IN THE
SUPREME COURT OF VIRGINIA

Record No. 241027

COURT OF APPEALS RECORD NO. 1638-23-3

YELLOW MOUNTAIN VILLAGE MOBILE HOME PARK ASSOCIATION and TANYA WILSON,
Petitioners,
– v. –

YELLOW MOUNTAIN MHP, LLC,
Respondent.

BRIEF OF *AMICI CURIAE* BLUE RIDGE LEGAL SERVICES, CENTRAL VIRGINIA LEGAL AID SOCIETY, LEGAL AID JUSTICE CENTER, LEGAL AID WORKS, SOUTHWEST VIRGINIA LEGAL AID SOCIETY, VIRGINIA LEGAL AID SOCIETY, LEGAL SERVICES OF NORTHERN VIRGINIA, VIRGINIA POVERTY LAW CENTER, HOUSING OPPORTUNITIES MADE EQUAL OF VIRGINIA, AND THE NATIONAL HOUSING LAW PROJECT, IN SUPPORT OF PETITION FOR APPEAL

/S/Victoria Horrock
Victoria Horrock (VSB #94625)
Legal Aid Justice Center
1000 Preston Ave Suite A
Charlottesville, VA 22903
victoria@justice4all.org
T: (434) 466-2233
F: (434) 288-0431

/S/Steven Fischbach
Steve Fischbach (VSB #94280)
Virginia Poverty Law Center
919 East Main St. Suite 610
Richmond, Virginia 23219
steve@vplc.org
T: (804) 351-5266

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes, Legislation, & Legislative Materials

Regulations and policy materials

Law review articles

Other authorities

INTEREST OF THE AMICUS CURIAE

Amici include entities who form the legal aid community covering every jurisdiction in the Commonwealth of Virginia ("Legal Aid Amici"), as well as Housing Opportunities Made Equal of Virginia (HOME) and the National Housing Law Project (NHLP) (jointly, "Amici"). Legal Aid Amici provide free legal representation to low-income Virginians on a wide range of civil matters, including representing residents of manufactured home park communities. Collectively, Legal Aid Amici have decades of experience working with residents in manufactured home parks across the Commonwealth.

HOME is a 501(c)(3) nonprofit advocacy and housing counseling organization founded in 1971 with a mission to secure equal access to housing for all people. Sustaining equal access to safe and affordable housing is integral to HOME's advocacy mission and its assistance to its clients. NHLP is a nonprofit organization that works to advance the rights of tenants and low-income homeowners, increase housing opportunities for underserved communities, and preserve and expand the nation's supply of safe and affordable homes. NHLP pursues these goals primarily through technical assistance and support to legal aid attorneys and other housing advocates, including those serving residents of manufactured housing communities.

Amici have a collective interest in maintaining stable housing for residents of manufactured home parks who own their own homes, but rent the lots their homes sit on, and in preserving policies that stabilize manufactured home park residents' rents and protect these residents—and tenants more generally—against sudden, arbitrary, or exploitative rent increases. In addition, amici have an interest in preserving the statutory scheme the Virginia General Assembly specifically enacted to protect manufactured homeowners.

ASSIGNMENTS OF ERROR, NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW, STANDARD OF REVIEW & STATEMENT OF FACTS

Amici adopt the content of the above titled sections as written in the Petitioners' ("Manufactured Homeowners") Petition for Appeal.

INTRODUCTION

At the heart of this case is whether certain provisions of a manufactured housing lot lease violate provisions of the Manufactured Housing Rental Lot Act ("MHLRA") codified at Va. Code 55.1-1300 *et seq.* At the court of appeals, the Appellee ("Landlord") insist that their interpretation of the MHLRA, bypassing the modest but critical right to a one-year lease with fixed rent by allowing the Landlord to make unilateral changes mid-term, "provides tenants with an option to find other housing and **leave without penalty**." Appellee's Court of Appeals Brief at 14. The Amici file this brief to show why this statement could not be further from the truth.

Manufactured housing is a unique form of housing because manufactured homeowners own their dwellings but lease the lots upon which their homes are placed. Because their homes are often impossible to move for economic or structural reasons, manufactured homeowners and park owners do not come to the bargaining table as equal players. As a well-known owner and investor in manufactured home parks notoriously stated, a park is like "a Waffle House where everyone is chained to the booths." Drew Harwell, Mobile Home Park Investors Bet on Older, Poorer America, Tampa Bay Times, May 19, 2014, https://perma.cc/Z7BA-QPWL. That same investor commented elsewhere, "[w]e're the Dollar General store of housing. If you can't afford anything else, then you'll live with us." Gary Rivlin, The Cold, Hard Lessons of Mobile Home U., New York Times, May 13, 2014, https://www.nytimes.com/2014/03/16/magazine/the-cold-hard-lessons-of-mobile-home-u.html. These comments illustrate how residents of parks are almost always captive consumers. Anthony Effinger and Katherine Burton, The Next Mobile Frontier: Trailer Parks Lure White-Collar Types Seeking Double-Wide Profits, Washington Post, May 10, 2014, https://www.washingtonpost.com/business/the-next-mobile-frontier-trailer-parks-lure-white-collar-types-seeking-double-wide-profits/2014/05/08/b58f2df2-cee1-11e3-937f-d3026234b51c_story.html.

Due to the unique qualities of manufactured homeownership and the uneven playing field between manufactured homeowners and park owners, the General

Assembly chose to regulate the leasing of lots where manufactured homes are placed by adopting the MHLRA. This case provides this Court with its first opportunity to interpret the MHLRA's provisions, particularly the Act's requirements that park owners offer manufactured homeowners leasing lots in these parks a one-year lease with a fixed rent. For the reasons set forth below, *amici* urge this Court to grant the Manufactured Homeowners' Petition for Appeal.

ARGUMENT

1. The unique characteristics of manufactured home parks and the homeowners who live in them required the enactment of protective legislation.

