IN THE
SUPREME COURT OF VIRGINIA

Record No. 241025

COURT OF APPEALS RECORD NO. 1860-23-3

LLOYD RICE and CHRISTINE ANDRADE,

Petitioners,

– v. –

WOODROCK RIVER WALK LLC,

Respondent.

BRIEF OF *AMICI CURIAE* BLUE RIDGE LEGAL SERVICES, CENTRAL VIRGINIA LEGAL AID SOCIETY, LEGAL AID JUSTICE CENTER, LEGAL AID SOCIETY OF EASTERN VIRGINIA, LEGAL AID WORKS, LEGAL SERVICES OF NORTHERN VIRGINIA, SOUTHWEST VIRGINIA LEGAL AID SOCIETY, VIRGINIA LEGAL AID SOCIETY, AND THE NATIONAL HOUSING LAW PROJECT, IN SUPPORT OF PETITIONERS RICE AND ANDRADE'S PETITION FOR APPEAL

Colleen OConor, #95915
Legal Services of
Northern Virginia
10700 Page Ave. #100
Fairfax, VA 22201
(571) 858-3900
(571) 260-5357 (fax)
coconor@lsnv.org

Eric Dunn, #91778
National Housing Law
Project
919 E Main St. #610
Richmond, VA 23219
(415) 546-7000
(415) 546-7007 (fax)
edunn@nhlp.org

Brandon Ballard, #95346
Legal Aid Society of
Eastern Virginia
125 St. Paul's Blvd. #400
Norfolk, VA. 23510
(757) 648-1241
(757) 622-8102 (fax)
brandonb@laseva.org

Counsel for Amici

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INTEREST OF AMICUS GROUPS

Amici Blue Ridge Legal Services, Central Virginia Legal Aid Society, Legal Aid Justice Center, Legal Aid Society of Eastern Virginia, Legal Aid Works, Legal Services of Northern Virginia, Southwest Virginia Legal Aid Society, and Virginia Legal Aid Society ("Legal Aid Amici") are civil legal aid organizations operating within the Commonwealth of Virginia. Legal Aid Amici provide free legal representation to low-income Virginians on a wide range of civil matters, including defending tenants in court eviction actions. Collectively, Legal Aid Amici have decades of experience handling unlawful detainers across the Commonwealth. Legal Aid Amici have successfully argued throughout Virginia that the 30-day notice provision of the CARES Act at issue in this case prevents landlords from obtaining judgments in cases involving properties subject to the CARES Act, unless landlords wait 30 days from the date the termination notice is given before filing an eviction action.

Amicus National Housing Law Project ("NHLP") is a nonprofit organization that works to advance tenants' rights, 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. NHLP coordinates the Housing Justice Network, which now includes more than 2,200

legal aid lawyers and other housing advocates across the United States. Throughout the COVID-19 pandemic and its economic aftermath, NHLP and HJN Network members have been at the front line in the struggle to keep people housed. This includes advocating at the federal level and in multiple states for tenant protections and relief funding, creating resources to help tenants learn about and advance rights and protections, providing training for a broad array of advocates and other stakeholders, and supplying leadership through national workgroups, communications, and media. The CARES Act notice requirement is central to the work of NHLP and Housing Justice Network members.

INTRODUCTION

Amici urge this Court to grant Lloyd Rice and Christina Andrade's ("Tenants") Petition for Appeal to correct the Court of Appeals' erroneous interpretation of the federal Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). In 2020, Congress enacted the CARES Act to address the economic fallout from the COVID-19 pandemic. Pub. L. No. 116-136, 134 Stat. 281, § 4024 (2020) (codified at 15 U.S.C. § 9058). As relevant here, the CARES Act provides that a "lessor of a covered dwelling unit . . . may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." 15 U.S.C. § 9058(c)(1) ("the CARES Act 30-day notice requirement.").

The CARES Act 30-day notice requirement only binds landlords that receive significant benefits by participating in certain federal housing programs, including Section 8 properties, Low-Income Housing Tax Credit properties, and rental properties secured by federally backed mortgages. In exchange for the economic benefits they receive through such programs, these landlords agree to be bound by terms and conditions periodically enacted or promulgated by, respectively, Congress or the federal regulating agency.

