

DOCKET NO. 16-56255

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COLONY COVE PROPERTIES, LLC
Plaintiff and Appellee,

v.

CITY OF CARSON and CITY OF CARSON MOBILEHOME PARK RENTAL
REVIEW BOARD,
Defendants and Appellants.

Appeal from the United States District Court
for the Central District of California
Case No. CV14-03242 PSG (PJWx)

BRIEF OF AMICI CURIAE CALIFORNIA RURAL LEGAL ASSISTANCE,
INC., CALIFORNIA COALITION FOR RURAL HOUSING, COMMUNITY
LEGAL SERVICES OF EAST PALO ALTO, THE GOLDEN STATE
MANUFACTURED-HOME OWNERS LEAGUE, INC., HOUSING
CALIFORNIA, LEGAL AID FOUNDATION OF LOS ANGELES, LEGAL AID
SOCIETY OF SAN MATEO COUNTY, NATIONAL HOUSING LAW
PROJECT, PUBLIC ADVOCATES, PUBLIC COUNSEL LAW CENTER, THE
PUBLIC INTEREST LAW PROJECT, TENANTS TOGETHER, WESTERN
CENTER ON LAW AND POVERTY, AND THERESA L. FORSYTHE IN
SUPPORT OF APPELLANTS FOR REVERSAL

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CORPORATE DISCLOSURE STATEMENT

California Rural Legal Assistance, Inc., California Coalition for Rural Housing, Community Legal Services of East Palo Alto, The Golden State Manufactured-Home Owners League, Inc., Housing California, Legal Aid Foundation of Los Angeles, Legal Aid Society of San Mateo County, National Housing Law Project, Public Advocates, Public Counsel Law Center, The Public Interest Law Project, Tenants Together, and Western Center on Law and Poverty are all nonprofit corporations which do not issue stock and which are not subsidiaries or affiliates of any publicly owned corporations.

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I. INTERESTS OF AMICI CURIAE

Pursuant to Federal Rule of Appellate Procedure 29(a), all Parties have consented to the filing of the Amicus Brief on behalf of the 14 amici.

A. California Rural Legal Assistance, Inc.

California Rural Legal Assistance, Inc. (CRLA) was created in 1966 as a statewide not-for-profit law firm to provide legal representation for rural, low-income tenants, farmworkers and other rural poor throughout California. CRLA has enabled thousands of low-income tenants and homeowners to gain access to justice in the civil legal system in substantive areas including housing and civil rights. Enforcement of their fundamental rights to decent, affordable and equitable housing access is a priority in its 18 field offices. CRLA clients face some of the worst housing conditions imaginable, living in canyons, under porches, in garages, vehicles, dwellings that lack the most basic amenities of heat, potable water, hot water, functional plumbing, electricity and structural integrity, facing homeless encampments as their only alternative. Many CRLA clients live in substandard mobilehome parks lacking fundamental services such as healthy water supplies, waste disposal systems and dangerous supplies of electricity and gas, violating the state Mobilehome Parks Act and Mobilehome Residency Law, paying substantial percentages of their modest incomes for rent. Homeowners and tenants in these parks must confront illegal practices, including improper rent increases sought

under local rent control ordinances, threatened displacement and conversions of parks to other uses. CRLA advocacy seeks to ensure that low income clients, 65% of whom are racial and ethnic minorities, many elderly and disabled, have access to decent, affordable housing they so desperately need.

B. California Coalition for Rural Housing

California Coalition for Rural Housing (CCRH) works with rural communities to improve the quality, stability, and affordability of manufactured housing opportunities, through training, technical assistance, and advocacy. Its members have worked with mobilehome park tenants in rural communities throughout the state to evaluate the feasibility of acquiring and rehabilitating mobilehome parks threatened with conversion to other uses, including those located in communities with space rent regulation similar to that challenged in this case. To safeguard the authority of rural communities throughout California to advance the affordability of manufactured housing, CCRH therefore supports the City of Carson's position seeking to uphold the validity of its local rent control law.

C. Community Legal Services of East Palo Alto

Community Legal Services in East Palo Alto (CLSEPA) provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Our practice areas include housing, immigration,

general civil litigation, and anti-predatory lending. CLSEPA represents lower-income residents who are protected by numerous rent control regimes, including mobilehome rent control programs in several jurisdictions in San Mateo County as well as the broader rent control programs in East Palo Alto and Mountain View.