As of 2022, approximately 10.5 million Americans live in manufactured homes. Consumer Financial Protection Bureau, Profiles of Older Adults Living in Mobile Homes, Data Spotlight, May 10, 2022, https://perma.cc/3L3G-RPSH. This constitutes roughly 6% of occupied housing stock nationwide, or approximately 6.7 million units, and is the largest source of unsubsidized affordable housing. Consumer Financial Protection Bureau Office of Research, Manufactured-Housing Consumer Finance in The United States at 3, May 2021, https://perma.cc/EX2B-P66P; *see also* Christopher Herbert et al., A Review of Barriers to Greater Use of Manufactured Housing for Entry-Level Homeownership, Joint Center for Housing Studies, Harvard University Joint Center for Housing Studies (Jan. 2024) at 4, https://perma.cc/65VT-BK5N (citing the American Housing Survey of 2021).

Over half of manufactured homes are here in the South. Consumer Financial Protection Bureau, Manufactured Housing Finance at 7; see also Herbert, Barriers at 5. The South also has the highest percentage of manufactured homes relative to the overall housing supply. Government Accountability Office, Manufactured Housing: Further HUD Action Is Needed to Increase Available Loan Products, Report to the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations, House of Representatives at 9, September 2023, https://www.gao.gov/assets/gao-23-105615.pdf. Manufactured homes are more prevalent in rural areas where they make up 14% of the housing stock. *Id.* at 10. Even so, 10% of homes in urban areas are manufactured. *Id*.

Here in Virginia, approximately 350,000 people live in manufactured homes. Manufactured Home Community Coalition of Virginia, MHC 101: An Introduction to Manufactured Home Communities, https://mhccv.org/resources-old/mhc-101/ (last visited December 8, 2024); *see also* Virginia Poverty Law Center, Reimagining Virginia's Mobile Home Parks, February 16, 2023, https://vplc.org/reimagining-virginias-mobile-home-parks/. Many of those homes are located in the Commonwealth's roughly 600 manufactured home parks. Manufactured Home Community Coalition of Virginia, MHC 101. Residents of manufactured home parks often own their homes but not the land beneath them. Instead, they rent the land pursuant to a lot lease. *See* Private Equity Stakeholder Project, Private Equity Giants

Converge on Manufactured Homes, February 2019 at 4, https://perma.cc/3XML-N3XM (stating that as of 2019, 2.9 million of the nation's manufactured homes were in land leased communities).

a. The immobility of manufactured homes leads to exploitation by owners and investors

The main factor contributing to the vulnerability of residents in manufactured home parks is the immobility of their homes and the risk of losing any equity they have in that home. Although homes in parks are often referred to as "mobile" homes, they are rarely actually moved. Eighty percent of manufactured homes are never moved from their first placement. Amos Barshad, 'It's Like Winning the Lottery': The Mobile Home Owners Buying the Land They Live On, The Guardian May 3, 2024, https://perma.cc/V9T7-YJCF. If a resident must leave the park because they cannot afford a rent increase, they often end up abandoning the home. Private Equity Stakeholder Project, Private Equity Giants at 1.

To move a manufactured home, it must be disconnected from all utility lines. External structures like carports and decks must be removed. Then, the home has to be raised up from its foundation and mounted on wheels, or placed on the back of a truck. All of these things must then be done in reverse when the home reaches its new lot. The moving process requires special equipment, and generally must be done by trained workers. Daniel Baker et al., A Window into Park Life: Findings From a Resident Survey of Nine Mobile Home Park Communities in Vermont, 6-2 J. of

Rural and Cmty. Dev. 53, 55-56 (2011). There are several variables that could increase the costs associated with moving a manufactured home. Size, axles, brakes, and hitches are common factors that can increase the costs of moving. Paul Luciano et. al., Report on the Viability and Disaster Resilience of Mobile Home Ownership and Parks, Vt. Dep't of Hous. and Cmty. Dev. (2013), http://www.leg.state.vt.us/reports/2013externalreports/295178.pdf.

In 2023, the average cost to move a manufactured home in the United States was $9,000. Andrew Keel, The Pros and Cons of Mobile Home Park Investing, Forbes, Aug. 17, 2023, https://www.forbes.com/councils/forbesbusinesscouncil/2023/08/17/the-pros-and-cons-of-mobile-home-park-investing/. Some estimates in Virginia are as high as $15,000. Charlotte Renee Woods, These new laws will take effect next month: some new laws offer more protection to residents of mobile home parks, Virginia Mercury, June 10, 2024, https://virginiamercury.com/2024/06/10/these-new-housing-laws-will-take-effect-next-month/. Additionally, a tax permit is required to move a manufactured home. Va. Code § 58.1-3520 (2024). For comparison, the annual maximum amount of Supplemental Security Income (SSI), the meager federal means-tested benefit for people with disabilities, was $11,316 in 2024. Social Security Administration, SSI Federal Payment Amounts, https://www.ssa.gov/oact/cola/SSIamts.html (last visited December 8, 2024). Even if a manufactured homeowner can afford these

costs, which may be more than the home itself is worth, many older homes are unsafe to move in the first place. Additionally, many parks will not accept older manufactured homes. Luciano, Viability and Disaster Resilience of Mobile Home Ownership and Parks at 26. Manufactured home parks have different rules for determining when a manufactured home is too old to accept, but homes older than ten years are commonly rejected from manufactured home parks. *Id*. In short, most owners do not relocate their homes because it is cost prohibitive. Government Accountability Office, Manufactured Housing at 15.

In Virginia, the law can often provide a short timeline to either move or forfeit title to a manufactured home when unforeseen circumstances, such as sudden unaffordable rent increases, make it impossible to remain in a park. If a manufactured homeowner is unable to pay rent, and is ultimately evicted on that basis, they have 90 days to sell or remove the manufactured home from the park. Va. Code § 55.1-1316 (2024). This right is conditioned upon payment of rent, retroactively and prospectively, and the landlord further takes a lien in the amount of unpaid rent. *Id*. The landlord also has the right to reject any subtenants the manufactured homeowner may secure. *Id*. If the homeowner cannot sell or rent the home within 90 days, the home is deemed "abandoned" and the landlord may seek a transfer of title under the same process used for abandoned vehicles. *See* Va. Code

§ 46.2-1200 *et seq.* (2024), including Va. Code § 46.2-1202(B) (2024) (discussing application of process to manufactured homes).

