Bill as Introduced

SB 466 - AS INTRODUCED

2000 SESSION

00-2815
05/10

SENATE BILL ***466***

AN ACT relative to lot rent increases at manufactured housing parks.

SPONSORS: Sen. Hollingworth, Dist 23; Sen. Brown, Dist 17; Sen. J. King, Dist 18; Sen. Disnard, Dist 8; Sen. Larsen, Dist 15; Rep. O'Keefe, Rock 21; Rep. Henderson, Rock 20; Rep. Weatherspoon, Rock 20;

COMMITTEE: Public Affairs

ANALYSIS

This bill allows manufactured housing park residents to request a hearing before the board of manufactured housing on lot rent increases.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

00-2815
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to lot rent increases at manufactured housing parks.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Jurisdiction of Board of Manufactured Housing. Amend RSA 205-A:27, I to read as follows:

I. The board shall hear and determine matters involving manufactured housing park rules, specifically RSA 205-A:2, RSA 205-A:7, and RSA 205-A:8, ***and lot rent increases under RSA 205-A:6-a***.

2 New Section; Board of Manufactured Housing; Process for Hearings on Lot Rent Increases. Amend RSA 205-A by inserting after section 6 the following new section:

205-A:6-a Lot Rent Increases.

I. Within 30 days of the receipt of notice of an increase in lot rent under RSA 205-A:6, a simple majority of the manufactured housing owners in the park, one vote per manufactured home unit, may bring a petition requesting that the board of manufactured housing conduct a hearing to determine whether the increase is excessive. The names of those petitioners requesting the hearing shall not be disclosed to the park owner or operator, but shall be authenticated on a confidential basis by the board.

II. For the purposes of this section an excessive lot rent increase is one which is indefensible after taking into account the park owner's or operator's total expenses, including debt service and a reasonable return on the park owner's investment or equity in the park as determined by an analysis of alternative and comparative investments, provided, however, that such debt service is directly related to acquisition or amelioration of the manufactured housing park in question. Specifically excluded from any such analysis shall be any debt service incurred using the mobile home park as collateral or other security for investment, enterprises, businesses or similar ventures separate and apart from the manufactured housing park.

III. The board shall, after hearing testimony and reviewing evidence, make its decision based on the following considerations:

(a) The rationale provided by the park owner or operator for the lot rent increase.

(b) An analysis of those fiscal issues detailed in paragraph II, with records supplied by the owner or operator covering a period of not less than 3 years prior to the proposed increase.

(c) A sampling of current lot rent rates as compiled and reported by the New Hampshire Housing Finance Authority.

IV. The board shall review the petitioners' request within 60 days of receipt of the petition, and shall be empowered to disallow any portion, or all, of the proposed lot rent increase.

V. No lot rent increase challenged under this section shall go into effect until completion of

the board's review.

VI. In the event of a decision in favor of the owner or operator, no retroactive lot rent increase payments shall be charged to the park residents, and any costs incurred by the owner in preparing for the hearing shall not be recoverable from residents.

3 Repeal. RSA 205-A:27, II, relative to jurisdiction over rent increases, is repealed.

4 Effective Date. This act shall take effect January 1, 2001.

Committee Minutes

Date: April 26, 2000
Time: 1:00 PM
Room: Representatives' Hall

The Senate Committee on Public Affairs held a hearing on the following:

SB 466 relative to lot rent increases at manufactured housing parks.

Members of Committee present: Senator Trombly
Senator Disnard
Senator Eaton
Senator McCarley
Senator Roberge

The Chair, Senator Rick A. Trombly, opened the hearing by recognizing the prime sponsor of Senate Bill 466, Senate President-Senator Hollingworth.

Senator Beverly A. Hollingworth, D. 23: Good afternoon. I'm delighted to see so many of the citizens coming to Concord for this and it's clear that this means so much to so many of you.

Reads written testimony – See **Attachment A.**

I would like to state that it was my hope that we would not have to have legislation, that somehow the few "bad apples" that are out there that are not treating the vast majority of tenants appropriately would somehow be brought to their senses in some way. It just hasn't happened. I have worked diligently with many people trying to resolve the issues. I have not been able to accomplish that. So, after trying for two years to come to some kind of agreement, I found that it was necessary to sponsor Senate Bill 466. It is clear that there is an unfairness here that needs to be addressed, and I am anxious to hear from the people who are here today to speak.

I do believe that there is a couple of amendments – One which would make it on passage, and one that would address some concerns that the banking industry has. I'll answer questions.

Senator Rick A. Trombly, D. 7: Any questions? Thank you. Representative Henderson?

Representative Warren Henderson: Thank you, Mr. Chairman, members of the committee. My name is Warren Henderson; and for the record, I'm a House member from Exeter. I'm a Republican; I'm a capitalist; I believe in free-market forces; I believe in supply and demand; and I'm the co-sponsor of this bill.

I co-sponsored this bill primarily because of my work as a member of the Board of Manufactured Housing for the past three years. It's given me insights that, candidly, I likely would not have otherwise had. Everyone has an impression of manufactured housing whether they construe them as trailer parks, mobile home parks, or any other of their nicknames. Like most people, mine was a misimpression.

Serving on the Board of Manufactured Housing for the past three years has taught me many lessons that led me to my support of this legislation. Now the Board of Manufactured Housing doesn't govern rent increases. It's a specific area of exception according to the laws as currently written. We know instinctively and by the testimony that the members have received, that most manufactured housing unit owners are satisfied, and most park owners are honorable and care about their tenants; but we also know that there are exceptions to both.

Within that context, I asked myself as I served as a member of the Board and as I learned more about the unique experience of those living in manufactured housing, why wouldn't market forces take care of this problem? And, of course, like most people, when people came to me and said, *"The park owner just raised our rent for the third time in two years; he didn't even give a reason. We said we'd sue him. He said, if you did, he'd just apply his court cost to your next rent increase."*

This is merely hearsay. I have no idea if it's even accurate, but I asked myself – Suppose these statements and others like them were accurate; only the exception but accurate nonetheless. – Move.

It's from that position that I began to learn about the bind that manufactured housing unit owners are placed, not just because – and this still may come as a surprise to most outside this room – that you can't just jack it up and back up your car and go over to the next lot. It just doesn't work like that anymore, as you know far better than I. So you can't move a unit, at least not with ease; and since in many parks, there're barriers to entry and barriers to exit; it's not easy to move. Well, just sell your manufactured housing and go get a regular house. That's the way they're normally referred to, as I'm sure you know.

Well, it turns out that a significant majority of people living in manufactured housing have limited ability to pay as at least one of the reasons why they're there. These aren't folks who said, *"I'm sick of that million dollar mansion. I'm going to go and live in a manufactured housing park."* That's not generally the case. So, not only is a mobile home not truly mobile and not only is it relatively difficult to get it in and out of parks because you may not be able to get your money back or there may be other barriers either in the market or in the park; but most people that live in manufactured housing don't have the ability to just pick up and go plunk down a 20 percent deposit on that fancy house in the development across town.

So, the market forces really don't work in some cases as it applies to manufactured housing. Well, in those cases, is there a role for government? Reluctantly, it's my position that there is a role for government, and the proper role ought to be to set up a standard so that there's a rational evaluation made to separate "fair" from "unfair", "reasonable" from "unreasonable", "justified" from "unjustified". To me this is the most basic way to evaluate these situations. In helping to draft the bill, we looked at issues like – Should we toss in some measures? (You can always go up by the CPI or by some other rate of inflation or something like that.) And decided that no, that those were arbitrary measures. They might be less and they might be more than the actual cost.

We wanted to make sure that park owners could continue to invest in their park in maintenance and improvements; in improvements to health and safety; to beautification; to the things that both park owners and unit owners would want. We wanted to make sure that they're entitled to make a profit since that's the basis for being in business in the first place, but we wanted also to try to restore some of the balance that's supposed to exist in a "supply and demand" situation.

It's my belief that, in most cases, the experience of living in manufactured housing is a good one; and it's a good one because (in most cases) both the unit owner and the park owner have pride in the home, in the land, and in the park.

So, I would echo what Senator Hollingworth said that this bill isn't aimed at most parks, and it isn't aimed at most unit owners; but remember, most laws are written not to govern the majority – the majority is self-governing . . .they all want to get along. It's to govern the exception. It's to govern those who aren't restrained by what's "reasonable" or what's "fair" so like all those laws, this law would serve to help to restrain the excess – to restrain the exception. In my belief, it's a notion whose time has come.

Yes, there's loads of speculation. This issue lends itself wonderfully on both sides to great demagoguery. I mean, you can say anything . . .we'll be quoting patriots (and I don't mean the football players) before this is over, and there'll be lots of time for all sorts of impassioned eloquence. But all I wanted to do was to say that, in my judgement, this is "reasonable" and "fair."

If the bill passes and becomes law – now, I don't know if I'll still be on the Board – but all the members of the Manufactured Housing Board – and they would be the enforcing authority here. Even though, by definition, they represent the public, the unit owner and the park owner, all of them bring the same sense of fairness and propriety to the Board. So my sense is that, once we see how often this law is needed and how this process works, we'll be able to get a very clear sense of whether or not this is a meaningful way to help restrain those who aren't restrained by "fairness." I think it's worth taking the chance. I'm optimistic that if it's passed into law, it'll work. I'm glad for the opportunity to be here, and I thank you.

Senator Rick A. Trombly, D. 7: Will you yield to a question? Senator McCarley?

Senator Caroline McCarley, D. 6: I have just one question, Representative Henderson. As I understand, are you still on the Board of Manufactured Housing?

Representative Warren Henderson: I'm on the Board for the balance of my current term.

Senator Caroline McCarley, D. 6: Is the Board taking a position on this legislation?

Representative Warren Henderson: I was not able to – I was sick and couldn't attend the last meeting where, apparently, this bill was a subject of heated discussion.

Senator Caroline McCarley, D. 6: Well, that I can imagine.

Representative Warren Henderson: My belief is that the Board itself – and these folks here will nod if I'm on the right track – that the Board itself will not take a position, but various members of the Board may and likely will today take positions. So presumably, they'd identify themselves as members. I bet you'll be able to tell by the positions they take where exactly they are in terms of their appointing authority.

Senator Caroline McCarley, D. 6: Okay. . .Thank you.

Representative Warren Henderson: Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Representative Weatherspoon?

Representative Jackie Weatherspoon: Thank you, Mr. Chairman. Good afternoon, everyone. I'm Representative Jackie Weatherspoon. I represent Exeter and Kensington. When I say I represent Exeter and Kensington, I also represent Sherwood Forest. I represent also, as a substitute teacher, all of your children and grandchildren who attend the area schools. That means I also know your kids and grandchildren who work in McDonald's, who work in Dunkin Donuts, who attend the local area churches, who are part of the Boy Scouts, the Girl Scouts, who attend the confirmation classes, and some of those who also work at Phillip's Exeter Academy, where my husband lives and my family. So I know the area that I live in; and I have lived in Exeter over 15 years. It's amazing, isn't it when you look at me? But that's what – yeah, laugh. Laugh – but when I look at Exeter, I look at what America is, what it's struggling to be, and why you're here today.

This is for you to enjoy your right as Americans. This is the reason why you are here because you have worked many, many years; a number of you are still on fixed pensions; and a number of you have grandchildren that may even stick five or ten dollars in an envelope to give it to you on a weekend or Mother's Day that's coming up.

I am here to say that all of you who cannot pick up the trailer and say – "Hello, we are out of here." I am here to say that this is a bill that supports manufactured housing; and if there are members in the House today who think that you can fool people of Exeter and say that this is a *"rent control" bill,* I have to tell you the people in Exeter are very smart. And one thing Exeter does very, very well is they vote. If you'll look at my district in the last presidential primary, we had over 63 percent of the people coming out. That is a very large percent. There were a number of people. . .(Democrats from all over the country). . .who came to assist us. They actually shoveled snow from the walks in Sherwood Forest. They came back with stories of people with dignity, of people who took care of their yards, of people who love their families, and people who had a commitment.

I would like all of you to know that this coming year the people in Sherwood Forest will be voting again. They will be voting in stronger numbers, and you need to know that the 18-year olds in my district will also be voting again. As this block becomes stronger and stronger and continues to have a voice,

they need to let you know that "fairness" is paramount to our democracy system, because if you are not "fair," they will vote you out. If you don't hear their voices, they can rise up and put in candidates on all types of boards and representatives who will give them voice and a strong voice.

When I came into the room, a gentleman said to me, "You know, I only hear from my landlord once a year. I hear from him around Halloween time, and he sends me a letter. It doesn't say "trick or treat," Representative Weatherspoon. It says, guess what? You are getting a rent increase." He never sees his landlord any other time or hears from his landlord any other time, except when his rent is going to go up.

I am in support of this bill. I am in the same district as Representative Henderson. We have fought so many ways bi-partisan in the state for Martin Luther King, for women, for all types of issues for your children, and we will continue to do that. I ask all of you today as you listen to the speakers, listen for those who are going to give you voice, and resonate to them loud and clear. . . .This is a bill not about "rent control". . . .This is a bill supporting those living in manufactured housing. It's so good to see you all here today. Thank you. (applause)

Senator Rick A. Trombly, D. 7: I have to remind you that at the beginning of the hearing I asked you not to show pleasure or displeasure. I must remind you of that, unless I was the one speaking. You remember that part too. Representative Letourneau?

Representative Robert Letourneau: Thank you, Mr. Chairman, members of the Committee, ladies and gentlemen. I'm Representative Robert Letourneau from Derry, NH representing Rockingham-District 13, and I also sit on the Manufactured Housing Board. I'm not here in favor or opposed to the bill, but I feel as though there are several things that I need to point out that need to be spoken here.

At the last meeting of the Manufactured Housing Board, we were going to discuss this bill, but Representative Henderson wasn't able to make that meeting, and so we weren't able to discuss it but we did ask our Attorney General representative on the Board to give us a cost analysis of what this would mean to the Board and to the state.

First of all, what we do at the Manufactured Housing Board is to review disputes between the park owners and the tenants. Generally, these disputes are over park rules or some fence, or a parking issue, or it may be a dog or a cat or some animal issue that has to do with the park rules. We opened this up to rent, and right now, currently, I think we're hearing about 25 or so or

30 (maybe) complaints a year. I can't even imagine what it would be if we had control over all the rents in all the mobile parks in the state. So, there would be some cost associated with this, and the cost will be – and from the Attorney General's point of view where we would need to have a qualified financial analysis with CPA credentials to complete and analyze proposed rent increases under the criteria set under this bill. Such position would be accorded a General Labor Grade 30, and that position would need to be supported by a Level II Paralegal. Also, it would need to have an attorney present at all these hearings. So, they considered that it'll take a full time CPA, a half-time secretary, and a half-time attorney. The proposed cost for the paralegal would be $27,456 (with benefits of $8,511); for the financial analysis with the CPA, it would be $46,059 (with benefits of $14,278) or $60,337. So, it's roughly around $100,000 just for those two people, and they didn't put in an analysis for the attorney. You need to consider these options when you're considering this bill, and I'll be glad to answer any questions.

Senator Rick A. Trombly, D. 7: You yield to questions? Senator McCarley has a question.

Senator Caroline McCarley, D. 6: Just one Representative, but I understand you are not a sponsor on the bill?

Representative Letourneau: No I am not.

Senator Caroline McCarley, D. 6: I'm curious, from your perspective, based on the fact that when the Manufacturing Board was put in place, it very specifically was not going to deal with the rents issue. Do you think we would need to seriously look at reconstituting that Board relative to the fact that the rent issue is a large one? You might not have an answer to that. I'm just curious because...

Representative Letourneau: I don't have a legal opinion but I think that you're correct. I think that if we're going to look at rent issues we would need to meet more often. We would need to have more people. It would be, again, these positions would be required for expert advise in those areas. So, yes. The context of the Board would change.

Senator Caroline McCarley, D. 6: Thank you.

Senator Rick A. Trombly, D. 7: Thank you Representative. That's a list of Senate and House members I have. Is there any other House or Senate members wishing to speak? If not I will go into the general public and recognize Lois Parris.

While Lois is making her way forward I will tell you that we expected that quite a bit of the testimony may be repetitive and those of you who are further on down on the list, if you please keep in mind we have already heard what may have been said prior. Please don't repeat that. We do have a full transcript of what everybody says and the Senators will be able to review that. So I would you ask you to beg the Committee's indulgence and that if the testimony has been given prior here to if you would please amend your remarks accordingly. If you have any written testimony, if you hand it into the Clerk here we will all receive a copy of that. Thank you. Lois.

Lois Parris, Concord, NH: Thank you. Good afternoon everyone. Good afternoon Chairman. I'm looking at all of you and I have to say and admit that I am very, very nervous standing here and for any of you close enough you can see this zit that came out yesterday. (laughter) I am scared to death so if I stumble a little bit please do excuse me.

I gave some material to the Board members for them to review at a later date and it's signed by our President, Bob Paradis, who could not be here today. **See Attachment B.** It is also, for many of you who remember Doris Levesque, something that she wrote back in 1994 when we had our last chance at explaining our side of this issue and it's all pretty pertinent and it's nice to know that Doris is with us today regarding this issue.

Written testimony handed in. **See Attachment C.** (turn over tape)

Senator Rick A. Trombly, D. 7: Thank you. (applause) I really have to ask you not to applaud. I think we need to do that out of respect for those people that are going to coming up and opposing the bill. It's very difficult to speak publicly like this and by the arrangement we have here, while we're listening the members of the public are going to be looking at you and that's a very intimidating thing to do but it's even worse when you're speaking your heart and your head on a position that's contrary to many of the people who are in the room. Believe me, I did it a lot when I was here in the House. So, it's very intimidating so I really must insist that you not do that. Otherwise I'm going to ask everyone of you take me out to dinner and I'm not a cheap dinner date. (laughter) So, that's your punishment. At that, I'd recognize Gene Gayda.

Gene Gayda, Nashua, NH: Written testimony handed in. **See Attachment D.**

Senator Rick A. Trombly, D. 7: I have one question for you. In listening to the studies that you've cited, it sounded to me like they were relative to non-

manufactured housing. The studies you've cited, did they break down between manufactured housing and residential ownership?

Mr. Gayda: Fair question. Some studies did. Most did not. Most of them were for the standard apartment rental, however, we do have the state of Nevada and there is, I think, the CATO Institute also went into mobile home parks. So there is some amount, yes for mobile homes.

Senator Rick A. Trombly, D. 7: Thank you. Dot Sliney.

Dot Sliney: Can everyone hear me? Good. My name is Dot Sliney and I'm President of the Rhode Island State Mobile Home Association. I'd like to first say to all you people you've got a great State House here.

One of the things that I would like to say is I listened to some of the things that the former speaker had to say and some of it quite frankly I have to disagree with.

1) Rhode Island has had this bill that's now being presented and we started in 1988 and we kept amending it until 1994 and we got the same bill with the exception that it goes before the American Arbitrators Association.
2) Another issue is rent control in mobile home parks is not going away anytime soon. I can tell you this, in Rhode Island since this bill has been enacted, we've had one challenge before the American Arbitrators Association and it's this year. Ok? This does not in any way stop rent increases. I say that to all mobile home owners also because this isn't the end of rent increases but it does stop the large ones that have no justification for anything that's been done in the park. Some park operators are real great guys. Some are not. Some buy their parks, put nothing back into their business and want to milk it dry. Right? Ok.
3) The second thing here is, I'm looking around this audience and I see a lot of gray hairs here. Well, mine too but I just did it. (laughter) But the thing here is people are attracted to mobile home parks because many of the park operators got signs out "Affordable Housing". You move in and before you know it in a few years your rent has gone up to something that you can't handle and you can't tell senior citizens that are already retired "well you better get out and get a job."
4) Another issue that, I don't know how New Hampshire is but in Rhode Island, a lot young people in Rhode Island don't go out and vote. So nobody really gives a heck about them. A poor young guy struggling with a wife and a family and they think a mobile home is going to be their first starter home. I'm sure we have a lot of young people that do do that and they move in. Then before they realize it, they can't afford to stay there either. Not only do they lose their home they lose their credit, they lose

their wife, and the kids – I don't know where they go. But it's some tragic things that happen.

5) Here's also another issue that happened in Rhode Island and I'm sure it's happening here. In Rhode Island we had out-of-state corporations coming in and wanting to buy the park in California for here, there and everywhere, milking their business dry and our senior citizens were being left with paying more than half of their social security check in rent. Our General Assembly said to them and our Senator Corporations Committee said to them "A lot of you are good guys but a lot out there are dirty rats. Clean your act up."

Since this bill has been enacted and is law the largest rent increase we've had in all these years have been $5.00, $10.00 and this year we had a $75.00 rent increase and he's going before the American Arbitrators Association. This is not rent control. This is not to try to stop legitimate rent increases. This is to stop the ones that are clearly excessive, have got nothing to do with the operation of the park.

Now the thing here is I heard some mention about cost. What cost will it be to the state of New Hampshire if these senior citizens, and you have 500 parks, can't afford to live in their homes because these out-of-state corporations are coming into the state, milking your business dry. Do you have enough of senior housing for them? I don't think so. Do you? Now the whole issue here is cost. The cost would be insignificant and appear to happen to housing seniors where out-of-staters come in. In my opinion this bill is a matter of state pride because New England is – whether you're from Rhode Island or New Hampshire and I believe you have a lovely state – we have deep roots in our community. Many of you have lived here all your life, haven't you? You didn't come from Boston or Rhode Island or Vermont or Maine. You've lived here all your life. You've made this state what it is.

The whole issue here is for your General Assembly not to give careful thought to this bill would be a terrible thing. I prayed on this and I hope there's an angle in your General Assembly that is going to help you get this bill passed because the cost is insignificant to housing you.

Rent control, you are absolutely right, it does not work in apartments and we all know why. Because as soon as you implement rent control the owner of those tenements doesn't do any more work. The property runs down but see, you're not dependent on the park operator and I say this to all your Representatives and Senators. You're not dependent on the park operator to fix your property because you take care of your property and you've got pride in it. So you don't need him. You're only using his land. The park operator

has the business interest in the land and you have an interest in the home. It's your home.

So I really do urge you – here's another thing that really got me ticked off. When Rhode Island's bill came up we had people from the Manufactured Housing Authority; every park operator in the state, before long they were talking about it's immoral. I thought we were talking about a social disease. The whole issue here is they talked about rent control. I'm not interested in rent controlling Cairo or in some other state. This is not rent control. It will not stop rent increases because if a park operator can justify it, he's going to get it and all mobile home owners should understand that. If he has to put money into his business to improve the property, he will get his money back.

But this is a beautiful state and I hope your General Assembly, like Rhode Island, will take the next step and protect you people from unscrupulous park operators and particularly them ones that come from out of state, are living in the lap of luxury at your expense. We don't need that. New Hampshire doesn't need that. So I hope that you people in the General Assembly will do the right thing for these people because they deserve it. I just hope I could hypnotize all of them. (laughter) Thank you. (applause)

Senator Rick A. Trombly, D. 7: Thank you for your interactive testimony.

Ms. Sliney: I have a copy of the law to give you.

Senator Rick A. Trombly, D. 7: You can hand it to the Clerk. **See Attachment 1.** Thank you. Elliott Berry.

Elliott Berry, NH Legal Assistance: Thank you Mr. Chairman and members of the Committee. I have some background materials, which I hope will provide some context to the discussions that will be taking place throughout this day.

When I first heard that Senator Hollingworth had the courage to bring this bill before the Legislature I said to myself "It'll be a snowy day in May before that has a chance of passing." (laughter) But who knows.

I was contacted about this bill by six elderly mobile home owners in the Kingstown Mobile Park in Epsom. Their ages range from 74 to 90 and not surprisingly they're all on fixed income. Their park is owned by an investor from Vancouver, British Columbia and the most recent increase was up to $333.00 a month. Three years ago it was $263. I just happen – one of the things in my handout is from the Bureau of Labor Statistics on the CPI over that same period of time, **See Attachment E**, and in three years the cost of

living, generally in the New England region is up 6%. Now some of these people will pay 40% of their fixed income for lot rent and that doesn't include property taxes, utilities, mortgage payments. That is a very dangerous amount of lot rent for them to be paying. It may well mean that they're one unexpected expense away from being evicted from their homes.

I also have had the pleasure of representing the tenants at the Sherwood Forest Mobile Home Park in Exeter and in four years their rental increase has gone up 22%. Now again, at a time when overall inflation was probably up 6% or 7%.

I am not say, and please everybody here listen to this, I am not saying that those rent increases are per se illegitimate. What I am saying is that when those people call me and say what can I do about that rent increase, the answer is ***nothing***. Absolutely ***nothing***. When the park owner now under our benevolent laws required to say why. He could say, "because I want gobs of money." That would not give you any recourse in court.

In this Legislature we have been hearing more and more these days about accountability. Is there any accountability of park owners to tenants? Is there any recourse to justice? In the current law there is not a court in this state that has jurisdiction to do anything about a rent increase in a mobile home park no matter how high it is.

Several years ago I represented a group of tenants in a small mobile home park in Milford and they got a rent increase at one time from $200 to $300. The tenants attempted to defend against that rent increase in court. They lost in court. It went to the Supreme Court and low and behold without even writing an opinion, the Supreme Court gave one of their one paragraph orders saying "Sorry. There's nothing that can be done."

What the bill does is simply make – enable the tenants to put the landlord in a position where he has to show the numbers, to justify the rent increase and then and only if it's indefensible, only if it's unreasonable, will it be rolled back. Remember, the law specifically, it specifically guarantees as part of the financial analysis a consideration of the owner's operating expenses, his debt service and his reasonable return on his investment. Analyzing it according to alternative uses that he could have had of his money.

I happen to believe, by the way, that if anything is problematic with this bill is that under the fairly generous standards, I got a feeling most very high increases will still be approved. Indefensible is a pretty tough standard to meet but nevertheless at least there's a sense of recourse. I can tell you people when you call "there might be something we can do." Maybe this is

just for my benefit because I hate telling people when they call me they have bad problems and there's not a damned thing I can do about it.

What will happen if this bill passes? Number one, for those who will come after me, I want to just preemptively say it will not mean the end of civilization as we know it. It will not mean the end of private property in this state and it surely doesn't mean that we'll be any closer to general rent control than we already have been. If this Legislature thinks we have a manufactured housing park rent problem and a recourse problem, you can pass this bill. You will only pass a general rent control bill over Gene Gayda's screaming objectives if you think it's a good idea. I haven't heard one of the bill sponsors – I haven't even said to myself that I think it's a good idea. You'll cross that bridge when you come to it but I don't think that anybody has anything to fear about generalized rent control from doing something to help this captive audience deal with exploitation.

The next question. Will investors – will this lower the value of the parks that a lot of good New Hampshire residents own here in New Hampshire? My honest answer to that question is sometimes. Once in a while it will. There are investors, we know and we have one of them as I said from British Columbia who owns at least two parks, we know he's looking all over North America for the most hospitable places he can where he can rest assured that he'll be hassled as little as possible when he charges as much rent as possible. He will pay a premium and has to operate in their environment and to that extent, yes it will have some effect on the value of your properties. But right now the people who are paying that premium are the people who are living with totally unregulated rents, totally in parks where they have no recourse. If I have to balance where that premium should be paid, I'd say let's make it a little less hospitable for the international investors who want to make as much profit as possible over unregulated environments.

Rent control opponents always say there will be abandonment and no reinvestment in parks. That is ridiculous and as already been said, mobile homeowners do most of the investing in the parks. They're the ones who fix up their properties. They keep up their properties. They have strong incentives to do it and if the park owners want to abandon their parks because they're so freaked out about having to pay some degree (change tapes) ...they are ready, willing and able to buy them. We have between 30 and 40 tenant owned co-ops in the state. They pay top dollar and anyone who wants to turn over their home to them contact me or the New Hampshire Community Loan Fund right away and we'll make sure those transactions proceed.

Zoning. Over and over and over again for the past 20 years I have heard the representatives from the industry, many of whom I like very much and enjoy several laughs with this time of year, we will agree that zoning is a problem. However, for at least the last 15 years the zoning laws of the state of New Hampshire have said every municipality has to permit manufacturing housing either on individual lots and the same terms and conditions as other homes or in mobile home parks and subdivisions. Every municipality. You're not going to do much better than that. The law is as it is. It's not going to get better than that.

I would also suggest to you that one of the main reasons that new mobile home parks are not being built is not so much zoning but when you look at the cost of land in the southern half of New Hampshire, the highest and best use of that property is for other things. Even if the local government said to the development community, "We're all yours. You find a piece of land, take it." A lot more likely it's going to be regular conventional real-estate development where people can pay $250,000 to $300,000 for a home. It is about economics. It's not so much about zoning and finally what if we had a major expansion? What if I'm wrong? Even if we had a major expansion of the number of mobile home parks, you still have the same problem because people can't move their homes.

The United States Supreme Court, in the last opinion upholding mobile home park rent control in 1992, made note of the fact that in the United States, one out of 100 mobile homes are moved after their first place in a manufactured housing park. They are not mobile and even if we had double the number of parks, they're not going to get moved. It's too expensive. It's destructive to the home and park owners like selling new homes with lots.

Bottom line, zoning – you know I have been an advocate of looser municipal zoning for affordable housing for a very long time. I will continue to do that with every ounce of my being but it's not the answer to the problem that we're trying to address today.

Finally, one of a number of things that I've put in the packet have to do with legal decisions. People who despise rent control of all forms have been attacking it in court throughout the 90's and the late 80's. I have two U.S. Supreme Court decisions for your reference. **See Attachments F and G.** Florida decisions. **See Attachments H, I, J and K.** California decisions. **See Attachments L and M.** Nine Circuit Court of Appeals decisions. **See Attachment N.** Rent control is holding up and especially many of them are mobile homes because that's where they're continuing to do it. Florida has not only remandatory arbitration that looks a lot like the proposed legislation today, they also have the courts which are by statute able to strike down

"unreasonable rent increases" with no more guidance – with hardly more guidance than that and that has been upheld by the Florida courts.

The bottom line is that it's absolutely constitutional. It's operating and not thriving in Florid, Rhode Island and I believe New Jersey. There is no reason we can't do it here. All we're asking for is access and accountability. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Questions? (applause) Folks, please! Thank you.

Senator Caroline McCarley, D. 6: Hello Mr. Berry. One quick question. Based on your understanding of the current charges of the Manufacturing Housing Board, I'm just trying to get at if we're going to do this, how we're going do it and what is your opinion, and understanding it is just that, about whether we would need to make some significant changes in terms of hearing the appeals process?

Attorney Berry: I think that whoever spoke on behalf – the second member of the Board who spoke – talked about adding somebody with financial expertise would be much more – lawyers you don't need, but I do think it would very important to have a somebody with an extensive financial background.

Senator Caroline McCarley, D. 6: Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Representative David Kibbey.

Representative David Kibbey, Sull. D. 4: Thank you Mr. Chairman and members of the Committee. First of all I signed the card on behalf of Representative David Kibbey and also on behalf of David Kibbey representing myself because I am a manufactured housing park owner.

As a representative representing Sullivan District 4 I haven't had any calls in support or in opposition of this bill. I also have tenants so as a representative I would be opposed to this bill. But more specifically my wife, Gloria, and myself are opposed to this bill.

When you go to page 1, line 17 through 21 and it says, *"however, that such debt service is directly related to acquisition or amelioration of the manufactured housing park in question."* We're in the process of discussing with our family of selling the parks to our children. We have one park with 52 lots, which supports itself, clearly. We have a second park with 54 lots with only 16 lots completed which obviously doesn't support itself. My

financial advisors have advised me that the children should take out a mortgage. Under this language here it would appear that the bank would have serious reservations about lending money for two parks when one of them doesn't pay for itself. So we're having a very big problem. We had started that discussion a little bit a few weeks ago and then I read this bill. So we're having a big problem with that issue and I'm going to leave it at that issue but personally I'm opposed to the whole bill particularly the one that would require to review all your financial data for the last three years. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Deborah Newell. Is Deborah here? David Newell. Sean Rogers.

Sean Rogers, Northboro, MA.: Thank you Mr. Chairman. My name is Sean Rogers and I work for Forward Financial Company. We are a specialized lender in the manufactured home industry and cover 22 states across the country. I have been in the industry for 10 years and my territory in New Hampshire covers Rockingham and Strafford Counties. Included in that is Sherwood Forest. I do business with many of you people here. Some of you people may have come to me for a loan for the house that you've purchased. In some instances I also do business with park owners selling new homes.

I personally do not believe that New Hampshire needs rent control legislation for manufactured housing communities. Last year I closed over 200 loans in New Hampshire and I do not recall high lot rent being a discussion or at issue at all in any of these closings.

My question to you is this: If the rents are too high then why are people buying in these communities? The answer is the rents for the most part, I should say, are not too high and as long as they remain reasonable the sales will continue to take place.

I am also against rent control because it leaves the park owner with no incentive for general upkeep or improvements to the community. For example, a community under rent control with a need to repave the streets. Why would the community owner repave the streets when there is no way to recoup his costs to do so? As a result the community becomes less desirable and the home values decrease. Because of this many homeowners would then owe more on their home than the home is actually worth.

Also, lenders would have concerns on lending on homes in deteriorating communities. The fear the lender has is in the event of foreclosure it would be more difficult to sell the home to perspective buyers if the park were in less than desirable condition. General appearance of the community places a

role in the ability to sell the home as well as the value of the home itself. Inability to get financing would hurt perspective buyers as well as sellers who may become trapped in a home they no longer want to be in.

As you can see, passing rent control legislation with the idea of helping tenants may actually hurt them in the long run. I suggest you look at the possible long-term effects of rent control before you consider passing this legislation. Thank you. (applause)

Senator Rick A. Trombly, D. 7: We need to stop the clapping. John Finnegan.

John Finnegan, Derry, NH: Good afternoon. Thank you Mr., Chairman. I'm a tenant in Derry and I've been living there for six years. We've had a rent increase of $60 and my aim in speaking here today is that our landlord, just before election time, sent out notices that there was a new school to be built in Derry and he intimated that if there was a tax increase that meant that he would have to raise the rent. It intimidated everybody.

Also people are talking about taking care of the park and so forth. Our park has not been taken care of. I was on the committee of the park about three years ago and I went to the town of Derry and complained about code violations and a state violation. A tenant bought a mobile home park for storage and Derry, Town didn't do anything about it. This is not rent control. This is rent justification and that's all we want. Just justification. Thank you. (applause)

Senator Rick A. Trombly, D. 7: Thank you. Peter Quinn.

Peter Quinn, Portsmouth, NH: Thank you Mr. Chairman. My name is Peter Quinn. I'm from Portsmouth, and I'm a commercial real-estate broker. I specialize in income properties. I have brokered a number of manufactured home communities over the years.

I worked on one rent controlled park unsuccessfully. I could not attract any investors. They just simply did not want to buy into a rent control situation. Now the flip side to that is if I can't sell a rent controlled park, developers are not going to go to the headaches of building in a state with rent control.

Now since rent control took effect in Vermont, not one new park has been built but 26 parks were sold and they were sold back to the state of Vermont. Not to the tenants but back to the state of Vermont.

When you consider this bill, please consider the ramifications. It's no secret that the fastest growing demographic today is the 50 and older. The Census Bureau has tracked this demographic group since 1990 and has projected that the 50 and older will grow by 74% by the year 2020. Manufactured home communities provide a valuable housing for this, the largest demographic group.

No longer are retirees simply flocking to Florida or Arizona or Hilton Head. They're retiring in New England. Down East Magazine, since 1998, every March they put out a special Retiring in Maine Supplement and monthly there are ads for retirement communities. This you didn't see back in 1996. This is new.

Consider the impact that a manufactured housing community has on communities. Most of the people in manufactured housing communities and where the largest market, as I said, is the 50 and older. Most of these people are retiring or preparing to retire.

In Goffstown, the Village of Glen Falls and Medford Farms are adjoining communities with approximately 300 units. I spoke with the assessor in the town. The homes average assessed value of $60,000. That gives an assessment for the town of Goffstown of $21 million or a little over $500,000 in taxes to the town. Now, the owner maintains the roads, plows the roads, picks up the trash and takes care of the septic. There are no school children in that community.

Briar Crest in Laconia, similar situation although it's not designated a 55 and older park most of the tenants are retired and there are no school children. Currently Briar Crest provides a tax base of $12 million or $350,000 in taxes. When fully built out it will provide well over $20 million in tax bases to the town and not have any children.

Now, 55 and older, in these communities you can buy a brand new two-bedroom home for $60,000 to $100,000 and in some cases they will have garages. In the Seacoast area, lots are selling currently for $100,000 to $300,000. Rent. Two bedroom apartments are renting for $1200 to $1300. Where's the 55 and older going to go? Are they going to buy a $250,000 or $300,000 home? Are they going to pay $100,000 or $300,000 for a lot? If you enact this bill and no parks are built, then the largest demographic group is going to suffer. I just think that would be a major mistake for the state of New Hampshire to enact that bill. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Debra Smith.

Debra Smith, Manchester, NH: Thank you Mr. Chairman. I'm not the president of an organization. I'm simply a small landlord in the city of Manchester, a single mom who's a stay at home mom. I subsidize the quality of life of my son through the income that I receive through the rental properties that I have. I'm opposed to this bill because I believe it will limit my income and the quality of life I am able to give to my son. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Peter Quinn. Malcolm Beaulieu.

Malcolm Beaulieu, Manchester, NH: Thank you Mr. Chairman and the Board. My name is Malcolm Beaulieu and I'm in opposition to this bill. Reason being is I'm also a landlord and small business. What I see in this bill is it puts a lot of burden on the owner. Right now it's for mobile home parks and there's no provisions in here whatsoever that any increase in cost of any kind cannot be passed on, or what is to say what is a reasonable or unreasonable rent increase? Anybody that receives a rent increase can automatically say this is unreasonable. Somebody gets a rent increase of $10.00 a month, can be reasonable to one individual and wouldn't complain. Somebody else would receive a rent increase of $10.00 a month and would say this is unreasonable.

I'm going to complain about this. The landlord will then be put through, the park owner, put through of providing records for three years of his expenses and cannot reclaim the cost. I don't see anything in here of any limitations as to what is fair or unfair. Not being able to recover any of the cost to be able to defend yourself against somebody that you do not know or is not identified, that is basically invisible to that owner is an unfair practice because any other situation, any other business or in a court environment, you are allowed to face your accuser. If somebody complains and brings forth, it could be numerous complaints generated by anybody who's in discontent – I don't like this owner. I'm going to really put the screws to him. – He is going to suffer - not knowing what is happening to him or who is bringing it forth.

I don't like the way this is written. It has no provisions whatsoever toward being fair towards the owner. It is all one sided as to a tenant.

Unfortunately we have a lot of laws that get passed, everybody's saying well this is for mobile homes. This is not for apartments. But we also know bureaucracy grows. Before you know it, it will be rent control and it will be on a lot of different owners. Apartments. You'll have a lot of small family businesses, two families or three families that are going to end up suffering for it. I thank you for your time.

Senator Rick A. Trombly, D. 7: Thank you. Ashton Welch.

Ashton Welch, Concord, NH: Mr. Chairman, Mr. Vice-Chairman, Senators. For the record I'm Ashton E. Welch, the Executive Vice-President of the New Hampshire Association of Realtors. I would have to say it's been about two decades since I've stood in this well and it is very reminiscing.

As a way of introducing my credentials, I would like to say that I have been with the Association for 17 years now. In that time I have developed a passion for the American Dream. A dream that says every person is entitled to an opportunity to have a decent and affordable house regardless of where they live, how they worship, the color of their skin, the spelling of their name and regardless of any other artificial barriers that would be put before them.

I believe strongly that everyone is entitled to be safe and that by living together and sharing our cultures that we become better in occupying the space that we have together in this world.

I have over these years served on task forces and working groups at the local, state and national level as we have searched for better answers for the affordable housing challenge. I have participated in the President's Conference on Homeownership in Washington where challenges and programs and ideas were shared. I have served for the past four years on the National Association of Realtors Housing Needs Committee where we have discussed a great many housing issues. I have also championed the partnership that now exists between my Association and the New Hampshire Community Loan Fund where ...a program helps to return some funds to help them with their affordable housing programs.

I care and our Association members care. The communities need to be more than geographic locations. They need to be about families and about volunteerism and about chipping in together, about education, about safety and about community. I care and our Association cares that affordable housing is hard to find for low and moderate income families in New Hampshire and that teachers and firemen and policemen often cannot live in the community that they serve because the housing is too expensive.

With those ideals, Mr. Chairman, I would like to very much say that I am here today to support the proposal that I believe would be a magic bullet for everyone in the room that we have also illusively sought. I would hope to be here to say that this magic bullet will solve or begin to solve the problems of affordable housing in New Hampshire. I wish I could say that by enacting Senate Bill 466 that we will put in motion a positive solution that will constructively address the issues of affordable housing and that in the long

run, IN THE LONG RUN, provide more affordable housing units in the state. Unfortunately, Mr. Chairman, I cannot provide you with that testimony because I feel that Senate Bill 466 would ultimately have exactly the opposite effect.

Senate Bill 466 is a rent control bill. Pure and simple. And indifference to Senator Hollingworth, the primary sponsor of this bill, I would agree. This bill and its language specifically addresses manufactured housing parks but I've been around and as plenty of you have been around for a long time and there are slippery slopes. When government says that property owners and managers and investors and landlords cannot, or even may not, be able to get the anticipated return on their investment, then government either directly or indirectly is setting prices and setting rents.

With the exception of the Housing Cooperatives that have been created statewide and that we whole-heartedly support, and in the subsidized units and programs that exist, rental housing and manufactured housing exist because investors exist. Those investors just like you and me look at an investment with an eye on return and on risk. With rent control under any name under any guise an investor is going to look and consider that the return is going be more uncertain and that the risk is going to be much higher.

Now we ask you, will an investor be more likely to invest in rental housing and manufactured housing in New Hampshire? Or less likely? If the investor goes elsewhere, what happens to the creation of new housing units and rental units in New Hampshire and what happens to the quality of the existing units?

Mr. Chairman, with all due respect to the sponsors and their intent, Senate Bill 466 is a bad solution because of what it is likely to set in motion. Eventually it will lower the value of residential investment properties in New Hampshire. It will deter the construction and creation of more units and it will make existing units more expensive and less plentiful.

Mr. Chairman, we believe that supply and demand, competition and the open and free market place fixes prices. We believe that if a community statewide would lower their barriers to creating affordable housing that the supply would increase and competition would result and the marketplace would work.

We do not believe in edicts from the government that would restrict the free marketplace. We do believe in partnerships, in two-way partnerships. Local government cannot on the one hand impose restrictive zonings and onerous

fees and processes and then on the other hand, ring their hands that housing is either too expensive or not available. The state government cannot on the one hand pass onerous taxes on real-estate and on small businesses such as the nation highest real-estate transfer tax and then on the other hand chastise rental property owners for not keeping the cost down.

Senate Bill 466 while laudable in it's intent is not the way we should go. For all the reasons I have cited, Mr. Chairman, I urge you and we urge you to vote SB 466 Inexpedient to Legislate. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Mr. Welch, I have a question for you. Since you mentioned the issue of fairness and taxation, in the last Session of the Legislature we passed a bill that substantially reduces property taxes in most of the state. For example, the town of Hillsboro, which I represent, their tax rate for education went from $32 a 1,000 down to $23, yet none of the renters in that community had a reduction in their rent. So if the landlords come to us and say as a Legislature we need to be fair and you need to allow us to include increases that we incur which are fair, what is our response to the demand of the tenants that say when we enact legislation that reduced property taxes by 1/3 that their lot rent should go down by 1/3?

Mr. Welch: Very good. I don't know that I'm prepared to answer that on the part of landlords. I understand the issue that you've raised though.

Senator Rick A. Trombly, D. 7: Thank you. Bridget Healy.

Bridget Healy, Concord, NH: Written testimony handed in. **See Attachment O.** (turn over tape) I'm not saying that we shouldn't get reasonable increases but the drastic increases block out the people and just leave us with a lot of land and not enough places for people to live.

Senator Rick A. Trombly, D. 7: Thank you. Mike Keeler.

Mike Keeler, Concord, NH: Written testimony handed in. **See Attachments P and Q.**

Senator Rick A. Trombly, D. 7: Thank you. Carol Charlantini.

D. Carol Charlantini, Epson, NH: Written testimony handed in. **See Attachment R.**

Senator Rick A. Trombly, D. 7: Thank you. I have a couple of questions for you. Was the $9 increase a per year to total all increases or simply a $9 increase for the improvement?

Ms. Charlantini: We didn't split it out. We just said we would be willing to pay $9 more a month if you will do the streets and the street lights.

Senator Rick A. Trombly, D. 7: How many lots in that park?

Ms. Charlantini: 134.

Senator Rick A. Trombly, D. 7: I'm trying to figure out how, even though you had an agreement, the $30 increase went into effect?

Ms. Charlantini: Beg your pardon?

Senator Rick A. Trombly, D. 7: How did the $30 – I assume it's $30 a month, correct? Per lot?

Ms. Charlantini: Yes.

Senator Rick A. Trombly, D. 7: How did that – how was that enforced if you had an agreement for only $9?

Ms. Charlantini: That's a good question. We had a hearing on January 10th.

Senator Rick A. Trombly, D. 7: In front of?

Ms. Charlantini: With the Board of Manufacturing. We have not received an answer or decision yet. We have been putting our $30 into an escrow account. Ninety-five of us put our money into an escrow account in January and I am already starting to receive the checks again and it's getting a little old. If you're going to do something about our problem, please give the Manufactured Housing Board the teeth and personnel or whatever to get it done expediently.

Senator Rick A. Trombly, D. 7: If you could help clarify one other thing for me. Under the current state of the law, not dealing with this bill, if an increase is noticed to the tenants and they feel it's excessive, how did you get in front of the Manufactured Housing Park Association for the $30?

Ms. Charlantini: Because he gave us his reasons and he was passing this $30 increase onto us because he had to do some repairs and maintenance on the water system which is against the rules for RSA 205:A. I think he misstepped but we thought we'd go that way rather than go to court and say look we had a contract with you and broke the contract.

Senator Rick A. Trombly, D. 7: Thank you. Thank you very much. Ken Burgess. Stephen Baker.

Stephen Baker, Salem, NH: Thank you Mr. Chairman and members of the Committee. For the record my name is Steve Baker. I'm a resident of Salem, New Hampshire. I'm also a member of the State Board of Manufactured Housing, which was established by the Legislature in approximately 1995. I was appointed to the Board as a public member at that time. I am also a park owner in New Hampshire.

The Board of Manufactured Housing is made up of approximately 9 members; six members of the Board are appointed by the Governor, one member is appointed by the NH Bar Association, two members are appointed by the Speaker of the House and the other members are appointed publicly, I suspect by the members of the House. The people who are on the Board are as follows which are Attorney Ken Neilson, which I don't believe is present today; Representative Warren Henderson, which I think was here earlier but has left the building; Representative Letourneau, which is here; Linda Rogers; Jimmie Purselley; Rick Greenwood; Florence Quast and Sherry Babbitt-Strange. Those are the members that sit on the Board of Manufactured Housing.

I don't believe and certainly the Board has not taken a position on this bill. I'm speaking for myself as a member and I speak in opposition of the bill. The Board is made up of volunteers. We meet approximately six to ten times per year depending on the cases but I suspect that if you took that average you'd find out what the cases are.

During the past five years of the Board's existence, we've addressed approximately 61 complaints. Sixty-one complaints. In that time I have no recollection at all that any of these complaints were brought forward due to rent increases. That's all of the complaints. Although we do not, under the statute are allowed to listen to rent complaints. People in general like to discuss them anytime they get a chance to in a forum especially one as we have at the State of New Hampshire. By the way, this Board was formed because of certain associations in the state were crying out that the tenants perhaps were being treated unfairly by park owners. So they put together this Committee which has it's own little budget and so forth that we try to maintain.

During that time, like I said, there are approximately 60 cases out of the 500 communities that are presently in New Hampshire. I'm proud to be on the Board and I think we do a marvelous job. Prior to that, I guess the only other

situation was calling the Attorney General's Office and so forth, which they seem to handle those complaints quite well for years prior to that.

Also, it's my opinion that the Board – we don't have the expertise to handle such complicated issues as rent. It's not our responsibility and I don't think we are able to do so and I think earlier Representative Letourneau spoke about the costs and procedures and people and times that it would take to put together this Board. Also just a few moments ago someone spoke about us taking the Board of Manufactured Housing quite some time to determine a case that is a rent increase issue. Of course it's been many months and we don't have control of that and so therefore if you can imagine having 20, 30, 40, 50, 60, 70, 80 cases a month with 9 members who really don't have the expertise to deal with that.

So the potential for reviewing these cases for the Board, because the bill asks for this Board to look at that is really something that we can't do. We don't have the full staff as I stated earlier and our staff member Anna-Mae Twigg does a terrific job; second to none, is having difficulty keeping up even with the 60 cases we've had over the past five years.

This bill would also make the Board of Manufactured Housing like a Board of Tax and Land Appeal. Some of us know what that's like. I don't think it's necessary. If the bill is passed I think the Board also mentioned it would cost between $100,000 and $200,000 a year to maintain this type of staff to deal with that.

So I urge the Committee to vote against Senate Bill 466. I don't think it's necessary, and I know we have some people here from a different state that may have or may not have had any success. I also have property in other states that have rent control. I also do business with the New Hampshire Institution that takes care of some of our property. I'm a small businessman and I have a family and three kids. My bank recently has told me they will not provide me the funding necessary to take care of my needs in those communities in states where rent control is there. That's a real serious problem for me. I can't do the repairs necessary because perhaps I need the money. I can't encumbrance other properties with this money because the bill would prohibit that. I think people really need to know the severity of this bill.

So, I urge you again to vote no on SB 466. Thank you.

Senator George F. Disnard, D. 8: Any questions? Senator McCarley.

Senator Caroline McCarley, D. 6: Thank you. Mr. Baker, we heard testimony right before you that a recent case involving a rent increase that was tied to an improvement issue. I'm wondering that case apparently was sent to you. I'm curious as to why and how often in the 60 or so cases that were brought up in the last five years there was a connection to rent?

Mr. Baker: Other than the one you've just mentioned I don't know of one.

Senator Caroline McCarley, D. 6: Why did that one go there?

Mr. Baker: Well, I think that particular community has brought several situations towards the Board. This last one happened to encumbrance a rent increase that was set forth by the ownership.

Senator Caroline McCarley, D. 6: The Board has not responded on that one?

Mr. Baker: The Board responded to everything except for their rent increase.

Senator Caroline McCarley, D. 6: Thank you.

Senator George F. Disnard, D. 8: Jimmie Purselley.

Jimmie Purselley, Goffstown, NH: My name is Jim Purselley. I'm also a public member of the Board of Manufactured Housing and I'm opposed to the things that Steve has just told you.

1) We'll take the case that we were just discussing. The complainant brought the owner before the Board because it was an improvement on an underground system. RSA 205:A-9 prohibits passing on the costs of underground systems to tenants. In looking at the case, there was a letter that was written to the tenants that there would be three $9 increases in successive years to provide for some improvements that needed to be done when the new park owner bought the property. He broke that contract and the Board of Manufactured Housing does not have jurisdiction over rental contracts. So there was nothing that we could do in way of relief to the tenants. We, however, did find the owner in – we found the owner had violated RSA 205:A-29 which would provide the tenants to now take this to District Court and pursue it under RSA 205:A-6 which has to do with your rental contracts.

My recommendation this morning to Senate Bill 359 which was being discussed was to give the Board of Manufactured Housing more authority to enforce those rules and give us more jurisdiction over the present law which

would help these tenants in their pursuit and a place to go to be heard. It also asked that the Legislature give concurrent authorization the same as the District Court for the five or six odd proposed amendments. If this were done then the Board of Manufactured Housing would be able to address all of the situations like one-stop shopping at Wal-Mart and without the tenant coming there and being delayed by three or four months for our decision to trickle down through and then have to go to another jurisdiction to finally get the problem solved. If the Board did have that authority, then I think we could respond more quickly.

I also disagree that the Board doesn't have sufficient knowledge to deal with these situations. The Board is made up of citizens just like you on a volunteer basis for the most part and our court system is designed to go before your peers and have this thing decided. It is a judiciary capacity of the Board and if we read and understand the state laws and apply them, then we would be able to service both park owners and tenants more reasonably.

A gentleman spoke about the Village at Glen Falls. I'm the President of the MEDVIL Association, which is a tenant's organization for both parks; Bedford Farms, and Village at Glen Falls. There are about 300 homes in there and I'll use his estimate of $21 million as an assessment for the homes within the park. I think it's greater than that. I think that's understated. The park owner, his assessment is approximately $3 million. Now collectively, $21 million versus $3 million is a heck of a difference for a park owner to have all the power on their side and not being able to consider the tenant's position and no place to go to consider it. I really and truly urge you to pass Senate Bill 466. Thank you very much.

Senator George F. Disnard, D. 8: Thank you very much. Donita Reardon.

Donita Reardon, Exeter, NH: I'm Donita Reardon and I live in Sherwood Forest and I don't own a lot of land. I don't even own the land. I own the home. That's about it. We moved there 16 years ago and for some reason I just had this dream that my husband and I could retire to a nice community and stay there for the rest of our life and not have to go to a nursing home or elderly housing. But I don't know today. I don't know anymore. I don't make a lot of millions. I don't own a lot of property. I don't want to. I love New Hampshire. It's a beautiful, beautiful state and I love the saying *"Live Free or Die"*. I'm not so sure what that means anymore. I just – I don't know when I get old if I'm going to make it. If I do, where am I going to be? Thank you.

Senator George F. Disnard, D. 8: Thank you. David Canada.

David Canada, Stratham, NH: Written testimony handed in. **See Attachment S.** (change tapes)

Senator Rick A. Trombly, D. 7: Thank you. Helen Gale.

Helen Gale, Hampton Falls, NH: (Handed in three-page packet. **See Attachment T.)** Mr. Chairman, members of the Committee and the Assembly. My name is Helen Gale. I'm a representative of Sherwood Forest in Exeter. I'm on the Legislative Committee in that park. I'm also a realtor. I'm on the Seacoast covering Portsmouth and that whole area.

The area I was going to cover in my little speech here has already been covered. So, I'm going to make it a brief one. I want to thank the person from Rhode Island and for all those who have spoke in favor of the bill. I appreciate the people who have sponsored our bill and knowing that we've been working on bills in the Legislature for about eight to ten years and it seems like it takes forever to get something done because by the time we get it introduced, it comes before committees, the elections take place, new people come in, new legislators come in, we have to start over again. We finally got to this point.

Please with all my heart I'm asking you to please pass this Senate Bill 466. It's required. It is not a rent control bill as people would like you to think. It is justification on what they're doing with this money. The park rent goes up tremendously. We started off in 1987 with $135. Today, it's $372. They will give a $50 discount should you pay anywhere between the 1st and the 5th of the month. If you don't – if people who are senior citizens and on a fixed income, if their check comes in on the 6th, it's too bad. It's $372 plus he charges I think it's $15 for being late.

Not only that but for a person coming in and purchasing a manufactured home it's not a cheap way to live. I can vouch for that. Between the lot rent, the entrance fee of $500, $550 in some parks and those people who have a mortgage on top of that, then their overhead. I can grant – I can put somebody into a condo for less than it costs to live in a manufactured home. So it does not come cheap.

I want to speak to you just briefly about selling manufactured homes on the Seacoast. I have heard from three to four, at least, realtors from other areas from Portsmouth, Stratham, wondering what we can do about entrance fees and the park increases that go on a whole lot. They don't even live in them and yet they're concerned.

I can – it's very hard for me to sell manufactured homes in the Seacoast area simply because I know. I live there. I sold my home just recently but I'm still on the Board in Sherwood Forest. They voted me to stay on. I go to bed sometimes at night and I'm unable to sleep knowing what I'm putting some of these people through. So I've ceased as much as I can on selling manufactured housing till they have something substantial to fall back on should they have a problem. This is the only bill that's going to help them to fight a situation. They have nowhere to go when these increases occur as rapidly as they do. Some of them – one of ours went up at one time, I think it was $23 one year and then it went up $15 the next year. No improvements. Nothing was done. When you have capital money and you put it into a bank or a mutual fund you get something back for that. You get a percentage back. You go into a manufactured home community and you're paying your park fee, they don't increase, they don't do anything to better the land, it comes time to sell your asset, you have to sell it for less than what it's marketable for. That's a shame. That's not fair.

Now, all that's been said or done by everybody here that's already spoken, there's no sense in my going over it. I do appreciate the sponsors of this bill. I am supporting this bill. It's been eight years trying to get something done for manufactured home owners and compared to what some of them have already spoken about, this will help. If the park owners increase the value of their land, make it look presentable, people have a home to sell, they take care of their homes and their land now you've got your working together hand in hand. That's the way it should be. Please give us your support. Thank you.

Senator Rick A. Trombly, D. 7: Do you yield to a question? Would you answer a question for me please?

Ms. Gale: Absolutely.

Senator Rick A. Trombly, D. 7: Where does the owner of your park live?

Ms. Gale: Massachusetts. Out of state. (after audience comments) He is an attorney that works in Massachusetts. He at one time lived in Massachusetts. As I understand it, I don't know it as a fact but I did hear that he moved to Lee.

Senator Rick A. Trombly, D. 7: Thank you. Mark Kaufman.

Mark Kaufman, Exeter, NH: My name is Mark Kaufman. I am a partner in our small family business and I've been involved in the manufactured housing industry since 1978.... period of time. My family owns and actively

manages four communities in New Hampshire. We provide housing for 850 manufactured housing homes, which amounts to approximately 2,000 residents in this state. Our rent ranges from $255 to $275 per month with three of the four communities being in the Seacoast area. We also own and operate a community in Massachusetts. I'm here to speak about my opposition to Senate Bill 466, a rent control bill.

I have seen the effects of rent control on the parks under rent control in Massachusetts and want to offer to the Committee on how it will effect the industry in New Hampshire. Any form of rent control prohibits me as an owner from expanding a community or constructing a new community. Currently I am constructing a retirement age community in the city of Dover. I could not imagine myself or any other developers would consider expanding or building a new community if there was rent control.

In the communities in Massachusetts that have rent control there is very little expansion or development of new communities. Rent control has stifled the industry in those communities. The absence of new development or expansion of existing communities creates a severe impact on affordable housing. New Hampshire is facing a housing shortage and this bill will only exacerbate that problem.

Like most investors I would rather invest in financial markets or other ventures than a manufactured housing community if it were to be controlled by a rent board. If this bill were to become law, I would have to seriously look at my properties to see if the highest and best use of the property would still be the operation of a manufactured housing community. It may be more economical to close a community and use the land for another purpose such as a condominium, shopping center, office building or another venture.

If owners did close communities tenants would be displaced. As it stands now I would never consider closing a community because the highest and best use of the land is the operation of the housing community.

Rent control would also impact my ability to maintain our communities. We have very nice communities that are 100% occupied. With rent control, we may no longer have the sufficient funds available to maintain the communities as they have been maintained in the past. In Massachusetts the communities in rent control towns have eroded, and fall in disrepair. The owners maybe even because they believe they won't be allowed an increase in rent do not continue to upgrade or maintain the properties. Both the communities look horrible and the property values of both the land owned by the park owner and the homes owned by the tenants, have gone down in value.

The woman from Rhode Island who gave testimony did touch some on maintenance and upkeep of communities. She did make a comment that you would not have to worry about that because it's the land where your home is and you control that but really that isn't the case because the community owner needs to maintain all the infrastructure; the utility systems in the road and that's much beyond what any homeowner can do. They can only deal with what's on the surface of the ground and not the infrastructure.

In New Hampshire either individuals or small family businesses, like mine, own most communities. Owners like myself provide hands-on management and maintenance. We are actually the operators and the laborers in our communities. We do this in order to provide maintenance and upkeep while keeping costs low. If it becomes uneconomical for individuals like me to perform the maintenance the maintenance will not be done.

Lastly, I believe that a rent control board would create tensions between the owners and the tenants that aren't currently there. I feel we have excellent relations with our tenants now and I've never been brought before any board with complaints about our communities. If this bill passes I feel a constant battle will occur as owners and tenants fight every year over what the rent amount could be.

One of my communities is in the town of Exeter and as I mentioned several others in the state with almost 2,000 residents. I know the sponsors of this bill some of them had been from in the Exeter district. I don't personally know any of them or have had any contact with them but I do believe with all the residents in my communities in this state, to the best of my knowledge, they have not had any complaints whether it be rent or other issues that have been brought to the attention of the Board or to the sponsors of this bill.

I urge the Committee to vote against Senate Bill 466. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. I have 26 more speakers. I have 13 on each side. It's snowing. Many of you have come a great distance and several of the Senators have to travel a great distance over not very good roads. My inclination is to go forward for another hour – to about 4:30. Because those of you who drove I don't want to have you drive back in. I want to get the testimony in today. Much has been said about the bill. Just to remind not to repeat but I'm going to hold all of you to roughly about a 2 minute speech if that's ok with everybody because I don't want to bring you all back. So hearing that, please keep in mind that we've heard quite a bit of testimony and there are many people behind you.

Florence Quast. (audience) Florence is gone? Chris Reenstierna.

Chris Reenstierna, Arlington, VA: Thank you Mr. Chairman. My name is Chris Reenstierna and I'm a commercial real-estate appraiser and I'll be pretty brief.

Our experience has been both with the city of Cambridge in preparing and training many of their rent control board members over the last 20 years and our additional experience is in appraising over 200 manufactured housing communities in the last several years alone. So we have somewhat unique experience in this regard.

The basic point of our observations of the impact of manufactured housing communities under rent control has been that it has provided an overall negative impact. The most likely person or entity that is going to be in a suffering position is the person the rent control bills have been designed to favor or the renters themselves. The reason for this is principally a dramatic increase in the development of new housing units or new communities. With a lack of competition the demand for housing goes up and the prices or the rents demanded go up as well.

In addition as many other people have already spoken of the overall quality and condition of the properties declines dramatically through the period of rent control.

In addition landlords and property owners typically realize an overall reduction in property values and in turn the municipalities typically realize a reduction in real-estate assessments and real-estate tax revenues.

The primary element of the lack of competition or the disincentive for any new developers to come into a market with rent control has been verified and made credible through various studies that have been mentioned as well as a survey that our office has completed over the last several months.

Senator Rick A. Trombly, D. 7: Excuse me, Chris? Could you tie it up please?

Mr. Reenstierna: Thank you very much.

Senator Rick A. Trombly, D. 7: Thank you. Ralph Doolan.

Ralph Doolan, Littleton, NH: My remarks will be a little simpler. Mr. Chairman, Senators. My name is Ralph Doolan. I live in Littleton, New Hampshire in a mobile home park with my wife and as part of our retirement

plan. I am also a member of the MOTA executive board, Member-at-Large up north, and I publish the newsletter for MOTA. Just as a side note, we were only able to send out about 8% of the legislative alerts and this is the response we got.

First I would just like to remind the Committee that when you live in a mobile home park you live in fear to one degree or another. Fear of excessive rental increase is one of the fears that we live with and the more vulnerable you are, the greater the fear is.

My family has had a successful publishing business for many years so I would just like to quickly, from a businessman's point of view, make one point. Senator King and I are familiar with this kind of a situation up north. It's called a "Dairy Farm". This is where you get 180 good milkers, you put them in a pen where they can't get out and then you milk them. The more milk you get the better business you've got. The state of New Hampshire has created the same business condition with manufactured home parks. I won't elaborate on the analogy, you get my point.

Senator Rick A. Trombly, D. 7: It's an utter disaster. (laughter)

Mr. Doolan: I personally find the idea of offering up neighborhoods of trapped New Hampshire citizens to out of state investors and foreign investors to be milked as repugnant and imprudent.

If for no other reason, I would urge you to recommend the passage of Senate Bill 466. Thank you.

Senator Rick A. Trombly, D. 7: Thank you very much. Matt Dupee, from Salisbury. Donald Mercier. Good afternoon.

Donald Mercier, Rochester, NH: Good afternoon. My name is Donald Mercier. I was brought up in the southern part of the state, in Hampton. I was a graduate of Hampton Academy in High School, which is now the Winnacunnet District. I own property in Rochester as a landlord and I have been a landlord since the 60's. I was very much involved with the rent control in Cambridge, Massachusetts. I could stand here for 2 hours and tell you all the problems and the horror stories on both sides of that issues and some of these landlords down there suffered unmercifully with what the media would not tell you.

I'm going to jump into some areas that have not been touched on. On these parks – when a park is up for sale, if the state or somebody, and I would help personally, no charge to show these people how to buy this park for

themselves either on a co-op or a condo association. There is one in Meredith, New Hampshire and there are probably others and there should be. That's where the push should be so you can build equity of that base. Why should somebody from Canada buy your park? You should buy it yourself. Unfortunately you've never been educated on how to do this. That's where's we need the leadership.

Now, a very, very dangerous part of this bill is it has not been brought up, it reads on your bottom line *"no lot increase challenge under this section shall go into effect until completion of the Board's review."* Period. In Cambridge, Massachusetts it would take you two weeks to two years, maybe never, to get that decision. So the landlord's out.

Another thing I found out from my own experience of operating apartments as I've tried to hold back rents when I have tried to help the tenants out by motivating them into public housing and holding back the rents for a year. When I ask them to do this, I find out they don't qualify.

This bill does not indicate anywhere whether the tenant can pay or not. It's "I don't want to pay."

When you – after you've passed this legislation and assign it to a board, it's like Massachusetts – God bless the landlords. They will do everything possible. There was a book written and published and distributed in Cambridge, Massachusetts on how the tenant could live in an apartment for a year and pay no rent. Those type of people can wind up on these boards and believe in time, they will.

If we don't support these parks in a decent manner, you're not going to have them. Just like you've been told. I'll tell you, one of the things that happens is the land values – you talk about the rents going up in the Hampton area and Sherwood Forest, that's been around for years. I know about that park. The houses around – they don't tell you the houses are $300,000 or $400,000 around there. So what does that do? It pushes the value of your land you're sitting on.

Now there's an excellent example in what's happened up here at Exit 20. About 8 or 10 years ago there was a park in that intersection and it was taken out. I hope the tenants didn't get hurt but it was taken out. Now you have a Wal-Mart there and there's a piece of land where that park was on the main road because I called up in answering an ad, $750,000 they want for an acre of land. Down the road from there I had an offer for a piece with a house on it, 10 years ago, for $140,000. Now when those prices push, what are you

going to do with this land you're sitting on? You're lucky that these landlords hang on.

Senator Rick A. Trombly, D. 7: Could you please start tying it up please?

Mr. Mercier: One last quick item. This bill is very viscous in the fact that it does not allow these hearing costs these landlords have to go through to be part of an expense. Your electric light departments have always had it as part of their expenses. All their expenses are allowed. This bill does not allow that either.

I would hope that you turn down this bill. It could be very, very viscous in the wrong hands. Thank you.

Senator Rick A. Trombly, D. 7: Nancy Hunt. Is Nancy no longer here? James Reardon. Guy Pichette.

Guy Pichette, Danville, NH: Written testimony handed in. **See Attachment U.**

Senator Rick A. Trombly, D. 7: Thank you. Roger Duhamel.

Roger Duhamel, Nashua, NH: Written testimony handed in. **See Attachment V.** (turn over tape)

Senator Rick A. Trombly, D. 7: Thank you. Ron Taylor. Good afternoon.

Ron Taylor, Henniker, NH: Mr. Chairman, members of the Committee. My wife and I are the "mom and pop" in a mobile home park. We've owned the park for 30 years and we've paid off the park like 15 years ago. Any increase that we propose in our park will be considered unreasonable because we don't have any debt service. So therefore we will be stuck with what we have for rent. Our rent right now is $195 a month. Our last increase was October 1994.

If this bill goes through it will limit our retirement because it'll make it very hard to sell our park. Anyone that buys it will want to increase the rents. We hope not to sell it but if the bill goes through that is a direct consideration. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Don Miner, from Laconia. Beth Littlefield. Jim Bianco.

Attorney Jim Bianco, Concord, NH: Mr. Chairman, members of the Committee. My name is Jim Bianco and I'm here on behalf of the NH Manufactured Housing Association. I'm an attorney in Concord and I've represented them for a number of years. We represent what we would like to think are reasonable park owners. The ones that you get along with. We understand why this bill is here. We understand that primarily there are two parks that have done things which people here think are unreasonable. I'm not here to defend them or to speak to them but I'm here to talk about and since I have limited time, I'm here to talk about what we think is wrong with Senate Bill 466.

Specifically we see Senate Bill 466 as a rent control bill and the reason we see it as a rent control bill is because someone other than the parties control the rent. What this bill does is to set up a situation where according to the language in the bill, if there is a increase in rent whether that's $1 or $10 or $5, then if a majority of people of the park vote that that in their opinion is unreasonable, those are my words, and where it goes is to the board. That's what the language says. You have to read it. The board takes a look to determine if it's "an excessive lot rent" which is one that is indefensible. That's what the language says.

So put yourself for a moment in the shoes of the people who rent. If you're in a situation and I'm not talking about someone who's blatantly being unreasonable but I'm talking about most of the mobile home parks in the state that are owned by "mom and pop" that have less than 100 units, the average lot rent in which is about $250 statewide. I'm talking about people who treat their people in the community not as tenants but as partners.

When this happens the potential is that the board now holds a hearing. At that hearing what happens? If the board finds that it is indefensible then the rent increase is gone. Now, let's go one step beyond that. Let's say that someone then appeals that decision to court. What happens then? According to this bill, according to the language in this bill, you can't raise the rent from the time the tenants take the petition to the board until you're done. That means through this board and also through any appeal. That could be a year. It could be two years. So let's say you have a 75 unit park and you're going through this appeals process and the real estate tax goes up because you're not in one of the communities to receive money or because that's a temporary reduction. What do you do then? How do you pay them? What do you say to the tax collector? What do you say then to the bank that wants the mortgage that may have a balloon payment?

The next part of the bill says that if you have the lot rent increase – if you prevail and you're the park owner, any of the cost that you've spent to argue

that point cannot be recouped. That would a lot of money. You would have to bring in an expert. You'd have to hire lawyers. None of that can be recouped.

It also says in here that if you have a park and you want to buy another park and you want to use the equity in the first park to buy another one, you can't do that because it's disallowed as an expense. Now often times if you buy more than one property the bank has something called a "wrap around" mortgage which means they cover more than one place. They cover two places. Under this bill when you go to the board and explain, it's disallowed. That's what it says. I'm not telling you anything more than what is in here.

Senator Rick A. Trombly, D. 7: Time.

Attorney Bianco: What else does it say? Can I just finish one sentence? Thank you. The other part that it says in here is that you have to show your records for a period of three years. Now how many people want to disclose all of their records including their tax return because that's your record out in the public? Not so much against the community people but what about competitors? Does this all become public because there's nothing in here that says it's confidential?

So we ask you to look at this. There are other solutions. I think the lease agreement that that gentlemen just put forth is something we have supported for years and continue to support. There are other ways to look at this so we can work cooperatively rather than to work adversely. Thank you.

By the way Mr. Chairman, I'd like to leave with you the letter from the Attorney General's Office in 1990 and 2000. **See Attachment W.** In 1990 since there's no fiscal note, they estimated the cost to be in 1994 $152,000 to implement it. This year the estimate is much higher. So I'll leave those two letters for you.

Senator Rick A. Trombly, D. 7: Do you yield to a question?

Attorney Bianco: Of course.

Senator George F. Disnard, D. 8: Attorney Bianco, I heard you mention up to three years and their holding the money. That's not the way I read the bill. I read the bill, I'll refer to line 29 on page 1, *"The board shall review the petitioners' request within 60 days of receipt of the petition".*

Attorney Bianco: That's correct.

Senator George F. Disnard, D. 8: We'll go on to Roman V. *"No rent increase challenged under this section shall go into effect until completion of the board's review."* Not the court's review. The board's review. So when I hear speakers, you're the second or third one, that use a threat of three years I can't agree with that.

Attorney Bianco: Can I respond to that? With all due respect Senator Disnard, the first part of it says the "board shall review the petitioners' request within 60 days." It does not say make a decision within 60 days. It says review. That means that's the beginning of a process.

Senator George F. Disnard, D. 8: I repeat that's lawyers talk. Thank you. (applause)

Senator Rick A. Trombly, D. 7: Please don't do that. Thank you. Bob Lago.

Bob Lago, Concord, NH: Good afternoon. Thank you. I didn't come prepared to speak today but I'm trying to analyze this whole thing. I've got some good news and bad news for you. The good news is I'm from New Hampshire. I've lived here all my life. The bad news is I own several parks. I own them north, south, east and west. They range in different rent ranges from $205 to $280. I have family parks and I have retirement parks. I have a big retirement park up in Gilford with 115 or so lots. I broke the chain of rental increases when I purchased the property. I've increased it once in three years.

God bless the people that stay there because the only way they leave, most of them, is because the good Lord takes them. They're all local people. They lived there. Up the street they get $80,000 to $85,000 for doublewides, people from out of state coming in.

Getting back to the analysis of this whole situation. I sympathize with you people that are involved in situations created by a few bad apples in this industry. I don't see 500 park owners here. I don't see 90,000 people here. I hear the word investor, out of state investor, excessive – I'm against rent control.

If they pass rent control where are the investors going to go? They've already driven up the price of these manufactured housing parks to unbelievable amounts. They're going to leave. They're going to leave the rest of the people who are fair to suffer the consequences.

That's pretty much all I have to say. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Marie Von Dohlen.

Marie Von Dohlen, Belmont, NH: Good afternoon Mr. Chairman and Committee members. My name is Marie Von Dohlen and I am from Great Brook Village in Belmont, New Hampshire.

My husband and I purchased there six months ago; however, in our paperwork that we received we were told that there was a ceiling on the rent increases based on the CPI. Three months later we received a $29 increase. Everybody was pretty upset. We did not have any idea that we would have a rent increase that high. However, when the owner got a lot of calls and more than that people went up screaming and yelling, he decided to back off and break it up into two year increases. Fifteen and fifteen and that was after he left for two months in Maui. We received registered letters saying that he would do that, he was concerned for us. However, in the second letter it reads *"$15.00 April 1st, 2000. $15.00 April 1st, 2001. The rent adjustment for the third year will be calculated using the difference in the CPI since January 1st, 1995 and may also include increases and other costs such as costs associated with seasonal water, clubhouse."* which they just received last June and November a sign went up saying that we could not use it between 11:00 and 5:00. They use it for their tours. *"Also amenities, operating expenses and maintenance and so on."* This is not what we expected. We thought where it was going to be controlled with the CPI that we would have a little protection. It doesn't turn out to be that.

We just purchased six months ago, however, we have a for sale sign in our home because we don't know what the hell to expect three or four years down the road. I think this bill, 466, is very important and I do hope Senators that you do consider this. We need your help.

Senator Rick A. Trombly, D. 7: Thank you very much. Linda Register. Ronald Adams. Paul Berton. I'm expecting somebody to yell bingo. (laughter)

Unidentified speaker: Can I speak for Paul?

Senator Rick A. Trombly, D. 7: Well sure. Paul only has a minute though. (laughter) If you'd just state your name and from where you hail for the record please and if you could fill out a blue card after you're done.

Richard Horton, Seabrook, NH: My name is Richard Horton. I'm from Seabrook and I just moved up here from Massachusetts two years ago. I was over in Sherwood Forest and I was going to buy over there but the rent was $300 back two years ago so I decided to go someplace else. I'm afraid, Mr.

Chairman, that I'm going to be caught into a park that I won't be able to get out to, if something doesn't pass here. Some kind of bill stating that somebody can't go up $50 at a whack and by the time I'm here five or ten years I might not be able to sell my place because who's going to come into a park and buy my mobile home, even though I keep it up real nice and add a room? I'm not going to add a room in my home yet because if the park fee keeps going up I'm never going to get my money back or half my money back on my unit.

So I'm real concerned – the fairness. Let's be fair about this. I hear a lot of real-estate people saying this is going to turn into rent control. I don't think this is going to turn into rent control. I'm just stating that there's some parks in the "mom and pops" parks that do good. I'll go move over there for $190 a month. The person that was here before because that's a good rent. I wouldn't be afraid if he went up $5 or $10 a year. There's going to be somebody that's going to go further and further up and take the advantage of this because we're closed in there and we can't sell our place and we can't move the home around. The we're going to have big problems. So, I'm thinking twice if I made the right move about buying a mobile home or not.

I came up here because I thought I'd save on state tax and I could live near the ocean and enjoy New Hampshire. But I'm having doubts. I'm not building onto my unit because if he goes up because another park goes up $50 and he goes up $50, then that's not right. If he can show me it's cost this much money to improve the roads...fine, then we should discuss a fair way. I think that to be fair to all the people out there and retirees and fixed incomes. I get a pension. I get a good pension from GM and I get maybe 6% or 7% raise, a cost living, fine. I don't want to take the food off the landlord's table but let's be reasonable about how much they can go up. We got to have some kind of law there stating how much they can go up because you're going to hurt the old people and the old people are the ones that vote. They're the ones that are powerful voters. I think we've got to do something for these people. I'm a young retiree. I just turned 61 but I'm getting up there and I'm a senior citizen. I've got the white hair to prove it.

Senator Rick A. Trombly, D. 7: Are you speaking in favor of the bill?

Mr. Horton: Yes. I'm favor.

Senator Rick A. Trombly, D. 7: Paul's signed up opposed to it. I don't think you ought to tell him what you said then. (laughter) Paul's signed up opposed to the bill so tell him you did a good job. (laughter) The person for whom you're speaking.

Mr. Horton: Excuse me. Say that again to me.

Senator Rick A. Trombly, D. 7: Are you speaking for Paul?

Mr. Horton: No. I'm speaking for Richard E. Horton, Sr. from Seabrook, New Hampshire. I took his place.

Senator Rick A. Trombly, D. 7: You took his place? Because Paul...

Mr. Horton: I was tired of hearing all these people say "Oh boy. I'm afraid of this bill. I'm afraid of this bill." The realtors got up. They're getting up saying they're going to miss the money. They're not going to miss no money.

Senator Rick A. Trombly, D. 7: Just Paul spoke up opposed to the bill so tell him you spoke opposed to it if you took his spot. (laughter)

Mr. Horton: Thank you very much. It's very important. This is something you just don't cast aside and say, "Oh these people just came up." I think these are the people that put you in office and these are the people that bail you out. So let's be fair to those people right out here. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Joyce Forsythe. Is Joyce here? Written testimony handed in for Joyce. **See Attachment X.** Jim Kerivan. Jim would correct the record for the pronunciation of your name please.

Jim Kerivan, Strafford, NH: My name is Jim Kerivan. I'm an independent voter from Strafford, New Hampshire. My wife, the bank and I own a four family apartment house in Pittsfield. We've owned it for 20 years.

I've heard the argument for this bill and I've heard a bunch of people say "this isn't rent control." Don't let them fool you. This IS rent control and if it's correct for the mobile home parks, it's correct for all rental apartments. So expand the bill then. Vote for rent control. If you believe that's the case then do it. Look into heating oil. That's gone up a lot. Control that price. You have that ability and power. Do that. That's all I have to say.

Senator Rick A. Trombly, D. 7: Thank you. (applause) Carrie Pearl. Good afternoon.

Carrie Pearl, Concord, NH: Written testimony handed in. **See Attachment Y.**

Senator Rick A. Trombly, D. 7: Carrie, would you answer a question for me?

Mrs. Pearl: Certainly.

Senator Rick A. Trombly, D. 7: Some people have expressed a concerned that if park owners can't get a reasonable return on their investment that they would perhaps sell the property and people who want to stay there would not any longer have a location to place their home. How would you suggest that we as representatives of the people take that into account in deliberating this bill?

Mrs. Pearl: From reading the bill, as I said, I am not in disfavor if we got a rent increase of $5, $9 $10 a year or around that amount, but give us a reason. When we get our rent increases we get no reason. Those to me are reasonable. If you're going to maintain the park and reinvest it into your community, then I don't have a problem with that but when we're paying and we're not receiving any services in return, then I have a problem.

Senator Rick A. Trombly, D. 7: If I could ask you a real tough question but I'm trying to flesh out the issues here. As someone who lives in a park and apparently you have some issues with the owner, what would you consider a reasonable rent increase that's not related to improvements in the park that happens just because?

Mrs. Pearl: I would probably say between $5 and $7.

Senator Rick A. Trombly, D. 7: Thank you. Jim Dodge. Donna Soucy.

Donna Soucy, Concord, NH: Thank you Mr. Chairman and members of the Committee. For the record I'm Donna Soucy and I'm representing the NH Mobile Home Association.

I have testimony here, a letter that was drafted and sent to our office from a Mr. Joseph Morey who used to live in the Sherwood Forest development, was part of the tenant's association. He recently moved out or moved out a few years ago because he wanted to allow his daughter and granddaughter to live with them and didn't meet the age requirements. But he talks about his experiences there and how much he enjoyed living in the park and how he saw two sides to this issue and wanted to express some of those concerns to the Committee. So I'd like to submit those letters from Mr. Morey for the Committee. **See Attachment Z.**

In addition, I would like to point out, Mr. Chairman and members of the Committee, that there's been a lot of discussion this afternoon about people's inability to move out of mobile home parks. I would just provide for the

Committee's information some recent statistics. Within the past year, 23 homes have been sold in the Sherwood Forest area. Nineteen of those homes were used and four of those homes were new. So there have been people that have moved from that development and it's unfortunate that some people have had issues with particular owners but we are opposed to the bill, Mr. Chairman, and we would hope the Committee would act on this legislation voting Inexpedient. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Richard Guild. Afternoon.