D. The Golden State Manufactured-Home Owners League, Inc.

The Golden State Manufactured-Home Owners League, Inc. (GSMOL) is a 501(c)(4) non-profit mutual benefit Corporation currently comprising some twenty thousand (20,000) mobilehome/manufactured home resident member households (defined as “homeowners” by statute) throughout California. GSMOL was formed in 1962 as a homeowners’ group dedicated to promoting and protecting the mobilehome lifestyle and the substantial property investments of its members. GSMOL provides resources and assistance to homeowners and homeowner organizations throughout the State, and is actively involved in legislative efforts at the local, state and federal levels. As a part of its activities GSMOL also monitors and reviews litigation which affects the rights of its members, and seeks intervention as Amicus Curiae where the issues before the court are deemed critical to mobilehome living. The instant action is a prime example of such a case.

GSMOL has a substantial interest in the continuing ability of local governments to enact regulations which protect the substantial property interests

held by mobilehome and manufactured home owners in their manufactured homes. A large percentage of GSMOL members are retired or on fixed incomes, or are low and moderate income families for whom a manufactured home is the only feasible means of home ownership. GSMOL members typically make a substantial investment in both their homes and the improvements to the space where their homes are located, including site improvements, accessory structures and landscaping. Their investments are directly challenged by the Court decision at issue, which threatens GSMOL members with economic ruin should local protective rent regulations be struck down.

GSMOL seeks to present the Court with additional viewpoints and information from homeowners who, although not parties to the present dispute, would be dramatically affected by this Court's decision. If the decision is not reversed, it could lead to litigation against virtually all of the approximately 100 California jurisdictions with mobilehome rent control laws and, given the desperate financial conditions facing many municipalities, could lead to the statewide elimination of these well-established protections. Such a result will be followed in turn by skyrocketing rents, and the loss of virtually all investment which manufactured-home owners currently possess in their homes.

E. Housing California

Housing California is a statewide nonprofit organization whose mission is to promote and support affordable home development and effective anti-homelessness policies statewide and in local jurisdictions throughout California. Housing California carries out its mission through policy and legislative advocacy, outreach and education campaigns and conferences/trainings. Virtually all localities in California have lower-income residents who lack a decent affordable place to live. Housing California represents the interests of these Californians and the interests of nonprofit affordable home developers working throughout the state to address this problem. Rent control ordinances are an important tool to achieve housing affordability in communities around the state. Additionally, Housing California's members provide training and technical assistance to increase manufactured housing opportunities.

F. Legal Aid Foundation of Los Angeles

Legal Aid Foundation of Los Angeles (LAFLA) has been the frontline law firm providing civil legal services to poor and low-income people in Los Angeles County for over 85 years. With five neighborhood offices, three Domestic Violence Clinics, and four Self Help Legal Access Centers, LAFLA serves diverse communities and is the first place thousands of poor people turn to when they need legal assistance for a crisis that threatens their shelter, health, and livelihood.

LAFLA's Housing & Communities Workgroup aims to remove barriers to housing opportunities by preserving and expanding the availability of quality affordable housing that is safe and habitable through, among other things, litigation to enforce existing protections against discrimination, harassment and unlawful displacement.

G. Legal Aid Society of San Mateo County

The Legal Aid Society of San Mateo County (LASSMC) is a non-profit civil legal services agency founded in 1959 with the purpose of providing low-income residents of San Mateo County access to the basic necessities of life, including safe affordable housing, access to health care, economic security, secure immigration status, an appropriate education, and freedom from violence and abuse. LASSMC has been at the forefront of mobilehome park preservation and affordability advocacy on behalf of the residents of parks within our county, and was instrumental in the adoption of the San Mateo County Mobilehome Rent Control Ordinance in 2003. Most recently, LASSMC staff have represented tenant groups in legal actions related to the enforcement of that ordinance, and defended residents in two fair return petitions in the City of Pacifica very similar to the one at issue in this case. The rapidly escalating real estate market in San Mateo County is a climate attractive to speculators, and particularly risky to residents of rent controlled spaces or rent stabilized units if debt servicing were permitted as an operating cost for purposes of determining fair rates of return.

H. National Housing Law Project

The National Housing Law Project (NHLP) is a nonprofit national housing and legal advocacy center established in 1968, whose mission is to advance housing justice for low-income people by increasing and preserving the supply of decent, affordable housing; preserving, expanding, and enforcing tenants' rights in housing; improving existing housing conditions; and minimizing involuntary displacement. NHLP partners with a host of individuals and organizations working in the affordable housing arena, including local and national advocates, tenant and advocacy networks, nonprofit developers, and allied housing organizations. Through policy advocacy and litigation, NHLP has contributed to many critically important changes to policy and programs that have resulted in increased housing opportunities and improved housing conditions for low-income people.

I. Public Advocates

Public Advocates Inc. is a nonprofit law firm and advocacy organization based in San Francisco, California, that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity throughout the state. It spurs change through collaboration with grassroots groups representing low-income communities, people of color and immigrants, combined

with strategic policy reform, media advocacy and litigation, “making rights real” across California since 1971.

