary to the provisions of this chapter. . . . A *notice of any change* by a landlord in any terms or provisions of the written rental agreement *shall constitute a notice to vacate the premises*, and *such notice shall be given in accordance* with the terms of the written rental agreement *or as otherwise required by law*. The written rental agreement shall not provide that the tenant pay any recurring charges *except fixed rent*, utility charges, or reasonable incidental charges for services or facilities supplied by the landlord.

Id. (emphasis added). Va. Code §§ 55.1-1302(A)-(B), in turn, provides in part that:

> A. A landlord shall offer all current and prospective year-round residents a rental agreement *with a rental period of not less than one year*. . . .

> B. Upon the expiration of a rental agreement with a term of one year or more, the agreement shall be automatically renewed for a term of the same duration with the same terms *unless* either party provides written notification of an intent to not renew the agreement at least 60 days prior to the expiration date or *the landlord provides written notice to the tenant of any change in the terms of the agreement at least 60 days prior to the expiration date*.

Id. (emphasis added).[4] When construed as a whole, Va. Code §§ 55.1-1301(A) and 55.1-1302(A)-(B) require landlords to offer tenants a one-year lease with a "fixed rent," meaning the rent will not vary or fluctuate during the lease's one-year period. Such a lease automatically renews with the same terms unless the landlord previously issued a "notice of any change" to the lease at least 60 days before the "expiration date." Va. Code § 55.1-1302(B). In that event, the new terms, including, if applicable, the revised "fixed rent," would go into effect upon the current lease's expiration. *See id*.(A)-(B). And if the tenant previously signified his disagreement with the rent increase, *see id*.(B) (affording tenant unwilling to assent to notice of change 30 days to notify landlord), the tenant must vacate upon the lease's

[4] This past July, the General Assembly amended Va. Code § 55.1-1302(B). Like the current version of the statute, the prior version stated the lease automatically renewed unless the "landlord provide[d] written notice . . . of any change in the terms of the agreement at least 60 days prior to the expiration date." To be sure, Va. Code § 55.1-1302(B) previously utilized the phrase, "termination date," not "expiration date." But when read in context, the statute plainly equated the two phrases with each other. Indeed, any contrary construction would render the language requiring one-year leases meaningless. *Baker v. Commonwealth*, 278 Va. 656, 661 (2009). Thus, the amendment has no effect on how the Court should resolve this case.

expiration, since the prior notice of change operated simultaneously as a "notice to vacate." Va. Code § 55.1-1301(A).

The Court of Appeals' contrary interpretation of Va. Code § 55.1-1301(A)—that a landlord may increase the rent at any time during the one-year lease's term upon 60 days' notice—cannot be squared with Va. Code § 55.1-1302(B), which specifies a notice of change to a lease's terms may only go into effect upon the one-year lease term's expiration. *See infra* Pt. I.A. In addition, the Court of Appeals' construction of "fixed rent" as merely requiring a "specific formula" for ascertaining rent during a given lease term ignores the plain meaning of "fixed," which conveys a sense of not being subject to any change or fluctuation. *See infra* Pt. I.B. For these reasons, the Court should grant Tenants' Petition for Appeal.

A. The Court of Appeals' interpretation of Va. Code § 55.1-1301(A) cannot be squared with Va. Code § 55.1-1302(B), which specifies a notice of change to a lease's terms may only go into effect upon the one-year lease term's expiration.

Statutory schemes like the MHLRA cannot be "construed by singling out a particular phrase." *Cuccinelli v. Rector, Visitors of Univ. of Virginia*, 283 Va. 420, 425 (2012) (cleaned up). Rather, courts must "consider[] [] the entire statute . . . to place its terms in context to ascertain their plain meaning[.]" *Eberhardt v. Fairfax Cnty. Employees' Ret. Sys. Bd. of Trustees*, 283 Va. 190, 194 (2012). And "when one statute speaks to a subject generally and another deals with an element of that subject specifically, the statutes will be harmonized, if possible, and if they conflict, the more

specific statute [will] prevail[].” *Commonwealth ex. re. Virginia Dept. of Corrections v. Brown*, 259 Va. 697, 706 (2000) (citations omitted).