Under the CARES Act 30-day notice requirement, a covered landlord intending to pursue an eviction for unpaid rent must first give the tenant a notice informing them they are not required to vacate for the next 30 days. Because in all states summary eviction actions only become ripe if and when a tenant remains in the premises despite no longer having the right to do so, a covered landlord must wait until after the 30-day notice expires before filing an eviction action. In Virginia, this ripeness requirement is codified at Va. Code § 8.01-126(B).

The opinion below authorizes a CARES Act covered landlord to file a summary eviction case during the 30-day notice period—before the tenant is required to vacate—and thus ignores this basic ripeness requirement and the plain language of the CARES Act. In so doing, the Court of Appeals created a split of authority with the four other state appellate courts that have addressed the CARES Act 30-day notice requirement.

This erroneous decision will adversely affect hundreds of thousands of Virginia families who are entitled to this federal protection, which often makes it possible for these households—who, under Virginia law, would generally only be entitled to five days' notice to pay or vacate—to catch up on rent and remain in their homes, neighborhoods, and school districts. Given the expedited nature of eviction proceedings and the high stakes for families in these eviction cases,[1] it is critical that this Court correct the Court of Appeals' ruling and enforce the plain language of the CARES Act 30-day notice requirement.

STATEMENT OF FACTS, PROCEDURAL POSTURE, STANDARD OF REVIEW, AND ASSIGNMENTS OF ERROR

Amici adopt the statement of facts, procedural posture, assignments of error, and standard of review as set forth in the Petitioners' Petition for Appeal.

[1] *E.g.* Karen A. Sabbeth, *Erasing the Scarlet E of Evictions*, The Appeal (Apr. 12, 2021), https://perma.cc/PE52-9DP2 ("Any eviction filing creates a 'Scarlet E' that can haunt a tenant for years. . . . Prospective landlords [] purchase [such] information or pay tenant-screening companies to assess prospective tenants on the basis of these records. With many landlords, a prior eviction will be a complete bar to accepting a rental housing application. Others consider it as one of several factors or use it as a basis to charge a higher deposit. Eviction judgments also undermine opportunities for employment, insurance, and, more broadly, any activities that depend on good credit. While evictions push people from their homes, records of those evictions can effectively banish people from civil society.")

ARGUMENT

I. Rental properties that receive benefits from a federal housing program—more than one fourth of all rental housing—must comply with the CARES Act 30-day notice requirement, which slightly delays when a landlord may initiate a summary eviction action for unpaid rent.

Over 12.3 million units, or 28.1 percent of the nationwide stock of 43.8 million rental units, are federally financed and thus covered[2] under the CARES Act. Laurie Goodman et. al., Urban Institute, *The CARES Act Eviction Moratorium Covers All Federally Financed Rental—That's One in Four US Rental Units* (Apr. 2, 2020), https://perma.cc/6LRZ-R6WX. In addition, approximately seven million U.S. rental units are assisted through housing vouchers or other federal subsidies. Congressional Research Service, *CARES Act Eviction Moratorium*, 2 (Apr. 7, 2020), https://crsreports.congress.gov/product/pdf/IN/IN11320. And more than 3.65 million Low-Income Housing Tax Credit ("LIHTC") units have been placed in service from 1987 through 2022. Department of Housing and Urban Development ("HUD"), Office of Policy Dev. & Research, *Low-Income*

[2] The CARES Act notice requirement applies to a "lessor of a covered dwelling unit." 15 U.S.C. § 9058(c)(1). A "covered dwelling" is a dwelling that is occupied by a tenant who resides at a "covered property." *Id*.(a)(1). A tenant lives at a "covered property," and therefore occupies a covered dwelling unit, if the property receives support or subsidies from one of the types of federal housing programs outlined in 15 U.S.C. § 9058(a)(2).

Housing Tax Credits: Property Level Data (last revised Apr. 12, 2024), https://perma.cc/8AEQ-JNTM.

While the exact number of CARES Act covered properties is unknown, there are at least hundreds of thousands of units in Virginia that are covered by the CARES Act. A property may participate in more than one of these federal housing programs, making it difficult to calculate the precise number of CARES Act covered properties, as some may be counted more than once. For example, a landlord may participate in the LIHTC program and have a federally backed mortgage loan or accept Housing Choice Vouchers. Additionally, there are no publicly available participant lists for certain federal housing programs. However, data is available on the number of Virginia rental units that are directly assisted by certain subsidies, that were developed under the LIHTC program, or that have federally backed mortgages.