Public Advocates Inc. works regionally and statewide to prevent the displacement of lower-income households due to rent increases, demolitions, and evictions, and to promote the creation and preservation of affordable housing. The organization has engaged in extensive litigation and administrative advocacy on behalf of low-income Californians to achieve racially and economically integrated communities in which low-income people and people of color have healthy affordable homes by enforcing federal and state fair housing laws, California’s Housing Element Law, Surplus Land Act, and other statutes. It has also pursued local, regional, and state policy campaigns to protect tenants, including by enacting and strengthening rent stabilization and just cause for eviction laws.

J. Public Counsel Law Center

Amicus curiae Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel specializes in delivering pro bono legal services to low-income communities -- advancing equal justice under law by delivering services to indigent and underrepresented children, adults, and families throughout Los Angeles County, ensuring that other community-based organizations serving this

population have legal support, and mobilizing the pro bono resources of attorneys, law students and other professionals. Public Counsel's activities include homelessness prevention and community development - impacting a wide spectrum of people who live at or below the poverty level. Affordable housing opportunities and tenant protections are of critical importance to Public Counsel's client base.

K. The Public Interest Law Project (PILP)

PILP is a California non-profit corporation providing advocacy support, technical assistance and training to local legal services offices throughout California on issues related to housing, public benefits, civil rights and community redevelopment. PILP is funded in part as a state support center for local public interest law offices funded through the Legal Services Trust Fund of the California State Bar.

PILP is frequently is called on to assist in efforts to prevent or mitigate displacement of lower income tenants due to rent increases, evictions, conversions or demolitions, including mobilehome park rent increases and conversions. In recent years frequency of mobilehome park space rent increase and conversion requests climbed sharply. We have been asked for assistance from all over the state, including Napa County, San Mateo County, Santa Barbara County, Los Angeles County, Orange County and San Diego County.

Key to protecting this major source of affordable housing in the steeply and rapidly rising housing markets of California is the Net-Operating-Income (NOI) method determining fair rent increases. The balanced methodology ensures both moderate rent increases for park tenants and the opportunity for a reasonable return on investment for park owners. In that way it fulfills the dual purpose of rent controls on mobilehome space rents, providing rent increases that cover operations and fair return, while limiting increases to reasonable levels to avoid displacement. The theory advanced by plaintiffs of calculating reasonable return based on any debt service expense instead of NOI allows “reasonable” rents to be determined by wildly speculative, unreasonable investments. It jeopardizes the continued effectiveness of modern rent control and so too the availability of provision of decent, affordable housing for anyone threatened by displacement.

L. Tenants Together

Tenants Together is a nonprofit organization that seeks to promote fairness and justice for California’s renters through education, organizing, and advocacy. Tenants Together is California’s only statewide renters’ rights organization. Among other efforts, Tenants Together monitors and reports on the development of landlord-tenant case law. Tenants Together is particularly concerned with judicial decisions that nullify or erode renter protections enacted by state and local legislative bodies, including rent control laws.

M. Western Center on Law and Poverty

Western Center on Law and Poverty has fought for justice and system-wide change to secure housing, healthcare and a strong safety net for low-income Californians since 1967. Western Center engages in legislative advocacy, litigation and educational work, and has been prominently involved in maintaining protections for mobile-home residents and individuals in rent-controlled housing. Western Center advocates for the production and preservation of quality affordable housing and the reduction and prevention of homelessness by protecting and expanding tenants' rights.

N. Colony Cove Resident Theresa L. Forsythe

Theresa L. Forsythe is a senior citizen, disabled, fixed-income mobile home owner who resides in Colony Cove Mobile Estates mobile home park (the "Park"), which is the subject of this appeal. Ms. Forsythe is currently the President of the Colony Cove Mobile Estates Homeowners' Association, and is a member of two mobile home park resident organizations in Carson, the Unity Team Rent Committee and Homeowners Against Rent Decontrol. Ms. Forsythe seeks to present the Court with the perspective of an actual home owner residing in the very mobile home park that would be directly impacted by the decision of this Court, and the perspective of Carson mobile home park residents as a whole.

Based on her personal experience and her discussions with fellow mobile home park residents, Ms. Forsythe is aware of the need for mobile home rent control to protect the housing rights and existing investments of tenant-homeowners in their homes. Ms. Forsythe agrees with the City's position that passing through the park owner's purchase debt service is irrational and would undermine rent control, because the allowable rent in a park should not be determined by the park owner's choice whether or not to finance the park purchase. A park owner could choose to finance the purchase simply to obtain a rent increase, and then pay off the loan or refinance at a lower rate.