Even though manufactured homes, unlike a stick-built home, depreciate in value, many homeowners have invested tens of thousands of dollars into their homes and face the loss of that investment if forced to abandon the home. Sheelah Kolhatkar, What Happens When Investment Firms Acquire Trailer Parks, New Yorker, May 8, 2021, https://www.newyorker.com/magazine/2021/03/15/what-happens-when-investment-firms-acquire-trailer-parks. A rent increase can also make it more difficult for a resident to sell their homes. Realtors estimate that for each $100 lot rent increase, the home loses $10,000 in value. Private Equity Stakeholder Project, Private Equity Giants at 5. The inability to move their homes makes manufactured homeowners uniquely vulnerable to a lot rent increase. Sophie Kasakove, Investors Are Buying Mobile Home Parks. Residents Are Paying the Price, New York Times, March 27, 2022, https://www.nytimes.com/2022/03/27/us/mobile-home-park-ownership-costs.html. Some increases are driven by high costs for park owners such as increases in utility costs, increased property taxes, and increased wages. Abha Bhattarai, 'We're all afraid': Massive rent increases hit mobile homes, Washington Post, June 6, 2022 https://www.washingtonpost.com/business/2022/06/06/mobile-manufactured-home-rents-rising/. However, there is little data on actual increases in

costs to park owners and some residents have seen their lot rents double and triple in recent years. *Id*.

Growing corporate interest in park ownership has also contributed to the increase in lot rents. *Id*. Large investors are buying up parks across the country, including and here in the Commonwealth. Nationwide private equity backed investors own hundreds of thousands of home lots. Private Equity Stakeholder Project, Private Equity Giants at 13-17 (profiling private equity firms which own 256,300 home sites). The vulnerability of residents has made it possible for a business model that already had devastating effects on low-income seniors to be carried out at scale. *Id.* at 2.The court of appeals' opinion suggests that many mid-term increases in rent may be due to "escalation clauses" based on increased operating expenses. Yellow Mountain Vill. Mobil Home Park Ass'n v. Yellow Mountain MHP, LLC, 906 S.E.2d 144, 150 (Va. 2024). While this may be common practice in commercial leases, such leases are not subject to remedial statutes like the MHRLA or VRLTA and do not suffer from the same inherent unequal playing field. In addition, investors are attracted to manufactured home parks in large part because there are *fewer* operating costs. Industry leaders estimate that approximately 35-40% of a park's gross income goes to operating expenses compared to 50-60% in multi-family housing. Dave Reynolds and Frank Rolfe, Advantages of Mobile

Home Parks vs Apartments, American Apartment Association Property Management News, https://perma.cc/LVK2-NKVV (last visited December 8, 2024).

Lack of amenities is an explicit part of the investment strategy for many owners. Rivlin, The Cold, Hard Lessons of Mobile Home U. As Frank Rolfe, a leading park investor, stated "[w]e don't like laundry rooms or vending machines, we don't like amenities of any kind." *Id.* Residents who live in investor-owned parks report that the owners, at most, make cosmetic changes to the park while failing to provide basic maintenance. Private Equity Stakeholder Group, Private Equity Giants at 2. At a seminar on manufactured home park investing, the advice to investors is:

> look for a park that's got high occupancy and that doesn't need a lot of investment. Take out any possible amenity you'd ever need to invest in, such as a playground or a pool that's going to need insurance. Make sure it's got a nice sign, and pawn off any maintenance costs onto your tenants.

Kolhatkar, What Happens When Investment Firms Acquire Trailer Parks.

b. Manufactured home parks, as "naturally occurring affordable housing," are important for the economically vulnerable population who depend on them

In general, manufactured housing is the only form of affordable housing not subsidized by the government. *Id*. It is an incredibly important housing source considering that an average minimum wage worker would have to work 104 hours a week to afford a 2-bedroom apartment. National Low Income Housing Coalition, The GAP: Shortage of affordable homes, March 2024, https://perma.cc/S7X3-

G8AG. Approximately forty percent of all households living in manufactured homes have incomes below $30,000, compared with 21 percent of all other households, and the median income of manufactured home residents is approximately $40,000, compared with $70,000 for all other households. Herbert, Barriers at 6 (citing to 2021 American Housing Survey data). As of 2009, Nearly three quarters of households living in manufactured homes earn less than $50,000 with a median household income of $30,000. Private Equity Stakeholders Project, Private Equity Giants at 4. Research done by the Federal Reserve Bank of Philadelphia and the Pew Charitable Trust found that 48.4% of manufactured home residents had household incomes below 200% of the federal poverty limit compared with only 20% of residents in stick-built homes. Eileen Divringi, Responding to Threats to the Continued Affordability and Livability of Manufactured Homeownership Presentation, at 21, June 25, 2024, https://perma.cc/JAN5-9N38. The researchers further cited the instability caused by increased lot rents as a challenge in relying on manufactured housing as a source of affordable housing. *Id.* at 24. Because affordable housing options are so limited, residents faced with a rent increase must choose between paying the increase and foregoing other basic necessities like food and medicine or abandon their homes. Private Equity Stakeholders Project, Private Equity Giants at 5.

c. Manufactured homeowners are demographically vulnerable

The majority of manufactured homeowners are not only low-income, but often belong to other economically vulnerable groups. *See* Herbert, Barriers at 6. Nationwide, approximately 30% of manufactured home residents have a disability. Consumer Financial Protection Bureau Office of Research, Manufactured-Housing Consumer Finance at 13. Around 3.2 million people ages 60 and older live in MHCs throughout the U.S., according to the Census Bureau's Household Pulse Survey. Consumer Financial Protection Bureau, Profiles of Older Adults Living in Mobile Homes.