Given these principles of statutory construction, a brief overview of Va. Code §§ 55.1-1301 and 55.1-1302 is in order. The MHLRA’s introductory code section, Va. Code § 55.1-1301(A), titled “written rental agreement required,” provides basic terms and conditions that all written leases must contain. *Id*. It goes on to expressly prohibit lease terms that “contain any provisions contrary to the provisions of th[e]” MHLRA. *Id*. Among the terms and conditions that must be offered to comply with the MHLRA is the “fixed rent” and one-year lease term requirements set forth, respectively, by Va. Code §§ 55.1-1301(A) and 55.1-1302(A).

Va. Code § 55.1-1301(A) further provides that a “notice of any change” by the landlord “constitute[s] a notice to vacate the premises, and [that] such notice[s] shall be given in accordance with the terms of the written rental agreement *or as otherwise required by law*.” *Id*. (emphasis added). The Court of Appeals held that because the lease provided a tenant with a choice “to accept the [mid-term] lot rent increase and remain a tenant,” or to terminate the lease, the lease comported with the notice-to-vacate language in Va. Code § 55.1-1301(A), on the one hand, and the one-year lease requirement in Va. Code § 55.1-1302(A), on the other hand. *Decision*, at 217.

The Court of Appeals' interpretation, however, cannot be squared with Va. Code § 55.1-1302(B). While Va. Code § 55.-1301(A) addresses the *effect* a notice of any change has on the lease, the question of *when* such a notice's changes may go into effect is expressly addressed by Va. Code § 55.1-1302(B). That statutory provision of the MHLRA, titled "Term of rental agreement; renewal; security deposits," provides a one-year lease term automatically renews with the same terms "unless" the landlord issues a "*notice* to the tenant *of any change* in the terms of the agreement *at least 60 days prior to the expiration date*." *Id*. (emphasis added). In other words, a landlord's at least 60-day advance notice of any change to a lease term, such as the lease's fixed rent, cannot go into effect until the current one-year lease term expires. *See id*. And if a tenant signifies disagreement with the new lease terms "within 30 days of receiving notice of the change," Va. Code § 55.1-1302(B), they must vacate once the current lease expires, as the "notice of any change" operated simultaneously as a "notice to vacate" under Va. Code § 55.1-1301(A).[5]

[5] To the extent the Circuit Court thought Va. Code § 55.1-1308(A) shed light on the question before it, *see* R. 145, 165–66, the Court of Appeals properly found otherwise. *Decision*, at 216–19 (not discussing Va. Code § 55.1-1308(A)). Before it was amended on July 1, 2024, Va. Code § 55.1-1308(A) provided "[e]ither party may terminate a rental agreement with a term of 60 days or more by giving written notice to the other at least 60 days prior to the termination date." *Id*. As of July 1, 2024, substantially equivalent language can now be found at Va. Code § 55.1-1302(B). *See supra* 7 n.4. Thus, all this language conveyed—and still conveys—is that a properly issued "noti[ce] of an intent to not renew," like a notice of any change to the lease's terms, may only go into effect at the end of the lease's term.

Stemming from its failure to analyze whatsoever the interplay between Va. Code §§ 55.1-1301(A) and 55.1-1302(B), the Court of Appeals effectively imputed into Va. Code § 55.-1302(B) other dates on which a notice of any change to a lease's terms or conditions may go into effect. This courts may not do. *E.g. Miller & Rhoads Building, LLC v. City of Richmond*, 292 Va. 537, 544 (2016) ("[W]hen a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way . . . . Stated another way, the mention of specific items in a statute implies that all items omitted were not intended to be included.") (cleaned up).

In sum, because the lease states Landlord's 60-day notice of change to the fixed rent may go into effect "at any time" during the one-year lease term, R. 4, ¶ 1(c), the Court of Appeals should have held this provision was "contrary to" the MHLRA and thus, could not be given effect. Va. Code § 55.1-1301(A). By holding otherwise, the court essentially rewrote the MHLRA, providing tenants with merely the right to a bi-monthly lease with a fixed rent.

B. The Court of Appeals' construction of "fixed rent" as merely requiring a "specific formula" for ascertaining rent during a lease term ignores the plain meaning of "fixed," which conveys a sense of not being subject to any change or fluctuation.

