

Docket No. 06-56306

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

DANIEL GUGGENHEIM, SUSAN GUGGENHEIM, AND
MAUREEN H. PIERCE
Plaintiffs and Appellants,

v.

CITY OF GOLETA, a municipal corporation,
Defendant and Appellee.

Appeal from the United States District Court for the Central District of California,
Florence Marie Cooper, District Judge, Case CV-02-02478-FMC

**BRIEF OF AMICI CURIAE AARP, CALIFORNIA COALITION FOR
RURAL HOUSING, HOUSING CALIFORNIA, LEGAL SERVICES OF
NORTHERN CALIFORNIA, NON-PROFIT HOUSING ASSOCIATION OF
NORTHERN CALIFORNIA, R. KEITH TRAPHAGEN, AND TENANTS
TOGETHER IN SUPPORT OF DEFENDANT-APPELLEE CITY OF
GOLETA**

NATIONAL HOUSING
LAW PROJECT
Meliah Schultzman (SBN: 250525)
614 Grand Avenue, Suite 320
Oakland, California 94610
Telephone: (510) 251-9400
Facsimile: (510) 451-2300

MEYERS, NAVE, RIBACK,
SILVER & WILSON
Dawn A. McIntosh (SBN: 162713)
333 South Grand Avenue, Suite 1670
Los Angeles, California 90071
Telephone: (213) 626-2906
Facsimile: (213) 626-0215

Attorneys for Amici Curiae

ADDITIONAL COUNSEL:

LEGAL SERVICES OF NORTHERN CALIFORNIA

R. Mona Tawatao (SBN: 128779)

515 12th Street

Sacramento, CA 95814

Telephone: (916) 551-2510

Facsimile: (916) 551-2196

Attorney for Legal Services of Northern California

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Ilene Jacobs (SBN: 126812)

511 "D" Street

P.O. Box 2600

Marysville, CA 95901

Telephone: (530) 742-7235

Facsimile: (530) 741-0854

Attorneys for Amicus Curiae R. Keith Traphagen

Kirk Ah Tye (SBN: 075661)

324 East Carrillo Street, Suite B

Santa Barbara, CA 93101

Telephone: (805) 963-5981

Facsimile: (805) 963-5984

PUBLIC INTEREST LAW PROJECT

Michael Rawson (SBN 95868)

449 15th Street, Suite 301

Oakland, CA 94612

Telephone: (510) 891-9794

Facsimile: (510) 891-9727

Attorney for Amici Curiae

AARP FOUNDATION LITIGATION

Susan Ann Silverstein

AARP

Michael R. Schuster

601 E Street, NW

Washington, DC 20049

Telephone: (202) 434-2060

Facsimile: (202) 434-6424

Attorneys for Amicus Curiae AARP

STATEMENT REGARDING CONSENT TO FILE

AARP, California Coalition for Rural Housing, Housing California, Legal Services of Northern California, Non-Profit Housing Association of Northern California, R. Keith Traphagen, and Tenants Together submit this amici curiae brief regarding the rehearing en banc of the panel decision in *Guggenheim v. City of Goleta*, Case No. 06-56306 (Sept. 28, 2009). Appellants and Appellee have given amici consent to file this brief, which is being filed consistent with the Court's April 21, 2010 order extending the deadline for filing amicus briefs to May 15, 2010.

TABLE OF CONTENTS

	Page(s)
I. INTERESTS OF AMICI CURIAE	1
II. SUMMARY OF ARGUMENT	7
III. MOBILEHOME RENT CONTROL PROMOTES THE LEGITIMATE GOVERNMENTAL OBJECTIVE OF PRESERVING AND PROMOTING AFFORDABLE HOUSING	9
A. Mobilehome parks are a significant source of affordable housing in California.	11
B. Placing rent controls on mobilehome sites is reasonable given the unique character of mobilehome parks.	13
C. State law mandates that local governments consider mobilehomes as a source of affordable housing	14
D. Mobilehome rent control is one part of a larger strategy adopted by many local governments to meet the needs of lower-income residents and to promote housing affordable to these residents as mandated by state law	16
IV. THE CITY’S ORDINANCE PROMOTES THE SAME PUBLIC PURPOSES PREVIOUSLY UPHELD BY THIS COURT	20
V. VACANCY CONTROL ORDINANCES FOR MOBILEHOME PARKS SERVE A VALID PUBLIC PURPOSE OF MAINTAINING A CRITICAL SUPPLY OF AFFORDABLE HOUSING IN CALIFORNIA	25
A. Mobilehome rent control/vacancy control laws do not violate the Due Process Clause	25
B. Vacancy control regulations protect mobilehomes as an important source of housing for residents on fixed incomes.	28
C. Vacancy control provisions protect mobilehome owners’ investments in their homes	29
VI. CONCLUSION.....	30