According to HUD's "Picture of Subsidized Households" dataset, Virginia has around 107,000 federally subsidized housing units with almost 200,000 Virginia tenants living in these subsidized units. The breakdown of tenancies that are part of these federal housing programs in Virginia is as follows:

Subsidized Housing Program	Number of Units	Number of People
Public Housing	13,280	26,304
Housing Choice Voucher	60,083	118,255
Moderate Rehabilitation	183	329
Project-Based Section 8	30,713	51,971
Section 202 Elderly Housing	2,266	2,300
Section 811 Disabled Housing	651	585
Totals	**107,175**	**199,744**

HUD, Office of Policy Dev. & Research, *Assisted Housing: National and Local* (2023), https://perma.cc/BC8D-6H8B. Moreover, a query to HUD's LIHTC Database reveals there are 108,648 LIHTC units in Virginia, of which 103,616 are reserved for families earning less than 60% of annual median income. HUD, *LIHTC Database Access* (last accessed Dec. 6, 2024), https://lihtc.huduser.gov/. Petitioners calculated that 305,200 rental units in Virginia likely have federally backed mortgages. Petition for Appeal at 1 n.1, *Rice et al. v. Woodrock River Walk LLC,* Record No. 241025 (Dec. 2, 2024) ("Pet.").

The large number of CARES Act covered properties in Virginia is unsurprising. Corporate landlords and developers often participate in federal housing programs because they receive significant benefits from the federal

government at taxpayer expense. In exchange, they subject themselves to certain requirements. Compliance with these duties is a quid pro quo which ensures that taxpayer money is effectively spent to achieve the programs' goal of helping vulnerable people acquire and maintain housing.

The Section 8 Program, for example, helps eligible low-income families pay rent and avoid homelessness by subsidizing a portion of a tenant's rent. There are two main types of Section 8 subsidies. The first is "project based," where the government subsidy is attached to the property and directly provided to the owner of a multifamily residential project, and the subsidy remains with the unit. The second type is "tenant based" and called the Housing Choice Voucher ("HCV") program. Under this program, the subsidy remains with the tenant. The HCV program provides money distributed through Public Housing Authorities ("PHAs"), paid on a tenant's behalf to landlords who choose to participate in the program. *See generally* 42 U.S.C. § 1437f.

Section 8 programs obviously benefit tenants, but they also benefit landlords, too. First, rent payments are guaranteed, with PHAs making up the shortfall even when tenants experience income loss. 24 C.F.R. § 982.505. Second, landlords gain access to a large tenant base, consisting of millions of families nationwide who would not otherwise be prospective tenants due to insufficient income or assets. Jung Hyun Choi & Laurie Goodman, *Housing Vouchers Have*

Helped Tenants and Landlords Weather the Pandemic, Urban Inst. (Mar. 23, 2021), https://tinyurl.com/mszn6nh6.

In return for these economic benefits, landlords and developers accept restrictions on what they could otherwise do under state law. For example, Project Based Section 8 regulations require good cause before a periodic lease is not renewed. 24 C.F.R. § 983.256(f). Both Project Based and HCV programs, along with many other CARES Act covered programs, require minimum housing quality standards, which may exceed local housing code requirements, and require landlords to participate in a rigorous housing inspection system. 24 C.F.R. §§ 5.701-5.713 (Project Based); 24 C.F.R. §§ 982.401-407 (HCV).

Another common type of federally assisted housing program is the LIHTC program. LIHTC landlords and developers receive a tax credit of either 9% or 4% of the property's basis, which can be offset for taxes otherwise owed. These considerable tax savings reduce the need for capital funding, which otherwise would usually require the developer to obtain a larger loan with higher monthly mortgage payments. The expectation is that the savings realized will help developers feasibly manage rent-restricted housing. In return for lucrative tax benefits, LIHTC landlords and developers accept certain restrictions. For example, they must reserve a specific number of units for tenants averaging below 50% to 60% of area median income.