Having held that, notwithstanding Va. Code § 55.1-1302(B), a 60-day notice of change may go into effect at any time during a lease's one-year term, the court next addressed the "fixed rent" requirement. *Decision*, at 218. The court held the

modifier "fixed" signified the term governing rent "simply needs to be *ascertainable*—i.e., the contract must provide a specific *formula or method* for *ascertaining* the amount of rent for discrete periods of time, here, at minimum 60 days, that will be charged to the tenant[.]" *Id*. (emphasis added). In so holding, the court erred.

Because the General Assembly did not define the word "fixed," this Court must ascertain its "everyday, ordinary meaning unless the word is a word of art." *Stein v. Commonwealth*, 12 Va. App. 65, 69 (1991) (citation omitted). In doing so, this Court may consult general- and technical-use dictionaries, along with "pertinent analysis in prior cases[.]" *Green v. Commonwealth*, 72 Va. App. 193, 203 (2020) (citations omitted); *Auer v. Commonwealth*, 46 Va. App. 637, 645–47 (2005).

After stating that "fixed" was the textual equivalent of an "ascertainable amount," the Court of Appeals turned to the eleventh edition of the Black's Law Dictionary. *Decision*, at 218 (emphasis omitted). Black's Law Dictionary, the court observed, defines the present tense of "fixed" as: "To announce (an exchange price, interest rate, etc.)," as in the "interest was fixed at 6%," or "To agree with another to establish (a price for goods or services), often illegally[.]" *Fixed*, Black's Law Dictionary (11th ed. 2019); *accord Fixed*, Black's Law Dictionary (12th ed. 2024) (Westlaw database last accessed Nov. 20, 2024). Yet the court failed to subsequently explain *how* this single dictionary definition supported its previously stated view that

the adjective "fixed" equated to a "formula" that was "ascertainable." *Decision*, at 218. *But see, e.g.*, *Suffolk City School Bd. v. Wahlstrom*, 302 Va. 188, 206–07 (Va. 2023) (consulting general-use dictionary definitions and explaining how they apply to the instant case) (citations omitted). Nor could the court have done so. For Black's Law Dictionary makes clear by its reference to a *single*, *distinct* price or interest rate for goods or services that the term "fixed" signifies the noun it modifies is not variable or subject to change; that is to say, the modified noun is "establish[ed.]" *Fixed*, Black's Law Dictionary (11th ed. 2019) (providing an example of an interest rate being "fixed at 6%," as opposed to a variable interest rate).

The court also should have consulted other dictionaries, particularly general-use ones, as it is not apparent that "fixed" or "fixed rent" bears a technical legal meaning. *Morgan v. Commonwealth*, 301 Va. 476, 482 (2022) (consulting black's law dictionary and a general-use dictionary); *accord* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 415–24 (2012) (illustrating the proper use of dictionaries); Phillip A. Rubin, *War of the Words: How Courts Can Use Dictionaries Consistent with Textualist Principles*, 60 DUKE L.J. 167, 194 (2010) (given the "wide discrepancy in the definitions of terms among contemporary, respectable dictionaries," "more than one dictionary" should be consulted).

Had the court consulted other dictionaries, it would have found that the all-important element found in technical- and general-use dictionaries is that the past

tense modifier "fixed" conveys a sense of not being subject to *any* change or fluctuation; put another way, it conveys a sense of finality during a set period. *See, e.g.*, *Fixed*, American Heritage Dictionary 508 (2d college ed. 1985) ("Firmly in position; stationary . . . . Not subject to change or variation; constant[.]"); *Fixed*, Cambridge Online Dictionary (last accessed October 11, 2024), https://perma.cc/JXH7-ZMLJ ("Not possible to change . . . . [A]rranged or decided already and not able to be changed," such as in a "fixed price" or "fixed interest rate[] . . . ."); *Fixed*, Collins Online Dictionary (last accessed October 11, 2024) https://shorturl.at/ERLVz (stating "fixed" is used to "describe something which stays the same and does not or cannot vary" and providing as an example restaurants listing "fixed-price menus."); *Fixed*, Oxford English Online Dictionary (last accessed October 11, 2024), https://perma.cc/CP5B-5URA ("Placed or attached firmly; fastened securely; made firm or stable in position . . . . Deprived of volatility . . . . Definitely and permanently placed; stationary or unchanging in relative position . . . . not fluctuating or varying; definite, permanent."); *State v. Wade*, 7 N.W.3d 511, 514 (Iowa 2024) (quoting *Fixed*, Webster's Third New International Dictionary 861 (unabr. ed. 2002)) ("[T]o set or place definitively."); *id*. at 514–515 (quoting *Fixed*, Oxford American Dictionary 654 (3d ed. 2010)) ("[To] decide or settle on (a specific price, date, course of action, etc.)."); *Basic Energy Servs. v. Occupational Safety & Health Rev. Comm'n*, 666 F. App'x 364, 367 (5th Cir. 2016) (quoting *Fixed*,