Ms. Forsythe would be imperiled if the Park residents were forced to shoulder the park owner's mortgage debt service because her mobile home is immovable. She likely could not afford the increased rent, and she would lose virtually all equity she has built from 40 years in her mobile home in the event of an involuntary sale. With the shortage of affordable housing and available mobile home spaces throughout the Los Angeles metropolitan area, she would be unable to relocate to another park and would have unimaginable difficulty securing other housing. Ms. Forsythe fears that economic and housing stability for herself and others in similar predicaments in the Park and throughout the Los Angeles area, as well as all California, will be forever devastated should the Park owner's mortgage debt service be passed through to residents under rent control.

As a mobile home owner in California, President of the Colony Cove Homeowners' Association, member of two mobile home resident organizations in Carson, and as a person who attended and observed a portion of the trial held in the District Court below, Ms. Forsythe is also concerned with the District Court's significant deviations from past Ninth Circuit takings precedent, and asks that the District Court's judgment be reversed.

STATEMENT OF COMPLIANCE WITH RULE 29(a)(4)(E)

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person—other than *amici*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

II. SUMMARY OF ARGUMENT

California is in the midst of an extreme housing crisis. Because mobilehome parks provide the last vestige of truly affordable home ownership in California, outcomes such as the one threatened in this lawsuit exacerbate the statewide problem. The courts universally embrace regulation of mobilehome rental rates via rent control to protect the many park residents who own their home but lease the land on which it lies. Preserving the integrity and efficacy of rent increase

mechanisms within local rent control ordinances is essential to stability of not only mobilehome housing, but rent controlled housing stock throughout California.

Mobilehome rent control ordinances balance the competing investments of homeowners and park owners. Mobilehome owners, on the one hand, most often have low incomes and have invested their savings into a mobilehome. The industry-accepted "paired analysis" holds that for every \$100.00 in increased rent, equity in the home decreases by \$10,000. Mobilehome park owners, on the other hand, purchase a park in which they are entitled to a fair return on their investment – an investment that is highly stable because of the inability of the mobilehome owners to easily move. Accordingly, mobilehome rent control ordinances allow for that fair return while also protecting the housing stability of mobilehome owners.

Colony Cove, however, insists that local governments must factor a mobilehome park owner's debt service into calculations regarding the appropriate rate of return for rent increases, no matter how heavily debt-leveraged the owner becomes. Colony Cove's position would place mobilehome parks into their own class of riskless real estate investment in which the people who can least afford it bear the costs. To allow a speculator to upset the careful balance achieved by rent control ordinances defies established legal principles consistently upheld in our state and federal courts. As legal services providers who strive to protect tenants

from such speculators, we urge the Court to see Plaintiff's tactics for what they are: a manipulation of our legal system to reach the wrong result.

III. MOBILEHOME PARKS ARE A UNIQUE AND IMPERILED SOURCE OF AFFORDABLE HOUSING IN CALIFORNIA.

Almost 500,000 California households live in mobilehomes. U.S. Census Bureau, *American Community Survey 2011-2015 5-year Estimates*,

[https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF)

[CF](#). Those homes provide a stable, affordable place to live, but bear peculiar characteristics that necessitate regulation. As explained in *Yee v. City of Escondido* 503 U.S. 519, 523 (1992), the “term ‘mobile home’ is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobilehome itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved.”

Accordingly, if rent increases to unaffordable amounts for a mobilehome owner, they may be evicted. Because mobilehomes are in reality mostly immobile, homeowners are frequently unable to sell their home before eviction, losing the value of the mobilehome and the affordable housing it provides. Thus, because of this homeowner-renter hybrid, local governments have a significant interest in ensuring that their residents can maintain housing stability through the implementation of mobilehome rent control ordinances. For those ordinances to be

meaningful, cities and counties must be able to ensure that residents can reasonably foresee what their rent will be over the long term.

The hybrid nature of mobilehome park residency has also drawn investors who seek to profit from the reluctance of residents to leave their immobile, tenant-improved residences. Investment advisors recommend mobilehome parks as a preferred alternative to apartment buildings because they require minimal capital expenditures, have operating costs lower than that of apartments, allow rent increases without risk of vacancies (because the residents are unwilling to abandon their investment), and experience only a third the occupancy turnover of apartment buildings. *See*, Frank Rolfe, *Why Invest in Mobile Homes*, MHU, <http://www.mobilehomeuniversity.com/articles/why-invest-in-mobile-home-parks.php>; Doug French, *Betting on a Poorer America*, Casey Research, <https://www.caseyresearch.com/articles/betting-on-a-poorer-america>. A revived interest in mobilehome park investments has lured predatory investors who gamble on their ability to find loopholes to maximize their investment. *See* Gary Rivlin, *The Cold, Hard Lessons of Mobilehome U*, N.Y. Times Magazine, March 13, 2014. As explained below, that is precisely the situation at hand.