Landlords with federally backed mortgages, such as Woodrock Riverwalk LLC, receive significant benefits at taxpayer expense as well. The Federal National Mortgage Association, more commonly known as "Fannie Mae," is a government-sponsored enterprise ("GSE") that purchases and maintains a portfolio of single- and multifamily-housing mortgage loans. Brent W. Ambrose et. al., Fed. Reserve Bank of Philadelphia, *Eviction Risk of Rental Housing: Does it Matter How Your Landlord Finances the Property?,* 1–2 (Feb. 2021), https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2021/wp21-05.pdf [*"Eviction Risk of Rental Housing*"]. Fannie Mae multifamily loans provide many benefits to borrowers seeking to purchase a multifamily housing complex. As a GSE, Fannie Mae is backed by the federal government, which allows Fannie Mae to provide more beneficial terms to borrowers. *See id*. This includes a predictable and streamlined underwriting process, so borrowers know what requirements to expect, and they can complete their loan process from engagement to execution in 30 to 90 days. *E.g.* LSG Lending, *Benefits of Fannie Mae and Freddie Mac Multifamily Financing for Apartment Owners and Investors*, LSG Blog (last visited Dec. 4, 2024), https://www.lsglending.com/blog/benefits-of-fannie-mae-and-freddie-mac-multifamily-financing/.

Fannie Mae loans tend to be cheaper overall, as the stability and government backing of the loans result in lower interest rates. Down payments are also lower,

as Fannie Mae lenders can offer favorable Loan-to-Value allowances resulting in down payments as low as 20% and amortization periods over 25 to 30 years – all resulting in reduced monthly mortgage payments. W. Ambrose et. al., *Eviction Risk of Rental Housing*, *supra*, at 2–3. Borrowers not only benefit from lower monthly mortgage costs but also benefit from protective default protection policies that Fannie Mae imposes in times of rental market crisis, like when Fannie Mae provided mortgage payment forbearances to lenders during the COVID-19 pandemic. *Id.*; *see also* 15 U.S.C. § 9057.

The CARES Act 30-day notice requirement is one of many requirements landlords and developers must comply with in return for the substantial benefits received from participating in a federal housing program. This requirement is less onerous than many of the other duties they are subjected to as a result of their participation in these programs.

II. In all states, a basic requirement of summary eviction actions is that a landlord must have a present right to possession at the time a case is filed.

Although the timelines and procedures for eviction actions differ across jurisdictions, one throughline across the states is that the landlord must be entitled to possession at the time of filing the case. In other words, the case must be ripe. This ripeness requirement dictates that when a CARES Act covered landlord provides a notice to a tenant that informs the tenant they are not required to vacate

for 30 days, the landlord may not file the eviction case until after the 30-day notice period expires. Eviction actions are summary procedures that afford great advantages to landlords in terms of speed and thrift, while affording tenants a diminished ability to investigate, prepare for, and defend their right to remain in their homes. Therefore, the use of eviction actions is strictly limited to circumstances where the tenant is presently occupying the home unlawfully, in violation of the landlord's right to possession.

While states differ as to whether the premature filing of a summary eviction action prevents the landlord from obtaining a judgment[3] or deprives a court of

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[3] Multiple jurisdictions hold that when a landlord prematurely files an eviction case, the landlord is not entitled to judgment because the landlord failed to prove an essential element of the case: that, at the time of filing, the landlord was entitled to possession of the premises. *See, e.g.*, *Cambridge St. Realty, LLC v. Stewart*, 113 N.E.3d 303, 306 (Mass. 2018) (holding that "a legally effective notice to quit is a condition precedent to a summary process action and part of the landlord's prima facie case but is not jurisdictional."); *Hunter v. Broadway Overlook*, 181 A.3d 745, 749 (Md. 2018) ("The landlord does not have a viable claim on which to base its complaint of breach of lease until the notice period has expired and the tenant has refused to comply with the notice to vacate. Furthermore, it is not appropriate to find that a defective notice became effective through the simple passage of time."); *Shinkle v. Turner*, 496 S.W.3d 418, 422, 424 (Ky. 2016) (dismissing an eviction because "[t]o assert a valid claim for forcible detainer, the plaintiff must allege a current and immediate right to possession of the premises," and noting that a "false allegation" that one is entitled to present possession cannot be cured by the passage of time); *Inv. & Income Realty, Inc. v. Bentley*, 480 So. 2d 219, 220 (Fla. Dist. Ct. App. 1985) ("A statutory cause of action cannot be commenced until the claimant has complied with all the conditions precedent. Since the landlord failed to comply with the notice