Richard Guild, Epsom, NH: Afternoon Chairman. I'm Richard Guild. I moved ten years ago into a trailer park in Epsom. The rent has been increased every three years, which at $15 we didn't figure was too bad. There's only one drawback, out of the ten years that I've been there we've had four rent increases, no maintenance to the park was done whatsoever. I do the mowing for free. As the landowner's profits gone up – has gotten bigger – so has the potholes. Septic systems have failed. The roads are not maintained. I wrote out at the end of the driveway for people's safety 10 miles an hour. That's how bad – I'm all for 466 because as I said as the rent increases keep going up – now this park was sold out from under us. We were not notified the park was being sold. A month later we meet our new landlord. Well, we hired an attorney and we took care of the old landlord.

Now this new landlord buys the place, he bought the place at a lower price than what we originally found out was offered. He saved himself $50,000. He owns the park for a month; we get a rent increase of $25. Now to this date nothing's been done. Potholes are still growing. Call this person at his office; never get a return phone call. Call his so-called manager; never get a return phone call. But the letter's in the mail without a problem saying your rent's going up. He has done nothing to the water. In ten years the maintenance on this park has been like I said a little bit of mowing that I do. The people in the park have maintained their own homes. When I first moved there the place was a real – it was filthy. I started doing some work around the park on my own, planting flowers, everybody's attitude changed and bang! First you know it, one's adding on, this person's adding on, this one's painting, this one's cleaning, this one's mowing. No more garbage all over the place.

So as far as the landlord's cost to maintain this park has been what he's paid in mortgage and his taxes. But it still keeps going up. That's why I'm in favor of 466. I don't have a problem with anybody raising my rent as long as like we've been discussing. It's justified. We don't need to know where every penny of it -- you know he's not in this for the long haul to break even but

we're not a long haul staying there to go broke either. If you can't save for your future then what is the term "low income housing"? Thank you.

Senator Rick A. Trombly, D. 7: Would you answer a couple of questions for me? When did you move there? What year?

Mr. Guild: I moved there in 1990.

Senator Rick A. Trombly, D. 7: What was your rent when you moved in?

Mr. Guild: My rent was $125 a month.

Senator Rick A. Trombly, D. 7: $125 a month and what is it now?

Mr. Guild: It's – right now it's $235.

Senator Rick A. Trombly, D. 7: There have been no improvements to the park?

Mr. Guild: No improvements whatsoever. There was one septic system and I installed it. A leach field.

Senator Rick A. Trombly, D. 7: Did that septic system service one unit?

Mr. Guild: Serviced two units.

Senator Rick A. Trombly, D. 7: Two units. Thank you. Rick Blais.

Rick Blais, Manchester, NH: Good afternoon everybody. My name is Rick Blais from Bedford, New Hampshire. I'm also the President of the Manchester Property Owners Association. I own a business in Manchester, basically a financial services company where we actually sit down with families, do a lot of budget counseling and whatnot.

In listening to the testimony today, opposition of Senate Bill 466 is as definite as a rent control bill. I see a lot of faces here, my parents are 84 years old, and I see the choices you've all made to get you where you are here today. A lot of it's frustration but the challenge comes is those decisions you've made now you're asking the government, basically, to bail out your decision for buying those mobile homes. My parents had an option 15 years ago to buy into a mobile home park and they chose not to because there was too many variables in buying a mobile home. This is a big challenge, I think, for a lot of people here today.

I heard one gentleman mention about a co-op. In this group right here you had legal aid, NH Housing and HUD that can show you how to go and buy these parks and put a real solution to your problem and make it work without more regulations and more laws.

One of the speakers earlier, Senator said that he's in favor of this bill and you're going to see some of the patriots come out. That's me. I'm the patriot. I'm tired of seeing more laws pass for nothing. There's a solution to your problem. Three or four good ideas have come out of this hearing today. Rather than passing more laws, taking more freedoms away from people, why don't we identify these solutions? Get together with these people that came with it. The gentleman with the lease option was also a great idea.

I think another issue that we look at - this bill won't stop profit taking. Basically you hear maintenance, different things like that. If they can't get a rent increase, why do anything at all in the park? People are moving into parks. You're buying in an "as is" condition, what makes you think it's going to get any better? Again, bad choices being made.

All the stories we've heard about the rent going up in the parks (change tapes) how their rent went up $20 or $30 this year per month. The first thing you know we have sympathetic ears saying, "Ok, let's pass rent control for everybody across the board. We already did it with the manufactured housing, let's draft it over the apartment owners." Now the apartment owners took a big hit back in the late 80's, early 90's and I mean a lot of people lost their homes because they invested in income property with the hopes someday they could retire off that property. They lost their property and they lost their home because of that. Nobody was around bailing them out. They understood the risk. They made choices in their life and they didn't expect the government to come bail them out with new laws and regulations to help fund their losses.

I think that's what's happening here today, is basically opening a door to other rent control, more legislation, more of our freedoms being taken away because of laws being passed because certain individuals, a small minority, made some bad decisions that are going to effect the outcome of their futures. There is resolutions. The failed septic systems we hear on testimony today, you got an instant ratification for that. Call EPA up. They'll be down there within days and they'll shut that down and they'll force that person to service it. Laws already on the books but yet we need to add more laws.

I encourage you to vote against Senate Bill 466 as it's going to erode more of our basic freedoms and it will turn to rent control, guaranteed, within the next two years. Thank you.

Senator Rick A. Trombly, D. 7: Mr. Blais, do you yield to a – would you yield to a question from Senator McCarley?

Mr. Blais: Sure.

Senator Caroline McCarley, D. 6: You indicated there have been, I believe, more than one suggestion made today that might improve this situation. You specifically mentioned the lease option. I'm wondering about the suggestion made by one of the gentlemen who currently sits on the Manufacturing Board regarding expanding their authority relative to letting them hear some of these issues so that there is actually an avenue to be heard.

Mr. Blais: You want me to agree with more government control?

Senator Caroline McCarley, D. 6: All I'm asking you – you indicated there was more than one. You mentioned one. I'm curious as to whether that was another one?

Mr. Blais: No, I like the idea – I think the co-op – I noticed NH Housing Finance was going to regulate what's realistic for rent increases, we've had dealings with NH Housing Finance and they're not very accurate on getting rent data. They do random calling. A lot of our members, with almost 600 members throughout the state, haven't been called by the NH Housing Finance but yet we're the largest majority of individual property owners. How are they going to get an accurate fixed number for an actual increase for a manufactured home? So I think if they sat down and had some real numbers as far as how can we put a co-op together? Legal Aid comes up with some programs. How to have some financing? A lot of these problems that's being aired here today, it's individual parks. I heard there's quite a few parks throughout the entire state – I didn't realize that many – but for the one or two parks that are having challenges, why not look into doing a co-op or some sort with them? I'm not sure – legislation I wouldn't agree with – I'd agree with putting Legal Aid and probably NH Housing Finance together on a project to spearhead a co-op program for these people.

Senator Caroline McCarley, D. 6: Your ringing endorsement of NH Housing Finance Authority to be involved in making these decisions doesn't really push that one forward to me. I understand what you're saying.

Mr. Blais: They have the financing structure infrastructure.

Senator Caroline McCarley, D. 6: I understand but you don't seem to have a lot confidence in how they're going about it based on your comments.

Mr. Blais: Well when they come up with rents, you're depending on a lot of different entities and I can see more people being hired, the cost being $200,000, $300,000, $400,000 a year to administer this bill and like I said, it's just going to flow over into the other section which is the apartment owners and that's where I see it's just not fair. Let the free-market take place. Government control is not the way.

Senator Caroline McCarley, D. 6: Thank you.

Senator Rick A. Trombly, D. 7: Thank you very much. Gene Hill. Gene? Gene Hill? Gene you want to come up? Sir, if -

Unidentified speaker: .....

Senator Rick A. Trombly, D. 7: (laughter) Somebody stop that bus. (laughter) Mr. Hill before you begin and everyone leaves, I do want to thank all of you who came today to participate in the hearing. Thank you for your courtesy. Mr. Hill? If you want to wait a minute. I'll leave that up to you. You may lose your entire audience though.

Gene Hill, Jr., Portsmouth, NH: I'll wait until they – that's ok. My name is Gene Hill, Jr. I'm a manufactured home owner down in Portsmouth, New Hampshire and I've been listening to all of the rhetoric today and it seems that we've been talking about apples and oranges. The MOTA of New Hampshire is merely looking for democracy. In democracy there's a fairness of treatment. The Park Owners Association is talking about America's bottom line which is money and money is a ruthless sort of entry to anybody's life. So we've been talking about, the manufactured home owners have been saying "we would like to have a say-so in our future." The other people have been saying that this is rent control.

We people that live in manufactured home parks – if we get a bad owner we're like disenfranchising the American the system because we have no recourse to take to defend ourselves. And all this 466 which I'm in favor of is saying *give us a voice in our future.* If we could get together with the manufactured home park owners association and talk to them then we could hammer out a solution that would be good for everybody but it seems that as soon as you – you can't get a hold of some of these landlords and the other ones are constantly dodging you so you're left as a disenfranchised American. We blacks in America know exactly what that feels like and all of us in manufactured home parks are beginning to feel like that and we don't give a damn for it.

So, all I'm saying is that all day this redderick has been going. I got a bunch of apples over here. I got a bunch of oranges over here. Which one taste the better? We are not looking for rent control. We are looking for an entry into our futures and to speak up for our futures. That's all we want.

Senator Rick A. Trombly, D. 7: Thank you. (applause) The Chair – no you're fine. Thank you very much. The Chair is going to re-recognize –

Senator Beverly A. Hollingworth, D. 23: There's a lady in the back.

Senator Rick A. Trombly, D. 7: Ma'am, did you want to say something?

Unidentified speaker: I want to thank you, Mr. Chairman and the Committee for listening to all of us.

Senator Rick A. Trombly, D. 7: Thank you. Thank you for coming. Thank you. The Senate President, the Prime Sponsor of the bill, Senator Hollingworth has an amendment which I would like her if you would be willing to indulge us a couple of more minutes to have on the record. I think it's important to make the record complete.

Senator Beverly A. Hollingworth, D. 23: Thank you. Have all the speakers spoken?

Senator Rick A. Trombly, D. 7: Yes.

Senator Beverly A. Hollingworth, D. 23: Briefly, there was an amendment that would address some of the concerns that for the banking industry – what it would do would allow the debt service that has been invested to be used as collateral so that it wouldn't prevent somebody who has paid – to use that debt service on something else.

I would like to just say one thing further because there seems to be an awful misunderstanding on this and I want to say on line 14 it clearly says that the owner can receive all operating total expenses including debt service and a reasonable return of the park owner's investment on equity and also on his profits. If that isn't clear enough I would welcome, welcome – we do not oppose that. All we're talking about is when it is indefensible the increases that have incurred or asking for. There were many owners that spoke today and there was one from Exeter. The gentleman that spoke said he hadn't had any complaints from his tenants and I have to say that's true. I represent and I haven't had one complaint from his park but I have had hundreds from the others and his, in that same area in that same location, he charges $75 a month less than the other park place. So, that gives you some idea and the

others have gone up 15%, 15%, 15%, 50% and I'm sure you were handed out some of that material. So clearly there are real good operators out there and they have nothing to fear from this bill.

Senator Rick A. Trombly, D. 7: Thank you. Senator Hollingworth will that amendment be available to the public so that some of the people....

Senator Beverly A. Hollingworth, D. 23: Yes it will.

Senator Rick A. Trombly, D. 7: Thank you. Again, thank you everybody for your patience and we will not vote on this today. We will vote on it a later day. Thank you all very much.

Hearing closed at 3:30 p.m.

Respectfully submitted,

Merideth A. Chandler,
Committee Secretary

Attachment "A"

SB 466

Relative to lot rent increases at manufactured housing parks

Remarks of Senator Beverly Hollingworth
President of the Senate

- This bill is intended and designed to safeguard the interests of residents of manufactured housing parks.
- Residents of manufactured housing parks are in a unique situation.
- Unlike other homeowners, they do not own the land their homes stand on.
- Unlike other renters, they cannot move without incurring significant expense.
- Therefore, there is little or nothing residents of manufactured housing parks can do to reduce or escape the impacts of excessive increases in lot rents.
- SB 466 establishes a process for ensuring that lot rents are fair and just for both park owners and park residents.
- SB 466 applies only to lot rents in manufactured housing parks.
- Along with other senators, I have received many calls and letters from landlords who rent apartments as well as from realtors.
- Some of these landlords and realtors may be here today.
- I am sorry if you have been misled into thinking SB 466 applies to other forms of property – this bill applies exclusively to lot rents in manufactured housing parks.

- I have no intention of extending the measures in this bill to any other form of property.

- In fact, it would be inappropriate to do so. Since tenants of other forms of rental property are able to move, other property markets work efficiently. Experience has demonstrated that measures to manage rents in these property markets lead to all sorts of problems – and benefit no one.

- But, manufactured housing parks are different. Because residents cannot move at will., market forces do not work efficiently.

- Residents of manufactured housing parks cannot depend on market forces to determine just lot rents: instead they must depend on the goodwill of park owners for fair treatment.

- Fortunately, the vast majority of park owners are fair-minded. They have not taken advantage of residents by imposing onerous rents.

- The vast majority of park owners have absolutely nothing to fear from SB 466.

- This bill simply seeks to ensure that all park owners treat their residents as most park owners always have: it simply ensures that no one abuses the power the imperfect market gives to park owners.

- Current law requires park owners to provide a written justification of any proposed rent increase.
- SB 466 establishes a process for determining if proposed rent increases are "excessive."

- It defines an "excessive" rent increase as one that is indefensible after taking into account (1) the total operating expenses, including debt service, for the park and (2) a reasonable return on investment, or profit, in the park.

- In other words, this bill allows park owners to set rents to cover their costs and make a profit.

- It prevents park owners from requiring residents to subsidize other commercial ventures by paying excessive lot rents.

- Some park owners will say they are being treated unfairly. They will say that every other business is able to charge high prices for some products so they can charge low prices for other products; they will say every other business can effectively get one group of customers to subsidize another group of customers.

- But they overlook the fact that the customers of all other businesses have choices: if they do not wish to pay a higher price, they can buy a different product from a different supplier.

- Residents of manufactured parks do not have a choice. They do not operate in a genuine market.

- The bill provides that a majority of park residents – one vote per unit – must petition the Board of Manufactured Housing within 30 days of receiving notification of a rent increase to determine if the increase is excessive.

- The Board must make a decision within 60 days.

- The Board may disallow all or part of the proposed increase in lot rent.

- No increase that is challenged may be collected until the Board completes its review and, if the Board decides in favor of the park owner, residents shall not be required to pay the increased lot rent retroactively.

- SB 466 is modeled on successful legislation adopted by other states.

- I want to stress that this bill is intended to address one unique property and one unique of tenants. It is in no way, shape or form intended to serve as a precedent for other types of rental property or other groups of tenants.

- I sincerely believe this bill will have no impact whatever on the vast majority of park owners in New Hampshire. It will, however, protect residents of all parks.

Attachment B

MANUFACTURED HOME OWNERS & TENANTS ASSOCIATION OF NEW HAMPSHIRE
PO Box 998, Concord, NH 03301
603 224-0408

April 25, 2000

Chairman Rick A. Trombly
Senate Public Affairs Committee
Legislative Building
Concord, NH 03301

RE: Senate Bill 466

Dear Committee Members

As President of M.O.T.A of NH, I would like to submit this letter on behalf of the thousands of manufactured home park tenants in New Hampshire in support of SB 466.

There are an estimated 30,000+ tax paying manufactured home owners living in 500+ parks in this state with an estimated 90,000+ men, women and children. For these thousands of mobile home owners, the single most important issue has been, and remains the land use fee they pay for that "privilege". For the families of modest means, old and young, mobile homes become the only home they could afford to own. In fact, not to many years ago manufactured housing accounted for over one third of all single family homes in the U.S..

This unique form of property ownership created by manufactured homes present state and local governments with different home owner issues, particularly the economic necessities of low cost home ownership with these homes sited on land owned by another, where it may not have security of tenure and a limited supply of spaces. Park owners, because of this split estate, obtain a controlling economic power over the equity of mobile home owners in their parks. These homes have been defined as "manufactured home" and designated as "real estate" - thereby enabling the state and local governments to collect millions of dollars from us since 1983.

Manufactured home owners are in a uniquely vulnerable position. They cannot pack up and leave when land use fees (rent) rise. They are not ordinary tenants - they are co-proprietors. Their home sits on land owned by someone else. What usually is a source of appreciation becomes, for the manufactured home owner, a trap.

A catch phase often heard is, "let the free market prevail". When it comes to land use fees in parks, there is no "free market" as these home owners are a captive market with relatively no alternatives; and, there is no incentive for the land owner to make declining adjustments to his/her fees no matter what the economic climate. Even in terrible economic times, park rents will continue to go up, whereas in a truly "free market", where rental properties become vacant if the price is to high, rents tended to decline.

As cited in "Market & Hierarchies: Analysis and Anti-Trust Implications" by Williamson, "These facts permit the 'opportunistic behavior' that is created whenever one party is obliged by circumstances to make an immobile capital investment on the land of another. This power may be called opportunistic monopoly after the fact." Even Hirsch & Hirsch in their study entitled, "Legal-Economic Analysis of Rent Controls in a mobile Home Context: Placement of Values and Vacancy Decontrol" speak of this monopoly profit potential as a "hold up" of the incumbent mobile home owners. The study contends that, once the home is installed on its pad, the unprotected homeowner will submit to above market rents simply to avoid the cost

of moving - or in most instances, because there is no other place to move the home. The park owners power to capture for him/herself those investment costs is an undeserved windfall called "quasi rent".

In a challenge to "rent control" statutes to the United States Supreme Court, in Yee vs The City of Escondido, Justice O'Connor wrote in the decision for the city, "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 mobile home itself. Once in place, only about one in every hundred homes is ever moved." The Court further stated that, "mobile homes and mobile home owners are completely dependent on the right to keep the home 'in place' and are captive to park owners' rents and other regulations."

The Urban Lawyer, Vol.24, No.1, Winter of 1992 cites several court case decisions related to rents in manufactured housing parks, including one from the Florida Supreme Court, which commented, "where rent increases by a park owner is a unilateral act, imposed across the board on all tenants and imposed after the initial agreement has been entered into, park residents have little choice but to accept the increase. They must accept it or, in many cases, sell their homes or undertake the considerable expense and burden of uprooting and moving

The 'absence of meaningful choice' for these residents who find the rent increase after their mobile homes have affixed to the land, serves to meet the class action requirement of procedural unconscionability. It is hard to imagine a situation where the park owner and tenants are in equal bargaining opposition on rent increase." Further, "because mobile home park spaces and mobile homes constitute a package of complementary goods with interdependent values, the interest of mobile home owners and park owners are in direct opposition. The higher the space rent the lower the mobile home values and vice versa.

Owners of mobile homes, as co-proprietors with a large capital investment, were found to be needful of "unique protection" both during their tenure and upon sale. The new Hampshire Legislature formalized its treatment of manufactured home park tenancies through passage of RSA 205A in 1973 with various changes implemented in subsequent years

. Many of the opposition will strongly advocate that allowing the development of the new parks will alleviate the pressure of rent increasing. However, we submit to you New Hampshire stature provide as exclusionary right to a land owner to reserve ALL spaces on a newly developed park for buyers of his/her homes and thus mobile home owners in other parks are, in essence, barred access to these parks which, initially, usually have lower land fee.

As fees continue to increase and park residents find their park contending with park owners who do not live up to their obligations, more and more homeowners are questioning the advisability of holding on to their manufactured homes. Approximately 47% of N.H.'s manufactured home owners are over the age of 60, and 35% are young families with their first opportunity for home ownership. Park owners, through ever increasing fees and other practices seem intent on eliminating an important housing alternative for these populations.

Under SB 466, if park owners have valid, justifiable reasons for rent increases they would get them. Opposition to SB 466 can only mean that park owners wish to continue to have a free hand to raise land use fees at will. The higher the fees go up, the lower the resale value of the homes . . home owners become prisoners of the land owners. Rent increases are made, seemingly, without any reason or justification. Often, it is the other way, with residents sometimes being pressured into accepting responsibilities that belonged to the park owner.

An analogy of today's manufactured housing park situation is to compare it to the 18th & 19th century European feudal landlord system - where the "tenant" provides a portion of the fruits of his/her labor as well as subservient respect to the landlord in order to stay on the land.

We fully understand that a manufactured housing park is a business venture, and as such is entitled to a profit. But when the amount is excessive it is put on the backs of the residents . . . in many instances for things that have nothing to do with the operation of the park.

Answers to why there is an increase are varied. "From - because, we've always had an annual increases", *'The others are doing it"*, etc". When there is a legitimate reason, such as a tax increase, it is understandable. Indiscriminate increases, based on the philosophy of charging "what the traffic will bear", however, makes it unfair.

After a couple of years of "fair" increases in the cost of park spaces, in 1994 we saw several parks, particularly in the southern region of the state raise those costs to levels that were predicted years ago - to over $300/month . . . The highest in the state is now in excess of $330 with many between $275 and $330.

A distressing factor that is seldom mentioned is the number of parks with serious infrastructure problems that are not being taken care of - water, sewerage/sptic and electrical systems - not to mention the condition of roads which look like war zones in all too many of New Hampshire's manufactured housing parks.

We urge you to consider these facts and the many other that will be brought to your attention during this process in the Senate and recommend passage of SB 466.

Respectfully Submitted

Robert J. Paradis

Robert Paradis
President
Manufactured Home Owners Tenants Association of New Hampshire

Attachment C

April 26, 2000

Good afternoon Mr. Chairman & Committee Members
My name is Lois Parris and I live in a manufactured home park in Belmont NH
I am 1st Vice President of the Manufacture Home Owners & Tenants Association of NH, otherwise known As MOTA.
Thank you for hearing my testimony today.

I would first like to thank all of the sponsors of SB#466.

This bill zero's in on EXCESSIVE RENT ISSUES IN MFG HOME PARKS ONLY.
It does not affect any other form of rental property.
It would not affect any "responsible park owner" because they would not be guilty of an excessive lot fee increase.
It would only affect those who are greedy.
It would only affect the "out of state investor" who wants to come into NH and just reap profits
There is a trend that is happening in our State that needs to be recognized by you, our elected officials.

That is the "OUT OF STATE INVESTOR". They know that the State of NH is open territory for them because they can do whatever they want re lot fees. AND THEY ARE DOING IT.

Just two weeks ago, one of my biggest nightmare's came true-our park was being sold to an out of state investor. We received a letter from our park owner informing us that the park was under agreement. In the paper work there was an amendment to the sales agreement stating that if SB #466 were to pass, the buyer would have the right to back out of the deal.

What this tells me is, is that they would not want to do business here in NH if our elected officials gave us the protection we so badly need. We would no longer be "open territory" for them.

We have 500 + parks in NH
In these parks we have an estimated 90,000 men, women and children. These figures go back to 1994 estimates. Today I know we have more parks and more people.

Tell me, whom do you think you should be protecting, the 90,000 men, women and children living in our state, or the few park owners, some of whom do not even live in New Hampshire, who want to take advantage of a selected group of people.

We own our homes, (or the bank does) we pay a mortgage, we pay real estate taxes, and a lot fee to place our homes on.

This is not a "cheap" way of ownership but in recent years has become an affordable form of ownership for low to moderate, income families. A place for the young family to begin their lives, a place for people to retire to and a place where the elderly can remain until they can no longer can care for themselves. All of these scenarios are being threatened due to the EXCESSIVE INCREASES IN LOT FEES. IT IS FAST BECOMING UNAFFORDABLE. Keeping young families out, the retired stuck because we cannot sell our homes, and the elderly forced to enter assisted living earlier than is necessary.

PLEASE GIVE US THE PROTECTION WE NEED. SB#466 would do that.

Thank you

Attachment D

NEW HAMPSHIRE PROPERTY OWNERS ASSOCIATION

P.O. Box 422 Nashua, NH 03061 (603) 881-3682

Concord Manchester Nashua Salem/Derry Rochester Seacoast Connecticut Valley

TESTIMONY OF GENE GAYDA

SB 466

4/26/00

Good afternoon. My name is Gene Gayda. I am the president of the New Hampshire Property Owners Association. We are the all volunteer trade association for the owners and managers of rental real estate.

It's a duck. SB 466 says ". . . shall be empowered to disallow any portion, or all, of the proposed lot rent increase." That's about as clear of a definition of rent control as anyone can supply. If it walks like a duck, it's a duck. If it talks like a duck, it's a duck. You get the idea.

To paraphrase a great philosopher, this seems like deja vu all over again. In 1994 and 1996, there were rent control bills introduced here in the Senate. Back then, the proponents claimed that rents were skyrocketing. Proponents even submitted studies purporting to "predict" how unreasonable rents were going to become. Hmmm. If you take a moment to reflect, you'll remember that we were in the middle of a major real estate market melt down back then. Gosh, the market goes down by 25% and some people wanted rent control. It seems the landlords should have been the ones asking for price supports. But we didn't because we understand the nature of the riskiness in rental real estate.

It is, in some ways, surprising that New Hampshire is seriously considering rent control legislation. Because, since 1983, there has been no new rent control legislation enacted ANYWHERE IN THE WORLD! Now, any statement as bold as this probably has an overlooked item somewhere, but from the research we've done, let me repeat. Since 1983, everywhere in the world, rent control has been abolished or weakened. There has been no new rent control enacted.

Attached to my testimony are reports. Malaysia has repealed rent control. India has repealed rent control. The City of Honolulu has rejected rent control. The State of Nevada rejected rent control for mobile home parks. The District of Columbia has weakened rent control.

Submitted without additional repetitive documentation. The Philippines has repealed rent control. The State of California has instituted vacancy de-control. New York City has loosened rent control, while still retaining many restrictions. The Province of Ontario in Canada has repealed rent control. And even our perceived liberal sister to the south, Massachusetts, repealed rent control by a vote of its citizens a few years ago.

These actions are not surprising to anyone who studies economics. I've attached a summary from the economics course taught at Drexel University. It basically says rent control is foolish shortsightedness. Attached is the course work from the University of Arizona titled "The Case Against Rent Control." Also, a report from the professor of economics at the College of Holy Cross titled "The Evils of Rent Control." A summary of a study from a professor with the Massachusetts Institute of Technology Center for Real Estate linking rent control with deteriorating housing stock.

This same understanding of the negatives of rent control is echoed by studies from prestigious think tanks. Attached is a report from the Cato Institute titled "How Rent Control Drives Out Affordable Housing." The Ann Rand Institute publishes a report titled "Why Rent Control is Immoral."

Heck, even the World Bank, in advising the countries they loan money to, uses a study titled "Rent Control: Aid or Impediment?" Considering the political nature of the regimes the World Bank works with, I thought it humorous that the report first praises rent control then concludes ". . . rent control fails to meet the goals sought by its advocates." This report also references other similar reports. If you were to find and read these other reports, they would say that the World Bank advises against rent control in Ghana, in Egypt, in Rio De Janeiro and in other developing countries.

Much of this current understanding of the negatives of rent control is nothing more than a fleshing out of the economic philosophies of some of our brightest economic thinkers. There is a book written by Milton Friedman loudly castigating rent control in any form. Ditto the thinking from Maynard Keynes. Currently, no credible economic leader supports any method of rent control.

Not all of the current economic thinking is based purely on opinion. When rent control was abolished by voter referendum in Massachusetts, the City of Cambridge commissioned a housing study four years later. When the study results were known, the City tried to bury the report. It took a lawsuit under the Freedom of Information Act to get the City to release the data. A summary of the report is attached.

One classic supporting reason for rent control is that "It helps the poor." In Cambridge, during the first two years after repeal, any tenant could claim "low income" status and continue to postpone rent increases. Even though the rent control bureaucracy never once challenged a tenant's claim, only 8% of tenants were able to qualify. Phrased another way, 92% of the renters in Cambridge were not poor and were getting a free ride from rent control. Further, four years after the end of rent control, the average tenant then residing earned $4,000 less than the protected tenant. In specific, the tenant who actually replaced someone who moved out, earned $10,000 less than the renter "displaced" by the ending of rent control. In Cambridge, more than 90% of the time, rent control benefitted someone who most definitely was not poor. Point is, rent control doesn't help the poor.

Another reason is to increase "affordable housing." Yet, after rent control, the average renter - remember, these are the new renters earning less than the guys before them - paid 27% of their income for housing, which is well below the federal guidelines. Housing doesn't need rent control to be affordable.

An important claim against rent control is that the owner cannot afford to maintain the property. This was shown to be accurate as, with rising rents, the owners of previously rent controlled apartments were 5 times more likely to do a big enough improvement requiring a building permit. The study "proves" that rent controlled apartments were slowly decaying away. And that the end of rent control improved the conditions of the housing stock, and thereby improved the conditions of the neighborhood.

And, surprisingly, during the second year after the end of rent control, the median market rent in Cambridge actually declined by $4. So, rent control was not saving that much for the average renter. Those who did received a subsidy were actually supported by other renters who paid more than they should have.

And, lastly, the study discovered that ethnic diversity increased after the end of rent control. It has been suggested by some that rent control is a racist policy in disguise.

Point is, rent control is poor public policy.

And, SB 466 is also poor public policy. The bill never details an acceptable minimum increase. If the owner asks for, say, only an increase of $5 per month, should the mechanism of big government be invoked? We'd have the foolish situation of more being spent by the bureaucracy in reviewing the increase than is represented by the total annual amount of the increase. The bill is unclear on what would happen if the park owner increased lot rent for only 1/3 of his customers at a time. Would that avoid the provisions of the bill? The bill, perhaps purposefully, has no confidentiality provisions for sensitive financial information. Just because someone owns a mobile home park, should their financial history be posted on the Internet? If a bank requires an owner to take a blanket mortgage covering multiple parks, does this mean that mortgage debt will be disallowed?

I think the bad policy of this bill is best stated by the bill itself ". . . any costs incurred by the owner in preparing for the hearing shall not be recoverable from residents." This sentence exemplifies the bias of the bill and speaks volumes about the author's fairness.

Members of the Committee. Please vote to recommend Inexpedient to Legislate.

Thank you for your time.

CONTROL OF RENT (REPEAL) BILL 1997

A BILL intituled An Act to repeal the Control of Rent Act 1966 and to provide for transitional provisions

ARRANGEMENT OF CLAUSES

PART 1
PRELIMINARY

1. Short title and commencement.

PART 11
REPEAL

2. Repeal of Act 363.

3. Cessation of tenancy.

4. Savings.

PART 111
TRANSITIONAL PROVISIONS

5. Transitional period.

6. Deemed tenancy.

7. Amount of rental.

8. Non-payment or arrears of rental.

9. Prohibition against recovery of premises.

10. De-control Tribunal.

11. Expiry of transitional period.

12. Rules.

SCHEDULE

EXPLANATORY STATEMENT

WHEREAS it is expedient for the purpose of ensuring uniformity of law and policy to repeal the law relating to the control of rent within the States of West Malaysia and the Federal Territory of Kuala

Lumpur:

AND WHEREAS the State Authority of each State has been consulted in relation to the date of the coming into force of this Act:

NOW, THEREFORE, pursuant to Clause (4) of Article 76 of the Federal Constitution, BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Control of Rent (Repeal) Act 1997.

(2) This Act shall come into force on 1 September 1997.

PART II
REPEAL

2. Repeal of Act 363.

The Control of Rent Act 1966, which in this Act is referred to as "the Act", is repealed.

3. Cessation of tenancy.

Upon the repeal of the Act under section 2, any tenancy between a landlord and a tenant before the date of the repeal shall forthwith be deemed to have ceased.

4. Savings

The repeal of the Act under section 2 shall not affect any proceedings commenced before the repeal of the Act and still pending immediately prior to the repeal of the Act, or any orders, decisions or judgments made before the repeal of the Act, in respect of-

(a) fair rent; and
(b) recovery of possession of controlled premises,

and the Act shall continue to apply to the proceedings or orders, decisions or judgments as if the Act had not been repealed.

PART III
TRANSITIONAL PROVISIONS

5. Transitional period.

(1) Subject to subsection (2), "transitional period" means the period commencing on 1 September 1997 and ending on 31 December 1999.

(2) Notwithstanding subsection (1), the transitional period may cease to be in force earlier than 31 December 1999 in the Federal Territory of Kuala Lumpur or in any State or in such part or parts of the State on such date as the Minister, after consultation with the State Authority, may appoint in relation to that State or such part or parts of that State for the expiry of the transitional period by a notification in the Gazette.

6. Deemed tenancy

(1) Notwithstanding section 3, any tenant, sub-tenant or joint-tenant who-

(a) was in actual occupation of the premises on the date of the repeal of the Act; and
(b) could have lawfully continued to occupy the premises but for the repeal of the Act,

shall be deemed to have entered into a tenancy with the landlord as from the date of the repeal of the Act.

(2) Unless sooner terminated by mutual consent of the parties, a tenancy deemed to have been entered into under subsection (1) shall be in force until the expiry of the transitional period.

7. Amount of rental.

The amount of rental to be paid monthly by the tenant to the landlord shall be determined in accordance with the formula in the Schedule.

8. Non-payment or arrears of rental

(1) In the event of non-payment or arrears in payment of rental by the tenant during the transitional period, the landlord shall have the right to vacant possession of the premises from the tenant without payment of any compensation.

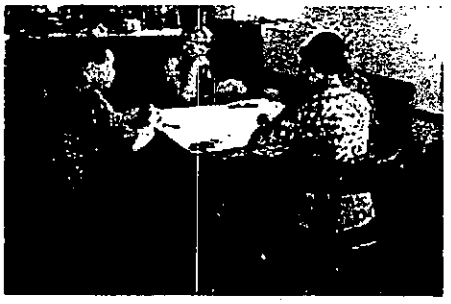
(2) In exercising his right to vacant possession of premises under subsection (1), the landlord shall comply with the procedure laid down in subsections 11(2) and 11(3) for the recovery of vacant possession of premises.

(3) Any dispute which may arise over the operation of subsection (1) may be referred by the tenant to the De-control Tribunal under paragraph 10(1)(b) before the expiry of the three-month period provided for in paragraph 11(3) (a).

(4) If no dispute is referred to the De-control Tribunal under subsection (3), the landlord shall be entitled to vacant possession of the premises upon the expiry of the three-month period provided for in paragraph 11(3)(a).

(5) The recovery of vacant possession of premises under subsection (4) shall not prejudice the

Current Projects



North Carnarvon Mansion

The Penang Heritage Trust is involved in organising consultations with those who live and work in the inner city in the face of the Rent Control Repeal. Since 1948, Penang's prewar buildings have been protected by the Rent Control Act. A 1994 census showed that Penang has 12,453 rent control premises, with 8,259 located in the heart of George Town, 2,395 located outside George Town and the rest in Seberang Perai (mainland Penang).

Rent control repeal is estimated to affect 10,000 families. It is a complex issue with great implications: A social housing issue: Rent control tenants have been paying rents way below the market levels. It is as though for rent control tenants have enjoyed social housing in the inner city for the last fifty years. The problem is that this "social housing" was not provided by the government but by unwilling private property owners. And from now there will only be market prices.

An urban renewal issue: Many of the rent control premises are in need of repair and renewal. Tenants will not invest heavily in improving their tenements unless they have a long lease on the place. However, landlords now relieved to get their properties back after fifty years may no longer be willing to give out long leases. Will landlords be willing to reinvest their properties to make for fifty years of catch-up maintenance?

A housing issue: At the moment the only alternative offered to rent

control tenants facing displacement is the possibility to purchase low-cost flats outside of George Town. However, this opportunity can only be taken advantage by people of low-to-medium income, not to the hardcore poor or those earning just below or just above the stipulated income bracket. Even for those who can afford it, there is a waiting list of up to twenty years. In the city, a small number of squatter settlements would spring up on distressed properties, inhabited by former rent control tenants who have no where to go.

A planning issue: What if all the tenants were to move out of the inner city? Then the inner city would be dead at night, there would no longer be local residents to support many small businesses, and no local people to operate or service the local businesses. And as George Town is zoned commercial, lots of potential housing space in the inner city would remain empty because landlords expecting commercial rents would rather leave their properties empty than rent them out to residents. Many shops and offices would remain empty. Many shophouses would be converted into warehouses, which are fire hazards (- this is happening already).

A transport issue: if all the residents moved out of George Town, there would be a tremendous traffic jam of all those people who lived outside of George Town but have to commute to work in town.

The Penang Heritage Trust has been contributing its inputs to a State-level committee on the Repeal of Rent Control. The main recommendations of this committee are summarised in a **speech made by YB Dr. Toh Kin Woon**, State Minister for Education, Information and Economic Planning, during the Rent Control Repeal Seminar in February 1999.

Corporate results

Monday, January 31, 2000

The Financial Express

The Full Story

The FE

Reduction of rental values on cards

GP KHUNGAR

The Maharashtra Rent Control Act in its new avatar is a boon for a large section of people. And more than anything else, it's an initiative in the right direction. But before analysing the new legislation, a look at its background, which dates back to 1947.

The Bombay Rents, Hotel and Lodging Houses Rates Control Act 1947 (commonly referred to as the Bombay Rent Act) was enacted by the Bombay Presidency Legislative Assembly in 1947 as a temporary measure. The Act was promulgated to check and control the burgeoning city rents in the aftermath of partition of the country involving mass exodus of population from north and east India to the metropolis in search of work and livelihood.

The original Bombay Rent Act came into force on February 13, 1938, for a period of two years but was extended time and again till its successor act i.e. The Bombay Rents, Hotel and Lodging House Rates Control Act was promulgated in 1947.

This Act sought to freeze the rents to September 1940 level. Thereafter, the Rent Act has been extended at least 20 times in the past 50 years. Only a few minor modifications have been enacted in the interim period and it has continued to be heavily weighted in favour of the tenants. The clause relating to determination and fixation of standard rent has not been amended.

Even though a few minor increases in the rent payable by the tenant have been granted from time to time, the net effect has been diminishing returns for the landlords. Increases in the cost of living, the cost of building materials and imposition of additional levies/ property taxes etc. by the local, self and the state government have not been fully neutralised.

The landlords aggrieved with the continual state of non-action by the successive state governments coupled with fast erosion of their returns due to the presence of galloping inflationary pressures in the economy were left with no option but to seek relief through the courts of law.

The relief finally came in the shape of Supreme Court ruling on December 19, 1997, with a clear direction to the Maharashtra state government to amend the Rent Control Act. The court directed the state government to adopt an unbiased approach to balance the interests of the tenants and the landlords.

The state government was given time up to March 31, 1998, to either make the subsisting legislation a balanced one or introduce a new Act altogether. However, the opposition in the assembly was quick to politicise the issue and the state government was caught in a proverbial catch nine situation.They, therefore, as of April 1, 1998, notified an across the board increase of 5 per cent in rentals of properties leased before October 1, 1987.

Simultaneously the state government informed the Supreme Court that in keeping with the courts directive, it had commenced work on a comprehensive new legislation which after due process of consultation and vetting would be enacted and promulgated in due course. Meanwhile, the elections followed and the BJP Shiv Sena coalition government was voted out of power. The responsibility to pilot the new legislation had consequently devolved unto the present Congress-led coalition government.

This government had made a commitment to the Supreme Court through their standing council Ashok Desai on October 26, 1999, that the new Maharashtra Rent Control Act would be enacted by the middle of January 2000. The obsolete and delinquent clauses of the Bombay Rent Control Act (amended up to 1987) were highlighted by the advocates representing the property owners before the Supreme Court bench that comprised Justice B N Kirpal, Justice N Srinivasan and Justice Santosh Hedge. It was pointed out that under the Bombay Rent Act, the rent as on September 1, 1940, or the first rent at which the premises were let out continues to be the standard rent. However, there is no provision under the Act for revision of the same or for taking into consideration the rapidly increasing repair and maintenance expenses and the imposition of new taxes and imposts by the local and state government.

The present Act also lacks a correcting mechanism to offset the impact of galloping inflation that in the past three decades has indeed resulted in a severe erosion in the value of the rupee.

The judges of the Supreme Court had rightly stressed in their 1997 judgment that the law must not only strike a balance between rival interests but should also try to be just to all. The law ought not be unjust to one and give a disproportionate benefit or protection to another section of the society. They, therefore, stressed that it is the responsibility of courts to look at the legislation from the alter of Article 14 of the constitution. This article has been embodied in the constitution to check the tendency of giving an undue preference to some over others.

It would be recalled that the issue of balancing the interests of the landlords and the tenants has been engaging the attention of both the central and the

state governments for the past 20 years. Even the recommendations from the various committees, specifically constituted for the purpose, were received and considered by the central government who even circulated a draft of the model rent control legislation to the states in 1992.

The various state governments, because of their own political compulsions, however, have failed to address this vital issue. Consequently, the interests of the landlords in a city like Mumbai where more than 70 per cent of the dwelling units are owned by persons belonging to the middle and lower middle income category personnel have continued to suffer.

Furthermore, investment into creation of housing stock for renting has virtually come to a standstill. Even repairs and maintenance of the existing rental housing stock is being neglected by the landlords due to diminishing returns and this is leading to further depletion in the availability of suitable houses for renting. The virtual freeze in rents is also leading to the debilitation of resources of the municipal bodies as the commonly adopted norm for determination and levy of property taxes continues to be standard rent that a property commands.

The frozen rents have also resulted in the perpetuation of the practice of `key money', which apart from creating a black market in rental housing, has reduced the accessibility of low-income groups to rental housing. Low and middle income groups just cannot mobilise adequate resources to pay large deposits and many months' rent in advance. This has also given rise to unchecked growth of jhugi jhompri clusters and slum dwellings in most metropolises.

It is in the light of this background, the Maharashtra Rent Control Act was finally passed by the State Assembly in December 1999. However, the state government, following the governor's assent, has yet to promulgate the Act. The salient implications of the new legislation are:

- More than 100,000 flats lying vacant will become available for rental at market-driven rents. Immediate entry of this stock in the rental housing market is likely to lead to an eventual reduction of rental values.

- Exemption offered to multinational companies, banks and institutions with networth exceeding Rs 1 crore will pave way for the entry of corporates in the rental housing market. Such houses will be leased at prevailing market-driven rents.

- The practice of deposits taken by the landlords and the tenants to vacate premises has been legalised. This is likely to encourage more white money deals and thus bring in greater transparency in real estate transactions. This should also result in increased revenue earnings for the municipality and the government as far as collection of property taxes and stamp duties is concerned.

• The Act, when promulgated, will also pave way for notification-based periodic revisions in the standard rent which henceforth will be revised on the basis of a formula to be announced by the state government. Whilst the formula is likely to partially neutralise living cost inflation, increases in the cost of building materials, other costs involved in undertaking routine repairs and maintenance work and also the direct impact of new imposts or increases in subsisting taxes and statutory levies. The notified increases may not be given retrospective effect.

• The new Act also addresses the issue of inheritance of tenancy rights. It also differentiates between the inheritability provisions relating to residential and non-residential properties, particularly the trade-oriented commercial properties.

Over all this appears to be welcome news for the landlords and one hopes that the other states in India will also follow suit in amending their Rent Control Laws. The new laws should attempt to create a level-playing field for both the tenants and the landlords with flexibility to meet the challenges of tomorrow.

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NEWSFLASH

RENT CONTROL LAW EXTENDED

Manila, Dec. 13, 1997 - Families staying in rented homes and apartments can enjoy four more years of the Rent Control Law, during which their landlords can only impose a 15 percent rental increase annually .

Senate Housing Committee Chairman Gregorio "Gringo" Honasan said the bill extending the life of the Rent Control Law has been approved by the bicameral committee and is expected to be signed into law by President Ramos before the present law expires on December 31.

Honasan's bill lets the government gradually lift the rent control law so resident can cope with current economic difficulties.

It also requires registration of all controlled rental housing units, surveys and investigations, and an annual progress report on controlled rental housing.

Reported by: Sol Jose Vanzi

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The Impact Of Rent Control On The City And County Of Honolulu For The Department Of Housing And Community Development

August 14, 1995

© The London Group Realty Advisors, Inc. October 5, 1995

Executive Summary

The intent of this study is to broadly and objectively evaluate the national rent control experience against the particular rental housing market as it has existed in Honolulu and prospectively will exist over the coming years.

The London Group has completed a comprehensive study of rent controls. We have prepared this report which documents our findings and recommendations, and details our analyses. The key findings are summarized, as follows:

Recommendations

Our overall recommendation is not to institute a rent control ordinance in Honolulu. While there are additional reasons for this recommendation which are elaborated in this report, our major concerns can be summarized as follows:

- The experiences with rent controls in many communities throughout the US has been that rent controls do not achieve the goal of insuring that rental units will be available to those renters most in need.
- The experiences of many communities are that rent controls disturb the local delivery system for rental housing as well as impact the healthy growth and development of those communities. As a result, several communities which have employed rent controls for many years have either rescinded or softened their programs.
- Honolulu has other basic adjustments which must be made within your housing delivery system which must be resolved first to get to the 'root' of the problem. It is our conclusion that rent controls will only exacerbate the housing affordability problems which exist today.

Resolution No. 92-173:

In December, 1992 Resolution No. 92-173 was placed before the Honolulu City Council. In an effort to address concerns regarding the high cost of rental housing and other related rental housing issues, this resolution proposed a rent control ordinance. The major provisions of Resolution No. 92-173 are as follows:

- Sets up a Rent Control Board
- Freezes residential rent levels for 120 days at the base rental rate in effect one year prior to this period
- Rent controls would be set by the Board, including annual adjustments on rent and

restrictions on rent increases
- Does not necessarily allow rents on vacated units to be adjusted upward
- Creates a system to administer and enforce regulations

Resolution No. 92-173 as presently conceived is too vague. If it is to be crafted into public policy we recommend that an initial determination be made as to what type of rent control is desired (restrictive, moderate or light). We have made detailed recommendations on how to achieve this within this report. Specific elements which must be added would include:

- establishing the annual increases in rents which would be allowed,
- determining the percentage of maintenance and capital improvements which may be passed on to the tenant,
- creating rules for rent increases when units become vacant, and
- clarifying policies for which units are exempt from controls and how units may be de-controlled.

Consequences: A probable consequence of Resolution No. 92-173 as currently written would be the loss of existing, affordable housing units ranging from 10% to 20% due to conversions, demolition's and landlords pulling units off of the market.

Executive Summary | **Conclusions** | **Rent Control In The U.S.** | **Financial Analysis**

Contact The London Group Realty Advisors, Inc.



LAS VEGAS REVIEW-JOURNAL

Friday, May 14, 1999
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Rent control measure left to die in Senate committee

By Ed Vogel
Donrey Capital Bureau

CARSON CITY -- A Senate chairman said Thursday he will kill an Assembly-passed bill that would bring rent control in Nevada mobile home parks because of the onerous effect it would have on the economy.

Senate Commerce and Labor Chairman Randolph Townsend, R-Reno, said he will let Assembly Bill 418 die by not even holding a hearing on the proposal. The bill automatically dies if not passed out of Townsend's committee by midnight tonight.

"Rent control would be the single worst thing we could do for the state of Nevada," Townsend said. "It would dry up capital and it would dry up the ability to build new parks."

He said rent control in other states has proved an abject failure.

"If you have been to a rent control facility in a different state, they are treated poorly," Townsend said. "They don't maintain them. The tenants are miserable."

The bill's sponsor, Assemblywoman Genie Ohrenschall, D-Las Vegas, was dismayed by Townsend's decision. The bill had passed the Assembly by a 28-12 vote April 9.

She said out-of-state speculators have been coming into Clark County, buying up mobile home parks and then gouging residents on lot rental rates. Lots rent for $300 to $600 per month, she said.

"They are engaged in quick turnover,"

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Ohrenscall said. "They buy the parks intending to keep them for a year or two and then sell them again. They try to get back the entire price they paid to get them."

Under her bill, the state Division of Manufactured Housing would have determined a fair rate of profit in mobile home parks across the state.

Ohrenschall said she intends to introduce a similar bill in 2001. Ironically, earlier this year she lost her bill that would have required committee chairmen to take a vote on all bills before their committees. Now her bill will die without a vote.

"Under the present rules, I can't do anything," she said.

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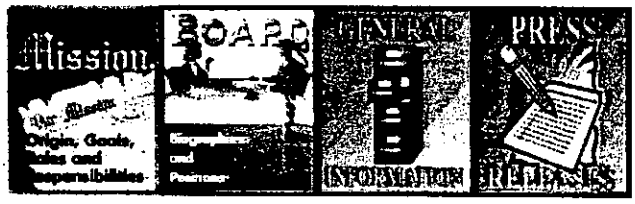
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District of Columbia

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5. Rent Control

Summary of Recommendations

The complex, time-consuming, and often costly procedures imposed under the District's rent control law (also referred to as its rent stabilization program) represent a significant obstacle to the ownership and operation of rental housing in the District. As discussed in further detail below, the Team recommends that the District government

- Promptly de-control rents on units that are vacant, as well as units that become vacant in the future.
- After a brief study period to assess the impact on low- and moderate-income tenants of terminating rent control on all rental units, either (1) phase out, within 2 to 3 years, rent control on all units, excluding those occupied by lower income, elderly tenants, or (2) substantially simplify and liberalize the procedural and substantive requirements relating to the implementation of rent increases.

Public Purpose

In 1973, Congress authorized the District government to implement rent control legislation. Within the next two years, the City Council passed a regulation, and then legislation, restricting rents on apartments in the District. The successor to these restrictions is the District's current Rental Housing Act (D.C. Code §45-2501 *et. seq.*) and the corresponding regulations (DCMR Title 14, Chapters 38 *et. seq.*).

As stated in the Rental Housing Act, the law's requirements are designed to remedy a "severe shortage" of rental housing in the District. This shortage, according to the law, arose from a variety of factors, including withdrawal of units from the rental housing market, deterioration of existing housing units, and the lack of rehabilitation and construction of new housing. Low- and moderate-income renters in the District, as recognized in the law, experienced the shortage most acutely.

Current Law or Regulation

Under the District's rent control law, a ceiling is imposed on the rents that can be charged on all nonexempt rental housing units in the District. The law and regulations also set forth specific procedures and requirements for (1) registering both nonexempt and exempt rental units, and (2) petitioning for rent increases based on, among other things (a) capital improvements or substantial rehabilitation to the property, (b) changes in services and facilities available at the property, and (c) the financial hardship of the housing provider (i.e., failure to realize a certain rate of return on investment).

The rent control law indicates that its requirements generally apply to any rental unit in the District, excluding certain exceptions such as (1) units subject to federally or District-subsidized rents or mortgages; (2) units constructed (i.e., building permit issued) after December 31, 1975; and (3) rental units owned by landlords who own four or fewer units. We have been informed that nearly two-thirds of the rental units in the District are currently subject to the rent control law.

By its terms, the rent control law was due to expire in December 1995. However, in June 1995 the District of Columbia Council adopted a 5-year continuation of rent control. In recent weeks, the Council considered, but declined to make, revisions to the rent control law.

Problems with Current Law or Regulation

Rent control remains a very controversial and "politically sensitive" issue in the District. In the interest of allowing the reader to better understand the long-standing debate over rent control, we have provided a brief summary of some of the principal arguments on each side of the controversy.

Many of those opposed to rent control, such as a number of real estate owners, developers, investors, and lenders, argue that

- Rent control has discouraged much-needed rehabilitation, maintenance, and development of rental housing in the District. As the District's rental housing stock continues to age, housing providers, investors, and lenders have diminishing financial incentives to repair, improve, and expand rental properties. The costs and time delays associated with obtaining the rent increases needed to pay for such repairs and improvements are far too great for the business community to bear.
- Tenants have relied on landlords' noncompliance with the law's excessively technical requirements in order to avoid or postpone a number of legitimate landlord actions such as evictions and rent increases.
- Because of the complex, restrictive, and often time-consuming process landlords must follow to obtain approval of rent increases associated with capital improvements, substantial rehabilitation, and increases in facilities and services, rent control has made rental properties "economically unviable" and has caused owners to "walk away" (either literally or figuratively) from their properties.
- Rent control was predicated on a shrinking supply of rental housing, a high demand for such housing, and the inability of low- and moderate-income families to pay rapidly increasing rents. However, given the significant reduction in the District's population in recent years, the relatively high vacancy rates (particularly in areas outside of the upper Northwest area of the District), and the relatively low rates of inflation, rent control no longer serves a legitimate governmental objective. Moreover, in most areas in the District, the market cannot even support rents as high as those allowed under the rent control ceilings.
- The burdens associated with rent control discourage investors, developers, and others in jurisdictions with no rent control (e.g., Maryland and Virginia) from seeking to own or operate rental properties in the District.
- Given the uncertainty associated with obtaining approval of rent increases in the District, many lenders are taking particularly conservative approaches to loan underwriting on rental properties (e.g., excluding capital improvement increases from their calculation and forecasts of future net income).
- In other jurisdictions where rent control has been eliminated (e.g., Boston, Cambridge, and Brookline, Massachusetts), the deregulation has not had a significant adverse impact on low- or moderate- income tenants. Moreover, deregulation has resulted in increased construction and renovation of rental housing, as well as increased property tax revenues.

On the other side of the rent control debate are a number of tenants and tenant advocacy groups who insist that the rent control law is essential to maintaining affordable housing in the District. They argue

that

- Elimination of rent control will force low- and moderate-income renters to become increasingly "rent burdened" or to move out of the District (or to less appealing neighborhoods in the District). As rents continue to rise, many neighborhoods will become increasingly gentrified.
- The rent adjustments allowed under the law [e.g., consumer price index (CPI) adjustments, adjustments for capital improvements, substantial rehabilitation, and hardship], as well as the exemptions under the law (e.g., new construction), are more than adequate to ensure that owners, developers, investors, and others have an adequate financial incentive to acquire, develop, rehabilitate, and construct rental housing.
- The District's housing problems are not related to rent control, but instead are a function of poor District government services (schools, police, etc.) and high taxes that discourage people from residing in the District.
- The law provides tenants with leverage against landlords who wrongly try to take actions contrary to the tenants' interests (e.g., if a landlord reduces the services or facilities offered, the tenants may file for a rent reduction).
- The elimination of rent control will simply allow real estate speculators to make substantial profits as rents and property sale prices rise, and low- and moderate-income tenants are forced to move elsewhere.

Recommendations for Reform

The Business Regulatory Reform Commission (BRRC) and a number of members of the business community have made recommendations to reform or eliminate rent control. The recommendations that we reviewed include the following:

1. De-controlling rental units that are currently vacant or that become vacant (Recommendation 1).
2. Phasing-out rent control over a fixed period of time (e.g., 2 to 3 years after the phase-out begins), except for units occupied by elderly people (the BRRC suggested persons 65 years of age or older) who have household incomes below a certain level (the BRRC suggested households with incomes of $40,000 or less) (Recommendation 2).
3. Eliminating or substantially reducing rent increase filing requirements, except for new registrations and exemptions (Recommendation 3).
4. Eliminating or substantially reducing limitations on capital improvements under rent control (including the process of petitioning for rent increases) and allowing full, permanent, pass-through of improvement costs as a "matter of right" (Recommendation 4).

On the basis of our preliminary analysis of the issues surrounding rent control, the Team believes that serious consideration should be given to implementing each of these recommendations. In fact, with the exception of Recommendation 2 (i.e., eliminating rent control), we believe the Authority should take immediate action, with the assistance from either a District government agency [e.g., Department of Housing and Community Development (DHCD)] or a private contractor, to develop the necessary law and regulation changes to implement these reforms.

However, because rent control remains a very controversial issue, and one that affects many District residents (especially those with low- and moderate-incomes), we suggest that implementation of Recommendation 2 be postponed until a study of the likely economic and social impacts of rent de-control on District residents is completed. The Authority should commission such a study and require

that it be completed within a 45- to 60-day time period. The study should identify (1) the anticipated reduction, if any, in the District's existing supply of affordable housing if the phase-out occurs; (2) the likely rent increases and changes in services and facilities, if any, that will be experienced by tenants in the District as a result of rent de-control; and (3) the expected increase, if any, in development and rehabilitation of affordable housing in the District as a result of the deregulation. The study should also discuss the impact that rent de-control has had on low- and moderate-income tenants in other cities, such as Boston.

Each of the recommendations is discussed in further detail below:

- **Recommendation 1: De-control of Units Upon Vacancy**: This recommendation is viewed as a relatively painless approach to de-controlling rents because the rent control limitations would only be eliminated as units were vacated. Nevertheless, there is concern that the de-control of vacant units may cause some landlords to wrongfully persuade or force tenants to move out. Therefore, if this recommendation is adopted, it will be necessary for the District government to ensure that tenant leases are not wrongfully terminated and that housing providers who undertake improper lease terminations face prompt and stiff penalties.
- **Recommendation 2: Phasing Out Rent Control, Except for Certain Elderly, Lower-Income Tenants**: This recommendation is more far-reaching and controversial than Recommendation 1 because it would affect current tenants who continue to occupy their units. The issues that will need to be addressed with respect to Recommendation 2 include (1) the date on which the phase-out will be initiated (we believe it should be initiated within 1 to 2 years following the date this reform is adopted); (2) the time period for completing the phase-out (we propose a phase-out period of 2 to 3 years or, alternatively, a single de-control date at the end of a 2- or 3-year period); (3) the rights of tenants forced to relocate as a result of rent de-control (e.g., notification rights and payment of relocation expenses); (4) the categories of tenants (e.g., elderly, disabled) that will be exempt from the de-control; and (5) the percentage of rental units ultimately subject to the de-control (i.e., will rent control be terminated with respect to all rental units, except those of certain elderly or disabled tenants, or will housing providers be required to maintain some percentage of rent-controlled units?). As stated earlier, final decision on this recommendation should be postponed until after the Authority has had an opportunity to review the above-referenced study addressing the impact of rent de-control on low- and moderate- income tenants.
- **Recommendations 3 and 4: Eliminating or Substantially Reducing Most Rent Increase Filing Requirements and Restrictions on Capital Improvements**: These recommendations are intended to (1) remove many of the administrative burdens associated with rent increases, and (2) eliminate disincentives and procedural difficulties associated with making capital improvements to and rehabilitating rental properties. These reforms, while likely to engender debate, should be less controversial than Recommendations 1 and 2. We believe that rent control imposes significant administrative burdens and costs on rental property owners and operators, and it produces only limited (and sometimes inappropriate) benefits for tenants. Therefore, if the Authority deems Recommendations 1 and 2 infeasible, the District government should, at a minimum, promptly implement reforms that will streamline (or eliminate, where appropriate) the procedures for effecting rent increases and registering exempt and nonexempt units. These reforms should focus on
    - Permitting a landlord to implement, as a matter-of-right, rent increase adjustments related to CPI adjustments, capital improvements, rehabilitation and increases in services and facilities, provided that the landlord: (1) provides at least 90 days prior written notice of such rent increase to the affected tenants; and (2) certifies to the Department of

Consumer and Regulatory Affairs (DCRA) in writing (on a form prescribed by the DCRA) that: (a) all affected tenants have been provided with the above-referenced 90-day notice; (b) the rent increases do not exceed the established rent ceilings for the applicable units (including all prior CPI adjustments); (c) the rent increases do not cause any breach of the terms of the affected tenants' existing leases; (d) none of the affected units remains the subject of any unresolved housing code violations cited in writing to the landlord by the District government, and (e) none of the families in the affected units is headed by an elderly, lower income tenant.

- Requiring landlords to provide low-income tenants a reasonable period to relocate (perhaps an additional 30 to 60 days), and reasonable relocation assistance, if such tenants will be unable to afford the rent increase adjustments.
- Simplifying the procedures for filing new and amended registration statements.
- Retraining and reassigning many DCRA staff members who previously processed rent control registrations and petitions so that they instead focus their efforts and resources on identifying and resolving housing code violations.

Comprehensive Housing Plan

In conjunction with any major reform of rent control, the Team recommends that the Authority set up a task force made up of representatives from a few of the key District government departments and agencies (including DCRA, DHCD, and the District's Housing Authority) to develop a comprehensive housing plan for the District. The plan should identify

- The District's specific strategies for maintaining its existing supply of affordable housing and encouraging rehabilitation and new construction of affordable housing.
- The District's specific strategies for using federal monies (e.g., CDBG, HOME, and Section 8 funds), District monies, low-income housing and other tax credits, bond financing, zoning relief, grants, and low interest rate loans to expand rental and home-ownership opportunities for low- and moderate-income District residents.
- Enterprise zones and other areas within the District that will be the focus of the District's efforts to promote housing and commercial development.

After a draft housing plan is prepared, it should be presented to a variety of business and tenant groups in the District for their questions and comments. The comprehensive housing plan, once completed, should form an integral part of the District's overall strategic plan for economic development. The housing plan should seek to ensure, among other things, that a stable supply of rental housing for low- and moderate-income residents (as well as residents in higher income brackets) is maintained in the District, and that sufficient financial incentives exist for the ownership, rehabilitation, and development of such housing.

Summary on Rent Control

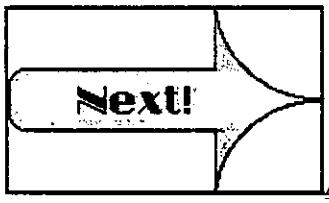
In this example, we have applied the theory of supply and demand to the "market for apartment services."

- Applying the long-run and short-run equilibrium concepts, we have found that restriction of rent below its market-clearing value not only creates excess demand in the short run, but that the shortage gets worse in the long run.
- Applying the marginal benefit interpretation of demand and the Consumers' Surplus analysis, we learn that this restriction of supply is inefficient.

It should be said that most real rent-control schemes have included some measures designed to reduce the shortage by increasing supply. For example, newly built apartments may be excluded from rent controls or controlled more generously. No doubt these measures reduce the problem of inefficiency caused by the rent controls, to some extent.

Nevertheless, the case for rent controls seems to be weak. It cannot even be said that they help tenants in general. They help the tenants who have rent-controlled apartments -- not those who are unable to get a rent-controlled apartment, and there will always be a considerable number who cannot.

Now let's look at another issue, again applying the supply-and-demand equilibrium approach.



A Chip Cycle


Copyright 

The Case Against Rent Control

Rent control is back in the news. With the laws governing the maximum allowable rents in New York City set to expire on June 15th, one of the country's largest few remaining examples of housing regulation may soon be a thing of the past.*1 Needless to say, the debate has grown heated, especially for those directly involved. Landlords have been pressing for the government to allow the laws to go unreplaced, while tenant groups have waged a fierce campaign for continued regulation. Recently, the political debate took an ugly turn as New York Senate majority leader Joseph Bruno, the leading proponent of abolishing rent regulations, received death threats and several deliberately set fires at his office building.*2 In the midst of all the rhetoric, however, economic arguments and empirical evidence alike have often been ignored.

In this paper I shall argue for the complete repeal of all rent-control laws, and the establishment of a free-market in rental housing. I will begin with a brief overview of the housing market and the factors involved in establishing rents. I shall then show how rent control, by interfering with the pricing system, leads to a distortion of the market and outcomes harmful to society's most vulnerable members. This will be followed by a response to some of the most common objections to a free-market in housing and, finally, by a look at some of the ethical and constitutional issues involved.

Housing Economics — the Basics

Any look at the housing market must start with the basic fact of economics—scarcity. At any point in time, there is a fixed supply of rental housing. This supply came about as a result of the past economic calculations of investors and entrepreneurs who, in deciding where to invest, considered such factors as the cost of building, anticipated rents over the lifetime of the property, variable costs, and likely rate of return on other available investments. When the expected return on an investment in rental housing was greater than that offered by comparable investments, new housing units were created. When, however, the appeal of the investment is lessened, perhaps as the result of a change in one of the factors listed above, new investment tends to drop off and those who have already invested attempt to minimize their losses by shifting capital elsewhere.

Scarcity has important consequences for the intersection between supply and demand. As economists Milton Friedman and George Stigler write:

> whenever people want more of something than can be had for the asking, whether bread, theatre tickets, blankets or haircuts, there must be some way of determining how it shall be distributed among those who want it.*3

In a free market economy, this determination is made via the price system. Market prices are a reflection of the fact that, *ceteris paribus*, consumers' propensity to purchase a given item lessens as the price rises, while sellers act in an opposite manner, offering more as prices rise and less as prices fall.

> At one point—and one point only—the interests of buyers and sellers will intersect. This is the 'market-clearing price,' the point at which, given current economic circumstances, the desires of both groups are optimized.*4

Not only do prices serve to maximize the interests of the particular buyer and seller involved in the exchange, but they also act as a signal to other economic actors.*5 When, for instance, a landlord demands a higher rent, he is, in effect, "demonstrating the true scarcity value of rental housing and thereby sending signals to investors and potential investors to undertake the provision of additional rental housing."*6 Should he ask for more than the market will bear, he will soon be punished by loss of income as renters take their dollars elsewhere. If, however, the high price accurately reflects the economic situation, another signal is sent—this one to other consumers—providing them with an incentive to seek the satisfaction of their wants by other, less costly, means (e.g. an apartment in a different neighborhood, some form of group-home). Prices thus serve as a dynamic coordinator of economic activity, constantly changing to reflect new developments, and relying upon nothing but the self-interest of producers and consumers alike to fulfill their role.

The Effects of Rent Control

Given the vital coordinating role they play, it is imperative that prices be left free to adjust as the situation demands. Rent control renders this impossible. In its purest form, rent control imposes a price ceiling on rents—a limit above which the price for rental housing cannot rise. Defenders, however, are quick to point out that most existing systems of rent control allow some upward adjustment of rents as operating costs increase, and that further adjustments are made to guarantee a 'fair return' to landlords.*7 Nevertheless, rent control laws must, if they are to have any effect at all, end up forcing units to be rented at below-market rates. To the extent that they do so, they undermine the effectiveness of the price system.

Shortages

One of the clearest ways in which this undermining manifests itself is the existence of shortages. A free market will, as we have seen, "eradicate surpluses and shortages if permitted to do so...by 'signaling' to consumers and producers, by means of change in prices, that they should alter their behavior."*8 When, however, prices are not permitted to rise to accommodate for a low supply, we are left with a situation of excess demand—a situation where consumers are willing to purchase, at the controlled price, more units of housing than are presently for sale. Whatever supply of housing is available when rent controls are enacted will be purchased and, most likely, held onto by consumers who are, in effect, taking advantage of a coerced "sale" on rental housing. It is for this reason that, while national vacancy rates have been at or above 7 percent for the last twenty years, vacancy rates in rent controlled cities have been "uniformly below

normal."*9 New York City has not had a vacancy rate above 5 percent since World War II, and in rent-controlled San Jose, the rate is currently 1%—the lowest in the country.*10 This government-induced shortage has serious ramifications for tenants, prospective tenants, and the economy as a whole.

One highly insidious effect of such a control-induced shortage is that it tends to be self-perpetuating. It would be one thing if rent control merely froze the available supply of housing at the level which existed at the time of its enactment. This much it does by serving as a disincentive to the construction of new rental property, even if not immediately applied to such property. For, notes economist George Reisman:

> If prospective landlords believe that rent control is a real possibility in, say, five or ten years, then they will construct new rental housing only if they are able to recover most of their investments in the coming five or ten years, before the combination of rent control and inflation can rob them...Low-income rental housing is simply impossible when the landlord's investment must be recovered so rapidly.*11

Thus, to the extent that rent control makes investment in rental housing unprofitable, new investment is not likely to be forthcoming, and tenants will be left with only the current supply over which to fight.

Effects on Current Supply

Even worse, however, is the fact that the supply of available rental housing is actually likely to *diminish* under rent control. Those landlords who already have a significant amount of capital tied up in controlled property will have a strong incentive to put their wealth to more profitable use. One method for the landlord to reduce costs is to cut back on maintenance. Owners may choose to allow their buildings to deteriorate, perhaps to the point where they are no longer habitable and are either abandoned or destroyed.*12 For instance, a 1975 US Census Bureau study of rental housing in New York City showed that "in every category except one (rodent infestation) the proportion of deficiencies in the controlled sector exceeded those in the uncontrolled sector by up to 100 percent or more."*13 Ironically, then, one of the effects of rent control is to harm even further society's worst-off, for it is precisely those landlords in poor and minority neighborhoods that "have the least ability to absorb increases in operating costs...As a result, it is these landlords who are the first to stop making improvements and major repairs, and who are the first to abandon their buildings."*14

But a landlord need not go so far as to abandon his building in order to recoup some of his losses; all that is required is that the property in question be taken off the rental market. Thus, under rent control we see a sharp increase in the number of owner-occupied dwellings, with many apartments being converted and sold as condominiums.*15 Friedman and Stigler, in a study of pre- and post-controlled San Francisco, found that while

> In 1906, when both rents and selling prices were free to rise, the San Francisco Chronicle listed 3 'houses for sale' for every 10 'houses or apartments for rent;' in 1946, under rent control, about 730 'houses

for sale' were listed for every 10 'houses or apartments for rent.'*16

Rent control thus tends to push those landlords who might have provided affordable (though market-rate) housing into the condominium business, where only the relatively well-off will be able to afford to live.

Effects on Non-Controlled Units

Often, a certain portion of rental housing is left outside the scope of rent control laws—generally so as to lessen the disincentive to new construction. Since much of the unsatisfied demand for housing is channeled into this unregulated sector, prices in it tend to be higher than they would otherwise be. William Tucker conducted a study of advertised rents from eighteen major cities to determine exactly how significant this effect is. What is clear from these findings, notes Tucker, is that "rent control splits the housing market into two sectors, the regulated segment and the shadow market. As prices in the regulated sector are forced lower, prices in the shadow market go higher."*17 Those unlucky enough, then, to be without a rent controlled apartment are forced to pay quite a bit more than they would have in a free market. By tending to raise the average price of *available* housing, then, rent control once again hurts those who are least able to afford it.

Effects on Landlord-Tenant Relationship

A further effect of rent controls is to alter the nature of the relationship between landlord and tenant. In a free market, landlords, like anyone else with a good to sell, must appeal to the interests of consumers in order to make a profit. This is due to the nature of the competitive market, where sellers are faced with the constant threat that consumers will take their business elsewhere if not satisfied. Under rent control, however, we have already seen that a price ceiling creates an excess of demand over supply. There thus arises a shortage of available housing units which consumers are unable to overcome by bidding up the price they are willing to pay. In such a situation, writes George Reisman, the buyer must view "the seller as an omnipotent tyrant whom he must beg for favors or threaten with reprisals."*18 To the seller, on the other hand, buyers are a dime a dozen, and can be viewed as nothing but "petty chiseler[s] seeking values without payment."*19 In the absence of a functioning price system to coordinate their interests, tenants and landlords become locked in to an adversarial situation with each one struggling to gain the upper hand. It is for precisely this reason that rent controls are almost always accompanied by strict regulations of evictions;*20 for, without them, landlords would simply evict clients at the first sign of trouble, confident in the knowledge that another one will be along shortly to take his place.

Rationing under Rent Control

One of the ways in which this altered relationship manifests itself is in the tendency towards increased discrimination under rent control. As we have already noted, any scarce good must be rationed by some means. Since rent control undermines the ability of the price system to perform this task, rationing must take place by some other method. One way is simply to offer the apartments on a "first-come, first-served" basis.*21 Since, however, this method offers no distinct advantages to the landlord, it is likely to evolve into one of several other methods. First, it can evolve into a system of illegal side payments, wherein prospective tenants seek to move themselves up to the front of the queue or otherwise distinguish themselves from the hordes of other apartment-seekers by "sweetening the deal" with an extra cash payment.*22

The fact that this is clearly illegal and relatively easy to detect, however, means that it will likely not be as popular as the second alternative: rationing on the basis of the personal characteristics of the buyer. As Friedman and Stigler point out, even the most morally upright of landlords is likely to give preference in the renting of his valuable units to "friends or relatives,"*23 who, in the absence of controls and the opportunity to capitalize on them, might not have chosen to seek an apartment at all. Aside from such blatant nepotism, moreover, a landlord will be "likely to rent to tenants he personally likes; and to the extent that he has any racial prejudices, he will be inclined to select tenants in a racially discriminatory manner."*24 This is not to say, of course, that discrimination never occurs in the free market. To the extent that racial prejudice exists, however, its effects are likely to be exacerbated under a system of rent control where the market incentives towards ignoring all but economic criteria are nullified. As Charles Baird of the Cato Institute points out, although an exclusive focus on economic considerations may seem crass, "when people are forbidden to make decisions on the basis of economic criteria, they may well use other criteria that are even more uncharitable."*25

Effects on Mobility and Unemployment

One lesson that becomes all too clear to those who attempt some form of centralized economic regulation is that it is "impossible to interfere with voluntary exchange in one area without adversely affecting other areas."*26 Though regulations such as rent control are often championed with the best of intentions, the Law of Unintended Consequences warns us to beware of harmful secondary effects. One such unintended consequence in the case of rent control is its effect on the utilization of labor in the economy. Since ceilings on rent produce a shortage of available rental housing units, those who hold such units at the time the laws are enacted are likely to hoard them for as long as possible. This, in turn, means that those living in rent-controlled units will find it very difficult to move without incurring a large increase in housing costs.*27 However, as professor of economics Charles Baird notes,

> [In order] for labor to be deployed in accordance with the wishes of those who buy what labor produces, it is necessary for individuals, from time to time, to switch jobs. Job switching often means changing addresses, but if living accommodations are difficult to find, not all of the job switching that ought to occur can occur.*28

Rent control, then, by reducing the mobility of tenants, tends to cause labor to be utilized in a sub-optimal manner. This, in turn, means less opportunities for career advancement on the part of those affected, as well as decreased productivity from the economy as a whole. Much like the infamous nail "for want of which the war was lost," then, the negative effects of rent control can grow exponentially from their impact on particular individuals, to their impact on the economy as a whole.

Arguments Against a Free-Market in Housing

There is virtually no disagreement regarding the basic economic argument against rent control, viz. that it tends to produce shortages. In a 1992 survey of 75 of the world's leading economists, almost unanimous agreement was given to the proposition that "A ceiling on rents will reduce the quality and quantity of housing."*29 Of the 30 questions presented for review, notes William Tucker, only one other received an equal level of support.*30 Arguments in favor of rent control, then, tend to be found not in the journals of academia but rather in the popular press or smaller, tenant-activist publications. Having presented the basic argument against rent control, then, we will now consider three of the most common arguments given in favor of such laws.

1. *"Rent control is needed to correct the private market's failure to provide affordable and decent housing."*31*

   This argument claims that in the absence of government regulation, the rich will find housing while the poor will not. This argument is intuitively spurious, for if we extend it to cover other goods ("In a free market, the rich will get food and the poor will not") we see that it clearly does not accord with experience. In fact, the free-market tends to provide all goods at a *wide variety* of price levels. Just as we have the choice at dining at the Ritz Carlton or at McDonalds, so a free-market in housing would allow tenants to choose between luxury apartments and economy-sized flats. History bears witness to the claim, as Friedman and Stigler show in their study of availability rates in pre- and post-control San Francisco. They conclude that in the absence of rent control, "at all times during the acute shortage in 1906 inexpensive flats and houses were available."*32 While it is true, then, that the poor will not be able to afford the same *quality* of housing as will the rich, a free-market tends to at least make available some level of housing at a rate they can afford. Compared with the shortages produced by ceilings then, capitalism comes out ahead.

2. *Rent control is needed to stop the exploitation of tenants by landlords.*

According to this argument, tenants are powerless against the wealthy landlord class who control a basic resource needed for human life. Rent control, then, is

a means of protecting tenants from price-gouging and "the brutality of the marketplace."*33 The problem with this argument, notes economist Walter Block, is that there is no "objective price," apart from that determined by supply and demand. "Price is rather established on the basis of how choosing individuals evaluate the available stock of the commodity or service. This is an entirely subjective phenomenon."*34 The high price of rental housing, then, is simply a reflection of the current supply of such housing and the values that consumers put on it. It is not "exploitation" because there is simply no standard one could use to expect or demand a lower price.

3. *"The battle* [for rent control] *is one of human rights versus property rights."*35*

This argument brings us in to the realm of morality, and asks us to assume a rather substantive point, viz. that there is a necessary dichotomy between property rights and other human rights. To make such a claim, however, is to ignore a significant tradition in Western political thought which holds that property rights are simply an *extension* of one's most basic human right: the right to life.*36

Furthermore, the (implicit) claim that housing is a basic human right is certainly, as Walter Block points out, at odds with certain core principles of Western law. For, "all rights impose obligations," and thus the right to housing "implies an obligation on the part of other people to provide it."*37 Such "positive rights" are a far cry from those Lockean rights embodied in Jefferson's *Declaration of Independence,* which require nothing more of others than that they "leave me alone." Indeed, much of the supposed "morality" of rent-control laws seems to be based on the assumption that "one particular group, the providers of some essential good or service, is a nefarious clique that must be wrestled into submission by the government." This signaling out one class of persons to bear the burden of providing society's housing, while at the same time denying their claim to market profits, seems itself to be, at best, morally questionable.

Conclusion - The Future of Rent Control

The future of rent control is far from certain. On the one hand, many cities, such as New York, are beginning to reconsider the wisdom and necessity of such laws on their own. Efforts to repeal rent control through the political process, however, face serious obstacles from organized tenant groups. As Cato's Charles Baird points out, "Rent control establishes a set of 'entitlements'...some people are made better off, and other people are made worse off...Its repeal, therefore, necessarily implies losses for some and gains for others."*38 Rent control is also coming under attack, however, on constitutional grounds. Noted legal scholar Richard Epstein has written that rent control violates the "takings" clause of the 5th Amendment, failing to satisfy the "public use" requirement and clearly violating the eminent domain clause.*39 Rent control, he argues, should be "struck down in its entirety."*40

Whatever the courts may decide regarding the constitutionality of rent control, it is, I believe, clear from the arguments presented in this paper that the overall effects of rent control are disastrous. Such laws cause shortages of

available housing units, provide a disincentive to maintenance on affected units, increase the likelihood of discrimination, reduce mobility and contribute to unemployment. While intended as a measure to help the poor, such laws actually hurt this group the most. Both economic theory and empirical evidence, then, make clear the ruinous effects of this form of government regulation. Rent control laws should be repealed and a free-market in rental housing should be established as the law of the land.

*1 See James Dao, "Aides Say Pataki Favors Easing Some Limits on Rents," *The New York Times,* vol. 146, March 27, 1997, p. B6.

*2 Raymond Hernandez, "Citing Threats, New York Senate Leader Attacks Tenants' Groups," *The New York Times,* vol. 146, April 12, 1997, p. 20(N).

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Consent is a journal of ideas and opinions on individual freedom.

Consent

Consent #27 May 1997 To Table of Contents

Dr. Walter Block, formerly senior economist with the *Fraser Institute* in Vancouver, is professor of economics at *College of the Holy Cross* in Worcester, Massachusetts. This essay and two others published in *Consent 27* (The Blessing of Saving Under Free Enterprise and Bottom Rung) are exclusive to *Consent* and were co-authored by Dr. Block and his students. Additional articles by professor Block's students, on a wide variety of subjects, have been published in other periodicals, including *The Freeman, The Chalcedon Report, Nomos, The Review of Austrian Economics, The Free Market, The Journal of Commerce, Agorist Quarterly, Indiana Policy Review, Intercollegiate Review, Center for World Capitalism Backgrounder, Glendale Law Review, The Voluntaryist, Dollars and Sense, and Discourse. Consent 26* also features an essay (The Candle Makers) by one of Dr. Block's students.

The Evils of Rent Control

Gene McDonough and Professor Walter Block

Rent control is one of the most controversial economic issues today. It is a policy almost universally in effect throughout major American cities. Yet, it hurts tenants, landlords, and the housing supply.

Landlords lose money because they can not charge market value for their apartments. Therefore, fewer people will invest their money in residential rental construction. Also, many landlords do not have the money or the economic incentive to make repairs in their buildings, due to the adversarial relationship created between tenant and landlord.

Rent control also creates an artificially high demand for housing, making it very difficult to find an apartment. This interferes with labour mobility and hence GDP growth.

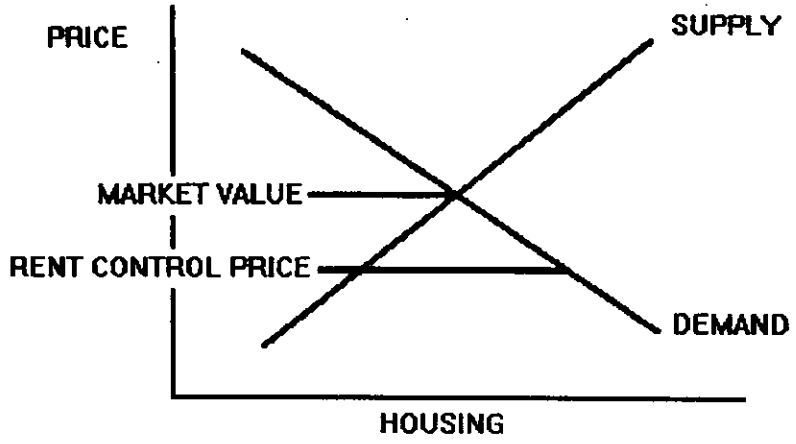
Workers will be more reluctant to give up their apartments, since they are not assured of finding a new one. This makes the economy a lot less efficient. Rent control also benefits the wealthy because their apartments are usually free of controls. Only the poor, it is widely thought, need the "protection" afforded by this law. As a result, residential investment money is funnelled into luxury dwellings, driving down the rents paid by the rich (2).

Finally, rent control leads to a greater amount of discrimination. Since landlords cannot choose their tenants based on ability to pay, they use other criteria, such as skin colour or religion, etc.