A. California’s affordable housing crisis has reached epic proportions.

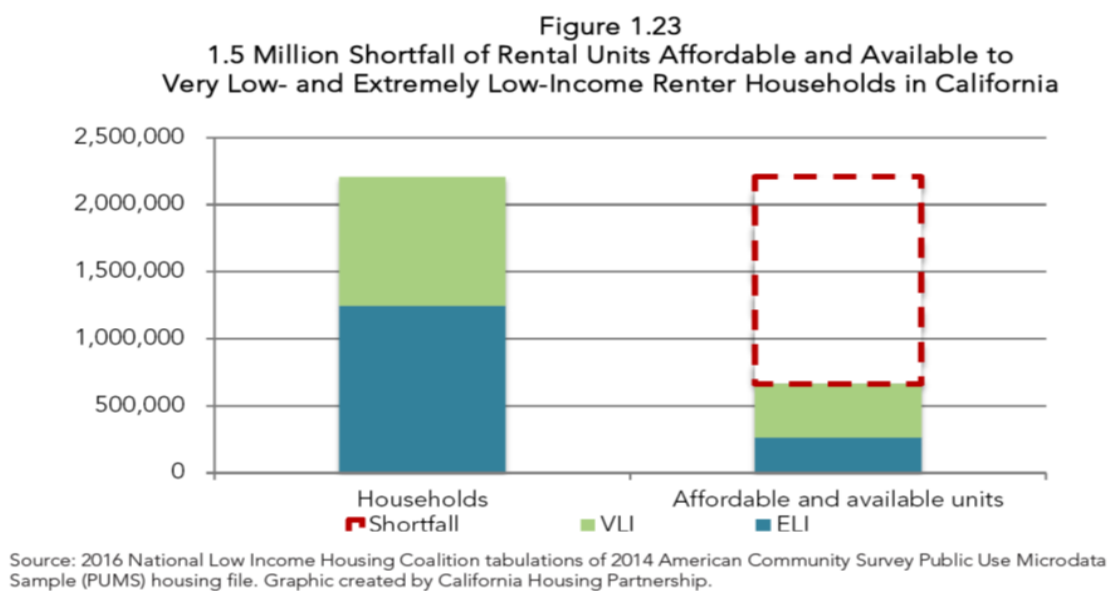
Forty years ago, the Legislature declared that “housing is of vital statewide importance to the health, safety, and welfare of the residents of this state” and yet

“there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income . . . can afford.” Health & Safety Code § 50001, 50003. The Legislature specifically recognized “the need to increase the supply of manufactured housing affordable to persons and families of low and moderate income and very low income households.” *Id.* In recent years, the state has hemorrhaged funding for building new affordable housing, wages have stagnated, and local governments have lost critical tools for encouraging the production of affordable housing. Headlines about housing shortages abound. The California Supreme Court recently observed: “It will come as no surprise to anyone familiar with California's current housing market that the significant problems arising from a scarcity of affordable housing have not been solved. . . . Rather, these problems have become more severe and have reached what might be described as epic proportions” *California Bldg. Indus. Assn. v. City of San Jose*, 61 Cal.4th 435, 441 (2015).

B. Research demonstrates the increasing severity of the crisis.

Research assessing the housing market confirms the daily reality of individuals and families who live in poverty. The California Department of Housing and Community Development’s recent public draft “California's Housing Future: Challenges and Opportunities,” contains the following graphic which illustrates the affordable housing crisis:

Snapshot: The Current State of Housing Affordability in California



Many factors have led to the current state of unaffordability. First, the loss of affordable housing financing has been enormous: “Cuts in annual federal and state funding . . . have reduced California’s investment in affordable housing production and preservation by more than \$1.7 billion annually since 2008, a 66% reduction.” California Housing Partnership Corporation, *Confronting California’s Rent and*

Poverty Crisis: A Call for Reinvestment in Affordable Homes,

<http://chpc.net/resources/confronting-californias-rent-poverty-crisis/>, April 2016.

Nothing has replaced those lost funds. Second, “California is home to 13% of the nation’s population and traditionally sees a faster than average rate of population growth. Yet, over the last 20 years, the state has only been responsible for 8% of new residential building permits. And this trend is continuing. Over the last two years California has added more than four new people for each new residential building.” Raphael Bostic *et al.*, *USC Lusk Center For Real Estate Casden Real Estate Economics Forecast 2016 Multifamily Report*,

[https://lusk.usc.edu/sites/default/files/attachments/2016-Multifamily-Forecast-](https://lusk.usc.edu/sites/default/files/attachments/2016-Multifamily-Forecast-Report.pdf)

[Report.pdf](https://lusk.usc.edu/sites/default/files/attachments/2016-Multifamily-Forecast-Report.pdf) at 7. Simply put, the state does not build enough housing for low-

income people to keep up with population growth. *Id.* (noting that rental housing construction skews toward the higher end of the market). These factors combine to create a tight housing market that simply cannot create enough housing for the lowest income families. In this context, the 1,110,803 affordable rental unit shortage is unsurprising. National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, http://nlihc.org/sites/default/files/Gap-Report_2017.pdf at Appendix A, March 2017.