jurisdiction to even hear the case,[4] it is a basic and consistent principle of landlord-tenant law that a landlord must be entitled to possession at the time of filing. *See, e.g.,* 36A C.J.S., Forcible Entry & Detainer, § 7 (Sept. 2020); 35A Am. Jur. 2d Forcible Entry and Detainer § 14 (Westlaw database last updated Aug. 2024) ("A forcible entry and detainer action may be brought against one who has no right or privilege to occupy the premises."); 21 Am. Jur. Proof of Facts 2d 567 (Westlaw database last updated Aug. 2024) ("Forcible detainer, on the other hand, is descriptive of an action resulting from a party's peaceably entering upon land in the possession of another and thereafter forcibly denying such possession to the other party."); John Campbell, *Where Kafka Reigns: A Call for Metamorphosis in*

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requirements, this action was properly dismissed."); *Sovereen v. Meadows*, 595 P.2d 852, 854 (Utah 1979) ("Until the tenancy is terminated by proper notice to quit there is no unlawful detainer. . . . When it appears that the tenancy has not been terminated by proper notice, the court should dismiss the suit on the grounds that there is no cause of action."); *Gunter v. Eiznhamer*, 196 P.2d 177, 181 (Kan. 1948) (holding that 3-day termination "notice statute prescribes the time which must elapse 'before commencing the action' for possession.") (citation omitted).

[4] Multiple jurisdictions hold subject matter jurisdiction does not exist if the landlord commences an eviction suit before the tenant's right to possession has terminated. See, e.g., *C.O. Homes, LLC v. Cleveland*, 460 P.3d 494, 497 (Or. 2020) ("A landlord may not commence an [eviction] action for the return of possession until 'after the expiration of the time period provided in a notice terminating the tenancy.'") (citation omitted); *Lampasona v. Jacobs*, 553 A.2d 175, 179 (Conn. 1989) ("[A] proper notice to quit is a jurisdictional necessity" under the summary eviction statutes); *Meservy v. Stoner*, 208 N.W. 781, 782 (S.D. 1926) ("This statute makes the service of the notice jurisdictional. In special statutory proceedings of this class, substantial compliance with the statute is a jurisdictional requirement.") (citations omitted).

Unlawful Detainer Law, 49 U. MICH. J.L. REFORM 557, 570 (2016) (observing that every state has some form of unlawful detainer statute that provides for a summary eviction process).

Indeed, Amici are not aware of a single state in which a landlord may commence an eviction action in court against a tenant before the deadline for that tenant to vacate has run. The lack of authority for such a proposition is hardly surprising, as it would be inconsistent with an eviction claim's essential basis: that the deadline for the tenant to vacate the property has passed but the tenant unlawfully retains possession.

This observation—that each state follows or substantially follows the rule that eviction lawsuits become ripe only once the plaintiff has acquired the present right to possession—has significance for interpretation of the CARES Act 30-day notice provision, 15 U.S.C. § 9058(c). Congress is presumed to have been aware of this ripeness requirement in drafting 15 U.S.C. § 9058(c). *E.g. United States v. Langley*, 62 F.3d 602, 605 (4th Cir. 1995) ("It is firmly entrenched that Congress is presumed to enact legislation with knowledge of the law[.]" (citations omitted)), *abrogated on other grounds*, *Rehaif v. United States*, 588 U.S. 225 (2019). Since a landlord cannot acquire the right to possession of a covered dwelling unit without first providing 30 days' notice, the landlord is barred from commencing a nonpayment of rent eviction action until the 30-day period to vacate has expired.

III. The Court of Appeals erroneously held an eviction action may be properly filed before a CARES Act 30-day notice expires.

a. A landlord must have a present right to possession and the tenant's right to possession must have expired before an eviction action may be filed under Va. Code § 8.01-126(B).

As in all states, *see supra* Part II, in Virginia, a landlord must have a present right to possession at the time an eviction is filed:

> In any case when possession of any house, land or tenement is *unlawfully detained* by the person in possession thereof, the landlord, his agent, attorney, or other person, *entitled to the possession* may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit.