The first reason rent control is destructive is that it reduces incentives for landlords to build new

dwellings or to improve their existing stock. Rent control places a ceiling on the prices which landlords can charge for their apartments. These ceilings are usually far below the market value for these units.

This phenomenon is represented by this graph:



Therefore, landlords lose money by renting out their apartments. Why would other landlords invest if they know they will lose money? "If a prospective entrant perceives that the rate of return that can be earned by using investment funds to provide rental units is low relative to what could be earned by investing in alternative markets, he will be eager not to supply additional rental units." (1)

It is simply a matter of economics. No investor will place his money in something he knows will not give him an adequate return. "With the increase in building costs, ...the old level of rents will not yield a profit." (3) However, if the landlord was allowed to charge market prices, more accommodations would be built, given the lure of profits. With rent control, that possibility is vitiated.

Along these same lines, rent control reduces landlord incentives to improve or repair apartments. "Not only will (the landlords) have no economic incentive to do so; they may not even have the funds." (3) Because they cannot charge market prices for their apartments, landlords often do not have the funds to make repairs, if they even have the incentive. Since they are taking a loss by renting out these controlled apartments, they often lack the necessary cash flow to make repairs. Even if they did have the means, they do not have the incentive.

Tenants cannot threaten to go to a cheaper apartment, because there are none. As there is no price competition between landlords, "the customer is always right" philosophy is nowhere in evidence. The landlord knows there will always be someone willing to take the apartment because at the controlled price, demand is much greater than the supply. This also prevents the tenant from moving because the odds of finding another apartment are slim.

Thus an adversarial relationship is created between the tenant and the landlord; the tenant does not get repairs done promptly and the landlord does not have the funds or the incentive to do them.

Let it not be thought that strife is a necessary result of landlord tenant relations. It only seems this way due to heightened hostility in the residential area. But property owners also rent other types of accommodations to tenants: office suites, commercial space, stores in shopping malls, subdivisions of

factories, automobiles, etc. Since there are no rent controls in operation here, there is almost total amity. When was the last time a municipality had to set up special courts to protect renters from the likes of Hertz or Avis? Yet landlord-tenant antagonism was so severe that New York City had to do just that.

Imagine a situation where there were price control for rentals, but not for apartments. Then, amiability would reign supreme in the latter case, but not the former. Firms would purchase new capital equipment in rental housing, and keep up in the maintenance and repair, but not in auto rentals. Welcome to the twilight zone.

Rent control also hinders labour movement, so necessary for an efficient economy. Since prices for apartments are set at a level where demand is much greater than supply, it is very difficult to find a new apartment.

"Since under rent control living accommodations of any type become difficult to get, individuals are very reluctant to give up the apartments they have unless they have an apartment ready to move to." (1) This is very unlikely to happen with such a high demand. Therefore, workers are reluctant to move to an area of the country where their skills are truly needed. Thus, the economy is inefficiently using its resources.

The original justification of rent control was to help the poor and prevent them from being ripped-off by greedy landlords. This fear is, of course, economic illiteracy. If landlords indeed "rip off" tenants, this means they earn high profits. But big returns are a magnet. If they exist, they would attract everyone and their uncle to bring more supply to the market. But this, in turn, will lower prices, ending any incipient tendency for "ripping off" or "over charging." (Even were this process, somehow, not to occur --- per impossible --- how can we know that rents are 'excessive'? All we know is that a rental contract is a voluntary agreement between buyer and seller, and that therefore both gain, at least in the ex ante sense.)

In actuality, the reverse has happened; it is the rich who often benefit from rent control. Since rent control is city-wide, and not based on tenant income, there is a cap on the apartments of the rich as well, saving them a lot of money. These are the people who need to save money the least, and they are being helped the most by rent control.

"In 1979 rent control in New York City seemed to do as much for the rich as for the poor. The mayor of New York, for example, lived in a rent controlled apartment at $250 a month. The estimated fair market value...was $400 to $450. The president of the American Stock Exchange paid $660 a month for an apartment with a fair market value of $850 to $1200." (1) These men, both of ample means, only have to pay half the market price for their apartments because of rent control. Thus a law designed to help the poor has instead helped the rich.

Rent control also causes an increase in discrimination. Before rent control, a landlord could choose his tenant based on ability to pay. If he discriminated, he risked losing money by not being able to fill his apartments with tenants. Now, however, many more people have the ability to pay the lower rent, so the landlord can use another set of criteria without fear of profit loss. This can range from skin colour to religion to national origin to pet ownership.

"Because of rent control, landlords observe many applicants vying for each vacant unit; they can afford to be very picky about whom they rent their apartments to...(they) will tend to pick the

applicant whose non economic characteristics --- e.g., race or religion --- are most appealing to him." (1) For example, before rent control, from 1939-1941, a Chicago newspaper ran 1,000 inches of apartment ads which precluded blacks. However, once rent control was enacted, this amount grew to 9,400 inches by the late 1940's.

If all of the evidence points to rent control harming the consumer rather than helping him, why are such laws still in effect? There are several reasons.

First, the 'benefits' of rent control are visibly obvious and immediate, while the costs are harder to see and more subtle. The tenant is not aware that fewer or no new buildings are being erected. He only sees that his rent is low and feels that without rent control it would be high. People also fear that rent would sky-rocket if controls were ended, because it would take a year or two for a new supply to come on stream. The fear is that landlords would escalate rents, even though over time competition would set in and rents would go down to affordable levels.

This fear is unfounded, however, due to the 'undoubling effect'. Under rent control, tenants tend to occupy excessive space. (The law of demand states that the lower the rent, the more quantity will be purchased.)

Consider an old woman with a 12 room apartment whose husband has died and 8 children have grown up and moved away. Without rent control, this matriarch would have long since transferred to a smaller, cheaper 3 room apartment. But under this law, her present spacious accommodation may actually be cheaper than this alternative in a new uncontrolled building. Now rent control ends, and this woman moves, in effect releasing an additional 9 rooms immediately, in one fell swoop. Thus, any tendency for rents to rise upon decontrol would tend to be ameliorated by this 'effect'.

Finally, politicians do not see the long run benefits of ending rent control. They only see what the voters see, and that is the short term 'harm' it would do. Rather than do something which may hurt some at first and help everyone later, politicians do only what will help win the next election. Rent control adjustment would take too long to help put them in office, therefore they do nothing about it.

Rent control is a harmful policy which must be ended. It limits the housing supply. It causes friction between tenants and landlords. It hinders worker mobility rendering the economy inefficient. It often benefits the rich more than the poor. It also exacerbates racial discrimination.

Politicians, however, will not touch rent controls because the benefits are short term (and visible), while the benefits of economic freedom are long term and more difficult to see.

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REALTY TIMES

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New Study Links Rent Control with Deteriorating Housing Stock

New research sponsored by the National Multi Housing Council (NMHC) and produced by Dr. Henry O. Pollakowski of the Massachusetts Institute of Technology Center for Real Estate strongly suggests that under many circumstances rent regulation (rent control) lowers the level of housing maintenance and causes the housing stock to deteriorate.

Using newly-available and improved data from the New York City Housing and Vacancy Survey (conducted by the U.S. Census Bureau), Dr. Pollakowski studies the changes over time in maintenance deficiencies, comparing rent regulated ("rent-stabilized") apartments with unregulated apartments. The report is the first to examine this powerful new data resource and its conclusions provide initial support for the proposition that unregulated rental housing is considerably better maintained than is regulated housing. According to Dr. Pollakowski, "While further research is needed to specify how the size of the regulated "rent break" affects housing maintenance, these initial results are striking."

Among his key findings:

- Rent-regulated apartments reported a higher percentage of maintenance deficiencies than non-regulated apartments in a variety of categories. For instance, 29.1 percent of regulated apartments reported water leakages from outside, compared to just 18.1 percent of unregulated apartments. Fully 22.5 percent of regulated apartments experienced heat breakdowns, while only 12.8 percent of unregulated units suffered from such breakdowns.
- Among rent-regulated apartments, those with resident turnover between 1993 and 1996 were less likely to acquire deficiencies. This is not the case for unregulated units. Since turnover of regulated units is typically associated with allowed rent increases, this result is consistent with the proposition that rent regulation has adverse quality effects.
- Older dwellings are more likely to have maintenance deficiencies. Pre-1947 rent-regulated apartments have twice the maintenance problems than do unregulated dwellings built prior to 1947. Since older dwellings are more costly to maintain, the housing quality effects of rent regulation may be more substantial for dwellings built before 1947.

"This research is important in that it uses new data to examine an issue that has suffered from limited evidence in the past," said NMHC Vice President of Research and Chief Economist Jack Goodman. "With this study, we can see more clearly that rent control may lower rents, but it often does so at the cost of significantly lowering the quality of housing available to residents."

Source: *Company Press Release*

Based in Washington, DC, NMHC represents the interests of the nation's larger and most prominent firms participating in the apartment industry. NMHC's members are engaged in all aspects of the development and operation of apartment housing, including ownership, construction, management, and finance of such communities.

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Cato Policy Analysis No. 274 May 21, 1997

Policy Analysis

How Rent Control Drives Out Affordable Housing

by William Tucker

William Tucker is the author of The Excluded Americans: Homelessness and Housing Policies *(Regnery) and* Zoning, Rent Control, and Affordable Housing *(Cato Institute).*

Executive Summary

Rent control has been in force in a number of major American cities for many decades. The best-known example is New York, which still retains rent controls from the temporary price controls imposed during World War II. But this policy, meant to assist poorer residents, harms far more citizens than it helps, benefits the better-off, and limits the freedom of all citizens.

A look at the classified ads in rent-controlled cities reveals that very few moderately priced rental units are actually available. Most advertised units are priced well above the actual median rent. Yet in cities without controls, moderately priced units are universally available.

In many cities, policymakers understand that controls drive out residents and businesses. Thus many exempt significant portions of housing from controls, creating shadow markets. Yet as controls hold down rents for some units, costs for all other rental housing skyrockets. And tenants in rent-controlled units fear moving to more desirable neighborhoods since the only units available for rent are very high-priced.

But the trend in recent years has been toward removal of rent control. The repeal of controls in Massachusetts, for example, did not lead to the widespread evictions and hardships that some predicted. The lesson for the rest of the country is that rent control is policy that never was justified and certainly should be scrapped.

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The Rush to Rent Control

Rent control has been in force in a number of major American cities for many decades. The best known example is New York, which still retains rent controls from the temporary wartime price controls imposed during World War II.

During the 1970s it appeared that rent control might be the wave of the future. Boston and several of its surrounding suburbs imposed rent control during the inflationary years of 1969 to 1971. President Richard Nixon imposed wage and price controls in 1971 on the entire country, freezing all rents in the process. Many cities retained rent controls, eventually making them permanent, after wage and price controls expired. Washington, D.C., still retains regulations from this period, as do about 125 municipalities in New Jersey, including Newark, Jersey City, and Elizabeth.

During the Proposition 13 anti-tax campaign in 1978, activist Howard Jarvis promised California tenants that their rents would be reduced if the proposed state constitutional amendment lowered property taxes. Yet in the midst of an inflationary period, this reduction failed to materialize, frustrating many tenants. Berkeley and Santa Monica, two smaller cities with radical political cultures, led California in imposing very strict rent control ordinances. Political activists Tom Hayden and Jane Fonda, who lived in Santa Monica, then toured the state urging other cities to follow suit. Ten cities--including San Francisco, Los Angeles, San Jose, West Hollywood, and East Palo Alto--eventually adopted rent regulation, putting more than half the state's tenant population under rent control ordinances. One major California city, San Diego, bucked the trend, rejecting rent control by a 2-to-1 vote in a 1985 referendum.

By the mid-1980s, more than 200 separate municipalities nationwide,

encompassing about 20 percent of the nation's population, were living under rent control. However, this proved to be the high tide of the movement. As inflationary pressures eased, the agitation for rent control subsided.

Some cities have remained strangely immune from the rent control temptation. Chicago, with one of the largest proportions of renters of any American city, has never seriously entertained proposals for rent control. Philadelphia, Baltimore, Cleveland, and other eastern cities outside the Boston-New York-Washington axis have never experimented with this policy. In the major cities of the South and Southwest--Atlanta, New Orleans, Dallas, Houston, Phoenix--rent control is simply not an issue. During the 1980s, a reaction set in among southern, western, and rural states. Some 31 states as diverse as Idaho, Florida, Texas, and Vermont adopted laws and constitutional amendments forbidding rent control.

Once in place, however, rent control usually proves extremely difficult to undo. London and Paris still have rent controls that started as temporary measures during World War I. "Nelson's Third Law," the contention by the late economist Arthur Nelson that the worse a government regulation is, the harder it is to get rid of it, seems to apply here. Whatever distortions a regulation creates, some people will adjust to it and actually profit. These people then become a tightly focused interest group that fights tenaciously to retain the regulation. When this interest group is a tenant population that forms a near-majority of a municipality, the chances that rent control can be abolished through local political efforts are extremely small.

Recent Rollbacks

Nevertheless, rent control is proving vulnerable. On January 1, 1997, Boston, Cambridge, and Brookline became the first major American cities to abandon rent controls since 1950. The process was not altogether voluntary. The initiative came from a statewide campaign organized by Boston and Cambridge property owners, who put up a state ballot initiative banning rent control. The initiative that passed in 1994 required immediate removal of rent controls. Landlords, however, soon agreed to a two-year extension of controls for hardship cases.

The property owners during the referendum argued that the costs of rent control were being borne by other taxpayers. When landlords start losing money because of low rents, they are usually able to get their property assessments lowered. This leads to a general decline in property values in a rent-controlled city and thus less revenue going to governments. In Massachusetts, property tax receipts are shared at the state level through a complicated formula that takes money from cities with high property tax bases and gives money to cities with low bases. The owners of rental units argued

that lower rents in Boston, Cambridge, and Brookline were being subsidized by higher property taxes elsewhere. Massachusetts voters found this argument persuasive and passed an initiative phasing out rent control by a 51-49 margin--even though it lost 2-to-1 in the state's three rent-controlled cities.

The aftermath has been encouraging to those who believe that rent control can be abolished without widespread disruption. Tenant activists had predicted huge rent increases, mass evictions, and a surge in the homeless population if the regulations were abandoned. None of this has occurred. Formerly regulated rents have risen, but construction of new apartments has also begun for the first time in 25 years. Since the overwhelming majority of rental units were deregulated by 1995, and the rest by January 1, 1997, the worst is probably over.

To be sure, there have been individual cases of hardship that tend to attract a great deal of media attention. Almost without exception, these incidents involve tenants who have suffered a loss of income but still have been able to afford their apartments because of rent control. In one case, featured prominently in many newspapers, an elderly diabetic who had been unable to work for 10 years was losing his apartment in the Fenway district of Boston because the landlord was tripling the rent. [1] But tenants frequently are forced to move when they suffer loss of income. Rent control only delays the process and its abolition cannot be held responsible for every instance of tenant displacement. Boston property owners have alleviated the situation considerably by setting up a bank of 200 apartments around the city that are immediately available for such emergencies.

Rent control is now under attack in New York as well. In December 1996, State Senate Republican majority leader Joseph Bruno announced that he intended to end "rent control as we know it" in New York City within the next few years. Bruno, a successful Rensselaer County businessman and free market advocate, says he is philosophically opposed to rent control and believes it is doing enormous harm to New York City.

His vow to overturn the system is no idle boast. Under New York State's arcane legislative proceedings, the majority leader wields enormous power, virtually controlling the entire legislative agenda. Because New York's rent control ordinance is still only "temporary," it must be renewed every two years. Bruno has said that if the Democratic Assembly does not agree to a two-to-four-year phase-out, the Senate will simply fail to renew the statute and rent regulations will expire on June 15. Bruno's effort has set off a firestorm among New York City's regulated tenant population.

Shadow Markets

Although the battle over rent control is routinely portrayed as a contest of "tenants-versus-landlords," in fact the situation is far more complex. Even in New York, which has some of the strictest rent control in the country, only 1.1 million of the city's 1.7 million apartments--about 63 percent--are regulated. This produces a tenant population of about two million individuals, one of the most formidable political constituencies in the city, with a direct interest in retaining rent control. But since New York City has seven million inhabitants, what are the interests of the other five million? And what are the effects of rent control on those among New York State's eighteen million inhabitants who do not live under rent control, or on individuals in other parts of the country who want to move to New York?

It is useful to analyze this issue in terms of the concept of "shadow markets." This concept was developed by Denton Marks in a paper in the Journal of Urban Economics in 1984, [2] and also suggested by George Horwich and David Leo Weimer that same year in the context of oil price controls. [3] Standard supply-and-demand theory predicts that any price controls, including rent controls, will produce an excess of demand over supply--an economic "shortage." There is virtually no disagreement on this premise. In a survey of 75 of the world's outstanding economists, J. R. Kearl and his colleagues found nearly unanimous agreement on the proposition: "A ceiling on rents will reduce the quality and quantity of housing." [4] Of 30 propositions presented for review, only one other received the same level of support. Further, a poll by the American Economic Association of its members in 1992 produced a similar result. [5]

Yet as Marks pointed out in his 1984 paper, rent control, or any other price control, rarely works in a straightforward fashion. It is virtually impossible for a government to control and regulate the entire supply of a commodity. Once a shortage appears, alternative markets and black markets will arise. The government can react in a variety of ways. Often, it will criminalize these markets and prosecute suppliers in draconian fashion. In Iran, merchants who sell above the government prices have their feet burned with hot irons in the public marketplace.

More often than not, however, governments may tolerate these markets as a way of relieving shortages. In many instances, governments will deliberately leave a portion of the market untouched by regulation in order to serve as a safety valve for excess demand. This unregulated portion of a regulated market becomes the "shadow market."

The question posed by Marks and by Horwich and Weimer is "What happens to prices in this shadow market?" Using standard supply-and-demand theory, they predicted that prices in the unregulated portion of the market will be forced higher than their normal market value. This is because the limited

supply in the shadow market must absorb the shortage, the excess of demand over supply, in the regulated part of the market. Because prices are pushed too low in the regulated sector, they are forced above what would otherwise be the market price in the unregulated sector. The result is that average prices in both sectors are likely to end up about as high as their free-market level. They could end up higher because of maldistributions and diseconomies in the regulated sector of the market.

Few Low-Rent Units with Rent Control

The concept of shadow markets offers a reasonable explanation of why the results of rent controls are so perverse and why they lead to a sense of helplessness and panic in a rent-controlled population. Although rent controls are widely believed to lower rents, data I have collected from eighteen North American cities show that the advertised rents of available apartments in rent-regulated cities are dramatically higher than they are in cities without rent control. In cities without rent control, the available units are almost evenly distributed above and below the census median. In rent-controlled cities most available units are priced well above the median. In other words, inhabitants in cities without rent control have a far easier time finding moderately priced rental units than do inhabitants in rent-controlled cities.

This is because tenants in the regulated sector tend to hoard their apartments, forcing everyone else to shop only in the shadow market. Thus, rent control is the cause of the widely perceived "housing crisis" in rent-controlled cities.

Price Controls and Commodity Shortages

Standard supply-and-demand theory shows that when the government fixes prices, a gap opens up between supply and demand. This is usually illustrated by two opposing curves, representing the "marginal propensity to sell" (supply) and the "marginal propensity to buy" (demand). Consumers, of course, are inclined to buy more as prices fall and less as prices rise. Sellers act in an opposite manner, offering more as prices rise and less as prices fall. At one point--and one point only--the interests of buyers and sellers will intersect. This is the "market-clearing price," the point at which, given current economic circumstances, the desires of both groups are optimized. Prices, of course, do not automatically come to rest at some market-clearing level. A continuing discovery process occurs. Either buyers or sellers may achieve a temporary monopoly due to geography or other circumstances. Lack of information may cause either buyers or sellers to accept a price that is unfavorable to them. But, lacking government interference, the actions of buyers and sellers always push prices toward a market-clearing level.

The effect of price regulation is to keep supply and demand permanently

separated. If the government holds prices above market value, usually in an attempt to appease suppliers, the result is an economic surplus. For instance, since the 1920s the federal government has maintained price supports for many agricultural commodities. The result has been chronic farm surpluses. Price controls, designed to benefit consumers. are much more common. The oil price controls from 1971 to 1981 that resulted in a decade-long "energy crisis" provide insights into the rent control issue.

Oil price controls had led to gas lines and rationing at the pump during two brief episodes in 1973 and 1979. But for the most part, there was no visible shortage and supplies continued uninterrupted for most of the decade. What happened to the shortages that should have been produced by price controls? In retrospect, the answer was simple. As Horwich and Weimer noted, the federal government was able to impose price controls only on domestic sources of supply. This created a shortage of domestic oil. But the country continually filled this gap by importing more oil. Imports constituted only 25 percent of the nation's supply when Nixon imposed price controls in 1971. In two short years, this portion climbed to nearly 33 percent. OPEC countries were emboldened to interrupt supplies briefly in 1973 and then quadruple the price.

Unfortunately, Congress responded in 1976 by "punishing" the oil companies, dramatically reducing the price and extending price controls indefinitely. As a result, imports rose to more than 50 percent by 1979, despite an extensive government publicity campaign against purchasing importing oil. Congress even abetted the process surreptitiously by expanding "oil entitlements," a program that supplied small refineries with subsidized imported crude oil, supposedly to help them compete against the major oil refiners.

By 1979, America's excess demand had stretched world supplies so tight that a small interruption of supplies, caused by the outbreak of the Iran-Iraq War, was enough to set off another "gas shortage." When President Ronald Reagan removed domestic price controls in 1981, the resulting surge of supply was enough to send world oil prices into a free fall. The "energy crisis" vanished almost overnight.

Horwich and Weimer show that the shadow market concept explains these events. Prices of only part of the oil supply, that produced domestically, were controlled. To make up for the resulting shortages, consumers had to turn to foreign-produced oil. Because of the excess demand, world oil prices rose rapidly. Only when domestic supplies were restored did world oil prices tumble. Over a decade, oil price controls accomplished almost nothing in lowering prices to consumers, but they did cause havoc by creating rapid shifts in the world market.

Shortages and Hoarding

One reason the disadvantages of oil price controls soon became apparent was that the hoarding of this commodity was only partially feasible. Hoarding occurs when consumers buy supplies for future use as well as present consumption. When uncertainty about future supplies becomes general, consumers will begin to stockpile. During the 1979 "gas shortage," for example, entertainer John Denver was reported to be building two 100-gallon gas tanks on his Colorado estate. Ordinary motorists reacted the same way by "topping off" their tanks at gas stations. The U.S. government hoarded oil with the Strategic Petroleum Reserve. Although hoarding may benefit individuals or countries, it also puts upward pressure on prices. When people buy for future use as well as present consumption, supplies will be tighter and prices on the shadow market will be driven even higher. Or, in the case of oil, if rationing-by-waiting is already in effect, gas lines will stretch even longer.

But the ability to hoard depends on the logistics and durability of a product. Oil is consumed only once and must be stored in facilities that are not easily or inexpensively obtainable. During a famine, food can be hoarded, but it must be stored under special conditions to avoid spoilage.

Housing is one of the most durable commodities. A well-constructed building can last more than 100 years; many buildings in Europe are centuries old. Housing can be consumed today and still be consumed 10 or 20 years later. And with government holding prices low through rent control, a tenant who holds a rent-controlled apartment has a strong incentive to stay in it his or her entire life, even passing it on to descendants. Hoarding of housing is not only possible, it can become the natural order of things.

Of course if the laws allow a landlord to charge a higher rent to a new tenant, the landlord may want to evict a low-paying tenant. But this only leads to strong antieviction laws, a staple in all rent-controlled communities that soon makes it difficult or impossible to get rid of even the most destructive or delinquent tenants.

As a commodity, then, rental housing makes an ideal target for conveying certain benefits to a portion of the population. Because of durability of housing, rent control can go on bestowing benefits to the same minority--or even a majority of a municipality--for a very long period of time. It is the individuals who are forced into the shadow market--usually newcomers or people who want to change apartments--who suffer the consequences.

Rent Control and Vacancy Rates

There can be no doubt that rent control creates housing shortages. For almost

20 years, national vacancy rates have been at or above 7 percent--a figure generally considered normal. Cities such as Dallas, Houston, and Phoenix, where development is welcomed, have often had vacancy rates above 15 percent. In these areas of the country, there usually is a surplus of housing rather than a shortage. Landlords commonly advertise "move-in specials," where rent is reduced for the first month or even where they pay moving expenses.

In rent-controlled cities, on the other hand, vacancy rates have been uniformly below normal. New York City has not had a vacancy rate above 5 percent since World War II. (The state's rent control law, supposedly temporary, would automatically expire if it did.) Before giving up rent control, Boston's vacancy rate was below 4 percent. (There are no figures as of yet on the rate since rent control ended.) In rent-controlled San Francisco, the vacancy rate is generally around 2 percent, and in San Jose the rate is 1 percent, the nation's lowest. Meanwhile, comparable nonrent-controlled cities, such as Chicago, Philadelphia, San Diego, and Seattle have normal vacancy rates at or above 7 percent.

Rent-controlled cities absorb these shortages in a variety of ways. Higher rates of homelessness are a manifestation of rent control. [6] Another is the traditional difficulty individuals have in finding a new apartment in these cities. An article in New York magazine entitled, "Finding an Apartment (Seriously)," recommended such techniques as "joining a church or synagogue" as a useful technique in meeting people who might provide good leads on an apartment. [7] Young people who migrate to New York or San Francisco usually must settle for paying $600 a month to share a two-bedroom apartment with several other people or commuting from a nearby city. Crowding is a manifestation of rent control.

Excluding Outsiders

The exclusion of newcomers may even emerge as the main purpose of rent control, particularly in small, selfidentified cities. Many of the small New Jersey municipalities with rent control are close-knit ethnic communities that do not particularly welcome newcomers. One of their major fears is apartment complexes that will bring in large numbers of outsiders and "change the character of the community." Rent control has proved an effective tool for making sure that small, exclusionary-minded communities do not have to undergo change.

Santa Monica is a beach community near Los Angeles that was discovered by urban professionals after the construction of the Santa Monica Freeway in 1972. These newcomers, many originally from New York, immediately set about trying to limit new construction, pulling up the ladder to keep out those

that would follow them. In particular, they opposed a series of high-rise apartments proposed for the beachfront. The newcomers soon discovered that imposing rent control not only guaranteed themselves cheap apartments but hampered further development as well.

The result has been a virtually closed community. It is almost impossible for newcomers to find apartments in Santa Monica. As Mark Kann, a Los Angeles newspaper columnist, reported in Middle Class Radicalism in Santa Monica, a book that celebrated rent control, "I knew one professional woman who tried to get a Santa Monica apartment for more than a year without success, but she broke into the city, finally, by marrying someone who already had an apartment there." [8] The city is also famous for its homeless population and is often called "The Homeless Capital of the West."

Generational Subsidies

Berkeley, California, and Cambridge, Massachusetts, have similar housing markets. Small college communities, they originally adopted rent control with the help of large student-voter populations that felt a town-gown rivalry with their landlords. But like many socialist programs, rent control turned out to be a one-generation wonder. Students who were in place when rent control was adopted often remained in their apartments all through their professional lives. Ken Reeves, the mayor of Cambridge until 1994, who used to advertise his rent-controlled status on his campaign literature, was still living in the apartment he rented as a Harvard law student in 1973. He finally bought a home when rent control was abolished.

In Berkeley, Floyd and Eva Floystrup are a carpenter and his wife, and also landlords, who were once forced to pay $70,000 to their tenants in "back rent" because they had refused to register with the rent control board. "We believe in free enterprise," they explained. They noted that their low-paying tenants are all high-salaried professionals who arrived as students in the 1970s. "I always have Berkeley students come up to me on the street and say, `How come I can't find a place to live in this city?'" said Eva Floystrup. "I tell them, `Look, we're still taking care of the Class of 1979. As soon as they leave, we'll have room for you.'" [9]

Studies in both cities showed that rent-controlled apartments have tended to fall into the hands of middle class professionals. A 1994 study of Cambridge by housing consultant Rolfe Goetze showed that rent-controlled apartments were concentrated among highly educated professionals, while the poor, the elderly, and students were generally excluded. [10] Michael St. John, a Berkeley sociologist, found similar results in California. "Rent control has actually accelerated gentrification in Berkeley and Santa Monica," said St. John. "Poor and working class people have been forced out of those

communities faster than in surrounding municipalities." [11]

In small cities such as Cambridge, Berkeley, and Santa Monica, the housing shortages created by rent control can be pushed onto neighboring communities. Most Berkeley students now search for housing in Oakland and Richmond, significantly increasing their commuting time.

Shadow-Market Housing

In large metropolises a housing shortage can severely damage the city's economy. Experience shows that when such cities adopt rent control, they usually try to avoid outright housing shortages by leaving segments of the market unregulated. Unsatisfied demand is diverted into this unregulated sector. Because of the shadow-market effect, people in this sector pay higher-than-market prices. Still, they are rarely conscious of the causation. Instead, they simply regard the city as "an expensive place to live" and often become a constituency for extending rent control to their own apartments.

It should be recognized that not all cities enforce rent control with the same enthusiasm. Both the city and county of Los Angeles adopted rent control in 1979, but the county dropped it shortly thereafter. The city government exempted new construction and allowed sizable rent increases. It also adopted a form of vacancy decontrol that allows rents to rise to market value each time a new tenant moves in. A 1990 study by the Rand Corporation found rent control saving tenants only $8 a month. Since then the city has depopulated and vacancies rose close to 10 percent. "We can't even get the rent the rent board allows us," said Dan Fellar, director of the Apartment Owners Association of Southern California. As a result, there is little shadow-market effect. Washington, D.C., is also depopulating and its rent control ordinance has little impact. Toronto has regulated all rental housing down to single-family homes since 1979, but allows generous 8 percent annual rent increases. The regulation seems to have only small impact.

New York and San Francisco, on the other hand, enforce two of the strictest sets of rent control ordinances in North America. (In many European countries, regulation has destroyed private rentals to the point that there is little left but public housing.) Both cities allow only small rent increases and neither has vacancy decontrol, although San Francisco will soon be adopting it according to a state law. Neither city is depopulating and both experience a high demand for housing. As a result, both have developed strong shadow markets.

New York City split its housing market at the outset in 1947 by exempting all future construction. Toronto exempted all new construction when controls were adopted in 1979. San Francisco did the same. Thus, while Santa Monica

and New Jersey communities used rent control intentionally to prevent new housing construction, these other cities worried that no new housing would ever be built.

Unfortunately, the strategy of exempting new units often backfires. Sooner or later, tenants in the new buildings will realize their position relative to rent-controlled neighbors and seek controls on the rents of their own dwellings. This happened in New York in 1969, when Mayor John Lindsay was forced to adopt "rent stabilization" to cope with the excessive rent in "post-war" housing, that is, housing built after 1947 that was originally exempt from regulation. Lindsay promised that all post-1969 housing would remain outside rent stabilization. But inflationary pressures forced the New York State Legislature to break this pledge within five years with the Emergency Tenant Protection Act of 1974. Since then, builders have learned that, sooner or later, any new housing in New York risks being "recaptured," the term used by city officials, that is, brought under regulations. Consequently, little new rental housing is ever built.

Toronto also repealed a new-construction exemption in 1989 and now "recaptures" all new housing after five years. Thus little is built. And San Francisco continues to exempt new housing, but does so much to discourage construction through zoning and no-growth ordinances that, with a 1 percent vacancy rate, the city still adds only 500 residential units a year.

New housing thus makes up a stable--if somewhat uncertain--segment of the shadow market. Another common sector is smaller buildings, particularly those that are owner-occupied. Cambridge exempted two- and three-unit owner-occupied buildings. San Jose exempts duplexes and single-family homes, but regulates the 10,000 mobile homes in its jurisdiction. Berkeley does not regulate duplex apartments when the owner occupies one unit. San Francisco originally exempted buildings with four units or fewer, but this was overturned in a popular referendum in 1994. Now the city even regulates rented single-family homes. New York's rent stabilization does not apply to buildings with fewer than six units, although the old rent control regulations from 1947 can still govern smaller units.

Finally, rented condominiums and cooperative apartments are commonly exempted--although this is an extremely controversial policy in most rent-controlled cities. The problem is that once apartment houses fall under rent control, many owners will attempt to escape the regulation by selling off the apartments to individual owners. This frustrates rent control officials because it diminishes the supply of rental housing. In New York, condominiums and cooperatives are treated as single units and thus exempted under the smallowner rule. In Washington, however, an apartment building under cooperative or condominium ownership is regulated as multi-family

housing, even though it has multiple owners.

Most cities with rent control usually end up adopting strong laws to discourage conversion to condominium and cooperative ownership, in order to close an escape hatch from the regulated market. In 1989, Cambridge adopted a law actually making it illegal for owners of converted condominiums to live in their own apartments. Instead, owners were to be forced to rent out their apartments as rent-controlled units, in order not to "diminish the supply of rental housing." Active enforcement of this law that would evict individuals from their own property was begun in earnest in 1992. The prosecution of these "condo criminals" swelled the ranks of rent-control opponents and played a large role in passage of the statewide referendum that in 1994 ended this regulation.

In major cities, then, these three exempted sectors-- new construction, smaller buildings, rented condominiums-- generally form the shadow market. Even in the strictest rent controlled environment, this shadow market may grow to considerable size. In New York, the unregulated sector now makes up 36 percent of the 1.7-million-unit rental market. In San Francisco and San Jose it makes up about half. Only in Berkeley and Santa Monica does the shadow market make up less than 20 percent of all rental housing.

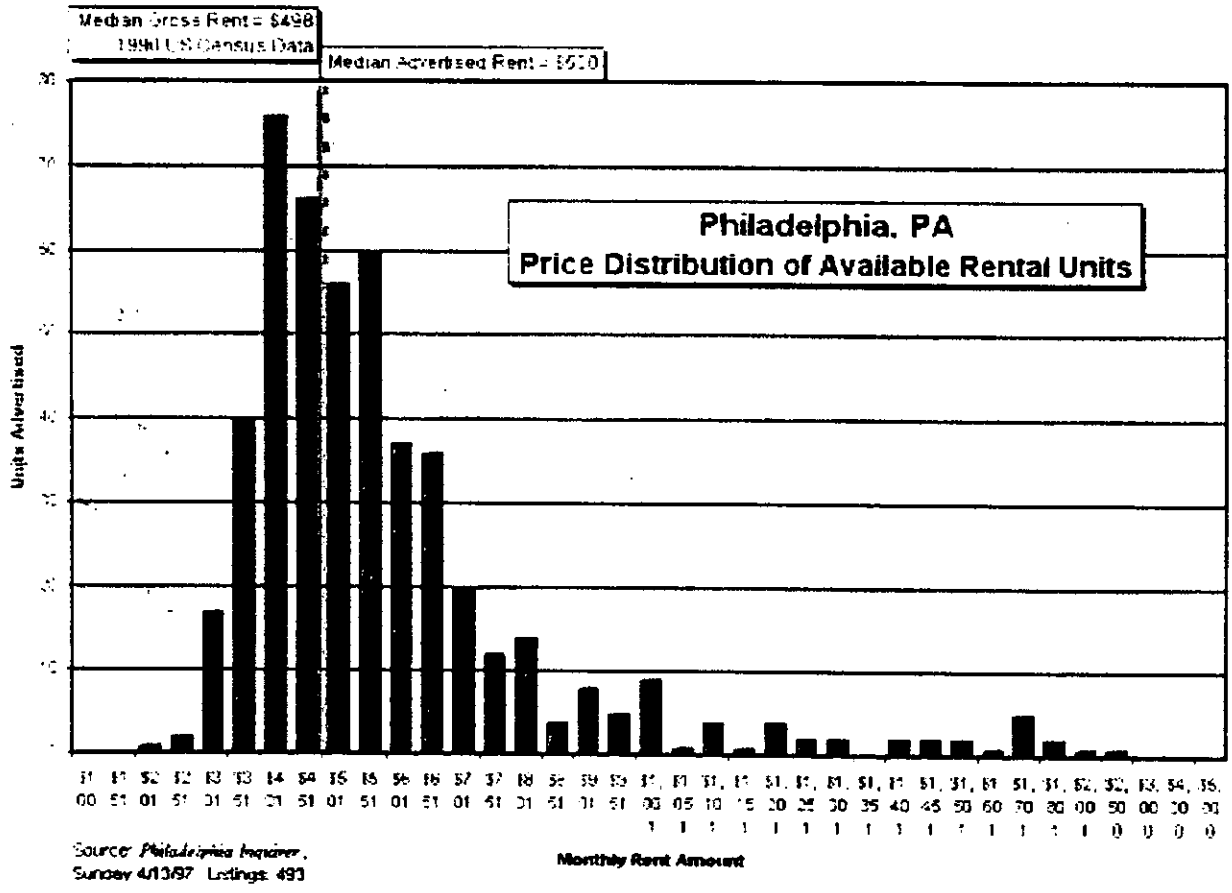
Shortages under Rent Control: The New Evidence

What happens to price and availability of unregulated housing in a rent-controlled market? To determine this, this author collected data on all the available apartments advertised in eighteen major cities around North America. The advertised prices were taken from a single Sunday edition of the largest paper in each city during the month of April 1997. The advertised price of every listed apartment was recorded. (Three newspapers were used for New York.) Rented houses were also included. Some older urban areas--Chicago, Cleveland, New York, Philadelphia--have very few rental houses, while in Sunbelt cities such as Dallas, Houston, Phoenix, and San Diego, they make up a large portion of the rental market. To make sure this regional phenomenon was not distorting the figures, rental houses were omitted in two cities, Atlanta and Phoenix. Six of the surveyed cities have rent control--Los Angeles, New York, San Francisco, San Jose, Toronto, and Washington. In addition, Boston ended rent control in January 1997. The median rent shown on each graph is based on the 1990 U.S. Census. [12] (See Appendix for all graphs.)

The most striking observation is that the graphs of rents in free-market cities follow a standard bell curve. The vast majority of advertised rents cluster around the median, with between 33 percent and 40 percent below the census median. The median advertised rent is rarely more than $50 above the census

median. This may be because the very cheapest apartments are not likely to be advertised in the newspaper and because landlords often raise rents when apartments become vacant. The mode - the number where the graph peaks - usually occurs below both medians. Characteristically, there is a steep climb on the low-rent side of the curve, followed by a long tail toward the "luxury" end of the market.

Figure 1

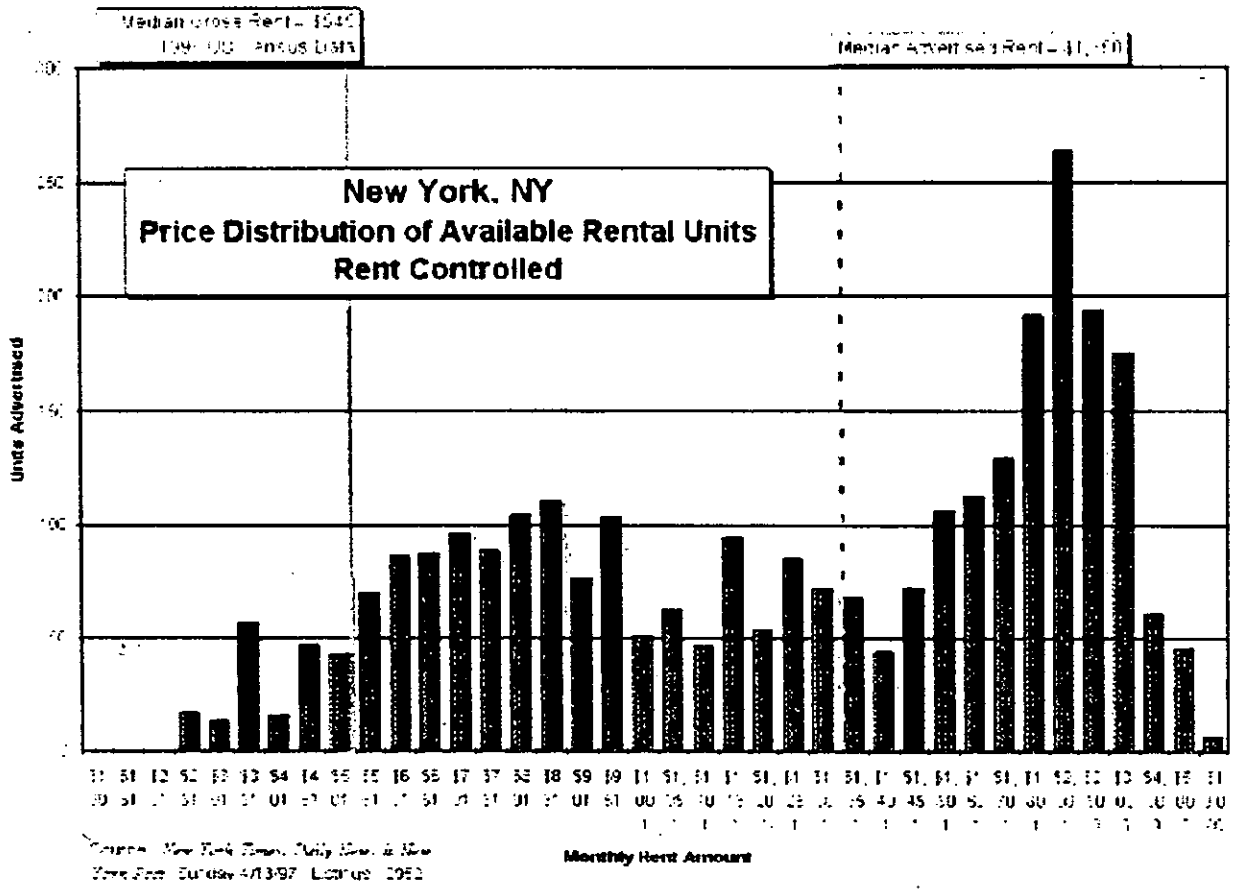


It is also striking how affordable housing is in most free-market cities. In

Philadelphia, the nation's fifth largest city, the most common advertised rent, the mode, is between $450 and $500--below both the advertised and census medians. (See Figure 1.) In Chicago, the mode was $500 to $550, also below both medians. Unregulated cities such as Philadelphia, Chicago, San Diego, Phoenix, and Seattle seem to have almost perfectly competitive housing markets, with housing available at every price level but clustered at the low end.

The two cities with strict rent control are glaring exceptions to this pattern. In both New York (see Figure 2.) and San Francisco, advertised rents peaked at $2,000--more than triple the U.S. Census median rent for each city. The median advertised rent in New York was $1,350, in San Francisco, $1,400--both more than double the census median. More important, there were almost no rental units available at the low end of the market. In both San Francisco and New York, less than 10 percent of advertised rents were below the census median. (The New York figures also included listings from the Daily News and the New York Post, which are slanted toward the lower end of the market.) Rent control in both these cities appears to make housing spectacularly unaffordable.

Figure 2



San Jose and Boston both show strong symptoms of the rent control disease. San Jose rents peak at $1,500, with rents pushed more toward the expensive end. Boston shows the usual "median hump," but displays overtones of the rent-control effect at the upper end. Los Angeles, Washington, and Toronto--all of which practice milder forms of rent control than New York and San Francisco--show little or no signs of the rent control effect.

What is going on in these markets? The explanation seems fairly straightforward. Rent control splits the housing market into two sectors, the regulated segment and the shadow market. As prices in the regulated sector

are forced lower, prices in the shadow market go higher. At a certain point, the differential between the two markets becomes so stark that tenants in the regulated sector begin hoarding their apartments. They hardly ever move. In New York, 88 percent of tenants living in pre-war. rent-controlled apartments have not moved in more than 25 years.

If they do abandon their apartments, regulated tenants pass them on to friends or relatives, or sell them to strangers through "key money" that reflects their true market value. As a consequence, regulated apartments are essentially withdrawn from the market. In New York, where regulated apartments make up 63 percent of the market, only 85 or 3 percent of the 2,800 listings in the New York Times, Daily News, and New York Post, were identified or identifiable as rent regulated. [13]

With the regulated portion market locked away, all new demand is funneled into the unregulated sector--the shadow market. Eventually the competition for these limited number of apartments creates highly inflated prices. It is like squeezing a balloon at one end--the pressure will simply create a bulge at the other end.

Burdens on Newcomers

One thing that makes rent control more palatable to the majority is that the brunt of these excessive costs is usually borne by newcomers. People moving to New York or San Francisco assume that housing is very expensive. They may get discouraged and leave. New York has lost 200 of its 250 national corporate headquarters over the last 25 years, in part because these companies found housing almost unattainable for transferring employees. If these individuals do stay, it may be several more years before they realize that others living in almost identical apartments are paying only a fraction of their rent. In 1985, for example, a woman wrote this letter to the New York Daily News:

> I recently moved to New York and I pay almost $1,200 a month for a nice little apartment on the lower East Side. The landlords have been reasonable and the building is clean. Still, when I found out at a tenants' meeting that 30 of the building's 34 apartments rent for below $300 and that most of the tenants in those cheap apartments make more money that I do, I was a bit outraged. I understand protecting the old people, but protecting fellow yuppies with bargains?
>
> In Texas, $400 will rent a two-bedroom apartment with air conditioning, washer/dryer, swimming pool, fireplace, and

> garage. The vacancy rate is over 10 percent. There are no rent controls and the tenants hold all the cards. And landlords are not a hated breed. [14]

Such voices are usually drowned out in the rent control debate. But they are beginning to be heard. As the current debate heads for its June 15 deadline, the following letter appeared in the New York Times:

> Where are the voices of all those who do not share the benefits of rent control but who actually suffer from it? For the past seven years my husband and I have been killing ourselves to pay our exorbitant market rent for a small one-bedroom apartment in order to stay in this city. I know too many people who live in rent-controlled apartments who also own country homes. One person (whose apartment we tried to rent at the legal rate) moved to Florida and now rents out his apartment, illegally, at the market price, subsidizing his new life style. If rent decontrol would mean a fairer, less insane market, then it is a just cause. If the housing situation does not improve, it will be the new generation of middle-class New Yorkers who will be forced to leave the city we love. [15]

Can Rent Control Be Abolished?

Rent control makes housing less affordable to anyone seeking housing in a rent-controlled market. Even people who already have a "great deal" under rent control become prisoners of their own apartment. They can never move because it means being thrown into the shadow market, where prices may be three or four times as high for an almost identical apartment. In Europe, where rent control governs even larger sectors of the market, the result has been the continent's famed "labor immobility," where moving a factory across town may mean losing half the work force. This huge differential between the regulated market and the shadow market strikes terror into the hearts of a rent-controlled population and fuels the fires against deregulation. But this fear is based on the illusion that shadow-market prices are actual market prices. Even landlords make the same mistake. They often assume that an end to regulation will enable them to double and triple rents, whereas the overall effect would be far more modest.

The goal in getting rid of rent control should be to allow the

curve of housing prices to return to the elegant symmetry of the free market. It is important to deregulate as much of the market as possible at once. That will move the entire curve toward the lower end of the market. If deregulation occurs in small increments, on the other hand, each individual tenant will be forced to make the jump from the low end to the high end, until their accumulated weight moves the curve back. It would be like moving a mountain one grain of sand at a time.

One poor way to deregulate is "vacancy decontrol." This solution, now in effect in California and being proposed as a compromise in New York, simply extends the adjustment period while delaying the benefits of deregulation. Under vacancy decontrol, apartments are deregulated only when the current tenant leaves or dies. But of course tenants in regulated apartments never move, since leaving an apartment means being thrown into the shadow market. It may take 20 to 50 years before the market resumes its normal shape.

Worse yet, under vacancy decontrol individual landlords have every incentive to evict their regulated tenants since vacancy means deregulation of the apartment. The result will be a daily series of horror stories, with landlords doing everything from hiring thugs to setting fire to their buildings to get rid of low-rent tenants. Meanwhile, because of general uncertainty, builders and renovators will not invest much in new housing. As a result, there is always pressure to repeal vacancy decontrol. New York tried such decontrol in 1972 but repealed it after only two years.

Instead, rent control is best abolished quickly and cleanly, with ample effort to protect the most vulnerable tenants. Massachusetts did it about right. After winning the 1994 referendum, property owners were faced with a series of court challenges that could have delayed implementation indefinitely. At the same time, Governor William Weld had vowed to veto any state legislation to revive rent control in Boston, Cambridge, and Brookline. The result was a compromise. Rent control was lifted immediately in the three cities, but a two-year extension was allowed for tenants qualifying for the federal definition of "lowincome"--less than 60 percent of the median for the region or 80 percent for the elderly and handicapped. In the end, 4 percent of the tenants in Boston and 10 percent in Cambridge and Brookline qualified for this extension. These groups were finally deregulated on January 1997.

Such a program could work in New York and San Francisco, perhaps with a slightly longer time scale. A three-to-five-year phase-out would seem reasonable. The effort could be helped enormously if builders and developers would pledge publicly to step up housing construction during the interim. Unfortunately, landlords and developers in both cities have become such pariahs that they rarely speak openly or work in concert. Boston landlords helped their cause enormously by setting up the reserve bank of 200 apartments for emergency relocations. Yet owners' groups in New York and San Francisco have done nothing comparable. Such an effort would go a long way toward allaying fears about deregulation.

The Morality of the Market

Human morality is based on the premise that virtuous behavior should be rewarded while harmful behavior ought to be punished. Where the rewards of the marketplace are concerned, it can truly be said that cities and nations get what they deserve.

Price controls are built around the concept that one particular group, the providers of some essential good or service, is a nefarious clique that must be wrestled into submission by the government. Oil company executives were the villains of the "energy crisis," and Congress portrayed itself as a gallant knight riding to the rescue of a distressed public. In fact, all that was at stake was the public's ability to tolerate the price increases associated with shifts in energy resources.

Rent control works the same way. Providing housing is perceived by some as an illegitimate enterprise. "Greedy landlords" become public enemies in rent-controlled cities and the entire political apparatus is geared up to subdue them. (The political party that has governed Santa Monica for the last 20 years is called "Santa Monica Renters' Rights.") The hate campaign against landlords feeds on itself, becoming a self-fulfilling prophecy, since owners in the shadow market can charge exorbitant prices, while owners in the regulated sector do best by making life uncomfortable for their low-rent tenants. Yet all that is really at stake is public willingness to accept the idea that some people make their living by providing housing.

Rent control is a disease of the mind that soon becomes a disease of the market. Those cities that resist infection --merely by having a healthy tolerance for the rights of others--are

Essays & Articles

Why Rent Control is Immoral

By Michael S. Berliner, Ph.D.

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Ayn Rand's Books
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Rent controls don't work, and its advocates know it. Rent controls create shortages and decrease the quality of housing. Yet the activists for rent control don't care that it doesn't work. They — and much of the public — think that rent controls are "humanitarian." After all, isn't the government helping out poor people and keeping them out of the clutches of greedy, gouging landlords? What drives these activists are not issues of practicality but issues of morality. They are possessed by the same moral fervor that still leads leftists to claim that socialism is the best system, despite the collapse of the USSR and all the model socialist economies.

In fact, there is nothing moral about rent controls.

Rent controls violate your rights. They are a gun at your head. As an apartment owner, you have the moral right to decide the price at which you'll offer a unit for rent. The government has no right to dictate to you what rate you can offer. Of course, it has a legal right to do this; it has a legal right to do whatever it can enact into law and get upheld by the courts. But that doesn't make it moral. Slavery was legal at one time, but it was never moral. And rent controls are nothing less than enslavement of the property owner.

In a free society, no government (local, state, or federal) has the right to interfere with the choices of people to do business with each other. It should no more tell a landlord what price to offer than it should tell a prospective tenant how much he can spend on rent. Both the landlord and the tenant have the moral right to "just say no" to the other's offer. That's freedom.

Government is an institution of physical force: police, courts, army. Government has a monopoly on the use of such force: it's the only institution legally empowered to enforce its decisions by the threat of taking your money or putting you behind bars. Rent control is the government putting a gun at the head of people trying to make voluntary contracts with each other. That's why rent controls violate the rights of everyone, not just landlords. It's never "humane" to prevent people from acting on their own judgments. It's never "humane" to turn people into slaves to someone else's desires.

But from their supposedly high moral plane, the advocates of rent control make a lot of serious charges which do require answers:

1. "Only the landlord has a choice, because he controls the apartment that the tenant needs and thus he has the tenant over a barrel."
ANSWER: The tenant controls the rent that the landlord needs; that's always what's involved in a contract: each party has a value the other wants, and they trade their values to mutual advantage. Neither party has a right to the other's values: landlords have no divine right to a customer or to certain levels of rent (they're free to lower their offers or invest their money elsewhere), and tenants have no right to demand housing (they're free to seek alternative housing). Of course, the advocates of rent control recognize the importance of housing (and medicine and food) and thus feel morally justified in forcing people to provide those things to the "needy." But their position is the exact opposite of the moral position. The more valuable and important the product, the more you should be rewarded — not punished — for supplying it! Need is not a claim.

2. "Human rights are more important than property rights."
ANSWER: Property rights are human rights, and very basic ones. They are the rights of human beings to use their own property. As Ayn Rand wrote in Capitalism: the Unknown Ideal: "Without property rights, no other rights are possible. Since man has to sustain his life by his own effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of his product, is a slave."

3. "Rent controls are perfectly legitimate because this is a democracy, and rent controls have been voted in."
ANSWER: It makes no difference how popular a law is; it can still be a violation of your rights. Just because the majority votes away your property, that doesn't give them a moral right to do so. If a neighbor sneaks into your house and takes some money out of your wallet to help pay his rent, that's theft; well, there's no moral difference if a group of your neighbors get together and vote away your money to help pay their rents; that's merely "legalized theft." If majority rule were the only basis for deciding what the government can do, then 51% of the people could legitimately vote to enslave or even kill the other 49%. Hitler was voted into office and had great popular support. All tyrannies are wrong, including tyranny by the majority. The voters don't own your life or your property.

4. "Landlords are just being selfish by wanting higher rents."
ANSWER: Why is it okay for tenants to be selfish by wanting lower rents? In fact, there's nothing wrong with being selfish — rationally selfish. Selfishness means that you live for your own happiness, not that of others. You want the highest rent you can get, and tenants want the best apartment for the least possible rent. Neither party

should be altruistic: the landlord shouldn't say "you can have this apartment for less than you're willing to spend," nor should the tenant say "I'll pay you more than you're willing to take, just to make you happy." Being selfish means you don't sacrifice yourself to others or sacrifice others to yourself. It means that you — and everyone — lives independently, trading value for value.

Property owners should not be apologetic for what they do; they should be proud. They should stand up for their right to control their own property. They should reject the claim — inherited from Marxism — that they are "evil exploiters." They should not try to appease their opponents by compromising. It doesn't work; in fact, appeasement of one's enemies just encourages them. "In any collaboration between two men (or two groups) who hold different basic principles," wrote Ayn Rand, "it is the more evil or irrational one who wins." It isn't possible to compromise with people who want to dictate your life. By agreeing to any of their demands, you concede their right to your property and give them a complete victory.

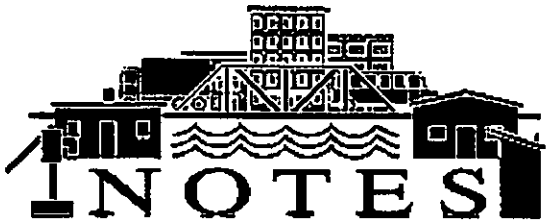
Even the Russians seem to be discovering that an economy run by dictatorial decrees (a "command" economy) destroys freedom. Isn't it about time that our own politicians and tenants learn the same lesson?

Select Destination

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INFRASTRUCTURE



NOTES

TRANSPORTATION, WATER AND URBAN DEVELOPMENT DEPARTMENT THE WORLD BANK
May 1991
Urban HS-4

RENT CONTROL: AID OR IMPEDIMENT?

Gwendolyn Ball

Does rent control aid the provision of low-income housing? A recently completed INURD study finds that tenants may be worse off under rent control than under market conditions.

Many advocates of low-income housing argue that rent control is an effective means of protecting their constituency. When housing markets are under stress-during wartime or periods of rapid migration-housing demand usually increases more rapidly than supply and rents can skyrocket. Under such conditions most nations have instituted rent control as a way of dealing with a temporary problem. Rent control has been prescribed as a way to protect low-income households from the high cost of housing. They argue that by controlling the rents which landlords may charge, landlords are prohibited from earning excess profits at the expense of tenants. Rent control is also viewed as a redistributive mechanism, a tax on housing capital, which reallocates income from wealthy landlords to relatively poorer tenants.

However, opponents of rent control argue that it distorts housing markets and limits the housing options of the poor. By distorting the pricing of rental housing, rent control influences both the quantity and quality of housing available to low-income tenants. Lower rents mean lower returns to investment in rental housing. Developers will build fewer units, and as supply contracts, only those able to make legal or illegal side payments ("key money") or with special connections will find housing. Lower rents will also reduce the return from investments in amenities, improvements and maintenance--with a subsequent decline in the quality of the unit as such investment decreases. Thus, landlords adjust to rent control by supplying less housing, of lower quality, and with less maintenance, and, while the rent payment per unit may decline, there may also be a decline in the average quality of the unit. Tenants may be paying less, but getting less for their money.

A recently completed INURD research project, "Rent Control in Developing Countries," directed by Stephen Malpezzi, evaluates whether rent control protects the interests of the poor or limits the quantity and quality of housing available to them.

AN INTERNATIONAL SURVEY OF RENT CONTROL REGIMES

Rent control is often thought of as a simple policy where the government mandates the amount of rent which can be charged in the housing market. In reality, rent control regulations are complex and

anything but homogeneous. The wide variety of motives and historical circumstances that exist in developing countries lead to a bewildering array of control regimes. However, it is possible to rank mechanisms according to the degree to which rental prices are controlled or restricted below their market values. The strictest regimes attempt to fix a "fair rent" for each rental unit or freeze rents at some point in the past; increases are never allowed under such regimes or occur infrequently. Less strict regimes allow some rent increases by either fully or partially indexing rents to inflation or setting maximum annual rent increases. Other provisions. such as exempting new construction, will limit the portion of the market controlled by these regimes. or limit the degree of price control.

The INURD project surveyed rent control regimes in 68 political jurisdictions, and analyzed the relationship between the strictness of the regime and the macro level performance of the housing market. Average rents were a lower portion of household income in markets with strict regimes. However, the ratio of house prices to income, a strong indicator of shortages in housing supply, was higher in markets with strict regimes. These results suggest that while strong rent controls do keep rents down, they also seem to introduce distortions and shortages in the housing market.

When the strictness of rent control regimes was compared to GNP per capita, it was found that lower income countries were more likely to have rent control and tended to have stricter regimes than higher income countries. Thus, the survey suggests that rent control may be a contributing factor to housing shortages in developing countries. To test this hypothesis, detailed micro level analysis was done in four developing country cities.

THE IMPACT OF RENT CONTROL: FOUR DEVELOPING COUNTRY CASE STUDIES

The INURD project analyzed the actual impacts of rent control regimes in four housing markets--Cairo, Kumasi, Bangalore, and Rio de Janeiro. These markets were chosen to represent a variety of economic and cultural environments as well as a full spectrum of rent control regimes as measured by the framework outlined above. Kumasi and Cairo have relatively strict regimes; Rio's is much less strict; and Bangalore's regime contains both a strictly controlled segment (which is occupied by public servants), a less strictly controlled segment, and an uncontrolled component. In each market, the reduction in rent, the "welfare loss" associated with reduced housing quality, and the distribution of benefits were estimated.

In all the markets, rent control reduced the rent paid by the typical tenant, with reductions ranging from 4% of the market rent for Bangalore households under "ordinary" controls to 64% for households in the same community under strict controls (see table). However the "welfare losses" created by the reduction in housing quality dramatically reduced these benefits. In Kumasi, losses reduced the benefit to tenants from 26% of the market rent to 12%. For households in Bangalore under "ordinary" controls, the welfare losses were sufficient to give the representative tenant a negative net benefit. These tenants were worse off under controls than in a free rental market.

	Rent Reduction as a % of Market Rent	Net Benefit as a % of Tenant Income	Market Rent	Tenant Income
Cairo	n.a.	5.8%	n.a.	5.1%
Kumasi	26%	2.3%	12%	1.0%
"Ordinary" Bangalore	4%	0.8%	negative	negative
"Strict" Bangalore	64%	15.1%	64%	15.1%

Rio de Janeiro	12%	2.0%	12%	2%

RENT CONTROL AND INCOME DISTRIBUTION

Much of the appeal of rent control stems from its ability to transfer income from supposedly wealthy landlords to poor tenants. This study casts doubts on rent control's efficacy as an income transfer mechanism. In Cairo and Bangalore, no relationship was found between the distribution either of rent reductions or of benefits and household income. In these markets, the benefits of rent control are not well-targeted towards lower income groups. In Rio, the distribution was moderately progressive. In Kumasi, there was no pattern to the distribution of rent reductions and benefits were moderately progressive only because losses increased with income. Thus, only Rio's relatively moderate reduction in rents was appropriately targeted.

Moreover, the founding premise behind using rent control for income redistribution was faulty in some markets. In three markets--Cairo, Kumasi, and Bangalore--the income distribution of tenants and landlords were compared. While the median income of landlords was higher in all three cases, there was significant overlap. In Cairo, for example, about a quarter of the tenants had higher incomes than the landlord median. And there is no guarantee that the transfer will only occur from high income landlords to low income tenants. As a redistributive mechanism, rent control appears as an inefficient regulation.

OPTIONS FOR DECONTROL

In markets where a highly restrictive rent control regime significantly distorts the market, several options exist to reform the policy. Rent control can be suddenly and completely lifted, or it can be removed in a more gradual fashion. For example, rental units which meet certain conditions can be exempted from the existing rent control legislation. Units can be exempted when the sitting tenant vacates, with future tenants required to pay market rates. Another option is to decontrol based on the rent of the unit. Units are exempted from the top of the price scale down, the most expensive units first, the cheapest last. The rent level above which units are decontrolled can depend on the location or the type of unit.

Another approach is to specify conditions under which entire cities or markets can be exempted from the directives of the rent control regime. For example, a higher jurisdiction that currently administers controls and allows lower jurisdictions (for example, individual cities) to choose whether or not to retain them. Usually, the higher jurisdiction requires the lower jurisdiction to administer the controls, if the latter decides to retain them. Housing submarkets or cities can also be automatically decontrolled when a vacancy rate above some statutory level is achieved.

Finally, the stringency of the rent control regime can be gradually relaxed by regularly increasing the allowed annual rent increase.

Unfortunately, it is impossible to provide a blanket prescription as to which is the "best" method. Even the last method cited, which would seem widely applicable, may not bring rents to market levels if it is instituted in a highly inflationary environment. Each market must be analyzed individually to determine the importance of removing controls and the appropriate method for doing so. The project report includes a detailed discussion of the determinants and methods.

CONCLUSIONS

The study concludes that rent control fails to meet the goals sought by its advocates. While a strong regime may reduce rents, rental supplements paid to low income households of equal value would have the same monetary benefit as the rent reduction without inducing the supply distortions, thereby leaving the households better off. Policy makers in developing countries should avoid using rent control to protect low income households or redistribute income.

In reforming markets currently affected by rent control, policy makers should carefully study the nature of the regime. The results of this study suggest that markets with strict regimes have greater reductions of rent--and greater market distortions and welfare losses. (The exception to this rule, strictly controlled units in Bangalore, covers units which are allocated on a highly preferential basis and therefore can not necessarily be extrapolated to total markets.) These results imply that in markets where rent control is strict, reforming the regime may create significant benefits. However, reform of other forms of housing policy might be more important than reform of rent control. Weak controls apparently create only minor distortions, and if serious problems exist in the housing market, other policies may be at fault. For example, an inadequate housing finance system may constrain the production of housing. Or overly restrictive regulation of land or housing may raise housing costs. In such cases, efforts to remove the rent control legislation may be a distraction from the real problems.

TO LEARN MORE

Malpezzi, Stephen and Gwendolyn Ball. *"Rent Control in Developing Countries: A Synthesis."*; Washington, DC: World Bank, PRE Discussion Paper, forthcoming.

Malpezzi, Stephen and Vinod Tewari. *"Costs and Benefits of Rent Regulation in Bangalore, India."* Washington, DC: World Bank, INU Discussion Paper, forthcoming.

Malpezzi, Stephen, Graham Tipple and Kenneth Willis. *"Costs and Benefits of Rent Control in Kumasi, Ghana."* Washington, DC: World Bank, INU Discussion Paper No. 51, 1989.

Malpezzi, Stephen. *"Rent Control and Housing Market Equilibrium theory and Evidence from Cairo, Egypt."* Unpublished Ph.D. dissertation, The George Washington University, 1986.

Silveira, Ricardo and Stephen Malpezzi. *"Costs and Benefits of Rent Control in Rio De Janeiro."* Washington, DC: World Bank, INU Discussion Paper, forthcoming.

"To my knowledge?" "See no evil, hear no evil?"

Does anyone still think there's any difference

between the West Coast and the East Coast?

After 25 years, rent control ended in Cambridge, Massachusetts, in 1994. Now come the results of the city's own study on the end of rent control:

Diversity goes up, not down!

Those who moved out were the rich whites.

They said it over and over again. There would be a great exodus. Ending rent control would force poorer tenants out of their homes – even out of the city – in the face of rising rents. That's what they predicted.

So what do they do when it doesn't happen? What do they do when a scientific study, commissioned by the tenant-sympathetic city of Cambridge, finds that the turnover rate in apartments since rent control's end three years ago has been perfectly, perfectly normal, no blip, bump, spurt, jump or any sign at all of tenants moving out faster -?

They don't announce it. They don't say their prediction failed. They keep saying "housing crisis". And they just report the turnover rate (no one knows what's normal) and say it is consistent with other data.

In this way, officials and leaders in Cambridge have carefully avoided every implication of their very own study.

And now the final story can be told: **Ending rent control in Massachusetts did not throw people out of their homes or lead to crushing rent burdens.**

In fact, two and a half years after decontrol, the survey depicts a surprising degree of rental "normalcy" in Cambridge (the study's focus) and *more* economic and racial diversity in the city – not less. No one is telling the facts, so here are key findings from the study.

- No increased turnover. Tenants moved out of their newly decontrolled apartments at exactly

the same rate (15% a year) as they moved out while under rent control. That turnover rate is also in line with typical tenant turnover across the state. Almost two-thirds (62%) of rent-controlled tenants are still living in their old apartments.

- No 'skyrocketing' rents. Actual rent increases did not, on average, create abnormally heavy rent burdens for the tenants affected by decontrol. In fact, quite the opposite, former rent-controlled tenants ended up with normal-to-light rent burdens.
- The rich moved out. The tenants that moved out of their newly decontrolled units had an average annual income of almost $51,000, making them by far the richest of all tenant groups. They earned almost $10,000 a year more than the next-highest-income tenant group. They were also more likely to be white and to have advanced graduate degrees. All in all, the tenants who moved out were a select, "dominant white culture" group, leaving when the system no longer benefited them.
- The less-well-off stayed. In sharp contrast to those that moved out, the tenants who stayed in their decontrolled units were the lowest in income of all tenant groups – earning $15,000 a year less than the high-income tenants who moved out. Many of these tenants who stayed (53% of them) were single-person households, however, so they are not as poor as they sound. And here's the real test: after paying their new, freely set rent increases, the tenants who stayed paid the *same percentage of income* for rent as any other tenant group. They had a normal rent burden on average, and were ***least*** likely to have cases of excessively heavy rent burdens. Landlords did not "gouge" them even though they now had to chance.

Predictions of doom failed

The dire predictions about ending rent control (and the whole rationale for it in the first place) simply did not materialize. Without artificially low rents, low-income and minority households were supposedly going to get pushed out as rent burdens became heavy. Exactly the opposite happened.

Income levels declined. The new tenants who moved into vacated decontrolled units earned considerably *less* - $10,000 a year *less* – than the well-off tenants they replaced. As a result, the overall income level *declined* in the former rent-controlled housing stock – by about $4,000. Letting rents rise *reduced* tenant incomes and *improved* diversity, primarily because rich tenants no longer held a lock-grip on their cut-rate housing deals.

Minorities increased. A striking 25% of the tenants who moved into vacated decontrolled units were minorities. Rent control had, in fact, catered to white tenants. As a result of decontrol, the net proportion of minorities in the former rent-controlled housing stock rose to the proportion existing all along in market-rate housing.

Although it flies in the face of the self-serving rhetoric that justified rent control for 25 years, the fact is that decontrolling rents actually increased the racial and income "diversity" of Cambridge. As critics of rent control had said all along, it was a policy that gave housing "to the privileged, not the poor"

Rent burdens normalized. After two and a half years of decontrol, the average rent burden across the city was 27%, which means people on average spent 27% of their income on rent, a perfectly normal rent burden. (Federal guidelines set 30% as the limit for an "affordable" rent burden.) Before decontrol, the average rent burden was 23% for the lower-income rent–controlled tenants who ended up staying and 15% for the rich rent-controlled tenants who ended up moving out – light rent burdens in both cases. Rent control had simply lightened rent burdens for tenants who could have afforded to pay more rent.

Moderation with old tenants. The rents of tenants who stayed in their decontrolled units went, on average, from $500 to $700 a month over the two and a half years after rent control ended. Their resulting rent burden – 27% – was normal and exactly the same as market-rate tenants in the city. Their $700 average rent was, moreover, $200 lower than the average market-rate rent in Cambridge and the lowest of any renter group in the city. Owners simply could not, or would not, raise rents too sharply on tenants staying on.

Market rents slowed down. The end of rent control was a lesson in Economics 101: increased supply reduces prices. With the increased supply of market-rate apartments, market rents in Cambridge "increased more slowly than in comparable Boston neighborhoods and in the state as a whole." During 1996, in fact, the average market rent in Cambridge *declined* by $4 a month. The city of Boston, ending rent control at the same time, also saw a slower increase in market rents than the Greater Boston area as a whole. These trends prove the point that rent control critics have always made: that rent control in a city affects the non-controlled housing market as well, pushing rents up in market-rate apartments by constricting the supply of available units.

Long-needed improvements. After 25 years of almost no improvements, deteriorating rent-controlled apartments finally got a new infusion of capital. Building permits for improvements to decontrolled properties rose by 68% form 1994 to 1996, while permits for market-rate properties increased just 13%. Confirming this trend, owners of former rent-controlled units (a sample of owners was also interviewed in the study) reported spending about $5,000 per unit to improve over half their units. Most of these improvements undoubtedly went into vacated units at turnover time. New tenants moving into these newly updated units paid accordingly. Their rents averaged $925 a month, the highest rent level among the various tenant groups. Nevertheless, their rent burdens – at 32% on average – were a little higher than normal but not excessive, just a couple of percentage points above the official federal guideline.

Roommates and over-housing. A large 39% of the new tenants moving into decontrolled units were roommates, compared to only 13% roommates among all former rent-controlled tenants. Doubling up, however, doesn't mean crowding. It means a normal, economical use of housing similar to market-rate tenants. And it means an end to luxurious "over-housing" under rent control, where tenants had rented more space per person than normal because of cut-rate rents. Almost half (47%) of former rent-controlled tenants were single persons living alone in apartments often big enough for two or three persons – a sign of over-housing.

Students resume limited role. Nearly 30% of new tenants moving into decontrolled units were students. Mixing them in with the old tenants in decontrolled units (who were 10% students), the result is a population in the former rent-controlled stock that is now 17% students – still less than the 21% student population that has lived all along in market-rate housing. It seems that Cambridge could expect a stable renter population of about one-fifth students, the rest (80%) being a working population including families. A 20% or even 30% student component is not particularly large, given this city dominated by two big and famous universities.

Facts from the study

AVERAGE RENTS of Tenant Households: 1994 & 1997

	Former rent-controlled tenants who stayed	Former rent-controlled tenants who moved	New tenants in decontrolled units	Tenants always in market-rate units	All households
1994 average rents	$500	$543	$500	$800	$600
1997 average rents	$700	$762	$925	$900	$815

Comment The New $700 average rent for tenants who stayed in their decontrolled units was still $200 less than the average market-rate rent in Cambridge, showing that landlords did not gouge tenants when they had the chance. The $925 average tent for new tenants in decontrolled units reflects the fact that most of these units got about $5,000 of new improvements and renovations, after years of neglect under rent control.

INCOMES of Tenant Households

	Former rent-controlled tenants who stayed	Former rent-controlled tenants who moved	New tenants in decontrolled units	Tenants always in market-rate units	All households
Average income	$35,650	$50,920	$41,340	$43,630	$41,660

Comment The rich moved out, while lower-income tenants remained in their decontrolled units. The tenants who moved in were almost $10,000 a year lower in income than those who moved out.

CHANGING INCOME LEVELS In the Rent-Controlled Housing Stock

Average income before decontrol:	**$41,453**	**(all former rent-controlled tenants)**
Average income after decontrol:	**$37,812**	**(former rent-controlled tenants who stayed in their units *plus* new tenants who moved into decontrolled units)**

Comment Because the tenants who moved in were lower income than those who moved out, the average income of tenants in former rent-controlled stock actually dropped by almost $4,000 a year. Decontrol *increased* diversity.

CHANGING RENT BURDENS of Tenant Households (rent burden = percent of income spent on

31-43-15. Transfer of records and other property. — All books, papers, records, current appropriations and relevant property necessary for the functioning of the administrative adjudication court shall be transferred thereto from the department of transportation. The administrative adjudication court and the department of administration shall share all data required by the administrative adjudication court including, but not limited to, all electronic data regarding the functions of licensing of persons and vehicles. The cost of such data shall be shared on a pro rata basis.

History of Section.
P.L. 1992, ch. 453, § 7.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted the present section number designation for "§ 31-43-13", which substitution was first made by the law revision officer of the joint committee on legislative services in 1992, pursuant to § 43-2-2.1; and substituted "department of administration" for "department of transportation", pursuant to § 42-11-2, in the second sentence.

31-43-16. Transfer of employees. — (a) Any general law or public law to the contrary notwithstanding, all employees of the department of administration deemed by the chief judge of the administrative adjudication court, in consultation with the administrator/clerk, and with the approval of the chief justice of the supreme court, to be essential to the operation of the administrative adjudication court are hereby transferred to the said court. The salaries, job classifications and job categories of all employees so transferred shall be the same as employees of the administrative adjudication court as they had been as employees of the department of administration immediately before such transfer. The chief judge of the administrative adjudication court, in consultation with the administrator/clerk, shall assign appropriate titles and duties to said employees.

(b) All positions within the department of administration as of September 1, 1992, which are within the bargaining unit designated by EE 3115 or the bargaining unit designated by EE 2098 shall remain within said bargaining unit when the affected employees are transferred to the administrative adjudication court pursuant to subsection (a) of this section.

History of Section.
P.L. 1992, ch. 453, § 7.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted the present section number designation for "§ 31-43-15", which substitution was first made by the law revision officer of the joint committee on legislative services in 1992, pursuant to § 43-2-2.1; in subsection (b), substituted "September 1, 1992" for "the effective date of this act", and corrected the misspelling of the word "or", which substitution and correction were first made by the compiler in 1992 (the substitution being made in brackets); and substituted "department of administration" for "department of transportation", pursuant to § 42-11-2, throughout the section.

Attachment 1

31-43-17. Severability. — If any provision of this chapter or the application thereof shall for any reason be judged invalid, such a judgment shall not affect, impair or invalidate the remainder of the law, but shall be confined in its effect to the provisions or application directly involved in the controversy giving rise to the judgment.

History of Section.
P.L. 1992, ch. 453, § 7.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted the present section number designation for "§ 31-43-16", which substitution was first made by the law revision officer of the joint committee on legislative services in 1992, pursuant to § 43-2-2.1.

CHAPTER 44

MOBILE AND MANUFACTURED HOMES

SECTION.	
31-44-1.	Definitions.
31-44-1.1.	Mobile and manufactured home commission.
31-44-1.2.	Terms of commission members.
31-44-1.3.	Quorum — Meeting of commission.
31-44-1.4.	Powers and duties of commission.
31-44-1.5.	Mobile and manufactured home advisory information.
31-44-1.6.	Fees and charges for licenses.
31-44-1.7.	Mobile and manufactured home park operation — License.
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31-44-4.	Sale of mobile and manufactured homes.
31-44-5.	Reprisals.
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31-44-7.	Lease.
31-44-7.1.	Security deposits.
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31-44-8.	Notice required by law.
31-44-9.	Enforceability.
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31-44-9.2.	Investigations.
31-44-10.	Penalty.
31-44-11.	Fiscal autonomy.
31-44-12.	Severability.
31-44-13.	Right of mobile home owners to peaceably assemble — Right to communicate.
31-44-14.	Resident owned mobile home parks — Record keeping.
31-44-15.	Purchase requirement.

31-44-1. Definitions. — As used in this chapter:

(a) "Commission" means the mobile and manufactured home commission created and established as an advisory body pursuant to this chapter.

(b) "Department" means the department of business regulation.

(c) "Entry requirements" means any written, nondiscriminatory criteria for resident selection incorporated into the rules and regulations of a mobile and manufactured home park which are equally applied by the licensee to all purchasers and prospective residents.

(d) "Fee schedule" means an itemized list of fees for goods or services sold or performed by a mobile and manufactured home park licensee including, but not limited to, the entrance fee, hook-up fee, and maintenance fee, if any.

(e) "Hook-up fee" means a reasonable fee for the services required to install a mobile and manufactured home on a mobile and manufactured home space or lot. The charge shall include the cost of connecting water and sewer lines, electrical connections, tie-downs,

removal of wheels or axles, steps, if necessary, and other necessary services, including but not limited to the creation of new pads or piers.

(f) "Household" means one (1) or more persons occupying a housing unit.

(g) "Licensee" means any person or agent licensed under § 31-44-1.6 thereof who is directly or indirectly engaged in the business of selling mobile and manufactured homes or who operates and maintains a mobile and manufactured home park under the provisions of this chapter.

(h) "Mobile and manufactured home" means a detached residential unit designed:

(1) For a long term occupancy and containing sleeping accommodations, a flush toilet, and a tub or shower bath and kitchen facilities, and having both permanent plumbing and electrical connections for attachment to outside systems;

(2) To be transported on its own wheels or on a flatbed or other trailer or detachable wheels; and

(3) To be placed on pads, piers, or tied down, at the site where it is to be occupied as a residence complete and ready for occupancy, except for minor and incidental unpacking and assembly operations and connection to utilities systems.

(i) "Mobile and manufactured home park" or "park" means a plot of ground upon which four (4) or more mobile and manufactured homes, occupied for residential purposes are located.

(j) "Mobile and manufactured home space or lot" means a plot of ground within a mobile and manufactured home park designed for the accommodation of one mobile and manufactured home.

(k) "Owner" means a licensee or permittee or any person who owns, operates, or maintains a mobile and manufactured home park.

(l) "Prospective resident" means an applicant for admission to a mobile and manufactured home park who is ready, willing, and able to buy a mobile and manufactured home owned and offered for sale by a licensee or resident, and who is able to meet the entrance requirements of the rules of the park.

(m) "Protected lawful action" means any report of a violation of this chapter, or of any applicable building or health code, or any other justified complaint to a governmental authority, or any other justified lawful act by the resident(s) or prospective resident(s).

(n) "Reprisal" means any act taken against the resident(s) which is intended as a penalty for any protected lawful action taken by the resident(s).

(o) "Resident" means an owner or renter occupying a mobile and manufactured home in a mobile and manufactured home park with the consent of the owner as defined in subdivision (g) of this section.

(p) "Security deposit" means a sum not to exceed the monthly rental which a licensee may require a resident of a rented mobile or manufactured home to deposit as security in case of damage caused by the resident in excess of ordinary wear and tear.

(q) "Standards for mobile and manufactured homes" means any written, nondiscriminatory minimum specifications for structural soundness, safety, and habitability adopted by the commission or any other government agency.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1985, ch. 150, § 41; P.L. 1993, ch. 309, § 1; P.L. 1994, ch. 198, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) arranged the subdivisions in alphabetical order; capitalized the first word in subdivisions (h)(1) — (h)(3); inserted a comma following "toilet" in subdivision (h)(1), and following "piers" in subdivision (h)(3); deleted "(1)" preceding "mobile" near the end of subdivision (j); inserted "and" preceding "who" near the end of subdivision (l); substituted "subdivision" for "subsection" in subdivision (o); and made several substitutions of "the" for "such" and "said" throughout the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1994 reenactment of title 31 by P.L. 1994, ch. 134, which were not included in the 1994 amendment. For the extent of the reenactment changes, see the reenactment note above.

In 1994, the compiler redesignated subdivision (q) as subdivision (f), and redesignated the other subdivisions accordingly.

Repealed Sections. The former chapter (P.L. 1975, ch. 280, § 1; G.L. 1956, §§ 31-44-1 — 31-44-10; P.L. 1981, ch. 271, § 1; P.L. 1982, ch. 223, §§ 1-3), concerning mobile homes, was repealed by P.L. 1984, ch. 382, § 1, effective July 1, 1985.

31-44-1.1. Mobile and manufactured home commission. — A commission shall be created consisting of thirteen (13) members. Each commissioner shall be a citizen of this state and shall include:

(1) A resident of a licensed mobile and manufactured home park having one hundred (100) or more sites and a resident of a licensed mobile and manufactured home park having less than one hundred (100) sites to be appointed by the governor.

(2) An operator of a licensed mobile and manufactured home park having one hundred (100) or more sites and an operator of a licensed mobile and manufactured home park having less than one hundred (100) sites to be appointed by the governor.