The U.S. Census Bureau American Community Survey (ACS) is an annual survey of the over 3.5 million households that provides detailed information on the characteristics of people and households. The ACS Survey shows that in 2019, for example, older adults ages 60 and older accounted for 22.9 percent of the population, yet they accounted for 23.8 percent of the people living in manufactured homes. See Consumer Financial Protection Bureau, Profiles of Older Adults Living in Mobile Homes. With respect to the race and ethnicity of park residents, these residents are slightly more likely to be headed by a person who is non-Hispanic white or Hispanic and less likely to be headed by someone who is Black or Asian, as compared to households residing in other types of housing. Herbert, Barriers at 7. Further, Native Americans make up approximately 14 percent of the nationwide population who live

in manufactured homes, much higher than that of Hispanic (6 percent), white (5 percent), Black (3 percent), and Asian (1 percent) residents. *Id.*

Comprehensive race and ethnicity data is not available for manufactured home communities throughout the Commonwealth. However, what demographic information is available for communities in at least some regions of the Commonwealth paints a somewhat different picture than national trends. For example, in Fairfax County, there are approximately 1,750 manufactured homes within eight manufactured home communities, six of which are located along the Richmond Highway corridor: Penn Daw Terrace, Woodley Hill Estates, Audubon Estates, Harmony Place, Engleside Mobile Home Park, and Rays Mobile Home Colony. *See* Fairfax County, Draft Application for the U.S. Department of Housing and Urban Development Preservation and Reinvestment Initiative for Community Enhancement ("PRICE") Main Competition at 11, May 6, 2024, https://perma.cc/T9SM-LNBB.

Looking at these parks suggests that at least in this county and possibly in other regions in Virginia, the majority of manufactured home community residents live in census tracts that are either majority Hispanic/Latino or where the majority of residents identify as people of color (combination of those who identify as Hispanic/Latino, Black or African American, or Asian). Further, most of these residents live in "Very High" Vulnerability areas, meaning a significant portion of

the population has low educational attainment, are severely rent burdened households, or are working in low-income occupations. *See* Fairfax County, PRICE Application at 12-14 and at *infra* Table 1.

Table 1: Fairfax County Demographics of Manufactured Home Communities

MHC Name & Census Tract	Percent of population that is…[1]				Median Family Income[2]	Income Compared to U.S. Population[3]
	Hispanic / Latino	Black	Asian	Living in Poverty[4]		
Audobon Estates Tract 4215	54%	29%	12%	(14.5%)	(Distressed: $54,295)	(Distressed: 73rd Percentile)
Harmony Place Tract 4215	54%	29%	12%	(14.5%)	(Distressed: $54,295)	(Distressed: 73rd Percentile)
Engleside Mobile Home Park Tract 4160	25%	26%	11%	(11.4%)	(Distressed: $70,625)	(Distressed: 75th Percentile)
Rays Mobile Home Colony Tract 4160	25%	26%	11%	(11.4%)	(Distressed: $70,625)	(Distressed: 75th Percentile)

[1] Fairfax County PRICE Application at 12 (citing Fairfax County Vulnerability Index Map (2016-2020)).

[2] Fairfax County PRICE Application at 6 Table 1 & n. 7. This criterion is defined as whether the median family income is "at or below 80% of the Metropolitan Area median family income or national Metropolitan area family income, whichever is greater." *Id.* at n.7; *see also* 12 CFR § 1805.201(b)(3)(ii)(D)(2)(i) Median household income for the Washington Arlington-Alexandria MSA as of 2024 HUD Income is $154,700. 80% of that is $123,760.

[3] Fairfax County PRICE Application at 6 Table 1 & n. 9.. The higher the percentile, the more distressed the area.

[4] Fairfax County PRICE Application at 6 Table 1 & n. 6. This criterion is defined as the "percent of [the] population living in poverty is at least 20%." *Id*. at n. 6; *see also* 12 CFR § 1805.201(b)(3)(ii)(D)(1).

Penn Daw Terrace Tract 4151	23%	9%	6%	(4.1%)	(Distressed: $111,500)	34th Percentile
Woodley Hills Estates Tract 4154.01	33%	35%	11%	(18.6%)	(Distressed: $103,017)	45th Percentile
Waples Mill Estates Tract 4406	22%	5%	26%	(4.6%)	($128,885)	28th Percentile
Meadows of Chantilly Tract 4901.04	44%	4%	13%	(7.4%)	(Distressed [5] : $60,329)	92nd Percentile

2. The history and structure of Virginia's Manufactured Home Lot Rental Act show a half century of careful regulation to protect vulnerable homeowners.

a. The Act's original passage and the impetus behind it.

Due to the unique characteristics of manufactured homeownership, the General Assembly first enacted the MHLRA in 1975, one year after enactment of

[5] A locality that meets the "distress" criteria is defined as an investment area (or the units that comprise an area) that "meet[s] at least one" of certain objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census) that further depend on whether the jurisdiction is within or outside of an urban or Metropolitan area. 12 CFR § 1805.201(b)(3)(ii)(D). For jurisdictions that are within an urban or Metropolitan area, the distress criteria are: (1) the percentage of the population that lives in poverty; (2) whether the area's median income ("AMI") is below a certain threshold of the Metropolitan AMI or that of the national AMI; and (3) the unemployment rate. *See* Fairfax County, PRICE Application at 6-7 and n. 6, 7, 9.

the Virginia Residential and Landlord Tenant Act ("VRLTA"). Originally titled "the Mobile Home Lot Rental Act," its name was updated in 1992, likely to reflect the long-understood reality that so-called "mobile homes" are usually not mobile.

Both the VRLTA and the MHLRA were enacted on the recommendation of the Virginia Housing Study Commission ("Commission"). S. Doc. No. 10, Report of the Virginia Housing Study Commission, November 1973 (Va. 1973); H. Doc. No. 15, Interim Report of the Virginia Housing Study Commission, November 1974 (Va. 1974). The Commission was formed by the General Assembly in 1970 to (1) study how to provide Virginia's "growing population with adequate housing"; (2) determine if Virginia's "laws were adequate to meet the present and future housing needs of all income groups"; and (3) recommend appropriate legislative changes. H. Doc. No. 24, 1979 Annual Report of the Virginia Housing Study Commission (Va. 1980).

The Commission's 1975 Interim Report recommended the enactment of the MHLRA in response to the General Assembly's charge to consider, among other things, "problems associated with the ownership and rental of mobile homes and park sites." H. Doc. No. 15, p. 1. In the report, the Commission identified a "serious imbalance in the bargaining powers of mobile homeowners in favor of mobile home park landlords." *Id*. at 4.