The impact of the lack of affordable housing for families with low incomes is severe. While the median rent in California has increased 24% since 2000, the

median renter household income has declined seven percent, when adjusted for inflation. *Confronting California's Rent and Poverty Crisis* at 1. This means that the state's lowest income renters spend a median of 68% of income on rent, creating a severe burden that prevents such families from buying food, medicine, and other life necessities. *Id.* When considering that cost burden, California's poverty rate rises to 21.2%. *Id.* Because of this acute crisis, local governments must be able to fully utilize every tool at their disposal in order to ensure that their residents have affordable places to live.

C. Mobilehomes are a critical source of affordable housing.

To effectively address the housing crisis, the federal, state, and local governments, as well as the private sector must play a role in housing individuals with the lowest incomes. Mobilehomes have long been “a major source of unsubsidized, low-cost housing for many owners and renters with few housing alternatives”; “[f]ollowing World War II, housing shortages induced many households to turn to mobile homes for permanent shelter.” Harvard Center for Joint Studies, *An Examination of Manufactured Housing as a Community- and Asset-Building Strategy*, 2002.

California's multifaceted affordable housing strategy recognizes that the state's planning and land use laws must impose requirements on local governments regarding their policies toward mobilehomes. For example, state law obligates

every local jurisdiction to adopt policies - through what is called the Housing Element of its General Plan - that address the housing needs of “all economic segments of a community.” Among other things, the Housing Element must identify “adequate sites for housing, including rental housing, factory-built housing, *mobilehomes*, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community.” Cal. Gov't Code § 65583 (italics added).

Many cities have also recognized the importance of mobilehome parks. The City of Carson’s Housing Element is similar to many others in that it identifies mobilehome parks as an important source of affordable housing, particularly for seniors. It notes that the “City’s 2010 housing stock is comprised of 80 percent single family, 10.9 percent multi-family, and 9.3 percent mobilehome and other (boat, RV, van, etc.) units.” The City further notes that one strategy to address the housing needs of the elderly is to conserve existing mobilehome parks and to provide other types of assistance for seniors in mobilehomes. City of Carson 2014-2021 Housing Element, page 36. As in many California cities, Carson’s 2412 mobilehome spaces “constitute a significant proportion of the low- and moderate-income housing in the City.” *Id.* at 98. Maintaining stable rents is necessary to preserve these homes.

D. Mobilehome parks house particularly vulnerable populations.

Although only four percent of the state's housing stock is manufactured homes, mobilehomes house many of the most vulnerable populations, including tribal populations and farmworkers. HCD Draft Report, *supra*, at 17, 21.

Mobilehomes can also be especially critical for older adults. In California, 70% of manufactured home householders are fifty years of age and older. AARP Public Policy Institute, *AARP Data Explorer: Housing Type by Tenure and Age of Householder*, <http://dataexplorer.aarp.org/profile/6/california#?ind=161> (2013).

More than half of California mobilehome park residents aged fifty and older own their manufactured homes free and clear of any mortgages or financing loans. *Id.*

The additional financial and equity investment that older people have in their mobilehomes also makes them particularly vulnerable to the harms that occur when park rates are raised and they are forced out. Even modestly inflated prices make older homeowners more likely to lose their homes because high housing costs consume a disproportionate share of their more limited income. *See* William C. Apgar & Zhu Xiao Di, J. Ctr. For Housing Studies of Harvard University, *Housing Wealth and Retirement Savings: Enhancing Financial Security for Older Americans* 16 (2006). Moreover, as the latest census data reveals, over 50% of seniors are rent burdened in that they pay more than 30% of their total income for rent, and more than 10% of all seniors reside in manufactured housing. The

Department of Housing and Community Development notes that the number of seniors “will grow by more than four million people by 2030. This trend, combined with the fact that California seniors currently have an average (median) personal income of \$21,300, will increase the need for affordable housing options, accessible design, and in-home supportive services.” HCD Draft Report, *supra*, at 10.

Given the typically low income of mobilehome owners in parks such as Colony Cove, cities have a legitimate and compelling interest in limiting the escalation of rents that could otherwise jeopardize this source of affordable housing and the stability of the residents. There is little capacity in California to absorb any loss of housing, and no reasonable housing alternatives open to most mobilehome owners if they face economic displacement.

IV. RENT CONTROL IS AN ESSENTIAL MEASURE IN PROTECTING THE INTERESTS OF VULNERABLE MOBILEHOME OWNERS.

A. The unique nature of mobilehomes necessitates unique protections.

“Mobile homes have the peculiar characteristic of separating ownership of homes that are, as a practical matter, affixed to the land, from the land itself.