(3) Three (3) members of the house of representatives, not more than two (2) from the same political party to be appointed by the speaker, of whom two (2) may be members of the general public appointed in lieu of members of the house of representatives.

(4) Two (2) members of the senate, one from each political party to be appointed by the senate majority leader, of whom one may be a member of the general public in lieu of a senate member.

(5) The director of business regulation or his or her designee.

(6) The associate director of administration for planning or his or her designee.

(7) Two (2) members of the general public to be appointed by the governor.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1985, ch. 181, art. 61, § 10; P.L. 1986, ch. 182, § 1; P.L. 1990, ch. 309, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) redesignated subdivisions (a) — (g) as subdivisions (1) — (7); and corrected a typographical error in the word "of" in subdivision (3), which correction was first made by the compiler in 1986.

31-44-1.2. Terms of commission members. — Public members and members appointed pursuant to § 31-44-1.1(1) and (2) shall be appointed for terms of three (3) years except that of the six (6) members originally appointed by the governor, two (2) shall be appointed for a term of one (1) year, two (2) shall be appointed for a term of two (2) years, and two (2) for a term of three (3) years. The members shall annually elect one of them as chairperson of the commission.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1986, ch. 182, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) made a series of minor punctuation and stylistic changes throughout the first sentence.

31-44-1.3. Quorum — Meeting of commission. — A majority of the members shall constitute a quorum. The commission shall conduct its business pursuant to the Open Meetings Law, chapter 46 of title 42.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1986, ch. 182, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) added "chapter 46 of title 42" at the end of the second sentence.

31-44-1.4. Powers and duties of commission. — (1) The commission may:

(a) Act in an advisory capacity in the interpretation and implementation of this chapter and the applicable provisions of chapter 44.1 of this title;

(b) Act for the purpose of promoting a uniform policy relating to all phases of mobile and manufactured home business and use;

(c) Monitor and determine the sufficiency of the state mobile and manufactured home act under this chapter as well as local mobile and manufactured home ordinances which are designed to provide local governments with superintending control over mobile and manufactured home business or use and to make recommendations thereto; and

(d) Conduct public hearings relating to these advisory responsibilities.

(2) The commission shall:

(a) Monitor the implementation of statutes and regulations affecting mobile and manufactured homes.

(b) Make investigations and conduct or authorize periodic surveys to determine compliance with this chapter.

(c) All departments of state government are hereby authorized to provide assistance to the commission as the commission requires.

(d) Conduct a public education program to improve public perception and local acceptance of mobile and manufactured homes and to promote them as affordable housing.

(e) Study additional issues related to mobile and manufactured homes and periodically disseminate acquired information.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1991, ch. 216, § 2; P.L. 1991, ch. 357, § 1; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted "; and" for a period at the end of subsection (1)(c), which substitution was first made by the compiler in 1987; and deleted former subsection (2)(b), first deleted by P.L. 1991, ch. 357, § 1, and redesignated former subsections (2)(c) — (2)(f) as present subsections (2)(b) — (2)(e).

31-44-1.5. Mobile and manufactured home advisory information. — The commission may publish and promote mobile and manufactured home advisory information based on this chapter and other issues as set forth in § 31-44-1.4. The information shall consist of:

A general interpretation of the rights and responsibilities of mobile and manufactured home park licensees and mobile home owners and residents as established by this chapter; and local state and federal standards to protect the health, safety, and welfare of mobile and manufactured home park residents.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) in the second paragraph, deleted the subsection "(a)" designation, and inserted a comma following "safety".

NOTES TO DECISIONS

1. Reasonableness of Standards.
Roof and width standards, which were not shown to have any impact upon the health, safety, or welfare of a mobile home park's residents but instead appeared to reflect the aesthetic preferences of the park's owners, were unreasonable. Andrews v. Brown, 603 A.2d 335 (R.I. 1992).

31-44-1.6. Fees and charges for licenses. — (a) The department of business regulation shall promulgate rules to establish fees and charges for the issuance of licenses or permits required herein.

(b) The fees and charges under this chapter shall be applied solely to fulfilling the various responsibilities of the department as specified within this chapter. In addition to the administration of fees and charges for licenses such responsibilities will include but not be limited to: providing space for periodic public meetings of the commission in its capacity as an advisory body for certain responsibilities it has been given under this chapter; filing and providing storage space for commission records, correspondence and other information as required by this chapter; the provision of secretarial services and recording equipment for recording minutes of meetings, providing meeting transcripts and conveying information to and from the commission and other interested parties; and paying for general mailings and the periodic publication and dissemination of information as may be necessary under §§ 31-44-1.4 and 31-44-1.5.

(c) All fees and charges collected by the department under this chapter shall be deposited in a special restricted account and not commingled with other department monies. Money received shall be used exclusively for purposes and duties as directly related to this

chapter. Any balance of these fees and charges shall not lapse at the end of a given fiscal year but shall be carried forward as a continuing account to be expended for the same purpose in the following fiscal years.

(d) A yearly unaudited financial report shall be provided by the department to the commission of the income and expenditures of all monies from said restricted account.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) redesignated subsections (1) — (4) as subsections (a) — (d).

31-44-1.7. Mobile and manufactured home park operation — License. — (a) A person shall not operate a mobile and manufactured home park without a license.

(b) Upon completion, review, and approval of certifications, the department of business regulation shall grant a license to operate a mobile and manufactured home park.

(c) An annual license shall be granted and renewed by the department based upon the filing of (i) leases and regulations that are applicable to the park, (ii) certification by the municipality in which the park is located that it is in compliance with all applicable land use regulations of the municipality, (iii) certification from the appropriate state agencies or municipal departments that the park has an adequate and operational sewage disposal system and water supply and that all applicable state and local taxes have been paid, and (iv) payment of an annual fee of fifteen dollars ($15.00) per occupied site in the park. The director of the department may by regulation provide for additional requirements and may place reasonable conditions on the grant of any license.

(d) If a person submits a timely application for renewal of a license and pays the appropriate fees, the person may continue to operate a mobile and manufactured home park unless notified that the application for renewal is not approved. In the event anyone is denied a license he or she will be afforded a hearing before the department.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) inserted a comma following "review" in subsection (b).

31-44-1.8. Survey of parks. — The department of health or its authorized representatives shall conduct a survey every three (3) years of mobile and manufactured home parks.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1985, ch. 487, § 1.

31-44-2. Evictions — Termination of tenancy. — (a) After July 1, 1985, a tenancy may be terminated by a park owner or operator pursuant to chapter 18 of title 34, provided, however, that jurisdiction as it relates to this chapter shall be in the district court but subject to one or more of the following reasons and limitations which shall take precedence over any conflicting state statute or local ordinance;

(1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that no action for possession shall be maintained if prior to the expiration of a notice to quit the tenant shall pay or tender all arrearages due, including a late charge of five percent (5%) of the monthly rent due after a seven (7) day grace period for the rental payment has elapsed.

(2) Failure of the tenant to comply with local ordinances or state or federal law or regulations relating to mobile and manufactured homes or mobile and manufactured home parks, provided that the tenant is first given written notice of his or her failure to comply with the laws or regulations and a reasonable opportunity thereafter to comply with the laws or regulations.

(3) Damage by the tenant to the demised property, reasonable wear and tear excepted.

(4) Repeated conduct of the tenant, upon the mobile and manufactured home park premises, which disturbs the peace and quiet of other tenants in the mobile and manufactured home park.

(5) Failure of the tenant to comply with reasonable written rules and regulations of the mobile and manufactured home park as established by the park owner or operator in the rental agreement at the inception of the tenancy or as amended subsequently with the written acknowledgement that the tenant has seen the amended rules, or without his or her consent upon three (3) months written notice; provided that the tenant is first given written notice of his or her failure to comply and a reasonable opportunity thereafter to comply with the rules and regulations. Nothing in this section, however, shall be construed to permit a park owner or operator to vary the terms of a written or oral rental agreement without notification to the tenant.

(6) Condemnation or change of use of the mobile and manufactured home park.

(b) No tenancy, however created, in a mobile and manufactured home park may be terminated, on or after July 1, 1985, by a mobile and manufactured home park owner or operator except upon giving notice in writing to the tenant in the manner prescribed herein to remove from the premises within a period of not less than sixty (60) days; provided that upon grounds of nonpayment of rent, a tenancy may be terminated upon giving thirty (30) days notice.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) redesignated subsections (a)(I) — (a)(VI) as subsections (a)(1) — (a)(6), inserted a comma following "charges" in subsection (a)(1), substituted "July 1, 1985" for "the effective date of this section" in subsections (a) and (b), and made several substitutions of "the" for "such" and "said" throughout subsection (a).

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-3. Rules and regulations. — The following requirements and restrictions shall apply to all mobile and manufactured home parks:

(1) A mobile and manufactured home park licensee may promulgate reasonable rules and regulations which shall specify standards for mobile and manufactured homes in the park, if any, entry requirements, if any, and rules governing the rental or occupancy of a mobile and manufactured home lot and mobile and manufactured home park;

(2) Current rules and regulations promulgated by a mobile and manufactured home park licensee shall be delivered by the licensee to a prospective resident prior to entering into a rental agreement, and to the resident(s) as soon as promulgated and whenever revised. A copy of the rules and regulations shall be filed with the commission and posted in a conspicuous place in the mobile and manufactured home park;

(3) Any rule or change in rent which does not apply uniformly to all mobile and manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unreasonable;

(4) (i) A mobile and manufactured home park licensee shall not impose any conditions of rental or occupancy which restricts the mobile and manufactured home owner in his or her choice of a seller of fuel, furnishings, goods, services, accessories, or other utilities connected with the rental or occupancy of a mobile and manufactured home lot.

(ii) The licensee who purchases electricity or gas (natural, manufactured, or similar gaseous substance) from any public utility or municipally owned utility or who purchases water from a water system for the purpose of supplying or reselling the electricity or gas to any other person to whom he leases, lets, rents, subleases, sublets, or subrents the premises upon which the electricity, gas, or water is to be used shall not charge, demand, or receive directly or indirectly, any amount for the resale of such electricity, gas, or water greater than that amount charged by the public utility or municipally owned utility from which the electricity, or gas was purchased or by the public water system from which the water was purchased;

(iii) Provided, however, if said licensee incurs costs in bringing the utility service to individual units, or in utilizing individual meters or in such similar cost, said licensee will be entitled to a return for such investment.

(iv) The park operator shall post in a conspicuous place the prevailing utility rate schedule as published by the serving utility.

(5) If any mobile and manufactured home park licensee adds, changes, deletes, or amends any rule governing the rental or occupancy of a mobile and manufactured home lot in a mobile and manufactured home park, a new copy of all such rules shall be furnished to all mobile and manufactured home residents in the park, and filed with the commission for its review, recommendations, if any, and recording for future reference at least forty-five (45) days prior to the effective date of the addition, change, deletion, or amendment. The new copy furnished to the resident shall be signed by both the mobile and manufactured home park owner and the mobile and manufactured home park resident;

(6) If any mobile and manufactured home park licensee changes the rent of a mobile and manufactured home lot, notice of the change shall be given to the mobile and manufactured home resident at least sixty (60) days prior to the effective date of the change;

(7) The owners of individual mobile and manufactured homes shall be entitled to have as many occupants in their homes as is consistent with the number of bedrooms and/or bed spaces certified by the manufacturer; provided that the occupancy does not violate any provision of the general laws or other municipal regulations. All bedrooms shall consist of a minimum of fifty (50) square feet of floor area and bedrooms designed and certified for two (2) or more people shall consist of seventy (70) square feet of floor area plus fifty (50) square feet for each person in excess of two (2). If there is sufficient bed space, according to the criteria set forth in this subdivision, additional rent or charges may not be imposed by a park owner or manager for any person or persons moving in with current resident owners of a mobile and manufactured home.

(8) A prospective resident shall not be charged an entrance fee for the privilege of leasing or occupying a mobile and manufactured home lot, except as provided in § 31-44-4; provided, however, that when a mobile and manufactured home is transported onto the mobile and manufactured home park, an entrance fee may be charged; notwithstanding the foregoing however, if the park owner received a commission for the sale of the mobile and manufactured home, no entrance fee shall be charged. A reasonable charge for the fair value of the owner's cost in obtaining, preparing, and maintaining a lot or for the fair value of services performed in placing a mobile and manufactured home on a lot shall not be considered an entrance fee, but shall be deemed a hook-up fee or maintenance fee and shall be detailed in the fee schedule. No tenant, or person seeking space in a mobile and manufactured housing park, shall be required to purchase manufactured housing from any particular person unless the person designated is the park owner or operator and the requirement is imposed only in connection with the initial leasing or renting of a newly-constructed lot or space not previously leased or rented to any other person. A resident may remove and replace a mobile and man-

ufactured home, provided however, that the resident shall install the mobile and manufactured home in accordance with present park standards regarding structural requirements and aesthetic maintenance in the mobile and manufactured home park where the replacement occurs, and in accordance with minimum standards for mobile and manufactured homes established by the United States department of housing and urban development. No fee shall be charged by the licensee to residents as a result of the resident's installation of cable television;

(9) Prior to signing a lease a licensee shall dispose in writing to the prospective resident: (a) the rental for the space or lot, and (b) any charges, including service charges, imposed by the licensee. The licensee shall dispose the rent and charges which were in effect during the three (3) preceding years or the period during which the licensee has operated the mobile home park, whichever is shorter;

(10) A copy of the fee schedule shall be filed with the commission and posted in a conspicuous place in the mobile and manufactured home park; and

(11)(a) A resident shall not be charged a fee for keeping a pet in a mobile and manufactured home park unless the park owner or management actually provides special facilities or services for pets. If special pet facilities are maintained by the park owner or management, the fee charged shall reasonably relate to the cost of maintenance of the facilities or services and the number of pets kept in the park;

(b) If the park owner or management of a mobile and manufactured home park implements a rule or regulation prohibiting residents from keeping pets in the park, the new rule or regulation shall not apply to prohibit the residents from continuing to keep the pets currently in the park if the pet otherwise conforms with the previous park rules or regulations relating to pets. However, if the pet dies, the resident shall have the right to replace the pet.

(c) Any rule or regulation prohibiting residents from keeping pets in a mobile and manufactured home park shall not apply to guide, signal, or service animals.

History of Section.

P.L. 1984, ch. 382, § 2; P.L. 1985, ch. 88, § 2; P.L. 1985, ch. 414, § 1; P.L. 1987, ch. 116, § 1; P.L. 1991, ch. 217, § 1; P.L. 1992, ch. 347, § 1; P.L. 1993, ch. 287, § 1; P.L. 1993, ch. 309, § 1; 1994, ch. 182, § 1.

Reenactments. The 1982 Reenactment (P.L. 1982, ch. 319, § 1), in subdivision (5), made a name change and a stylistic change.

The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted "and" for "a" following "mobile" in the second sentence of subdivision (8), inserted a colon in the first sentence of subdivision (9), and substituted a semicolon for a period at the end of subdivision (9), which substitutions and insertion were first made by the compiler in 1987; inserted "home" following "mobile and manufactured" in the first sentence of subdivisions (11)(a) and (11)(b), deleted a superfluous comma following "guide" in subdivision (11)(c), and added a period at the end of subdivision (11)(c), which insertion, deletion, and addition were first made by the compiler in 1991; inserted "not" preceding "charge" in subdivision (4)(ii), substituted a semicolon for a period at the end of subdivision (4)(ii), inserted a comma following "however" in subdivision (4)(iii), and substituted "for such" for "on such" in subdivision (4)(iii), which insertions and substitutions were first made by the compiler in 1992; and made a series of minor changes in punctuation and style, and several substitutions for the words "such" and "said", throughout the section.

Compiler's Notes. This section, as it appears above has been edited by the compiler to incorporate the changes made by the 1994 reenactment of title 31 by P.L. 1994, ch. 134, which were not included in the 1994 amendment. For the extent of the reenactment changes, see the reenactment note above.

In 1994, in subdivision (7), the compiler deleted a comma following "rent" in the last sentence; and, in the first sentence, inserted "as", substituted "the occupancy" for "such occupancy", and deleted a comma following "laws or".

Repealed Sections. For repeal of the former section, see the note under this heading following § 31-44-1.

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31-44-3.1. Sale of mobile home parks — Tenants association right of first refusal. — (a) In any instance in which a mobile home park owner has been sent a certified letter from an incorporated home owner households association indicating that such association has at least fifty-one percent (51%) of the home owner households residing within that park as members and has articles of incorporation specifying all rights and powers, including the power to negotiate for, acquire, and operate the mobile home park on behalf of the member residents, then, before a mobile home park may be sold for any purpose and before it may be leased for any purpose that would result in a discontinuance, the owner shall notify the association by certified mail return receipt requested of any bona fide offer that the owner intends to accept, to buy the park or to lease it for a use that would result in a discontinuance. The park owner shall also give notice by certified mail return receipt requested to the incorporated home owners' association of any intention to sell or lease the park for a use which will result in a discontinuance within fourteen (14) days of any advertisement or other public notice by the owner or his or her agent that the park is for sale or the land upon which the park is located is for lease.

(b) The notice of pending bona fide sale from the owner must contain at a minimum the following if known and available and applicable to the sale:

(1) An affidavit from the buyer or lessee stating the offered purchase price or offered lease payment;

(2) The terms of seller financing, including the amount, the interest rate and the amortization rate thereof;

(3) The terms of assumable financing, if any, including the amount, the interest rate and the amortization rate thereof;

(4) The legal description and a statement of appraised or assessed value of property included in any land trade involved in the sale of the park;

(5) Proposed improvements to the property to be made by the owner in connection with the sale, or other economic concessions by the owner in connection with the sale, if any;

(6) A statement that the owner will allow reasonable access to the property by parties involved in the potential purchase including but not limited to the tenants' association, consultants, and lenders;

(7) A statement that the owner will make available to the residents copies of any easements either on or off the property to which

the owner is a party and copies of all permits or licenses in force within seven (7) days of a signed purchase and sale agreement with the residents;

(8) A statement that the owner will make available to the residents a survey and legal description of the park, plus an itemized list of monthly operating expenses, utility consumption rates, taxes, insurance and capital expenditures for each of the past three (3) years within seven (7) days of a signed purchase and sale agreement with the residents;

(9) A statement that the owner will make available to the tenants' association the most recent rent roll, a list of tenants, a list of vacant units and a statement of the vacancy rate at the park for the three (3) preceding calendar years within seven (7) days of a signed purchase and sale agreement with the residents;

(10) A statement that the owner will make available to the tenants' association any available data relating to the past and present existence of hazardous waste either on the property or in close proximity within seven (7) days of a signed purchase and sale agreement with the residents;

(11) A statement that the owner will make available to the tenants' association any available data relating to the water, sewer and electrical systems of the park within seven (7) days of a signed purchase and sale agreement with the residents;

(12) A statement that the owner will make available to the tenants' association all income and operating expenses relating to the property to be purchased for the three (3) preceding calendar years within seven (7) days of a signed purchase and sale agreement with the residents and such other information as may be required by the lender; such additional information as required by the lender shall be kept strictly confidential. Any incorporated home owners' association entitled to notice under this section shall have the right to purchase, in the case of a third party bona fide offer to purchase, or to lease in the case of a third party bona fide offer to lease, the said park, provided it meets the same price and the same terms and conditions of any offer of which it is entitled to notice under this section by (1) executing a contract or purchase and sale or lease agreement with the owner within forty-five (45) days of notice of the offer and (2) obtaining any necessary financing or guarantees within an additional one hundred thirty-five (135) days. No owner shall unreasonably refuse to enter into, or unreasonably delay the execution of a purchase and sale or lease agreement with a home owners' association that has made a bona fide offer to meet the same price and the same terms and conditions of an offer for which notice is required to be given pursuant to this section. The deposit monies must be credited to the purchase price of the mobile home park. The incorporated home owners' association will use diligent efforts to obtain a commitment for financing from a lender by making immediate application for financing upon signing of the purchase and sale agreement. In the event that the incorporated home owners' association, with the exercise of reasonable efforts, is unable to obtain necessary financing or comply with other contingencies of the purchase and sale agreement, the incorporated home owners' association shall immediately notify the park owner and the deposit shall be returned to the incorporated home owners' association. If the incorporated home owners' association shall default in the performance of its obligations as a purchaser under the terms of the purchase and sale agreement, the park owner shall have, as sole and exclusive remedy for such default, the right to retain the deposit as liquidated damages in full settlement and discharge of all obligations of the incorporated home owners' association without further recourse in law or equity. Failure of the incorporated home owners' association to execute such a purchase and sale agreement or lease within the forty-five (45) day period or to obtain a binding commitment for financing within the one hundred thirty-five (135) day period shall serve to terminate the right of such association to purchase or lease the mobile park home. Residents shall have a total of one hundred eighty (180) days from the receipt of notice of a bona fide sale to complete a transaction under the right of first refusal legislation. Any delays by the seller in supplying requested information as stated in this legislation or any delay resulting from litigation involving the sale and/or litigation affecting the marketability of the title of the mobile home park shall result in the same number of days over the due date being added to the one hundred eighty (180) days available to the residents for a right of first refusal purchase unless such litigation is frivolous and prompted for the sole purpose of delay by the home owners association. The time periods herein provided may be extended by agreement of the association and the owner. Nothing herein shall be construed to require an owner to provide financing to any association or to prohibit an owner from requiring an association which is offering to lease a park to have within its possession a sum equivalent to the capitalized value of the proposed rent of the park and requiring that a portion of that sum, of an amount necessary to pay the rent on the park for a period of no greater than two (2) years, be kept in escrow for such purpose during the term of the lease.

(c) The right of first refusal created herein shall inure to a home owners' association for the time periods hereinbefore provided, beginning on the date of notice to the home owners' association. The effective period of the right of first refusal shall apply separately for each substantially different bona fide offer to purchase the park or to lease it for a purpose that would result in a discontinuance, and for each offer the same as an offer made more than three (3) months prior to the later offer; provided, however, that in the case of the same offer made by a prospective buyer who has previously made an offer for which notice to a home owners' association was required by this section, the right of first refusal shall apply only if the subsequent offer is made more than six (6) months after the earlier offer. The right of first refusal shall not apply with respect to any offer received by the owner for which notice to a home owners' association is not required pursuant to this section.

(d) No right of first refusal shall apply to a government taking by eminent domain or negotiated purchase, a forced sale pursuant to a foreclosure, transfer by gift, devise, or operation of law, or a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of a park owner.

(e) In any instance in which the incorporated home owners' association of a mobile home park is not the successful purchaser or lessee of the mobile home park, the seller or lessor of the park shall prove compliance with this section by filing an affidavit of compliance in the official land evidence records of the city or town where the property is located within seven (7) days of the sale or lease of the park.

(f) In any instance in which the incorporated homeowners' association of a mobile home park is the successful purchaser or lessee of such mobile home park, said association shall have the right to distinguish in terms of lease conditions and rent and fees as between members of said association and non-members of said association. For purposes of this chapter, members of a homeowners' association and non-members of a homeowners' association shall not be deemed residents of a similar class.

History of Section.
P.L. 1987, ch. 136, § 1; P.L. 1992, ch. 384, § 1; P.L. 1993, ch. 309, § 1; P.L. 1994, ch. 198, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) added the subsection designations; inserted a comma following "acquire" near the middle of the first sentence of subsection (a), and following "devise" in subsection (d); and made several substitutions for the words "such" and "said" throughout the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1994 reenactment of title 31 by P.L. 1994, ch. 134, which were not included in the 1994 amendment. For the extent of the reenactment changes, see the reenactment note above.

In 1994, the compiler substituted "than" for "that" in the last sentence in subsection (b).

31-44-3.2. Mobile home parks — Discontinuance. — (a) In any instance in which a mobile home park is to be sold or leased for any purpose which would result in a discontinuance of the mobile home park, the mobile home park owner shall give at least one year written notice by certified mail return receipt requested to each mobile home resident of the proposed sale or lease. The mobile home park owner shall pay to any resident who is entitled to receive notice pursuant to this section, relocation benefits of up to two thousand ($2,000) dollars or the actual relocation expenses incurred, whichever is less. The relocation benefits shall be payable within ten (10) days of the departure of the resident and the removal of the mobile home unit from the park. In the event that the resident fails to remove the unit from the park and the park owner is required to remove the unit, the relocation benefits shall be reduced by an amount equal to the documented out of pocket moving costs incurred by the park owner for the physical removal of the unit. Any mobile home park owner shall provide to each resident who is entitled to receive relocation benefits pursuant to this section, a rental agreement. The agreement shall begin on the date of the issuance of the

notice of discontinuance. The provisions of the rental agreement shall not alter in any manner the tenancy arrangement existing between the park owner and resident prior to issuance of the notice of discontinuance, except with respect to the amount of annual rent, which may be increased by an amount not to exceed the increase in the consumer price index for urban consumers, published by the United States department of labor, bureau of labor statistics, from the calendar year immediately preceding the date upon which the rental agreement is commenced plus the proportionate amount of any documented increase in real estate taxes or other municipal fee or charge; provided, however, that the total amount of the increase shall not exceed ten percent (10%) of the annual rent charged in the immediately preceding year; and provided, further, that once a resident has received a notice of discontinuance, his or her rent shall not be increased unless a year has passed from the date of the last increase imposed upon the resident.

(b) Any new resident taking up residence at said park, after the initial notice of discontinuance has been mailed shall be given a copy of the notice in hand prior to his or her signing a lease and/or placing his or her unit in the park. The new resident shall be provided a form upon which he or she shall acknowledge in writing having received a copy of the notice.

(c) Any new resident taking up residence at the park after the initial notice of discontinuance has been mailed and who receives a copy of the notice of discontinuance provided for in the preceding paragraph shall not be entitled to any relocation benefits as provided for in this section.

History of Section.
P.L. 1991, ch. 238, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) added the subsection designations; substituted "resident" for "residents" in the first sentence in subsection (b); and made several substitutions for the words "such" and "said" throughout the section.

31-44-4. Sale of mobile and manufactured homes. — (a) No owner of a mobile and manufactured home park shall deny any resident the right to sell his or her mobile and manufactured home owned by him or her while the mobile and manufactured home is in the park or require the resident to remove the mobile and manufactured home because of the sale of the home, except as provided herein.

(b) A mobile and manufactured home park licensee, directly or indirectly engaged in the business of selling mobile and manufactured homes, may impose conditions on the rental or occupancy of a new lot, including the right to sell the first unit or impose an entrance fee on that lot.

(c) An owner of a mobile home or manufactured home remaining within the park may utilize one of the following methods in selling the home to a qualified buyer:

(1) Sell the home through his or her own individual efforts;

(2) List the home with a licensed real estate broker at a commission not to exceed ten percent (10%);

(3) List the home with park licensee at a commission not to exceed ten percent (10%).

The mobile and manufactured home commission shall provide recommendations for screening of prospective purchasers, by the park licensees.

(d) No licensee shall exact a commission or fee with respect to the price realized by the resident, except as provided herein, unless he or she has acted as agent for the resident in a sale pursuant to a written contract.

(e) No owner of a mobile and manufactured home park shall make or enforce any rules which require any resident to sell his or her mobile and manufactured home to the owner.

No owner of a mobile and manufactured home park shall make any rule or enter into a contract, which shall abrogate or limit the tenant's right to place "for sale" signs on or in his or her mobile manufactured housing; provided, however, the park owner may by rule or contract provision impose reasonable limitations as to size, quality registration of the signs, requirements that the posting of the signs be pursuant to bona fide efforts to sell, and removal when the home is no longer being offered for sale. No limitation as to size or quality shall restrict the use of painted or printed signs which are two feet (2') by two feet (2') or less in size and which contains no more than "for sale," "address" and "phone number".

(f) An owner may refuse to sell a mobile and manufactured home, allow a mobile and manufactured home to remain in the park, or to approve entry to the mobile and manufactured home park for good cause. For the purpose of this section, good cause means a reasonable cause for the owner to believe:

(1) That the purchaser will not meet the entry requirements for the park and the entry requirements are equally applied by the owner to all purchasers and prospective residents;

(2) That the purchaser intends to utilize that purchased mobile and manufactured home for an illegal purpose or for any purpose that would disturb the quiet enjoyment of the other residents of the park;

(3) That the purchaser is or will be financially unable to pay the rent for the mobile and manufactured home space or lot upon which the purchased mobile and manufactured home is located;

(4) An owner may require the removal of a mobile home being sold whose age and condition does not meet the standards of mobile homes in the park; or

(5) No owner or operator of a mobile and manufactured home park shall require a mobile or manufactured home at the time of sale or foreclosure, which is safe, sanitary, and in conformance with aesthetic standards, to be removed from the park; provided however, that this clause (5) shall not apply where the owner or operator has initiated such foreclosure as mortgagee.

(g) A mobile and manufactured home shall be presumed to be safe if it is established that the mobile and manufactured home was constructed to any nationally recognized building or construction code or standard. Failure to meet any standard or code, shall raise no presumption that the mobile manufactured home is unsafe; nor may the failure be used as a reason for withholding approval of an on site sale.

(h) The mobile and manufactured home park owner shall have the burden of showing that a mobile and manufactured home is unsafe, unsanitary, or fails to meet the aesthetic standards of the development. No aesthetic standard shall be applied against a mobile and manufactured home if the standard relates to physical characteristics, such as size, original construction materials, or color which cannot be changed without undue hardship to the tenant.

(i) Any homeowner wishing to sell his or her home must request in writing a statement of the park owner's intentions regarding the conditions of the dwelling. Within ten (10) days of the receipt of the request of the homeowner for the park owner's intentions, the park owner must approve the home's condition for resale or deliver a written statement specifying ways in which the home is not safe, sanitary, or in conformance with aesthetic standards. Failure of the park owner to respond within ten (10) days shall be deemed approval of the home's condition for resale;

(j) In the event of resale or resiting of a mobile and manufactured home, the local building official in the town where the mobile and manufactured home is to be located shall, upon the request of either party, inspect the unit and shall issue a certificate of approval in the case of an on site sale or a certificate of occupancy in the case of resiting, to the owner of the unit, provided the authority finds the unit safe for human habitation and the site meets local zoning requirements. A fee of not more than thirty dollars ($30.00) may be charged for the inspection by building officials.

(k) No licensee shall discriminate in the treatment of tenants of mobile and manufactured homes as the result of the sale of the home, whether the tenant is the tenant prior or subsequent to the sale.

(l) Every person who sells a mobile and/or manufactured home shall warrant to the buyer that the home is free and clear of all liens and if the seller violates the warranty, then the seller shall be strictly liable to the buyer in damages.

(m) Every person who sells a mobile and/or manufactured home in this state which will be located at a mobile or manufactured home park in this state and retains a secured interest in the mobile and/or manufactured home shall file a notice of the lien with the recorder of deeds of the city or town within which the park is located as allowed by the provisions of § 34-13-8 and with the uniform commercial code division of the department of state.

(n) Prior to the execution of a purchase and sale agreement, every owner of a mobile and manufactured home park, shall disclose to the

prospective purchaser the rental history for the preceding three (3) years of the land on which the home will be located.

(o) The owner of a mobile and manufactured home park shall not require the purchaser to provide the names of more than three (3) references from whom the park owner can seek information concerning the behavior and financial reliability of the purchaser; nor shall the purchaser be required to obtain a written report from any reference; the park owner shall not require the purchaser to submit copies of any personal income tax returns in order to obtain approval for residency in the park; however, the park owner may require the purchaser to document the amount and source of his or her gross monthly income or means of financial support. If the park owner or management rejects a purchaser as a prospective homeowner, the ownership or management shall inform the selling homeowner in writing no later than ten (10) days of its reasons for the rejection. If the approval of a purchaser is withheld for any reason other than those stated in these articles, the park owner or management may be held liable for all damages proximately resulting therein.

(p) The park owner or management may require the right of prior approval of a purchaser of a mobile and manufactured home that will remain in the park and that the selling homeowner or his or her agent give notice of the sale to the park owner or management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the park unless the park owner or management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park.

(q) If the park owner or management collects a fee or charge from a prospective purchaser of a mobile and manufactured home in order to obtain a financial report or credit rating, the full amount of the fee or charge shall be credited toward payment of the first month's rent for that mobile and manufactured home purchaser.

(r) If, for whatever reason, the prospective purchaser is rejected by the park owner or management, the park owner or management shall refund to the prospective purchaser the full amount of that fee or charge within thirty (30) days from the date of rejection. If the prospective purchaser is approved by the park owner or management, but, for whatever reason, the prospective purchaser elects not to purchase the mobile or manufactured home, the park owner or management may retain the fee, or a portion thereof, to defray its administrative costs under this section.

(s) No owner or operator of a mobile and manufactured home park shall require any person as a precondition to renting, leasing, or otherwise occupying a space for mobile and manufactured housing in a mobile and manufactured home park to pay any fee of any kind, unless services are actually rendered. The park owner or management shall not perform any service unless so requested in writing.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1986, ch. 79, § 2; P.L. 1986, ch. 173, § 1; P.L. 1987, ch. 116, § 1; P.L. 1990, ch. 456, § 1; P.L. 1991, ch. 234, § 1; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) designated previously undesignated paragraphs as subsections, thereby redesignating several subsections; substituted a semicolon for a period at the end of subsection (f)(3), and corrected a misspelling in the word "preceding" in subsection (n), which substitution and correction were first made by the compiler in 1987; inserted "and" following the second occurrence of "mobile" in the first sentence of subsection (g), which insertion was first made by the compiler in 1991; substituted "herein" for "therein" in subsection (d); substituted "; or" for a period at the end of subsection (f)(4); deleted "of secretary" preceding "of state" at the end of subsection (m); and made a series of capitalization, minor punctuation, and stylistic changes, and several substitutions for the words "such" and "said", throughout the section.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

NOTES TO DECISIONS

1. Reasonableness of Standards.
Roof and width standards, which were not shown to have any impact upon the health, safety, or welfare of a mobile home park's residents but instead appeared to reflect the aesthetic preferences of the park's owners, were unreasonable. Andrews v. Brown, 603 A.2d 335 (R.I. 1992).

31-44-5. Reprisals. — (a) No licensee shall take reprisal(s) against a resident or prospective resident.

(b) An increase in rent, nonrenewal of lease, refusal to offer a lease, or termination of tenancy, taken by a licensee against a resident or prospective resident within six (6) months after the resident or prospective resident has taken any protected lawful action, shall create a rebuttable presumption that the act by the licensee is a reprisal. Reprisal may be pleaded as a defense in any court proceeding brought against a resident or prospective resident after he or she has taken any protected lawful action.

(c) In addition to any other remedy under this chapter, a resident or prospective resident who has been the subject of a reprisal shall be entitled to the remedies provided for retaliatory actions in § 34-18-46.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1990, ch. 307, § 1; P.L. 1994, ch. 182, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) deleted the brackets surrounding the word "or" in the first sentence in subsection (b), which word was first inserted by the compiler; and substituted "the act" for "such act", also in the first sentence of subsection (b).

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1994 reenactment of title 31 by P.L. 1994, ch. 134, which were not included in the 1994 amendment. For the extent of the reenactment changes, see the reenactment note above.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-6. Notice of judgment. — In any action to enforce the provisions of this chapter, the clerk of the court shall mail copies of any final judgment, decree, permanent injunction, arbitration decision or order of the court upon the entry thereof to the attorney general and if licenses are involved, the department of business regulation.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-7. Lease. — All terms and conditions of the occupancy must be fully disclosed in a written lease by the mobile and manufactured home park owner to any prospective mobile and manufactured home park resident at a reasonable time prior to the rental or occupancy of a mobile and manufactured home space or lot. The disclosures shall include, but shall not be limited to the following:

(1) The licensee shall agree at all times during the tenancy to:

(i) Maintain the premises when necessary to prevent the accumulation of stagnant water;

(ii) Keep each mobile and manufactured home space or lot marked in such a way that each resident will be certain of his or her area of responsibility;

(iii) Keep any exterior area of the mobile and manufactured home park within his or her control, not the responsibility of each resident, free from any species of weed or plant growth which are noxious or detrimental to the health of the residents;

(iv) Be responsible for the extermination of any insect, rodent, vermin, or other pest dangerous to the health of the residents whenever infestation exists in the area of the mobile and manufactured home park not the responsibility of the resident or in the area for which the resident is responsible including the mobile and manufactured home if the infestation is not the fault of the resident and particularly if the infestation existed prior to the occupancy of the resident claiming relief;

(v) Maintain all mobile and manufactured homes rented by the owner in a condition which is structurally sound and capable of withstanding adverse effects of weather conditions;

(vi) Maintain all electrical, plumbing, gas, or other utilities provided by the licensee in good working condition. In the event of any repairs or construction to any utility in any mobile and manufactured home park, written notice shall be given twenty-four (24) hours prior to such repairs or construction to each tenant of the mobile and manufactured home park, except in cases of emergencies, after which any repair shall be completed within seventy-two (72) hours unless good cause is shown as to why the action or repair has not been completed; no utility shall be discontinued during the repairs or construction for more than three (3) consecutive hours unless the plans have been reviewed by the city or town engineer;

(vii) Maintain all utilities provided to mobile and manufactured homes, and all water and sewage lines and connections in good working order, and in the event of any emergency, make necessary arrangements if possible for the provisions of such service on a temporary basis; and there shall be no additional charge for the use of water because a resident has children;

(viii) If the park operator fails to comply with subdivision (1)(vi) or (1)(vii), the resident may notify the park operator of the resident's intention to correct the condition at the park operator's expense. After being notified by the resident in writing, if the park operator fails to comply within fourteen (14) days or more promptly as conditions reasonably require in case of emergency, the resident may cause the work to be done by a contractor and, after submitting to the park operator an itemized statement, deduct from the resident's rent the actual and reasonable cost of the work.

(ix) Respect the privacy of the resident and if only the mobile and manufactured home space or lot is rented, agree to enter the mobile and manufactured home only with the permission of the owner only after notice to the resident;

(x) Allow all residents freedom of choice in the purchase of all services, pursuant to § 31-44-3 "rules and regulations";

(xi) Allow a resident to terminate a rental agreement whenever a change in the location of the resident's employment requires a change in the location of his or her residence if the resident gives thirty (30) days notice; provided, however, that a resident who is a member of the armed forces of the United States may terminate his or her rental agreement with less than thirty (30) days if he or she receives reassignment orders which do not allow such prior notification;

(xii) Maintain any road in the mobile and manufactured home park within the licensee's control in good condition, provide adequate space for parking of one car for each lot and be responsible for damage to any vehicle, excluding damages from speed bumps, which is the direct result of any unrepaired or poorly maintained access road within the park and that is within the licensee's control;

(xiii) Make reasonable rules for guest parking which shall be clearly stated in the rules of the park;

(xiv) Provide a written lease having a term of not less than one year unless the resident requests, in writing, a term for less than one year, or unless a resident in writing states that he or she does not desire a written lease.

(2) The resident shall agree at all times during the tenancy to:

(i) Keep the unit and his or her area of responsibility as marked by the owner in a clean and sanitary condition, free of garbage and rubbish;

(ii) Keep the supplied, basic facilities including any plumbing fixture, cooking and refrigeration equipment, and electrical fixtures in a rented mobile and manufactured home unit in a clean and sanitary condition and exercise reasonable care in their proper use and operation;

(iii) Observe all reasonable rules and regulations of the licensee concerning the use, occupation, and maintenance of the premises, provided such rules and regulations comply with the provisions of § 31-44-3;

(3) Any action on the part of the resident which may be grounds for eviction from the mobile and manufactured home park or termination of the rental agreement shall be clearly stated therein.

(4) The terms for the payment of rent shall be clearly set forth and any charges for services, mobile and manufactured home space or lot rent, unit rent, or any other charge shall be specifically itemized in the rental agreement and in any billing to the resident by the owner. The total rent for the term of the rental agreement shall be stated therein.

(5) The right of the mobile and manufactured home park owner to designate himself or herself as the sole and exclusive agent for the sale of any mobile and manufactured home pursuant to § 31-44-4 "sale of mobile and manufactured homes" of this chapter shall be clearly stated in the rental agreement.

(6) The lease prescribed by this chapter shall not contain the following:

(i) Any provision allowing less than a seven (7) day grace period in which to pay rent without the assessment of a late charge;

(ii) Any provision allowing the licensee to assess a late charge in excess of five percent (5%) of the monthly rent due;

(iii) Any provision which allows the owner to increase the total rent or change the payment arrangements during the term of the rental agreement; provided however that prorated increases for increased taxes only may be added if stated in the original lease;

(iv) Any provision allowing the owner to charge an entrance fee to a resident assuming occupancy, except as provided herein;

(v) Any provision which denies to the resident the right to treat as a breach of the agreement, a continuing violation by the owner, substantial in nature, of any provisions set forth in the lease or of any state statute unless the owner discontinues such violation within a reasonable time after written notice is given by the resident by registered or certified mail;

(vi) Any provision waiving the restrictions of § 31-44-7.1;

(7) Except as provided herein, the lease shall be signed by both the mobile and manufactured home park licensee and the mobile and manufactured home park resident and shall contain the notice set forth in § 31-44-8, printed verbatim in a clear and conspicuous manner.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 154, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) assigned the present subdivision designations; substituted "rules and regulations" for "'rules and restrictions' of this chapter" in subdivision (1)(x), "the licensee's control" for "their control" twice in subdivision (1)(xii), and "sale of mobile and manufactured homes" for "sale of a mobile and manufactured home" in subdivision (5); substituted a semicolon for a period at the end of subdivisions (1)(vi), (1)(xii), (6)(iii), (6)(iv), and (6)(v), which substitutions were first made by the compiler in 1987; and made a series of minor changes in punctuation and style, along with several substitutions of "the" for "such" and "said", throughout the section.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-7.1. Security deposits. — In any rental agreement for the lease of a mobile home wherein the licensee requires the payment of a security deposit by the resident:

(1) The deposit shall accumulate interest on an annual basis at the rate of three percent (3%).

(2) No deposit will be required which is more than the amount of one month's rent.

(3) The interest shall be paid to the resident annually or upon termination of the rental.

(4) Upon termination of the rental, the licensee shall return the deposit along with accumulated interest within thirty (30) days, or shall provide the resident with a written itemized list of damages caused by the resident during the rental, other than ordinary wear and tear, and return to the resident the difference, if any, between the deposit and interest and the damages sustained.

(5) The resident shall provide the licensee with a forwarding address upon vacating the premises so as to permit the licensee to return the deposit.

(6) If the licensee fails to either return the deposit within thirty (30) days or pay interest on same, he or she shall be liable for damages not to exceed twice the amount of the deposit and three (3) times the amount of interest due.

(7) Any security deposits received by the licensee shall be deposited in a savings account and earmarked specifically as a security deposit account, and that fund shall not be used by the licensee for any purpose except as provided in subdivision (4) of this section.

(8) No security deposit shall be required for the rental of a mobile home lot or space; and any security deposit collected by a mobile home park owner prior to July 10, 1990 shall be refunded in full not later than sixty (60) days.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1990, ch. 308, § 1; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) redesignated subdivisions (a) — (h) as subdivisions (1) — (8); deleted the brackets surrounding the word "than" in subdivision (2), which word was first inserted by the compiler; substituted "July 10, 1990" for "the effective date of this act" twice in subdivision (8); and made a series of capitalization and stylistic changes, and several substitutions for the words "such" and "said", throughout the section.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-7.2. Trailer parks located within the town of Exeter. — Any agreement for the lease of a mobile home or a mobile home lot or space located within the town of Exeter and offered pursuant to the provisions of § 31-44-7, must be in writing and shall not be executed unless each term thereof either shall have been completed in full or shall contain a statement that such terms may not be applicable. All lease agreements executed pursuant to the provisions of this section shall be executed in duplicate original, one of which

shall be provided to the lessee within thirty (30) days of its execution.

History of Section.
P.L. 1986, ch. 422, § 1.

31-44-8. Notice required by law. — The following notice must be given by the licensee to the tenant prior to occupancy:

"The terms of your tenancy must be in accordance with the Rhode Island Mobile and Manufactured Home Act, title 31, chapter 44. Section 31-44-3 requires all the rules and regulations governing your tenancy to be fair and reasonable. Unreasonable rules, or those not in compliance with § 31-44-3, cannot be enforced against you.

"No licensee may offer a mobile and manufactured home or a mobile and manufactured home space or lot for rent without showing to the prospective resident a copy of the written lease before the resident occupies that mobile and manufactured home space or lot. No licensee may rent a mobile and manufactured home or mobile and manufactured home space or lot until a written lease has been signed by the resident and the owner. The term of the lease shall not be less than one year unless the resident requests, in writing, a term for less than one year, or requests in writing that he or she does not desire a written lease.

"The licensee of this park shall not require you to deal exclusively with a certain fuel dealer or other merchant for goods or services in connection with the use or occupancy of your mobile and manufactured home lot unless that restriction is necessary to protect the health, safety, or welfare of mobile and manufactured home residents in the park. If you are required to deal with a certain dealer or merchant, the price you pay for such goods or services may not be more than the prevailing price in this locality for similar goods and services.

"An increase in rent, nonrenewal of lease, refusal to offer a lease, or termination of tenancy which is taken against you by a licensee as a penalty for reporting a violation of the Mobile and Manufactured Home Act or of any applicable building or health code, or for any other justified complaint to a governmental authority is a reprisal and is prohibited by law."

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) made a series of minor changes in punctuation and style, along with several substitutions of "the" and "that" for "such", throughout the section.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-9. Enforceability. — (a) Any provision of this chapter and any provision of a license issued pursuant to this chapter may be enforced by the department of business regulation. In addition and notwithstanding any action taken by or pending at the department of business regulation, any resident of a mobile home park may seek to enforce any provision of a license or this chapter by civil action in the court exercising jurisdiction over the subject matter; provided, however, that failure to comply with tax laws and violations of land use regulations and water supply and sewage disposal requirements shall be subject to the jurisdiction of and shall be enforceable by, the municipality in which the park is located and/or the state agency having regulatory authority over the matter.

(b) Any park owner or operator who violates any of the provisions of §§ 31-44-3, 31-44-3.1, 31-44-3.2, 31-44-4, 31-44-5, 31-44-7, 31-44-7.1, 31-44-7.2, 31-44-8 and 31-44-13 shall be deemed to have engaged in an unfair and deceptive trade practice under § 6-13.1-2 and, in addition to other remedies, shall be subject to the enforcement provisions of that chapter.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1; P.L. 1994, ch. 182, § 1.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-9.1. Remedies. — In addition to any other remedy authorized by law, equity or regulation, the director of the department may order, following notice and opportunity to be heard, the owner and residents of any mobile and manufactured home park to pay monthly rents directly to an interest bearing escrow account established by and under the control of, the director and may make the payment of such amounts to the owner of the mobile and manufactured home park contingent on the owner's submission of satisfactory evidence of compliance with all orders of the director. Upon submission of such evidence of compliance, the director shall promptly cause any escrowed rents to be paid to the owner.

History of Section.
P.L. 1993, ch. 309, § 2.

31-44-9.2. Investigations. — When, in the opinion of the director, sufficient cause exists to begin an investigation of alleged violations of any provision of this chapter or a license issued pursuant to this chapter, the director may commence an investigation of any act or practice or failure to act of any mobile and manufactured home park owner or operator and may bill the costs of such investigation to the mobile home park owner or operator; provided, however, that the investigation fees payable under this section shall not exceed one thousand dollars ($1,000) in any one calendar year unless the director petitions the superior court for the ability to continue the investigation, at which time the director shall demonstrate to the court's

satisfaction that such further investigation is warranted, whereby the fees may exceed one thousand dollars ($1,000).

History of Section.
P.L. 1993, ch. 309, § 2.

31-44-10. Penalty. — Any person who violates the licensing provisions of this chapter may be fined by the department an amount not in excess of five hundred dollars ($500), lose their license according to prescribed procedure, after a hearing. Provided, further, any person violating any of the provisions of this chapter may also be fined by the appropriate court according to existing court procedure.

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

Repealed Sections. For repeal of former section, see the note under this heading following § 31-44-1.

31-44-11. Fiscal autonomy. — All license and permit fees collected pursuant to this chapter, and any fines collected by the department of business regulation for violations related to licenses and permits shall be held and used as specified under § 31-44-1.6. Any revenue so received in excess of the department's expenses used as herein specified shall be carried forward as specified under § 31-44-1.6(3).

History of Section.
P.L. 1984, ch. 382, § 2; P.L. 1993, ch. 309, § 1.

31-44-12. Severability. — If the provisions of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

History of Section.
P.L. 1984, ch. 382, § 2.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted "that invalidity" for "such invalidity", and "this chapter" for "the chapter" twice.

31-44-13. Right of mobile home owners to peaceably assemble — Right to communicate. — (a) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners to peaceably assemble in an open public meeting for any lawful purpose, at reasonable times and in a reasonable manner, in the common areas or recreational areas of the mobile home park.

(b) No provisions contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall infringe upon the right of the mobile home owners or tenants to communicate or assemble among themselves, at reasonable times and in a reasonable manner, for the purpose of discussing any problems relative to the mobile home park. The discussions may be held in the common areas or recreational areas of the park, including halls or centers, or in any resident's home. In addition, the park owner or developer may not unreasonably restrict the use of any facility, including the use of utilities, when requested. Written notice must be provided to the mobile home park management and/or owner of the time and place for such assembly. The assembly shall be open to all park residents.

(c) No provision contained in any bylaw, rental agreement, regulation, or rule pertaining to a mobile home park shall prohibit any mobile home owner of the mobile home park from canvassing mobile home owners of the mobile home park for the purposes described in this subsection. For the purposes of this subsection, the term "canvassing" includes an oral or written request; the distribution, circulation, posting, or publication of a notice; or a general announcement requesting the payment of membership dues or other matters relevant to the membership, federation, or organization. Such canvassing shall be done at a reasonable time or times and in a reasonable manner. It is the intent of the legislature, through the enactment of this subsection, to prohibit any owner, developer, or manager of a mobile and manufactured home park from prohibiting free communication among mobile home owners or tenants in the guise of regulations or rules restricting or limiting canvassing for association, federation, or organization dues or other association, federation, or organization matters.

History of Section.
P.L. 1991, ch. 160, § 1.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) redesignated subsections (1) — (3) as subsections (a) — (c); substituted "The discussions" for "Such discussions" in the second sentence in subsection (b); combined the former two paragraphs of subsection (b) to form one paragraph; and substituted "mobile and manufactured home park" for "mobile/manufactured park", and "organization dues" for "organization's dues", in the last sentence of subsection (c).

31-44-14. Resident owned mobile home parks — Record keeping. — (a) Resident owned mobile home parks shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

(1) The plans, permits, warranties, and other items provided by the developer;

(2) A photocopy of the resident association documents;

(3) A copy of the current rules of the association;

(4) A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners, which minutes shall be retained for a period of not less than seven (7) years;

(5) A current roster of all unit owners and their mailing addresses, unit identification, and, if known, telephone numbers;

(6) All current insurance policies of the association, including a fiduciary bond of the association, and their agents;

(7) A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility;

(8) Bills of sale or transfer for all property owned by the association;

(9) Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years:

(i) Accurate, itemized, and detailed records of all receipts and expenditures.

(ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

(iii) All audits, reviews, accounting statements, and financial reports of the association.

(iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

(10) Ballots, sign-in sheets, voting proxies, and all other papers relating to elections, which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates;

(11) All rental records where the association is acting as agent for the rental unit.

(b) The official records of the association shall be maintained in the city/town in which the resident owned association operates.

(c) The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of such association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member.

(d) *Insurance.* — The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property.

(e) *Financial report.* — Within sixty (60) days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of directors of the association shall mail or furnish to each unit owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amounts of receipts by accounts and receipt classification and shall show the amounts of expenses by accounts and classification including, but not limited to the following:

(1) Cost for security;

(2) Professional and management fees and expenses;

(3) Taxes;

(4) Costs of recreation facilities;

(5) Expenses for refuse collection and utilities;

(6) Expenses for lawn care;

(7) Costs for building maintenance and repair;

(8) Insurance costs;

(9) Administrative and salary expenses;

(10) General reserves, maintenance reserves, and depreciation reserves;

(11) Aging of all rental income and accounts payable.

History of Section.
P.L. 1992, ch. 417, § 1.

Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) deleted a comma following "maintain" and inserted a comma following "applicable" in the introductory language of subsection (a), substituted a period for a comma following "practices" and capitalized "All" in subsection (a)(9), substituted a semicolon for a period at the end of subsection (a)(10), and redesignated subsections (e)(a) — (e)(k) as subsections (e)(1) — (e)(11), which changes were first made by the compiler in 1992; inserted a comma following "warranties" in subsection (a)(1); and redesignated subsections (a)(9)(a) — (a)(9)(d) as subsections (a)(9)(i) — (a)(9)(iv).

31-44-15. Purchase requirement. — (a) All dealers and purchasers of new manufactured homes shall present or buy only housing urban and development (HUD) approved and compliant manufactured structures.

(b) All dealers and purchasers of new manufactured homes are required to record with the local building official data plate wind zone information as part of the installation application. Local building officials shall consider data plate wind zone information as part of their inspection and enforcement process.

History of Section.
P.L. 1994, ch. 269, § 1.

CHAPTER 44.1

MOBILE AND MANUFACTURED HOME LOT RENTAL INCREASES

SECTION.
31-44.1-1. Declaration of policy.
31-44.1-2. Rent increases for mobile and manufactured home lots.
31-44.1-3. Severability.

31-44.1-1. Declaration of policy. — The general assembly finds and hereby declares that the provision of affordable housing is of vital concern to the citizens of the state, that mobile and manufactured homes are an important source for affordable housing, that lot rent increases for such homes are a continuing concern for low and moderate income citizens and the elderly, and that some form of

limited regulation relative to lot rental increases for mobile and manufactured homes is in the public interest.

History of Section.
P.L. 1991, ch. 216, § 1; P.L. 1993, ch. 309, § 4.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted "affordable housing" for "such housing" near the middle of the section, and inserted a comma following "elderly".

31-44.1-2. Rent increases for mobile and manufactured home lots. — (a) Any person who owns, operates, or maintains a mobile and manufactured home park pursuant to the provisions of chapter 44 of title 31 shall give the mobile home owners of the park sixty (60) days written notice prior to any lot rent increase going into effect. The written notice shall set forth the current rent, the proposed rent, and the date upon which the increase shall take effect.

(b) If a majority of the mobile home owners of the park believe that the rent increase is "clearly excessive" as hereinafter defined, they may request in writing from the American Arbitration Association that binding arbitration take place between the park owner or operator and the mobile home owners. The American Arbitration Association will authenticate on a confidential basis the request and the signatures of a majority of the park mobile home owners, who shall be made aware of the costs involved in seeking binding arbitration under this section. For purposes of determining a majority under this section, there shall be one vote per mobile home unit. The names of the mobile homer owners requesting the binding arbitration shall not be disclosed by the American Arbitration Association to the park owner or operator. Upon authentication that a majority of the owners are requesting mediation, the commission shall appoint an impartial and qualified arbitrator, to arbitrate the dispute. The park owner or operator and the mobile home owners will cooperate with the arbitrator in an effort to resolve their differences. The costs and expenses of the arbitrator shall be borne equally by the park owner or operator and the mobile home owners.

(c) A "clearly excessive" rent increase for purposes of this section is an increase which is indefensible based on the park owner's or operator's total expenses, including debt service and a reasonable return on the park owner's investment or, equity in the park.

(d) The arbitrator will promptly hear the dispute and render a decision based on the "clearly excessive" rent increase standard as herein defined. For purposes of determining a reasonable return on the park owner's investment or equity, the arbitrator shall perform a risk analysis and consider alternative and comparative investments. The costs of the arbitration shall be borne by the losing party in the arbitration.

(e) No lot rent increase shall go into effect until the earlier of

(i) Completion of the binding arbitration process or

(ii) One hundred twenty (120) days after the written notice given under subsection (a) of this section.

History of Section.
P.L. 1991, ch. 216, § 1; P.L. 1993, ch. 309, § 4.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) substituted "subsection (a)" for "clause (a)" in subsection (e)(ii); and made a series of minor punctuation changes, and several substitutions of "the" for "such", throughout the section.

31-44.1-3. Severability. — If any clause, sentence, paragraph, subsection, section or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof but will be confined in its operation to the clause, sentence, paragraph, subsection, section or part directly involved in the controversy in which such judgment has been rendered.

History of Section.
P.L. 1993, ch. 309, § 5.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) inserted "subsection" twice.

CHAPTER 45

NOISE LIMITS FOR MOTOR VEHICLES

SECTION.
31-45-1. Noise limits.
31-45-2. Establishment of regulations.
31-45-3. Application.
31-45-4. Penalty.

31-45-1. Noise limits. — (a) No person shall operate a motor vehicle, nor shall the owner of any vehicle allow such vehicle to be operated, at any time, or under any condition of grade, load, acceleration, or deceleration, in such a manner as to exceed the following noise limit based on a distance of fifty feet (50') from the center of the lane of travel within the speed limit. For the purposes of this section, "dbA" means decibels measured with a calibrated sound level meter weighted to the "A" scale.

(b) In speed zones of thirty-five miles per hour (35 mph) or less, not more than eighty-six (86) dbA. In speed zones of more than thirty-five miles per hour (35 mph), not more than ninety (90) dbA.

History of Section.
P.L. 1976, ch. 197, § 1.
Reenactments. The 1994 Reenactment (P.L. 1994, ch. 134, § 1) added the subsection designations; in the first sentence in subsection (a), deleted a comma following "any vehicle", inserted a comma following "acceleration", and substituted "a distance of fifty feet (50')" for "a distance of fifty (50) feet"; made a stylistic change in the second sentence of subsection (a); and, in subsection (b), inserted commas following "less" and the second occurrence of "(35 mph)", and substituted "thirty-five miles per hour (35 m.p.h.)" for "thirty-five (35) miles per hour" twice.

31-45-2. Establishment of regulations. — The director of the department of administration is hereby authorized to adopt such rules, regulations, and procedures to be utilized in the enforcement of this chapter. The director is further authorized to lower the noise standards set forth in this chapter consistent with economic and technological feasibility. The procedure shall allow, to the extent

Attachment E
Elliott Berry

U.S. Department of Labor, Bureau of Labor Statistics
Boston Regional Office, JFK Federal Bldg., Room E-310, Boston, MA 02203
Information: 617 565-2327/Fax: 617 565-4182/Fax-on-demand: 617 565-9167

FAX CODE 9140

CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U)

Northeast

ALL ITEMS

1982-84=100

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	AVG
1983		98.2		98.9		99.5		100.2		101.2		101.7	99.8
1984		103.1		103.8		104.1		105.0		105.7		106.0	104.5
1985		106.8		107.8		108.2		108.6		109.5		110.7	108.4
1986		110.8		110.3		110.6		111.1		112.0		112.5	111.1
1987	113.3	113.6	114.2	115.0	115.4	115.8	116.0	116.9	117.5	118.1	118.3	118.3	116.0
1988	118.9	119.2	119.6	120.4	120.7	121.4	121.8	122.5	123.9	124.1	124.4	124.5	121.8
1989	125.4	125.8	126.7	127.4	128.3	128.5	129.0	129.1	130.0	130.6	131.1	131.3	128.6
1990	132.9	133.1	134.1	134.5	134.7	134.9	136.0	137.4	138.6	139.4	139.7	139.7	136.3
1991	140.9	141.2	141.4	141.6	141.7	142.1	142.4	142.9	143.6	143.7	144.3	144.6	142.5
1992	144.9	145.3	146.2	146.3	146.3	147.0	147.5	148.2	148.5	148.9	149.0	148.9	147.3
1993	149.7	150.4	150.9	151.1	150.8	151.2	151.4	151.7	151.8	152.5	152.7	152.7	151.4
1994	153.2	154.0	154.3	154.4	154.2	154.8	155.2	155.9	156.1	156.4	156.7	156.3	155.1
1995	157.1	157.6	158.0	158.3	158.5	158.9	159.2	159.7	160.0	160.3	160.5	160.5	159.1
1996	161.4	162.2	162.8	162.9	163.0	163.1	163.4	164.0	164.6	165.1	165.4	165.7	163.6
1997	166.2	166.9	167.3	167.1	166.8	167.0	167.6	167.8	168.4	168.7	168.5	168.4	167.6
1998	168.8	169.1	169.3	169.5	169.4	169.6	169.9	170.5	170.6	171.3	171.2	171.2	170.0
1999	171.4	171.6	171.9	172.8	172.8	173.1	173.4	174.1	174.8	175.5	175.5	175.5	173.5
2000	176.1	177.4	178.3										

PERCENT CHANGE FROM 12 MONTHS AGO

1984		5.0		5.0		4.6		4.8		4.4		4.2	4.7
1985		3.6		3.9		3.9		3.4		3.6		4.4	3.7
1986		3.7		2.3		2.2		2.3		2.3		1.6	2.5
1987		2.5		4.3		4.7		5.2		5.4		5.2	4.4
1988	4.9	4.9	4.7	4.7	4.6	4.8	5.0	4.8	5.4	5.1	5.2	5.2	5.0
1989	5.5	5.5	5.9	5.8	6.3	5.8	5.9	5.4	4.9	5.2	5.4	5.5	5.6
1990	6.0	5.8	5.8	5.6	5.0	5.0	5.4	6.4	6.6	6.7	6.6	6.4	6.0
1991	6.0	6.1	5.4	5.3	5.2	5.3	4.7	4.0	3.6	3.1	3.3	3.5	4.5
1992	2.8	2.9	3.4	3.3	3.2	3.4	3.6	3.7	3.4	3.6	3.3	3.0	3.4
1993	3.3	3.5	3.2	3.3	3.1	2.9	2.6	2.4	2.2	2.4	2.5	2.6	2.8
1994	2.3	2.4	2.3	2.2	2.3	2.4	2.5	2.8	2.8	2.6	2.6	2.4	2.4
1995	2.5	2.3	2.4	2.5	2.8	2.6	2.6	2.4	2.5	2.5	2.4	2.7	2.6
1996	2.7	2.9	3.0	2.9	2.8	2.6	2.6	2.7	2.9	3.0	3.1	3.2	2.8
1997	3.0	2.9	2.8	2.6	2.3	2.4	2.6	2.3	2.3	2.2	1.9	1.6	2.4
1998	1.6	1.3	1.2	1.4	1.6	1.6	1.4	1.6	1.3	1.5	1.6	1.7	1.4
1999	1.5	1.5	1.5	1.9	2.0	2.1	2.1	2.1	2.5	2.5	2.5	2.5	2.1
2000	2.7	3.4	3.7										

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P.02

112 S.Ct. 1522
118 L.Ed.2d 153, 60 USLW 4301
(Cite as: 503 U.S. 519, 112 S.Ct. 1522)

John K. YEE, et al., Petitioners
v.
CITY OF ESCONDIDO, CALIFORNIA.

No. 90-1947.

Supreme Court of the United States

Argued Jan. 22, 1992.

Decided April 1, 1992.

Mobile home park owners brought action and claimed that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, amounted to physical occupation of their property entitling them to compensation under the takings clause. The Superior Court of San Diego County, No. N42268, Don Martinson, J., sustained city's demurrer to complaint and dismissed the action. Mobile home park owners appealed. Eleven other cases were consolidated with the mobile home park owners' case. The Court of Appeal, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551, affirmed. Petition for certiorari was filed in eight of the twelve cases. The Supreme Court, Justice O'Connor, held that: (1) the rent control ordinance did not amount to physical taking of park owners' property; (2) whether ordinance violated park owners' substantive due process rights was not properly before the Supreme Court; and (3) whether ordinance constituted regulatory taking was not properly before the Supreme Court.

Affirmed.

Justices Blackmun and Souter concurred in the judgment and filed opinions.

[1] EMINENT DOMAIN ⚖2(1)

148k2(1)
Where government authorizes physical occupation of property, or actually takes title to the property, the takings clause generally requires compensation. U.S.C.A. Const.Amend. 5.

[2] EMINENT DOMAIN ⚖2(1)
148k2(1)
Where government merely regulates use of property, compensation is required under the takings clause only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear burden that should be borne by the public as a whole. U.S.C.A. Const.Amend. 5.

[3] EMINENT DOMAIN ⚖2(1)
148k2(1)
The government effects physical taking only where it requires the landowner to submit to the physical occupation of his land. U.S.C.A. Const.Amend. 5.

[4] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Whether the government floods landowner's property or does no more than require landowner to suffer installation of cable, the takings clause requires compensation if the government authorizes compelled physical invasion of property. U.S.C.A. Const.Amend. 5.

[4] EMINENT DOMAIN ⚖2(10)
148k2(10)
Whether the government floods landowner's property or does no more than require landowner to suffer installation of cable, the takings clause requires compensation if the government authorizes compelled physical invasion of property. U.S.C.A. Const.Amend. 5.

[5] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Local rent control ordinance, when viewed against backdrop of California Mobilehome Residency Law, which limited the bases upon which mobile home park owners could terminate mobile home owner's tenancy, did not amount to compensable taking of mobile home park owners' property; ordinance did not compel park owners to suffer physical occupation of their property since owners voluntarily rented their land to the mobile home owners, and nothing on face of regulatory scheme compelled park owners to continue renting property to tenants. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code §§ 798 et seq., 798.55(a).

[5] LANDLORD AND TENANT ⚖384
233k384
Formerly 233k200.11
Local rent control ordinance, when viewed against backdrop of California Mobilehome Residency Law,

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which limited the bases upon which mobile home park owners could terminate mobile home owner's tenancy, did not amount to compensable taking of mobile home park owners' property; ordinance did not compel park owners to suffer physical occupation of their property since owners voluntarily rented their land to the mobile home owners, and nothing on face of regulatory scheme compelled park owners to continue renting property to tenants. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code §§ 798 et seq., 798.55(a).

[6] FEDERAL COURTS ⚖511.1
170Bk511.1
Formerly 170Bk511
Whether statutory procedure for changing use of mobile home park was in practice "a kind of gauntlet" that prevented mobile home park owners from changing the use of their land and terminating mobile home owner's tenancy could not be considered on petition for certiorari which claimed that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, amounted to physical occupation of mobile home park owners' property entitling the park owners to compensation under the takings clause; park owners did not claim to have run that gauntlet. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[7] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
When landowner decides to rent land to tenants, government may place ceilings on rents landowner can charge, or require landowner to accept tenants he does not like, without automatically having to pay compensation under the takings clause. U.S.C.A. Const.Amend. 5.

[8] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Fact that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, transfers wealth from mobile home park owners to incumbent mobile home owners did not mandate determination that local rent control ordinance amounted to compensable physical taking of mobile home park owners' property; ordinance did not compel mobile home park owners to suffer physical occupation of their property. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[8] LANDLORD AND TENANT ⚖384
233k384
Formerly 233k200.11
Fact that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, transfers wealth from mobile home park owners to incumbent mobile home owners did not mandate determination that local rent control ordinance amounted to compensable physical taking of mobile home park owners' property; ordinance did not compel mobile home park owners to suffer physical occupation of their property. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[9] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Allegation that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, benefited incumbent mobile home owners without benefiting future mobile home owners had nothing to do with whether the ordinance caused compensable physical taking of mobile home park owners' property; ordinance did not require mobile home park owners to submit to the physical occupation of their land. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[10] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Claim that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, deprived mobile home park owners of ability to choose incoming tenants did not mandate determination that ordinance amounted to compensable physical taking of park owners' property; because park owners voluntarily opened their property to occupation by others, park owners could not assert per se right to compensation based on their inability to exclude particular individuals. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[11] FEDERAL COURTS ⚖508
170Bk508
Whether local rent control ordinance violated mobile home park owners' substantive due process rights could not be considered on petition for certiorari which claimed that local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, amounted to compensable physical taking of mobile home park owners' property; owners did not raise substantive due process claim in the state courts, and even if rule against addressing questions not raised below

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were prudential, adherence to the rule would have been appropriate. U.S.C.A. Const.Amends. 5, 14.

[12] CONSTITUTIONAL LAW ⚖46(1)
92k46(1)
Claim that local rent ordinance, when viewed against backdrop of California's Mobilehome Residency Law, amounted to regulatory taking was ripe for judicial review even though mobile home park owners had not sought rent increases; claim amounted to facial challenge to ordinance, and mobile home park owners alleged that ordinance did not substantially advance legitimate state interest no matter how it was applied. U.S.C.A. Const.Amend. 5; West's Ann.Cal.Civ.Code § 798 et seq.

[13] FEDERAL COURTS ⚖508
170Bk508
Although it was unclear whether mobile home park owners made regulatory taking argument below in action which asserted physical taking challenge to local rent control ordinance, regulatory taking argument could have been raised on petition for certiorari; arguments that ordinance constituted taking by physical occupation and by regulation were not separate claims, but, rather, were separate arguments in support of single claim. U.S.C.A. Const.Amend. 5.

[14] FEDERAL COURTS ⚖511.1
170Bk511.1
Formerly 170Bk511
Once federal claim is properly presented, party can make any argument in support of that claim; parties are not limited to precise arguments they made below.

[15] FEDERAL COURTS ⚖511.1
170Bk511.1
Formerly 170Bk511
Whether local rent control ordinance, when viewed against backdrop of California's Mobilehome Residency Law, amounted to compensable regulatory taking of mobile home park owners' property could not be considered on petition for certiorari which claimed that ordinance amounted to compensable physical taking of owners' property; regulatory taking question was not fairly included in question on which certiorari was granted, and prudence dictated awaiting case in which issue was fully litigated below. U.S.C.A. Const.Amend. 5; U.S.Sup.Ct.Rule 14.1(a), 28 U.S.C.A.

****1524** Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The Fifth Amendment's Takings Clause generally requires just compensation where the government authorizes a physical occupation of property. But where the government merely regulates the property's use, compensation is required only if considerations such as the regulation's purpose or the extent to which it deprives the owner of the property's economic use suggests that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. Petitioners, mobile home park owners in respondent Escondido, California, rent pads of land to mobile home owners. When the homes are sold, the new owners generally continue to rent the pads. Under the California Mobilehome Residency Law, the bases upon which a park owner may terminate a mobile home owner's tenancy are limited to, inter alia, nonpayment of rent and the park owner's desire to change the use of his land. The park owner may not require the removal of a mobile home when it is sold and may neither charge a transfer fee for the sale nor disapprove of a purchaser who is able to pay rent. The state law does not limit the rent the park owner may charge, but Escondido has a rent control ordinance setting mobile home rents back to their 1986 levels and prohibiting rent increases without the city council's approval. The Superior Court dismissed lawsuits filed by petitioners and others challenging the ordinance, rejecting the argument that the ordinance effected a physical taking by depriving park owners of all use and occupancy of their property and granting to their tenants, and their tenants' successors, the right to physically permanently occupy and use the property. The Court of Appeal affirmed.

Held:

1. The rent control ordinance does not authorize an unwanted physical occupation of petitioners' property and thus does not amount to a per se taking. Petitioners' argument--that the rent control ordinance authorizes a physical taking because, coupled with the state law's restrictions, it increases a mobile home's value by giving the homeowner the right to occupy the pad indefinitely at a submarket rent--is unpersuasive. The government effects a physical taking only where it requires the landowner

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to submit to the physical occupation of his land. Here, petitioners have voluntarily rented their land to mobile home *520 owners and are not required to continue to do so by either the city or the State. On their face, the laws at issue merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant. Any transfer of wealth from park owners to incumbent mobile home owners in the form of submarket **1525 rent does not itself convert regulation into physical invasion. Additional contentions made by petitioners--that the ordinance benefits current mobile home owners but not future owners, who must purchase the homes at premiums resulting from the homes' increased value, and that the ordinance deprives petitioners of the ability to choose their incoming tenants--might have some bearing on whether the ordinance causes a regulatory taking, but have nothing to do with whether it causes a physical taking. Moreover, the footnote in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 439, n. 17, 102 S.Ct. 3164, 3178, n. 17, 73 L.Ed.2d 868--that a physical taking claim cannot be defeated by an argument that a landlord can avoid a statute's restrictions by ceasing to rent his property, because his ability to rent may not be conditioned on forfeiting the right to compensation for a physical occupation--has no relevance here, where there has been no physical taking. Since petitioners have made no attempt to change how their land is used, this case also presents no occasion to consider whether the statute, as applied, prevents them from making a change. Pp. 1528-1531.

2. Petitioners' claim that the ordinance constitutes a denial of substantive due process is not properly before this Court because it was not raised below or addressed by the state courts. The question whether this Court's customary refusal to consider claims not raised or addressed below is a jurisdictional or prudential rule need not be resolved here, because even if the rule were prudential, it would be adhered to in this case. P. 1531.

3. Also improperly before this Court is petitioners' claim that the ordinance constitutes a regulatory taking. The regulatory taking claim is ripe for review; and the fact that it was not raised below does not mean that it could not be properly raised before this Court, since once petitioners properly raised a taking claim, they could have formulated, in this Court, any argument they liked in support of that claim. Nonetheless, the claim will not be considered because, under this Court's Rule 14.1(a), only questions set forth, or fairly included, in the petition for certiorari are considered. Rule 14.1(a) is prudential, but is disregarded only where reasons of urgency or economy suggest the need to address the unpresented question in the case under consideration. The Rule provides the respondent with notice of the grounds on which certiorari is sought, thus relieving him of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions. It also assists the Court in selecting the cases in which certiorari *52: will be granted. By forcing the parties to focus on the questions the Court views as particularly important, the Rule enables the Court to use its resources efficiently. Petitioners' question presented was whether the lower court erred in finding no physical taking, and the regulatory taking claim is related to, but not fairly included in, that question. Thus, petitioners must overcome the very heavy presumption against consideration of the regulatory taking claim, which they have not done. While that claim is important, lower courts have not reached conflicting results on the claim as they have on the physical taking claim. Prudence also dictates awaiting a case in which the issue was fully litigated below, to have the benefit of developed arguments and lower court opinions squarely addressing the question. Thus, the regulatory taking issue should be left for the California courts to address in the first instance. Pp. 1531-1534.

224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990), affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. BLACKMUN, J., post, p. 1534, and SOUTER, J., post, p. 1535, filed opinions concurring in the judgment.

Robert J. Jagiello, Running Springs, Cal., for petitioners.

**1526 Carter G. Phillips, Washington, D.C., for respondent.

*522 Justice O'CONNOR delivered the opinion of the Court.

[1][2] The Takings Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." Most of our cases interpreting the Clause fall within two distinct

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classes. Where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation. See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 102 S.Ct. 3164, 3171, 73 L.Ed.2d 868 (1982). But where the government merely regulates the use of property, compensatio *52 is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. See, e.g., Penn Central Transportation Co. v. New York City, 438 U.S. 104, 123-125, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978). The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions.

Petitioners own mobile home parks in Escondido, California. They contend that a local rent control ordinance, when viewed against the backdrop of California's Mobilehome Residency Law, amounts to a physical occupation of their property, entitling them to compensation under the first category of cases discussed above.

I

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 mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. Hirsch & Hirsch, Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement Values and Vacancy Decontrol, 35 UCLA L.Rev. 399, 405 (1988). A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.

*524 In 1978, California enacted its Mobilehome Residency Law, Cal.Civ.Code Ann § 798 et seq. (West 1982 and Supp.1991). 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 cha § " 798.55(a).

The Mobilehome Residency Law limits the bases upon which a park owner may terminate a mobile home owner's tenancy. These include the nonpayment of rent, the mobile home owner's violation of law or park rules, and the park owner's desire to change the use of his l 798.56. While a rental agreement is in effect, however, the park owner generally may not require the removal of a mobile home when it is sold § 798.73. The park owner may neither charge a transfer fee for the sale, § 798.72, nor disapprove of the purchaser, provided that the purchaser has the ability to pay the re §, 798.74. The Mobilehome Residency Law contains a **1527 number of other detailed provisions, but none limit the rent the park owner may charge.

In the wake of the Mobilehome Residency Law, various communities in California adopted mobile home rent control ordinances. See Hirsch & Hirsch, supra, at 408-411. The voters of Escondido did the same in 1988 by approving Proposition K, the rent control ordinance challenged here. The ordinance sets rents back to their 1986 levels and prohibits rent increases without the approval of the city council. Park owners may apply to the council for rent increases at any time. The council must approve any increases it determines to be "just, fair and reasonable," after considering the following nonexclusive list of factors: (1) changes in the Consumer Price Index; (2) the rent charged for comparable mobile home pads in Escondido; (3) the length of time since *525 the last rent increase; (4) the cost of any capital improvements related to the pad or pads at issue; (5) changes in property taxes; (6) changes in any rent paid by the park owner for the land; (7) changes in utility charges; (8) changes in operating and maintenance expenses; (9) the need for repairs other than for ordinary wear and tear; (10) the amount and quality of services provided to the affected tenant; and (11) any lawful existing

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lease. Ordinance § 4(g), App. 11-12.

Petitioners John and Irene Yee own the Friendly Hills and Sunset Terrace Mobile Home Parks, both of which are located in the city of Escondido. A few months after the adoption of Escondido's rent control ordinance, they filed suit in San Diego County Superior Court. According to the complaint, "[t]he rent control law has had the effect of depriving the plaintiffs of all use and occupancy of [their] real property and granting to the tenants of mobilehomes presently in The Park, as well as the successors in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiff." Id., at ¶ 6. The Yees requested damages of $6 million, a declaration that the rent control ordinance is unconstitutional, and an injunction barring the ordinance's enforcement. Id., at 5-6.

In their opposition to the city's demurrer, the Yees relied almost entirely on Hall v. Santa Barbara, 833 F.2d 1270 (CA9 1987), cert. denied, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), which had held that a similar mobile home rent control ordinance effected a physical taking under Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). The Yees candidly admitted that "in fact, the Hall decision was used [as] a guide in drafting the present Complaint." 2 Tr. 318, Points & Authorities in Opposition to Demurrer 4. The Superior Court nevertheless sustained the city's demurrer and dismissed the Yees' complaint. App. to Pet. for Cert. C-42.

The Yees were not alone. Eleven other park owners filed similar suits against the city shortly afterwards, and all were *526 dismissed. By stipulation, all 12 cases were consolidated for appeal; the parties agreed that all would be submitted for decision by the California Court of Appeal on the briefs and oral argument in the Yee case.

The Court of Appeal affirmed, in an opinion primarily devoted to expressing the court's disagreement with the reasoning of Hall. The court concluded: "Loretto in no way suggests that the Escondido ordinance authorizes a permanent physical occupation of the landlord's property and therefore constitutes a per se taking." 224 Cal.App.3d 1349, 1358, 274 Cal.Rptr. 551, 557 (1990). The California Supreme Court denied review. App. to Pet. for Cert. B-41.

Eight of the twelve park owners, including the Yees, joined in a petition for certiorari. We granted certiorari, 502 U.S. 905, 112 S.Ct. 294, 116 L.Ed.2d 239 (1991), to resolve the conflict between the decision below and those of two of the Federal Courts of Appeals, in Hall, supra, and Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (CA3 1990).

**1528 II

Petitioners do not claim that the ordinary rent control statutes regulating housing throughout the country violate the Takings Clause. Brief for Petitioners 7, 10. **C Pennell v. San Jose, 485 U.S. 1, 12, n. 6, 108 S.Ct. 849, 858, n. 6, 99 L.Ed.2d 1 (1988)**; Loretto, supra, 458 U.S. at 440, 102 S.Ct. at 3178. Instead, their argument is predicated on the unusual economic relationship between park owners and mobile home owners. Park owners may no longer set rents or decide who their tenants will be. As a result, according to petitioners, any reduction in the rent for a mobile home pad causes a corresponding increase in the value of a mobile home, because the mobile home owner now owns, in addition to a mobile home, the right to occupy a pad at a rent below the value that would be set by the free market. Cf. Hirsch & Hirsch, 35 UCLA L.Rev., at 425. Because under the California Mobilehome Residency Law the park owner cannot evict a mobi *527 home owner or easily convert the property to other uses, the argument goes, the mobile home owner is effectively a perpetual tenant of the park, and the increase in the mobile home's value thus represents the right to occupy a pad at below-market rent indefinitely. And because the Mobilehome Residency Law permits the mobile home owner to sell the mobile home in place, the mobile home owner can receive a premium from the purchaser corresponding to this increase in value. The amount of this premium is not limited by the Mobilehome Residency Law or the Escondido ordinance. As a result, petitioners conclude, the rent control ordinance has transferred a discrete interest in land--the right to occupy the land indefinitely at a submarket rent--from the park owner to the mobile home owner. Petitioners contend that what has been transferred from park owner to mobile home owner is no less than a right of physical occupation of the park owner's land.

[3][4][5] This argument, while perhaps within the

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scope of our regulatory taking cases, cannot be squared easily with our cases on physical takings. The government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land. "This element of required acquiescence is at the heart of the concept of occupation." FCC v. Florida Power Corp., 480 U.S. 245, 252, 107 S.Ct. 1107, 1112, 94 L.Ed.2d 282 (1987). Thus whether the government floods a landowner's property, Pumpelly v. Green Bay Co., 13 Wall. 166, 20 L.Ed. 557 (1872), or does no more than require the landowner to suffer the installation of a cable, Loretto, supra, the Takings Clause requires compensation if the government authorizes a compelled physical invasion of property.

But the Escondido rent control ordinance, even when considered in conjunction with the California Mobilehome Residency Law, authorizes no such thing. Petitioners voluntarily rented their land to mobile home owners. At least on the face of the regulatory scheme, neither the city nor the State compels petitioners, once they have rented their property *528 to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with 6 or 12 months notice. Cal.Civ.Code Ann § 798.56(g). Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government. See Florida Power, supra, 480 U.S. at 252-253, 107 S.Ct. at 1112-1113. While the "right to exclude" is doubtless, as petitioners assert, "one of the most essential sticks in the bundle of rights that are commonly characterized as property," Kaiser Aetna v. United States, 444 U.S. 164, 176, 100 S.Ct. 383, 391, 62 L.Ed.2d 332 (1979), we do not find that right to have been taken from petitioners on the mere face of the Escondido ordinance.