Va. Code § 8.01-126(B) (emphasis added). The code section requires that a landlord seeking to evict a tenant must swear an oath establishing two elements: 1) that the property is being unlawfully detained, and 2) that the plaintiff is entitled to possession. *Id*. Both elements must be satisfied at the time the summons is issued. *Id.* Indeed, this Court recently recognized the ripeness requirement of Va. Code § 8.01-126(B), stating: "Unlawful detainer is an action against a defendant who lawfully entered into possession of real property but whose right to lawful possession has since expired. It is brought by a *plaintiff lawfully entitled to possession at the time of the suit, which the defendant is then unlawfully withholding*." *Parrish v. Fed. Nat'l Mortg.*

Ass'n, 292 Va. 44, 50 (2016) (citing *Allen v. Gibson*, 25 Va. 468, 473 (1826)) (emphasis added).

b. 15 U.S.C. § 9058(c) entitles a tenant in possession of a covered dwelling unit to remain in possession until at least 30 days after a notice to vacate.

15 U.S.C. § 9058 was enacted as part of the CARES Act, one in a series of economic relief packages Congress passed during the COVID-19 pandemic. In that provision, Congress prohibited for 120 days all unlawful detainer and eviction filings in covered properties based on nonpayment of rent or other charges. *Id.*(b). At the same time, Congress effectively prohibited landlords of covered properties from issuing new notices to vacate until after the 120-day filing moratorium ended. *Id.*(c)(2) ("[L]essor of a covered dwelling unit . . . may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b)."). Once the 120-day moratorium period expired, the landlord could issue a notice to vacate for nonpayment—but had to provide at least 30 days' notice. *Id.*(c)(1) ("[L]essor of a covered dwelling unit . . . may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.").

The initial 120-day filing moratorium has expired. But the 30-day notice provision had no expiration date and remains in effect today. *See, e.g.*, *Arvada Vill. Gardens LP v. Garate*, 529 P.3d 105, 106 (Colo. 2023). This means a landlord who

seeks to evict a tenant from a covered dwelling unit for nonpayment of rent must give the tenant at least 30 days' notice—and hence such tenant remains entitled to possession for at least 30 days after that notice is given. 15 U.S.C. § 9058(c)(1).

c. The Court of Appeals erroneously allowed an eviction action against tenants in lawful possession.

The Court of Appeals nevertheless ruled that an unlawful detainer can properly be filed during the 30-day notice period that 15 U.S.C. § 9058(c)(1) requires. This ruling was incorrect because it conflicts with *Parrish* and the plain language of Va. Code § 8.01-126(B), both of which make clear that a landlord may not file an unlawful detainer against a tenant whose right to possession has not expired.

The Court of Appeals ruled the CARES Act 30-day notice requirement does not prevent an unlawful detainer action from being filed before the notice period has expired because a "summons for unlawful detainer does not require a tenant to vacate their premises." *Woodrock River Walk LLC v. Rice*, 82 Va. 355, 358 (2024). However, under Virginia law, an unlawful detainer summons may only be issued to a landlord who claims the present right to possession against a tenant who unlawfully occupies the premises. Va. Code § 8.01-126(B).

A landlord who has given a tenant 30 days' notice in which to vacate has no valid claim to possession before the deadline to vacate has expired. See *id.*; *Parrish*, 292 Va. at 50. Indeed, asserting otherwise contradicts the very content of a

CARES Act 30-day notice. The notice given in this case, for example, specifically informed Tenants they were "not required to vacate the Dwelling during the 30-day period immediately following the date of this notice." R. 7. The simple but critical question in this case is: who had the right to possession on day 29 when the landlord filed the case, the Respondent or Tenants? The answer is unambiguously the Tenants.

IV. The Court of Appeals' opinion is at odds with the four state appellate courts that have considered the CARES Act 30-day notice requirement.

Until this Court of Appeals' opinion, the appellate courts that considered the meaning of the CARES Act 30-day notice requirement consistently held that a covered landlord must wait until the 30-day notice period expires to file a summary eviction action.