Webster's New Collegiate Dictionary (1975)) (defining "fixed" as "securely placed or fastened[.]"); *id*. (quoting *Fixed*, Random House Webster's Unabridged Dictionary (2d ed. 2001)) ("[F]astened, attached, or placed so as to be firm and not readily movable; firmly implanted; stationary; rigid[.]"); *Yates Energy Corp. v. Enerquest Oil & Gas, L.L.C.*, No. 13-03-118-CV, 2005 WL 1530510, at *2 (Tex. App. June 30, 2005) (quoting *Fixed*, Webster's New World Dictionary (3d College ed. 1988)) (defining "fixed" as "established" or "settled."); *see also State v. Blyth*, 226 N.W.2d 250, 274 (1975) (quoting *Fix*, Webster's New Twentieth Century Dictionary 694 (2d ed. 1964)) ("[T]o make stable, firm, or secure . . . . to establish, set, to arrange definitely, as he Fixed the rent at forty dollars.") (cleaned up).

As for "pertinent analysis in prior cases," *Green*, 72 Va. App. at 203 (citations omitted), while no case from this or any other jurisdiction is squarely on point, Virginia caselaw provides two apt comparisons. First is the Uniform Commercial Code's ("UCC") definition of a "negotiable instrument." Va. Code § 8.3A-104(a) defines "negotiable instrument," in part, as an "unconditional promise or order to pay a *fixed* amount of money[.]" *Id*. (emphasis added). Courts generally interpret the fixed requirement as excluding contracts where the total amount cannot instantly be ascertained from the contract's four corners. *Taylor v. Roeder*, 234 Va. 99, 104 (1987) (holding that variable interest loans were not negotiable instruments, since the "amount required to satisfy the debt cannot be ascertained without reference to . . .

the varying prime rate charged by the Chase Manhattan Bank."); *Armstrong v. United States*, 7 F. Supp. 2d 758, 766 (W.D. Va. 1998) (holding that while the contract stated a fixed total amount, the incremental payments were not fixed as they "could not be determined without reference to an outside source[.]").

Second, this Court has articulated two distinct ways in which a price in a contract for the sale of land is sufficiently definite, such that a court may "enforce specific performance": on one hand, the price may be "'fixed by the agreement itself'"; on the other hand, the agreement may provide a "mode 'for ascertaining it with *certainty*[.]'" *Wilburn v. Mangano*, 299 Va. 348, 353 (2020) (emphasis in original) (quoting *Parker v. Murphy*, 152 Va. 173, 184 (1929)).

Here, the one-year lease's rent is not "fixed," because the lease provides Landlord with unfettered discretion to issue a 60-day notice that could raise rent by five dollars or five-thousand dollars. Put another way, just as a variable interest rate is not fixed, the rent is not fixed because it "cannot be readily ascertained without reference to" a contingent "outside force." *Taylor*, 234 Va. at 104 (first quote); *Armstrong*, 7 F. Supp. 2d at 766 (second quote). Nor does the distinction drawn by the Court of Appeals adhere to the distinction this Court has drawn in real property law between fixed (the price is determined by the agreement itself) and ascertainable (the agreement expressly provides the mode for determining the price). *See Wilburn*, 299 Va. at 353 (2020) (emphasis in original) (quoting *Parker*, 152 Va. at 184). In any

event, even assuming the court's construction was correct, the lease lacks any "formula" to ascertain rent. Unlike the court's example of an escalation clause, *see Decision*, at 218, which provides some indicia of predictability, the lease provides Landlord with unfettered discretion to raise rent without regard to any external factors, like an increase in tax or utility expenses.