[6] Petitioners suggest that the statutory procedure for changing the use of a mobil **1529 home park is in practice "a kind of gauntlet," in that they are not in fact free to change the use of their land. Reply Brief for Petitioners 10, n. 16. Because petitioners do not claim to have run that gauntlet, however, this case provides no occasion to consider how the procedure has been applied to petitioners' property, and we accordingly confine ourselves to the face of the statute. See Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 493-495, 107 S.Ct. 1232, 1246-1247, 94 L.Ed.2d 472 (1987). A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy. See Florida Power, supra, 480 U.S., at 251-252, n. 6, 107 S.Ct., at 1111-1112, n. 6; see also Nollan v. California Coastal Comm'n, 483 U.S. 825, 831-832, 107 S.Ct. 3141, 3145-3146, 97 L.Ed.2d 677 (1987); Fresh Pond Shopping Center, Inc. v. Callahan, 464 U.S. 875, 877, 104 S.Ct. 218, 219, 78 L.Ed.2d 215 (1983) (REHNQUIST, J., dissenting).

[7] On their face, the state and local laws at issue here merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant. "This Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship *52 in particular without paying compensation for all economic injuries that such regulation entails." Loretto, 458 U.S., at 440, 102 S.Ct., at 3178. See also Florida Power, supra, 480 U.S., at 252, 107 S.Ct., at 1112 ("statutes regulating the economic relations of landlords and tenants are not per se takings"). When a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge, see, e.g., **Pennell, supra, 485 U.S., at 12, n. 6, 108 S.Ct., at 857- 858, n.** , or require the landowner to accept tenants he does not like, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 261, 85 S.Ct. 348, 359, 13 L.Ed.2d 258 (1964), without automatically having to pay compensation. See also PruneYard Shopping Center v. Robins, 447 U.S. 74, 82-84, 100 S.Ct. 2035, 2041-2042, 64 L.Ed.2d 741 (1980). Such forms of regulation are analyzed by engaging in the "essentially ad hoc, factual inquiries" necessary to determine whether a regulatory taking has occurred. Kaiser Aetna, supra, 444 U.S., at 175, 100 S.Ct., at 390. In the words of Justice Holmes, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922).

[8] Petitioners emphasize that the ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. Ordinary rent control often transfers wealth from landlords to tenants by reducing the landlords' income and the tenants' monthly payments, although

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it does not cause a one-time transfer of value as occurs with mobile homes. Traditional zoning regulations can transfer wealth from those whose activities are prohibited to their neighbors; when a property owner is barred from mining coal on his land, for example, the value of his property may decline but the value of his neighbor's property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more visible than in the ordinary case, see Epstein, Rent Control and the Theory of Efficient Regulation, 54 Brooklyn L.Rev. 741, 758- 759 (1988), but the existen *53(of the transfer in itself does not convert regulation into physical invasion.

[9] Petitioners also rely heavily on their allegation that the ordinance benefits incumbent mobile home owners without benefiting future mobile home owners, who will be forced to purchase mobile homes at premiums. Mobile homes, like motor vehicles, ordinarily decline in value with age. But the **153(effect of the rent control ordinance, coupled with the restrictions on the park owner's freedom to reject new tenants, is to increase significantly the value of the mobile home. This increased value normally benefits only the tenant in possession at the time the rent control is imposed. See Hirsch & Hirsch, 35 UCLA L.Rev., at 430-431. Petitioners are correct in citing the existence of this premium as a difference between the alleged effect of the Escondido ordinance and that of an ordinary apartment rent control statute. Most apartment tenants do not sell anything to their successors (and are often prohibited from charging "key money"), so a typical rent control statute will transfer wealth from the landlord to the incumbent tenant and all future tenants. By contrast, petitioners contend that the Escondido ordinance transfers wealth only to the incumbent mobile home owner. This effect might have some bearing on whether the ordinance causes a regulatory taking, as it may shed some light on whether there is a sufficient nexus between the effect of the ordinance and the objectives it is supposed to advance. See Nollan v. California Coastal Comm'n, supra, 483 U.S., at 834-835, 107 S.Ct., at 3147-3148. But it has nothing to do with whether the ordinance causes a physical taking. Whether the ordinance benefits only current mobile home owners or all mobile home owners, it does not require petitioners to submit to the physical occupation of their land.

[10] The same may be said of petitioners' contention that the ordinance amounts to compelled physical occupation because it deprives petitioners of the ability to choose their incomi *531 tenants. [FN*] Again, this effect may be relevant to a regulatory taking argument, as it may be one factor a reviewing court would wish to consider in determining whether the ordinance unjustly imposes a burden on petitioners that should "be compensated by the government, rather than remain[ing] disproportionately concentrated on a few persons." Penn Central Transportation Co. v. New York City, 438 U.S., at 124, 98 S.Ct., at 2659. But it does not convert regulation into the unwanted physical occupation of land. Because they voluntarily open their property to occupation by others, petitioners cannot assert a per se right to compensation based on their inability to exclude particular individuals. See Heart of Atlanta Motel, Inc. v. United States, 379 U.S., at 261, 85 S.Ct., at 359, see also id., at 259, 85 S.Ct., at 358 ("[A]ppellant has no 'right' to select its guests as it sees fit, free from governmental regulation"); PruneYard Shopping Center v. Robins, 447 U.S., at 82-84, 100 S.Ct., at 2041-2042.

> FN* Strictly speaking, the Escondido rent control ordinance only limits rents. Petitioners' inability to select their incoming tenants is a product of the State's Mobilehome Residency Law, the constitutionality of which has never been at issue in this case. (The State, moreover, has never been a party.) But we understand petitioners to be making a more subtle argument--that before the adoption of the ordinance they were able to influence a mobile home owner's selection of a purchaser by threatening to increase the rent for prospective purchasers they disfavored. To th extent the rent control ordinance deprives petitioners of this type of influence, petitioners' argument is one we must consider.

Petitioners' final line of argument rests on a footnote in Loretto, in which we rejected the contention that "the landlord could avoid the requirements of [the statute forcing her to permit cable to be permanently placed on her property] by ceasing to rent the building to tenants." We found this possibility insufficient to defeat a physical taking claim, because "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." Loretto, 458 U.S., at 439, n. 17, 102 S.Ct., at 3178 n. 17. Petitioners argue that if they have to leave the mobile home park business in order to avoid the strictures of the Escondi *53(ordinance, their

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ability to rent their property has in fact been conditioned on such a forfeiture. This argument fails at its base, however, because there has simply been no compelled physical occupation giving rise to a right to compensation that **1531 petitioners could have forfeited. Had the city required such an occupation, of course, petitioners would have a right to compensation, and the city might then lack the power to condition petitioners' ability to run mobile home parks on their waiver of this right. Cf. Nollan v. California Coastal Comm'n, 483 U.S., at 837, 107 S.Ct., at 3148. But because the ordinance does not effect a physical taking in the first place, this footnote in Loretto does not help petitioners.

With respect to physical takings, then, this case is not far removed from FCC v. Florida Power Corp., 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987), in which the respondent had voluntarily leased space on its utility poles to a cable television company for the installation of cables. The Federal Government, exercising its statutory authority to regulate pole attachment agreements, substantially reduced the annual rent. We rejected the respondent's claim that "it is a taking under Loretto for a tenant invited to lease at a rent of $7.15 to remain at the regulated rent of $1.79." Id., 480 U.S., at 252, 107 S.Ct., at 1112. We explained that "it is the invitation, not the rent, that makes the difference. The line which separates [this case] from Loretto is the unambiguous distinction between a ... lessee and an interloper with a government license." Id., at 252-253, 107 S.Ct., at 1112. The distinction is equally unambiguous here. The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of petitioners' property. It is a regulation of petitioners' use of their property, and thus does not amount to a per se taking.

III

In this Court, petitioners attempt to challenge the ordinance on two additional grounds: They argue that it constitutes a denial of substantive due process and a regulatory *533 taking. Neither of these claims is properly before us. The first was not raised or addressed below, and the second is not fairly included in the question on which we granted certiorari.

A

[11] The Yees did not include a due process claim in their complaint. Nor did petitioners raise a due process claim in the Court of Appeal. It was not until their petition for review in the California Supreme Court that petitioners finally raised a substantive due process claim. But the California Supreme Court denied discretionary review. Such a denial, as in this Court, expresses no view as to the merits. See People v. Triggs, 8 Cal.3d 884, 890-891, 106 Cal.Rptr. 408, 412, 506 P.2d 232, 236 (1973). In short, petitioners did not raise a substantive due process claim in the state courts, and no state court has addressed such a claim.

In reviewing the judgments of state courts under the jurisdictional grant of 28 U.S.C § 1257, the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below. Illinois v. Gates, 462 U.S. 213, 218-220, 103 S.Ct. 2317, 2321-2323, 76 L.Ed.2d 527 (1983). While we have expressed inconsistent views as to whether this rule is jurisdictional or prudential in cases arising from state courts, see ibid., we need not resolve the question here. (In cases arising from federal courts, the rule is prudential only. See, e.g., Carlson v. Green, 446 U.S. 14, 17, n. 2, 100 S.Ct. 1468, 1470, n. 2, 64 L.Ed.2d 15 (1980).) Even if the rule were prudential, we would adhere to it in this case. Because petitioners did not raise their substantive due process claim below, and because the state courts did not address it, we will not consider it here.

B

[12] As a preliminary matter, we must address respondent's assertion that a regulatory taking claim is unripe because petitioners have not sought rent increases. While **1532 respondent is correct that a claim that the ordinance effects a regulat*534 taking as applied to petitioners' property would be unripe for this reason, see Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186-197, 105 S.Ct. 3108, 3116-3122, 87 L.Ed.2d 126 (1985), petitioners mount a facial challenge to the ordinance. They allege in this Court that the ordinance does not " 'substantially advance' " a " 'legitimate state interest' " no matter how it is applied. See Nollan v. California Coastal Comm'n, supra, 483 U.S., at 834, 107 S.Ct., at 3147; Agins v. Tiburon, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980). As this allegation does not depend on the extent to which petitioners are deprived of the

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economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe. See Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S., at 495, 107 S.Ct., at 1247; Agins, supra, 447 U.S., at 260, 100 S.Ct., at 2141.

[13] We must also reject respondent's contention that the regulatory taking argument is not properly before us because it was not made below. It is unclear whether petitioners made this argument below: Portions of their complaint and briefing can be read either to argue a regulatory taking or to support their physical taking argument. For the same reason it is equally ambiguous whether the Court of Appeal addressed the issue. Yet petitioners' regulatory taking argument stands in a posture different from their substantive due process claim.

[14] Petitioners unquestionably raised a taking claim in the state courts. The question whether the rent control ordinance took their property without compensation, in violation of the Fifth Amendment's Takings Clause, is thus properly before us. Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71, 78, n. 2, 108 S.Ct. 1645, 1650, n. 2, 100 L.Ed.2d 62 (1988); Gates, supra, 462 U.S., at 219-220, 103 S.Ct., at 2322-2323; Dewey v. Des Moines, 173 U.S. 193, 197-198, 19 S.Ct. 379, 380-381, 43 L.Ed. 665 (1899). Petitioners' arguments that the ordinance constitutes a taking in two different *535 ways, by physical occupation and by regulation, are not separate claims. They are, rather, separate arguments in support of a single claim--that the ordinance effects an unconstitutional taking. Having raised a taking claim in the state courts, therefore, petitioners could have formulated any argument they liked in support of that claim here.

A litigant seeking review in this Court of a claim properly raised in the lower courts thus generally possesses the ability to frame the question to be decided in any way he chooses, without being limited to the manner in which the question was framed below. While we have on occasion rephrased the question presented by a petitioner, see, e.g., Ankenbrandt v. Richards, 502 U.S. 1023, 112 S.Ct. 855, 116 L.Ed.2d 764 (1992), or requested the parties to address an important question of law not raised in the petition for certiorari, see, e.g., Payne v. Tennessee, 498 U.S. 1080, 111 S.Ct. 1407, 112 L.Ed.2d 1038 (1991), by and large it is the petitioner himself who controls the scope of the question presented. The petitioner can generally frame the question as broadly or as narrowly as he sees fit.

The framing of the question presented has significant consequences, however, because under this Court's Rule 14.1(a), "[o]nly the questions set forth in the petition, or fairly included therein, will be considered by the Court." While "[t]he statement of any question presented will be deemed to comprise every subsidiary question fairly included therein," ibid., we ordinarily do not consider questions outside those presented in the petition for certiorari. See, e.g., Berkemer v. McCarty, 468 U.S. 420, 443, n. 38, 104 S.Ct. **1533 3138, 3152, n. 38, 82 L.Ed.2d 317 (1984). This rule is prudential in nature, but we disregard it "only in the most exceptional cases," Stone v. Powell, 428 U.S. 465, 481, n. 15, 96 S.Ct. 3037, 3046, n. 15, 49 L.Ed.2d 1067 (1976), where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration.

Rule 14.1(a) serves two important and related purposes. First, it provides the respondent with notice of the grounds upon which the petitioner is seeking certiorari, and enable *536 the respondent to sharpen the arguments as to why certiorari should not be granted. Were we routinely to consider questions beyond those raised in the petition, the respondent would lack any opportunity in advance of litigation on the merits to argue that such questions are not worthy of review. Where, as is not unusual, the decision below involves issues on which the petitioner does not seek certiorari, the respondent would face the formidable task of opposing certiorari on every issue the Court might conceivably find present in the case. By forcing the petitioner to choose his questions at the outset, Rule 14.1(a) relieves the respondent of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions.

Second, Rule 14.1(a) assists the Court in selecting the cases in which certiorari will be granted. Last Term alone we received over 5,000 petitions for certiorari, but we have the capacity to decide only a small fraction of these cases on the merits. To use our resources most efficiently, we must grant

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certiorari only in those cases that will enable us to resolve particularly important questions. Were we routinely to entertain questions not presented in the petition for certiorari, much of this efficiency would vanish, as parties who feared an inability to prevail on the question presented would be encouraged to fill their limited briefing space and argument time with discussion of issues other than the one on which certiorari was granted. Rule 14.1(a) forces the parties to focus on the questions the Court has viewed as particularly important, thus enabling us to make efficient use of our resources.

[15] We granted certiorari on a single question pertaining to the Takings Clause: "Two federal courts of appeal have held that the transfer of a premium value to a departing mobilehome tenant, representing the value of the right to occupy at a reduced rate under local mobilehome rent control ordinances, constitute[s] an impermissible taking. Was it error for the state appellate court to disregard the rulings an(*537 hold that there was no taking under the fifth and fourteenth amendments?" This was the question presented by petitioners. Pet. for Cert. i. It asks whether the court below erred in disagreeing with the holdings of the Courts of Appeals for the Third and Ninth Circuits in Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (CA3 1990), and Hall v. Santa Barbara, 833 F.2d 1270 (CA9 1987), cert. denied, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988). These cases, in turn, held that mobile home ordinances effected physical takings, not regulatory takings. Fairly construed, then, petitioners' question presented is the equivalent of the question "Did the court below err in finding no physical taking?"

Whether or not the ordinance effects a regulatory taking is a question related to the one petitioners presented, and perhaps complementary to the one petitioners presented, but it is not "fairly included therein." Consideration of whether a regulatory taking occurred would not assist in resolving whether a physical taking occurred as well; neither of the two questions is subsidiary to the other. Both might be subsidiary to a question embracing both--Was there a taking?--but they exist side by side, neither encompassing the other. Cf. American Nat. Bank & Trust Co. of Chicago v. Haroco, Inc., 473 U.S. 606, 608, 105 S.Ct. 3291, 3292, 87 L.Ed.2d 437 (1985) (question whether complaint adequately alleges conduct of racketeering enterprise is not fairly included i **153(question whether statute requires that plaintiff suffer damages through defendant's conduct of such an enterprise).

Rule 14.1(a) accordingly creates a heavy presumption against our consideration of petitioners' claim that the ordinance causes a regulatory taking. Petitioners have not overcome that presumption. While the regulatory taking question is no doubt important, from an institutional perspective it is not as important as the physical taking question. The lower courts have not reached conflicting results, so far as we know, on whether similar mobile home rent *53 control ordinances effect regulatory takings. They have reached conflicting results over whether such ordinances cause physical takings; such a conflict is, of course, a substantial reason for granting certiorari under this Court's Rule 10. Moreover, the conflict is between two courts whose jurisdiction includes California, the State with the largest population and one with a relatively high percentage of the Nation's mobile homes. Forum shopping is thus of particular concern. See Azul Pacifico, Inc. v. Los Angeles, 948 F.2d 575, 579 (CA9 1991) (mobile home park owners may file physical taking suits in either state or federal court). Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question. See Lytle v. Household Mfg., Inc., 494 U.S. 545, 552, n. 3, 110 S.Ct. 1331, 1336, n. 3, 108 L.Ed.2d 504 (1990) ("Applying our analysis ... to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion"). In fact, were we to address the issue here, we would apparently be the first court in the Nation to determine whether an ordinance like this one effects a regulatory taking. We will accordingly follow Rule 14.1(a), and consider only the question petitioners raised in seeking certiorari. We leave the regulatory taking issue for the California courts to address in the first instance.

IV

We made this observation in Loretto:

"Our holding today is very narrow. We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation.

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> We do not, however, question the equally substantial authority upholding a St *539 broad power to impose appropriate restrictions upon an owner's use of his property." 458 U.S., at 441, 102 S.Ct., at 3179.

We respected this distinction again in Florida Power, where we held that no taking occurs under Loretto when a tenant invited to lease at one rent remains at a lower regulated rent. Florida Power, 480 U.S., at 252-253, 107 S.Ct., at 1112-1113. We continue to observe the distinction today. Because the Escondido rent control ordinance does not compel a landowner to suffer the physical occupation of his property, it does not effect a per se taking under Loretto. The judgment of the Court of Appeal is accordingly

Affirmed.

Justice BLACKMUN, concurring in the judgment.

I agree with the Court that the Escondido ordinance is not a taking under this Court's analysis in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). I also conclude that the substantive due process and regulatory taking claims are not properly raised in this Court. For that reason, I, unlike the Court, do not decide whether the regulatory taking claim is or is not ripe, or wh **153 petitioners' arguments would or would not be relevant to such a claim.

Justice SOUTER, concurring in the judgment.

I concur in the judgment and would join the Court's opinion except for its references to the relevance and significance of petitioners' allegations to a claim of regulatory taking.

END OF DOCUMENT

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Attachment G

Richard PENNELL and Tri-County Apartment House Owners Association, Appellants
v.
CITY OF SAN JOSE and City Council of San Jose.

No. 86-753.

Supreme Court of the United States

Argued Nov. 10, 1987.

Decided Feb. 24, 1988.

Landlord and landlords' association brought action for declaratory and injunctive relief against city, attacking constitutionality of city rent control ordinance. The Superior Court, Santa Clara County, Bruce F. Allen, J., held that provision allowing hearing officer to consider "hardship to a tenant" when determining whether to approve rent increase proposed by landlord was unconstitutional, but upheld annual fee levied under ordinance on each rental unit, and both sides appealed. The Court of Appeal, 201 Cal.Rptr. 728, affirmed, and both sides appealed. The California Supreme Court, 42 Cal.3d 365, 228 Cal.Rptr. 726, 721 P.2d 1111, reversed in part, determining that tenant hardship provision was not facially unconstitutional, and landlord and landlords' association appealed. The Supreme Court, Chief Justice Rehnquist, held that: (1) landlords had standing to challenge ordinance's constitutionality; (2) contention that application of ordinance's tenant hardship provisions violated takings clause was premature; and (3) ordinance did not on its face violate due process clause or equal protection clause.

Affirmed.

Justice Scalia filed opinion concurring in part and dissenting in part in which Justice O'Connor joined.

Justice Kennedy took no part in the consideration or decision of this case.

[1] ASSOCIATIONS ⚿20(1)

41k20(1)
"Associational or representational standing" requires actual injury redressable by court, that association's members would otherwise having standing to sue in their own right, that interests association seeks to protect are germane to association's purpose and that neither claim asserted nor relief requested requires participation of individual members in lawsuit. U.S.C.A. Const. Art. 3, § 1 et seq.
See publication Words and Phrases for other judicial constructions and definitions.

[2] CONSTITUTIONAL LAW ⚿42(1)
92k42(1)
Application of constitutional standing requirement is not mechanical exercise. U.S.C.A. Const. Art. 3, § 1 et seq.

[3] FEDERAL CIVIL PROCEDURE ⚿103.5
170Ak103.5
Upon challenge to standing on basis of pleadings, the Supreme Court of the United States accepts as true all material allegations of complaint and construes complaint in favor of complaining party. U.S.C.A. Const. Art. 3, § 1 et seq.

[4] MUNICIPAL CORPORATIONS ⚿121
268k121
Landlord and landlords' association had standing to challenge constitutionality of city rent control ordinance allowing hearing officer to consider, among other factors "hardship to a tenant" when determining whether to approve rent increase proposed by landlord, even though complaint did not allege that landlords had "hardship tenants" who might trigger ordinance's hearing process or that they had been or would be aggrieved by hearing officer's determination that certain proposed rent increase was unreasonable on ground of tenant hardship; allegation that landlords' properties were subject to ordinance and statement at oral argument that association represented most of residential unit owners in city and had many hardship tenants raised likelihood of enforcement of ordinance, with concomitant probability that rent would be reduced below what landlord would otherwise be able to obtain, so as to sustain landlords' burden of demonstrating realistic danger of sustaining direct injury as result of ordinance's operation or enforcement. U.S.C.A. Const. Art. 3, § 1 et seq.

[5] FEDERAL COURTS ⚿445
170Bk445
Parties litigating in the Supreme Court of the United States should take pains to supplement record in any manner necessary to enable Court to address with as much precision as possible any question of standing

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that may be raised. U.S.C.A. Const. Art. I § 1 et seq.

[6] EMINENT DOMAIN ⚖2(1)
148k2(1)
Fifth Amendment's just compensation provision is designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by public as a whole. U.S.C.A. Const.Amend. 5.

[7] CONSTITUTIONAL LAW ⚖46(1)
92k46(1)
Constitutionality of statutes ought not be decided except in actual factual setting that makes such decision necessary, particularly in takings cases. U.S.C.A. Const.Amends. 5, 14.

[8] MUNICIPAL CORPORATIONS ⚖121
268k121
Landlords' contention that city rent control ordinance's tenant hardship provision violated takings clause, alleging that reducing, because of tenant hardship, what would otherwise be "reasonable" rent under other, objective factors specified in ordinance, relating to landlord's cost or rental market's condition, accomplished taking and transfer of landlord's property to individual hardship tenants, was premature, absent evidence that tenant hardship provision had in fact ever been relied upon by hearing officer to reduce rent as alleged, particularly where ordinance did not require that hearing officer in fact reduce proposed rent increase on grounds of tenant hardship, but rather, only required that tenant hardship be considered. U.S.C.A. Const.Amends. 5, 14.

[9] CONSTITUTIONAL LAW ⚖298(1)
92k298(1)
State price-control regulation that is arbitrary, discriminatory, or demonstrably irrelevant to policy that legislature is free to adopt violates Due Process Clause. U.S.C.A. Const.Amends. 5, 14.

[10] CONSTITUTIONAL LAW ⚖298(1)
92k298(1)
Government's intervention in marketplace to regulate rates or prices that are artificially inflated as result of monopoly or near monopoly does not violate Due Process Clause. U.S.C.A. Const.Amends. 5, 14.

[11] LANDLORD AND TENANT ⚖200.11
233k200.11
City rent control ordinance's purpose of preventing unreasonable rent increases caused by city's housing shortage was legitimate exercise of city's police powers. U.S.C.A. Const.Amends. 5, 14.

[12] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
States have broad power to regulate housing conditions in general and landlord- tenant relationship in particular without paying compensation for all economic injuries that such regulation entails. U.S.C.A. Const.Amends. 5, 14.

[12] LANDLORD AND TENANT ⚖200.10
233k200.10
States have broad power to regulate housing conditions in general and landlord- tenant relationship in particular without paying compensation for all economic injuries that such regulation entails. U.S.C.A. Const.Amends. 5, 14.

[13] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Statutes regulating economic relations of landlords and tenants are not per se takings. U.S.C.A. Const.Amends. 5, 14.

[14] CONSTITUTIONAL LAW ⚖298(1)
92k298(1)
For purposes of due process analysis, protection of consumer welfare is legitimate and rational goal of price or rate regulation. U.S.C.A. Const.Amends. 5, 14.

[15] LANDLORD AND TENANT ⚖200.10
233k200.10
Protection of tenants is primary purpose of rent control.

[16] CONSTITUTIONAL LAW ⚖278.3
92k278.3
Provision in city rent control ordinance that hearing officer may consider tenant's hardship, among other factors, in finally fixing reasonable rent, did not render ordinance facially invalid under Fourteenth Amendment's due process clause; ordinance's scheme represented rational attempt to accommodate conflicting interests of protecting tenants from burdensome rent increases and from costs of dislocation while at same time ensuring that landlords were guaranteed fair return on their investment. U.S.C.A. Const.Amend. 14.

[16] LANDLORD AND TENANT ⚖200.11

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233k200.11
Provision in city rent control ordinance that hearing officer may consider tenant's hardship, among other factors, in finally fixing reasonable rent, did not render ordinance facially invalid under Fourteenth Amendment's due process clause; ordinance's scheme represented rational attempt to accommodate conflicting interests of protecting tenants from burdensome rent increases and from costs of dislocation while at same time ensuring that landlords were guaranteed fair return on their investment. U.S.C.A. Const.Amend. 14.

[17] CONSTITUTIONAL LAW ⚖228.3
92k228.3
In face of Equal Protection challenge to city rent control ordinance, city was only required to show that classification scheme embodied in ordinance was rationally related to legitimate state interest. U.S.C.A. Const.Amend. 14.

[18] CONSTITUTIONAL LAW ⚖213.1(2)
92k213.1(2)
Statute that does not burden suspect class or fundamental interest will not be overturned on Equal Protection grounds unless varying treatment of different groups of persons is so unrelated to achievement of any combination of legitimate purposes as to compel conclusion that legislature's actions were irrational. U.S.C.A. Const.Amend. 14.

[19] CONSTITUTIONAL LAW ⚖228.3
92k228.3
City rent control ordinance allowing hearing officer to consider, among other factors, "hardship to a tenant" when determining whether to approve rent increase proposed by landlord did not, on its face, violate Equal Protection Clause; treating landlords differently on basis of whether they had hardship tenants was rationally related to legitimate purpose of protecting tenants. U.S.C.A. Const.Amend. 14.

[19] LANDLORD AND TENANT ⚖200.11
233k200.11
City rent control ordinance allowing hearing officer to consider, among other factors, "hardship to a tenant" when determining whether to approve rent increase proposed by landlord did not, on its face, violate Equal Protection Clause; treating landlords differently on basis of whether they had hardship tenants was rationally related to legitimate purpose of protecting tenants. U.S.C.A. Const.Amend. 14.

****852** Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***01** Under a San Jose, Cal., rent control ordinance (Ordinance), a landlord may automatically raise the annual rent of a tenant in possession by as much as eight percent, but if a tenant objects to a higher increase, a hearing is required to determine whether the landlord's proposed increase is "reasonable under the circumstances," and the hearing officer is directed to consider specified factors, including "the hardship to a tenant." Appellants, an individual landlord and Tri-County Apartment House Owners Association (Association), which represents owners and lessors of real property located in San Jose, filed a state-court action seeking a declaration that the Ordinance, particularly the "tenant hardship" provision, is facially invalid under the Federal Constitution. The court entered judgment on the pleadings in appellants' favor, and the California Court of Appeal affirmed. However, the California Supreme Court reversed, rejecting appellants' arguments under the Takings Clause of the Fifth Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Held:

1. Appellants have standing to challenge the Ordinance's constitutionality, even though they did not allege that either the individual appellant or appellant Association's members have "hardship tenants" who might trigger the Ordinance's hearing process, or that they have been or will be aggrieved by a hearing officer's determination that a certain proposed rent increase is unreasonable on the ground of tenant hardship. When standing is challenged on the basis of the pleadings, all material allegations of the complaint must be taken as true, and the complaint must be construed in favor of the complaining party. Appellants alleged that their properties are subject to the Ordinance, and stated at oral argument that the Association represents "most of the residential unit owners in the city and [has] many hardship tenants." Thus, the likelihood of enforcement of the Ordinance, with the concomitant probability that a rent will be reduced below what the landlord would otherwise be able to obtain, is a sufficient threat of actual injury to satisfy Art. III's requirement that a plaintiff who challenges a law

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must demonstrate a realistic danger of sustaining a direct injury as a result of the law's operation or enforcement. Pp. 854-855.

2. Appellants' contention that application of the Ordinance's tenant hardship provision violates the Takings Clause--since reducing, because of tenant hardship, what would otherwise be a "reasonable" rent under the other, objective factors specified in the Ordinance relating to the landlord's costs or the rental market's condition, accomplishes a taking and transfer of the landlord's property to individual hardship tenants--is premature. There is no evidence that the tenant hardship provision has in fact ever been relied upon by a hearing officer to reduce a rent below the figure it would have been set at on the basis of the other specified factors. In addition, the Ordinance does not require that a hearing officer in fact reduce a proposed rent increase on grounds of tenant hardship, but only makes it mandatory that tenant hardship be considered. In takings cases, the constitutionality of laws should not be decided except in an actual factual setting that makes such a decision necessary. Pp. 856-857.

3. The mere provision in the Ordinance that a hearing officer may consider the tenant's hardship in finally fixing a reasonable rent does not render the Ordinance facially invalid under the Due Process Clause. The Ordinance's purpose of preventing unreasonable rent increas **85 caused by the city's housing shortage is a legitimate exercise of appellees' police powers. Moreover, there is no merit to appellants' argument that it is arbitrary, discriminatory, or demonstrably irrelevant for appellees to attempt to accomplish the additional goal of reducing the burden of housing costs on low-income tenants by requiring that "hardship to a tenant" be considered in determining the amount of excess rent increase that is "reasonable under the circumstances." The protection of consumer welfare is a legitimate and rational goal of price or rate regulation. The Ordinance's scheme represents a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment. Pp. 857-859.

4. The Ordinance, on its face, does not violate the Equal Protection Clause. Its classification scheme is rationally related to the legitim * purpose of protecting tenants. It is not irrational for the Ordinance to treat landlords differently on the basis of whether or not they have hardship tenants. Pp. 858-859.

42 Cal.3d 365, 228 Cal.Rptr. 726, 721 P.2d 1111 (1986), affirmed.

REHNQUIST, C.J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, J., joined, post, p. ----. KENNEDY, J., took no part in the consideration or decision of the case.

Harry D. Miller argued the cause for appellants. With him on the briefs were Burch Fitzpatrick and Gary E. Rosenberg.

Joan R. Gallo argued the cause for appellees. With her on the brief was George Rios.*

* Briefs of amici curiae urging reversal were filed for the California Association of Realtors by William M. Pfeiffer; for the National Apartment Association et al. by Jon D. Smock, Wilbur H. Haines III, and Jeffrey J. Gale; for the National Association of Realtors by William D. North; for the National Multi Housing Council by Lawrence B. Simons and Michael E. Fine; for the Rent Stabilization Association of New York City, Inc., et al. by Erwin N. Griswold; and for the Washington Legal Foundation by Daniel J. Popeo, Paul D. Kamenar, and Todd Natkin.

Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union et al. by John A. Powell, Steven R. Shapiro, Helen Hershkoff, Paul L. Hoffman, and Mark Rosenbaum; for the American Federation of Labor and Congress of Industrial Organizations by Robert M. Weinberg and Laurence Gold; for the Asian Law Alliance et al. by Brenton Rogozen; for the Center for Constitutional Rights by Frank E. Deale; for the National Housing Law Project by David B. Bryson; for the National Institute of Municipal Law Officers by William I. Thornton, Jr., Roger F. Cutler, Roy D. Bates, and William H. Taube; and for the U.S. Conference of Mayors et al. by Benna Ruth Solomon and H. Bartow Farr III.

Briefs of amici curiae were filed for the city of Santa Monica et al. by Joseph Lawrence, Karl M. Manheim, Joel M. Levy, Hadassa K. Gilbert, Manuela Albuquerque, Raymond E. Ott, Mary Jo

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Levinger, Marc G. Hynes, Jayne W. Williams, K. Duane Lyders, Louise H. Renne, Roger T. Picquet, Steven A. Amerikaner, Mark G. Sellers, and John M. Powers; for the Competitive Enterprise Institute by Sam Kazman; and for the National Association of Home Builders et al. by Gus Bauman.

*4 Chief Justice REHNQUIST delivered the opinion of the Court.

This case involves a challenge to a rent control ordinance enacted by the city of San Jose, California, that allows a hearing officer to consider, among other factors, the "hardship to a tenant" when determining whether to approve a rent increase proposed by a landlord. Appellants Richard Pennell and the Tri-County Apartment House Owners Association sued in the Superior Court of Santa Clara County seeking a declaration that the ordinance, in particular the "tenant hardship" provisions, are "facially unconstitutional and therefore ... illegal and void." The Superior Court entered judgment on the pleadings in favor of appellants, sustaining their claim that the tenant hardship provisions violated the Takings Clause of the Fifth Amendment, as made applicable to the States by the Fourteenth Amendment. The California Court of Appeal affirmed this judgment, 154 Cal.App.3d 1019, 201 Cal.Rptr. 728 (1984), but the Supreme Court of California reversed, 42 Cal.3d 365, 228 Cal.Rptr. 726, 721 P.2d 1111 (1986), each by a divided vote. The majority of the Supreme Court rejected appellants' arguments under the Takings Clause and the Equal Protection and Due Process Clauses of the Fourteenth Amendment; the dissenters in that court thought that the tenant hardship provisions were a "forced subsidy imposed on the landlord" in violation of the Takings Clause. Id., at 377, 228 Cal.Rptr., at 734, 721 P.2d, at 1119. On appellants' appeal to this Court we postponed consideration of the question of jurisdiction, 480 U.S. 905, 107 S.Ct. 1346, 94 L.Ed.2d 517 (1987), and now having heard oral argument we affirm the judgment of the Supreme Court of California.

The city of San Jose enacted its rent control ordinance (Ordinance) in 1979 with the stated purpose of

> "alleviat[ing] some of the more immediate needs created by San Jose's housing situation. These needs include but are not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship *5 upon individual tenants, and the assurance to landlords of a fair and reasonable return **854 on the value of their property." San Jose Municipal Ordinance 19696, § 5701.2. [FN1]

> FN1. In order to be consistent with the decisions below, we refer throughout this opinion to the sections of the Ordinance as originally designated. We note, however, that the San Jose Municipal Code has recently been recodified and the Ordinance now appears at Chapter 17.23 of the new Code.

At the heart of the Ordinance is a mechanism for determining the amount by which landlords subject to its provisions may increase the annual rent which they charge their tenants. A landlord is automatically entitled to raise the rent of a tenant in possession [FN2] by as much as eight percent; if a tenant objects to an increase greater than eight percent, a hearing is required before a "Mediation Hearing Officer" to determine whether the landlord's proposed increase is "reasonable under the circumstances." The Ordinance sets forth a number of factors to be considered by the hearing officer in making this determination, including "the hardship to a tenant. 5703.28(c)(7). Because appellants concentrate their attack on the consideration of this factor, we set forth the relevant provision of the Ordinance in full:

> FN2. Unde ¦ 5703.3, the Ordinance does not apply to rent or rent increases for new rental units first rented after the Ordinance takes e §ct, 5703.3(a), to the rental of a unit that has been voluntarily vacated, § 5703.3(b)(1), or to the rental of a unit that is vacant as a result of eviction for certain specified acts, § 5703.3(b)(2).

"5703.29. Hardship to Tenants. In the case of a rent increase or any portion thereof which exceeds the standard set in Section 5703.28(a) or (b), then with respect to such excess and whether or not to allow same to be part of the increase allowed under this Chapter, the Hearing Officer shall consider the economic and financial hardship imposed on the present tenant or tenants of the unit or units to which such increases apply. If, on balance, the Hearing Officer determines that the proposed increase *6 constitutes an unreasonably severe financial or economic hardship on a particular tenant, he may order that the excess of the increase which is subject to consideration under subparagraph (c) of Section 5703.28, or any portion thereof, be disallowed. Any tenant whose

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household income and monthly housing expense meets [certain income requirements] shall be deemed to be suffering under financial and economic hardship which must be weighed in the Hearing Officer's determination. The burden of proof in establishing any other economic hardship shall be on the tenant."

If either a tenant or a landlord is dissatisfied with the decision of the hearing officer, the Ordinance provides for binding arbitration. A landlord who attempts to charge or who receives rent in excess of the maximum rent established as provided in the Ordinance is subject to criminal and civil penalties.

[1] Before we turn to the merits of appellants' contentions we consider the claim of appellees that appellants lack standing to challenge the constitutionality of the Ordinance. The original complaint in this action states that appellant Richard Pennell "is an owner and lessor of 109 rental units in the City of San Jose." Appellant Tri-County Apartment House Owners Association (Association) is said to be "an unincorporated association organized for the purpose of representing the interests of the owners and lessors of real property located in the City of San Jose." App. 2-3. The complaint also states that the real property owned by appellants is "subject to the terms of" the Ordinance. But, appellees point out, at no time did appellants allege that either Pennell or any member of the Association has "hardship tenants" who might trigger the Ordinance's hearing process, nor did they specifically allege that they have been or will be aggrieved by the determination of a hearing officer that a certain proposed rent increase is unreasonable on the ground of tenant hardship. As appellees put it, "[a]t **855 this point in time, it is speculative" *7 whether any of the Association's members will be injured in fact by the Ordinance's tenant hardship provisions. Thus, appellees contend, appellants lack standing under either the test for individual standing, see, e.g., Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982) (individual standing requires an " 'actual injury redressable by the court' "), or the test for associational standing, see Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977) (an association has standing on behalf of its members only when "its members would otherwise have standing to sue in their own right"). [FN3]

FN3. Our cases also impose two additional requirements for associational or representational standing: the interests the organization seeks to protect must be "germane to the organization's purpose," Hunt, 432 U.S at 343, 97 S.Ct., at 2441, and "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit," ibid. See also Automobile Workers v. Brock, 477 U.S. 274, 281-282, 106 S.Ct. 2523, 2529, 91 L.Ed.2d 228 (1986). Both of these requirements are satisfied here. The Association was "organized for the purpose of representing the interests of the owners and lessors of real property" in San Jose in this lawsuit, App. 3, and the facial challenge that the Association makes to the Ordinance does not require the participation of individual landlords.

[2][3][4] We must keep in mind, however, that "application of the constitutional standing requirement [is not] a mechanical exercise," Allen v. Wright, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984), and that when standing is challenged on the basis of the pleadings, we "accept as true all material allegations of the complaint, and ... construe the complaint in favor of the complaining party," Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975); see also Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 109, 99 S.Ct. 1601, 1612, 60 L.Ed.2d 66 (1979). Here, appellants specifically alleged in their complaint that appellants' properties are "subject to the terms of" the Ordinance, and they stated at oral argument that the Association represents "most of the residential unit owners in the city and [has] many hardship tenants," Tr. of Oral Arg. 42; see also id., at 7; Reply Brief for Appellants 2 * Accepting the truth of these statements, which appellees do not contest, it is not "unadorned speculation," Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 44, 96 S.Ct. 1917, 1927, 48 L.Ed.2d 450 (1976), to conclude that the Ordinance will be enforced against members of the Association. The likelihood of enforcement, with the concomitant probability that a landlord's rent will be reduced below what he or she would otherwise be able to obtain in the absence of the Ordinance, is a sufficient threat of actual injury to satisfy Art. III's requirement that "[a] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." Babbitt v. Farm Workers, 442 U.S. 289, 298, 99 S.Ct. 2301, 2308, 60 L.Ed.2d 895 (1979). [FN4]

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FN4. Appellees also argue that Pennell lacks standing individually because in early 1987 he sold the properties he owned at the time the complaint in this action was filed. See Brief for Appellees 8. In a declaration submitted to the Court, Pennell admits that he sold these properties, but states that he recently repurchased and now owns one of the apartment buildings in San Jose that he formerly owned. Declaration of Richar Pennell ¶ 7. That property was and still is "subject to the Ordinance." Id., ¶ 8. Because we conclude that the Association has standing and that therefore we have jurisdiction over this appeal, we find it unnecessary to decide whether Pennell's sale and repurchase of the property affects his standing here.

[5] This said, we recognize that the record in this case leaves much to be desired in terms of specificity for purposes of determining the standing of appellants to challenge this Ordinance. Undoubtedly this is at least in part a reflection of the fact that the case originated in a state court where Art. III's proscription agains **85(advisory opinions may not apply. We strongly suggest that in future cases parties litigating in this Court under circumstances similar to those here take pains to supplement the record in any manner necessary to enable us to address with as much precision as possible any question of standing that may be raised.

[6] Turning now to the merits, we first address appellants' contention that application of the Ordinance's tenant hardship provisions violates the Fifth and Fourteenth Amendment *! prohibition against taking of private property for public use without just compensation. In essence, appellants' claim is as follow 5703.28 of the Ordinance establishes the seven factors that a hearing officer is to take into account in determining the reasonable rent increase. The first six of these factors are all objective, and are related either to the landlord's costs of providing an adequate rental unit, or to the condition of the rental market. Application of these six standards results in a rent that is "reasonable" by reference to what appellants contend is the only legitimate purpose of rent control: the elimination of "excessive" rents caused by San Jose's housing shortage. When the hearing officer then takes into account "hardship to a tenant" purs §t to 5703.28(c)(7) and reduces the rent below the objectively "reasonable" amount established by the first six factors, this additional reduction in the rent increase constitutes a "taking." This taking is impermissible because it does not serve the purpose of eliminating excessive rents--that objective has already been accomplished by considering the first six factors--instead, it serves only the purpose of providing assistance to "hardship tenants." In short, appellants contend, the additional reduction of rent on grounds of hardship accomplishes a transfer of the landlord's property to individual hardship tenants; the Ordinance forces private individuals to shoulder the "public" burden of subsidizing their poor tenants' housing. As appellants point out, "[i]t is axiomatic that the Fifth Amendment's just compensation provision is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' " First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 318-319, 107 S.Ct. 2378, 2388, 96 L.Ed.2d 250 (1987) (quoting Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960)).

[7][8] We think it would be premature to consider this contention on the present record. As things stand, there simply is no evidence that the "tenant hardship clause" has in fact e' *1(been relied upon by a hearing officer to reduce a rent below the figure it would have been set at on the basis of the other factors set forth in the Ordinance. In addition, there is nothing in the Ordinance requiring that a hearing officer in fact reduce a proposed rent increase on grounds of tenant hardship. Section 5703.29 does make it mandatory that hardship be considered--it states that "the Hearing Officer shall consider the economic hardship imposed on the present tenant"--but it then goes on to state that if "the proposed increase constitutes an unreasonably severe financial or economic hardship ... he may order that the excess of the increase" be disallowed. § 5703.29 (emphasis added). Given the "essentially ad hoc, factual inquir[y]" involved in the takings analysis, Kaiser Aetna v. United States, 444 U.S. 164, 175, 100 S.Ct. 383, 390, 62 L.Ed.2d 332 (1979), we have found it particularly important in takings cases to adhere to our admonition that "the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary." Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264, 294-295, 101 S.Ct. 2352, 2369-2370, 69 L.Ed.2d 1 (1981). In Virginia Surface Mining, for example, we found that a challenge to the Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U.S.C § 1201 et seq., was "premature," 452 U.S., at 296, n. 3' **857 101 S.Ct., at 2370, n. 37, and "not ripe for judicial resolution," id., at 297,

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101 S.Ct., at 2371, because the property owners in that case had not identified any property that had allegedly been taken by the Act, nor had they sought administrative relief from the Act's restrictions on surface mining. Similarly, in this case we find that the mere fact that a hearing officer is enjoined to consider hardship to the tenant in fixing a landlord's rent, without any showing in a particular case as to the consequences of that injunction in the ultimate determination of the rent, does not present a sufficiently concrete factual setting for the adjudication of the takings claim appellants raise here. Cf. CIO v. McAdory, 325 U.S. 472, 475-476, 65 S.Ct. 1395, 1397, 89 L.Ed. 1741 (1945) (declining to consider the validity of a state statute when the record did n *11 show that the statute would ever be applied to any of the petitioner's members). [FN5]

FN5. For this reason we also decline to address appellants' contention that applicat § of 5703.28(c)(7) to reduce an otherwise reasonable rent increase on the basis of tenant hardship violates the Fourteenth Amendment's due process and equal protection requirements. See Hodel v. Indiana, 452 U.S. 314, 335-336, 101 S.Ct. 2376, 2388-2389, 69 L.Ed.2d 40 (1981) (dismissing as "premature" a due process challenge to the civil penalty provision of the Surface Mining Act because "appellees have made no showing that they were ever assessed civil penalties under the Act, much less that the statutory prepayment requirement was ever applied to them or caused them any injury").

Appellants and several amici also argue that the Ordinance's combination of lower rents for hardship tenants and restrictions on a landlord's power to evict a tenant amounts to a physical taking of the landlord's property. We decline to address this contention not only because it was raised for the first time in this Court, but also because it; too, is premised on a hearing officer's actually granting a lower rent to a hardship tenant.

[9][10][11][12][13][14][15][16] Appellants also urge that the mere provision in the Ordinance that a hearing officer may consider the hardship of the tenant in finally fixing a reasonable rent renders the Ordinance "facially invalid" under the Due Process and Equal Protection Clauses, even though no landlord ever has its rent diminished by as much as one dollar because of the application of this provision. The standard for determining whether a state price-control regulation is constitutional under the Due Process Clause is well established: "Price control is 'unconstitutional ... if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt....' " Permian Basin Area Rate Cases, 390 U.S. 747, 769-770, 88 S.Ct. 1344, 1361, 20 L.Ed.2d 312 (1968) (quoting Nebbia v. New York, 291 U.S. 502, 539, 54 S.Ct. 505, 517, 78 L.Ed. 940 (1934)). In other contexts we have recognized that the government may intervene in the marketplace to regulate rates or prices that are artificially inflated as a result of the existence of a monopoly or near monopoly, see, e.g., FCC v. Florida Power Corp., 480 U.S. 245, 250-254, 107 S.Ct. 1107, 1111-1113, 94 L.Ed.2d 282 (1987) (approving limits on rates charged to cable companies for access to telephone poles); FPC v. Texaco Inc., 417 U.S. 380, 397-398, 94 S.Ct. 2315, 2326-2327, 41 L.Ed.2d 141 (1974) (recognizing that federal regulation of the natural *12 gas market was in response to the threat of monopoly pricing), or a discrepancy between supply and demand in the market for a certain product, see, e.g., Nebbia v. New York, supra, 291 U.S., at 530, 538, 54 S.Ct., at 513, 516 (allowing a minimum price for milk to offset a "flood of surplus milk"). Accordingly, appellants do not dispute that the Ordinance's asserted purpose of "prevent[ing] excessive and unreasonable rent increases" caused by the "growing shortage of and increasing demand for housing in the City of San Jose, § 5701.2, is a legitimate exercise of appellees' police powers. [FN6] Cf. Bloc **85t v. Hirsh, 256 U.S. 135, 156, 41 S.Ct. 458, 459, 65 L.Ed. 865 (1921) (approving rent control in Washington, D.C., on the basis of Congress' finding that housing in the city was "monopolized"). They do argue, however, that it is "arbitrary, discriminatory, or demonstrably irrelevant," Permian Basin Area Rate Cases, supra, 390 U.S., at 769-770, 88 S.Ct. at 1361, for appellees to attempt to accomplish the additional goal of reducing the burden of housing costs on low-income tenants by requiring that "hardship to a tenant" be considered in determining the amount of excess rent increase that is "reasonable under the circumstances" pursuant t § 5703.28. [FN7] As appellants put it, "[t]he objective of alleviating individual tenant hardship is ... not a 'policy the legislature is free to adopt' in a rent control ordinance." Reply Brief for Appellants 16.

FN6. Appellants do not claim, as do some amici, that rent control is per se a taking. We stated in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), that we have "consistently affirmed that States have broad power to regulate housing

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conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." Id., at 440, 102 S.Ct., at 3178 (citing, inter alia, Bowles v. Willingham, 321 U.S. 503, 517-518, 64 S.Ct. 641, 648-649, 88 L.Ed. 892 (1944)). And in FCC v. Florida Power Corp., 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987), we stated that "statutes regulating the economic relations of landlords and tenants are not per se takings." Id., at 252, 107 S.Ct., at 1112. Despite amici 's urgings, we see no need to reconsider the constitutionality of rent control per se.

FN7. As we noted above, see n. 5, supra, to the extent that appellants' due process argument is based on the claim that the Ordinance forces landlords to subsidize individual tenants, that claim is premature and not presented by the facts before us.

*13 We reject this contention, however, because we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare. See, e.g., Permian Basin Area Rate Cases, supra, 390 U.S., at 770, 88 S.Ct., at 1361; FPC v. Hope Natural Gas Co., 320 U.S. 591, 610-612, 64 S.Ct. 281, 291-292, 88 L.Ed. 333 (1944) ("The primary aim of [the Natural Gas Act] was to protect consumers against exploitation at the hands of natural gas companies"). Indeed, a primary purpose of rent control is the protection of tenants. See, e.g., Bowles v. Willingham, 321 U.S. 503, 513, n. 9, 64 S.Ct. 641, 646, n. 9, 88 L.Ed. 892 (1944) (one purpose of rent control is "to protect persons with relatively fixed and limited incomes, consumers, wage earners ... from undue impairment of their standard of living"). Here, the Ordinance establishes a scheme in which a hearing officer considers a number of factors in determining the reasonableness of a proposed rent increase which exceeds eight percent and which exceeds the amount deemed reasonable under eithe § 5703.28(a) o § 5703.28(b). The first six factors § 5703.28(c) focus on the individual landlord--the hearing officer examines the history of the premises, the landlord's costs, and the market for comparable housing. Section 5703.28(c)(5) also allows the landlord to bring forth any other financial evidence--including presumably evidence regarding his own financial status--to be taken into account by the hearing officer. It is in only this context that the Ordinance allows tenant hardship to be considered and, under § 5703.29, "balance[d]" with the other factors set out in § 5703.28(c). Within this scheme § 5703.28(c) represents a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment. Cf. Bowles v. Willingham, supra, at 517, 64 S.Ct., at 648 (considering, but rejecting, the contention that rent control must be established "landlord by landlord, as in the fashion of utility rates"). We accordingly find that the Ordinance, which so carefully considers both the individual circumstances of the landlord and *14 the tenant before determining whether to allow an additional increase in rent over and above certain amounts that are deemed reasonable, does not on its face violate the Fourteenth Amendment's Due Process Clause. [FN8]

FN8. The consideration of tenant hardship also serves the additional purpose, not stated on the face of the Ordinance, of reducing the costs of dislocation that might otherwise result if landlords were to charge rents to tenants that they could not afford. Particularly during a housing shortage, the social costs of the dislocation of low-income tenants can be severe. By allowing tenant hardship to be considered under § 5703.28(c), the Ordinance enables appellees to "fine tune" their rent control to take into account the risk that a particular tenant will be forced to relocate as a result of a proposed rent increase.

**859 [17][18][19] We also find that the Ordinance does not violate the Amendment's Equal Protection Clause. Here again, the standard is deferential; appellees need only show that the classification scheme embodied in the Ordinance is "rationally related to a legitimate state interest." New Orleans v. Dukes, 427 U.S. 297, 303, 96 S.Ct. 2513, 2517, 49 L.Ed.2d 511 (1976). As we stated in Vance v. Bradley, 440 U.S. 93, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979), "we will not overturn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." Id., at 97, 99 S.Ct., at 943. In light of our conclusion above that the Ordinance's tenant hardship provisions are designed to serve the legitimate purpose of protecting tenants, we can hardly conclude that it is irrational for the Ordinance to treat certain landlords differently on the basis of whether or not they have hardship tenants. The Ordinance distinguishes between landlords because

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doing so furthers the purpose of ensuring that individual tenants do not suffer "unreasonable" hardship; it would be inconsistent to state that hardship is a legitimate factor to be considered but then hold that appellees could not tailor the Ordinance so that only legitimate hardship cases are redressed. Cf. Woods v. Cloyd W. Miller Co., 333 U.S. 138, 145, 68 S.Ct. 421, 425, 92 L.Ed. 596 (1948) *15 (Congress "need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest"). We recognize, as appellants point out, that in general it is difficult to say that the landlord "causes" the tenant's hardship. But this is beside the point--if a landlord does have a hardship tenant, regardless of the reason why, it is rational for appellees to take that fact into consideration und[illegible] § 5703.28 of the Ordinance when establishing a rent that is "reasonable under the circumstances."

For the foregoing reasons, we hold that it is premature to consider appellants' claim under the Takings Clause and we reject their facial challenge to the Ordinance under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The judgment of the Supreme Court of California is accordingly

Affirmed.

Justice KENNEDY took no part in the consideration or decision of this case.

Justice SCALIA, with whom Justice O'CONNOR joins, concurring in part and dissenting in part.

I agree that the tenant hardship provision of the Ordinance does not, on its face, violate either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. I disagree, however, with the Court's conclusion that appellants' takings claim is premature. I would decide that claim on the merits, and would hold that the tenant hardship provision of the Ordinance effects a taking of private property without just compensation in violation of the Fifth and Fourteenth Amendments.

I

Appellants contend that any application of the tenant hardship provision of the San Jose Ordinance would effect an uncompensated taking of private property because that provision does not substantially advance legitimate state interests and because it improperly imposes a public burden on individual *16 landlords. I can understand how such a claim--that a law applicable to the plaintiffs is, root and branch, invalid--can be readily rejected on the merits **860 by merely noting that at least some of its applications may be lawful. But I do not understand how such a claim can possibly be avoided by considering it "premature." Suppose, for example, that the feature of the rental ordinance under attack was a provision allowing a hearing officer to consider the race of the apartment owner in deciding whether to allow a rent increase. It is inconceivable that we would say judicial challenge must await demonstration that this provision has actually been applied to the detriment of one of the plaintiffs. There is no difference, it seems to me, when the facial, root-and-branch challenge rests upon the Takings Clause rather than the Equal Protection Clause.

The Court confuses the issue by relying on cases, and portions of cases, in which the Takings Clause challenge was not (as here) that the law in all its applications took property without just compensation, but was rather that the law's application in regulating the use of particular property so severely reduced the value of that property as to constitute a taking. It is in that context, and not (as the Court suggests) generally, that takings analysis involves an "essentially ad hoc, factual inquir[y]," Kaiser Aetna v. United States, 444 U.S. 164, 175, 100 S.Ct. 383, 390, 62 L.Ed.2d 332 (1979). We said as much less than a year ago, and it is surprising that we have so soon forgotten:

> "In addressing petitioners' claim we must not disregard the posture in which this case comes before us. The District Court granted summary judgment to respondents only on the facial challenge to the Subsidence Act. The court explained that '... the only question before this court is whether the mere enactment of the statutes and regulations constitutes a taking.' ...
>
> "The posture of the case is critical because we have recognized an important distinction between a claim that the mere enactment of a statute constitutes a taking [illegible] *1' a claim that the particular impact of government action on a specific piece of property requires the payment of just compensation. This point is illustrated by our decision in Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264 [101 S.Ct. 2352, 69 L.Ed.2d 1] (1981), in which we rejected a preenforcement challenge to the constitutionality of the Surface Mining Control and Reclamation Act of 1977.... The Court [there] explained:

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" ' "Because appellees" taking claim arose in the context of a facial challenge, it presented no concrete controversy concerning either application of the Act to particular surface mining operations or its effect on specific parcels of land. Thus, the only issue properly before the District Court and, in turn, this Court, is whether the "mere enactment" of the Surface Mining Act constitutes a taking.... The test to be applied in considering this facial challenge is straightforward. A statute regulating the uses that can be made of property effects a taking if it "denies an owner economically viable use of his land." ...'

"Petitioners thus face an uphill battle in making a facial attack on the Act as a taking." Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 493-495, 107 S.Ct. 1232, 1246-1247, 94 L.Ed.2d 472 (1987).

While the battle was "uphill" in Keystone, we allowed it to be fought, and did not declare it "premature."

The same was true of the facial takings challenge in Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra. It is remarkable that the Court should point to that case in support of its position, describing the holding as follows:

"In Virginia Surface Mining, for example, we found that a challenge to the Surface Mining Control and Reclamation Act ... was 'premature,' ... and 'not ripe for judicial *18 resolution,' ... because the property owners in that case had not identified any property that had allegedly been taken by the Act, nor had they sought administrative relief from **8(Act's restrictions on surface mining." Ante, at 856-857.

But this holding in Virginia Surface Mining applied only to "the taking issue decided by the District Court," 452 U.S., at 297, 101 S.Ct., at 2371, which was the issue of the statute's validity as applied. Having rejected that challenge as premature, the Court then continued (in the language we quoted in Keystone):

"Thus, the only issue properly before the District Court and, in turn, this Court, is whether the 'mere enactment' of the Surface Mining Act constitutes a taking." 452 U.S., at 295, 101 S.Ct., at 2370.

That issue was not rejected as premature, but was decided on its merits, id., at 295-297, 101 S.Ct., at 2370-2371, just as it was in Keystone, and as it was before that in Agins v. Tiburon, 447 U.S. 255, 260-263, 100 S.Ct. 2138, 2141-2142, 65 L.Ed.2d 106 (1980).

In sum, it is entirely clear from our cases that a facial takings challenge is not premature even if it rests upon the ground that the ordinance deprives property owners of all economically viable use of their land--a ground that is, as we have said, easier to establish in an "as-applied" attack. It is, if possible, even more clear that the present facial challenge is not premature, because it does not rest upon a ground that would even profit from consideration in the context of particular application. As we said in Agins, a zoning law "effects a taking if the ordinance does not substantially advance legitimate state interests, ... or denies an owner economically viable use of his land." Id., at 260, 100 S.Ct., at 2141. The present challenge is of the former sort. Appellants contend that providing financial assistance to impecunious renters is not a state interest that can legitimately be furthered by regulating the use of property. Knowing the nature and character of *1! particular property in question, or the degree of its economic impairment, will in no way assist this inquiry. Such factors are as irrelevant to the present claim as we have said they are to the claim that a law effects a taking by authorizing a permanent physical invasion of property. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). So even if we were explicitly to overrule cases such as Agins, Virginia Surface Mining, and Keystone, and to hold that a facial challenge will not lie where the issue can be more forcefully presented in an "as-applied" attack, there would still be no reason why the present challenge should not proceed.

Today's holding has no more basis in equity than it does in precedent. Since the San Jose Ordinance does not require any specification of how much reduction in rent is attributable to each of the various factors that the hearing officer is allowed to take into account, it is quite possible that none of the many landlords affected by the Ordinance will ever be able to meet the Court's requirement of a "showing in a particular case as to the consequences of [the hardship factor] in the ultimate determination of the rent." Ante, at 857. There is no reason thus to shield alleged constitutional injustice from judicial scrutiny. I would therefore consider appellants' takings claim on the merits.

II

The Fifth Amendment of the United States

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Constitution, made applic... to the States through the Fourteenth Amendme... Chicago, B. & Q.R. Co. v. Chicago, 166 U.S. ...6, 239, 17 S.Ct. 581, 585, 41 L.Ed. 979 (1897... provides that "private property [shall not] be tak... for public use, without just compensation." We ... repeatedly observed that the purpose of this ...rovision is "to bar Government from forcing s... ...e people alone to bear public burdens which, in ... fairness and justice, should be borne by th... ...ublic as a whole." Armstrong v. United State... 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.... ...554 (1960); see also First English Evangelica... Lutheran Church of Glendale v. Los Angeles Co... ...y, 482 U.S. *20 304, 318-319, 107 **862 S.Ct. ...8, 2388, 96 L.Ed.2d 250 (1987); Webb's Fabu... ...s Pharmacies, Inc. v. Beckwith, 449 U.S. 155, ..., 101 S.Ct. 446, 452, 66 L.Ed.2d 358 (1980); ...ns v. Tiburon, supra, 447 U.S., at 260, 100 S.C... ...2141; Penn Central Transportation Co. v. N... ...ork City, 438 U.S. 104, 123, 98 S.Ct. 2646 ...58, 57 L.Ed.2d 631 (1978); Monongahela N... ...tion Co. v. United States, 148 U.S. 312, 325... ...S.Ct. 622, 625, 37 L.Ed. 463 (1893).

Traditional land-use regu... (short of that which totally destroys the econo... ...lue of property) does not violate this principle ...se there is a cause-and-effect relationship ... ...n the property use restricted by the regulatio... ...the social evil that the regulation seeks to re... ... Since the owner's use of the property is (o... ...ut for the regulation, would be) the source of th... ...ial problem, it cannot be said that he has been ... ...out unfairly. Thus, the common zoning regul... ...equiring subdividers to observe lot-size and s... ...restrictions, and to dedicate certain areas to ... ...streets, are in accord with our constitutiona... ...tions because the proposed property use wo... ...herwise be the cause of excessive congestion. ...same cause-and-effect relationship is popula... ...hought to justify emergency price regulati... When commodities have been priced at a le... ...t produces exorbitant returns, the owners of ...commodities can be viewed as responsible fo... ...nomic hardship that occurs. Whether or ... ...at is an accurate perception of the way ...ee-market economy operates, it is at least t... ...at the owners reap unique benefits from the ...on that produces the economic hardship, and i... ...respect singling them out to relieve it may n... ...egarded as "unfair." That justification might ... ... the rent regulation in the present case, ap... ... the single feature under attack here.

Appellants do not contest the validity of rent regulation in general. They acknowledge that the city may constitutionally set a "reasonable rent" according to the statutory minimum and the six other factors that must be considered by the hearing officer (cost of debt servicing, rental history of the unit, physical condition of the unit, changes in housing services*21 other financial information provided by the landlord, and market value rents for similar units). San Jose Municipal Ordinance 19696, § 5703.28(c) (1979). Appellants' only claim is that a reduction of a rent increase below what would otherwise be a "reasonable rent" under this scheme may not, consistently with the Constitution, be based on consideration of the seventh factor--the hardship to the tenant as defined § 5703.29. I think they are right.

Once the other six factors of the Ordinance have been applied to a landlord's property, so that he is receiving only a reasonable return, he can no longer be regarded as a "cause" of exorbitantly priced housing; nor is he any longer reaping distinctively high profits from the housing shortage. The seventh factor, the "hardship" provision, is invoked to meet a quite different social problem: the existence of some renters who are too poor to afford even reasonably priced housing. But that problem is no more caused or exploited by landlords than it is by the grocers who sell needy renters their food, or the department stores that sell them their clothes, or the employers who pay them their wages, or the citizens of San Jose holding the higher paying jobs from which they are excluded. And even if the neediness of renters could be regarded as a problem distinctively attributable to landlords in general, it is not remotely attributable to the particular landlords that the Ordinance singles out--namely, those who happen to have a "hardship" tenant at the present time, or who may happen to rent to a "hardship" tenant in the future, or whose current or future affluent tenants may happen to decline into the "hardship" category.

The traditional manner in which American government has met the problem of those who cannot pay reasonable prices **86: privately sold necessities-- a problem caused by the society at large--has been the distribution to such persons of funds raised from the public at large through taxes, either in cash (welfare payments) or in goods (public housing, publicly subsidized housing, and food stamps). Unless we are t... *22 abandon the guiding

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principle of the Takings ' at "public burdens ... should be borne by lic as a whole," Armstrong, 364 U.S., at .Ct., at 1569, this is the only manner tha institution permits. The fact that governmen ough the landlord-tenant relationship doe agically transform general public welfare, st be supported by all the public, into me nomic regulation," which can disproporti burden particular individuals. Here the ci "regulating" rents in the relevant sense o ng rents that are excessive; rather, it is e occasion of rent regulation (accomplish the rest of the Ordinance) to establish program privately funded by those landl happen to have "hardship" tenants.

Of course all economi on effects wealth transfer. When excessi are forbidden, for example, landlords as come poorer and tenants as a class (or at mbent tenants as a class) become richer. t landlords to be the transferors may a our traditional constitutional notions of because they can plausibly be regarded source or the beneficiary of the high- u. Once such a connection is no longer however, there is no end to the social tions that can be accomplished by so-cal lation," at great expense to the democrat

The politically attractive f regulation is not that it permits wealth t be achieved that could not be achieved but rather that it permits them to be a f budget," with relative invisibility and e immunity from normal democratic proc n Jose might, for example, have accom mething like the result here by simply rai eal estate tax upon rental properties and usi ditional revenues thus acquired to pay pa nts of "hardship" tenants. It seems to me owever, whether the citizens of San Jos low funds in the municipal treasury, fro r derived, to be distributed to a family th income *23 high as $32,400 a ye nerous maximum necessary to qualify au y as a "hardship" tenant under the rental C [FN*] The voters might well see othe pressing, social priorities. And of c t $32,400-a-year renters can acquire thi ious "regulation," other groups can acqui Once the door is opened it is not unreasonable to expect price regulations requiring private businesses to give special discounts to senior citizens (no matter how affluent), or to students, the handicapped, or war veterans. Subsidies for these groups may well be a good idea, but because of the operation of the Takings Clause our governmental system has required them to be applied, in general, through the process of taxing and spending, where both economic effects and competing priorities are more evident.

FN* Under the San Jose Ordinance, "hardship" tenants include (though are not limited to) those whose "household income and monthly housing expense meets [sic] the criteria" for assistance under the existing housing provisions o § 8 of the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f (1982 ed. and Supp. III). The United States Department of Housing and Urban Development currently limits assistance under these provisions for families of four in the San Jose area to those who earn $32,400 or less per year. Memorandum from U.S. Dept. of Housing and Urban Development, Assistant Secretary for Housing-Federal Housing Comm'r, Income Limits for Lower Income and Very Low-Income Families Under the Housing Act of 1937 (Jan. 15, 1988).

That fostering of an intelligent democratic process is one of the happy effects of the constitutional prescription--perhaps accidental, perhaps not. Its essence, however, is simply the unfairness of making one **864 citizen pay, in some fashion other than taxes, to remedy a social problem that is none of his creation. As the Supreme Court of New Jersey said in finding unconstitutional a scheme displaying, among other defects, the same vice I find dispositive here:

"A legislative category of economically needy senior citizens is sound, proper and sustainable as a rational classification. But compelled subsidization by landlord *24 or by tenants who happen to live in an apartment building with senior citizens is an improper and unconstitutional method of solving the problem." Property Owners Assn. v. North Bergen, 74 N.J. 327, 339, 378 A.2d 25, 31 (1977).

I would hold that the seventh factor in § 5703.28(c) of the San Jose Ordinance effects a taking of property without just compensation.

END OF DOCUMENT

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Attachment H

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 723. MOBILE HOME PARK LOT TENANCIES

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Current through End of 1999 1st Reg. Sess.

723.033. Unreasonable lot rental agreements; increases, changes

(1) If the court, as a matter of law, finds a mobile home lot rental amount, rent increase, or change, or any provision of the rental agreement, to be unreasonable, the court may:

(a) Refuse to enforce the lot rental agreement.

(b) Refuse to enforce the rent increase or change.

(c) Enforce the remainder of the lot rental agreement without the unreasonable provision.

(d) Limit the application of the unreasonable provision so as to avoid any unreasonable result.

(e) Award a refund or a reduction in future rent payments.

(f) Award such other equitable relief as deemed necessary.

(2) When it is claimed or appears to the court that a lot rental amount, rent increase, or change, or any provision thereof, may be unreasonable, the parties shall be afforded a reasonable opportunity to present evidence as to its meaning and purpose, the relationship of the parties, and other relevant factors to aid the court in making the determination.

(3) For the purposes of this section, a lot rental amount that is in excess of market rent shall be considered unreasonable.

(4) Market rent means that rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.

(5) In determining market rent, the court may consider rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.

(6) In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.

(7) An arbitrator or mediator under ss. 723.037, 723.038, and 723.0381 shall employ the same standards as set forth in this section.

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Amended by Laws 1990, c. 90-198, § 9, eff. Oct. 1, 1990.

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< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

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Laws 1990, c. 90-198, § 9, eff. Oct. 1, 1990, rewrote the section.

1988 Main Volume

Derivation:
Laws 1984, c. 84-80, § 1.

LIBRARY REFERENCES

1988 Main Volume

Landlord and Tenant ⚿372.
C.J.S. Landlord and Tenant § 203 et seq.

Texts and Treatises
36 Fla Jur 2d, Mobile Homes and Recreational Vehicles § 45.

UNITED STATES SUPREME COURT

Takings clause, rent control, mobile home parks, limitation on termination of tenancy, see Yee v. City of Escondido, Cal., U.S.Cal.1992, 112 S.Ct. 1522, 503 U.S. 519, 118 L.Ed.2d 153.

NOTES OF DECISIONS

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1/4. Validity

Statute prohibiting unreasonable increases in rent for lots in regulated mobile home parks was not an unconstitutional rent control statute but, rather, was valid legislative attempt to balance the interests of mobile home owners and park owners in context of their unique economic relationship. Aspen-Tarpon Springs Ltd. Partnership v. Stuart, App. 1 Dist., 635 So.2d 61 (1994).

1/2. Construction and application

Although Public Service Commission (PSC) has exclusive jurisdiction to entertain actions involving utilities with regard to authority, services, and rates, circuit court is vested with jurisdiction to hear matters outside of that realm such as mobile home park owner's breach of prospectus and settlement agreement where, following rate increase by Commission, park owner unilaterally determines amount by which to adjust monthly rental costs; such costs are not "authority," "service," or "rates" under statutory chapter governing Commission's exclusive jurisdiction and, thus, are within circuit court's jurisdiction. Sandpiper Homeowners Ass'n, Inc. v. Lake Yale Corp., App. 5 Dist., 667 So.2d 921 (1996).

Reasonableness standard of statute prohibiting unreasonable increases in rent for lots in mobile home parks provided adequate guidance for courts to implement statute. Aspen-Tarpon Springs Ltd. Partnership v. Stuart, App. 1 Dist., 635 So.2d 61 (1994).

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Subsection of statute prohibiting unreasonable increases in rent for lots in mobile home parks did not, when read in pari materia with other subsections, create conclusive presumption that any particular increases were unreasonable; subsection was directory rather than mandatory. Aspen-Tarpon Springs Ltd. Partnership v. Stuart, App. 1 Dist., 635 So.2d 61 (1994).

Provision of Mobile Home Act governing unreasonable lot rental agreements does not require owner to rent below fair market value but, rather, it allows rent increases for existing tenants to be established by fair market rate negotiated by current new tenants whose homes are still mobile and whose options have not yet been restricted by process of moving into park. Homeowner's Corp. of River Trails v. Saba, App. 2 Dist., 626 So.2d 274 (1993).

1. Parties

For purposes of Mobile Home Landlord and Tenant Act, state attorney cannot sue mobile home park owner for allegedly unconscionable rental agreement where there was no allegation that lessees were bound by agreement to pay increased rental. State v. De Anza Corp., App. 5 Dist., 416 So.2d 1173 (1982), review denied 424 So.2d 763.

Declaratory Judgments Act (§ 86.011 et seq.) does not provide independent source of authority to state attorney to maintain an action seeking declaration that rental increases proposed by mobile home park owner were "unconscionable" under Mobile Home Landlord and Tenant Act. State v. De Anza Corp., App. 5 Dist., 416 So.2d 1173 (1982), review denied 424 So.2d 763.

1.5. Construction with other laws

Statute on reasonableness of rental increases did not eliminate obligation of mobile home park tenants to deposit rent under statute requiring mobile home owner to pay into registry of court portion of accrued rent related to claim of material noncompliance. MLH Property Managers, Inc. v. Cox, App. 4 Dist., 613 So.2d 1358 (1993).

2. Hearing

Failure to hold hearing during which parties had full opportunity to present evidence before rendering declaratory judgment was error, where law applicable to tenants' claims regarding unconscionability of rental increases was not clear, especially as this section regarding unconscionable rent expressly provided that parties should have reasonable opportunity to present evidence. Appel v. Scott, App. 2 Dist., 479 So.2d 800 (1985).

3. Findings

Erroneous submission of issue of unconscionability of rent increases for tenants of mobile home park, requiring jury to determine that the increases were unconscionable if it found that the rent was increased beyond the fair market rental value of each lot, constituted harmful error which mandated reversal and r 83.754 [repealed; see, now, this section] governing unconscionable lot rental agreements did not prescribe such criteria, and no evidence was adduced that would have supported a finding that the rent was increased beyond the fair market rental value of each lot. Aristek Communities, Inc. v. Fuller, App. 4 Dist., 453 So.2d 547 (1984).

4. Unconscionable

Unconscionability of rent is a question of law to be determined by court. Vander Voort v. International Development & Holding Corp., App. 2 Dist., 579 So.2d 887 (1991).

"Unconscionable" would not be equated with "unreasonable" in context of this section authorizing court to take action upon finding mobile home lot rental agreement or any provision is unconscionable. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

5. Amount of rent

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Reducing rent of mobile home park tenant who moved into park and voluntarily chose to pay a specific amount of rent upon a determination that the rent charged was unconscionable would be untenable interference with freedom to contract. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

West's F. S. A. § 723.033

FL ST § 723.033

END OF DOCUMENT

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Attachment I

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XL. REAL AND PERSONAL PROPERTY
CHAPTER 723. **MOBILE HOME** PARK LOT TENANCIES

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Current through End of 1999 1st Reg. Sess.

723.037. Lot rental increases; reduction in services or utilities; change in **rules** and regulations; **mediation**

(1) A park owner shall give written notice to each affecte**d mobile home** owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days prior to any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The notice shall identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner shall make the names and addresses available upon request. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter. Pass-through charges must be separately listed as to the amount of the charge, the name of the governmental entity mandating the capital improvement, and the nature or type of the pass-through charge being levied. Notices of increase in the lot rental amount due to a pass-through charge shall state the additional payment and starting and ending dates of each pass-through charge. The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation.

(2) Notice as required by this section shall, in addition to the information required in subsection (1), only be required to include the dollar amount of the relevant portions of the present lot rental amount that are being increased and the dollar amount of the proposed increases in lot rental amount if there is an increase in the lot rental amount, the reduction in services or utilities, or the change in rules and regulations and the effective date thereof.

(3) The park owner shall file annually with the division a copy of any notice of a lot rental amount increase. The notice shall be filed on or before January 1 of each year for any notice given during the preceding year. If the actual increase is an amount less than the proposed amount stated in the notice, the park owner shall notify the division of the actual amount of the increase within 30 days of the effective date of the increase or at the time of filing, whichever is later.

(4)(a) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place within 30 days after receipt by the homeowners of the notice of change, to discuss the reasons for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations.

(b) At the meeting, the park owner or subdivision developer shall in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed. The park owner or subdivision developer may not limit the discussion of the reasons for the change to generalities only, such as, but not limited to, increases in operational costs, changes in economic conditions, or rents charged by comparable mobile home parks. For example, if the reason for an increase in lot rental amount is an increase in operational costs, the park owner must disclose the item or items which have increased, the amount of the increase, any similar item or items which have decreased, and the amount of the decrease. If an increase is based upon the lot rental amount charged by comparable mobile home parks, the park owner shall disclose the name, address, lot rental amount, and any other relevant factors concerning the mobile home parks relied upon by the park owner. The park owner shall prepare a written summary of the material factors and retain a copy for 3 years. The park owner shall provide the

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committee a copy of the summary at the meeting.

(5)(a) Within 30 days after the date of the scheduled meeting described in subsection (4), the homeowners may petition the division to initiate mediation of the dispute pursuant to s. 723.038 if a majority of the affected homeowners have designated, in writing, that:

1. The rental increase is unreasonable;

2. The rental increase has made the lot rental amount unreasonable;

3. The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or

4. The change in the rules and regulations is unreasonable.

(b) A park owner, within the same time period, may also petition the division to initiate **mediation** of the dispute.

(c) When a dispute involves a rental increase for different home owners and there are different rates or different rental terms for those home owners, all such rent increases in a calendar year for a **mobile home** park may be considered in one **mediation** proceeding.

(6) If a party request **mediation** and the opposing party refuses to agree **mediate** upon proper request, the party refusing to **mediate** shall not be entitled to attorney's fees in any action relating to a dispute described in this section.

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Amended by Laws 1988, c. 88-147 § 15, eff. Oct. 1, 1988; Laws 1990, c. 90- 1[illegible] § 10, eff. Oct. 1, 1990; Laws 1992, c. 92-148, § 8, eff. April 8, 1992; Laws 1997, c. 97-291, § 2, eff. July 1, 1997.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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Laws 1988, c. 88-147, § 15, eff. Oct. 1, 1988, amended subsec. (1) to require the notice of pass-through charges to mobile home owners shall state the amount of the charge, the governmental entity mandating the capital improvement for which the charge is made and the nature of the charge; and, amended subsec. (3) to provide that meetings of the homeowners and park owner upon notice of change in lot rental amount, reduction in services or utilities provided, or change in rules and regulations shall be at a mutually convenient place and shall occur within a certain time after receipt of the notice.

Laws 1990, c. 90-19[illegible] § 10, eff. Oct. 1, 1990, rewrote subsec. (2); inserted subsec. (3); redesignated subsequent subsections; and rewrote the provisions contained in subsecs. (5) and (6).

Laws 1992, c. 92-148, § 8, eff. April 8, 1992, in subsec. (2), substituted "the relevant portions of the present lot rental amount that are being increased and the dollar amount increases in lot rental amount" for "the present lot rental amount and the dollar amount of the proposed lot rental amount".

Laws 1997, c. 97-291, § 2, eff. July 1, 1997, in subsec. (4), designated par. (a) and added par. (b).

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Derivation:
Laws 1986, c. 86-162, § 8.
Laws 1984, c. 84-80, § 1.

Prior to the 1986 amendment, the section as it appears in Fla.St.1985 provided:

"(1) A park owner shall give written notice to each mobile home owner at least 90 days prior to any lot rental increase, reduction in services or utilities, or change in rules and regulations. Rules adopted as a result of restrictions imposed by governmental entities and required to protect the public health, safety, and welfare may be enforced prior to the expiration of the 90-day period but are not otherwise exempt from the requirements of this chapter.

"(2) A committee, not to exceed five in number, designated by a majority of the mobile home owners or, if a homeowners' association has been formed, by the board of directors of the homeowners' association shall meet with the park owner to discuss such change within 30 days of the notice from the park owner.

"(3) Within 15 days of the meeting described in subsection (2), the home owners shall request that the dispute be submitted to mediation pursuant to s. 723.038 if a majority of the home owners, or a majority of the members of the homeowners' association if one has been established, have stated, in writing, that:

"(a) The rental increase is unreasonable;

"(b) The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or

"(c) The change in the rules and regulations is unreasonable.

"(4) If both parties subsequently agree, they may request that the dispute be arbitrated rather than mediated.

"(5) No action relating to a dispute described in this section may be filed in any court unless and until a request has been submitted to the division for mediation or arbitration and the request has been processed in accordance with s. 723.038.

"(6) If a party refuses to agree t **mediate** or arbitrate, or fails to reque**s mediation,** upon proper request, that party shall not be entitled to attorneys' fees in any action relating to a dispute described in this section."

Laws 1986, c. 86-162, § 8, eff. July 1, 1986, substantially rewrote this section.

Section 14 of Laws 1986, c. 86-162, provides:

"The provisions of subsection (2) of section 723.037, Florida Statutes, as created by this act, are intended to be remedial and all previous notices of increase in lot rental amount, reduction in services or utilities, or change in rules and regulations provided in conformance with such section shall be considered proper notice. A park owner who has provided a second notice of an increase in lot rental amount that provides for recoupment of lost income due to an initial notice which may have been deficient under the rules of the Division of Florida Land Sales, Condominiums, and Mobile Homes between October 1, 1984, and July 1, 1986, shall not be allowed to recover said lost income twice by the provisions of such section."

LIBRARY REFERENCES

1988 Main Volume

Texts and Treatises

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36 Fla Jur 2d, Mobile Homes and Recreational Vehicles §§ 35, 44, 46, 48.

NOTES OF DECISIONS

Conformity to prospectus 4
Contest of rental increases 5
Notice of rent increase 3
Unconscionable increases 2
Validity of related law 1

1. Validity of related law

Since rent control laws are restricted in scope and duration to instances constituting an emergency, absent specific time frame circumscribing its operation, ¦ 83.770 et seq. (repealed) regulating rental charges in mobile home parks, which was not restricted in application to emergency but could continue forever without any required reassessment of circumstances thereby permanently impairing constitutional rights, exceeded permissible scope of state authority to regulate rental charges and was unconstitutional. Department of Business Regulation v. National Manufactured Housing Federation, Inc., 370 So.2d 1132 (1979).

2. Unconscionable increases

Determination of unconscionability of mobile home park rent increases ismatter of law, so District Court of Appeal views evidence on such a claim from the same vantage point as trial court. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

In determining unconscionability of mobile home park rent increases, unconscionability must be viewed through two-pronged approach, considering both procedural unconscionability and substantive unconscionability. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

Mobile home park rent increases were not "unconscionable,'so as to entitle tenants to remedy, where difference between trial court determination of fair market rental value and rents charged ranged from $9 per month that was 6.6% above fair market rental value to $27 per month that was 15.9% above fair market rental value; such discrepancies were not so grossly excessive as to be substantively unconscionable. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

Mobile home park rent increases were procedurally unconscionable, for purposes of this chapter, due to absence of any meaningful choice on part of tenants. Belcher v. Kier, App. 2 Dist., 558 So.2d 1039 (1990), review denied 570 So.2d 1305.