The enactment of both the VRLTA and MHLRA took place against a national backdrop of similar reforms passed in most other states. As early as 1981, a significant number of states enshrined the requirement of a one-year lease in their manufactured home lot tenancy statutes. *See* Russell E. Lovell II, The Iowa Uniform Residential Landlord and Tenant Act and the Iowa Mobile Home Parks Residential Landlord and Tenant Act, 31 Drake L. Rev. 253, 308 (1981) https://drakelawreview.org/wp-content/uploads/2016/09/lovell1.pdf; *see also* Conn. Gen. Stat. § 21-70 (1981); N.J. Gen. Stat. § 46.8C-4(b) (1981); N.Y. Real Property Law § 233 (1981). Virginia did not add such a requirement until 1992, the same year the name of the Act was changed to reflect that manufactured homes are very often not truly "mobile.", H. 507, 1992 Gen. Assemb. Regular Session, Ch. 709 (Va. 1992). The 1992 one-year lease requirement remains more or less the same language in today's MHLRA. As of 2015, at least fifteen other states had similar one-year lease requirements. National Consumer Law Center, Protecting Fundamental Freedoms in Communities at 5, January 2015, https://perma.cc/U28T-HJEW.

In its 1975 legislative update, the Virginia Law Review explained that the MHLRA provided heightened protections for tenants:

> The 1975 Mobile Home Lot Rental Act provides strong state regulation of mobile home landlord-tenant relations. Drawing heavily on the 1974 Residential Landlord and Tenant Act, the new statute sharply constricts the ability of mobile home park lessors to take advantage of their superior economic position. …

Property, 61 Va. L. Rev. 1834, 1842-43 (1975). It is logical to infer from their establishment of these heightened protections that the General Assembly understood the distinctive vulnerabilities of manufactured homeowners living on rented lots.

b. Tenant protections in the MHLRA and VRLTA.

The MHLRA and VRLTA include many similar protections for tenants, particularly as the MHLRA specifically incorporates several provisions of the VRLTA. Va. Code § 55.1-1311. Both acts require that all property rules be reasonable and sufficiently explicit, and must apply to all tenants fairly. Va. Code §§ 55.1-1228, -1311 (2024). Both acts prohibit and declare unenforceable lease provisions through which a tenant waives or foregoes any codified rights, confesses judgment, indemnifies the landlord, or is liable for attorney fees beyond what the Code provides. Va. Code §§ 55.1-1208, -1311 (2024). Under both acts, a tenant may terminate their lease for the landlord's material noncompliance. Va. Code §§ 55.1-1234, -1311 (2024). Certain tenants may terminate their lease early. Va. Code §§ 55.1-1235, -1236, -1311 (2024). Remedies are available to tenants for the landlord's wrongful failure to supply essential services, for unlawful exclusion by the landlord, and for the landlord's material noncompliance (tenant's assertion). Va. Code §§ 55.1-1239, 1243.1, -1244, -1311. A landlord's noncompliance is available as a defense to an action for possession for nonpayment. Va. Code §§ 1241, -1311.

Finally, a tenant has a right to redeem through full payment up until 48 hours before a sheriff's eviction. Va. Code §§ 1241, -1311.

But the MHLRA offers many additional tenant protections not found in the VRLTA. Although oral leases are not favored under the VRLTA, Va. Code § 55.1-1204(B) ("A landlord shall offer a prospective tenant a written rental agreement"), the VRLTA provides statutory lease terms for tenancies without written leases, establishing that oral leases, while not favored, are permitted. By contrast, the MHLRA not only requires written rental agreements, Va. Code § 55.1-1301 (2024)(A), but also affords tenants who are not offered one a private cause of action for damages and reasonable attorney fees. Va. Code § 55.1-1318 (2024). As is most relevant to this case, while the VRLTA allows landlords to offer leases of any duration they choose, MHLRA landlords must offer a lease of a year or more that renews on the same terms and for the same duration unless either party gives 60 days' notice of non-renewal prior to the lease's "expiration date." Va. Code § 55.1-1302 (2024). Notably, the term "expiration date" replaced the earlier term "termination date" when the entirety of Title 55 of the Virginia Code was transferred to Title 55.1 in 2019. *Compare* Va. Code § 55.1-1302 (2019) ("Upon the expiration of a rental agreement, the agreement shall be automatically renewed for a term of one year with the same terms unless 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**)

(emphasis added) *with* Va. Code § 55-248.42:1 (2018) (prior version using term "termination date").

Under the MHLRA, a landlord must provide tenants with 180 days' notice of a change in the use of the park; the VRLTA only requires 120 days' notice for changes in use of multifamily dwellings. Va. Code §§ 55.1-1208, -1308 (2024). The MHLRA requires localities to notify affected park tenants if a landlord fails to remedy violations of ordinances related to health and safety within seven days, Va. Code § 55.1-1313 (2024), and provides statutory damages equal to one month's rent for a landlord's willful violation of certain MHLRA provisions. Va. Code § 55.1-1318 (2024). The VRLTA contains neither of these tenant-friendly provisions.

The MHLRA, unlike the VRLTA, also states that tenants may only be required by the lease to pay "fixed rent" and other allowed charges. Va. Code § 55.1-1301. While the one-year lease requirement was not added until 1992, the MHLRA has required since its inception that rent be "fixed." Va. Code § 55-248.42 (1975). The court of appeals panel completely misinterpreted this provision in its decision below. The panel stated they "understand the term 'fixed rent' simply to require some sort of ascertainable amount. … [T]he contract must provide a specific formula or method for ascertaining the amount of rent for discrete periods of time." Yellow Mountain Vill. Mobil Home Park Ass'n v. Yellow Mountain MHP, LLC, 906 S.E.2d 144, 150 (Va. Ct. App. 2024). But this Court clearly distinguishes between a "fixed"

amount and an amount that is merely "ascertainable" by some means in a contract. Wilburn v. Mangano, 851 S.E.2d 474, 476–77 (Va. 2020) (citing Parker v. Murphy, 146 S.E. 254, 257 (Va. 1929) ("It is elementary that, [i]n all contracts of sale the price is, of course, a material term. It must *either* be fixed by the agreement itself, *or* means must therein be provided for ascertaining it with certainty." (Internal quotations and cites omitted; emphasis added.)). This clear distinction cannot be arbitrarily dispensed within the context of an MHRLA-governed lot lease.

c. Homeownership rights are protected in the MHLRA.