II. The Court of Appeals' decision eviscerates the MHLRA's self-evident purpose of supplying a greater degree of predictability and stability to manufactured home owners, who occupy a unique economic position relative to residential tenants and other homeowners. (AOE I).

Statutory language must be "construed with reference to its subject matter, the object sought to be obtained, and the legislative purpose in enacting it[.]" *Esteban v. Commonwealth*, 266 Va. 605, 610 (2003) (citation omitted). Because the Court of Appeals applied a substantive canon of construction, *see infra* Pt. III, the court must have concluded the at-issue language was ambiguous. *See, e.g.*, *Jackson v. Jackson*, 298 Va. 132, 139 (2019) (observing that when a statute is unambiguous, courts "may not consider *rules of statutory construction*, legislative history, or extrinsic evidence.") (emphasis added) (cleaned up). Even assuming the MHLRA was susceptible to two textually permissible interpretations, Tenants' interpretation constitutes a textually "permissible interpretation that furthers rather than obstructs the statute's purpose" and, therefore, must be favored. *Luttrell v. Cucco*, 291 Va. 308, 314 (2016) (citations omitted); *accord* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012).

To ascertain the purpose of the at-issue provisions, the Court need look no further than the MHLRA's text. Unlike the Virginia Residential Landlord and Tenant Act ("VRLTA"), Va. Code §§ 55.-1200 *et. seq.*, which regulates residential tenancies, the MHLRA contains a unique directive that landlords must offer one-year leases with a fixed rent—that is, a rent that cannot fluctuate or vary—to manufactured home owners. *Compare* Va. Code §§ 55.1-1301, 1302, *with* Va. Code § 55.1-1204 (declining to require a one-year lease term with a "fixed rent"). This language, along with several provisions of the MHLRA,[6] signify the General Assembly's intent to supply a greater level of predictability and stability to manufactured home owners, since they occupy a unique economic position relative to residential tenants and other homeowners.

"[M]obile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself," and "once in place, only about 1 in every 100 mobile homes [are] ever moved." *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 523 (1992) (O'Connor, J.) (citing Hirsch

[6] Several provisions reflect the General Assembly's acknowledgment that relocating a manufactured home is costly and often impractical. *See, e.g.*, Va. Code § 55.1-1308.1 (requiring landlord to pay tenants $5,000 in relocation expenses if manufactured home park is sold to buyer who intends to redevelop the park); Va. Code § 55.1-1308(B) (directing landlords to provide tenants with a 180-day advance notice to move manufactured homes when a manufactured home park will be converted to a different use, rehabilitated, or demolished); Va. Code § 55.1-1316(A) (providing tenants who have been judicially evicted from a manufactured home park with "90 days after judgment" to sell or remove manufactured home).

& Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol*, 35 UCLA L. REV. 399, 405 (1988)). Moreover, many manufactured home owners are impoverished, making the prospect of relocating a manufactured home—which may exceed $10,000—even less likely. Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing* ["*Promoting the Promise*"], 13 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 384, 389 (2004); *id*. at 386 n. 30; Sue Eng Ly, *Forget Me Not: Manufactured Home Owners and the Laws That Leave Them Behind*, 57 U. LOUISVILLE L. REV. 183, 186 (2018). Given these circumstances, rent increases "often push [manufactured home owners] to sell their homes at distressed prices to the landlords." Amy J. Schmitz, *Promoting the Promise*, *supra*, at 389.

The General Assembly chose to address these problems with a modest—but important—measure limiting the frequency with which rents could be increased to an annual basis.[7] The Court of Appeals' interpretation eviscerates the choice made by the General Assembly. By contrast, Tenants' textually permissible interpretation furthers the MHLRA's purpose of supplying the necessary degree of predictability

[7] The Court of Appeals' characterization of Tenants' position as advocating for "rent control" is inaccurate. *Decision*, at 218. Rent control laws impose strict, comprehensive, and permanent limits on rental fees based on external factors outside landlords' control. *See, e.g.*, Michael D. Bergman, *Property Law: Recent Developments in Rent Control and Related Laws Regulating the Landlord-Tenant Relationship*, 1989 ANN. SURV. AM. L. 691, 727–34 (1991).

and stability manufactured home owners need for long-term occupancy of their homes.