A mobile home park tenant's ability to pay a rent increase or his ability to pack up and go someplace else rather than acquiesce in the increase is not a material consideration in determining whether an increase in rents is unconscionable under the Florida Mobile Home Act. Pearce v. Doral Mobile Home Villas, Inc., App. 2 Dist., 521 So.2d 282 (1988).

Amount of increase in rent charged for mobile home lots was unconscionable in light of reduction in services and amount of rent charged by comparable mobile home parks in the vicinity. Ashling Enterprises, Inc. v. Browning, App. 3 Dist., 487 So.2d 56 (1986).

3. Notice of rent increase

Notice of lot rental increases, reduction in services, and pass through of impact fee by owner of mobile home park to homeowners was ineffective absent separate notice to board of directors of homeowners' association, even if notice was sent to all homeowners, and even if all officers and board members received notice in their individual capacities as homeowners. Menna v. Sun Country Homeowners Ass'n, Inc., App. 2 Dist., 604 So.2d 897 (1992).

Under provision of lease allowing the landlord to raise the rent for any extended term by giving tenant notice not less than 60 days prior to the expiration of the current lease term, adequate notice was given when the landlord, more than 60 days prior to the end of the term on December 31, gave the tenants a copy of new lease which contained the increased rent; that notice was also sufficient to meet requirements unde ¦ 83.784

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(repealed). Graviss v. Levan, App. 2 Dist., 378 So.2d 333 (1980).

Purpose of F.S.A. § 83.784 (repealed) requiring that notice of any rent increase to tenants in a mobile home park be given in writing by November 1st of the year preceding that during which the rent increase would take effect was to give the tenant an opportunity to find other accommodations if he was unwilling or unable to pay the increased rent. Graviss v. Levan, App. 2 Dist., 378 So.2d 333 (1980).

4. Conformity to prospectus

Prospectus given to mobile home owners by owner of mobile home park delineates basis for, and procedure governing, future rent increases and unless park owner fully discloses all proposed fees, charges and assessments, he waives right to obtain such in the future. Herrick v. Florida Dept. of Business Regulation, Div. of Florida Land Sales, Condominiums and Mobile Homes, App. 1 Dist., 595 So.2d 148 (1992).

5. Contest of rental increases

Strict compliance with statute requiring notice to board of mobile homeowners' association was required in order to allow contest of rental increases by homeowners within statutory time limit, even if actual notice had been given. Menna v. Sun Country Homeowners Ass'n, Inc., App. 2 Dist., 604 So.2d 897 (1992).

West's F. S. A. § 723.037

FL ST § 723.037

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Attachment J

ASPEN-TARPON SPRINGS LIMITED PARTNERSHIP, etc., et al., Appellants,
v.
George STUART, etc., et al., Appellees.

No. 92-2814.

District Court of Appeal of Florida, First District.

Jan. 18, 1994.

Mobile home park owners challenged legislation regulating rent increases and changes in use of park property. The Circuit Court, Leon County, George S. Reynolds, III, J., struck one of two challenged statutes, and cross appeals were taken. The District Court of Appeal, Barfield, J., held that: (1) statute prohibiting unreasonable rent increases was constitutional, but (2) statute requiring owner desiring to change use of park property to either buy tenants' homes or pay to have homes moved was unconstitutional regulatory taking of property.

Affirmed.

[1] LANDLORD AND TENANT ⚿371

233k371
Statute prohibiting unreasonable increases in rent for lots in regulated mobile home parks was not an unconstitutional rent control statute but, rather, was valid legislative attempt to balance the interests of mobile home owners and park owners in context of their unique economic relationship. West's F.S.A. § 723.033.

[2] LANDLORD AND TENANT ⚿371
233k371
Reasonableness standard of statute prohibiting unreasonable increases in rent for lots in mobile home parks provided adequate guidance for courts to implement statute. West's F.S.A. § 723.033.

[3] LANDLORD AND TENANT ⚿384
233k384
Statute prohibiting unreasonable increases in rent for lots in mobile home parks did when read in pari materia with other tions, create conclusive presumption that any ular increases were unreasonable; subsection irectory rather than mandatory. West's F.S.A. §§ 723.033, 723.033(6).

[4] EMINENT DOMAIN ⚿2(1.1)
148k2(1.1)
State effected regulatory taking of property by enacting legislation requiring mobile home park owners desiring to change use of their property either to pay tenants' costs of moving to other parks or to buy tenants' homes; since neither option was even remotely economically feasible for park owners, statute, as practical matter, authorized permanent physical occupation of property and extinguished fundamental attribute of ownership. West's F.S.A. § 723.061(2).

*62 Marguerite H. Davis, Daniel C. Brown, and Paul R. Ezatoff, of Katz, Kutter, Haigler, Alderman, Davis & Marks, Tallahassee, for appellants/cross- appellees.

Thomas A. Bell, E. Harper Field, and Tracy P. Moye, for Florida Dept. of Business and Professional Regulation, Tallahassee, appellees/ cross-appellants.

Peter M. Dunbar and Robert S. Cohen, of Haben, Culpepper, Dunbar & French, Tallahassee, for Federation of Mobile Home Owners of Florida, Inc., appellee/cross-appellant.

David D. Eastman and Jack M. Skelding, Jr., of Parker, Skelding, Labasky & Corry, Tallahassee, for Florida Manufactured Housing Ass'n, Inc., amicus curiae.

BARFIELD, Judge.

This appeal involves challenges to a final judgment determining the constitutionality of two provisions of "The Florida Mobile Home Act," section 723.033, Florida Statutes (Supp.1990), and section 723.061(2), Florida Statutes (1989). The trial court found section 723.033 constitutional and section 723.061(2) unconstitutional, and denied the mobile home park owners' request for attorney fees under 42 U.S.C 1988. We affirm each of these determinations.

In November 1990, several mobile home park owners filed a complaint against the Secretary of the Department of Business Regulation, the Director of its Division of Florida Land Sales, Condominiums and Mobile Homes, and the Chief of its Bureau of

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Mobile Homes (collectively, DBR [FN1]). They sought a declaratory judgment that the above-mentioned provisions of chapter 723 were unconstitutional, as well as injunctive and declaratory relief under 42 U.S. 1983 and attorney fees under 42 U. 1988. The Federation of Mobile Home Owners of Florida, Inc. (FMO), representing mobile home owners and tenants, was allowed to intervene as a party defendant.

> FN1. Since this litigation began, the Department of Business Regulation has been consolidated with the Department of Professional Regulation, but will be referred to in this opinion as "DBR".

Chapter 723 applies to tenancies in mobile home parks offering at least ten lots for re *63 where only the lots are leased by the mobile home owners. Section 723.033 authorizes relief when the court finds "a mobile home lot rental amount, rent increase, or change, or any provision of the rental agreement, to be unreasonable." Subsection (3) provides that "a lot rental amount that is in excess of market rent shall be considered unreasonable." The park owners claimed that section 723.033 contains no meaningful guidance for determining whether a rental amount is reasonable; that it establishes statewide rent controls of unlimited duration; that it grants the tenant, but not the park owner, the right to unilaterally set aside any allegedly "unreasonable" term of the rental agreement; and that subsection (3) establishes an irrebuttable and conclusive presumption.

Section 723.061(2) requires a mobile home park owner who wishes to change his land use either to pay to have the tenants moved to another comparable park within fifty miles, or to purchase the mobile homes and appurtenances from the tenants at a statutorily determined value. The park owners claimed that this section requires them to hold their property out for rent in perpetuity; that it transfers a possessory interest in their land to tenants, requiring them, in order to change the use of their land, to pay their tenants a "ransom" which includes part of the value of the land; that it violates due process guarantees of both the Florida and the federal constitutions; and that it constitutes a taking of their property without compensation, in violation of both constitutions.

The answers filed by DBR and FMO asserted that section 723.033 "provides ample and adequate guidance for Courts to resolve issues about the lot rental amounts charged by mobile home park owners" and that the statute does not "unconstitutionally abridge Plaintiff's rights to be rewarded for their industry, to engage in lawful business, or to rely on their contracts." They asserted that section 723.061(2) does not create an unconstitutional taking of park owners' land, and that it fully complies with both constitutions.

In support of their claims, the park owners presented the expert witness testimony of a statistician and finance professor, a property appraiser, and an economist and professor of real estate valuation. They also presented the testimony of two mobile home park managers. DBR and FMO presented no witnesses.

The trial court ruled that section 723.033 is constitutional. Noting the "economically unbalanced bargaining position" of tenants once they have moved into a mobile home park and the "extraordinary economic expense of moving [the mobile home] elsewhere," the court found that the challenged regulation prohibiting unreasonable rent increases "is rationally related to and substantially accomplishes the legitimate state objective of balancing the interests of mobile home owners (tenants) and park owners in the context of the permanent, unique, and hybrid economic relationship between the regulated parties," citing Stewart v. Green, 300 So.2d 889 (Fla.1974), and Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla.1974). The court found that the park owners' constitutional rights to be rewarded for their industry "are not so affected by the regulation of rents, in these unique circumstances, as to require the striking down of this form of legislation" and that "[t]he constitution cannot be raised as a bar to a regulation limiting rents or rental increases to a reasonable amount when the other party to the bargain does not stand on even remotely equal footing." It found that section 723.033 "contains sufficient standards to guide trial courts in the exercise of their duties under the statute" and did not violate the Florida Constitution.

Observing that it was "obliged to construe the statute in a manner so as to avoid a constitutional defect, if a reasonable construction may be given it in order to achieve that result," the court read sections 723.033(3)-(5) in pari materia with section 723.033(6) and rejected the park owners' "conclusive presumption" argument. It found that

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the statute "allows the park owner to show, by evidence pertaining to matters referenced in subsection (6)," that a rent "in excess of market rent" is not unreasonable. It ruled that "shall" in subsection (3) "should reasonably be interpreted by a trial court as directory, rather than as mandatory and conclusive."

***64** The trial court ruled that subsection 723.061(2) is unconstitutional, severed it from the rest of section 723.061, and enjoined DBR and FMO from enforcing it, finding that the challenged subsection is "arbitrary and capricious." Noting the other protections afforded mobile home owners by chapter 723, the court observed that the effect of subsection 723.061(2) "is not to make reasonable accommodation for competing interests, but to require the park owner to virtually guarantee a perpetual tenancy to a tenant in a regulated park in Florida," and that the unrebutted evidence of the subsection's practical operation and effect "only serves to underscore and buttress that which is apparent from the face of the statute."

The trial court noted the evidence that the supply of vacant lots in comparable parks is generally inadequate, that it costs $10,000 on average to move a single-wide mobile home, and that it would cost the park owner 25%-1434% of the land's value to move the tenants to another location. It observed that the alternative "buy out" under the statute would include to some extent "that portion of the market value of the mobile home which is contributed, not by the mobile home owner, but by the location of the park land and the types of amenities offered by the park owner," and that it would cost the park owner 32%-1174% of the land's value to purchase all the mobile homes and appurtenances.

The court found that section 723.061(2) constitutes both a physical taking and a regulatory taking of the park owner's property which does not substantially advance a public purpose, in violation of the Florida and federal constitutions. It noted that under the challenged subsection, "the only means within the park owner's control to terminate the lessee's occupancy of a park owner's land is by purchasing or moving all the affected homes" at its own expense, and that the lessees already have the statutory right to purchase the land if the park owner wishes to change the land use. The court found that section 723.061(2), "on its face, compels a park owner to suffer possession, occupancy, and perpetual tenancy of his land by others until he complies with an economically impossible requirement to purchase or move property that he does not own," and that the statute's "intent and effect is to coerce the landowner to surrender indefinitely his right to possess and occupy his land and to exclude others, and to do so for the exclusive benefit of a limited class who are lessees, not owners, of his land and who have chosen not to become owners of his land."

The court found that the state defendants "have the duty and authority to enforce section 723.061, Florida Statutes," but declined to assess attorney fees against them, finding that "Plaintiffs have not proved any activity of any of the Defendants that would give rise to any liability under Count VI of Plaintiff's complaint concerning 42 U.S.C. § 1983."

The park owners appealed the finding that section 723.033 is constitutional; DBR and FMO cross-appealed the finding that section 723.061(2) is unconstitutional. Florida Manufactured Housing Association, Inc. (FMHA) was allowed to appear as amicus curiae on the side of the park owners on the issue of the constitutionality of section 732.033.

This is not the first time that DBR and mobile home park owners have opposed each other. In Department of Business Regulation v. National Manufactured Housing Federation, Inc., 370 So.2d 1132, 1136-37 (Fla.1979), the supreme court found chapter 77-49, Laws of Florida, a regulation of "unconscionable" rental increases in mobile home parks, to be unconstitutional because it unlawfully delegated legislative authority to an administrative body without meaningful guidance and because it "exceeds the authority ordinarily granted by rent control legislation" and therefore deprived park owners of property without due process. The court, however, acknowledged the state's "permissible interest in ameliorating the scourge of exorbitant rentals caused by housing shortages" and its authority "under its police power to impose reasonable regulations upon mobile homes and mobile home parks," citing Palm Beach Mobile Homes, Inc. v. Strong. Id at 1137.

The park owners contend that the trial court erred in refusing to adhere to the precedent set in National Manufactured Housing, which they assert is directly on point and dispositive of the issue of the constitutionality***65** of section 723.033. They argue that, like the 1977 attempt at rent control, the challenged statute is of unlimited duration, was

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enacted without a housing emergency which would justify such drastic regulation, contains an open-ended set of vague standards for determining whether a rent increase is "unreasonable," and unlawfully delegates legislative authority. They assert that section 723.033 is facially unconstitutional and that "all of the lower court's stated grounds for its decision were grounds which the Supreme Court in National Manufactured Housing considered and rejected as insufficient to save the practically identical 1977 law."

DBR argues that the state of the law has evolved since 1979 and that under current standards, rent control is constitutional unless it is arbitrary, discriminatory, or demonstrably irrelevant to the legislature's policy. It contends that the trial court correctly recognized the legislative purpose behind section 723.033 and properly upheld the statute, which contains the additional factors included in 723.033(6) for determining the "reasonableness" of rent increases. It asserts that section 723.033 differs from the statute stricken in National Manufactured Housing in several respects, including the fact that the determination of reasonableness in the challenged statute is to be made by the circuit court, "for whom determinations of reasonableness are a near daily event," whereas the 1977 statute delegated that responsibility to a state commission, which was "not otherwise engaged in determinations of reasonableness." It notes that both the United States Supreme Court and the Florida Supreme Court have upheld statutes which use the term "reasonable" as the yardstick, citing Stewart and Strong (both of which examined the predecessor to chapter 723); Federal Communications Commission v. Florida Power Corp., 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987) (involving the determination of "just and reasonable" rates for use of utility poles by cable systems); and Pennell v. City of San Jose, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988) (involving a determination of whether rent increases were "reasonable under the circumstances").

The park owners reply that section 723.033(6) "provides absolutely no guidance" as to the relative weight to be accorded any factor used in determining the reasonableness of rent increases, and that it delegates to the courts the "unbridled discretion to consider any conceivable, yet unspecified, factors in making that determination." They argue that the statute "is so vague, and its impact on basic rights is so severe, that its lack of intelligible standards wholly supports a ruling that this section unconstitutionally delegates legislative authority." They contend that because the statute "does not clearly circumscribe the court's review authority," it is unconstitutional for the reasons set forth in National Manufactured Housing "because it delegates to the courts the power to determine what the law shall be." They rely on Sarasota County v. Barg, 302 So.2d 737 (Fla.1974), in which the court held the term "unreasonable" insufficient to guide any court in interpreting the statute there under scrutiny. They argue that the meaning of the term "reasonable" varies with the issues involved, and that it is the inability to know what the legislature meant by the term in this context which "dooms this statute," not the fact that it has no meaning in any context.

The park owners argue that whatever the present state of federal constitutional law, National Manufactured Housing controls the issue of constitutionality under the Florida Constitution, and that none of the federal cases cited by DBR offers a basis for departing from the holding and rationale in that case as to the invalidity of open-ended rent control laws. They assert that DBR quoted dicta from Pennell out of context and that this dicta did not change the existing standards, or alternatively, that Pennell is distinguishable because it did not decide the constitutionality of rent control per se. They assert that the mobile home owner is now adequately protected by the regulatory structure of chapter 723, and may freely choose, without duress, whether to enter into an agreement providing for specified rent amounts and the factors bearing upon future rent increases.

***66** DBR and FMO contend that the trial court ignored precedent and the lack of evidence in striking section 723.061(2) as unconstitutional. They assert that the pleadings, which indicated only a facial challenge, and the facts in evidence, which did not include specific evidence as to the plaintiffs' parks, do not support its finding that the statute is unconstitutional as applied. They argue that in Yee v. City of Escondido, Cal., 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992), which they assert involved a regulatory framework very similar to Florida's, [FN2] the Supreme Court reaffirmed that an invitation by the landlord in a mobile home tenancy negates any claim of physical taking. They assert that nothing in the challenged statute requires a different result here. They contend that the park owners have failed to establish that the challenged statute constitutes a violation of substantive due

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process, i.e., that section 723.061(2) bears no substantial relationship to the general welfare, or that the statute constitutes a regulatory taking, i.e., that the regulation deprives the park owners of any economically viable use of their property.

FN2. DBR acknowledges that the most significant difference between the two regulatory frameworks is the additional requirement of section 723.061(2).

The park owners assert that the trial court correctly found section 723.061(2) to be unconstitutional. Citing New York and United States Supreme Court decisions, [FN3] they contend that the statute authorizes an unconstitutional physical taking of their property without compensation. They argue that, because the cost to buy or move the mobile homes approaches or exceeds the value of the land, under this statute a park owner has no real option to change the use of his land and is effectively required to suffer a physical occupation of his property in perpetuity. They assert that the statute also constitutes a regulatory taking, because it deprives park owners of the right to possess and use their property, a fundamental and central right of property ownership. They contend that the "buy-out-or move" provision fails to advance any legitimate public purpose and serves only a private purpose, indemnifying mobile home owners for costs they might incur as a natural result of having chosen to lease a lot in a mobile home park instead of buying their own land. They argue that Glendale Federal Savings & Loan Association v. Department of Insurance, 485 So.2d 1321 (Fla. 1st DCA), rev. denied, Department of Insurance v. Glendale Federal Savings & Loan Association, 494 So.2d 1150 (Fla.1986), required a factual record to support a facial due process challenge to the statute challenged in that case, because it involved issues of mixed fact and law, and that the trial court in this case properly considered the irrational and confiscatory impact of section 723.061(2).

FN3. Yee v. City of Escondido, Cal., 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) (rent control ordinance was not an unconstitutional physical taking because mobile home park owners had voluntarily offered their property to tenants and could cease doing so upon providing notice, without having to compensate the tenants, but it could be a physical taking if such a statute were found "to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy"); Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) (requiring a lateral easement across beachfront property was not substantially related to the granting of a building permit); Hodel v. Irving, 481 U.S. 704, 107 S.Ct. 2076, 95 L.Ed.2d 668 (1987) (federal law forbidding the devise of fractional interests in Indian lands interfered with a fundamental right of property ownership); Federal Communications Commission v. Florida Power Corp., 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987) ("The element of required acquiescence is at the heart of the concept of [physical] occupation"); Kaiser Aetna v. United States, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979) ("the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the Government cannot take without compensation"); and Seawall Associates v. City of New York, 74 N.Y.2d 92, 544 N.Y.S.2d 542, 542 N.E.2d 1059, cert. denied, City of New York v. Seawall Associates, 493 U.S. 976, 110 S.Ct. 500, 107 L.Ed.2d 503 (1989) (ordinance intended preserve "single room occupancy" housing effectively required owners to rent their properties indefinitely to strangers).

DBR and FMO reply that the trial judge confused the constitutional "taking" standards, and found a "physical taking" after applying the "regulatory taking" standard, directly contrary to the precedent set in Yee and Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 *67 L.Ed.2d 868 (1982). They assert that the statute challenged in Seawall Associates v. City of New York, 74 N.Y.2d 92, 544 N.Y.S.2d 542, 542 N.E.2d 1059, cert. denied, City of New York v. Seawall Associates, 493 U.S. 976, 110 S.Ct. 500, 107 L.Ed.2d 503 (1989), cited by the park owners, differs substantially from section 723.061(2). They note that the court in that case distinguished its holding from Loab Estates, Inc. v. Druhe, 300 N.Y. 176, 90 N.E.2d 25 (1949), in which the court had upheld a statute which prohibited a landlord from evicting tenants "for the purpose of withdrawing accommodations permanently from the rental market" unless provision was made for relocating the tenants in comparable quarters at rents no greater than they had paid. They argue that the trial court erred in finding a regulatory taking, because section 723.061(2) serves a legitimate public purpose in regulating the unique relationship between a landowner and mobile home tenant, and because the park owners retain an economically viable use of their land under the statute.

The park owners assert that the trial court's rulings,

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that section 723.061(2) violated the constitutional provisions they presented, that it violated the Fourteenth Amendment to the United States Constitution, and that DBR had the duty and power to enforce it, establish a violation of 42 U.S §. 1983. They argue that they were therefore entitled, as a matter of law, to attorney fees under 42 U.S.C. § 1988, citing Howlett v. Rose, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990).

DBR points out that 42 U.S.C. § 1988 provides that in an action to enforce a provision § 1983, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs" (emphasis supplied). It argues that an award of attorney fees in a civil rights action is not an absolute right, and that the park owners have not shown that the trial court abused its discretion in finding that no conduct of the individual defendants was proved which would warrant assessment of attorney fees. [FN4]

FN4. DBR also asserts that section 723.005 specifically provides that the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation does not have the power or duty to enforce the provisions of 723.033. But since the park owners did not prevail in their challenge of 723.033, this assertion is irrelevant.

The park owners reply that the federal courts have repeatedly held that a prevailin § 1983 plaintiff is entitled to recover attorney's fees "unless special circumstances would render such an award unjust," and argue that no such circumstances exist here.

[1][2][3][4] We find that competent, substantial evidence supports the trial court's factual findings, which in turn support its legal conclusions that section 723.033 is constitutional and that section 723.061(2) is unconstitutional. [FN5] We do not read section 723.033 as a traditional "rent control" statute, but as a legislative attempt to balance the interests of mobile home owners and park owners in the context of their unique economic relationship. We find that the "reasonableness" standard provided in the statute is adequate to guide trial judges in its implementation. Reading subsection 723.033(3) in pari materia with the other subsections of the statute, we find that it does not constitute a "conclusive presumption" and that it should be interpreted by trial judges as directory, rather than as mandatory and conclusive.

FN5. The impact of the holding in Glendale Federal Savings & Loan Association v. Department of Insurance, 485 So.2d 1321 (Fla. 1st DCA), rev. denied, Department of Insurance v. Glendale Federal Savings & Loan Association, 494 So.2d 1150 (Fla.1986), is that factual determinations that are universally applicable to all persons affected by the statute may be necessary in a challenge to the facial validity of a statute, while the fact specific effect of a statute on one member of a class of affected persons may be reserved to the "as applied" challenge to constitutional validity.

Having carefully considered the principles set out in Yee v. City of Escondido, California, Nollan v. California Coastal Commission, Hodel v. Irving, Seawall Associates v. City of New York, and the other cases cited by the parties, we find that section 723.061(2) constitutes an unconstitutional taking of property without compensation. We agree with the trial court that the statute goes far beyond the legitimate goal of reasonably accommodat ***68** conflicting interests, [FN6] in effect coercing mobile home park owners to surrender indefinitely their rights to possess and occupy their land and to exclude others. Once the park owners have rented their property to mobile home owners, they are required by section 723.061(2) to continue doing so unless they buy all the mobile homes or pay to have them moved. A statute that requires any form of remuneration to recover the right to possess and occupy one's own property would seem to be confiscatory, but the evidence presented to the trial court demonstrated that neither the "buy out" option nor the "relocation" option is even economically feasible. Therefore, as a practical matter, the challenged statute authorizes a permanent physical occupation of the park owner's property and effectively extinguishes a fundamental attribute of ownership, the right to physically occupy one's land. Unlike section 723.033, the regulatory scheme contained in section 723.061(2) does not substantially advance a legitimate state interest, but instead singles out mobile home park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property. See Agins v. City of Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980), and cases cited therein.

FN6. These conflicting interests appear to be protecting mobile home tenants from burdensome costs of dislocation while at the same time ensuring that mobile home park owners receive a fair return

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> on their investment. We note that the parties may protect by contract their respective interests with regard to the duration and conditions of mobile home park tenancies.

Appellants have not demonstrated that they are entitled to attorney fees as a matter of law, either at the trial level or at the appellate level. We therefore do not find that the trial court abused its discretion in denying their motion for attorney fees below, nor that an award of appellate attorney fees is warranted.

The trial court's rulings are AFFIRMED. Appellants' motion for appellate attorney fees is DENIED.

WOLF and MICKLE, JJ., concur.

END OF DOCUMENT

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Attachment K

CHAPTER 44.1
MOBILE AND MANUFACTURED HOME LOT RENTAL INCREASES

31-44.1-1. Declaration of policy.-- The general assembly finds and hereby declares that the provision of affordable housing is of vital concern to the citizens of the state, that mobile and manufactured homes are an important source for affordable housing, that lot rent increases for such homes are a continuing concern for low and moderate income citizens and the elderly, and that some form of limited regulation to lot rental increases for mobile and manufactured homes is in the public interest.

Section 1. Section 31-44.1-2 of the General Laws in Chapter 31-44.1 entitled " Mobile and manufactured Home Lot Rental Increases" is hereby amended to read as follows:

31-44.1-2. Rent increases for mobile and manufactured home lots.-- (a) Any person who owns, operates, or maintains a mobile and manufactured home park pursuant to the provisions of chapter 31-44 shall give the mobile home owners of the park sixty (60) days written notice prior to any lot rent increase going into effect. The written notice shall set forth the current rent, the proposed rent, and the date upon which the increase shall take effect.

(b) If a majority of the mobile home owners of the park believe that the rent increase is "clearly excessive" as hereinafter defined, they may request in writing form the American Arbitration Association that binding arbitration take place between the park owner or operator and the mobile home owners. The American Arbitration Association will authenticate on a confidential basis the request and the signatures of a majority of the park mobile home owners, who shall be made aware of the cost involved in seeking binding arbitration under this section. For purposes of determining a majority under this section, there shall be one (1) vote per mobile home unit. The names of the mobile home owners requesting the binding arbitration shall not be disclosed by the American Arbitration Association to the park owner or operator. Upon authentication that a majority of the owners are requesting binding arbitration, the American Arbitration Association shall appoint an impartial and qualified arbitrator, to arbitrate the dispute. The park owner or operator and the mobile home owners will cooperate with the arbitrator in an effort to resolve their differences. The costs and expenses of the arbitrator shall be borne equally by the park owner or operator and the mobile home owners.

(c) An "excessive" rent increases for purposes of this section is an increase which

is indefensible based on the park owner's or operator's total expenses, including debt service and a reasonable return on the park owner's investment or equity in the park, provided, however, that such debt service is directly related to acquisition of the mobile home park. Debt service used to or otherwise employed for purposes other than that which is directly related to the acquisition or capital management of the mobile home park shall be excluded. Further, the arbitrator shall perform an analysis as to the mobile home park owner's need for rent increase and services provided to the park. Such analysis shall be performed for a period of not less than three (3) years prior to the application for rental increase. Specifically excluded in any such analysis shall be any debt service incurred using the mobile home park as collateral or other security for investment, enterprises, businesses or similar ventures separate and apart from the mobile home park.

(d) The arbitrator will promptly hear the dispute and render a decision based on the "clearly excessive" rent increase standard as herein defined. For purpose of determining a reasonable return on the park owner's investment or equity, the arbitrator shall perform a risk analysis and consider alternative and comparative investments. The cost of the arbitrator shall be borne by the losing party in the arbitration.

(e) No lot rent increase shall go into effect until the earlier of:

(i) completion of the binding arbitration process or

(ii) one hundred twenty (120) days after the written notice given under subsection (a) of this section.

31-44.1.3. Severability.– If any clause, sentence, paragraph, subsection or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof but will be confined in its part directly involved in the controversy in which such judgment has been rendered.

SECTION 1. Chapter 31-44 of the general laws entitled "Mobile an Manufactured Homes" is hereby amended by adding thereto the following sections:

31-44-4.1. Recording of sale or transfer documents. - Penalties – Every deed, instrument, or writing by which an interest in any mobile or manufactured home is granted, assigned, transferred, or otherwise conveyed to, or vested in, a purchaser or purchasers, or nay other person or persons, shall be filed with the recorder of deeds of the city or town in within which the mobile home or manufactured home is located, within ten (10) days after execution of such deed, instrument, or writing. The fee for such filing shall be in accordance with section 34-13-7. The city or town shall assess a fine to be determined by each city or town for failure to comply with the provisions of this section.

31-44-16. Mobile home conveyance tax. – (a) There is hereby imposed, on every deed, instrument, or writing by which any mobile or manufactured home shall be

Attachment L

MONTCLAIR PARKOWNERS ASSOCIATION et al., Plaintiffs and Appellants,
v.
CITY OF MONTCLAIR, Defendant and Respondent.

No. E024137.

Court of Appeal, Fourth District, Division 2, California.

Dec. 2, 1999.

Certified for Partial Publication. [FN*]

FN* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part II.

Review Denied March 15, 2000.

Mobile home park owner associations brought facial constitutional challenge to city's rent control ordinance, alleging a regulatory taking. The Superior Court, No. RCV 35814, Riverside County, Peter Norell, J., sustained city's demurrer without leave to amend. Park owners appealed. The Court of Appeal, McKinster, Acting P.J., held that: (1) Agins-Nollan regulatory taking test should not be utilized in determining the constitutionality of a rent control scheme applicable to mobile home parks; (2) such a scheme should be reviewed to determine whether it results in arbitrary regulation of private landowner's property rights; and (3) city could have reasonably concluded that limitation on park owners' ability to raise space rent upon sale of mobile homes would protect current mobile home owners' equity in the homes and protect prospective mobile home owners from excessive rent increases.

Affirmed.

[1] APPEAL AND ERROR ⚿893(1)

30k893(1)
On appeal from an order of dismissal after an order sustaining a demurrer, appellate court's standard of review is de novo, i.e., appellate court exercises its independent judgment about whether the complaint states a cause of action as a matter of law.

[2] PLEADING ⚿218(1)

302k218(1)
Court, when considering demurrer to complaint, deems to be true all material facts properly pled and those facts that may be implied or inferred from those expressly alleged.

[3] PLEADING ⚿236(1)
302k236(1)
Grant or denial of leave to amend the complaint calls for an exercise of discretion on the part of the trial court.

[4] APPEAL AND ERROR ⚿959(1)
30k959(1)
Denial of leave to amend the complaint is reviewed for abuse of discretion.

[5] PLEADING ⚿236(1)
302k236(1)
The trial court abuses its discretion in denying leave to amend the complaint only if the plaintiff shows a reasonable possibility of curing any defect by amendment.

[6] EMINENT DOMAIN ⚿2(1.1)
148k2(1.1)
The Agins-Nollan regulatory taking test should not be utilized in determining the constitutionality of a rent control scheme applicable to mobile home parks; instead, such a scheme should be reviewed to determine whether it results in arbitrary regulation of private landowner's property rights. West's Ann.Cal. Const. Art. 1, § 19.

[7] EMINENT DOMAIN ⚿2(1.1)
148k2(1.1)
City could have reasonably concluded that limitation on mobile home park owners' ability to raise space rent upon sale of mobile homes would protect current mobile home owners' equity in the homes and protect prospective mobile home owners from excessive rent increases, and thus, city's mobile home rent control ordinance, on its face, was not a regulatory taking under state Constitution. West's Ann.Cal. Const. Art. 1, § 19.

****599 *786** Hart, King & Coldren, Robert S. Coldren, C. William Dahlin and Keith W. Carlson, Santa Ana, for Plaintiffs and Appellants.

Robbins & Holdaway, Diane E. Robbins, Richard Holdaway, Chino; Endeman, Lincoln, Turek & Heater, Donald R. Lincoln, Henry E. Heater and

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Linda B. Reich, San Diego, for Defendant and Respondent.

OPINION

McKINSTER, Acting P.J.

Plaintiffs Montclair Parkowners Association and Hacienda Mobile Home Association (hereafter "Park Owners") seek to invalidate Ordinance No. 98-777, enacted by the City of Montclair (hereafter, "City"), on the grounds that it is unconstitutional on its face. Ordinance No. 98-777 was enacted to amend the existing rent control ordinance. Park Owners contend that enactment of the ordinance resulted in a regulatory taking of their property without just compensation in violation of article I, section 19, of the California Constitution. The trial court sustained City's demurrer on the ground that Ordinance No. 98-777 was facially constitutional and dismissed the entire case against City.

In the published portion of the opinion (Part I), we conclude that Ordinance No. 98-777 on its face is not an unconstitutional regulatory taking. In our view, the relevant inquiry into the constitutionality of Ordinance No. 98-777 under article I, section 19, of the California Constitution is whether the ordinance is an arbitrary regulation of Park Owners' property rights. Since City could have reasonably concluded that the limitation on Park Owners' ability to raise the rent upon sale of mobile homes would (1) protec *787 the current mobile home owners' equity in the homes and (2) protect prospective mobile home owners from excessive rent increases, it is not a compensable taking under the California Constitution.

In the unpublished portion of the opinion (Part II), we conclude that the trial court did not abuse its discretion in denying leave to amend the complaint.

FACTUAL AND PROCEDURAL BACKGROUND

A. History of City's Rent Control Ordinance

Prior to 1998, City had an existing rent control ordinance. According to that ordinance, Park Owners were free to adjust the rental rate for the mobile home space in the park upon sale of the mobile home or other voluntary transfer of ownership in the mobile home unless the transfer was made to a family member by gift, contract, or otherwise. However, according to a study commissioned by City in 1998, the existing rent control ordinance lost some of its effectiveness because Park Own **60 routinely required prospective mobile home owners to sign long-term rental agreements or leases that were exempt from local rent control ordinances pursuant to Civil Code section 798.17 (hereafter, "the mobile home residency statute"). As a result, the current mobile homeowners' ability to sell their mobile homes was significantly impaired because many prospective mobile home owners were discouraged from buying by the prospect of paying higher market level rental rates.

Furthermore, according to the study, the limitation on the ability to sell the mobile homes resulted in a higher number of the homes being abandoned, which caused an increasing number of the mobile homes to be placed in the hands of Park Owners. Thus, Park Owners were, in a sense, competing with existing mobile home owners in selling the mobile homes. According to the study, although antitrust laws would bar Park Owners from requiring prospective mobile home owners to purchase their mobile homes from Park Owners as a condition of residence at the park, nothing would preclude Park Owners from giving rent preferences to those individuals that bought their mobile homes from Park Owners. Also, the study noted the peculiar nature of mobile homes, particularly their low mobility, as a factor in favor of amending the ordinance since the cost of moving a mobile home from place to place was prohibitive. Therefore, the study concluded that City's rent control ordinance's existing vacancy decontrol provision should be replaced with a vacancy control provision in order to (1) protect existing mobile home owners from excessive rents and preserve equity in their mobile homes an *788 (2) protect prospective mobile home owners from excessive rent increases. An existing vacancy decontrol provision allowed Park Owners unlimited space rent increases when a mobile home was sold in place. The proposed vacancy control provision would prohibit Park Owners from adjusting the space rent to market level when a mobile home is sold in place.

When a concern arose that the proposed ordinance would not accomplish its stated legislative purpose, a supplemental report was issued. The report addressed the argument that any benefit created by the proposed vacancy control provision would be captured only by the existing mobile home owners because lower rent-controlled space rental rates would allow them to sell their mobile homes at

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higher prices. However, the report concluded that, in light of the data collected from neighboring cities with similar rent control ordinances, any potential increase in sale prices of mobile homes would be more than offset by low rental rates. Also, prospective mobile home owners would be able to benefit from the higher equity retained in the mobile homes once they bought them.

On June 20, 1998, City enacted Ordinance No. 98-777. The stated legislative goal of the ordinance was to "... (1) protect current home owner's investment in their mobile homes by precluding park owners from (a) requiring prospective mobile home owners to sign a long-term lease therefore adversely effecting [sic] sales of mobile homes and (b) raising space rents upon sale or transfer of a mobile home in a park." (Ord. No. 98-777, § 5-19.01, subd. (H).) Moreover, the ordinance's aim was to "... protect prospective mobile home owners from excessive rents by providing (a) for lease options in order to give each prospective home owner a real choice between an exempt long-term lease and a lease subject to the protections of the Ordinance; and (b) that a park owner may not raise space rents upon the sale or transfer of a mobile home in a park." (Ibid.) Finally, the ordinance was designed to "protect prospective homeowners' future investments in their mobile homes by precluding park owners from (a) affecting a future sale of such mobile homes through a long-term lease requirement imposed upon the subsequent purchasers and (b **601 raising space rents upon sale or transfer of a mobile home in a park." (Ibid.)

Section 5-19.06 of the newly enacted ordinance limits Park Owners' ability to raise space rental rates upon sale or transfer of ownership of a mobile home to the greater of: (a) three percent; or (b) one hundred percent of the most current annual CPI percentage increase, up to a maximum of eight percent. Section 5-19.09 allows Park Owners to make an administrative application to increase rental rates above the limitatic *788 imposed by the ordinance based on increases in land lease payments made by Park Owners, certain taxes and making of capital improvements. The application for rent increase must be made to the Rent Review Administrator. (Ord. No. 98-777 § 5-19.09, subd. (A).) Any adverse determination on the application for rent increase can be appealed to the City Council, and a subsequent judicial review of the City Council's decision can be made via a petition for a writ of administrative mandate. (Ord. No. 98-777, § 5-19.09, subd. (F).)

In addition to any rent increase allowed pursuant to section 5-19.09, Park Owners may seek permission to increase space rent by submitting an application to the Park Mediation Committee (hereafter, "Committee"). (Ord. No. 98-777, § 5-19.10, subds. (A) and (B).) The Committee shall consist of two representatives from Park Owners, two representatives from the spaces affected by the proposed rent increase, and one mediator appointed by the Rent Review Administrator. (Ibid.)

If the Committee fails to reach an agreement on the application, Park Owners may also apply for a rent increase through arbitration. (Ord. No. 98-777, § 5-19.11.) Park Owners are permitted to employ legal counsel and present physical and testimonial evidence in support of their application. (Ord. No. 98-777, 5-19.11, subd. (F).) The ordinance provides a non-exclusive list of factors on which the arbitrator may rely in reaching his or her decision. (Ord. No. 98- 77 § 5-19.11, subd. (G).) Any adverse decision by the arbitrator is not binding and can be appealed to the City Council. (Ord. No. 98-777, § 5-19.12.) Park Owners may obtain judicial review of any adverse decision by City Council by seeking a writ of administrative mandate. (Ord. No. 98-777, § 5-19.13.)

B. Procedural History of This Litigation

On August 18, 1998, Park Owners filed a complaint against City in the superior court. It contained the following counts: (1) A declaratory relief cause of action re: facial constitutionality of the rent control ordinance; [FN1] (2) A request for temporary and permanent injunctive relief on the grounds that the ordinance was facially unconstitutional, and its enforcement would result in irreparable harm; and (3) An inverse condemnation claim which alleged that enactment of the ordinance resulted in a regulatory taking of Park Owners' property without compensation.

FN1. Park Owners made an express reservation of their right to litigate federal constitutional issues in federal court pursuant to England v. Louisiana State Bd. of Medical Examiners (1964) 375 U.S. 411, 420-421, 84 S.Ct. 461, 11 L.Ed.2d 440. Thus, the only constitutional claim before us is one made under article I, section 19, of the California Constitution.

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*790 City demurred to the entire complaint. The trial court ruled that the ordinance was facially constitutional and sustained City's demurrer to the entire complaint without leave to amend. Park Owners timely appealed.

DISCUSSION

[1][2] "A demurrer tests the legal sufficiency of the complaint, ..." (Hernandez v. City of Pomona (1996) 49 Cal.App.4th 1492, 1497, 57 Cal.Rptr.2d 406; Sargoy v. Resolution Trust Corp. (1992) 8 Cal.App.4th 1039, 1041, 10 Cal.Rptr.2d 889.) On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a **602 matter of law. (Moore v. Regents of University of California (1990) 51 Cal.3d 120, 125, 271 Cal.Rptr. 146, 793 P.2d 479.) We deem to be true all material facts properly pled (Serrano v. Priest (1971) 5 Cal.3d 584, 591, 96 Cal.Rptr. 601, 487 P.2d 1241) and those facts that may be implied or inferred from those expressly alleged (Marshall v. Gibson, Dunn & Crutcher (1995) 37 Cal.App.4th 1397, 1403, 44 Cal.Rptr.2d 339).

[3][4][5] While a decision to sustain or overrule a demurrer is subject to de novo review on appeal, a grant or denial of leave to amend calls for an exercise of discretion on the part of the trial court. (Hernandez v. City of Pomona, supra, 49 Cal.App.4th at p. 1497, 57 Cal.Rptr.2d 406.) Denial of leave to amend is reviewed for abuse of discretion. (Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 967, 9 Cal.Rptr.2d 92, 831 P.2d 317.) The trial court abuses its discretion in denying leave to amend only if the plaintiff shows a reasonable possibility of curing any defect by amendment. (Ibid.)

I

Constitutionality of Ordinance No. 98-777

Park Owners contend that Ordinance No. 98-777 is unconstitutional because it does not substantially advance a legitimate government interest and deprives Park Owners of all economically beneficial use in their property. [FN2] City responds that the stated legislative purposes of the ordinance, protection *791 of the current mobile home owners' investment in their homes and protection of prospective mobile home owners from excessive rents, are legitimate government interests. City further argues that the ordinance accomplishes its stated legislative purposes by prohibiting Park Owners from adjusting rental rates to the market level upon sale or transfer of ownership of a mobile home. City points out that lower rental rates protect the current mobile home owners' equity in their homes by making the homes more attractive sale items and allow prospective mobile home owners to capture the benefit of Ordinance 98-777 in the form of lower rental rates.

FN2. In the reply brief, Park Owners state that their complaint encompasses both facial and as applied challenge to Ordinance 98-777. But in their opening brief, Park Owners state as follows: "Plaintiffs have brought an action which includes a cause of action for declaratory relief regarding the constitutionality of one portion of the Ordinance, not as to the entire Ordinance as applied to Plaintiffs." Furthermore, the declaratory relief count in Park Owners' complaint is labeled "Declaratory Relief: Re Facial Constitutionality of Ordinance No. 98-777." Thus, the as applied challenge is being made for the first time in the reply brief, and it will not be considered. (Reichardt v. Hoffman (1997) 52 Cal.App.4th 754, 764-765, 60 Cal.Rptr.2d 770.) In any event, this issue could not otherwise be considered on the merits at this time because it is not ripe for adjudication. (Sandpiper Mobile Village v. City of Carpinteria (1992) 10 Cal.App.4th 542, 549, 12 Cal.Rptr.2d 623 ["Because Sandpiper has not alleged that it has attempted to change the use of its park or to apply for rent increases, its regulatory taking claim is not ripe."].)

The following legal principles govern our review of facial constitutional challenges to statutes: "In determining a statute's constitutionality, we start from the premise that it is valid, we resolve all doubts in favor of its constitutionality, and we uphold it unless it is in clear and unquestionable conflict with the state or federal Constitutions. [Citation.] A challenge to a statute's constitutionality must demonstrate that its provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions. [Citation.] The corollary to the challenger's burden is that if the court can conceive of a situation in which the statute can be applied without entailing an inevitable collision with constitutional provisions, the statute will prevail. [Citation.] ... A statute will be declared invalid in its entirety only when its scope cannot be limited to constitutionally applicable situations except by reading in numerous qualifications and exceptions, i.e., rewriting it, or if

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it is invalid in certain situations and cannot be enforced in othe **60 without danger of an uncertain or vague future application. [Citation.]" (County Mobilehome Positive Action Com., Inc. v. County of San Diego (1998) 62 Cal.App.4th 727, 733, 73 Cal.Rptr.2d 409, internal quotation marks omitted.)

A. Standard Of Review

[6] Initially, we need to address the standard under which the ordinance in question must be reviewed. Both parties take the position that Ordinance No. 98-777 is not an unconstitutional regulatory taking if it (1) substantially advances a legitimate government interest and (2) does not deprive Park Owners of all economically viable use of their property. (Nollan v. California Coastal Comm'n (1987) 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 67*792 hereafter, "Nollan "); Agins v. Tiburon (1980) 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (hereafter, "Agins ").) [FN3] However, as we explain below, the Agins-Nollan test should not be utilized in determining the constitutionality of a rent control scheme applicable to mobile home parks. Instead, such a scheme should be reviewed to determine whether it results in arbitrary regulation of private landowner's property rights. (Santa Monica Beach, Ltd. v. Superior Court (1999) 19 Cal.4th 952, 967, 81 Cal.Rptr.2d 93, 968 P.2d 993 (hereafter, "Santa Monica Beach ").)

FN3. Hereafter, "the Agins-Nollan test."

In Nollan, the United States Supreme Court held that in cases where the government conditions lifting of a land-use restriction on dedication of a portion of a private land to the public, the condition is an unconstitutional regulatory taking unless it (1) substantially advances a legitimate state interest sought to be protected by the development ban and (2) does not deprive the landowner of the economically viable use of his land. (Nollan, supra, 483 U.S. at pp. 834-842, 107 S.Ct. 3141, citing Agins, supra, 447 U.S. at p. 260, 100 S.Ct. 2138.) The court observed that a land-use restriction will be particularly scrutinized when the lifting of that restriction is conditioned upon actual conveyance of private property, "since in that context there is heightened risk that the purpose [of the condition] is avoidance of the compensation requirement, rather than the stated police-power objective." (Id. at p. 841, 100 S.Ct. 2138.)

The U.S. Supreme Court had no occasion to decide whether the Agins- Nollan test should be used to review either rent control laws applicable to apartment buildings (hereafter, "general rent control laws") or rent control laws applicable to mobile home parks; although, several comments by the court in Yee v. City of Escondido, Cal. (1992) 503 U.S. 519, at page 530, 112 S.Ct. 1522, 118 L.Ed.2d 153 (hereafter, "Yee ") [FN4], suggest that this test might be applicable to determine whether a mobile home park rent control law amounts to a regulatory taking. [FN5] On the contrary, the high court recently acknowledged that it had never extended the Agins-Nollan test beyond cases involving regulations requiring dedication of private property for public use *793 as a condition of the issuance of a land development permit. **60 (City of Monterey v. Del Monte Dunes At Monterey, Ltd. (1999) 526 U.S. 687, 119 S.Ct. 1624, 1635, 143 L.Ed.2d 882.)

FN4. In Yee, the U.S. Supreme Court noted that rent control schemes applicable to mobile homes differ from rent control laws applicable to apartments in that an apartment tenant does not transfer anything to the succeeding tenant while a mobile home owner actually transfers an asset, i.e., the mobile home itself. (Yee, supra, 503 U.S. at p. 530, 112 S.Ct. 1522.) Thus while a rent control scheme applicable to apartments benefits only prospective tenants in the form of reduced rent, a similar law applicable to mobile homes also allows the current mobile home owners to benefit by charging a higher sale price for the mobile home. (Ibid.)

FN5. The lower federal courts had also utilized the Agins-Nollan test to decide whether a rent control regulatory schemes results in a regulatory taking. (See e.g., Federal Home Loan Mortgage Corp. v. New York State Division of Housing and Community Renewal (2nd Cir.1996) 83 F.3d 45, 48; **Richardson v. City and County of Honolulu (9th Cir.1997) 124 F.3d 1150-1166164** (hereafter, "**Richardson** ".)

The California Supreme Court has never held that rent control schemes involving mobile home parks should be reviewed under the Agins-Nollan test. On the contrary, our Supreme Court has recently held that the Agins- Nollan test does not apply to general rent control laws. (Santa Monica Beach, supra, 19 Cal.4th at p. 967, 81 Cal.Rptr.2d 93, 968 P.2d 993.) Instead, the high court concluded that the standard of review in this context must be at least as deferential as for generally applicable zoning laws and other legislative land use controls, i.e. "... the

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party challenging rent control must show 'that it constitutes an arbitrary regulation of property rights.' [Citation]" (Ibid.) Although the court declined to characterize this new test as a rational basis test, it observed that it was more deferential to the government than the Agins-Nollan heightened intermediate scrutiny test. (Ibid.)

Notably, the court acknowledged that the dictum from Yee "suggested that the mobile home rent control scheme of regulation would be scrutinized to determine whether those restrictive regulations advanced a legitimate government interest." (Santa Monica Beach, supra, 19 Cal.4th at p. 969, 81 Cal.Rptr.2d 93, 968 P.2d 993.) Nevertheless, the court left unanswered the question of what standard of review applies to rent control regulation of mobile home parks. (Ibid.)

California Courts of Appeal have not applied a uniform standard of review to rent control schemes of mobile home parks. (Compare, Casella v. City of Morgan Hill (1991) 230 Cal.App.3d 43, 57, 280 Cal.Rptr. 876 ["Legislation passes muster if the legislature reasonably could have concluded that its action would promote a legitimate state interest."]; with Sandpiper Mobile Village v. City of Carpinteria (1992) 10 Cal.App.4th 542, 550-551, 12 Cal.Rptr.2d 623 ["In evaluating whether an ordinance on its face constitutes a taking of a landowner's property, the question is whether the ordinance substantially advances a legitimate state interest in the public welfare.... Unless the regulatory ordinance denies the property owner substantially all economically viable use of [the] land, there is no compensable taking."], accord Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd. (1994) 30 Cal.App.4th 84, 95, 35 Cal.Rptr.2d 315.)

We conclude that the Agins-Nollan test does not apply to rent control schemes of mobile home parks. The Santa Monica Beach court rejected *794 Agins-Nollan test (characterized by the court as an intermediate scrutiny test) in the context of general rent control laws because the test applied only in situations where the government required dedication of private property for public use before it issued a land use permit. (Santa Monica Beach, supra, 19 Cal.4th at p. 966, 81 Cal.Rptr.2d 93, 968 P.2d 993.) Instead, the court adopted a more deferential standard of review, reasoning that general rent control laws are "essentially legislative determinations that do not require any physical conveyance of property." (Id. at p. 966, 81 Cal.Rptr.2d 93, 968 P.2d 993.)

The reasoning of Santa Monica Beach is equally applicable to rent control schemes of mobile home parks. We are aware of the differences between general rent control laws and rent control laws of mobile home parks identified by the U.S. Supreme Court in Yee. However, these differences provide no justification for application of the Agins-Nollan test in the field of rent control of mobile home parks. All rent control schemes are essentially legislative determinations that only limit one particular use of private land. Rent control laws do not require physical conveyance of the property and do not interfere with traditional property rights, such as, for example, the right to exclude others from the property.

**605 Therefore, we conclude that the proper inquiry in determining whether a rent control scheme applicable to mobile home parks is a regulatory taking under the California Constitution is whether such a scheme is an arbitrary regulation of landowner's property rights. (Santa Monica Beach, supra, 19 Cal.4th at p. 967, 81 Cal.Rptr.2d 93, 968 P.2d 993.)

B. Ordinance No. 98-777 Is Constitutional

Having determined the appropriate standard of review, we now turn to the constitutionality of the ordinance in this case.

[7] In order to establish that Ordinance No. 98-777 facially violates the takings clause of the California Constitution, [FN6] Park Owners must establish that the mere enactment of the ordinance amounted to a regulatory taking of private property for public use without compensation. As noted above, a rent control ordinance is a regulatory taking if it is an arbitrary regulation of property rights. (Santa Monica Beach, supra, 19 Cal.4th at p. 967, 81 Cal.Rptr.2d 93, 968 P.2d 993.) California courts have traditionally upheld rent control regulatory schemes against constitutional challenges under the takings clause. (See e.g., Santa M *795 Beach, supra, 19 Cal.4th at pp. 969-970, 81 Cal.Rptr.2d 93, 968 P.2d 993; cf. Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 781, 66 Cal.Rptr.2d 672, 941 P.2d 851.) In Casella v. City of Morgan Hill, the Sixth District upheld a rent control ordinance under the rational basis standard of review. (Casella v. City of

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Morgan Hill, supra, 230 Cal.App.3d at p. 57, 280 Cal.Rptr. 876.)

> FN6. Article I, section 19, of the California Constitution provides, in pertinent part: "Private property may be taken or damaged for public use only when just compensation ... has first been paid to, ... the owner."

In this case, we conclude that Ordinance No. 98-777 is not a regulatory taking. Park Owners concede that protection of the current mobile home owners' equity in their homes and protection of prospective mobile home owners from excessive rents are legitimate government interests. City could have reasonably concluded that limiting Park Owners' ability to raise the rent upon the sale or transfer of mobile homes would accomplish that goal by making mobile homes more attractive sale items and making mobile home ownership more feasible for prospective buyers. Thus, Ordinance No. 98-777 on its face is not an arbitrary regulation of Park Owners' property rights.

Park Owners urge us to part company with prior California decisions upholding constitutionality of rent control regulatory schemes similar to Ordinance No. 98-777. Instead, they contend that we should follow a 1997 decision from the Ninth Circuit, which found the City of Honolulu's rent control ordinance to be an unconstitutional regulatory taking. (See **Richardson, supra, 124 F.3d at p. 1166.**) We are not persuaded.

In **Richardson**, the Ninth Circuit found that the rent control ordinance was an unconstitutional regulatory taking because it did not provide for a separate mechanism allowing prospective mobile home owners to capture the benefit of the reduced rental rates. **(Richardson, supra, 124 F.3d at p. 1166.)** Thus, the court concluded that the ordinance failed to substantially advance the stated legislative goal of the ordinance to create more affordable housing in Honolulu. **(Ibid.)**

In this case, there is a good reason for not following the Ninth Circuit. Th **Richardson** court used the Agins-Nollan test in striking down the Honolulu rent control ordinance. As we concluded above, this test cannot be used to review constitutionality of rent control schemes applicable ****60(** mobile home parks. Moreover, our Supreme Court expressly held that this test cannot be used to review the constitutionality of general rent control laws. (Santa Monica Beach, supra, 19 Cal.4th at p. 967, 81 Cal.Rptr.2d 93, 968 P.2d 993.)

Therefore, we conclude that Ordinance No. 98-777 on its face is not a regulatory taking under the California Constitution.

***796** II [FN**]

FN** See footnote *, ante.

DISPOSITION

The judgment is affirmed.

RICHLI, J., and WARD, J., concur.

END OF DOCUMENT

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Attachment M

BESARO MOBILE HOME PARK, Petitioner/Plaintiff,
v.
CITY OF FREMONT, Respondent/Defendant.

No. C97-02106 CW.

United States District Court, N.D. California.

Dec. 19, 1997.

John H. Erickson, Erickson Beasley Hewitt & Wilson, Oakland, CA.

Timothy S. O'Hara San Mateo, CA.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFF'S REQUEST FOR SANCTIONS

WILKEN, J.

*1 Defendant City of Fremont ("Fremont") moves to dismiss the complaint of Besaro Mobile Home Park ("Besaro") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Besaro opposes the motion and requests sanctions against Fremont. The matter was heard on October 10, 1997. Having considered all of the papers filed by the parties and oral argument on the motion, the Court GRANTS Fremont's motion to dismiss [FN1] and DENIES Besaro's request for sanctions.

FN1. As discussed below, certain causes of action are dismissed without prejudice to refiling once they become ripe for review.

BACKGROUND

Beginning in 1987, Fremont adopted, through its City Council, various ordinances imposing and affecting rent controls on mobile home parks within the city. The first of the ordinances, Ordinance 1760, added Chapter 13, entitled "Mobile Home Space Rent Stabilization," to Title III of the Fremont Municipal Code. All of the other ordinances thereafter were amendments to Chapter 13.

Ordinance 1760 imposed rent controls on mobile home park spaces in an effort to "protect the owners and/or tenants of mobile homes from unreasonable space rental increases while simultaneously recognizing and providing for the need of park owners to receive a just and reasonable return on their property." Ordinance 1760 determined the 1986 general market rent for spaces in mobile home parks to be $268.00 per month.

Besaro is one of three mobile home parks in Fremont. Compl. at 14. The other two are Southlake and Niles Canyon. Besaro was excluded from rent controls imposed by Ordinance 1760 because its 1986 rents were $60 below market. Id. Besaro alleges that its rents were below market because: (a) it had a special relationship with its residents, and (b) Fremont promised to exclude Besaro from rent control if it kept rents below market. Id.

In November, 1992, Fremont adopted Ordinance 2018, which subjected all mobile home parks, including Besaro, to the same rules regarding rent control. Besaro alleges that, as a result, Fremont froze Besaro's 1986 base rent at $60 below general market rents. Id. at 16-17.

In March, 1995, Fremont adopted Ordinance 2115 pursuant to the settlement of a lawsuit between Fremont and the Southlake and Niles Canyon mobile home parks. Ordinance 2115 states, in pertinent part:

> In order to minimize the uncertainty and the cost of litigation the parties have decided to attempt to settle their disputes. In order to effectuate the settlement the City of Fremont has decided to phase in the rent increases that were 'rolled back' at Southlake and Niles Canyon, in exchange for the parkowners dismissing certain claims for back damages and the immediate reinstatement of substantial rent increases.

Ordinance 1760 specifically stated that it excluded Besaro from similar rent increases because "(1) Besaro did not experience a 'roll back' of rents in 1987 and (2) any claims Besaro may have against the City based on the 1992 'roll backs' appear to be barred by the statute of limitations."

In June, 1995, Fremont enacted Ordinance 2121. Ordinance 2121 § 3-13106 requires that petitions for rent increases contain certain information, including data to compute fair return on investment. Section 3-13106 authorizes the rent review officer to request any additional information he or she deems necessary for evaluation of the petition.

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*2 On January 9, 1997, Besaro petitioned Fremont for an adjustment of its base rents to reflect the general market conditions that existed in 1986. Administrative Record ("A.R.") p. 93. On January 22, 1997, the Fremont rent control officer advised Besaro that its petition was incomplete because all categories of materials detailed § 3-13106(b) of Ordinance 2121 were not submitted. Id. at 120. The rent control officer requested that Besaro provide data substantiating its 1994, 1995, and 1996 income and operating expenses and its 1997 projected income, and also requested the income and operating expenses for comparable mobile home parks. Id . On January 28, 1997, Besaro objected to Fremont's demand for this information. Id. at 123. On February 4, 1997, the Fremont rent control officer narrowed her demand by rescinding her request for data on comparable mobile home parks. Id. at 126. Besaro objected to the narrowed demand and requested that the rent control officer appoint a hearing officer to handle Besaro's petition. Id. at 127. On February 7, 1997, Fremont refused to appoint a hearing officer. Id. at 134. On February 11, 1997, at a City Council meeting, Besaro requested that at its next meeting the City Council hear Besaro's appeal of Fremont's refusal to appoint a hearing officer. Id. at 135, 136. At the February 11 hearing, the Mayor of Fremont refused Besaro's request to have its appeal heard at the next City Council meeting and advised Besaro to appeal in writing. Id. at 138-140. On February 12, 1997, Besaro submitted a written appeal regarding Fremont's refusal to have a hearing officer appointed. Id. at 188. This appeal was ultimately denied. Id. at 141.

Besaro alleges that it has no other administrative remedies available. On February 14, 1997, Besaro made a timely request to Fremont for the preparation of the administrative record. Compl. at 30. Besaro did not receive the administrative record from Fremont. Besaro alleges that it made additional requests for the record on February 19 and 28, 1997, and again on April 17 and 28, 1997. Id. Besaro alleges that Fremont refused to prepare an administrative record and, therefore, Besaro compiled an "administrative record" consisting of the documents it possessed. Id.

On May 7, 1997, Besaro filed a complaint against Fremont for: (1) a writ of mandate directing Fremont to appoint a hearing officer; (2) substantive and procedural due process violations; (3) an equal protection violation; and (4) a violation of 42 U.S.C. § 1983. The administrative record compiled by Besaro was attached to the complaint and will be considered by the Court.

LEGAL STANDARD

A motion to dismiss for failure to state a claim will be denied unless it appears that the plaintiff can prove no set of facts which would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Fidelity Fin. Corp. v. Federal Home Loan Bank of San Francisco, 792 F.2d 1432, 1435 (9th Cir.1986), cert. denied, 479 U.S. 1064, 107 S.Ct. 949, 93 L.Ed.2d 998 (1987). All material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9 th Cir.1986). Although the court is generally confined to consideration of the allegations in the pleadings, when the complaint is accompanied by attached documents, such documents are deemed part of the complaint and may be considered in evaluating the merits of a Rule 12(b)(6) motion. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir.1987), cert. denied, 484 U.S. 944, 108 S.Ct. 330, 98 L.Ed.2d 358 (1987).

DISCUSSION

I. Petition For Writ of Mandate

*3 Besaro seeks a writ of mandate pursuant to California Code of Civil Proc 1094.5 directing Fremont to appoint a hearing officer to "hear the relevant evidence relating to its petition for an adjustment of its 1986 base rents." Besaro seems to be arguing that Fremont's refusal to appoint a hearing officer is equivalent to Fremont's issuance of a final administrative order not to grant Besaro a rent increase.

Fremont argues that no final administrative order or decision has been made and therefore Besaro cannot seek a petition for writ of mandate. Fremont also argues that the reason it has not appointed a hearing officer is that Besaro has refused to submit all relevant financial information.

California Code of Civil Procedu §§ 1094.5(a) and (b) state, in pertinent part:

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be

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taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury ...
(b) The inquiry ... shall extend to the questions of whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion ...

Until there has been a final administrative order or determination, a plaintiff's claim is not ripe for adjudication. Pacific Legal Found. v. California Coastal Comm'n, 33 Cal.3d 158, 170, 188 Cal.Rptr. 104, 655 P.2d 306 (1982). California Code of Civil Procedure § 1094.5 allows judicial review only of those administrative decisions that have been made in proceedings involving a hearing, presentation of evidence and findings of fact. Balch Enters., Inc. v. New Haven Unified Sch. Dist., 219 Cal.App.3d 783, 791, 268 Cal.Rptr. 543 (1990).

Section 3-13106 of Ordinance 2121 sets forth the information that petitions for rent increases must contain. This information includes:

(1) The address of the mobile home park; (2) The space number of each mobile home space for which a rent increase is requested; (3) The current and proposed rent schedules for each mobile home space in the mobile home park, including the amount of the requested rent increase for each mobile home space, stated in dollars and cents; (4) The facts supporting the requested rent increase, including supporting documentation; (5) The actual income and operating expenses by category for the mobile home park for each year of a two year period ending no more than six months before the proposed effective date of the rent increase; (6) A schedule of other anticipated fees; and income from the mobile home park; (7) The vacancy rates in the mobile home park during the preceding two year period; (8) A list of any current leases for mobile home spaces unaffected by the proposed rent increase extending beyond the effective date of the rent increase, showing the date that each lease expires and the amount and date of change in the space rent for such lease; (9) Any other information affecting the need for the proposed rent increase that is required by the Rent Review Officer; and (10) Any other information that the parkowner deems relevant.

*4 Ordinance 2121, § 13106.

Besaro failed to provide the information requested in item (5), its income and operating expenses by category for the two years preceding the proposed effective date of the rent increase. Under Ordinance 2121, the petition Besaro filed was incomplete. The rent review officer, who reviews all petitions for completeness, requested that Besaro submit the omitted information so that Besaro's petition would be complete. Besaro refused on grounds that the information requested is irrelevant. [FN2]

FN2. Besaro contends that the information it has not given to Fremont is irrelevant because Ordinance 2121 is unconstitutional. As discussed below, Besaro's constitutional claims are dismissed.

Because Besaro's petition was incomplete, Fremont never held a hearing, reviewed evidence, or made findings of fact regarding the substance of Besaro's petition. Besaro is not entitled to a writ of mandate under California Code of Civil Procedu § 1094.5 because no final decision was made or order issued regarding Besaro's petition.

Besaro mistakes Fremont's denial of its request for appointment of a hearing officer as a final administrative decision. Besaro did exhaust its administrative remedies regarding the appointment of a hearing officer. However, this is not a final order on the merits of Besaro's petition for a rent increase and is, therefore, not subject to judicial review under California Code of Civil Procedu § 1094.5.

II. Constitutional Claims

Besaro claims that Fremont has violated its substantive due process rights provided by the Fourteenth Amendment. Fremont argues that Besaro's substantive due process claim must be brought, if at all, as a Fifth Amendment Takings Clause violation.

A. The Takings Clause

Fremont argues that Besaro cannot proceed under the general guarantee of substantive due process because the Takings Clause of the Fifth Amendment provides an explicit source of constitutional protection against violations of rights such as those Besaro alleges against Fremont. Besaro does not address this argument in its opposition.

When an explicit textual provision of the federal

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constitution protects against a challenged government action, the claim must be analyzed under that specific provision alone and not under the more general guarantee of substantive due process. Armendariz v. Penman, 75 F.3d 1311, 1322 (9th Cir.1996); Macri v. King County, 110 F.3d 1496, 1499 (9th Cir.1997). The Macri court explained that this exception to the general rule that a plaintiff can seek relief under multiple constitutional theories is based on the "belief that the substantive due process clause must be expanded only with the greatest care and that its protection is primarily reserved for 'liberties deeply rooted in this Nation's history and tradition.' " Id. The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, specifically provides protection against the taking by the State of private property for public use without just compensation. Yee v. City of Escondido, 503 U.S. 519, 522, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992); Armendariz, 75 F.3d at 1320.

*5 In Yee v. City of Escondido, the Court explained that:

> when the government merely regulates the use of property, compensation is required only if consideration such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggests that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole.

503 U.S. at 522.

Courts have consistently analyzed rent control ordinances to determine if they are regulatory takings under the Takings Clause as explicated in **Yee. Richardson v. City and County of Honolulu, 124 F.3d 1150 (9th** .1997); Carson Harbor Village Ltd. v. City of Carson, 37 F.3d 468 (9th Cir.1994), overruled on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir.1997); Azul Pacifico, Inc. v. City of Los Angeles, 948 F.2d 575 (9th Cir.1991), cert. denied, 506 U.S. 1081, 113 S.Ct. 1049, 122 L.Ed.2d 357 (1993); Federal Home Loan Mortgage Corp. v. New York State Div. of Hous. and Community Renewal, 83 F.3d 45 (2d Cir.1996). Because the Takings Clause of the Fifth Amendment provides an explicit textual provision of the Constitution under which the constitutionality of Fremont's rent control ordinance can be analyzed, Besaro's challenge to the constitutionality of Ordinance 2121 must be brought under the Takings Clause and not under the more general guarantee of substantive due process. As a result, Besaro's claim for a violation of substantive due process is dismissed.

The Court notes that an action under the Takings Clause requires that the State action alleged to constitute the taking must be a final action. Schnuck v. City of Santa Monica, 935 F.2d 171, 173 (9th Cir.1991) (citing Williams Co. Reg'l Planning v. Hamilton Bank, 473 U.S. 172, 195, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985)); see also Macri, 110 F.3d at 1499. A plaintiff's claim under the Takings Clause is not ripe until the plaintiff seeks and the State fails to provide adequate compensation for the taking. Id. If Fremont issues a final decision on Besaro's petition that Besaro feels constitutes a taking, Besaro may file a claim for violation of the Takings Clause.

B. Substantive Due Process

Even if analyzed under the substantive due process doctrine, Besaro's claim fails. Besaro argues that the provisions of Ordinance 2121 violate its substantive due process rights because the ordinance arbitrarily mandates that a mobile home park owner "whose rents are below market at the commencement of rent control may only get an adjustment if he proves that he is not currently getting a fair return."

To survive a substantive due process challenge, an economic regulation must satisfy a two-part test: (1) the ordinance must serve a legitimate purpose, and (2) the means employed must be rationally related to the legitimate purpose. Moore v. East Cleveland, 431 U.S. 494, 498 n. 6, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). The Ninth Circuit has articulated the test as one which requires that the plaintiff "prove that the government's action was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951, 957 (9th Cir.1991), vacated and remanded, 506 U.S. 802, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992), adhered to in relevant part, 987 F.2d 662 (9th Cir.1993).

*6 The California Supreme Court, in Fisher v. City of Berkeley, provided an extensive analysis of the constitutionality of local rent control ordinances. 37 Cal.3d 644, 679-691, 209 Cal.Rptr. 682, 693 P.2d 261 (1984). Fisher addressed the very same issue raised here, that is, whether a rent control ordinance

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is facially unconstitutional if it provides that a landlord is to receive a fair return on his or her investment. Id. at 679, 209 Cal.Rptr. 682, 693 P.2d 261. The court explained that a regulation can only be declared unconstitutional on its face if "its terms will not permit those who administer it to avoid confiscatory results in its application to the complaining parties." Id. (citing Birkenfeld v. City of Berkeley, 17 Cal.3d 129, 169, 130 Cal.Rptr. 465, 550 P.2d 1001 (1976)). The court concluded that a fair return on investment standard will not preclude a rent control board from avoiding confiscatory results, and thus, an ordinance providing that rents be administered to provide a landlord a fair return on his or her investment is constitutionally valid on its face. Fisher, 37 Cal.3d at 686, 209 Cal.Rptr. 682, 693 P.2d 261. Therefore, under Fisher, Besaro's argument that Ordinance 2121 is unconstitutional because it incorporates a fair return on investment standard into its analysis fails.

Besaro also argues that Ordinance 2121 is unconstitutional because it contains no mechanism to adjust upwardly base rents which are below general market rents. In Kavanau v. Santa Monica Rent Control Board, 16 Cal.4th 761, 66 Cal.Rptr.2d 672, 941 P.2d 851 (1997), the California Supreme Court revisited the issue of the constitutionality of rent control ordinances. The court explained that although the State and federal constitutions do not require a particular administrative formula for measuring a fair return on investment, several characteristics are favored.

First, the court noted that because of inflation, a rent control ordinance "may not indefinitely freeze the dollar amount of ... profits without eventually causing confiscatory results." Id. at 768, 66 Cal.Rptr.2d 672, 941 P.2d 851 (quoting Fisher, 37 Cal.3d at 683, 209 Cal.Rptr. 682, 693 P.2d 261). Section 3-13109(k) of Ordinance 2121 provides, "In no event may a hearing officer place a cap on any rent increase allowable under this ordinance, specifically including but not limited to any rent increase necessary to provide a park owner with a fair return on investment." Therefore, Ordinance 2121 does not violate the first criterion set forth in Kavanau to ensure that a landlord receives a fair rate of return.

Second, the Kavanau court noted that "when a rent control law established a 'base rent' by reference to rents on a specified date, the law should permit adjustments of that base rent for those rental units that had artificially low rents at that time." Kavanau, 16 Cal.4th at 768, 66 Cal.Rptr.2d 672, 941 P.2d 851 (quoting Birkenfeld, 17 Cal.3d at 168, 130 Cal.Rptr. 465, 550 P.2d 1001). Section 3-13106 of Ordinance 2121 allows landlords to petition for a major rent increase to adjust base rents on units which have artificially low base rents.

Third, the Kavanau court noted that the rent control ordinance should permit individualized rent adjustments in appropriate cases even if the base rent was not artificially low. Kavanau, 16 Cal.4th at 768, 66 Cal.Rptr.2d 672, 941 P.2d 851 (citing Fisher, 37 Cal.3d at 689-690, 209 Cal.Rptr. 682, 693 P.2d 261). Fremont's rent control ordinance permits such individualized rent adjustments, whether or not the base rent is artificially low, because it allows any mobile home park to petition for a major rent increase.

*7 Fourth, the Kavanau court pointed out that the procedural mechanism by which landlords may obtain rent adjustments must not be prohibitively burdensome. Kavanau, 16 Cal.4th at 768, 66 Cal.Rptr.2d 672, 941 P.2d 851 (citing Birkenfeld, 17 Cal.3d at 169-171, 130 Cal.Rptr. 465, 550 P.2d 1001). To avoid being prohibitively burdensome, the rent adjustment process may not entail "a substantially greater incidence and degree of delay than is practically necessary." Id. The petition process for a rent adjustment provided by Ordinance 2121 is not prohibitively burdensome. All the information requested by Ordinance 2121 appears to be relevant for a determination of whether a landlord is entitled to a rent increase. In addition, the petition process, including the appointment of a hearing officer upon submission of a complete petition, does not appear to be burdensome. Therefore, under the most recent California Supreme Court decision regarding the constitutionality of rent control ordinances, Ordinance 2121 is constitutional.

Besaro also argues that Fremont's ordinance is unlawful under two California cases. Besaro argues that Vega v. City of West Hollywood, 223 Cal.App.3d 1342, 273 Cal.Rptr. 243 (1990), only allows Fremont to ask Besaro to produce data relating to Besaro and not to other mobile home parks. This argument is not relevant because it is undisputed that the rent control officer's last request only required Besaro to produce its own income and operating expenses.

Besaro also argues that Fremont's request for

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income and expense data violates Vega because Vega established that rent control ordinances, to pass constitutional muster, must focus on "general market conditions" rather than a "fair and reasonable return." Besaro misinterprets Vega. Vega was concerned with both factors, stating that, "after base rents are established which reflect general market conditions, then ... the rents which are established must provide the landlord with the requisite 'just and reasonable return.' " Id. at 1351, 273 Cal.Rptr. 243.

Besaro seems to be arguing that Fremont will ignore comparable market rent data, just as the commission did in Vega, because Fremont is asking for income and expense data. However, Ordinance 2121 requires, for a petition to be complete, that both types of data be submitted. Because Fremont has not ruled on the substance of Besaro's petition, Besaro's conclusion that Fremont will not increase its base rents is premature.

Besaro relies on Birkenfeld v. City of Berkeley, 17 Cal.3d 129, 168, 130 Cal.Rptr. 465, 550 P.2d 1001 (1976), for the proposition that the procedural mechanism by which landlords may obtain rental rate adjustments must not be prohibitively burdensome. The court in Birkenfeld stated that the Berkeley rent control law was constitutionally deficient because it "drastically and unnecessarily" restricted the rent control board's ability to adjust rents. Id. at 169, 130 Cal.Rptr. 465, 550 P.2d 1001. In Birkenfeld, the court concluded that the adjustment procedure, consisting of hearings for approximately 16,000 rental units on a unit-by-unit basis before a single tribunal, "inherently and unreasonably precluded reasonably prompt action except perhaps for a lucky few." Id. at 172, 130 Cal.Rptr. 465, 550 P.2d 1001.

*8 The situation here is different from that in Birkenfeld. There are only three mobile home parks in Fremont rather than the 16,000 units in Birkenfeld. Fremont's adjustment procedure allows the rent review officer to review petitions and make determinations regarding rent increases at a mobile home park upon that park's submission of all relevant information. Fremont has responded promptly to Besaro's submission of a petition for major rent increase. Thus, Fremont's rent control ordinance does not violate the constitutional requirements set forth in Birkenfeld.

Fremont points out that Birkenfeld holds that whether rental regulations are fair or confiscatory depends ultimately on the result reached and that determination can only be made by analyzing the regulation as applied. Birkenfeld, 17 Cal.3d at 165, 130 Cal.Rptr. 465, 550 P.2d 1001. Because Fremont has not yet applied Ordinance 2121 to Besaro's petition for a rent increase, its claim that Ordinance 2121 is unconstitutional as applied is premature. Besaro's claim that Ordinance 2121 is unconstitutional as applied fails for failure to exhaust. Amberhill Properties v. City of Berkeley, 814 F.2d 1340, 1341 (9th Cir.1987). As noted above, such a challenge must be made under the Takings Clause.

Thus, Ordinance 2121 does not on its face violate Besaro's right to substantive due process and Besaro's as-applied challenge to Ordinance 2121 is premature.

C. Procedural Due Process

Besaro argues that it was denied procedural due process because Fremont refused to allow Besaro the opportunity to present "relevant" evidence before a hearing officer. Fremont argues that Besaro is not entitled to a hearing until Besaro has complied with the requirements of Ordinance 2121. Fremont also argues that the hearing to which Besaro is entitled would not be meaningful until all of Besaro's financial information has been submitted.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)).

Besaro incorrectly asserts that it has not been allowed to present relevant evidence. Fremont has accepted the market data Besaro has submitted and is merely requesting additional information required by Ordinance 2121. This does not suggest that Fremont will not consider the evidence Besaro has already presented. Fremont states that when Besaro complies with the requirements of Ordinance 2121, it will appoint a hearing officer and a hearing date will be set. Thus far, it has been Besaro's own non-compliance that has led to the delay in appointing a hearing officer.

Because Besaro has failed to plead sufficient facts to constitute a cause of action for a violation of

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procedural due process, the claim is dismissed without prejudice. If Besaro produces the requested information and is then denied a hearing at a meaningful time and in a meaningful manner, it may refile this claim.

D. Equal Protection Claim

*9 Besaro argues that Fremont's rent control ordinance improperly distinguishes between Besaro and the other two mobile home parks in Fremont and thereby violates Besaro's equal protection rights. Besaro argues that because Ordinance 2018 imposed rent control on all parks and Ordinance 2115 upwardly adjusted the base rents of the two other mobile parks, Fremont has impermissibly classified the parks into two groups. Fremont argues that Besaro's equal protection claim fails because Besaro is not a member of any constitutionally protected class and Ordinances 2018 and 2115 are rationally related to a legitimate government interest.

Unless a classification warrants heightened review because it jeopardizes a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate government interest. Nordinger v. Hahn, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992). This deferential standard is appropriate for reviewing equal protection challenges to rent control ordinances. Pennell v. City of San Jose, 485 U.S. 1, 14, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988). Under this standard, a city need only show that its rent control ordinance is rationally related to a legitimate State interest. Id. In Schnuck v. City of Santa Monica, the Ninth Circuit rejected an equal protection claim that a city's rent control law impermissibly classified landlords. 935 F.2d 171 (9th Cir.1991). The court, citing Pennell, stated that "we will not overturn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." Id. at 176 (quoting Pennell, 485 U.S. at 14).

Ordinance 2018 established that all mobile home parks, including Besaro, are subject to the same rules regarding rent control. It treats all mobile home parks equally and does not distinguish between them. Ordinance 2115 was adopted pursuant to the settlement of the lawsuit between Fremont and the Southlake and Niles Canyon mobile home parks. Ordinance 2215 at 33-34. Ordinance 2115 permitted these two parks to raise their rents so that they could recover lost rents resulting from roll-backs Fremont had imposed upon them in 1987 and 1992. Id. Ordinance 2115 did not apply to Besaro because Besaro had not been subject to any roll-backs and was not a party to the lawsuit. Id. at 35.

Although Ordinance 2115 arguably divides Fremont's mobile home parks into two groups, it does so for the legitimate public purpose of avoiding lengthy and expensive litigation that might have resulted in even greater liability for Fremont. Besaro has failed to allege facts demonstrating that Fremont illegally classified Besaro or that Ordinance 2115 is not a reasonable means for achieving a legitimate public purpose. As a result, Besaro's equal protection claim is dismissed with prejudice.

III. Claim Under 42 U.S.C. § 1983

*10 Fremont argues that Besaro's fourth cause of action, labeled "violation of 42 U.S.C § 1983" is not actionable because all of Besaro's constitutional claims fail.

To sustain an action against a municipality under 42 U.S.C. § 1983, a plaintiff must show that: (1) he or she possessed a constitutional right of which he or she was deprived, (2) the municipality had a policy which amounted to "deliberate indifference" to the plaintiff's constitutional right, and (3) action taken pursuant to that policy caused a violation of that constitutional right. City of Canton, Ohio v. Harris, 489 U.S. 378, 389-391, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

As discussed above, all of Besaro's constitutional claims are dismissed. If Besaro can establish a viable procedural due process claim in a refiled complaint, the 42 U.S.C. § 1983 claim will be analyzed at that time. Therefore, the § 1983 claim is dismissed without prejudice.

IV. Request For Sanctions

Besaro requests sanctions against Fremont in the amount of $3,000 pursuant to Rule 11 of the Federal Rules of Civil Procedure. Besaro argues that this is Fremont's second motion to dismiss, and that, like the first, it is completely lacking in merit and is brought to delay, harass and vex Besaro.

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Fremont's first motion to dismiss was based on alleged procedural defects in Besaro's complaint. The Court denied the motion. Because this motion to dismiss deals with the substance of the complaint, it is not a repetitive motion seeking to delay, harass or vex Besaro. As discussed above, Fremont's motion to dismiss is not lacking in merit. Therefore, the request for sanctions is denied.

CONCLUSION

For the foregoing reasons, Fremont's motion to dismiss is GRANTED. The claims for writ of mandate, violation of procedural due process and violation of 42 U.S.C. § 1983 are dismissed without prejudice to refiling, if necessary, after Besaro receives a final decision on its complete petition. The claim that Ordinance 2121 violates Besaro's right to substantive due process is dismissed on the ground that it must be brought, if at all, as a claim for violation of the Takings Clause. The claim that Ordinance 2121 violates Besaro's right to equal protection is dismissed with prejudice. Besaro's request for sanctions is DENIED.

IT IS SO ORDERED.

END OF DOCUMENT

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Berry?

Attachment N

LEVALD, INC., Plaintiff-Appellant,
v.
CITY OF PALM DESERT, Defendant-Appellee.

No. 91-56315.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Feb. 4, 1993.