Unlike the VRLTA, the MHLRA recognizes and protects certain rights related to homeownership. The lopsided power imbalance the Virginia Housing Study Commission identified in favor of manufactured home park landlords is largely because of the common split between homeownership and tenancy on a rented lot. The MHLRA was intended to lessen that imbalance by allowing the many tenants in manufactured housing communities who own their homes to maintain key property rights that any other homeowners would have. These include the right to benefit financially from their property interest by selling or renting their home in the park.

There are additional protections in the MHLRA that support homeowners. For example, as is at the heart of this case, a landlord must offer a lease with a term of one year or more. Va. Code § 55.1-1302 (2024). Manufactured homeowners have a

number of other rights as well. For example, a lot landlord must pay $5,000 to manufactured homeowners displaced by a change of park use. Va. Code § 55.1-1308.1 (2024). Landlords are prohibited from unreasonably restricting a homeowner's sale or rental of a manufactured home located within the park. Va. Code § 55.1-1310 (2024). Landlords must provide manufactured homeowners at least a limited right to sell or rent their home in the park even after they have been evicted from the lot. Va. Code § 55.1-1316 (2024). A landlord must also provide notice to tenants of their intent to sell a park, so that tenants and homeowners can make a competing purchase offer. Va. Code § 55.1-1308.2 (2024).

3. The lack of a limiting principle in the court of appeals' decision threatens to upend the general assembly's lawful regulation of Virginia's economy far beyond manufactured housing

a. The court of appeals decision will lead to wide-ranging, unintended, and absurd results

By the logic of the court of appeals' decision below, any lot landlord with the same incredibly broad "take it or leave it" clause, just a few words hidden among many pages of specific rights and responsibilities, can at any time modify any of those specific terms of a "one year lease." This includes but is not limited to just the amount of monthly rent. This outcome ignores decades of careful and evolving regulation of residential tenancies, in Virginia and across the nation. It also has the potential to seriously weaken other carefully constructed regulatory schemes in other sectors of Virginia's economy. If this sweeping decision stands, it will be a basis for

dismantling not only longstanding guardrails in landlord-tenant law, but will also undercut many other aspects of the daily lives of the Commonwealth's residents and create uncertainty throughout the Commonwealth's economy in general.

This case involves a $150 monthly rent increase, or $1,800 annual increase. While an additional $150 per month may feel *de minimis* to people with significant disposable income, this increase cuts deeply for the almost exclusively low-income manufactured homeowners living on rented land. $150 is 16% of the maximum amount of Supplemental Security Income (SSI), the meager federal means-tested benefit for people with disabilities, in 2024. Social Security Administration, SSI Federal Payment Amounts, https://www.ssa.gov/oact/cola/SSIamts.html (last visited December 8, 2024). Even for those who do not rely on SSI, $150 still represents an unanticipated 37.5% increase in rent, as early as one sixth of the way through what a reasonable person would believe was a one-year lease term.

Even if we can imagine hypothetical manufactured homeowners that could easily afford a 37.5% rent increase, neither the Landlord nor the court of appeals articulates any limiting principle that would prevent a monthly increase of $1,500, or even $15,000. Instead, while sidestepping the clear will of the Legislature, both the Landlord and the court of appeals labeled the Homeowners' arguments that they should enjoy the modest protection of one-year of predictable rent as "rent control." Yellow Mountain Vill. Mobil Home Park Ass'n, 906 S.E.2d at 150. The MHLRA's

"fixed rent" requirement is not "rent control." As most people understand it, "rent control" involves statutory limits on the amount by which landlords can impose rent increases on their tenants, as opposed to preventing landlords from changing the rent at whim midway through a previously contracted lease term. The limited protection fixing lease terms merely gives some assurance to manufactured homeowners that their rent will be fixed and predictable for at least one year at a time, which helps protect the investment they have made in their manufactured home which rarely, if ever, can be moved.

In this case, rent was increased shortly after the Tenants signed their "one year" lease. The following scenario shows how the court of appeals' opinion could be used in an even more exploitative fashion. Suppose that a landlord advertises lots for rent for $400 monthly, and the sale of a manufactured home sitting on that lot with terms including a $5,000 down payment. Tenant and landlord sign a one-year lot lease on July 1 at 9:00 AM, with rent of $400 per month as advertised. At 3:00 PM that afternoon, the landlord serves a notice doubling the rent to $800 effective September 1. No longer able to afford the rent, the tenant either abandons what is now an unaffordable property, or worse, is evicted and earns a permanent black mark on their ability to secure future housing. Furthermore, but if the tenant is unable to sell the home, which is effectively not "mobile" and is now subject to unaffordable lot rent of $800 per month, both the title to the home and the tenant's $5,000 would stay

with the landlord through the "abandonment" process. Under the right conditions, a landlord could repeat this process two or three times per year, and could do so within the letter of the law if the current court of appeals decision stands.

Of course, this case is not solely about claiming the unilateral right to merely change the amount of rent in the middle of a lease term. Clause 1(d) allows the landlord to change any provision in the lease in the middle of a lease term.[6] Ostensibly this would allow for the landlord to suddenly demand that rent be paid weekly, not monthly. A landlord could suddenly decide to change "approved occupants" without otherwise asserting cause to do so, thus separating families. Under the court of appeals rollback of longstanding protections, a lot landlord could even require a manufactured homeowner to move their home to a different lot in the park – a likely impossible ask that would result not only in potential eviction but also loss of equity and title to the home because typically, the homeowner could neither sell nor move the home in the short window of time available.