III. The Court of Appeals' application of a freedom-of-contract rule of construction violates the General Assembly's directive, codified at Va. Code § 55.1-1301(A), that leases must comply with the MHLRA and, more broadly, threatens to upend the General Assembly's lawful regulation of tenancies and other economic activities. (AOE II).

Far from favoring a reading that advanced the MHLRA's self-evident purpose, the Court of Appeals "interpret[ed] [the MHLRA] in a way that would [not] infringe upon the right of Virginians to freely contract with each other." *Decision,* at 219 (citations omitted). This rule of construction, however, conflicts with the MHLRA's plain text. For the General Assembly expressly provided that no lease covered by the MHLRA may "contain any provision contrary to [its] provisions[.]" Va. Code § 55.1-1301(A). And when a provision is contrary to the MHLRA or incorporated provisions of the VRLTA, the General Assembly provided aggrieved manufactured home owners with a private cause of action for damages and injunctive relief. Va. Code § 55.1-1318; Va. Code § 55.1-1311 (incorporating by reference Va. Code § 55.1-1259 of the VRLTA); Va. Code § 55.1-1259. Although no court has construed these provisions of the MHLRA, the Court of Appeals recently construed an analogous provision of the VRLTA. In so doing, the court affirmed that Va. Code § 55.1-1208 of the VRLTA, which the MHLRA also incorporates by reference, *see* Va. Code § 55.1-1311, renders "unenforceable" any lease term that "purports to waive

[a] tenant's rights or remedies required by" the VRLTA. *Parrish v. Vance*, 80 Va. App. 426, 436 (2024) (citing Va. Code § 55.1-1208(A)(1)); *see also Sweeney v. West Group, Inc.*, 259 Va. 776, 778–79 (2000) (holding a lease that required a tenant to give a written notice of intent to vacate effectively waived a right under VRLTA and thus, was unenforceable).

By directing courts to actively police leases for compliance with the MHLRA, the General Assembly enacted remedial legislation. *E.g. Bd. of Supervisors of Richmond Cnty. v. Rhoads*, 294 Va. 43, 51 (2017) (characterizing as remedial laws whose "plain language" conveys they were intended to "provide protections to those otherwise not in a position to effectively defend themselves," and noting such laws must be liberally construed). The General Assembly's directive, along with the clarity of the MHLRA's one-year lease and fixed rent requirements, distinguishes the two cases the Court of Appeals cited to support its application of the freedom-of-contract rule of construction. *Decision*, at 219 (citing *Commonwealth Div. of Risk Mgmt. v. Virginia Ass'n of Ctys. Grp. Self Ins. Risk Pool,* 292 Va. 133, 143 (2016); and *Atlantic Grayhound Lines v. Skinner*, 172 Va. 428, 439 (1939)). For neither case concerned a statute with a similar directive from the General Assembly. Nor did the cases concern a statute that forbade the at-issue conduct. As such, the common law, which favors rules that uphold parties' freedom to contract, applied. *Commonwealth Div. of Risk Mgmt.*, 292 Va. at 143–44 (noting the "*common-law* tradition counsels

that courts 'are not lightly to interfere' with lawful exercises of the 'freedom of contract,'" and going on to uphold the parties' contract for insurance "[g]iven the absence of any clearly expressed legislative prohibition[.]") (emphasis added) (citation omitted); *id.* at 143 n.9 ("[A] person's 'right to contract freely is to *yield only to the safety, health, or moral welfare of the public.*'") (emphasis added) (quoting Roscoe Pound, *Liberty of Contract*, 18 YALE L.J. 454, 459–61 (1909)); *Atlantic Grayhound Lines*, 172 Va. at 429–31, 439, 442–43 (in wrongful death action, upholding common carrier's contract that waived liability for negligence, as the Federal Hepburn Act of 1906, which governed such interstate travel, did not purport to prohibit such waivers and common law favored upholding contracts).