Decided July 8, 1993.

Owner of mobile home park brought action challenging city's rent control and vacancy control ordinance as effecting taking without just compensation and as violative of substantive due process. The United States District Court for the Central District of California, Laughlin E. Waters, J., dismissed, and owner appealed. The Court of Appeals, O'Scannlain, J., held that: (1) facial takings challenge accrued on date final version of ordinance was passed and challenge was thus time barred; (2) as-applied takings challenge was not ripe inasmuch as owner had not sought compensation for regulatory taking; (3) ordinance was not facially violative of substantive due process; but (4) district court abused its discretion in failing to explain its reasons for denying leave to amend complaint to assert as-applied substantive due process claim.

Affirmed in part, reversed and remanded in part.

[1] FEDERAL COURTS ⇦701.1

170Bk701.1
Formerly 170Bk701
Factual allegations that were presented to district court only in amended complaint that was lodged with but not accepted for filing by district court were not considered on appeal inasmuch as complaint was not part of record on appeal.

[2] EMINENT DOMAIN ⇦2(1)
148k2(1)
Permanent physical occupation of property that will support takings claim occurs when government physically intrudes upon private property either directly or by authorizing others to do so. U.S.C.A. Const.Amend. 5.

[3] EMINENT DOMAIN ⇦2(1)
148k2(1)
In context of taking claim, regulatory taking occurs when value or usefulness of private property is diminished by regulatory action that does not involve physical occupation of property. U.S.C.A. Const.Amend. 5.

[4] EMINENT DOMAIN ⇦2(1)
148k2(1)
Physical occupation of private property by government is taking per se. U.S.C.A. Const.Amend. 5.

[5] EMINENT DOMAIN ⇦2(1.1)
148k2(1.1)
Combined effect of California Mobile Home Residency Law and city's vacancy control and rent control ordinance did not result in permanent physical occupation that could be considered taking per se so as to require just compensation under Fifth Amendment. U.S.C.A. Const.Amend. 5.

[6] EMINENT DOMAIN ⇦255
148k255
Owner of mobile home park could raise regulatory takings argument for first time on appeal after intervening Supreme Court decision foreclosed takings claim against city based on physical occupation theory; takings claim based on physical occupation and on regulation were not separate claims, but separate arguments in support of single claim that city's ordinance effected unconstitutional taking. U.S.C.A. Const.Amend. 5.

[7] EMINENT DOMAIN ⇦2(1)
148k2(1)
In context of takings claim, facial challenge involves claim that mere enactment of statute constitutes taking, while as-applied challenge involves claim that particular impact of government action on specific piece of property requires payment of just compensation. U.S.C.A. Const.Amend. 5.

[8] EMINENT DOMAIN ⇦277
148k277
In context of takings claim, requirement that claimant seek final decision regarding application of regulation to claimant's property before government entity charged with its implementation does not apply to facial challenge. U.S.C.A. Const.Amend. 5.

[9] FEDERAL COURTS ⇦13.25
170Bk13.25

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Requirement that party asserting takings claim first seek compensation through state procedures before turning to federal courts does not mean that party has to bring state-court action where it would be futile under existing state law. U.S.C.A. Const.Amend. 5.

[10] FEDERAL COURTS ⚖13.25
170Bk13.25
Property owner's facial takings challenge to city ordinance was ripe for judicial review even though property owner had not sought compensation in state court; at time ordinance was enacted, state did not recognize actions for inverse condemnation based on regulatory takings. U.S.C.A. Const.Amend. 5.

[11] FEDERAL CIVIL PROCEDURE ⚖1825
170Ak1825
District court properly entertained statute of limitations issue as grounds for motion to dismiss even though statute of limitations defense was not raised in motion; movant pleaded statute of limitations in its answer, thereby preserving defense, and nonmovant had opportunity to present argument on statute of limitations question before district court and on appeal.

[12] FEDERAL COURTS ⚖760
170Bk760
Doctrine of the law of the case did not bar Court of Appeals from considering merits of statute of limitations argument; regardless of whether it was appropriate or prudent for one district judge to revisit statute of limitations when another judge had already ruled on it, there was nothing insulating either judge's conclusion from appellate review.

[13] EMINENT DOMAIN ⚖277
148k277
Plaintiff cannot bring § 1983 action in federal court based on facial takings challenge to ordinance until state denies just compensation; such claim is not ripe, and cause of action under section 1983 does not accrue, until such point. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. § 1983.

[13] FEDERAL COURTS ⚖13.25
170Bk13.25
Plaintiff cannot bring § 1983 action in federal court based on facial takings challenge to ordinance until state denies just compensation; such claim is not ripe, and cause of action under section 1983 does not accrue, until such point. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. § 1983.

[14] CIVIL RIGHTS ⚖365
78k365
Claimant asserting facial takings claim need not seek relief in state court as prerequisite to fili § 1983 claim in federal court when it would be futile to do so; where state has expressly rejected claimant's theory of case and therefore state remedies are inadequate, federal court considers unavailability of state remedy to be functional equivalent of denial of just compensation. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. § 1983.

[15] LIMITATION OF ACTIONS ⚖58(1)
241k58(1)
In case in which it would be futile to seek compensation in state court, facial challenge to statute as effecting taking without just compensation under § 1983 accrues upon passage of ordinance. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. § 1983.

[16] LIMITATION OF ACTIONS ⚖58(1)
241k58(1)
In view of fact that state law provided no remedy for regulatory takings at time alleged taking occurred § 1983 claim based on facial challenge to ordinance accrued when final version of ordinance was passed, notwithstanding property owner's contention that cause of action did not accrue until property values increased, and that statute of limitations was inapplicable to claim for declaratory judgment. U.S.C.A. Const.Amend. 5; 42 U.S.C.A. § 1983.

[17] EMINENT DOMAIN ⚖2(1.1)
148k2(1.1)
Claim that ordinance did not advance purpose of controlling spiraling housing costs for future tenants of mobile home park but merely operated as transfer of wealth from landlord to existing tenant did not involve as-applied takings claim, but facial challenge to ordinance. U.S.C.A. Const.Amend. 5.

[18] EMINENT DOMAIN ⚖277
148k277
Property owner's as-applied takings challenge to rent control and vacancy control ordinance governing mobile home parks was not ripe for judicial review where owner had not sought compensation in state court and had not shown that state courts had established that property owners could not obtain just compensation through inverse condemnation action under any circumstances, notwithstanding owner's contention that it would be futile to do so because "California courts defy the United States

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Supreme Court"; while state Supreme Court had refused to follow United States Supreme Court in context of takings claim based on physical occupation, state courts did recognize regulatory takings claim such as that asserted by property owner. U.S.C.A. Const.Amend. 5.

[18] FEDERAL COURTS ⚿13.25
170Bk13.25
Property owner's as-applied takings challenge to rent control and vacancy control ordinance governing mobile home parks was not ripe for judicial review where owner had not sought compensation in state court and had not shown that state courts had established that property owners could not obtain just compensation through inverse condemnation action under any circumstances, notwithstanding owner's contention that it would be futile to do so because "California courts defy the United States Supreme Court"; while state Supreme Court had refused to follow United States Supreme Court in context of takings claim based on physical occupation, state courts did recognize regulatory takings claim such as that asserted by property owner. U.S.C.A. Const.Amend. 5.

[19] CONSTITUTIONAL LAW ⚿70.1(7.1)
92k70.1(7.1)
In reviewing economic legislation on substantive due process grounds, Court of Appeals gives great deference to judgment of legislature. U.S.C.A. Const.Amends. 5, 14.

[20] CONSTITUTIONAL LAW ⚿253.1
92k253.1
In context of substantive due process challenge to economic legislation, there is no requirement that legislation actually advance its stated purpose; rather, inquiry focuses on whether governmental body could have had no legitimate reason for its decision. U.S.C.A. Const.Amends. 5, 14.

[21] CONSTITUTIONAL LAW ⚿278.3
92k278.3
City rent control and vacancy control ordinance governing mobile home parks did not violate substantive due process; ordinance was legitimately designed to alleviate hardship created by rapidly escalating rents, to protect owners' investments in their mobile homes, to equalize bargaining position of park owners and tenants, and to protect residents from unconscionable and coercive changes in rental rates, and rational legislator could have believed that rent control ordinance would further those goals, at least insofar as purpose was to protect existing tenants. U.S.C.A. Const.Amends. 5, 14.

[21] LANDLORD AND TENANT ⚿384
233k384
City rent control and vacancy control ordinance governing mobile home parks did not violate substantive due process; ordinance was legitimately designed to alleviate hardship created by rapidly escalating rents, to protect owners' investments in their mobile homes, to equalize bargaining position of park owners and tenants, and to protect residents from unconscionable and coercive changes in rental rates, and rational legislator could have believed that rent control ordinance would further those goals, at least insofar as purpose was to protect existing tenants. U.S.C.A. Const.Amends. 5, 14.

[22] FEDERAL COURTS ⚿666
170Bk666
Court of Appeals had jurisdiction to consider denial of leave to amend even though appellant's notice of appeal did not indicate that appellant intended to appeal such denial; denial of leave to amend complaint was addressed in appellant's opening brief, thus demonstrating that appellee had notice of issue and did not suffer prejudice from appellant's failure to specify order in notice of appeal. F.R.A.P.Rule 3(c), 28 U.S.C.A.

[23] FEDERAL COURTS ⚿817
170Bk817
District court's denial of plaintiff's request to amend its complaint is reviewed for abuse of discretion. Fed.Rules Civ.Proc.Rule 15(a), 28 U.S.C.A.

[24] FEDERAL CIVIL PROCEDURE ⚿849
170Ak849
District court abused its discretion in failing to explain its reasons for denying plaintiff leave to amend its complaint; district court had dismissed original claim without prejudice, and even though amended complaint was phrased exactly as district court had suggested in order to state viable claim, district court denied motion without explanation. Fed.Rules Civ.Proc.Rule 15(a), 28 U.S.C.A.

[25] FEDERAL COURTS ⚿18
170Bk18
After dismissing all federal constitutional claims regarding city's rent and vacancy control ordinance governing mobile home parks, district court was justified in declining to exercise supplemental jurisdiction over state-law claims. 28 U.S.C. §

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1367(c)(3).

*683 Jerrold A. Fadem and Andrew H. Kopkin, Fadem & Douglas, Los Angeles, CA, for plaintiff-appellant.

Michael J. Andelson and Kandy Lee Allen, Best, Best & Krieger, Rancho Mirage, CA, for defendant-appellee.

Appeal from the United States District Court for the Central District of California.

Before: HUG, and O'SCANNLAIN, Circuit Judges, and SEDWICK, [FN*] District Judge.

FN* The Honorable John W. Sedwick, United States District Judge for the District of Alaska, sitting by designation.

O'SCANNLAIN, Circuit Judge:

We are called upon to consider, yet again, a takings challenge to mobile home rent control laws.

I

Levald, Inc. owns a mobile home park in the city of Palm Desert, California. Residents of the park own their mobile homes but rent pads from Levald. Levald provides private streets and common areas, along with other lesser amenities. The vast majority of mobile homes are never moved once they are placed in the park.

The park is subject to California's Mobilehome Residency Law, California Civil Code § 798 et seq. ("the residency law"). The impetus for the residency law was the legislature's finding 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 provisions of this chapter." Cal.Civ.Code § 798.55(a). The residency law severely limits the ability of the mobile home park owner to terminate the tenancy of the mobile home owner, and provides that the park owner may not require the removal of a mobile home when it is sold. Moreover, the residency law prohibits the park owner from charging a transfer fee for the sale, and the park owner may not disapprove a purchaser as *684 long as the purchaser has the ability to pay rent.

In 1985, Palm Desert passed a vacancy control ordinance to supplement an already-existing rent control ordinance. The vacancy control ordinance prohibited mobile home park owners from increasing the rent for a mobile home space when that space became vacant or the ownership of a mobile home was transferred. In 1986, Palm Desert repealed the rent control and vacancy control ordinances and reenacted their provisions in Palm Desert Ordinance No. 456. Under the ordinance, a park owner may apply for a hardship rental increase through various procedures outlined in the city's Rent Review Board Guidelines.

According to Levald, the combined effect of the residency laws and the ordinance ("the statutory scheme") is that a property interest is transferred from the landlord to its tenants: the right perpetually to occupy park spaces at below-market rents. Levald asserts the right has a market value that park tenants are able to capture when they sell their mobile homes to third parties. The premium that the new buyer must pay is equal to the difference between the rent controlled price and the fair market price over the expected life of the statutory scheme, discounted to present value. Thus, the argument goes, incoming tenants do not get the benefit of the lower rents since the lower rents are offset by the premium.

[1] In 1989, Levald filed suit against Palm Desert. The complaint alleges violations of the Takings and Due Process Clauses of the United States Constitution, along with the California Constitution. On September 9, 1991, the district court dismissed the complaint, concluding that the takings claims were barred by the statute of limitations and that Levald had failed to state a claim for a violation of the substantive due process clause. The district court declined to exercise supplemental jurisdiction over the pendent state law claims. Levald appeals. [FN1]

FN1. Palm Desert's motion to strike from Levald's brief factual allegations not in the record below is granted. The amended complaint that was lodged with, but not accepted for filing by, the district court is not part of the record on appeal and we thus do not consider factual allegations that were presented to the district court only in it. See United States v. Sanchez-Lopez, 879 F.2d 541, 548 (9th Cir.1989); Kirshner v. Uniden Corp. of

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Am., 842 F.2d 1074, 1077 (9th Cir.1988). Moreover, the allegations do not concern facts that are judicially noticeable under Fed.R.Evid. 201(b).

II

[2][3][4] The Takings Clause of the Fifth Amendment provides: "[N]or shall property be taken for public use, without just compensation." Takings claims are divided into two classes: permanent physical occupation claims and regulatory takings. Compare, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 102 S.Ct. 3164, 3171, 73 L.Ed.2d 868 (1982) (physical occupation) with Penn Central Transp. Co. v. New York City, 438 U.S. 104, 123-25, 98 S.Ct. 2646, 2658-59, 57 L.Ed.2d 631 (1978) (regulatory taking). A physical occupation occurs when the government physically intrudes upon private property either directly or by authorizing others to do so. Loretto, 458 U.S. at 426, 102 S.Ct. at 3171. A regulatory taking occurs when the value or usefulness of private property is diminished by a regulatory action that does not involve a physical occupation of the property. **"Where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation." Yee v. City of Escondido, 503 U.S. 519, ----, 112 S.Ct. 1522, 1526, 118 L.Ed.2d 153 (1992)**; see Loretto, 458 U.S. at 426, 102 S.Ct. at 3171 (installation of television cables, although only occupying one and one half cubic feet, represented a physical occupation and thus a per se taking). **"But where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a wh."le Yee, 503 U.S. at ----, 112 S.Ct. at 1526** see Penn Central, 438 U.S. at 123-25, 98 S.Ct. at 2658-59 (regulation that prohibite* ***685** Penn Central from building a fifty-five story office tower over its Grand Central Terminal drastically diminished the value of Penn Central's property, but did not amount to a taking). Because determining whether a regulatory action effects a taking requi: **"complex factual assessments of the purposes and economic effects of government actions," Yee, 503 U.S. at ----, 112 S.Ct. at 1526,** while any physical occupation by the government is a taking per se, much turns on the classification of the government's action.

A

[5] In Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir.1987), cert. denied, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), overruled by **Yee v. City of Escondido, 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (199**, the Ninth Circuit considered whether a statutory scheme almost identical to the one challenged here could amount to a permanent physical occupation and thus a per se taking. The Hall court concluded that the appellants' claim that the mobile home rent control ordinance transferred from the landlords to the tenants a possessory interest in the land, consisting of the right to occupy the property in perpetuity while paying only a fraction of what it is worth in rent, was indeed a physical occupation claim. Id. at 1276-77.

Levald relied on Hall before the district court, arguing that the government had taken its property through a permanent physical occupation. After the district court reached its decision, however, the Supreme Court overruled Hall **Yee v. City of Escondido, 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992**. The Court held that the rent control ordinance, even when considered in conjunction with the California Mobilehome Residency Law, in no way authorized a compelled physical invasion of the property because the landlords **"voluntarily rented their land to mobile home owners." Id. 503 U.S. at ----, 112 S.Ct. at 1528.** The Court noted th: **"neither the City nor the State compels petitioners, once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notic." Id.** (emphasis added). The Court reserved, however, the question whether the combined effects of the mobilehome residency law and the rent control ordinance could amount to a regulatory takin **Id. 503 U.S. at ---- - ----, 112 S.Ct. at 1530-31.**

[6] Because the Supreme Court extinguished any chance that Levald could prevail on a physical occupation theory, Levald seeks to argue for the first time on appeal that the statutory scheme effects a regulatory taking. Palm Desert argues that since Levald did not raise this argument to the district

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court, it is barred from raising it on appeal.

We are persuaded that Levald may make its regulatory takings argument on appeal. The Supreme Court's opinion Ye is instructive. Although the Yee Court did not consider the merits of the regulatory takings claim because it was outside the scope of the grant of certiorari, the Court "reject [ed] the respondent's contention that the regulatory taking argument is not properly before [the Court] because it was not made belo\ **Id. 503 U.S. at ----, 112 S.Ct. at 15** The Court noted: **"Petitioners unquestionably raised a taking claim in the state courts. The question whether the ren control ordinance took their property without compensation ... is thus properly before us."** Id. The Court continued:

> **Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Petitioners' arguments that the ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims. They are rather separate arguments in support of a single claim--that the ordinance effects an unconstitutional taking. Having raised a taking claim [below], therefore, petitioners could have formulated any argument they liked in support of that claim here.**

Id. (emphasis in original) (citations omitted). Following that reasoning, we conclude that Levald's regulatory taking claim is not foreclo: ***68(** by Yee's rejection of the physical occupation theory.

B

[7] In addition to the division into physical occupation and regulatory takings, takings claims are divided into "facial" and "as-applied" challenges. A facial challenge involves "a claim that the mere enactment of a statute constitutes a taking," while an as-applied challenge involves "a claim that the particular impact of a government action on a specific piece of property requires the payment of just compensation." Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 494, 107 S.Ct. 1232, 1246, 94 L.Ed.2d 472 (1987). As the Keystone Court noted, there is "an important distinction" between the two types of claims. Among other things, each raises different ripeness and statute of limitations issues. Here, we consider Levald's facial and as-applied claims in turn.

1

a

[8] We must first consider whether Levald's facial challenge is ripe. Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), placed "two hurdles in the way of a takings claim brought in federal court against states and their political subdivisions." Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398, 1402 (9th Cir.1989). The first hurdle--that the claimant must seek a final decision regarding the application of the regulation to the property at issue before the government entity charged with its implementation--does not apply to facial challenges, and is therefore not applicable here. **Yee, 503 U.S. at ----, 112 S.Ct. at 1532.**

[9][10] "The second, and independent, hurdle established by Williamson County requires plaintiffs to 'seek compensation through the procedures the State has provided for doing so' before turning to the federal courts." Sinaloa, 882 F.2d at 1402 (quoting Williamson, 473 U.S. at 194- 95, 105 S.Ct. at 3120-21). Williamson, however, does not require the plaintiff to bring a state court action where it would be futile under existing state law. Williamson, 473 U.S. at 196-97, 105 S.Ct. at 3121-22; Sinaloa, 882 F.2d at 1402. "[T]he appropriate point for determining the adequacy of state compensation procedures is at the time the alleged taking occur[red]." Sinaloa, 882 F.2d at 1402. Here, the taking at issue in the facial challenge allegedly occurred at the time the ordinance was enacted--in 1986. California did not recognize actions for inverse condemnation based on regulatory takings until after the Supreme Court's decision in First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987). Therefore, even though Levald did not seek remedies in state court, it was not required to do so because it would have been futile to seek state court relief at the time the alleged taking occurred. The claim is ripe.

b

We next consider whether, as the district court concluded, Levald's facial claim is barred by the statute of limitations. Levald argues (1) the district court erred in raising the statute of limitations issue sua sponte, (2) the law of the case is that the facial challenge is timely, and (3) in any event, the statute

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of limitations does not bar the facial claim.

Levald filed its complaint on August 23, 1989. Palm Desert moved to dismiss the complaint as, among other things, untimely under the statute of limitations. Judge Letts denied the motion. Palm Desert then filed its answer, pleading the statute of limitations as an affirmative defense. The case was transferred, ultimately ending up before Judge Waters. Palm Desert then brought a motion to dismiss the takings claim on ripeness grounds and to dismiss the due process claim for failure to state a claim. Although Palm Desert did not raise the statute of limitations defense in that motion, the district court rested its dismissal of the takings claim on that ground.

[11] The district court properly entertained the statute of limitations issue. Although we have never considered this precise question in the statute of limitations context, we have held that a sua sponte dismissal was *687 not erroneous in an analogous context. In Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir.1986), after the plaintiff filed its complaint, the district court dismissed the complaint sua sponte for lack of venue. Although the defendant in that case had never raised the venue issue, the court concluded that he had not waived lack of venue as an affirmative defense because he had not yet filed a responsive pleading. Id. The court continued: "In the absence of a waiver, we can find no reason to hold that the district court erred in raising the issue of defective venue on its own motion." Id.

Other circuits have addressed the precise question at issue here and have concluded that the district court may sua sponte dismiss a complaint as untimely so long as the defendant has not waived the defense. See, e.g., Leonhard v. United States, 633 F.2d 599, 609 n. 11 (2d Cir.1980) (affirming the district court's sua sponte dismissal on statute of limitation grounds, noting that the defendant had pleaded the statute of limitations as a defense in his answer), cert. denied, 451 U.S. 908, 101 S.Ct. 1975, 68 L.Ed.2d 295 (1981); see also Street v. Vose, 936 F.2d 38, 41 (1st Cir.1991) (upholding sua sponte dismissal of complaint on statute of limitations grounds); Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir.1989) ("While this Court generally will not consider an affirmative defense not raised below, we are not prevented from considering the defense where it is raised sua sponte by the district court."). Cf. Wagner v. Fawcett Publications, 307 F.2d 409, 412 (7th Cir.1962) (where the defendant waived the statute of limitations defense, the district court could not raise it sua sponte).

Here, Palm Desert pleaded the statute of limitations in its answer, and thus preserved the defense. Moreover, Levald had the opportunity to present argument on the statute of limitations question before the district court and on appeal. Thus, we are not troubled by the fact that Palm Desert had not raised the defense in the particular motion before the district court.

[12] Levald's argument regarding the law of the case is also without merit. Regardless whether it was appropriate or prudent for Judge Waters to revisit the statute of limitations question when Judge Letts had already ruled on it, there is nothing that insulates either judge's conclusion from appellate review. We therefore consider the merits of the statute of limitations argument.

[13] To determine when the statute of limitations period begins to run, we first must determine when the cause of action accrued. Determining when the cause of action accrues is merely the corollary to the ripeness inquiry. A plaintiff asserting a facial challenge contends that the passage of the ordinance effects a taking. However, "[t]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." Williamson, 473 U.S. at 194, 105 S.Ct. at 3120 (emphasis added). "So long as the state provides 'an adequate process for obtaining compensation,' no constitutional violation can occur" until just compensation is denied. Sinaloa, 882 F.2d at 1402 (quoting Williamson, 473 U.S. at 194-95, 105 S.Ct. at 3120-21). Thus, a plaintiff cannot bring a section 1983 action in federal court until the state denies just compensation. A claim under section 1983 is not ripe--and a cause of action under section 1983 does not accrue--until that point.

[14] As our ripeness cases teach, there is an exception to this general rule. We do not require a claimant to seek relief in state court as a prerequisite to filing a section 1983 claim in federal court when it would be futile to do so. See, e.g., Austin v. City and County of Honolulu, 840 F.2d 678, 680-81 (9th Cir.1988). Where the state has expressly rejected the plaintiff's theory of the case and therefore the state remedies are inadequate, we consider the unavailability of a state remedy to be the functional equivalent of the denial of just compensation. In this small class of cases, the cause of action accrues and

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the limitations period begins to run upon the enactment of the statute.

[15] This is consistent with our decision in De Anza Properties X, Ltd. v. County of Santa Cruz, 936 F.2d 1084 (9th Cir.1991). In that case, we held that the facial takings claim accrued upon the passage of the ordinance. Id. at 1087. Although De Anza did not discuss the ripeness question, it is clear *688 that it would have been futile for the claimant to seek compensation in California courts at the time the alleged taking occurred. The ordinance was passed in 1982, before California law recognized inverse condemnation claims based on regulatory takings. De Anza thus stands for the proposition that in cases in which it would be futile to seek compensation in state court, a facial challenge to a statute as a taking without just compensation under section 1983 accrues upon the passage of the ordinance. See also Azul-Pacifico v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir.1992) (on rehearing) (cause of action accrued when the ordinance was passed in 1982, before California law recognized regulatory takings). To read De Anza more expansively--interpreting it to hold that all facial challenges accrue upon the passage of the legislative enactment--would be in conflict with the Supreme Court's decision in Williamson.

[16] Here, as Levald itself recognizes, it would have been futile to seek compensation in state court where the ordinance was passed because California law provided no remedy for regulatory takings at that time. Supra Part II.B.1.a; see Schnuck v. City of Santa Monica, 935 F.2d 171, 173 (9th Cir.1991). Since the unavailability of state remedies is the functional equivalent of the denial of just compensation, Levald's cause of action under section 1983 accrued upon the passage of the ordinance. The statute of limitations for all section 1983 claims in California accruing after 1985 is one year. See Wilson v. Garcia, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985); De Anza, 936 F.2d at 1085. In this case, the final version of the ordinance was passed in 1986; the complaint was not filed until 1989. By the time Levald filed the complaint, the limitations period had run.

Levald argues that because in other contexts the Supreme Court has allowed challenges to statutes long after they were enacted, Levald should be allowed to bring an action challenging the enactment of a statute as a taking without just compensation at any point. This argument misapprehends the differences between a statute that effects a taking and a statute that inflicts some other kind of harm. In other contexts, the harm inflicted by the statute is continuing, or does not occur until the statute is enforced--in other words, until it is applied. In the takings context, the basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has effected a transfer of a property interest. This is a single harm, measurable and compensable when the statute is passed. Thus, it is not inconsistent to say that different rules adhere in the facial takings context and other contexts.

Levald further argues that the cause of action in this case did not accrue until property values in Palm Desert increased dramatically years following enactment. This argument fails to acknowledge the distinction between a facial and an as-applied challenge: while the rising property values may be relevant to an as-applied challenge, they are not relevant to a claim that the very enactment of the statute effected a taking.

Levald finally contends that the statute of limitations is inapplicable to its claim for declaratory judgment. This argument is meritless. As the First Circuit held in a similar takings case:

> To prevent plaintiffs from making a mockery of the statute of limitations by the simple expedient of creative labelling--styling an action as one for declaratory relief rather than for damages--courts must necessarily focus upon the substance of an asserted claim as opposed to its form. It is settled, therefore, that where legal and equitable claims coexist, equitable remedies will be withheld if an applicable statute of limitations bars the concurrent legal remedy.

Gilbert v. City of Cambridge, 932 F.2d 51, 57-58 (1st Cir.1991) (citing Cope v. Anderson, 331 U.S. 461, 464, 67 S.Ct. 1340, 3141, 91 L.Ed. 1602 (1947), and Russell v. Todd, 309 U.S. 280, 289, 60 S.Ct. 527, 532, 84 L.Ed. 754 (1940)). Therefore, if " 'a claim for declaratory relief could have been resolved through another form of action which has a specific limitations period, the specific period of time will govern.' " Id. at 58 (quoting Orangetown v. Gorsuch, 718 F.2d 29, 42 (2d Cir.1983)). Whether styled as a claim for damage *689 or one for declaratory judgment, the facial challenge is time barred.

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[17] In addition to its facial challenge, Levald

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asserts on appeal that it has stated an as-applied takings claim. The nature of the as-applied challenge, however, is not clear; neither the briefs nor the complaint spells out precisely how Levald believes the application of the statute has effected a taking. The gravamen of Levald's complaint is that the statutory scheme does not substantially advance its stated purpose because most tenants--those other than the incumbents--will pay a premium equal to the expected difference between the rent controlled price and the market price discounted to present value. Future tenants thus will not pay less than market value for housing. Thus, the argument goes, insofar as the purpose of the statute is to control spiraling housing costs for future tenants, the statutory scheme does not substantially advance its purpose. The statute operates solely as a transfer of wealth from the landlord to the existing tenant. That argument, however, is relevant only to a facial, not an as-applied, regulatory challenge. It is not a particular application of the statute that gives rise to the premium; the premium arises solely from the existence of the statute itself. [FN2] Given that the existence of the premium does not give rise to an as-applied challenge, it seems that an as-applied challenge would have to focus on the reasonableness of the return on Levald's investment--in other words whether the allowable rent increases are large enough--and not on the "transfer" of the premium. Such a claim is not clearly stated in Levald's original complaint, nor has Levald clearly stated any other basis for an as-applied challenge in this case. [FN3]

> FN2. The size of the premium will obviously fluctuate. However, Levald's claim does not focus on the size of the premium; rather, it is the existence of the transfer that forms the basis of Levald's claim.

> FN3. We emphasize that we do not hold that it would be impossible for a litigant to make such an argument. We merely note that Levald has not spelled out the nature of an as-applied claim.

[18] Despite Levald's failure to articulate clearly the basis for its as-applied challenge, we will assume arguendo for purposes of this appeal that the complaint can be construed to state an as-applied claim. We must conclude, however, that Levald has not satisfied the second ripeness requirement. Levald has not sought compensation in state court, nor has it shown that "the state courts [have] establish[ed] that landowners may not obtain just compensation through an inverse condemnation action under any circumstances." Austin, 840 F.2d at 681. Indeed, California has recognized inverse condemnation claims based on as-applied regulatory takings since the Supreme Court decided First Evangelical Lutheran Church, 482 U.S. 304, 107 S.Ct. 2378 (holding that California's denial of compensation for inverse condemnation claims based on regulatory takings was unconstitutional). Schnuck, 935 F.2d at 173-74. [FN4]

> FN4. While California did not recognize a remedy for regulatory takings before 1987, any as-applied challenge that accrued before the availability of the remedy in 1987 would be untimely under the one year statute of limitations · 1983 actions. Schnuck v. City of Santa Monica, 935 F.2d 171, 173-74 (9th Cir.1991). As-applied regulatory takings must be brought un ¦ 1983. Azul-Pacifico, 973 F.2d at 705. As discussed above, the statute of limitations for § 1983 claims in California is one year. Wilson v. Garcia, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Any taking that resulted from the application of the ordinance prior to 1988--one year before the complaint was filed--would be barred as untimely.

Levald contends that notwithstanding the Supreme Court's decision in First Evangelical, it would be futile to seek relief in California courts because the "California courts defy the United States Supreme Court." We rejected this very argument in Schnuck, 935 F.2d at 174, in which we held that the appellant's "allegation of mere generalized hostility of the state courts to takings claims does not excuse [the claimant's] failure to seek relief there." Rather, in order to be excused from this requirement, the appellant must show that the state has explicitly rejected its theory of the case. Id. Levald has not done so.

At the time Levald filed suit, California courts refused to follow Hall v. City o ***690a** Barbara, thus rendering it futile to seek compensation on a physical occupation theory in state court. However, at the time Levald filed suit, California courts did recognize regulatory takings--Levald's only viable theory. Levald is obliged to seek compensation in state court before it can seek relief under section 1983 on an as-applied takings theory.

In so holding, we in no way mean to suggest that the doors to the federal courthouse will remain permanently closed to Levald or to other litigants in Levald's position. Rather, if Levald cannot obtain

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relief through the state procedures available to it, Levald will have the right to a federal determination of whether the ordinance, as applied to it, "unjustly imposes a burden on [Levald] that should 'be compensated by the government, rather than remain[ing] disproportionately concentrated on a few persons.' " Yee, --- U.S. at ----, 112 S.Ct. at 1530 (quoting Penn Central, 438 U.S. at 124, 98 S.Ct. at 2659).

III

A

Levald argues that the district court improperly dismissed its substantive due process claim.

[19][20] In reviewing economic legislation on substantive due process-grounds, we give great deference to the judgment of the legislature. "[O]rdinances survive a substantive due process challenge if they were designed to accomplish an objective within the government's police power, and if a rational relationship existed between the provisions and purpose of the ordinances." Boone v. Redevelopment Agency of City of San Jose, 841 F.2d 886, 892 (9th Cir.1988) (quoting Scott v. City of Sioux City, 736 F.2d 1207, 1216 (8th Cir.1984), cert. denied, 471 U.S. 1003, 105 S.Ct. 1864, 85 L.Ed.2d 158 (1985)). Unlike in the takings context, there is no requirement that the statute actually advance its stated purpose; rather, the inquiry focuses on whether "the governmental body could have had no legitimate reason for its decision." Shelton v. City of College Station, 780 F.2d 475, 483 (5th Cir.1986) (en banc) (citing Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, 101 S.Ct. 715, 724, 66 L.Ed.2d 659 (1981)). "[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 487-88, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955).

[21] Here, the stated purposes of the ordinance were to alleviate hardship created by rapidly escalating rents; to protect owners' investments in their mobile homes; to equalize the bargaining position of park owners and tenants; and to protect residents from unconscionable and coercive changes in rental rates. These purposes are similar to those advanced in support of other rent control ordinances; the Supreme Court has held that these goals are legitimate. See Pennell v. City of San Jose, 485 U.S. 1, 13-14, 108 S.Ct. 849, 858, 99 L.Ed.2d 1 (1988).

Moreover, a rational legislator could have believed that the rent control ordinance would further the stated goals, at least insofar as the purpose is to protect existing tenants. For example, a rational legislator could have believed that the unfettered right of a park owner to raise the rent on a space when ownership of a mobile home was transferred might make it difficult for a mobile home owner to sell. The legislator thus could have believed that the ordinance protects owners' investments in their units. It may be true that in operation the ordinance does nothing more than take "money from the landlord and put[ ] it into the pocket of a tenant who no longer resides at the park." Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951, 958 (9th Cir.1991), vacated, 506 U.S. 802, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992), reinstated in part, 987 F.2d 662 (9th Cir.1993). However, while one might believe that the ordinance is an ineffective--and indeed draconian--means by which to effect its goals, "[h]ow well the ordinance serves [its] purpose[s] is a legislative question, one the court will not consider" in the context of a substantive due process challenge. Id. Dismissal of the substantive due process claim was proper.

*691 B

Levald next argues that its motion for leave to amend was improperly denied.

After determining that the ordinance on its face met the rational relation test, the district court in its September 9, 1991, order stated the following:

> The substantive due process claim as written in the complaint constitutes only facial challenges to the Ordinance. As such, it is dismissed without prejudice because the plaintiff might be able to state a claim for violation of due process as applied, if, for example, it alleges that it had applied for an increase under the Ordinance and was not given an amount constituting a fair amount of its investment.

Final judgment was entered on all claims on September 12, 1991. Levald moved for clarification of this order, requesting a due date for filing an amended complaint. On October 8, 1991, the district court denied the motion without comment and refused to allow Levald to file an amended complaint.

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[22] As a preliminary matter, we must determine whether this court has jurisdiction to consider the denial of leave to amend. [FN5] After the district court denied the motion, Levald filed a notice of appeal indicating that it was appealing the September 9th order. Levald did not indicate in the notice of appeal that it also intended to appeal the denial of leave to amend.

> FN5. Although Palm Desert does not raise this argument, we must raise issues concerning our jurisdiction sua sponte.

Federal Rule of Appellate Procedure 3(c) provides that "[t]he notice of appeal shall ... designate the judgment, order or part thereof appealed from."

> While some circuits construe Rule 3(c) strictly, this circuit has held that "a mistake in designating the judgment appealed from should not bar appeal so long as the intent to appeal a specific judgment can be fairly inferred and the appellee is not prejudiced by the mistake." In determining whether "intent" and "prejudice" are present, we apply a two-part test: first, whether the affected party had notice of the issue on appeal; and second, whether the affected party had an opportunity to fully brief the issue.

Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472, 1481 (9th Cir.1986) (citations omitted), aff'd, 488 U.S. 347, 109 S.Ct. 639, 102 L.Ed.2d 700 (1989). Here, the denial of leave to amend the complaint was addressed in Levald's opening brief. We have previously held in similar circumstances that this is enough to demonstrate that the appellee had notice of the issue and did not suffer prejudice from the appellant's failure to specify the order in the notice of appeal. See, e.g., Meehan v. County of Los Angeles, 856 F.2d 102, 105-06 (9th Cir.1988). We thus reach the merits of Levald's argument.

2

[23] A district court's denial of plaintiff's request to amend its complaint pursuant to Federal Rule of Civil Procedure 15(a) is reviewed for abuse of discretion. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 S.Ct. 795, 802, 28 L.Ed.2d 77 (1971). "A court is within its discretion to refuse amendment and dismiss the complaint if it 'concludes that the pleading as amended could not withstand a motion to dismiss.' " Hoover v. Langston Equip. Assocs., Inc., 958 F.2d 742, 745 (6th Cir.1992) (citations omitted). However, the "outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of Federal Rules." Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962).

[24] Here, the district court gave no reason for denying Levald leave to amend the complaint. Nor is the reason for the denial apparent from the record. See DCD Programs Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir.1987) ("in the absence of written findings or a record which clearly indicates reasons for the district court's denial, this court will reverse a denial of leave to amend"). The district court dismissed th *69 claim "without prejudice," implying that the defects in the complaint were not unremediable. See id. at 187. The court stated that an allegation "that [Levald] had applied for an increase under the ordinance and was not given an amount constituting a fair return on its investment" would perhaps be sufficient to state an as-applied due process claim. The proposed amended complaint alleged precisely that:

> [27] The Ordinance as applied to Levald deprives Levald of property without due process of law.
>
> [28] By the Rent Review Board's enforcement policy of the Ordinance: Levald is not able to receive a fair return on the value of Levald's property or on its capital improvements. The value of Levald's investment does not even keep pace with inflation. [FN6]

> FN6. Although the amended complaint is not part of the record as defined by Fed.R.App.P. 10(a), we consider the contents of it for the limited purpose of determining whether the district court abused its discretion in failing to allow Levald to file the complaint. See DCD Programs Ltd. v. Leighton, 833 F.2d at 186 (9th Cir.1987).

Even though the amended version of the complaint seemed to comply with the direction provided by the court, the court refused to grant leave to amend. Since the district court did not provide an explanation for its refusal to allow Levald to amend its complaint and since its reasons are not apparent from the record, we conclude that the district court abused its discretion in failing to explain its reasons for denying leave to amend the complaint. We thus remand for explanation.

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IV

[25] Levald argues that the district court erred in declining to exercise supplemental jurisdiction over its state law claims.

28 U.S.C. § 1367(c) provides:

> The district courts may decline to exercise supplemental jurisdiction over a claim ... if--
>
> . . . . .
>
> (3) the district court has dismissed all claims over which it has original jurisdiction....

Here, the district court properly exercised its discretion under section 1367(c)(3) and declined to retain the pendent state claims after it dismissed all of the other claims in the complaint.

V

AFFIRMED in part, REVERSED and REMANDED in part. Palm Desert is awarded costs on appeal.

END OF DOCUMENT

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Attachment O

STATE SENATE HEARINGS ON BILL 466 04/25/2000 For 4/26/2000

I moved into my mobile home located on Hall Street here in Concord on Nov. 20,1999 five months ago.

I got my mobile home by a grant through "Home Of Your Own" program at New Hampshire Loan Fun with Sharon Drake as my liason.

This is my first time owning my own home.

I moved here from NY in 1998.

Currently my lot rent is affordable with taking into account other expenses such as oil, water, property tax and so and so forth.

I am a single mom living with my 10 yr. Old daughter. I have a married daughter of 21 along with a 3yr . old granddaughter who resides in NY.

I live on a fixed income of Social Security and State Welfare. If I don't have the security and protection this Bill 466 would give me in the event of the park rent being increased I'd be oust of my home with my child on to the streets and with the only fate of becoming one of the homeless.

This is a serious threat to our well being. Without a affordable roof over our head there's no peace in our heart.

Being close to and homeless prior to moving to New Hampshire and into our mobile home I know and lived through it's devastating effects.

Once achieving home ownership I did not think I'd have to deal with the possibility of homelessness yet again and without this 466 Bill this possibility looms of the traumatizing reality of it occurring.

You just can't take life, home ownership etc. for granted but with this 466 bill we certainly can plan with more stability for the future.

Please here my words and other homeowners and push this bill through.

Don't just think fiscally with your head but add some heart to your decision and we'll all continue to build towards a better and brighter tomorrow one bill at a time , one family at a time. Thank you.

Attachment P

REALTOR®

New Hampshire Association of REALTORS®, Inc.
P.O. Box 550
115A Airport Road, Concord, New Hampshire 03302-0550
Telephone 603-225-5549
FAX # 603-228-0385

The Voice for Real Estate™ in New Hampshire

TESTIMONY ON SB 466 RENT CONTROL

Good afternoon Mr. Chairman, Members of the committee.

For the record my name is Mike Keeler, I am the President of the New Hampshire Association of REALTORS, and am here today representing our associations 4000 members statewide.

I have been involved in Real Estate for 15 years, and feel that I have a very good understanding of our industry and the people that make it work.

Like most products, housing is a commodity that strictly obeys the laws of supply and demand. If our states contractors build more houses than citizens demand, than prices will fall.

If through government restriction, at either the state or local level, developers or contractors can't build, then demand outstrips the supply and the prices go up.

Senate bill 466 is a solution that attempts to ignore, this most basic and fundamental rule of economics.

If lenders are presented with a park, that's expenses are always going to increase, and revenues from renting lots are restricted from being increased in any way, investors will surely put there money elsewhere, which in turn, creates less affordable housing.

Just the suggestion of this Rhode Island modeled legislation, has effected the sale of two mobile home parks in the state.

I have a letter from ONYX capital corporatin, they are the exclusive national advisor to *SunAmerica Life Insurance Company and American International Group, for all manufactured housing community financing. They are one of the top five loan originators for manufactured housing with loan volume ranging from $100 to $200 million dollars a year.*

I Would like to read just a few of their comments and concerns, and will provide the committee with a copy of the full letter.

ONYX Capital Believes:

1. That lenders will be unable to accurately predict the net income of a property, making them reluctant to secure loans for manufactured housing communities in New Hampshire.
2. Owners of manufactured housing communities will be unable to predict a payback period for capital improvements due to the uncertainty of future rent increases. As a result, the overall quality and livability of manufactured housing communities in New Hampshire will decline.
3. If rental rates decline significantly during a recession, what assurances does the property owner have that they will be able to raise their rents back to market levels when the economy stabilizes?
4. Rhode Island and Massachusetts have rent control ordinances that are extremely onerous. As a result, Onyx Capital/SunAmerica have never financed a manufactured housing community in Rhode Island or Massachusetts.

Our Government Affairs staff has reviewed Rhode Island's law, and it is identical to what is before you today. We respectfully ask that you find this legislation Inexpedient to legislate.

Thank you.

Michael Keeler
President, New Hampshire Association of Realtors

EQUAL PROFESSIONAL SERVICE

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

Attachment Q

ONYX

CAPITAL CORPORATION

April 24, 2000

Re: New Hampshire Senate Bill 466
An act "Relative to lot rent increase at manufactured housing parks"

To Whom It May Concern,

Onyx Capital is the exclusive national advisor to SunAmerica Life Insurance Company and American International Group for all manufactured housing community financing. In addition to originating more than $1.4 billion dollars in manufactured housing loans since 1983, the principals at Onyx Capital are experienced owners of more than six manufactured housing communities.

Onyx Capital has consistently ranked as one of the top five MHC loan originators with annual MHC loan volume ranging from $100 to $200 million dollars per year.

Onyx Capital is very concerned that Senate Bill 466 will make it very difficult to finance manufactured housing communities in New Hampshire. If this bill is adopted, we believe the following actions will result:

1) Residents of manufactured housing communities will object to every rent increase proposed by an owner. Even if a proposed rent increase is reasonable, residents will object in order to delay the imposition of the rent increase.

2) Lenders will be unable to accurately predict the gross and net income of a manufactured housing community, given the uncertainty regarding the implementation of rent increases and the ability to raise rents relative to increased operating costs such as property tax increases, utilities increases and payroll increases. Unable to accurately predict the net income of a property, lenders will be reluctant to make a loan secured by a manufactured housing community in New Hampshire.

3) Owners of manufactured housing communities will be unable to predict a payback period for capital improvements due to the uncertainty of future rent increases. As a result, the overall quality and livability of manufactured housing communities in New Hampshire will decline.

4) Prospective purchasers of manufactured housing communities will not be able to accurately predict future rent increases, making it impossible to calculate the yield on their investments. Investors will not purchase manufactured housing communities in New Hampshire, depriving existing communities of the opportunity for new ownership with improved amenities and overall maintenance levels.

11777 San Vicente Boulevard, Suite 640 • Los Angeles, California 90049
Tel: (310) 442-8400 • Fax: (310) 442-8405

APR 25 '00 09:08AM ONYX CAPITAL P.2/3

New Hampshire Senate Bill 466 (page 2)

5) Real estate investments, including manufactured housing communities, are subject to wide fluctuations in occupancy and rent levels due to local economic conditions and supply and demand factors.

If rental rates decline significantly during a recession, what assurances does the property owner have that he will be able raise his rents to market levels when the economy stabilizes ?

If manufactured housing community owners do not have that potential upside when times are good, then why should they sustain losses or no return on their investment when economic times are difficult ?

Rhode Island and Massachusetts have rent control ordinances that are extremely onerous when compared to California or Florida rent control initiatives. As a result, Onyx Capital/SunAmerica have never financed a manufactured housing community in Rhode Island or Massachusetts.

I respectfully urge the defeat of Senate Bill 466.

Thank you for your consideration.

With best regards,

Bruce R. Tolchin
President

APR 25 '00 09:09AM ONYX CAPITAL

Attachment R

Thank you Chairman & members of the Public Affairs Committee for the opportunity to speak to you today in favor of Sen. Bill 466. My name is Carole Charlantini & I reside in Kingstowne Park, Epsom. I am a senior citizen living on SS and I am the Pres. of the KTP tenants Assoc.

Our story at Kingstown Park is the finest example of why we need this Legislation.

A couple of years ago we negotiated an agreement with the then owner in regards our rent & improvements.

We agreed to (2)yrly 9 increases if the park owner would put in much needed Streets & street lites. When the new owner took over he agreed to put in the improvem in exchange for the 9 yrly increases. The work was done - Everyone very happy! Last Aug, 99 the 2nd increase took place No problem.

In october we received a ~~letter~~ notice that on Jan 1, 2000 our rent would be raised an additional 30. Excessive!

I love where I live. We have one of the finest parks around.

But as you can see even though we play by the rules we have no protection from greedy owners - Please give us some help.

(2)

I am not here to tell you a story about individual problems pertaining to Kingstowne Park. I will leave that to others —
I would like to get to the real heart of the matter. The reason that Senate Bill 466 is before you today
The key words are "Excessive Rent Increases"
Excessive!!
I do not want relief from ordinary "reasonable" increases. The Park Owner is due "reasonable" increased revenue to keep our park in the condition & provide the services that we as tenants want & expect. He or she is due a "reasonable" profit for their efforts.
There is no way that I or any other Tenants Assoc. will be running around with petitions upon a reasonable rent increase notice.
The "reasonable" park owner has no reason to oppose this bill but the unreasonable park owner does.
If they play fair they have nothing to be concerned about —
Please, Senators you are our only hope to have some control over this situation. Provide us with some protection from those tha would & have been greedy. Remember unlike other tenants, we own our homes but cannot just pack it into a U haul & move
Thank you for your time &

Xerox

Attachment S

DAVID A. CANADA
P.O. BOX 193
STRATHAM, NH 03885
(603) 772-4982

Testimony of David Canada to the New Hampshire Senate Public Affairs Committee on Senate Bill 466, April 26, 2000.

Good afternoon Committee Members. I am here today in opposition to Senate Bill 466 and to tell you why I think this rent control legislation is not necessary or desirable for the well being of New Hampshire residents. I make my observations based on my experience as a provider of mobile home lots.

I own two small Parks in New Hampshire. I additionally rent apartments in the urban sections of Portsmouth and Newmarket. One of my first real estate purchases was a Mobile home park in Barrington. When I bought that Park in 1980, the lot rent was $55.00. Today, the rent is $250.00. That is an annual increase of less than 8%. To put that in perspective, the real estate taxes on my home in Stratham in 1980 were about $800.00. Last year they were close to $5000.00, almost a 10% annual increase.

Our society allocates its resources by using the pressures of the marketplace to balance supply and demand. At times it is necessary for the government to intervene in this process but it is risky business to do so and never works in the long run. Where supply and demand get grossly out of whack, intervention may be called for on a temporary basis, but that is hardly the case in New Hampshire today. I have a Park in Alton that currently has 2 of 22 sites vacant. I have had fairly large infrastructure expenditures at this Park in the last three years and feel an increase is sorely needed. I am not increasing the rent, however, for fear of losing still more tenants without a pool of replacements. Isn't that the marketplace working?

If there is a single source of problems with the supply side of mobile home lot availability, which I agree can cause price increases, it is at the hands of local governments artificially putting roadblocks in the way of both those that would satisfy demand, and those who would choose to relocate their homes. Limiting a developer's return on investment, as this legislation would do, will not produce more supply, the one effective way of keeping prices competitive, it will create less. Code restrictions requiring relocated homes to meet the newest HUD standards reduces consumers ability to vote with their feet. Limiting local government's ability to stymie quality, but affordable housing solutions is the way to achieve the end this bill seeks.

Thank you.

Attachment T

SHERWOOD FOREST MANUFACTURED HOMES, INC.

LINDEN STREET

EXETER, NEW HAMPSHIRE 03833

TELEPHONE (603) 772-5377 FACSIMILE (603) 772-2877

October 23, 1999

Dear Resident:

Please be advised that as of January 1, 2000, your monthly rent will be increased Sixteen Dollars ($16.00) from Three Hundred and Fifty Six Dollars ($356.00) to Three Hundred and Seventy Two Dollars ($372.00).

The rental increase is due to a substantial increase in Operating Expenses, in particular legal fees and expenses in addition to cost of Capital and Capital Improvements.

Late rent receipts are an ongoing problem. Rent is due and payable on the FIRST of the month please. If we receive your rent **in our office** by the FIFTH of the month, we will allow you a FIFTY DOLLAR ($50.00) discount so that you will only pay THREE HUNDRED AND TWENTY TWO DOLLARS ($322.00) per month. Please note that there will be a Fifteen Dollar ($15.00) late charge added when your payment is received after the fifth day of the month. This is in addition to the loss of the Fifty Dollar ($50.00) discount for timely payments.

Sincerely,

Elizabeth Bommer

Elizabeth Bommer
Office Manager

YEARS: 1987-2000 RENT INCREASES

F.O.R.T members are frequently asked by people who have lived in the park only a few years, how much has the rent in Sherwood Forest increased over the years? Below is your answer from 1987 to the up coming increase in the year 2000!

YEAR	MONTHLY RENT		RENT INCREASE	PERCENT
1987	$ 135.00			
1988	$ 150.00		$ 15.00	11 %
1989	$ 170.00		$ 20.00	13%
1990	$ 180.00		$ 10.00	6%
1991	$ 190.00		$ 10.00	6%
1992	$ 200.00		$ 10.00	5%
1993	$ 223.00		$ 23.00	12%
1994	$ 233.00		$ 10.00	4%
1995	$ 247.00		$ 14.00	6%
1996	$ 263.00		$ 16.00	6%
1997	$ 327.00*		$ 14.00	24%
1998	$ 342.00	*	$ 15.00	5%
1999	$ 356.00	*	$ 14.00	4%
2000	$ 372.00	*	$ 16.00	

4%

(Please Note) * Park Owners before the $ 50.00 Discount If Rent Paid By The 5th of Each Month

February 14, 1994

SHERWOOD FOREST MOBILE HOME PARK

SUMMARY OF RENT INCREASE COMPARED TO C.P.I.

YEAR	MONTH'S RENT	RENT INCOME	PERCENT INCREASE	CPI	INCREASE IN RENTAL INCOME		SHERWOOD FOREST TAXES	INCREASE/ DECREASE
					INCREASE MONTHLY	YEARLY		
1987	135.00							
1988	150.00	15.00	11 %	4.4 %	3750.00	45,000.00	46,028.00	
1989	170.00	20.00	13 %	4.6 %	5000.00	60,000.00	52,293.00	+6165.00
1990	180.00	10.00	5.8 %	6.1 %	2500.00	30,000.00	53,629.00	+1336.00
1991	190.00	10.00	5.5 %	3.1 %	2500.00	30,000.00	52,237.00	-1392.00
1992	200.00	10.00	5.3 %	2.9 %	2500.00	30,000.00	58,602.00	+6365.00
1993	223.00	23.00	11.5 %	2.7 %	5750.00	69,000.00	60,138.00	+1536.00
1994	233.00	10.00	4.3 %		2500.00	30,000.00		
1995	247.00	15.00						
1996	262.00	15.00						
1997	277.00	15.00						
1998	292.00	15.00						
1999	306.00	14.00						
2000	322.00	16.00						

income from 1987

·IF LATE PAYING RENT
$50 CHARGE

Attachment 4

Good afternoon Mr. Chairman, members of the Senate Public Affairs Committee.

My name is Guy Pichette. I am one of 135 home owners who reside at Cotton Farm Village in Danville. I speak in support of Senate Bill 466 on behalf of those in my park who could not be here today.

Senate bill 466 applies exclusively to manufactured housing parks because of the unique situation home owners are in. We are not like ordinary tenants. We cannot pack up and move when the land use fees rise. In most cases the cost of relocating our house would be prohibitive.

An argument against Senate Bill 466 states that this is rent control and it would interfere with the park owner recovering his costs of improvements. Such interference would cause the park to fall into disrepair. In the case of Cotton Farm Village, we have been in a sad state of disrepair for many years. The most serious and unhealthy condition is the failed septic systems. At least twenty systems need to be replaced or repaired. The system at my house has been in failure for 7 years. The leach field located in my lot services 6 homes. I have had septic water back up under my house on several occasions. We have been and still are exposed to septic water puddling in my yard. To add insult to injury, we received a land use fee increase in the amount of $35 effective July 1st with no justification on top of the $30 per month increase effective last June. In one year's time, we are being forced to endure a $65 per month increase with no benefit of improvements. (1)

Cotton Farm residents have been subjected to much abuse over the years. We are not looking to deny park owners a reasonable profit. We simply NEED the Manufactured Housing Board to have authority to make adjustments to rents that cannot be justified.

Thank you for your time in reviewing this important decision which represents affordable housing for many people in the state.

(1)

WHEN THE PARK WENT INTO FORECLOSURE 2 YEARS AGO WE THE HOME OWNERS POSITIONED OURSELVES WITH THE ASSISTANCE OF THE N.H. COMMUNITY LOAN FUND TO BID AT THE FORECLOSURE AUCTION. OUR BUDGET WAS VERY RESPONSIBLE IN DEALING WITH UPGRADING THE CONDITION OF THE PARK. WE WERE SECOND HIGH BIDDER WITH THE MORTGAGEE IN POSSESSION AS HIGH BIDDER AT 3,200,000. AFTER THE AUCTION, WE WERE CONTACTED BY THE MORTGAGEE IN POSSESSION REGARDING PURCHASING THE PARK. WE OFFERED 3,200,000 HE TOLD US HE COULD NOT SELL FOR LESS THAN 3,500,000. 3 MONTHS LATER WE WERE NOTIFIED THE PARK WAS SOLD TO A GROUP IN NEW YORK FOR 3,200,000. BECAUSE OF THE FORECLOSURE CLOSE IN RSA 205A. WE LOST THE RIGHT TO HAVE THE OWNER DEAL IN GOOD FAITH. WITH US. THE OWNER DID NOT DEAL IN GOOD FAITH.

Attachment V

TRESTLE BROOK

RTE. 111-W, Nashua, NH

TO: Chairperson and Committee Members April 26, 2000

Twenty-three years ago (1977) we obtained approval for a 93 site cluster manufactured home park in Nashua, served by town water and sewer, and with a 1988 addition now totals 138 sites. At that time we discovered that by entering into long term leases, our buyers could obtain conventional housing mortgages from lenders at competitive rates (not manufactured home loans), since they were mortgaging a leasehold interest (that is: their right to occupy the site for a term longer than the term of the mortgage), and the structure was additional collateral to the loan.

After the bank closings of the early 90's, and the change in banking regulations, we spent several months in refining our leases to comply with all secondary market requirements, so that today our lease is acceptable to FHA, New Hampshire Housing Finance Authority, Federal Home Loan Bank (Freddie Mac) and the Federal National Mortgage Association (FNMA). Our leases are for 90 years and are subject to annual adjustments indexed to the change in the Consumer Price Index, plus any change (up or down) in taxes, water and sewer as paid to the city of Nashua. Since many salary and Social Security adjustments are based in part on the CPI, it is the most widely used index to measure depreciation of the purchasing value of the dollar. In addition there is a further safeguard to our tenants that any change in the CPI cannot exceed 7% in any one year. Since 1989 the average yearly increase due to the change in the CPI has been only $5.04 month. The ability to obtain 30 year fixed rate mortgages with low downpayments has helped many families become homeowners.

Our approach in 1978 was that the fairest way to deal with rent increases was to create the same approach used in commercial leases referred to as triple net leases. The Lessor earns a pre-determined return on investment indexed to the CPI, and the tenant pays all other charges but in return gets the benefit of the real estate tax deduction. This approach has worked well for our people, and we have had no complaints about our annual adjustments. A recent review showed that we had the lowest cost of area parks.

In the event that this legislation is approved, we respectfully request that the committee allow an exception to the proposed legislation, exempting parks that have entered into long term leases that provide tenant protection from unreasonable increases in consideration of the protection that our 90 year leases provide. To superimpose the proposed hearing process on our leases is an intrusion into contractual relations that have served all parties well since 1978, resulting in no benefit to our lessees and creating additional costs for us. A copy of our lease and annual adjustment letter is attached. Your kind consideration is appreciated.

Sincerely,

Roger Duhamel

Manager

Patterson-Duhamel Address: PO Box 999, Merrimack, NH 03054 603-891-2081
Office: 26 Wright Avenue, Merrimack NH FAX 603-424-3922

ADD NEW SECTION TO SB 466

VII: Parks that have entered into long term leases (35 yrs or greater) that provide rental increase protection for tenants through the use of limits by indexing to the consumer price index or other caps are exempt from this section.

TRESTLE BROOK LEASE

This agreement is made this day of , 19 , by and between Denise O. Duhamel and Gregory E. Michael, Trustee under Declaration of the Dana Patterson 1991 Revocable Trust (hereinafter called the LESSOR) and

_____

(hereinafter called the **LESSEE**. In mutual consideration of the benefits, burdens and obligations imposed herein, the parties agree as follows:

1. **PREMISES**. The Lessor does hereby agree to lease to the Lessee, as joint tenants, Lot _____in Trestle Brook on Plan # 12087 Hillsborough County Registry of Deeds, with a street address of _____, Nashua, New Hampshire 03062. The use of the term (home) or (leasehold improvements) or vice versa are synonymous throughout this lease.

2. **TERM**. This lease shall run for a term of ninety (90) years commencing on_____ and expiring at midnight, _____.

3. **RENT**. The Lessee shall pay to the Lessor or his assigns, base rent at the rate of $166.67 per month ($2,000.00 per year) plus land tax charges as listed below and adjusted yearly, and any future government imposed fees or charges, on or before the first day of each month of the term. **Payments** shall be made to **PATTERSON-DUHAMEL** and mailed to **PO Box 999, Merrimack, NH 03054** or as further notified.

The monthly rental consists of FOUR separate charges as follows: **(1)** Base Rent $166.67 (1989 Basis); **(2)** Land Tax of $24.78 (1989 Basis); **(3)** Water $ 12.47 (1989 Basis); **(4)** Sewer Waste Water Treatment (Estimated $9.20 – 1990 Basis) which totals $213.12 rounded down to $213.00.

RENT ADJUSTMENT. (1). The rent identified as Base Rent ($166.67) shall be subject to adjustment for cost of living at one (1) year intervals during the term of this lease. Such adjustment shall be determined by multiplying the base monthly rent by a fraction, the denominator of which shall the Consumer Price Index for all Urban Consumers (US CITY AVERAGE), published by the Bureau of Labor Statistics, U.S. Department of Labor for December 31, 1989 (126.1) and the numerator of which shall be the Consumer Price Index for all Urban Consumers (US CITY AVERAGE) published for December 31st of each current year, provided however, that no adjustment shall be made if the fraction is less than one (1). If the publication of such Consumer Price Index is discontinued, the comparable index most clearly reflecting the diminution of real value of base rent herein shall be used. Maximum yearly change in the CPI adjustment not to exceed 7%.

(2) (3) (4) If the real property taxes on the premises (land and land improvements) shall increase above the amount for the year 1989-$24.78 per month and the price of water & hydrants supplied to the lot shall increase above the amount $14.74 per month, and the cost of sewer waste water shall increase above the amount of $10.00 per month (1989 Basis), the Lessee shall pay Lessor said increased amount.

UPON NOTICE IN WRITING, the Lessee shall pay the Lessor any increase in the monthly amount of each of the four **(4)** separate charges , beginning with the April 1st payment of each year. The total monthly payment shall be rounded off to the nearest even dollar. In the event of Lessee's failure to pay said additional charges for increases as listed above when due, said sums shall be added to and considered rent due.

3.A. SALE OR RENTAL OF HOME. At the time of re-sale or rental of the home, the monthly rental shall be the rate in effect at the time, but not to exceed 110% of the average rental rates of manufactured home parks within a 5½ mile radius.

4A. UTILITIES. Lessor shall provide the following utilities: sewer main in the streets, all subject to interruption due to accidents, making of repairs, alterations or improvements, labor problems, or any cause beyond the Lessor's control.

B. Lessee shall be responsible for and pay all other utilities supplied to Lessee directly to the supplier, to include but not limited to water, sewer waste, telephone, cable TV, electricity and gas.

C. Any charges such as trash tipping fees or recycling costs or other costs created by governmental action or edict will be the responsibility of the Lessee and passed through directly to Lessee if charged against the Lessor.

5. PENALTY. Any sums due under the Lease not paid when due shall bear a late penalty charge of five (5) per cent of the monthly rent, for each month that each payment is not made by the 10th of the month. Unpaid late penalties shall accrue interest at the rate of One (1%) per cent per month (12%APR).

6. LEASE NON-MERGER--AMENDMENTS--ESTOPPEL. This lease may not be terminated as to the leasehold mortgagee because of conveyance of the Lessee's leasehold interest to the Lessor, or conveyance of the Lessor's interest to the Lessee. This lease may not be modified without consent of the Leasehold Mortgagee and Lessor will not accept a voluntary surrender of the lease without notice to and consent of the leasehold mortgagee. Lessor further agrees to provide "estoppel" certificates when requested by leasehold mortgagee, stating that the lease is in full force and effect, no amendments have been implemented, that no known defaults exist and that the rent is paid through a date certain.

7. ATTORNEY'S FEES AND LEGAL COSTS. All sums paid by the Lessor, including reasonable attorney's fees in instituting any action by reason of Lessee's default, shall be deemed additional rent under this lease to be paid by Lessee.

8. USE. The premises shall be used only for the placement of Lessee's residence, which will be used only as a residence and the housing of lessee's family. Occupancy of any dwelling shall be limited to no more than two (2) persons per bedroom, unless written permission is obtained from the Lessor.

B. Lessee will in every respect comply with the ordinances of the City of Nashua and Laws of the State of New Hampshire, and with the orders and requirements of the police, health and fire departments thereof.

9. ASSIGNMENT/SUBLEASING. The Lessee may assign or sublet the premises subject to the terms of the lease and rules of Trestle Brook, and that written Notice of such assignment is furnished by the Lessee to both the Lessor and Leasehold Mortgagee. Notwithstanding , the Lessee shall remain liable to Lessor for the payment of all rent and the full performance of the terms of the Lease, and file a rental affidavit supplied by Lessor.

10. INDEMNIFICATION AND INSURANCE. Lessee agrees to indemnify and save Lessor harmless from all claims and causes of action arising from any act, omission or negligence of Lessee or Lessee's agents, employees, invitees, licensees, contractors or guests, asserted by any person(s) or corporation(s) on account of any injury or damage to persons or property, suffered in, on or around the premises arising out of or resulting from the use or occupancy of the premises. This indemnity and hold-harmless agreement shall include indemnity against all costs and liabilities incurred in connection with any such claim or cause of action or the defense thereof.

10B. Lessee shall maintain in effect throughout the term of this lease personal injury liability insurance covering the premises and its appurtenances in the amount of at lease Fifty Thousand Dollars ($50,000.00). Such policy shall be issued by a company licensed by the State of New Hampshire and non-cancelable without ten (10) days written notice to the Lessor. A duplicate of such policy or certificate evidencing such coverage shall be promptly furnished to Lessor upon written request. Lessee shall pay all insurance premiums required under such policy in advance, allowing no delinquency in payment. Lessor hereby consents to Lessee's right to insure the premises without limitation and Lessee is encouraged to obtain Homeowner's or Owner, Landlord & Tenant coverage.

11. EMINENT DOMAIN. If the premises or any portion thereof shall be taken by any public authority for any public use, then this lease shall be terminated upon taking by the public authority. The Lessee shall not share in any award made to Lessor on account of such taking, nor shall the Lessor share in any award made to Lessee on account of such taking. Any award due Lessee will first be tendered to the leasehold mortgagee.

12. RIGHT TO INSPECT. It shall be lawful for Lessor at reasonable times to enter onto the premises to examine the condition thereof.

13. SIGNS. Lessee shall not display any signs without consent of the Lessor on the premises, except for signs which Lessee may post for the purpose of selling Lessee's home. In such case there shall be not more than two (2) "FOR SALE" signs which each measure no more than 24x36 inches (864 sq.in.) placed only in the windows.

14A. SALE OF HOME. The sale of Lessee's home will not discharge Lessee from this Lease. Execution of a Termination of Lease affidavit by the Lessee, and execution of a new Lease by the purchaser, both of which must be recorded in the Hillsborough County Registry of Deeds, are required to discharge Lessee from the Lease.

14B. APPROVAL OF PURCHASER. Lessor will approve any new purchaser under the following:

(1) Payment in full of any outstanding rent, tax or other charges due Lessor or City of Nashua.

(2) Execution of a new lease on terms and conditions in effect at the time of sale, that cannot exceed 110% of the average rental rates of manufactured home parks within a 5½ mile radius.

(3) Purchaser's agreement to meet the reasonable rules of Trestle Brook.

(4) Purchaser executing a Leasehold Rider to the mortgagee in conjunction with obtaining financing.

15A. LIEN. Lessor shall have a security interest in Lessee's home securing Lessee's obligation under the lease, and Lessee shall execute any and all documents to include but not limited to mortgages to perfect Lessor's security interests.

15B. Lessor shall subordinate its interest in Lessee's home to a first mortgage which provides for financing of up to 95% of the value at the time of purchase, and to 90% of value at time of any refinancing.

16. TAX ON HOME. Lessee shall be liable for any tax imposed on the leasehold improvements by the City of Nashua. In the event that Lessor pays any tax to the City of Nashua on Lessee's home, said payment shall be added to the rent due from Lessee to Lessor under this Lease including all interest and late payment charges.

17. LESSOR'S RIGHT TO ASSIGN AND/OR SELL. Lessor shall have the right at any time to sell its interest in the premises, assign its interest in the Lease or assign the rent payable under the Lease.

18. LESSOR'S DUTIES. The Lessor shall perform the following during the term of the Lease:

a. Set iron pipes at lot corners when the home is built.

b. Maintain all roads within Trestle Brook in good condition and to provide, but not maintain, parking space for two automobiles on each lot at time of construction. Garage space shall be considered as parking space.

c. Maintain all utilities provided by Lessor and complete any necessary emergency repairs within 24 hours when possible.

d. Maintain all underground plumbing, water when supplied, sewage lines and connections, other than those located within a home, and, in the event of an emergency, to make arrangements for the provision of temporary service. Maintenance of all utility connections above ground and/or within the home shall be the Lessee's responsibility. The cost of cleaning or repairing sewer pipes due to Lessee's negligence shall be paid by Lessee.

e. Trim and maintain trees and shrubs when deemed necessary by Lessor.

f. Respect the privacy of Lessee and to enter the home only with permission of Lessee, which permission shall be deemed given in the event of an emergency.

g. Allow the Lessee complete freedom of choice in purchase of all goods and services.

19. RULES. The rules attached as Appendix A are a part of this Lease. These rules may be amended by Lessor with consent of Lessee or giving of ninety (90) days notice of changes.

20. PERSONAL PROPERTY. All property of any kind on the leased premises shall be there at the sole risk of the Lessee, and if the whole or any part of said property shall be destroyed by fire, water, or otherwise, the Lessor shall in no case be held liable to any party by reason thereof.

21. ALTERATIONS. No alteration, addition, or improvement to the leased property including but not limited to trees, shrubbery and fixtures, shall be made by the Lessee without the written consent of the Lessor. Any alteration, addition, or improvement made by the Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall at the Lessor's option become the property of the Lessor upon the expiration or other sooner termination of this lease; provided however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee's cost upon such termination of this lease.

22A. TERMINATION/DEFAULT. Lessor may terminate the lease for any one of the following:

(1) Non-payment of rent, provided that no action for possession shall be maintained if prior to the expiration of a notice to quit, the Lessee shall pay or tender all arrearages due including late penalties plus Fifteen ($15.00) dollars, or actual legal expenses if greater, as liquidated damages.

(2) Failure of the Lessee to comply with local ordinances or state or federal regulations, provided that the Lessee is first given written notice of his failure to comply, and a reasonable opportunity thereafter to comply with said laws or regulations.
(3) Damage by the Lessee to the demised property, reasonable wear and tear excepted.
(4) Repeated conduct of the Lessee, upon the premises, which disturbs the peace and quiet of other residents of Trestle Brook.
(5) Failure of the Lessee to comply with reasonable written rules and regulations as established by the Lessor at the inception of the tenancy or as amended in accordance with section 20 herein, provided that the Lessee is first given written notice of his failure to comply and a reasonable opportunity thereafter to comply with said rules.
(6) Condemnation of Trestle Brook Estates.
(7) If Lessee defaults on lease, the leasehold mortgagee shall be provided with a notice of default by Lessor, and shall have 60 days to cure the default after receipt of notice of default. At its option, the leasehold mortgagee may take over Lessee's interest in the lease.

22B. To terminate the lease, the Lessor must give the Lessee notice in writing to remove the home from the premises within a period of not less than sixty (60) days, except that the lease may be terminated upon giving thirty (30) days notice or as provided by statute for non-payment of rent or other reasonable or incidental service charges.

22C. The notice of termination shall specify the reason for termination.

22D. In addition to terminating the lease, Lessor shall have the right to sue Lessee for possession, and for all sums due under the lease.

23. MERGER. All representations, statements and agreements heretofore made are merged in this lease, which is the full expression of the parties' obligations and intentions, and neither party, in entering this lease, has relied upon any statement or representations not set forth herein.

24. SEVERABILITY. Invalidation of any of these provisions by judgment or Court order shall in no way affect any other provision which shall remain in full force and effect.

Denise O. Duhamel LESSOR	LESSEE
Gregory E. Michael, Trustee of the Dana Patterson 1991 Revocable Trust LESSOR	LESSEE

TRESTLE BROOK

RTE. 111-W, Nashua, NH

GOOD NEWS!!! GOOD NEWS!!!

Dear Trestle Brook Homeowner: January 31, 2000

The Consumer Price Index for January 1, 2000 was published at 168.3 by the Dep't of Labor, an increase of $5.82. With no change in the land assessment at 8,850 and a decrease in the tax rate to 25.90 M, results are a decrease of $ 2.03 a month. Water usage decreased resulting in asaving of $4.35 month, and a corresponding decrease in Sewer charges resulted in a saving of $2.24 month. The new breakdown is as follows:

BASE RENT	Numerator (CPI 2000) 168.3 x 166.67 / (CPI 1989) 105.5		=	222.45	+ 5.82
TAXES	Lot Valuation at 8,850. x 25.90 per M divided by 12 months		=	19.10	- 2.03
WATER	Paid P.W.W. $22,325.13 divided by 12 months by 93 homes		=	20.00	- 4.35
SEWER	Paid City $25,896.93 divided by 12 months by 93 homes		=	23.20	- 2.24
		TOTAL ADJUSTMENTS		284.75	- 2.80
		Rounded up to			
	NEW LEASE FEE EFFECTIVE APRIL 1, 2000			**$285.00**	

NOTE: $254.55 IN R.E.TAX CAN BE ITEMIZED ON YOUR 1999 IRS TAX RETURN IF YOU LEASED FOR ALL 12 MONTHS OF 1999, JUST AS IF PAID TO THE CITY OF NASHUA. IF YOU HAVE NOT MADE LEASE PAYMENTS FOR ALL OF '99 COMPUTE YOUR TAX AS FOLLOWS: Jan/Feb/Mar use 21.46 per month, Apr thru Dec use 21.13 per mo.

OTHER CHARGES REMAIN THE SAME:

LATE CHARGES for payments postmarked after 10th of month = $10.00 **(plus $10.00 for each month each payment is late.)**

CHARGE FOR CHECKS RETURNED BY BANK FOR ANY REASON **$15.00.**

We do not re-deposit checks--send new check plus $15.00 to exchange checks.

RE-BILLING CHARGE - If you receive a notice for late or incorrect payment and do not send the correct amount with your next payment, a re-billing charge of $2.00 will be added to your account. If you make an error in your payment, we do not charge for the first notice (except for late payment), but forgetting or ignoring the notice the following month which requires subsequent billings is a chargeable expense. Please call with any questions.

Sincerely,

Roger Duhamel, Manager

THIS NOTICE SHOULD BE FILED AS AN ADDENDUM TO YOUR LEASE

Patterson-Duhamel Address: PO Box 999, Merrimack, NH 03054 603-891-2081
Office: 26 Wright Avenue, Merrimack NH FAX 603-424-3922

Attachment W

Interoffice Memorandum

To: Kenneth R. Neilsen, Esquire, Chairman
Board of Manufactured Housing

From: Walter Maroney WJM

Date: April 24, 2000

Re: SB 466, An Act Relative to Lot Rent Increases at Manufactured Housing Parks

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This memo responds to the request by the Manufactured Housing Board at its March 13, 2000 meeting, reiterated in the April 2000 letter of Anna Mae Twigg to this office, for an informal evaluation of the potential cost impact to the Board and the Attorney General's Office with respect to proposed SB 466. Please be advised as follows:

In my view, the analysis by Senior Assistant Attorney General Terry Robertson in her February 2, 1990 letter to Hon. Henry P. Whitcomb, Jr. regarding the manpower necessary to effectuate a rent control provision under RSA 205-A remains essentially accurate. However, I shall assume for purposes of this memorandum that the primary responsibility for analysis of rent increases under the proposed statute would rest with the Board. To that end, it is my view that the Board would be required to retain a qualified financial analyst with CPA credentials in order to competently analyze proposed rent increases under the criteria set forth in the bill. Such a position would generally be accorded a labor grade 30 status. That position would need to be supported by a level II paralegal. In addition enforcement activities with respect to orders issued by the Board under the proposed authority would require dedication of at least a half time attorney.

Under the current State salary structure, a labor grade 30 financial analyst would be compensated in the first year of employment at an annual salary of $46,059 with benefits of $14,278 for a total expenditure of $60,337.

A paralegal II would have an initial annual salary of $27,456, with associated benefits of $8,511 for a total commitment of $35,967.

It is not clear that the Attorney General's Office could devote resources, absent a dedicated appropriation, for enforcement with respect to orders of the Board under the proposed authority. To that end, it would be advisable for either the Board or the Attorney General's Office to retain independent counsel under contract for a 20 hour per week commitment at prevailing market rates.

This office is not prepared to comment on potential ancillary costs associated with this process. Such costs could include costs associated with space, computer hardware, software, travel or other incidental expenses.

Thank you for your attention to this matter.

141290

ATTORNEY GENERAL
JOHN P. ARNOLD

DEPUTY ATTORNEY GENERAL
BRIAN T. TUCKER

ASSOCIATE ATTORNEYS GENERAL
ROBERT P. CHENEY, JR.
GEORGE DANA BISBEE

THE STATE OF NEW HAMPSHIRE

SENIOR ASSISTANT ATTORNEY GENERAL
TERRY L. ROBERTSON

ASSISTANT ATTORNEY GENERAL
DONALD FEITH

ATTORNEY
JULIE HOWARD

INVESTIGATORS
RICHARD M. GERRY
MARIE P. WILKINSON
BRIAN F. TIERNEY

PARALEGALS
PAUL R. DORAN
NANCY C. SHEA
SANDRA L. PETELL

THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST BUREAU
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397
[illegible]
TTY TDD Relay [illegible]
FAX [illegible]

February 2, 1990

The Honorable Henry F. Whitcomb, Jr.
State Institutions and Housing Committee
Legislative Office Building, Room 304
Concord, New Hampshire 03301

Re: House Bill 1255, An Act Relative To Rent Justification In Manufactured Housing Parks

Dear Representative Whitcomb:

Pursuant to the request made earlier today, please be advised that upon reviewing House Bill 1255 the Office of the Attorney General has determined that in order to fulfill the responsibilities set forth in the proposed legislation it would be necessary to hire one assistant attorney general (Group M), one financial research assistant, and one paralegal II (LG 18). State expenditures would increase by $131,385.00 in fiscal year 1991, by $137,954.25 in fiscal year 1992, by $144,851.96 in fiscal year 1993, and by $152,094.56 in fiscal year 1994. The expenses noted herein have been calculated by referring to the pertinent salaries, employee benefits, and office and travel costs associated with carrying out the duties necessitated by the bill. A five percent increase in those expenses has been included for each year after 1991.

Please do not hesitate to contact me with any questions that you may have.

Very truly yours,

Terry L. Robertson
Senior Assistant Attorney General

TLR:lj

Against Bill Attachment X

4/26/00

Re SB 466:

Rent control doesn't work for the good of anybody except the short-term interest of current tenants.

Rent control makes investment in real estate less attractive, compared to other investment options. Deterioration of the housing stock and reduced new construction are the result. My husband and I live in the Dover area where rental housing is in very short supply.

Government intrusion into the private marketplace is costly. We moved here from New York where we had Housing Courts. With rent control come costs of courts, judges, clerks, courtrooms, and so forth. If not new courts, the currently already overloaded Courts will need new personnel and be further inundated with a whole new class of cases.

Most states and cities that have had rent control have spent decades trying to get rid of it.

Joyce Forsythe

258½ Dover Pt. Rd.
Dover, NH 03820
603-742-6648

Xmax

Attachment Y

April 26, 2000

Good afternoon ~~Madam~~ Mr. Chairman (Ms. Chairman) and members of the committee. For the record my name is Carrie Pearl and I live in Green Meadows Mobile Home Park, Inc. in Concord NH.

I'm here today to show my support in the passing of SB 466, which would not allow manufactured housing park owners to excessively increase lot fees. I have lived in Green Meadows Mobile Home Park for 10 years and my husband has lived in the park for 13 years. We have both seen our lot fee increase dramatically over the years. When I first moved in to the mobile home where my husband had been living the fee was $175.00 and as of today we pay $260.00 plus a $25.00 late fee if not paid by the 10th of the month. I fully understand the need for the owners to make a living and I'm not here to deny them of that. My concern is they don't have to answer to anybody on why the lot fee has been increased in such an excessive amount or have to show why they find such a need for this increase. The owner of the park I live in has gone up on our lot fee and when we are notified that there will be an increase we are never told why which by rights he is suppose to do. When he did the first increase of $20.00 he told us it was because there hadn't been an increase since he inherited the park.

The park I live in has been in existence for 25 plus years and they're a lot of things that need to done in it. Since Mr. James Grappone inherited the park he has built himself an elaborate garage/office that has a marble floor, black leather couch and a chrome toilet paper holder. He keeps the dump truck parked in the garage along with his antique car. Then his wife felt we needed two gazebos in the park that very few people even use. The dump truck he stores in the garage is suppose to be used to do work in the park but he never uses it instead he hires a person to come in a pays them for their labor and use of their dump truck. The owner also owns a small bobcat and has used it this winter to clean out the driveway of the chosen few he likes. The rest of us were left to shovel out our own driveways that were literally plowed in by the person he hires to come in and do work in the park. Our park also this winter was only sanded once and that was due to a tenant who fell and broke her leg going to her mailbox to get her mail. The ambulance had to be slowed down when coming in to attend to this tenant as it was sliding coming around the corner of the park. The manager was notified about this so he could get in touch with the owner to have someone come in a sand. The road never got sanded until the next day and that was around 2-3:00 the next day.

These roads in the park are used daily and especially the children who need to walk and catch the bus infront of our park and these children could have used ice skates to get to the bus stop. I think there needs to be justification for these excessive fee increases I don't feel we are provided with a lot of services but pay what I feel is a lot for nothing. We put up with a lot of abuse and harassment not only from the owner but from his hired helper for the amount of money we pay to provide him with a decent living.