In *Sherwood Auburn LLC v. Pinzón*, 521 P.3d 212, 217 (Wash. Ct. App. 2022), the Washington Court of Appeals squarely rejected Respondent's position that the CARES Act simply prohibits a sheriff from evicting a tenant during the 30-day notice period. In a case involving a tenancy at a property with a federally backed mortgage, the court correctly observed the plain language of the CARES Act specifically imposes the obligation to provide a 30-day notice to vacate on lessors, not on courts or judicial officers:

> Sherwood Auburn contends that the CARES Act simply prohibits state trial courts from evicting tenants during the 30-day period

> following service of a pay or vacate notice required by state law. . . . The plain language of the statute, however, belies such an interpretation. The CARES Act notice provision clearly prohibits the lessor (the beneficiary of the federal financial assistance)—not a state trial court—from requiring a tenant to vacate a covered housing unit prior to expiration of the notice period. . . . Here, Congress unambiguously provided that "the lessor" may not require a tenant to vacate prior to providing a 30-day notice.

Id. at 217. In *Olentangy Commons Owner LLC v. Fawley*, 228 N.E.3d 621, 632 (Ohio App. 2023), the Ohio Court of Appeals similarly found the plain language of 15 U.S.C. § 9058(c) requires a landlord to wait 30 days before filing an eviction case. "Because a landlord must file a forcible entry and detainer action to require a tenant to vacate the rent premises, the plain language of 15 U.S.C. § 9058(c)(1) mandates that a landlord must provide a tenant with a notice to vacate 30 days before filing such an action." *Id.* The court emphasized that "the landlord does not order or perform the [sheriff's eviction]—the court and law enforcement officers do those things." *Id.* Indeed, under 15 U.S.C. § 9058(c)(1), "the actor prohibited from requiring the tenant to vacate is '[t]he lessor,' not the court or law enforcement officers." *Id.*

Following the *Pinzón* and *Olentangy Commons* decisions, courts have continued to reject the position adopted by the Court of Appeals in this case. *See, e.g.*, *Arvada Vill. Gardens LP v. Garate*, 529 P.3d 105, 108 (Colo. 2023) ("A landlord of a property covered by the CARES Act must give thirty days' notice before filing for [eviction] in Colorado."); *D.H. v. Common Wealth Apartments*, 231

N.E.3d 284, 288 (Ind. Ct. App. 2024) (holding the landlord "violated federal law by failing to give D.H. a thirty-day notice to vacate as required by 15 U.S.C. § 9058(c) before initiating eviction proceedings[.]"); *see also Watson v. Vici Comm. Dev. Corp.*, 2021 WL 1394477, at *11 (W.D. Okla. Apr. 12, 2021) ("The CARES Act requires certain landlords to give tenants at least 30 days' notice to vacate a covered dwelling before filing a petition for eviction."). The above cases involved a range of different types of covered properties, including the HCV Program and United States Department of Agriculture's ("USDA") rural rental assistance program.

Unfortunately, the Court of Appeals' opinion failed to engage with this countervailing weight of well-reasoned authority. In doing so, it unnecessarily created a split of authority among the jurisdictions that addressed the issue and denies Virginia tenants a modest but critical protection.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court grant the Petition for Appeal.

Respectfully submitted,

AMICI

/s/ Colleen Oconor
Colleen OConor, Esq., VSB No. 95915
Legal Services of Northern Virginia
10700 Page Ave. Suite 100
Fairfax, VA 22201
(571) 858-3900 (phone)
(571) 260-5357 (fax)
coconor@lsnv.org (email)

/s/ Eric Dunn
Eric Dunn, Esq., VSB No. 91778
National Housing Law Project
919 E Main Street, Suite 610
Richmond, VA 23219
(415) 546-7000 (phone)
(415) 546-7007 (fax)
edunn@nhlp.org (email)

/s/ Brandon L. Ballard
Brandon L. Ballard, Esq. (VSB No. 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 Rules 5:17(i) and 5:30(c), the undersigned certifies:

Petitioners are Lloyd Rice and Christine Andrade

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
Jarryd@lasrv.org

Steven Fischbach (VSB No. 94280)
VIRGINIA POVERTY LAW CENTER
919 East Main Street, Suite 610
Richmond, Virginia 23219
Telephone: 804-351-5266
Facsimile: 804-649-0974
steve@vplc.org

Respondent is Woodrock River Walk, LLC.

Counsel for Respondent is:

Patrick R. Pettitt (VSB No. 37307)
SENEX LAW, PC
3 Ruckman Road
Fort Monroe, Virginia 23651
(757) 251-2256
attorney@senexlaw.com

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

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 exact word count is 4,864 words.

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/s/ Colleen OConor, Esq._____
Colleen OConor, VSB #95915
Counsel for Amici