More broadly, unless this Court steps in, courts throughout the Commonwealth may feel obligated to artificially narrow the scope of numerous tenant protections found not only in the MHRLA, but also the VRLTA. And the decision's impact will not necessarily be confined to landlord-tenant law. Rather, the Court of Appeals' logic could be employed to artificially narrow statutes governing wages, noncompete agreements, and a whole host of economic activities lawfully regulated by the General Assembly. Although courts once viewed with skepticism legislation that 'infringed' on the right to contract, this Court has repeatedly disavowed such a policy-driven approach to statutory interpretation. *See, e.g.*, *Vasquez v. Dotson*, 303 Va. 97, 104 (2024) ("Given our commitment to 'neutral

principles of interpretation,' we are not 'free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal.") (quoting *Appalachian Power Co. v. State Corp. Comm'n*, 301 Va. 257, 279 (2022)); *In Re Woodley*, 290 Va. 482, 490 (2015) (similar); *see also Working Waterman's Ass'n of Virginia, Inc. v. Seafood Harvesters, Inc.*, 227 Va. 101, 110 (1984) ("[T]he police power [] is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.") (cleaned up); *cf. Palmer v. Atl. Coast Pipeline, LLC*, 293 Va. 573, 586 (2017) (McCullough, J. concurring) (critiquing use of the substantive due process doctrine to invalidate "laws enacted by the people's elected representatives.").

The Court should grant Tenants' Petition and reaffirm this Court's commitment to neutral principles of statutory interpretation.

CONCLUSION

This case presents an issue of first impression that not only affects hundreds of thousands of manufactured home owners, but also could influence how lower courts construe legislation regulating tenancies and other economic activities. Further, the decision below is egregiously wrong and defies principles of textualism and statutory construction. Hence, the Court should grant Tenants' Petition for

Appeal, reverse the Court of Appeals, and remand the case to the Circuit Court for the County of Roanoke for proceedings consistent with the Court's decision.

Respectfully submitted,

/s/ Jarryd Smith, Esq.
Jarryd Smith, VSB #92530
LEGAL AID SOCIETY OF ROANOKE VALLEY
541 Luck Avenue Suite 118
Roanoke, VA 24016
Telephone: (540)-344-2087
Facsimile: (540) 342-3064
Email: Jarryd@lasrv.org.

/s/ Brandon L. Ballard, Esq.
Brandon L. Ballard, VSB #95346
LEGAL AID SOCIETY OF EASTERN VIRGINIA
125 St. Paul's Blvd., Ste. 400
Norfolk, VA. 23510
Telephone: (757) 648-1241
Facsimile: (757) 622-8102
Email: brandonb@laseva.org

CERTIFICATE

Pursuant to Rule 5:17(i), on December 2, 2024, the undersigned certifies the following:

1. The Petitioners are the Yellow Mountain Village Mobile Home Park Association and Ms. Tanya Wilson.

2. Counsel for Petitioners are:

   Jarryd Smith, VSB #92530
   LEGAL AID SOCIETY OF ROANOKE VALLEY
   541 Luck Avenue Suite 118
   Roanoke, VA 24016
   Telephone: (540)-344-2087
   Facsimile: (540) 342-3064
   Email: Jarryd@lasrv.org.

   and

   Brandon L. Ballard, VSB #95346
   LEGAL AID SOCIETY OF EASTERN VIRGINIA
   125 St. Paul's Blvd., Ste. 400
   Norfolk, VA. 23510
   Telephone: (757) 648-1241
   Facsimile: (757) 622-8102
   Email: brandonb@laseva.org

3. The Respondent is Yellow Mountain MHP, LLC.

4. Counsel for the Respondent are:

   Justin S. Feinman, VSB #87511
   John A. Irvin, VSB $ 97044
   WILLIAMS MULLEN
   200 South Tenth Street, Suite 1600
   P.O. Box 1320
   Richmond, Virginia 23218
   Telephone: (804) 420-6507
   Facsimile: (804) 420-6507
   Email: jfeinman@williamsmullen.com
   Email: jirvin@williamsmullen.com

5. A PDF copy of this Petition for Appeal was filed with the Supreme Court of Virginia, via VACES, and served by electronic mail on counsel for Respondent.

6. Pursuant to Rule 5:17(f), exclusive of the cover page, table of contents, table of authorities, signature blocks, and certificate, this Petition for Appeal does not exceed the longer of 35 pages or 6,125 words. The exact word count is 6,013 words.

7. Pursuant to Rule 5:17(i)(5), Petitioners request in-person oral argument before a panel of this Court to state why this Petition for Appeal should be granted.

Dated: December 2, 2024

/s/ Jarryd Smith
Jarryd Smith, VSB No. 92530
Counsel for Petitioners