Because the owner of the mobile home cannot readily move it to get a lower rent, the owner of the land has the owner of the mobile home over a barrel.”

Guggenheim v. City of Goleta 638 F.3d 1111, 1113–14 (2010). This peculiar

characteristic - that mobilehome owners must rent the dirt underneath their homes - has led California to create numerous unique protections designed to allow mobilehome owners to remain in their homes.

On a state level, the Mobilehome Residency Law, Civil Code Sections 798 *et seq.*, establishes a statewide good cause for eviction standard. The Legislature found that “because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.” Civ. Code. § 798.55(a). Accordingly, a mobilehome park owner can only evict mobilehome residents for seven enumerated reasons. *Id.* at § 798.56. One of those reasons is nonpayment of rent. *Id.* at 798.56(e). The statewide just cause rule is just one of the many protections created by state law.

While the Mobilehome Residency Law does not create statewide rent control, it does contemplate that local jurisdictions may do so. Cal. Civ. Code §798.17. Moreover, the Costa Hawkins Act, which prohibits localities from imposing limits on the rent charged upon vacancy of unit, excludes mobilehome parks from its purview. Cal. Civ. Code §1954.51(b) (excluding mobilehome park and mobilehome owners from the definition of owner). Accordingly, not only can

local governments pass mobilehome rent control ordinances, they can impose those requirements even when there is a change in ownership of a mobilehome. Almost 100 jurisdictions in California have mobilehome rent control ordinances. *See* Golden State Mobilehome Owners League list of mobilehome rent control ordinances, <http://www.gsmol.org/wp-content/uploads/2014/11/CA-Jurisdictions-Rent-Stabilization.pdf>.

Preservation of parks from closure or conversion is also of increasing concern, due to attraction of investors with higher-density and profitable uses in mind. Government Code Section 65863.7 outlines minimum procedures for the process of converting or closing a mobilehome park that ensure some amount of relocation assistance should a park shut down. This state law is supplemented by over 40 local closure conversion ordinances that seek to help preserve mobilehome parks. *See* Golden State Mobilehome Owners League, List of Mobilehome Closure Conversion Ordinances at <http://www.gsmol.org/wp-content/uploads/2014/11/CA-Jurisdictions-In-Place-Market-Value.pdf>. These laws serve to protect this critical source of housing.

V. ALLOWING INVESTORS' SPECULATION RISK TO BE PASSED ALONG TO PARK RESIDENTS WOULD UNDERMINE THE PURPOSE AND EFFICACY OF RENT CONTROL.

California mobilehome parks have increasingly attracted larger corporate investors in recent years. "Investor attraction to mobile home parks includes

steady, recession-proof income and high barriers to entry. Publicly traded Equity Lifestyle Properties Inc., the largest mobile home park owner in the nation, has seen its stock price jump by 38 percent in the last year; over the same time period, the New York Stock Exchange composite index is down by about 7 percent.”

Nathan Donato-Weinstein, “*Carlyle Group bets on Bay Area mobile home park,*” Silicon Valley Business Journal, September 22, 2015. With the increased presence of Wall Street investment in the mobilehome park market has come increased pressure to ensure the profitability of such investments, often in conflict with the interests of the residents and municipalities to preserve these parks as a source of affordable housing. In this environment, the ability of municipalities in the state to establish predictable and fair methodologies for determining adjustments to rents is all the more essential.

A. MNOI is a widely accepted methodology for determining what rents will provide a fair rate of return.

Both the Federal and California courts have uniformly upheld mobilehome rent control ordinances as constitutional, including Carson’s rent ordinance specifically. *Yee v. City of Escondido* 503 U.S. 519 (1992); *Colony Cove Properties, LLC v. City of Carson* 640 F.3d 948 (9th Cir. 2011); *Guggenheim v. City of Goleta* 638 F.3d 1111 (9th Cir. 2010); *Carson Harbor Village, Ltd. v. City of Carson*, 37 F.3d 468 (9th Cir. 1994); *Carson Mobilehome Park Owners’ Assn. v. City of Carson* 35 Cal.3d 184 (1983). The avenues for calculation of fair rate of

return adjustments also have thoroughly explored history through California case law. The “maintenance of net operating income” (MNOI) methodology at issue in the present case presumes the landlord's net operating income was providing a just and reasonable return at the time a rent control regulation went into effect, and provides an adjustment to maintain this net operating income at a stable level.

Kavanau v. Santa Monica Rent Control Bd. 16 Cal.4th 761, 769 (1997). This methodology has been consistently deemed a fairly constructed formula which provides a park owner a sufficiently just and reasonable return on its investment.