Although we presume that commercial actors have roughly equal levels of sophistication and parity in bargaining power, even the terms of commercial

[6] In briefing before the court of appeals, the Landlord raises the strawman hypothetical: "Under Tenants' interpretation, a party would be barred from updating its address (i.e., a modification of the notice provision) because the change would not have been memorialized in a signed amendment." *Appellee's Court of Appeals Brief* at 7. Of course, changing one's address doesn't constructively force an early termination of the lease mid-term by making it unaffordable or unworkable, which makes the Landlord's analogy completely fall apart.

contracts must have some limits. For example, imagine a "mom and pop" lot landlord refinances their manufactured home park to conduct necessary repairs. Could a lender use a clause like Clause 1(d) of the lease at issue to add a provision authorizing judgment by confession, maybe many years after the execution of the original contract? Or to double the principal balance of the loan? Or to change the period of repayment from 10 years to 2? These hypothetical outcomes are obviously absurd, but no more so than the actual outcome of this case.

Even for commercial contracts, "freedom of contract" has legislatively imposed limits. Take, for example, the Uniform Commercial Code (UCC), a sprawling set of statutes that comprehensively regulates the core aspects of our commercial economy, including regulating allowable terms and the meanings of terms in contracts between commercial actors. The UCC legislatively declares that the intent of these restrictions is, in part, "to make uniform the law among the various jurisdictions." Va. Code § 8.1A-103 (2024); *see also* Navy Fed. Credit Union v. Lentz, 890 S.E.2d 827, 832 (Va. Ct. App. 2023) (holding that the UCC preemption of a common law negligence claim was in keeping with "uniformity in conclusions of law… one of the hallmark principles of the UCC.")

Even where the purpose of regulating contracts is uniformity and predictability, rather than protecting the vulnerable, courts have long recognized the limits of "freedom of contract." A 1984 concurrence in the West Virginia Supreme

Court, recognizing the primacy of the UCC over the general freedom to contract, explained the proper balance like this:

> "Freedom of contract" means freedom to agree or assent; not freedom to be forced to agree, to be presumed to have assented, to be cornered into something that one has not remotely considered, or to be denied meaningful choice. This theoretical and philosophical argument underlies the evolution of contract law and this concurrence. "Freedom of contract" does not vindicate tolerance of blatant inequities or unconscionable acts. Our society values fundamental fairness, equality, honesty, cooperation and ethics… [which is why the UCC has] provisions relieving against the "you are bound by what you signed" rule.

McGinnis v. Cayton, 312 S.E.2d 765, 772 (W. Va. 1984). Commercial regulation like the UCC places limitations on the right to contract to ensure uniform expectations and predictability, thus guaranteeing that parties to a contract have exercised meaningful choice. The law dictates that manufactured homeowners be accorded at least the same level of predictability and clear expectation, at least during each year's term, of how much rent they must pay and the lease terms they must follow.

b. "Freedom of contract" cannot thwart a "clearly expressed legislative prohibition," especially in situations involving the fundamental property interest of the right to continued residence in one's home, and long recognized as rife with disparate bargaining power and contracts of adhesion

The General Assembly believed it was necessary to provide at least some modest extra protection to manufactured homeowners who have "chained themselves to the Waffle House booth," by giving them at least one year of

predictable rent. It is notable that, in doing so, both the court of appeals and the Landlord rely exclusively on cases involving commercial tenancies. These cases do not implicate the constitutionally protected fundamental property interest tenants have in the "right to continued residence in their homes." Greene v. Lindsey, 456 U.S. 444, 451 (1982). Moreover, commercial tenancies involve contracts between relatively more sophisticated parties, who are generally presumed to have equal bargaining power. In contrast, both the MHLRA and the VRLTA are part of a venerable regime of law that guarded against the long-recognized problem of contracts of adhesion in residential tenancies, where the bargaining power is always decidedly in favor of the landlord. It is also notable that neither case cited by the court of appeals invoking "freedom of contract" did so to thwart a "clearly expressed legislative prohibition," such as the requirement in this case that a lot landlord must offer a one-year lease with a "fixed rent." The case Commonwealth Div. of Risk Mgmt. v. Virginia Ass'n of Ctys. Group Self Ins. Risk Pool, 787 S.E.2d 151 (Va. 2016), was between a Commonwealth agency and an insurance company to determine the extent of coverage between two overlapping insurance policies in a jail liability case. This Court's holding refused to add words to a statute in order to recharacterize one of two alternative primary coverage liability policies as excess coverage, rather than alternative primary coverage. In doing so, the Court found that the statute at issue did not expressly preclude jails from purchasing alternative

primary coverage policies. *Id*. at 143. Per the Court, in the "**absence of any clearly expressed legislative prohibition,**" it would decline to interfere in the freedom of a jail to purchase whatever configuration of coverage that it chose to do. *Id*. (emphasis added).

Further, the case cited in *Commonwealth Div. of Risk Mgmt.* To support the court of appeals' proposition of the supremacy of "freedom of contract" over a clear legislative prohibition has no bearing here. That case, Atl. Greyhound Lines v. Skinner, 2 S.E.2d 441 (Va. 1939), interpreted an exception to the federal Hepburn Act statute limiting liability of common carriers for passengers who did not pay for their tickets. However, the quote in *Skinner* referencing freedom of contract derives from a *Lochner*-era United States Supreme Court decision that predated the Hepburn Act and instead navigated the tension between contractual language and judicially imposed "public policy." *Id*. at 442. In other words, neither of the cases the court of appeals cited for the primacy of "freedom of contract" involved judicial decisions supplanting legislative will, as does the case at bar.

When it comes to regulating residential tenancies, the law could not be clearer that freedom of contract can be abrogated by express legislative prohibition. Va. Code § 55.1-1208 (2024), which is incorporated into the MHLRA through Va. Code § 55.1-1311, extends the protections enjoyed by other residential tenants to manufactured homeowners. One of the most important protections is Va. Code 55.1-

1208(A)(1), which simply says "[a] rental agreement shall not contain provisions that the tenant: ... [a]grees to waive or forgo rights or remedies under this chapter." Parrish v. Vance, 898 S.E.2d 407, 411 (Va. 2024) ("[W]hen a lease provision purports to waive tenant's rights or remedies required by law, the law controls and the lease provision is unenforceable"); *see also* Sweeney v. W. Group, Inc., 527 S.E.2d 787, 786 (Va. 2000); *see also* Va. Code § 55.1-1301(A) (2024) (prohibiting lease provisions contrary to the MHLRA).