Being that this is an older park there are a lot of big pine trees around the homes some are healthy but most are dead. Were we reside in the park there are a lot of these huge pine trees and a two years (1998) ago my husband had asked Mr. Grappone about removing them. My husband voiced his concern as the trees are over 100 ft tall and leaning towards our home and the neighbors and we were afraid with a bad storm they may fall. Mr. Grappone's reply was he couldn't afford to have them taken down maybe next year well the following year came and again my husband mentioned it to him again and he again stated he couldn't afford it. Then we found out that during that winter of 1998 he and his friend had gone on a cruise and would be taking another one before winter ended. I don't have any sort of problem with someone taking a vacation from his or her job. I do have a problem when you tell a tenant you cant afford to remove some trees that could cause serious harm to either their home or someone else's and then find out they have gone on a cruise I don't find that right at all.

Last July 5th when we had that terrible thunderstorm I was on my way home from the beach with my mother and children and my husband had been out working. When I drove into my park and saw the mess of branches around I hated to think of what I would see at my house. I couldn't even drive into my driveway as I had wires that had been brought down by tree limbs, the top of the 100ft tree had been blown off and tore of the door to my children's shed. I also had a big tree lying across the back of my mobile home and it was also lying across electrical wires. What my husband had told the owner had now indeed happened and it took the storm happening in order for him to take down what was left of those trees. We were also told by the concord police department we couldn't stay in our home as the tree was lying across live wires.

My husband called the owner at home very upset at what he saw when he came home as stated we had asked him about taking down these trees. The owner just laughed and said it was an act of god and hung up on my husband. The next day when he hired the tree people to come in and clean up the mess we were the last one's to be taken care of and we were the only ones that had a tree across there home. In the process of having the tree people he hired remove the trees and what was left of the trees they tore up our lawn that we had just planted grass the year before and then left a mess of branches and shavings on our lawn. It was our responsibility to repair the lawn and clean up the mess that was left not the park owners. He also has had half of the park repaved in the beginning of last summer shortly after that we got our lot fee increase notice. We have terrible water pressure in the park and this is not new it has been like this for as long as I have resided there for well over 10 years and has yet be fixed. We are also responsible for planting any grass we need on our lawns and any maintenance that needs to be done on the lot we pay for. We also have to pay out of pocket for the tarring of the driveway either every summer or every other summer.

We also pay for all of our utilities heat, electricity, cable, taxes, house insurance, mortgage, water and sewer our lot fee does not include any services.

Then there is a supposedly problem in the park with tenants Mr. Grappone not only is able to afford one attorney but has the monies to have two lawyers were us as tenants in the park can't afford one never mind two. We rely on the Manufactured Housing Board to hopefully hear whatever violation the owner maybe violating. Then again the board is limited in hearing on going problems and harassment and abuse that we tolerate from the owner. As I stated before I'm not out so that the owners can't make a decent living but the extent in which they go about doing it is wrong as in my case the owner has done next to nothing to improve any thing in the park. At one time living in a manufactured home and park was the most affordable way to live now it is not, you hear all the time the issues of affordable housing not being available well it can be if this bill is passed.

These homes we live in may not be three bedroom homes with two car garages but they are our homes and our investments and if the fee's are allowed to continue to rise to the extreme they have without any reasoning to it we just can't up and leave. Where as in an apartment if your rent goes up and you cant afford to pay it when it gets beyond your means you can pack up your belongings and move. You will also find that there are a lot of elderly people who reside in mobile homes and live on a fixed income. These people you will find have been in their homes for years and are just making it as it is these are their homes and should not have to worry about how to pay for the excessive increase or pay for their fuel or etc. The same goes for the younger people who live in these parks being either single or with children.

We not only have to worry about the fee charged for the lot, we have threats of eviction at any time hanging over our heads if the owner feels he is in the right and wants you out. I'm personally going through this as I speak. The manufactured housing board is there for good reasons but needs to hear and have jurisdiction over this pending bill along with more serious issues involving park owners. We find ourselves constantly harassed in our home setting by the owner and to make matters worse his hired helper who does not even live in the park is allowed to harass not just us but others who live in the park. If the owner does not like you or knows you will stick up for your rights your household is turned upside down with the ongoing abuse. Park rules are made to be followed by whom the owner wants to follow them they are not enforced upon everyone. There are approximately 110 units in this particular park and the owner has his favorites and it is well known amongst the tenants. For the amount we pay a month for lot fee's we should not have to put up with the abuse we do along with paying enormous fee increases.

Thank you for the opportunity to speak to you regarding SB 466 today.

Attachment Z

APR 24 2000

April 21, 2000

Jodi Grimbilos
Manufactured Housing Association
18 Centre Street
Concord, NH 03301

Dear Jodi,

I hope the enclosed helps. I took the statement I made last year and updated it a little. At that time, Senator Hollingworth was going to introduce a rent justification bill, which to many was rent control. That's when she learned of the Sherwood Forest Tenants Association. She received many letters from the members asking her not to submit the bill and she didn't.

I can't believe that just a year later rent control can be more desirable! SB466 should not be passed.

My question would be if rent control were so great, why has it been discontinued in so many places?

If you have any questions, please feel free to call me at (603) 778-0740.

Yours truly

Joseph M. Morey

Joseph M. Morey

April 21, 2000

In spite of the negative publicity appearing in the Exeter News letter, the poor condition of the roads, the less than inviting post office and a picnic area that was hard to recognize, Eleanor and I bought a home in Sherwood Forest in 1991. After looking around, it was the only adult park that allowed pets.

The Sherwood Forest tenants association, which has been active for almost 30 years, was the only one at that time and appealed to us because of its social activities. We later learned of the good relationship existing between the association and the park owners.

Shortly after we moved in, management changed hands-then changes for the better began happening—roads were repaved, the water steadily improved, the old post office was replaced by a new building to be proud of. With this building and landscaping, the picnic area was transformed.

In October of 1995, plans for the addition of a ground level function hall accessible to all were ready to go and the residents were informed that construction would begin in the spring of 1996. Thanks to the efforts of a group of people who had formed their own association, a vote by the residents was demanded. Fear of a rent increase (which would not have happened) caused the residents to vote against the addition so the plans were put aside. Many activities could have been held in Sherwood Forest if the owners had been allowed to follow through with their plans.

We moved out of Sherwood Forest in December of 1995 to a lot just outside of the park. We pay rent to the same owners. We moved to have our daughter and grand son live with us since they didn't meet the age requirement for Sherwood Forest. If they should move to their own residence, we would have no problem moving back to Sherwood Forest. We are still members of the Sherwood Forest Tenants Association.

In January of 1999, the park owners invited the residents to attend a forum to discuss issues affecting the community. Senator Hollingworth attended this forum. The senator learned that a second tenants association (The Sherwood Forest Tenants Association) existed. She had the opportunity to hear a different side of the story.

Much has been done to create a pleasant atmosphere for the residents of Sherwood Forest.
The owners have sponsored summer BBQ, Christmas Parties, and last November, free turkeys averaging 14 pounds each.

Sincerely,

Joseph M. Morey

Joseph M. Morey

RE: SB 466

Please note – Mr. Bill Emery called 4/28/00 to request a copy of the transcript on SB 466 when completed. His telephone & address are:

Telephone: 772-3534
Address: 51 Sherwood Forest
110 Robin Hood Ext.

Call to let him know the transcript is complete & the cost and that he will have to pick it up. Thank you.

Speakers

TEL 603-225-7170 FAX 603-226-0165

SB 466

BIANCO PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

JODI E. GRIMBILAS
GOVERNMENT AFFAIRS
SPECIALIST

18 CENTRE STREET
CONCORD, NEW HAMPSHIRE 03301-6315
800-262-8112

COMMITTEE HEARING ON Rent Control

Date: 4-26-00 Place: _____

NAME: Ronald J. Adams

Business Address: P.O. Box 2497

City: Salem, N.H. Phone: 603-425-0799

REPRESENTING: Rent Control

WISH TO SPEAK: YES ____ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: #466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place _____

NAME: Stephen Baker

Business Address: 281 Broadway

City: Lawrence, Ma. Phone: 978-688-8880

REPRESENTING: Board of Manufactured Housing, Public mmbr

WISH TO SPEAK: YES ✓ NO ____ Time Needed: 10 min

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4-26-00 Place: _____

NAME: Malcolm H. Beaulieu, Sr.

Business Address: 17 Dutton St

City: Manchester NH Phone: 603-641-5029

REPRESENTING: _____

WISH TO SPEAK: YES X NO ____ Time Needed: 2 min

Supporting Bill: _____ Opposing Bill: oppose

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place Representatives Hall

NAME: Elliott Berry

Business Address: 1361 Elm St

City: Manchester NH Phone: 668-2900

REPRESENTING: ~~Kingston~~ N.H Legal Assistance

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 min

Supporting Bill: ✓ Opposing Bill: ___

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON RENT CONTROL #466

Date: 4/26 Place: ___

NAME: PAUL E. BERTON

Business Address: 480 Broad St

City: Portsmouth NH Phone: 431-0068

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ___ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466.

Date 4/26/00 Place ___

NAME: Jim Bianco.

Business Address: ___

City: Concord Phone: 225-7170

REPRESENTING: N.H. Municipal Hwy Assn.

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 2-3

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: Roy Hall

NAME: Rick Blais

Business Address: 50 Queen City Ave

City: Manchester Phone: 603-641-2527

REPRESENTING: Manchester Chapter of NAIOP

WISH TO SPEAK: YES X NO ___ Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

I can go last or come back.

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place ___

NAME: Ken Burgess

Business Address: 1180 Hooksett Rd

City: Hooksett Phone: 623-5082

REPRESENTING: N.H. Manufactured Housing Assoc.

WISH TO SPEAK: YES X NO ___ Time Needed: 2 min.

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place ___

NAME: David Canada

Business Address: 47 Bunker Hill Ave

City: Stratham NH Phone: 772 3876

REPRESENTING: Self

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3 Minutes

Supporting Bill: ___ Opposing Bill: ___

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Sen Bill 466

Date: 4/26 Place:

NAME: D. Carole Cherlantini

Business Address: (Res) 6 Kings Row

City: Epsom NH Phone: 736-3364

REPRESENTING: TA Kingstowne Park

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3 min

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: ___ Place: ___

NAME: Jim Yocque

Business Address: Fortune

City: Fortune Phone: ___

REPRESENTING: ___

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 4 MIN

Supporting Bill: ___ Opposing Bill: ___

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LEGISLATIVE BLDG

NAME: RALPH DOOLAN

Business Address: PO Box 9

City: LITTLETON NH Phone: 603 444-8915

REPRESENTING: MOTA

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4/26 Place REP. HALL

NAME: ROGER DUHAMEL

Business Address: 5 MADELEINE DR

City: NASHUA NH Phone: 891-2081

REPRESENTING: TRESTLE BROOK

WISH TO SPEAK: YES X NO Time Needed: 5 MIN

Supporting Bill: _____ Opposing Bill: X w/ AMENDMENT

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB-466

Date 4/26 Place LOB

NAME: Matt Dupee

Business Address: 6 Dunlap Rd.

City: Salisbury NH Phone: 648-2122

REPRESENTING: Self

WISH TO SPEAK: YES ✓ NO Time Needed: 3 mins.

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON _____

Date: _____ Place: _____

NAME: JOHN FINNEGAN

Business Address: _____

City: DERRY Phone: _____

REPRESENTING: WEBBER MH. PARK

WISH TO SPEAK: YES ✓ NO Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466 on rent control

Date 4/26/00 Place Dover, NH (State House)

NAME: Joyce Forsythe

Business Address: 258 2 Dover PT. Rd.

City: Dover NH 03820 Phone: 603-742-6648

REPRESENTING: myself, a taxpayer

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 2 minutes

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON H.B 466

Date: 4-26-00 Place: Legislative Bldg

NAME: Helen M. Gale

Business Address: Century 21 Chase Assoc.

City: Hampton Falls Phone: 603-926-9846

REPRESENTING: Shekwood Forest, Exeter

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3-4

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place REP HALL

NAME: GENE GAYDA

Business Address: P.O. BOX 422

City: NASHUA Phone: 881 3682

REPRESENTING: NH POA

WISH TO SPEAK: YES X NO ___ Time Needed: 5 MIN

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON HB 466

Date: 4-26-2000 Place: Senators Hall

NAME: Richard Guild

Business Address: Bartletts Inn Plc

City: Epsom Phone: (603) 736-6015

REPRESENTING: Self

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 min

Supporting Bill: HB 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4/26 Place: ___

NAME: Bridget Healy

Business Address: 8 wallstreet

City: Concord Phone: 226-6607

REPRESENTING: ___

WISH TO SPEAK: YES ✓ NO ___ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place REP HALL

NAME: REP. WARREN HENDERSON

Business Address: ___

City: EXETER Phone: 772-4285

REPRESENTING: ROCK. DIST. 22

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3 MIN

Supporting Bill: ✓ Opposing Bill: ___

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON M SB 466

Date: 4-26-00 Place: _____

NAME: GENE HILL JR.

Business Address: NONE 3205 LAFAYETTE RD. #165

City: PORTSMOUTH NH Phone: 603-431-6045

REPRESENTING: MOTA

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3 MIN

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: Representatives Hall

NAME: RICHARD. E. HORTON SR.

Business Address: P.O BOX 2009

City: SEABROOK N.H Phone: 474-8548

REPRESENTING: MOTA

WISH TO SPEAK: YES ✓ NO ___ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LOB

NAME: Nancy Hunt

~~Business~~ Address: 266 Sherwood Forest Pk

City: Exeter Phone: unlisted

REPRESENTING: ~~self~~ Sherwood Forest Pk

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 1 min

Supporting Bill: 405 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON # SB 466

Date 4/26/00 Place

NAME: MARK KAUFMAN

Business Address: 8 WAYLAND circle

City: Exeter Phone: 772486

REPRESENTING: myself

WISH TO SPEAK: YES ✓ NO Time Needed:

Supporting Bill: Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place

NAME: Mike Keeler

Business Address: 115A Airport Rd

City: Concord Phone: 225-5549

REPRESENTING: NH Realtors (President)

WISH TO SPEAK: YES ✓ NO Time Needed:

Supporting Bill: Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON RENT CONTROL

Date 4-26-00 Place LOB

NAME: JIM KERRIVAN

Business Address: NORTHWOOD

City: STRAFFORD Phone: 664-9200

REPRESENTING: HIMSELF

WISH TO SPEAK: YES ✓ NO Time Needed: 4 min

Supporting Bill: Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/2000 Place Rep Hall

NAME: Rep David Kibbey / David Kibbey

Business Address:

City: Phone: 8632904

REPRESENTING: Sullivan Dis 4 / SELF

WISH TO SPEAK: YES L NO Time Needed: 3 min

Supporting Bill: Opposing Bill: L

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 4/26/00 Place:

NAME: Bob LaGo

Business Address: 212 Pembroke Rd

City: Concord NH Phone: 224-1542

REPRESENTING: Crippetell Assoc, LLC

WISH TO SPEAK: YES ✓ NO Time Needed: 10 min

Supporting Bill: Opposing Bill: ✓

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COMMITTEE HEARING ON SB 466

Date 4-26-00 Place LOB RM 201-203

NAME: Rep Robert LeFoorneau

Business Address:

City: Phone:

REPRESENTING: Rock Dist 13

WISH TO SPEAK: YES ✓ NO Time Needed: 1-3 min

Supporting Bill: Opposing Bill:

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COMMITTEE HEARING ON 4466

Date: 4-26-00 Place: _____

NAME: Beth Littlefield

Business Address: P.O. 406

City: Farmington Phone: 603 859 2184

REPRESENTING: Greater Rochester Landlords Assoc

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 minutes max

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place RM 201-203

NAME: Donald Mercier

Business Address: Grovegate Realty

City: 13 Allen Phone: 332-0779

REPRESENTING: Rochester Self

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 7 min

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place _____

NAME: Don Minor

Business Address: 216 Union Ave

City: Laconia Phone: 524-0348

REPRESENTING: myself

WISH TO SPEAK: YES X NO ___ Time Needed: 5 min

Supporting Bill: _____ Opposing Bill: SB466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LOB Rm 104

NAME: Lois Parris

Business Address: PO Box 228

City: Concord NH Phone: 224-0408

REPRESENTING: MOTA of NH

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3-5

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: LOB ROM 104

NAME: CARRIE READL

Business Address: 69 Skyline DR

City: Concord NH Phone: 228-9167

REPRESENTING: Green Meadows Mobile Home Park

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 min

Supporting Bill: X Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: LOB Rom 104

NAME: GUY PICHETTE

Business Address: Home 13 JENNIFER ST

City: DANVILLE Phone: 603-382-1894

REPRESENTING: COTTON FARM VILLAGE - MOTA.

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 MINS.

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2002 Place: Rm 104

NAME: Jimmie D. Purselley

Business Address: 143 Village of Glen Falls

City: Goffstown NH Phone: 497-3884

REPRESENTING: MEDVIL Association (Tenants Assoc.)

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 minutes

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 4/26 Place: LOB Rm 104

NAME: Florence Quast

Business Address: 529 Nashua St #7

City: Milford NH Phone: 673-5067

REPRESENTING: MOTA, Mfg Housing Board, Coop.

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 1 min

Supporting Bill: X Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/02 Place ___

NAME: Peter K Quinn

Business Address: 95 Albany St Suite 3

City: Portsmouth Phone: 436 3611

REPRESENTING: Commercial Brokerage

WISH TO SPEAK: YES X NO ___ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466 House Bill

Date: 4/26/2000 Place: N.H. Legislature Concord

NAME: Donita C. Reardon

Business Address: Exeter NH

City: Exeter N.H. Phone: 603 772 1876

REPRESENTING: ~~Self~~ - Sherwood Forest Park

WISH TO SPEAK: YES X NO ___ Time Needed: 3

Supporting Bill: SB466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON H.B 466

Date: 4-26-00 Place: ___

NAME: James W. Reardon

Home
~~Business~~ Address: 256 Sherwood Forest

City: Exeter Phone: 772-1876

REPRESENTING: Self (Sherwood Forest Park

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 3-4 min.

Supporting Bill: SB466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

James W. Reardon

COMMITTEE HEARING ON Senate 466

Date 4-26-2000 Place ___

NAME: CHRIS REENSTIERNA

Business Address: 742 MASSACHUSETTS AVE

City: ARLINGTON Phone: 781 643-5737

REPRESENTING: T. H. REENSTIERNA

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 MINUTES

Supporting Bill: ___ Opposing Bill: ✓

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COMMITTEE HEARING ON Rent Control #466

Date: 4/26/00 Place: Concord, NH - Nashua, NH

NAME: Linda B. Register

Business Address: 46 Londonderry Rd.

City: Windham, NH Phone: 603-437-9029

REPRESENTING: Myself against Rent Control

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X #466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4-26-00 Place Concord

NAME: Sean Rogers

Business Address: 360 Church St.

City: Northboro MA Phone: 800-854-4350

REPRESENTING: Forward Financial Company

WISH TO SPEAK: YES X NO ___ Time Needed: 3-5 Minutes

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4/26/00 Place ___

NAME: Debra Smith

Business Address: 87 Caldwell St

City: Manchester Phone: 669-0893

REPRESENTING: Self

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 2 mins

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON _____

Date: 4-26-00 Place: _____

NAME: DOT Slinky

Business Address: President RI State Reg.

City: Harrisville Phone: 401-568-0965

REPRESENTING: Mobile Home Owners

WISH TO SPEAK: YES ✓ NO ___ Time Needed: _____
PRO

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4-26-00 Place _____

NAME: Donna Soucy for Joe Morey

Business Address: 18 Centre St

City: Concord Phone: _____

REPRESENTING: NHMHA

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 2 mins

Supporting Bill: _____ Opposing Bill: ✓

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COMMITTEE HEARING ON SB 466

Date 4/26/00 Place _____

NAME: RON TAYLOR P.O. BOX 221

Business Address: JOHNSON CITY MH Park

City: HENNIKER Phone: 428-7037

REPRESENTING: _____

WISH TO SPEAK: YES X NO ___ Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Bill 466

Date: 4-26 Place: _____

NAME: Marie VonTobel

Business Address: 64 Magnolia Ln

City: Belmont Phone: 267-7063

REPRESENTING: Mota

WISH TO SPEAK: YES X NO ___ Time Needed: 5 Min

Supporting Bill: Hele Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place _____

NAME: Ashton Welch

Business Address: 105A Airport Rd

City: Concord Phone: 225-5549

REPRESENTING: NH Realtors

WISH TO SPEAK: YES ✓ NO ___ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON RENT INCREASES/MAUFACT. HOUSING

Date: 4/26/2000 Place: LEGISLATIVE BUILDING

NAME: MARY ANN AMMANN

Business Address: BOX 103 SHERWOOD FOREST

City: EXETER NH. Phone: 772-8380

REPRESENTING: SHERWOOD FOREST

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Mary Ann Ammann

COMMITTEE HEARING ON 346 RENT INCREASES

Date: 4-21-00 Place: LOB

NAME: RUTH ARROYO

Business Address: _____

City: _____ Phone: _____

REPRESENTING: HOLIDAY ACRES

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON RENT CONTROL

Date 4-26-2000 Place Concord Legislative Bldg

NAME: Steven Auberton

Business Address: 16 Main St

City: Pittsfield Phone: (603) 435-7575

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

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COMMITTEE HEARING ON 466

Date: 4/26/99 Place: King Towne

NAME: Raymond Bassett

Business Address: 26 Quessy Lane

City: Epsom NH Phone: 736-6063

REPRESENTING: King Towne

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: Yes Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 4-26 '00 Place: Concord LOB 201

NAME: JOSEPH E. BEAUREGARD

Business Address: 120 Village Glen Falls

City: Goffstown Phone: 603-497-2949

REPRESENTING: Medville Assoc.

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: Yes Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date 4-26-00 Place STATE HOUSE

NAME: ELLIOT BERKOWITZ

Business Address: PO Box 600

City: Hanover FALLS Phone: 603-929-0006

REPRESENTING: MYSELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

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COMMITTEE HEARING ON SB 466

Date 4/26/00 Place Concord Leg. Bldg # 206

NAME: LARRY BERKSON

Business Address: 16 MAIN ST.

City: PITTSFIELD Phone: 435-7575

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: _____

NAME: Madalyn Bishop

Business Address: _____

City: Exeter, N.H. Phone: 778-1521

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: YES Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON MOTA

Date 4/26/00 Place _____

NAME: Roland A Boone esq.

Business Address: _____

City: Raymond NH. Phone: _____

REPRESENTING: MOTA

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

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COMMITTEE HEARING ON ~~April 26, 2000~~ SB 466

Date: April 26, 2000 Place: LOB 201

NAME: Marilyn T. Blake-Boucher

Business Address: _____

City: Allenstown Phone: 485-5294

REPRESENTING: Holiday Acres Mobile Home Park

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: SB466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Marilyn J. Blake-Boucher

COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: Concord State Houses

NAME: ELEANORE - BROOKS

Business Address: 71 NASHVILLE ST

City: SEABROOK N.H. Phone: 603-474-9805

REPRESENTING: SEE STABLES MOBILE HOME PARK

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: X Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB # 466

Date: 4-27-00 Place: LOB 201

NAME: Carolyn Brouillette

Business Address: ret-Sherwood Forest

City: Exeter N.H. 03833 Phone: 1-603-772-7078

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: SB 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Carolyn Brouillette

COMMITTEE HEARING ON SB 466

Date: 4/26 Place: Lobby 201

NAME: Dorothy Burke

Business Address: ___

City: Seabrook N.H. Phone: 474-9155

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO V Time Needed: ___

Supporting Bill: V Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4-26-00 Place: _____

NAME: George A Burpee SR

Business Address: IRON WORKS RD

City: Concord NH Phone: 848-3004

REPRESENTING: SELF

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: yes

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COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: Legislative

NAME: Pauline Calabrese

Business Address: _____

City: Seabrook NH Phone: _____

REPRESENTING: _____

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: ✓SB466 Opposing Bill: _____

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WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26 Place: STATE HOUSE LOB201

NAME: MARGARET A. CAMPANELLA

Business Address: _____

City: SEABROOK Phone: 474-2776

REPRESENTING: STAPLES MOBILE HOME PARK

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: SB466 Opposing Bill: _____

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WITH COMMITTEE CLERK

Margaret A Campanella

COMMITTEE HEARING ON SB 466

Date: 4-25-00 Place: Legislative Office Bldg.

NAME: Maureen P. Cate

Business Address: 168 Walton Rd. #47

City: Seabrook Phone: 603-474-7011

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ✓ 466 Opposing Bill: ___

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COMMITTEE HEARING ON S B 466

Date: 4/25/2000 Place: L.O.B.

NAME: NANCY CAVALIERI

Business Address: 21 BLUEBERRY LANE SEABROOK N.H.

STIMPLES MOBILE PARK P.O BOX

City: SEABROOK. N.H. 1803 Phone: 1-603-474-7140

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO X Time Needed: —

Supporting Bill: YES Opposing Bill: ___

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COMMITTEE HEARING ON SB 466

Date 4/26/2000 Place State House Concord

NAME: Eileen Ceccanti

Business Address: P.O. Box 65

City: Portsmouth, NH Phone: 603-431-9757

REPRESENTING: Appledore Assoc.

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

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COMMITTEE HEARING ON SB 466

Date 4-26-00 Place LEGISLATIVE BUILDING 201

NAME: DONALD J CHABOT

Business Address: 26 TREMONT ST.

City: CONCORD Phone: 542-5188

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

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COMMITTEE HEARING ON 466

Date 4-26-00 Place ___

NAME: Li Chang

Business Address: 1143 Bridge St

City: Manchester NH Phone: 493-5358

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓ oppse

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COMMITTEE HEARING ON 466

Date Apr 26, 00 Place ___

NAME: MING TSAN CHANG

Business Address: 1143 Bridge St.

City: Manchester Phone: 603-668-8314

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: oppse

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COMMITTEE HEARING ON Public Affairs Committee

Date: 4/26/00 Place: Legislature

NAME: Joan Cheever

~~Business~~ Address: 27 Kingstone

City: Bow NH Phone: 736-3350

REPRESENTING: Kingstowne Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Bill # HB 466

Date: 4-26-00 Place: Sherwood Forest Park Exeter N.H.

NAME: Florence L. Chetty

Business Address: ~

City: Exeter N.H. Phone: 778-1270

REPRESENTING: Sherwood Forest park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ___

Date: 4/26/00 Place: ___

NAME: Darrell Chubbuck

Business Address: ___

City: ___ Phone: 603 778-1078

REPRESENTING: Sherwood Forest Exeter NH

WISH TO SPEAK: YES ___ NO ___ Time Needed: ___

Supporting Bill: SB 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON [redacted]

Date: 4/26/00 Place: _____

NAME: Elaine ChubBuck

Business Address: _____

City: _____ Phone: 603-778-1678

REPRESENTING: Sherwood Forest Exeter NH

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: SB 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LOB 201

NAME: HARVEY C CLEMENT

Business Address: 93 VILLAGE OF GLEN FALLS

City: GOFFSTOWN NH 03045-6214 Phone: (603) 497-1751

REPRESENTING: MEDVIL TENANTS ASSOCIATION

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: YES Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26 Place _____

NAME: Kipp Cooper

Business Address: 115A Airport Rd

City: Concord Phone: 225-5544

REPRESENTING: NH Realtors

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place _____

NAME: Maxine Cummings

Business Address: _____

City: W. Lebanon Phone: _____

REPRESENTING: Maxine Cummings

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date _____ Place _____

NAME: THERESA V. DAMEAU

Business Address: _____

City: _____ Phone: _____

REPRESENTING: Valley Stream

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: [redacted]

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: HOUSE CHAMBERS

NAME: JOHN DAVIS

Business Address: 225 NORMAN RD

City: GOFFSTOWN NH Phone: 497-3500

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 4/26/00 Place: LOB 201

NAME: Rupertia Dearborn

Business Address:

City: Exeter Phone: 778-4782

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO V Time Needed: ___

Supporting Bill: Yes SB 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Rupertia Dearborn

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place State House

NAME: Therese DeLuca

Business Address:

City: Nashua Phone: 42 889-4229

REPRESENTING:

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place ___

NAME: THERESA DESFOSSES

Business Address: Portsmouth Mobile Homes

City: 3205 Lafayette Rd Portsmouth, NH Phone: (603) 436-2357

REPRESENTING: Hilcrest Estates

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4/26/2000 Place: [redacted], LOB

NAME: Helen E. Dion

Business Address: 168-Waeton Rd. - 9 - Staples Park

City: Seabrook, N.H. Phone: (603) 474-9305

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: yes Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place Rep

NAME: Susan C Dobens

Business Address: 210 Pine St #11

City: Nashua NH Phone: 6038898854

REPRESENTING: NH POA

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-2000 Place: CONCORD

NAME: EDWARD R. DONAHUE

Business Address: 537 HOWE ST.

City: MANCHESTER Phone: 603-624-8779

REPRESENTING: MYSELF

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: _____

NAME: Elinor Doncaster

Business Address: _____

City: Exeter N.H. Phone: 772-7054

REPRESENTING: Sherwood Forest Park

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

*PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26 Place: CONCORD

NAME: JEAN B DOOLAN

Business Address: PO Box 9

City: Littleton 03561 Phone: 603 444-8915

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: 0

Supporting Bill: ✓ Opposing Bill: _____

*PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON LOT RENT INCREASES

Date: 4-26-00 Place: LEGISLATIVE BUILDING

NAME: MADELINE DREW

Business Address: 15 KNIGHTS LANE

City: EPSOM N.H. Phone: _____

REPRESENTING: KINGSTOWN PARK

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

*PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LOB 201

NAME: PATRICIA R. EATON

Business Address:

City: SEABROOK Phone: 474-9612

REPRESENTING: STAPLES MOBILE HOME PARK

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: YES SB466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Patricia R. Eaton

COMMITTEE HEARING ON SB466

Date: 4/26/2000 Place: LOB 201/203

NAME: BILL EMERY

Business Address: 71 SHERWOOD FOREST

City: EXETER, N.H. Phone: 603-772-3534

REPRESENTING: F.O.R.T. of SHERWOOD FOREST

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: YES Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date: 4-26-00 Place: ___

NAME: Pauline Jenimore

Business Address:

City: Epsom Phone: 736-9239

REPRESENTING: Kings Towne Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4/26/00 Place: Legislative

NAME: THERESA FINNIGAN

Business Address:

City: SEABROOK Phone: 603-474-7624

REPRESENTING:

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: SB466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date 4/26/00 Place

NAME: PENNRYN FITTS

Business Address: RR#1 Box 159

City: DANBURY NH Phone: 768 3606

REPRESENTING:

WISH TO SPEAK: YES ___ NO Time Needed: ___

~~Supporting Bill: ✓~~ Opposing Bill:

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: Concord

NAME: Peter Forsythe

Business Address: retired

City: Dover Phone: 742-6648

REPRESENTING: self as taxpayer

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place Representative Hall

NAME: Kathy Corey Fox

Business Address: 10 So. Broadway

City: Salem, NH Phone: 893-2100

REPRESENTING: NH Association of Realtors

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON PUBLIC AFFAIRS

Date: 4-26-00 Place: LEGISLATIVE BL

NAME: VICTOR GABOURY

Business Address: 36 KINGS ROW

City: EPSOM NH Phone: 736-4428

REPRESENTING: KINGS TOWNE PK

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-2000 Place House Chamber

NAME: Denise Gallant

Business Address: ___

City: Allenstown, N.H Phone: ___

REPRESENTING: Stephen A Hynes

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: opposed

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: Concord

NAME: Lois E. Gustafson

Business Address: _____

City: Exeter, N.H Phone: 603-772-7323

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: SB 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ~~April~~ SB 466

Date: April 26 Place: LOB 201

NAME: Nemie goodwin, 9½ Marilyn Drew

Business Address: ALLENSTOWN, N.H

City: 03275 Phone: 485-3747

REPRESENTING: Ho

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: SB 466 yes Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Nemie F. goodwin

COMMITTEE HEARING ON SB-466

Date: 4/26/00 Place: L-B

NAME: Madeline Grace

Business Address: _____

City: Epsom NH Phone: (603) 736-9941

REPRESENTING: Kingstown Pork

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: Yes. Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON BILL 466

Date: 4/25/00 Place: CONCORD

NAME: TRUE CRAWFORD

Business Address: 40 NASHVILLE ST

City: SEABROOK Phone: 474-1801

REPRESENTING: MOTA

WISH TO SPEAK: YES ___ NO ___ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: Concord - STATE House

NAME: JAMES GOUFFIN

Business Address: ___

City: SEABROOK, N.H. Phone: 603-474-9805

REPRESENTING: SELF - STABLES MOBILE HOME PARK

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: X Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-25-2K Place: Concord

NAME: Marilyn M. Grindall

Business Address: ___

City: Exeter N.H. Phone: 03833

REPRESENTING: Sherwood Forest Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date: 4-26-00 Place: _____

NAME: Shirley Austin

Business Address: 78 Epping Rd.

City: Exeter Phone: 772-9059

REPRESENTING: 466

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: _____

NAME: George Hall

Business Address: Sherryland Village Park

City: Tilton Phone: 286 8138

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: _____

PLEASE LEAVE COPY ~~OF ANY PREPARED~~ STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date 4/26/2000 Place _____

NAME: Mr. + Mrs. Donald White

Business Address: RR1 Box 121M

City: Alton NH Phone: 859-4811

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO V Time Needed: _____

Supporting Bill: _____ Opposing Bill: V

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill #466

Date: 4/26/00 Place: _____

NAME: Roy A Woodward

Business Address: 700 E Clinton St

City: Loudon NH Phone: 7830345

REPRESENTING: self

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: yes Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT
WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4-26-00 Place: Public Affairs

NAME: Paul A Worsowicz

Business Address: 214 N Main St

City: Concord NH Phone: 228-1181

REPRESENTING: Jensen's Manufactured Housing Parks

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT
WITH COMMITTEE CLERK

Concord, Tilton, Nashua, Dover, Lebanon

COMMITTEE HEARING ON Lot Rent at Mobile Home Parks

Date: 4-26-00 Place: Hall of Representatives

NAME: Martha Yager

Business Address: PO Box 1081 / 4 Park St #209

City: Concord Phone: 224-2407

REPRESENTING: NH Housing Forum

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: X Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT
WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4/26/00 Place Concord

NAME: Peter Zsofka

Business Address: 6 Althea Lane

City: Nashua Phone: 889-0711

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: X466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date 4/26/00 Place Rep Hall

NAME: Deitz Heins

Business Address: Box 671

City: Concord NH Phone: 228-9279

REPRESENTING: Self

WISH TO SPEAK: YES (NO) Time Needed: _____

Supporting Bill: _____ Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON BILL 466

Date: 4/26/00 Place: Concord

NAME: Richard Horton SR.

Business Address: P.O Box 2009

City: SEABROOK Phone: 474-8548

REPRESENTING: MOTA

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place REP. HALL

NAME: THOMAS A. HOWARD

Business Address: PO Box 161

City: CENTER HARBOR Phone: 253-4345

REPRESENTING: LAKES REGION BOARD / REALTORS

WISH TO SPEAK: YES ___ NO X Time Needed: —

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place Legis/State House

NAME: Louise Hyeank

Business Address: _____

City: Nashua, NH 603 Phone: 888-7417

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place State House "Rep's Hall"

NAME: Richard E Johnson

Business Address: 533 N. State A4

City: Concord NH Phone: 603 224-7609

REPRESENTING: Property owner

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: Yes Opposing

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date: 4/26/2000 Place:

NAME: Marie E. Johnson

Business Address:

City: Phone:

REPRESENTING: Kings Towne

WISH TO SPEAK: YES ___ NO X Time Needed:

Supporting Bill: ✓ Opposing Bill:

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Rent Control Bill

Date 4/26/00 Place LOB

NAME: JOAN T. JONES

Business Address: 32 Livermore Lt

City: Portsmouth 603 Phone: 431-[redacted]7169

REPRESENTING: NHAOA

WISH TO SPEAK: YES ___ NO X Time Needed:

Supporting Bill: ___ Opposing Bill: Rent Control Bill

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: LOB 301-303

NAME: DORIS HORAN

~~Business~~ HOME Address: 23 SHERWOOD FOREST

City: EXETER Phone: 772-8112

REPRESENTING:

WISH TO SPEAK: YES ___ NO ___ Time Needed:

Supporting Bill: ✓ Opposing Bill:

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: LOB 201

NAME: VERNON D. JORDAN

Business Address: P.O BOX 1018

City: Raymond Phone: 603-895-1600

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ↘ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 04/26/00 Place: KINGSTOWN PARK

NAME: RUDOLPH & SHIRLEY KATSCH

Business Address: 5 BISHOP LANE

City: Epsom NH. Phone: 736-8683

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date 4-26-00 Place LOB

NAME: Lucinda Keriven

Business Address: P.O. Box 206

City: Strafford Phone: 664-9200

REPRESENTING: myself

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SENATE BILL 466

Date 4-26-00 Place CONCORD NH

NAME: CHARLES KENG

Business Address: PO BOX 484

City: BARRINGTON Phone: 603 664 9598

REPRESENTING: SELF LANDLORD (NON PREMANUFACTURED)

WISH TO SPEAK: YES ___ NO X Time Needed: ___ (2)

Supporting Bill: ___ Opposing Bill: X BECAUSE YOU WON'T STOP HERE !!

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ~~SENATE~~ BILL 466

Date: 4/26/00 Place: STATE HOUSE ROOM 201-204

NAME: MARIE G. KUCMAS

Business Address: P.O. BOX 1141

City: AMHERST, NH Phone: 673-0171

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: YES

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-2000 Place House Chamber

NAME: Donna LaBarge

Business Address: ___

City: Allenstown, N.H. Phone: 485-8398

REPRESENTING: Stephen A Hynes

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: opposed

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HB

COMMITTEE HEARING ON 4 to 6

Date: 4/26 20 Place: LEG

NAME: Rachel Lombert

Business Address: _____

City: _____ Phone: _____

REPRESENTING: Kingston

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Bill # SB 466

Date 4/26/00 Place State House Concord

NAME: Lewis W. Latremore

Business Address: P.O. Box 1307

City: Portsmouth, NH Phone: 603-431-9757

REPRESENTING: Appledore Ass. Cld.

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Bill 466

Date: 4/26/00 Place: Concord

NAME: Robert McClain POA

Business Address: 184 Main St #212

City: Nashua Phone: 598-4800

REPRESENTING: Peter Francesconi

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Bill 466

Date: 4/26/00 Place: Concord

NAME: Robert MacLean POA

Business Address: 18 Main St

City: Alexandria Phone: 598-4800

REPRESENTING: Rockingham County

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: Yes

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ~~Mario Leclerc~~ SB466

Date 4/26/00 Place ___

NAME: Mario Leclerc

Business Address: 87 Coldwell St

City: Manchester Phone: 669-0893

REPRESENTING: self

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place ___

NAME: Marcia Tiede

Business Address: 119 N Main St

City: Rochester Phone: 431-2613

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

SB

COMMITTEE HEARING ON 0 N/66

Date 4-26-00 Place Rep. Hall

NAME: Beth Lacelaid

Business Address: P.O. 606

City: Farmington Phone: 859 2194

REPRESENTING: Rochester Landlords Assoc.

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: 466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Rent Control

Date: 4/26/2000 Place: ___

NAME: Gary Lowe

Business Address: PO Box 4099

City: Portsmouth Phone: 603-431-7484

REPRESENTING: New Hampshire Property Owners Assn

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

✱ PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 486

Date 4/26/00 Place ___

NAME: Mark Cutter

Business Address: 24 Linlew Dr #15

City: Derry NH Phone: 437-6759

REPRESENTING: ___

WISH TO SPEAK: YES ✓ NO ___ Time Needed: 5 min

Supporting Bill: ___ Opposing Bill: ✓

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COMMITTEE HEARING ON 4/26/2000 SB 466

Date: 4/26/2000 Place: 104

NAME: M. L. McMAHON

Business Address:

City: SEABROOK N.H. Phone:

REPRESENTING:

WISH TO SPEAK: YES ___ NO ✓ Time Needed:

Supporting Bill: ___ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466 - Mobil Home rent control

Date: 4/26/00 Place: Legislative hall?

NAME: Karen Mairs

Business Address: 17 Portland Ave

City: Dover Phone: 743-3670

REPRESENTING: 3 cpt owners in Dover.

WISH TO SPEAK: YES ___ NO X Time Needed:

Supporting Bill: ___ Opposing Bill: XXXX

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SENATE BILL 466

Date: 4/26/2000 Place: Legislative Bldg

NAME: JAY MATHENA

~~Business~~ Address: 43 TEE DEE DR.

City: BELMONT NH Phone: 524-5584

REPRESENTING: MYSELF AS TENNANT of BELKNAP MOBILE Home Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed:

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: Concord Lobby 201

NAME: Frederick W, Matthes

Business Address:

City: Exeter Phone:

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO ✓ Time Needed:

Supporting Bill: YES / SB 466 Opposing Bill:

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: Lobby 201 Concord

NAME: Jennie M, Matthes

Business Address:

City: Exeter Phone:

REPRESENTING: Sherwood Forest

WISH TO SPEAK: YES ___ NO ✓ Time Needed:

Supporting Bill: SB 466 / YES Opposing Bill:

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place LOB

NAME: Michael McConchie

Business Address: P. O. Box 206

City: Strafford Phone: 664-9200

REPRESENTING: self

WISH TO SPEAK: YES ___ NO X Time Needed:

Supporting Bill: ___ Opposing Bill: X

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COMMITTEE HEARING ON Public Affairs Committee

Date: 4/26/00 Place: Legislature

NAME: Rene McDonald

~~Business~~ Address: 17 Knight Lane

City: Epsom, NH Phone: 603 736-8277

REPRESENTING: Kingstown LP

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ___

Date: ___ Place: ___

NAME: FRANK McLEAN

~~Business~~ Address: 133 SHERWOOD FOREST

City: EXETER NH Phone: 772-7670

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ___ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 0466

Date 4-26-00 Place SENATE

NAME: FRED MCMANUS

Business Address: 108 PINE HILL RD

City: NASHUA Phone: 880 9131

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place Senate

NAME: Judith A. McManus

Business Address: 108 Pinehill Rd

City: Nashua Phone: 881-9131

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: ___

NAME: DANIEL J. MCNEIL, JR.

~~Business~~ Home Address: 203 SHERWOOD FOREST

City: EXETER Phone: 772-9711

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

✱ PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON HB 466

Date: 4/26/00 Place: LEG. BLDG.

NAME: Maedean St. Mongeon

Business Address: ___

City: Epsom Phone: 736-8315

REPRESENTING: King Crane W.H.P.

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

✱ PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: _____ Place: _____

NAME: Ben Monnell

Business Address: _____

City: _____ Phone: _____

REPRESENTING: Valley Stream

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: X Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT
WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date _____ Place _____

NAME: Ben Monnell

Business Address: _____

City: _____ Phone: _____

REPRESENTING: Valley Stream

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE
CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: _____

NAME: JACQUELINE MURPHY

~~Business~~ Home Address: 203 SHERWOOD FOREST

City: EXETER Phone: 772-9711

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT
WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place State House

NAME: Joe Nelson

Business Address: 48 Basin St.

City: Dover NH 03820 Phone: 742-8392

REPRESENTING: NHPOX

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: 466

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Rent Control SB 466

Date: ___ Place: ___

NAME: David Newell

Business Address: 74 Fisherville Rd

City: Concord NH Phone: 603 228 0579

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Rent Control SB 466

Date: 4-26-00 Place: ___

NAME: Deborah Newell

Business Address: 74 Fisherville Rd

City: Concord NH Phone: 228-0579

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Manufactured Housing Parks

Date 4/26/00 Place _____

NAME: MRS. THERESA NICKLES

Business Address: _____

City: Exeter NH. Phone: 603-772-6935

REPRESENTING: Sherwood Forest.

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: Yes Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date 4-26-00 Place _____

NAME: Lorraine D. Novello

Business Address: _____

City: Exeter NH Phone: 772-9843

REPRESENTING: Sherwood Forest, Exeter

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: YES Opposing Bill: _____

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date: 4/26/2000 Place: _____

NAME: Catherine O'Brien

Business Address: _____

City: Epsom NH Phone: 736 5532

REPRESENTING: Knights of Columbus

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: X Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/2/00 Place: LOB RM 201-203

NAME: Laura Ouellette

~~Business~~ Address: 4 Hunter Blvd

City: Londonderry NH Phone: 437 2145

REPRESENTING: MTA Bockman Mobile Pk

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON LOT INCREASES AT Mfg. Housing PARKS

Date: 4/26/2000 Place: CONCORD, N.H.

NAME: ROSAIRE PAQUETTE

~~Business~~ Address: 43 Village of GLEN FALLS

City: GOFFSTOWN N.H. Phone: 497-8195

REPRESENTING: Village of GLEN FALLS

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON ___

Date: ___ Place: ___

NAME: JOSEPH PARADIS

Business Address: 28 Wayne DR.

City: DERRY Phone: ___

REPRESENTING: Webber DERRY

WISH TO SPEAK: YES ✓ NO ___ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 0466

Date 4/26/00 Place STATE HOUSE

NAME: SEAN M. PARENT

Business Address: 15½ MAIN ST.

City: NASHUA Phone: 603 883-7398

REPRESENTING: MYSELF

WISH TO SPEAK: YES ___ NO X Time Needed: —

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 0466

Date 4-26-00 Place State House

NAME: Lisa C Parent

Business Address: 15 1/2 Main St

City: Nashua Phone: 603-883-7398

REPRESENTING: MYSELF

WISH TO SPEAK: YES ___ NO X Time Needed: —

Supporting Bill: ___ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: ___

NAME: BARBARA M PORTER

Business Address: 9 BLUEBERRY LANE

City: SEABROOK, N.H. STAPLES MOBILE HOME PARK Phone: 603 474 7298

REPRESENTING: SELF STABLOS Mobile Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: Yes Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4/26/2000 Place: CONCORD NH

NAME: ROBERT G PORTER

Business Address: 9 BlueBerry Ln STAPLES PARK

City: SEABROOK NH Phone: 6034747298

REPRESENTING: (SELF) STAPLES MOBIL Home Park

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: Yes Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/25/2000 Place: ___

NAME: Barbara A Purves

Business Address: PO Box 1785

City: Seabrook NH, Phone: 603 474-5240

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4-26-00 Place Legislature Building

NAME: Kevin Purcell

Business Address: P.O. Box 1050

City: Nonwich Phone: ___

REPRESENTING: Kevin Purcell

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ✓

Supporting Bill: ___ Opposing Bill: ___

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON RENT CONTROL

Date 4-26-00 Place CONCORD LEGISLATIVE BLDG.

NAME: MICHAEL PURTELL

Business Address: 11 MAIN ST.

City: PITTSFIELD Phone: 603-435-7575

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: _____ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: 104

NAME: Vivian I. Punselley

~~Business Address:~~ 143 Village of Glen Falls

City: Goffstown, NH Phone: 497-3884

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-00 Place: Rep. Hall - St. House

NAME: Mariann Richardson

Business Address: 22 King St.

City: Nashua Phone: 603 883-4201

REPRESENTING: NHPOA

WISH TO SPEAK: YES ___ NO X Time Needed: ~~0~~

Supporting Bill: _____ Opposing Bill: X

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date: 4-26-2000 Place: Concord N.H

NAME: Carol Rivers

Business Address: _____

City: Seabrook Phone: 474-1818

REPRESENTING: _____

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4-26-2000 Place: Concord N.H.

NAME: William Rivers

Business Address: _____

City: Seabrook Phone: 474-1818

REPRESENTING: _____

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Senate Bill 466

Date: 4/26/00 Place: Legislative Bldg Concord N.H.

NAME: Jan Robbins

Business Address: 292 Sherwood Frost Exeter N.H.

City: Exeter Phone: 603 772-9831

REPRESENTING: 466

WISH TO SPEAK: YES ____ NO ✓ Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place Reps hall

NAME: Linda Roberts PO Box 6488

Business Address: LinBar Prop. Mgmt, Inc.

City: Nashua, NH Phone: (603) 598-2900

REPRESENTING: NHPOA/myself

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place House Chamber

NAME: Denis O. Robinson, Esq

Business Address: 27 Lowell St., Suite 302

City: Manchester Phone: (603) 666-9966

REPRESENTING: Stephen A. Hynes

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: Opposed

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466 lot rent increase in manufactured housing parks

Date: 4-26-00 Place: ~~Leg~~ L.B.

NAME: Loretta Rocheleau

Business Address: 5 Kings Row Kingstowne Park

City: Epsom Phone: 736-8659

REPRESENTING: Kingstown Mobile Home Park

WISH TO SPEAK: YES ___ NO ✓ Time Needed: 0

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Public Affairs

Date: 4/26/00 Place: Legislative Bldg.

NAME: Muriel Rousseau

Business Address: Po Box 249 / 26 Kings Row

City: Epsom, N.H. Phone: 736-3304

REPRESENTING: Kings Fun Park

WISH TO SPEAK: YES ___ NO ~~X~~ Y Time Needed: ~~~~

Supporting Bill: 466 Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON Rent Control 466

Date 4/26/00 Place ___

NAME: Joseph Roy

Business Address: North Hampton Mobile Home Park

City: North Hampton NH Phone: 603-964-9303

REPRESENTING: Myself

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: ___ Opposing Bill: *

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: STATE HOUSE

NAME: FRANCINE RYAN

Business Address: 64 COURTLAND ST.

City: NASHUA, N.H. 03064 Phone: 603-882-2255

REPRESENTING: SELF

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: ✓

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB466

Date: 4-26-2000 Place:

NAME: Alice P. Scott

Business Address: 197 Sherwood Forest

City: Epeter Phone: 772-3070

REPRESENTING: Sherwood Forest Mobile Home Park

WISH TO SPEAK: YES ___ NO V Time Needed: ___

Supporting Bill: V Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

Alice P. Scott

COMMITTEE HEARING ON SB 466

Date: 4/26 Place: Lobby 201-

NAME: JANET SHAW

Business Address: ___

City: Seabrook N.H. Phone: ___

REPRESENTING: ___

WISH TO SPEAK: YES ___ NO X Time Needed: ___

Supporting Bill: X Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place ___

NAME: Debra Smith

Business Address: 87 Coldwell St

City: Manchester Phone: 623669-0893

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO V Time Needed: ___

Supporting Bill: ___ Opposing Bill: V

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466

Date 4-26-00 Place Reps Hall

NAME: Bo SANTO

Business Address: 54 IRON WORKS RD

City: Concord Phone: 225-5062

REPRESENTING: Self

WISH TO SPEAK: YES ___ NO ✓ Time Needed: ___

Supporting Bill: ___ Opposing Bill: yes

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 204-203 466

Date: 4/26/00 Place: STATE House

NAME: ROBERT H. TETREAULT

Business Address: KINGSTOWNE PARK

City: EPSOM Phone: 736-8576

REPRESENTING: TENANTS ASSOCIATION

WISH TO SPEAK: YES ___ NO V Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON HB 466

Date: 4/26/00 Place: LEG. BLDG

NAME: DOROTHY H. THAYER

Business Address: ___

City: EPSOM Phone: 736-8049

REPRESENTING: KINGSTOWNE MHP

WISH TO SPEAK: YES ✓ NO ___ Time Needed: ___

Supporting Bill: ✓ Opposing Bill: ___

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/2000 Place: Concord

NAME: Robert Thompson

Business Address: _____

City: _____ Phone: _____

REPRESENTING: tenant

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: ~~SB 466~~ yes Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON 466 Relative To Lot Increase.

Date: 4-26 2000 Place: Concord

NAME: Donald Unitet

~~Business Address:~~ 111 Village Glen Falls

City: Goffstown NH. Phone: _____

REPRESENTING: _____

WISH TO SPEAK: YES ___ NO X Time Needed: _____

Supporting Bill: 466 Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date: 4/26/00 Place: _____

NAME: ALICE WEBBER

Business Address: _____

City: EXETER NH 03833 Phone: 778-1539

REPRESENTING: SHERWOOD FOREST MOBILE HOME PARK

WISH TO SPEAK: YES ___ NO ___ Time Needed: _____

Supporting Bill: ✓ Opposing Bill: _____

* PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON SB 466

Date 4/26/00 Place

NAME: Norman Acker

Business Address: 119 N. Main St.

City: Rochester Phone:

REPRESENTING:

WISH TO SPEAK: YES ___ NO X Time Needed:

Supporting Bill: ___ Opposing Bill: XX

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

WT Grants

Strike (1)

Left of Sen Freeze

Strike (2)

SENATE Public Affairs COMMITTEE

Date 4/26 Time 1:00 PM Public Hearing on SB 466

Appearing in FAVOR: (Please print) **Please check box at left to speak:**

Speaking?	Name	Address	Representing
☑	Lois Parris – Lois Parris	37 Tee Dee Dr. Belmont NH	MOTA of NH
☑	CARRIE PEARL	69 Skyline DR Concord NH	MOTA
☑	GUY PICHETTE	13 JENNIFER ST. DANVILLE	MOTA - COTTON FARM VILLAGE
☐	Bridget Healy	34 Hazel Drive	Myself
☐	Richard E. Horton	Seabrook N.H.	MYSELF
☐	Becky Cook	Seabrook NH	"
☐	~~Lois E. Hartford~~	~~Epsom NH~~	~~myself~~
☑	Norma Quant	Milford NH.	Mfg Housing
☑	Bob Shirley	45 Mumford Rd RI	Mobile Home Owners
☐			

Appearing in OPPOSITION: (Please Print) **Please check box at left to speak:**

☐	Richard Girard, 517 Hevey Rd., Manchester		(FAXED testimony)
☐			
☐			
☐			
☐			
☐			
☐			
☐			
☐			
☐			

1st V.P.

Lois Pappas - MOTA ✓
~~Dot~~ Slater - RI - ✓
Elliott (Barry)

MHTA Assoc
NH
Rhode Island
State Mobile
Home Assoc
Association

Testimony

NHHFA Special Data Request - April 24, 1995
(a) From 1990 Census STF3A
(b) From CHAS Database

	(a) Owner Occupied Mobile Homes	(b) Occupied Owner Units Affordable 80% or Less	Percent of Affordable Units	(a) Renter Occupied Mobile Homes	(b) Occupied Renter Units Affordable 80% or Less	Percent of Affordable Units
Belknap	1,518	2,363	64.24%	249	4,444	5.60%
Carroll	1,139	1,957	58.20%	227	2,971	7.64%
Cheshire	1,750	3,246	53.91%	311	6,318	4.92%
Coos	1,190	5,247	22.68%	189	4,039	4.68%
Grafton	2,366	4,793	49.36%	395	7,362	5.37%
Hillsborough	2,745	7,907	34.72%	252	36,825	0.68%
Merrimack	3,287	6,229	52.77%	363	11,905	3.05%
Rockingham	5,949	7,467	79.67%	715	18,684	3.83%
Strafford	3,905	5,826	67.03%	452	11,583	3.90%
Sullivan	1,426	3,247	43.92%	171	3,976	4.30%
Total	25,275 3324	48,282	52.35%	3,324	108,107	3.07%

In 1990, there were (by US Census) 503,904 total dwelling units (some unoccupied)
there were 41,943 mobile home units = 8% of total housing stock

since 1990, (through 1998) there have been permits for 44,447 units (not multifam)
of those, 1090 (4430) were for Mobile Home lots & park + nonpark

There are 56 parks in Belknap Co, (1763 units) 74 parks (2516 units) in Merrimack Co
41 parks Hillsboro Co (2264 units) 80 parks (4232 units) Rockingham Co.

Petition Bill 466

Kingsfarone PK.

+

Barthill PK.

&

Sheltering Pines.

Epsom

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Eric R. Johnson	21 Bishop Lane
Linda M. Caron	34 Queens Lane
Bob + Betty Clemens	Briscoe Lane
Herb Granny Carbury	Queens Lane
Polly + Barbara Frost	11 Princess Lane
Lois Clemens	8 King Row
DICK FAUCHER	6 KNIGHT LANE
THOMAS FAUCHER	" " "
ROSEMARY & KENNETH LINDSAY	30 QUEENS LANE
Martha D. Mihalko	33 Kings Row
Robert J. Mihalko	" " "
Hazel Sprague	24 Bishop Lane
Richard Sprague	24 Bishop Lane

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Jeannette A. Hamilton	10 Washington St. 736- Epsom, N.H. 03234 8967
Raphael MacDonald	17 Knights Lane Kingstown PK- Epsom N.H.
Louise Cassidy	10 Lane
Bob Cassidy	Epsom N. H.

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
[illegible]	9 Emile Dr. Allenstown, NH 03275
[illegible]	12 Emile Dr Allenstown, NH 03275
Cindea Hammond	12 Emile Dr allenstown, NH 03275
[illegible]	7 emile dr.
[illegible]	8 Emile
Rita & Daniel LaGrenade	28 Roland Dr.

PETITION

W

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Nevvie Goodwin	Holiday Acres NH
J. Scott Ciavola	Holiday Acres
George Tabell	Holiday Acres
Charles Hopkins	20 Marilyn Dr. Allenstown, N.H
Robert A. Wells	22 Marilyn Dr Allenstown
Robin High	5 Marilyn DR. Allenstown NH 03275
Shannon Greenly	1 Marilyn Dr Allenstown NH 03275
Peggy L Cass	13 MARILYN DR. ALLENSTOWN, NH
L. Malwood	3 Marilyn Dr.
Nancy Sanborn	2 Marilyn DR. ALLENSTOWN
Joann Gregoire	4 Merrimack dr. Allenstown NH
Marie Thompson	22 Fullam Circle, N.H
Lori Jarvis	20 Emile Dr Allenstown NH

271-3321 / 271-3321

271-

Rick 271-3041
Bernard 271-2641
Eaton 271-3073
Caroline 271-2600

APRIL 26 Kingstowne PK.
Epsom. N.H

(15)

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Madeline Dieser	15 Knights Lane
Sharon Gordon	18 Queen Ln
Richard A. Webb	29 Kings Row
Isabell M. Webb	29 Kings Row
Mr + Mrs Richard Ryder	Kings Row
Barbara Frost	Princess Lane
Eric Johnson	21 Bishops Lane
Fred & Virginia Norberg	3 Kings Row
Carl E. Hoch	32 Kings Row
Ann Jones	32 Kings Row
Edith Waters	4 Knight Lane, Epsom, NH
Beatrice Thackeray	14 Knights Ln " "
John & Edwina Lancaster	19 Princess Lane
Jean Silva	

APRIL 26 Kingstowne PK
EPSOM N.H.

(14)

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend, the undersigned ask you to support Senate Bill 466

Name	Address
Robert Rott	11 Kings Row Kingstowne PK Epsom NH 03234
Rachel Lambert	7 Archer Circle Epsom NH 03234
PAT STEERE	24 Kings Row Epsom NH
Arthur Roberts	12 Kings Row Epsom 03234
Mary H. Thayer	14 KINGS ROW - EPSOM NH 03234
Barbara L. Anderson	11 Prince Lane, Epsom, NH 03234
Clare Wheaton	19 Kings Row Epsom NH
[illegible]	Princess Lane
Edith Elliott	2 Archer Cir Epsom, N.H.
C. Lewis Landmesser	35 Kings Row
Michael Ventola	25 Kings Row
Pat + Tony Ventola	8 Knights Lane
Betty Hackman	Princess Lane
Walter Shepard	Princess Lane

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Charlotte Lee	2 Lincoln St Epsom 03234
Joan M. Brody	2 Jefferson St., Epsom NH 03234
Arlene Cassidy	2 Washington St Epsom N.H.
[illegible]	7 Nixon Rd Epsom
Ann Falabella	7 Main St Epsom

PETITION

SENATE PUBLIC AFFAIRS COMMITTEE

Unable to attend the undersigned ask you to support Senate Bill 466

Name	Address
Charlene Abbott	Bartlett MH Park/Lot 9 Epsom, N
Connie Humphreys	Bartlett MH PARK/Lot 1 Epsom, NH
Richard & Barbara Guild	Bartlett Park LOT 13 Epsom N.H
Donald & Linda Bearden	Bartlett Park lot 7 Epsom NH
Carol Thurston	Bartlett Park, #3, Epsom, N.H.
Carl Ford	Bartlett Park #3 Epsom NH
Robert / Donna Frost	Bartletts pack #5 Epsom NH
James E Dubois	15 Bartlett M.H. Park Epsom N.H.

Left hearing
no one spoke

FROM CHAIRMAN OF LEGISLATIVE COMMITEE . FOR .....

ALL TENANTS OF STAPLES MOBILE PARK

CHAIRMAN : NORMAND J. TONDREAU 168 Walton Road # 8
Seabrook, NH.
03874

EXCESSIVE RENT INCREASE BILL #466

Are you concerned about yearly increases in landfees with little or no justification?

A Bill is being presented to the House on* Wednesday, April 26, 2000 in Concord, NH.** If passed the ***owner/operator of the Mobile Park would have to apply for an increase ***"before a reviewing board",*** supplying records covering a period of not less than 3 years prior to the proposed increase.

THIS AFFECTS EVERYONE IN THE PARK. The association is sending a group to represent the park in support of the passage of this bill.

Please sign the attached petition if you wish to show your support to get this important Bill passed.

We will be mailing a copy of the petition to our Senators and House Representatives showing our support of the Bill.

Thank you.

STAPLES TENANTS ASSOCIATION, INC.

ALL TENANTS OF STAPLES MOBILE PARK

168 WALTON ROAD. SEABROOK, NH. 03874

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STAPLES TENANTS ASSOCIATION, INC.

Note
copies of the following petitions
will be sent to the following.

Senator -- Robert C. Smith
" -- Judd Gregg
U S House of Representative John E. Sununu

PETITION FOR "BILL #466" BILL #466

Richard Montalbano	23 BLUEBERRY LN.
Ann Montalbano	23 BLUEBERRY LANE
Carol Rivers	14 Blueberry Lane
William Rivers	14 Blueberry Lane
Virginia Rogers	4 Blueberry Lane
Henry Caroleo	21 Blueberry Lane
Vincent Caroleo	21 Blueberry Lane
Phyllis Brown	167 Staples St.
Karen B. Rogers	4 Blueberry Ln
Thomas F. Campbell	5 Blueberry St.
Claire G. Campbell	5 Blueberry Lane
Armand Soucy	6 Blueberry Lane
Norma Soucy	6 Blueberry Lane
Eleanor Rist	19 Blueberry Lane
Edward B Rist	19 Blueberry Lane
L. Rita Gray	9 Blueberry Lane
Bill Evans	17 Blueberry Lane
Sally Evans	17 Blueberry Lane
Robert L Porter	9 Blueberry Ln
Barbara M Porter	9 Blueberry Lane
Paula L. DeBoisbriand	12 Blueberry Lane
Joseph DeBoisbriand	12 Blueberry Lane
Helen E. Dion	13 Blueberry Lane
Roger J. DION SR.	" " "
John DesJardin	22 " "
Elizabeth DesJardin	" " "
Carmen De Leon	3 Blueberry Lane

PETITION FOR "BILL #466"

Catherine Carter 60 Silver St.	
Sylvia Schadcraft 58 Silver St	
Pasquale D'Isonto 55 Silver St	
Frank Williams 55 Silver St	
Rosario Carabello 56 Silver	
Sharon Wright 54 Silver St.	
Marguerite V. Judge	59 SILVER St. STAPLES PARK SEABROOK
Henry B. Judge Jr.	59 SILVER St. SEABROOK STAPLES PARK
Annette Gosselin	77 Silver St Seabrook NH Staples.
Mark Gosselin	77 SILVER ST " "
Mary Collins	65 Silver ST.
Paula Pasternak	76 Silver St.
Grace Tower	68 Silver St.
Thomas Tower	68 Silver St
Joseph L. Brown	74 SILVER ST.
Marilyn Tuccelli	61 Silver St.
Sal Tuccelli	61 Silver ST

PETITION FOR "BILL #466"

BILL #466

Margaret A Campanella	142 Garden St.
Henry Main	141 Garden St
Dorothy Main	141 Green St
Nancy Winchell	140 Garden St.
Milton Winchell	140 Garden St.
David A Rogers	143 Garden St
Margaret M Corsaro	143 Garden St
George D Corsaro	143 Garden St
Claude Joe Bragg	145 Garden St
Kim nadden	136 Garden St
Ken nadden	136 Garden St.
Joann L Bragg	135 GARDEN ST
Deborah Farrier	134 Garden
Janet L Powers	138 Garden ST
Richard Blackford	153 Garden St
Diana Duvall	151 GARDEN ST.
Charles O Duvall	151 GARDEN ST.
Normand J Tondreau	148 GARDEN ST.
Lucille Tondreau	148 GARDEN ST.
Patricia Eaton	138 GARDEN ST.
(NANCY J. Lewis)	139 GARDEN ST.
David B. Savory	154 Garden St
Marcia Savory	154 Garden St
Isabel Smith	131 Galden St.

BILL
466

PETITION FOR "BILL #466"

Shirley E. Flanagan	122 Whip-poor-will Street
Joseph P. Flanagan	122 Whippoorwill Street
Arthur E. Naylor	121 Whippoorwill St.
Maurice Dastous	97 WHIPPOORWILL ST.
Carol Dastous	97 Whippoorwill St.
Claire Mehlhorn	90 Whippoorwill St.
[illegible]	91 WHIP-POOR-WILL ST
Sandra Bragg	127 Whippoorwill St
Alberto Bragg	127 Whippoorwill St.
Robert H. Demers	119 Whip Poor Will St.
Ginger Demers	119 Whip-Poor-Will St.
John J. Cardarelli	94 " " " "
Dorothy Mace	123 " " " "
C. M. Mace	123 " " " "
Malcolm R. Bond	98 " " " "
Mary E. Bailey	98 " " " "

BILL #466

PETITION FOR "BILL #466"

NAME	ADDRESS
Emanuel A Cote	105 Nashville ST Seabrook
Maureen L. Cote	105 Nashville St. Seabrook
Barbara A Lawes	71 Nashville
Lena Ingalls	77 Nashville
Brad C Ingalls	40 NASHVILLE SEABROOK
Alice N. Ingalls	40 Nashville Rd.
Carole A Greaney	41 Tricia St
Daniel J Greaney	" " "
Edward B Blais	36 TRICIA ST.
Barbara A. Blais	" "
Marjorie Blais	38 Tricia St.

B, LL
466

PETITION FOR "BILL #466"

Dorothy Buck	
Janet Shaw	
Barbara C Gavin	
Evelyn Randall	
Hazlett F. Baxter	
James Lamar Bonnesen	
Robert E Sutton	
Mildred Potter	
Marguerite Wells	
Charles Fuller	
Steven A Pettingill	

BILL
466

PETITION FOR "BILL #466"

Richard A Simard	28 Tricia Seabrook N.H 03874
Elizabeth J. Simard	" " " " "
Nancy Bradley	30 Tricia Seabrook N.H.
Marilyn Brunelle	27 Tricia ST Seabrook NH
Beverly D. Horton	37 Tricia St Staples part Seabrook
Richard E. Horton	37 Tricia St Seabrook N.H
James J. Griffin Jr.	71 NASHVILLE ST. SEABROOK, N.H
Eleanore F Brooks	71 Nashville ST. SEABROOK, NH
Helen D. Savage	69 " " " "
Raelene C. Roach	44 Tricia St. " "
Gilbert Roach	44 Tricia St " "
Carlene Calabrese	45 Tricia ST.
Rocky Calabrese	"
Pat Strangie	48 TRICIA ST
Donny Stabler	" "
Marie Rogers	50 Tricia St SEABROOK
Hugh Rogers	50 TRICIA ST "
Ann M. Lirien	25 Tricia St Seabrook
Henry Lirien	25 Tricia St. Seabrook
Ralph Desbutt	29 Tricia St Seabrook
Ruth B Desbutt	29 Tricia St Seabrook
Gwendolyn P. Marroquin	32 Tricia St Seabrook
James E. Fitzgerald	42 Tricia ST. SEABROOK
Janice T. Fitzgerald	42 Tricia ST. Seabrook
Robert R Denis	70 Nashville St. Seabrook
Gloria Denis	70 Nashville St Seabrook

CARL A. CARLSON
32 Suncook Terrace
Merrimack, NH 03054
603-883-4138

April 19, 2000

To Those It May Concern:

I am strongly OPPOSED to SB0466, the rent control bill.

Sincerely,



Carl A. Carlson

April 20, 2000

To Whom It May Concern,

I would like to voice my opinion on S B 0466. I am opposed to any kind of Rent control in New Hampshire. Please vote "No!" on S.B. 4066.

Thank you

Abigail A. Byrd
14 Shady Lane
Nashua, N.H. 03062

Thomas W. Boland
12 Mallard Point Road
Merrimack, NH 03054
(603) 424-4561

April 19, 2000

Judy McManus
108 Pine Hill Road
Nashua, NH 03063

Dear Judy:

As you and I have discussed, I am a landlord with rental properties in Nashua, Merrimack and Manchester, and I am strongly opposed to the proposed Rent Control Bill (SB 0466). Unfortunately, I will be unable to attend the public hearing on the matter, but I hope that this letter will allow my opinion on this matter to be heard.

Sincerely yours,

Thomas W. Boland

Thomas W. Boland

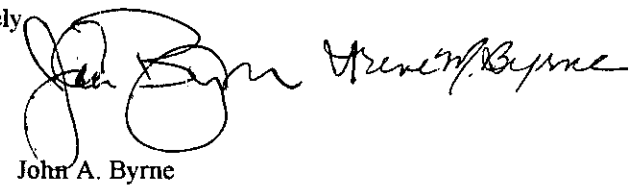
4/18/00

To: New Hampshire State Legislature
Re: Bill #SB0466 - Rent Control

In regards to Bill #SB0466 concerning Rent Control, we are vehemently opposed to this bill.

Please do not vote for this bill.

Sincerely,



John A. Byrne
Irene M. Byrne
67 Speare Road,
Hudson, NH

We oppose the Rent Control Bill # SB04666.

Barbara B Spaeth 4/20/00

Robert E Spaeth 4/20/00

TESTIMONY IN FAVOR OF SB 466

My name is Kenneth R. Nielsen. I am a practicing attorney in Concord and have been a member of the Board of Manufactured Housing since 1995, and have served as its Chairman since 1997. In my practice over the years I have represented tenants in numerous parks and have represented several tenant-owned cooperative parks. I regret that I am unable to be present this testimony in person as I will be out of the country on the day of your hearing.

I do wish to emphasize that my comments are my own and do not necessarily reflect the opinions of the Board of Manufactured Housing or its members.

I support SB 466. As you know those New Hampshire citizens who own manufactured housing parks and those who live in them are in unique positions with regard to landlord/tenant relationships. It is this uniqueness that makes this bill necessary. The park owner owns the land. The tenants own their own manufactured home and rent the land from the park owner. Like most of us, a part of the tenants American Dream rests in their homeownership of their manufactured house. Like most of us, their home is their most valuable asset and their most costly expense. Yet tenants are more vulnerable than most because they do not own the land that their home sits upon, and they are subject to reasonable park rules established by the landowners. Their homes can not only be foreclosed upon by a bank, but they can also be evicted or have their home removed from the park, often with devastating financial cost and a shattering of the American Dream. Historically, tenants were subject to park rules and rent increases without any real leverage to prevent unreasonable rules or unjust rent increases. The Legislature wisely recognized this and established the Board of Manufactured Housing to give tenants a forum to challenge park rules. This Board has served both tenants and park owners well since it was created in 1994. It is time for the Legislature to go the next step

While I believe most park owners are legitimate businessmen and women that strive to provide quality services to their tenants at a reasonable cost, unfortunately, there are some park owners

who may use rent increases as a way to force out lower income families further decreasing affordable housing in our state. Senate Bill 466 is an effort to level the playing field between park owners and tenants in manufactured housing parks when dealing with rent increases just as you have already done with park rules. Therefore, I support this initiative.

As a member of the Board of Manufactured Housing, I have watched our board grapple with difficult issues within our jurisdiction to reach fair and reasonable decisions for all parties involved in the case. I have also watched our board struggle with issues surrounding evictions and rent increases. The bright line which establishes our jurisdiction often becomes gray and murky as we deal with real time situations.

For example, a tenant whose fence pre-dates a new park rule restricting the height of fences in a park gets served with an eviction notice for violating the park rules. Our board has jurisdiction over the reasonableness of the fence park rule, but not over the eviction.

Another example, a park owner specifically notifies park tenants that he is increasing their rents to cover his costs of repairing underground water and septic lines in the park, and he wants to recoop all of his costs in the first year and yet plans to continue the rent increase indefinitely. Our board has jurisdiction over RSA 205-A:2 IX which prohibits park owners from charging tenants with the repair of underground utilities, but we do not have jurisdiction over the rent increase.

I view SB 466 as an attempt to correct these inequities.

I also wonder if the Board could better serve its constituents if it also had jurisdiction over evictions, perhaps concurrently with the district and superior courts, particularly when the reason for the eviction is intertwined with the park rules and the Board's existing jurisdiction. Fees, Charges and Assessments under RSA 205-A:6 is another area in which conflicts over jurisdiction can arise and have arisen in cases before the Board. Would expanding the Board's jurisdiction provide tenants with assurances that their needs are being met and provide park owners with guidelines for operating their businesses? I feel both sides would reap benefits from a board

with expanded authorities in all or some of these areas. I feel RSA 205-A:27 II should be repealed and evictions, rents and rent increases added to the Board's jurisdiction.

While I support this bill, the draft that I have reviewed is not without it's areas of concern that must be addressed in my opinion:

The Board's current practice is only having individual tenants bring complaints before the Board in their own names (similar complaints by two or more tenants may be consolidated for hearing but decisions are made individually). By adding rent increases to the purview of the Board would seem to give tenant associations standing to bring complaints, I think this is a good idea. Tenant associations have been and should be encouraged, and to give them standing would reflect the realities of many manufactured housing park communities in our state.

Another concern I have is, if this bill passes should the makeup of the Board be changed to add financial persons such as accountants, auditors or economists to the board to assist it in reaching thoughtful decisions, or should additional staff or consultants be hired to testify before the board on the areas of their expertise? In either case there would be some increased cost to the state

Next, I agree with the bill that the identity of the tenant petitioning the board should be held confidential. I also wonder whether park owners' personal financial information should be held confidential as well. If it should, then what role would tenants have at a hearing? Under this scenario a rent increase hearing would involve the park owner presenting documents and testimony on why the rent increase is justified, and the counterbalance would be the testimony of accountants, auditors and/or economists retained by the Board to evaluate that information followed by public comment from the tenants (similar to utility increases before the PUC).

Finally I would offer the following amendments to the language of the bill:

Section I

"...simple majority of the manufactured housing <u>owners</u>..." Should the word 'owners' be changed to 'tenants' to be consistent with RSA 205-A I Definitions # IV or a new

definition added?

"...authenticated on a confidential basis by the board..." My questions are: How? By whom? At what cost? The board's staffing needs would have to increase.

Section III (b)

"...a period of not less than three years..." I would suggest adding language to the end of this section to the effect: "...or if the park owner has owned the park for less than three years then all records with regard to the purchase and thereafter". Many parks undergo large rent increases in the first few years after the park is sold to a new owner.

Section V

I would suggest adding language at the end of this section to the effect: "...or expiration of the normal 60 day notice of a rent increase whichever is later."

I believe the concerns I have raised can be effectively addressed in a bill of this kind, and perhaps in a redraft of the Board's Administrative Rules following the enactment of this legislation. I urge you to give this bill serious consideration.

Again I apologize for being on vacation in Mexico, and thus unable to attend today's hearing. I would be happy to work with the Committee on this bill.

Respectfully submitted:
Kenneth R. Nielsen, Chair
Board of Manufactured Housing

Richard H. Girard
517 Hevey Street
Manchester, NH 03102
624-5668

April 26, 2000

Senate Public Affairs Committee
Hon. Rick Trombly, Chair
LOB 104
Concord, NH 03302

Sent Via Fax: 271-3027

RE: SB 466

Chairman Trombly and Members of the Honorable Committee:

Please forgive my inability to appear in person. Ironically, an appointment with a city housing code inspector precludes my testifying before the committee today. However, I write to offer my unequivocal opposition to this legislation. There are four reasons for my opposition.

First, what could possibly justify the government's entry into the free market in this manner? My guess is that there have been complaints from mobile park tenants about rent increases. "Government to the rescue to save the poor from the villainous landlords" is the likely the motive. The sense of entitlement is disturbing. Simply, people are not entitled to live where they want for the price they want. If a landlord raises his rents too high, he will lose tenants. Since people are not chained to the place they rent, if they don't like the price they can move. When the bottom falls out of the market, as it always does, will these controls insure that the landlord remain solvent? We'd have to agree that this is not likely.

Second, this legislation uses undefined and undefinable terms to base its judgements. Determinations as to what is "excessive," "indefensible," and a "reasonable return" are exceedingly subjective and should not be the purview of government. Landlords lose anticipated revenue for at least 60 days, bear the added cost of defending their decisions, and can recover none of the lost revenue or added expense if they prevail. Finally, comparing rents in one area of the state to rents in another to determine reasonableness is ridiculous. Location and condition determine market and market determines rent. Manchester's market is very different from Portsmouth's and any comparison is simply not valid.

Third, while this legislation only singles out trailer park owners for the heavy hand of government, if it passes it will not be long before all rental property falls subject to these kinds of controls. Honesty dictates that if one variety of rental property falls subject to rent controls, they all eventually will. In principle, there is no difference between the mobile park owner who rents land and a building owner who rents apartments. The step to place controls on apartment building owners is inevitable if this legislation passes.

Fourth, this legislation will cause a deterioration in the quality of rental property available. Once government steps in and begins to tell property owners what is a "reasonable return" on their investment, the incentive to invest is irreparably harmed. If the government wants to control the revenues of private property owners, then it should buy the property. As it is, the owners pay the debt, taxes, insurance, utilities and other expenses. They should be able to determine their revenues and, for their own time and trouble, what is a reasonable return on their investment. What happens if an owner has no debt and is using the property for retirement income? Will the state force a decrease in rental revenues to prevent them from being "excessive" or "indefensible" and make sure that the rate of return is "reasonable?"

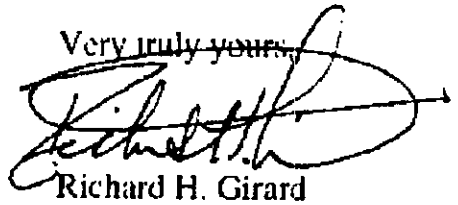
I must admit, I have several biases in this matter. I am a former alderman and mayoral aide in the city of Manchester. As such, I would be concerned about the impact rent control would have on Manchester's multi-unit neighborhoods. Property owners need to make money to improve their properties and they deserve whatever rate of return the free market will provide on their investment because when the market is bad, they have no rate of return; they will mostly have losses. This concern arises because it is without question that these controls would soon be extended to apartment buildings. Precedent is hard not to follow.

I am also a landlord. I have raised rents. Some thought me reasonable. Others did not. But, when I took over the buildings I now own or have owned, rental income was well under market and very meager. The buildings also needed several tens of thousands of dollars of repairs and improvements. Even with the increases in rent, I am only at a break even point. If there is repair work that needs to be done, say if a pipe breaks, or if a roof leaks, or if a water heater dies, it comes out of my pocket because building revenues are insufficient. I could increase rent to improve cash flow. But, for the increases, my rents are still below market. I might lose my tenants if the rent goes any higher and if they stay, higher rent will likely cause them financial distress. As the property owner, I have made this choice, but it should never be forced on anyone.

As an aside, using the proposed system, I could raise my rents significantly and justifiably given the debt load and everyday expenses associated with my properties. I would also be likely to do so in this good economy to guard against revenue shortages in a downturn where, because of the subjective nature of these regulations, I would be much less likely to recover my costs and earn a "reasonable return" on my investments. After all, raising rent in a bad economy might be deemed "indefensible."

Please, defeat this measure. New Hampshire need not travel the path of Massachusetts and other big government states that are now actually moving away from unsuccessful measures like these. Please, don't regulate for the minority of property owners who act unjustly in the potentially biased eyes of some complainers.

Very truly yours,



Richard H. Girard

Rec'd 5/01/00

Edward R.Donahue
537 Howe St.apt.2
Manchester,N.H. 03103
April 28,2000

Public Affairs Committee
RM 104 L.O.B.
33 North State St.
Concord,N.H. 03301

Dear Sirs;

Re. SB-466

I find the bill as introduced to be objectionable on several points.

While I feel that rent control or any other attempts of the Government to regulate prices of any commodity is at best ill conceived, I find the sections of the bill concerning the implementation of a rent increase to be particularly unfair.

I can't imagine park renters passing up the chance to delay imlementation of a rent increase. Particularly when no retroactive rental increase is allowed after the owner wins the increase. That financial incentive is powerfull.

Not allowing an owner to recover the legitimate costs of preparing for a hearing would amount to State imposed stranded costs. The legal and accounting costs associated with any other business are legitimate costs of doing business even for Public Service Co. Any individual that itemises his or her tax deductions can deduct the cost of an accountant as a legitimate expense even if not a business.

The bill as introduced would force an owner to sustain unrecoverable losses in two areas. That hardly fits any definition of fairness the I am aware of.

I wish to be recorded as being not in favor of the bill's passage.

Yours truly,

Edward R Donahue

Edward R. Donahue

Committee Report

Date: April 26, 2000 Time: 1:00 PM

The Senate Committee on Public Affairs held its hearing in Room Representative's Hall, Concord, New Hampshire.

BILL NO.: SB 466 TITLE: relative to lot rent increases at manufactured housing parks.

Members of the Committee present: Senator Trombly
Senator Disnard
Senator Eaton
Senator McCarley
Senator Roberge

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

☐	Ought to Pass	☐	Interim Study
☐	Ought to Pass w/ Amendment	☐	Continued Hearing
☐	Inexpedient to Legislate	☐	Postponed Hearing
☐	Rereferred	**XX**	**No Recommendation**