Rainbow Disposal Co. v. Escondido Mobilehome Park Rental Review Bd. 64 Cal.App.4th 1159, 1172 (1998). "The [MNOI] approach has been praised by commentators for both its fairness and ease of administration." *Palomar*

Mobilehome Park Assn. v. Mobile Home Rent Review Com. 16 Cal.App.4th 481, 486 (1993).

B. Inclusion of debt servicing among operating costs considered in a fair rate of return determination undermines the purpose of rent control measures.

Debt servicing is generally excluded as an expense when calculating an appropriate rent increase pursuant to the MNOI methodology, and this exclusion is

explicit in many California rent control ordinances.¹ This case offers an extreme example of why inclusion of debt servicing is disfavored. Inclusion of debt servicing costs as an operating expense in the calculation of a fair rate of return results in an unreasonable disparity, whereby a heavily financed park is entitled to higher rents than a park purchased for cash. *Palomar*, 16 Cal.App.4th at 488. It is not sensible for an owner's fair return to vary depending on the financing arrangements. *Id.* The California Court of Appeal has “rejected the notion that permissible rental rates based on a fair rate of return can vary depending solely on the fortuity of how the acquisition was financed.” *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.* 30 Cal.App.4th 84, 94 (1994).

The expert retained by the City of Carson in this case, Dr. Kenneth Baar, opined in the previous state court proceeding that “rate of return formulas which

¹ For example: City of San Jose Municipal Code §17.22.540(B)(1)(“Operating expenses shall not include . . . [m]ortgage principal or interest payments or other debt service costs.”); City of Modesto Municipal Code 4-19.10(f)(3)(H)(2)(ii)(“Operating expenses shall not include . . . [m]ortgage principal or interest payments or other debt service costs.”); City of Palmdale Municipal Code §5.44.080(G)(11)(a)(“Operating expenses’ shall not include . . . [d]ebt service, including but not limited to mortgage principal and interest payments, and any other form of debt service.”); Mountain View Charter Amendment §1710(a)(3)(A) (approved by voters in Mountain View in November 2016 specifically excluding most newly acquired debt servicing costs from the factors that can be considered when evaluating a landlord’s request for a rent adjustment based on an allegation that he or she is not obtaining a fair rate of return); East Palo Alto Rent Stabilization Ordinance §13(F)(5) (excluding all mortgage principal and interest costs).

include debt service ‘suffer from the shortcoming that they are circular in the context of rent regulations. . . . In effect, this approach allows the investor to set the allowable return by setting the investment.’” *Colony Cove Properties, LLC v. City of Carson* 220 Cal. (9th Cir. 2010) App.4th 840, 854 (2013). The courts have found no rational basis for tying rents to the vagaries of individual land owners’ financing arrangements. *Id.* at 869–71.

Where the park owner’s investment backed expectation is unreasonable, the risk of loss is appropriately on the owner, not the residents. “The people who really do have investment-backed expectations that might be upset by changes in the rent control system are tenants who bought their mobile homes after rent control went into effect.” *Guggenheim v. City of Goleta*, 638 F.3d at 1122. Passing the cost of speculation on to the residents is equivalent to a “bail out” for the investor. Colony Cove alleged in the April 28, 2014 Complaint in this matter that “[b]y altering the manner in which it treated bona fide debt service expenses, the City has essentially forced Colony Cove to shoulder an affordable housing burden that should be borne by the City taxpayers as a whole.” Complaint at 2. Yet the District Court decision takes the matter to the opposite extreme, in which the residents are given the burden of ensuring the profitability of Colony Cove’s heavily leveraged investment. This misplaced burden is contrary to the guiding principle in all fair

return determinations, which "involves a balancing of the investor and the consumer interests." *Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 603 (1944).

VI. CONCLUSION

Based upon the foregoing, amici urge the Court to find that, as a matter of law, the City of Carson's rent increase determination that did not factor Colony Cove's debt servicing expenses did not constitute an unconstitutional taking. To affirm the District Court's decision and mandate the inclusion of debt servicing costs as an operating expense in such calculations would open a floodgate for opportunistic investors to ensure returns on speculative real estate transactions on the backs of the poor. Impacting not only mobilehome parks, but also any residential real property under the protection of a rent stabilization ordinance, such a restriction on fair rate of return determinations would undermine the very purpose of rent control and compromise the careful balance of California's affordable housing strategy.

Dated: March 15, 2017

WESTERN CENTER ON LAW AND POVERTY

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Dated: March 15, 2017

LEGAL AID SOCIETY OF SAN MATEO
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I hereby certify that this brief has been prepared using proportionately double-spaced 14 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word 2013 for Windows software, this brief contains 6,383 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on March 15, 2017.

Dated: March 15, 2017

WESTERN CENTER ON LAW AND POVERTY

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9th Circuit Case Number(s) 16-56255

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Colony Cove Properties, LLC v. City of Carson, et al.

Docket No. 16-56255

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