The prohibition against contracting away VRLTA protections is taken verbatim from the language used in the Uniform Residential Landlord Tenant Act (URLTA). Uniform Residential Landlord and Tenant Act § 1.401(a)(1) (1972). The URLTA drafting commentary recognized that "[r]ental agreements are often executed on forms provided by landlords, and some contain adhesion clauses the use of which is prohibited by this section…" *Id*. This provision was retained, verbatim, in the most recent update to URLTA circa 2015, along with prohibitions against confessing judgment, attorney fees, waivers of habitability, and exculpation of landlord liability. Revised Uniform Residential Landlord Tenant Act § 203(a)(1) (2015); *see also* Va. Code 55.1-1208 (2024) (containing similar prohibitions and additional terms prohibited in Virginia).

Thus, the VRLTA is only one of many protective laws meant to address situations like residential tenancies where bargaining power is uniformly out of

balance in favor of one party, here landlords. For example, the Virginia Consumer Protection Act lists 82 prohibited practices, many of which constrain or render unenforceable contractual provisions between consumers and various commercial actors, as well as creating public and private remedies when these prohibited practices are employed. Va. Code § 59.1-200 (2024); s*ee also* FTC Credit Practices rule, 16 C.F.R. § 444.2 (2024) (barring use against consumers per se unfair contractual provisions like confessions of judgment or waivers of exemption); *see also* the federal Truth in Lending Act, 15 U.S.C. § 1601 (2024) *et seq.* (a comprehensive federal statute requiring the true cost of credit be explained accurately and in a way that an unsophisticated consumer could understand, and in some cases invalidating security interests when violated). This understanding of inherently unequal bargaining power has also led the majority of federal and state courts in cases interpreting when a communication from a debt collector may violate the Fair Debt Collection Practices Act to supplant a reasonable person test with the so-called "least sophisticated consumer standard." *See, e.g.* Elyazidi v. SunTrust Bank, 780 F.3d 227, 234 (4th Cir. 2015). This standard directs a court to "consider how a naive consumer would interpret [a] statement" from a debt collector when that statement would "frustrate [the least sophisticated] consumer's ability to intelligently choose his or her response[.]" *Id*. In short, courts necessarily limit "freedom of contract" every day, by enacting clear and unambiguous legislative directives like

the MHRLA's one-year lease requirement that are meant to level an otherwise hopelessly unequal playing field.

Clauses 1(c) and 1(d) as utilized by the Landlord in this case are among the most expansive types of adhesion clauses one could imagine. They allow the Landlord, and only the Landlord, to unilaterally change the terms of the agreement at any point during the term of the lease. The agreement at issue is drafted by the Landlord, who has decidedly more bargaining power in a residential tenancy than an individual tenant, a commonsense observation long codified in the VRLTA. This is especially true for manufactured homeowners, who have made a significant investment in the homes that they own and maintain, but could lose very quickly without recovering a cent of equity – under the contracts upheld by the court of appeals, essentially at the whim of the Landlord. The unilateral modifications allowed by Clauses 1(c) and 1(d) have no limits, and require no additional consideration or benefit to be given to the tenant in return.

Freedom of contract is not an absolute, and has long been tempered by laws protecting the public welfare. *See, e.g.,* Sweat v. Commonwealth, 148 S.E. 774, 779 (Va. 1929) (quoting Palmore v. Baltimore & O.R. Co., 142 A. 495, 496 (Md. 1928)) ("While it is true as a general rule that all competent persons are free to make any contracts they please which are not contrary to public policy or positive law, that rule is subject to the qualification that the State, in the exercise of its police power

and in the public welfare, may regulate and limit that right.") (quotations omitted). The court of appeals decision below has upset that careful balance, creating great uncertainty, necessitating review by this Court.

CONCLUSION

For the reasons stated above, the Amici collectively urge this Court to grant the Petition for Appeal and set this case for argument on its merits.

Respectfully Submitted,

/S/Victoria Horrock, Esq.
Victoria Horrock (VSB #94625)
Legal Aid Justice Center
1000 Preston Ave Suite A
Charlottesville, VA 22903
victoria@justice4all.org
T: (434) 466-2233
F: (434) 288-0431

/S/Steven Fischbach, Esq.
Steve Fischbach (VSB #94280)
Virginia Poverty Law Center
919 East Main St. Suite 610
Richmond, Virginia 23219
steve@vplc.org
T:(804) 351-5266

CERTIFICATE

Pursuant to Rules 5:17(i) and 5:30(c), the undersigned certifies:

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

2. Counsel for Petitioners are:

Jarryd Smith (VSB No. 92530)
LEGAL AID SOCIETY OF ROANOKE VALLEY
541 Luck Avenue, Suite 118
Roanoke, Virginia 24016
Telephone: (540) 344-2087

Facsimile: (540) 342-3064
Emai;: Jarryd@lasrv.org

Brandon Ballard (VSB No. 95346)
LEGAL AID SOCIETY OF EASTERN VIRGINIA
125 St. Paul's Boulevard Suite 400
Norfolk, VA 23510
Telephone: (757) 648-1241
Facsimile: (757) 622-8102
Email: brandonb@laseva.org

3. Respondent is Yellow Mountain MHP, LLC.
4. Counsel for Respondent are:

Justin S. Feinman (VSB No. 87511)
John A. Irvin (VBS No. 97044)
Williams Mullen
200 South Tenth St., Suite 1600
P.O. Box 1320
Richmond, VA 23218
T: (804) 420-6507
Email: jfeinman@williamsmullen.com
Email: jirvin@williamsmullen.com

5. A PDF copy of this brief amicus curiae in support of the Petition for Appeal was filed with the Supreme Court of Virginia, via VACES, and served by electronic mail on counsel for Petitioners and Respondents on December 9, 2024, to the addresses listed in the captions for each.
6. Pursuant to Rule 5:17(f), exclusive of the cover page, table of contents, table of authorities, signature block, and certificate, this amicus brief does not exceed the longer of 35 pages or 6,125 words. The page count of the countable portion of the brief is 34, and the word count including footnotes is 8,214.

Dated: December 9, 2024

/s/ Victoria Horrock, Esq.
VSB#94625
Counsel for Amici