TABLE OF AUTHORITIES

CASES

Adamson Cos. v. City of Malibu, 854 F. Supp. 1476 (C.D. Cal. 1994).....29

Carson Harbor Vill. Ltd. v. City of Carson, 37 F.3d 468 (9th Cir. 1994).....*passim*

Cashman v. City of Cotati, 374 F.3d 887 (9th Cir. 2004).....19

Equity Lifestyle Props., Inc., v. County of San Luis Obispo, 548 F.3d 1184
(9th Cir. 2008).....25, 27

Fisher v. City of Berkeley, 37 Cal. 3d 644 (1984).....24

Galland v. Clovis, 24 Cal. 4th 1003 (2001).....14

Guggenheim v. Goleta, 582 F.3d 996 (9th Cir. 2009).....8

Levald, Inc. v. City of Palm Desert, 998 F.2d 680 (9th Cir. 1993).....25

Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005).....8

Montclair Parkowners Ass’n v. City of Montclair, 76 Cal. App. 4th 784 (1999)...28

Penn Central Transp. Co. v. New York City, 438 U.S. 104 (1978).....23

Pennell v. City of San Jose, 485 U.S. 1 (1988).....25, 26

Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951 (9th Cir. 1991).....25, 27

Ventura Mobilehome Communities Owners Ass’n v. City of San Buenaventura,
371 F.3d 1046 (9th Cir. 2004).....*passim*

Vill. of Euclid v. Ambler Realty, 272 U.S. 365 (1926).....25

Yee v. City of Escondido, 503 U.S. 519 (1992).....*passim*

STATUTES

Cal. Civ. Code § 798.45.....16

Cal. Civ. Code § 798.46.....16

Cal. Civ. Code § 798.47.....16

Cal. Civ. Code § 798.48.....16

Cal. Civ. Code § 798.49.....16

Cal. Civ. Code § 798.55.....16

Cal. Civ. Code § 798.56.....16

Cal. Civ. Code § 1954.51.....28

Cal. Civ. Code § 1954.53.....28

Cal. Gov't Code § 65580.....15

Cal. Gov't Code § 65581.....18

Cal. Gov't Code § 65582.1.....11

Cal. Gov't Code § 65583.....14, 15

Cal. Gov't Code § 65583.2.....15

Cal. Gov't Code § 65589.5.....9

Cal. Gov't Code § 65913.....9

Cal. Health & Safety Code § 18250.....30

Cal. Health & Safety Code § 18551.....15

Cal. Health & Safety Code § 50003.....15

Cal. Health & Safety Code § 50007.5.....15

Cal. Health & Safety Code § 50840.....9

Modesto Code § 4-19.02.....12, 19

Salinas Code § 17.1-1.....19

Sonoma County Mun. Code, ch. 2, art. XIX, § 2-910.....12, 19

Vallejo Mun. Code, ch. 5.64 § 5.64.020.....12

Woodland Mun. Code Ch. 25, § 25-20-40.....17

OTHER AUTHORITIES

Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, J. Affordable Hous., Vol. 13, No. 3 (2004).....*passim*

Cal. Dep’t of Hous. & Cmty. Dev., *Myths & Facts About Affordable & High Density Housing* (2002)10

Cal. Dep’t of Hous. & Cmty. Dev., *The State of Housing in California 2009: Supply and Affordability Problems Remain* (2009).....10

Carolyn Carter, et al., *Manufactured Housing Tenants: Shifting the Balance of Power* (June 1, 2002).....1, 12

City of Goleta, 2009-2014 Consolidated Plan for the Community Development Block Grant (CDBG) Program (July 21, 2009)21, 22

City of Goleta, Community Development Block Grant 2009-2010 Action Plan (July 21, 2009)17, 22

Goleta General Plan Background Report No. 8, Existing Land Uses (Dec. 20, 2004)21

City of Goleta, General Plan Ch. 10, Housing Element (Sept. 2006)17

Jean C. Accius, *Issues in Manufactured Housing* (Oct. 31, 2007)1

Kenneth K. Baar, *The Right to Sell the “Im”mobile Manufactured Home in Its Rent-controlled. Space in the “Im”mobile Home Park: Valid Regulation or Unconstitutional Taking?*, 24 Urb. Law. 157 (1992).....12, 29

Neighborhood Reinvestment Corp. & Joint Center for Housing Studies of Harvard University, *An Examination of Manufactured Housing as a Community and Asset-Building Strategy* (Ford Found. 2002).....*passim*

CORPORATE DISCLOSURE STATEMENT

AARP, California Coalition for Rural Housing, Housing California, Legal Services of Northern California, Non-Profit Housing Association of Northern California, and Tenants Together are all nonprofit corporations which do not issue stock and which are not subsidiaries or affiliates of any publicly owned corporations.

I. *INTERESTS OF AMICI CURIAE*

A. AARP

AARP is a nonpartisan, nonprofit membership organization of people, age 50 or older, dedicated to addressing the needs and interests of older people.

Manufactured homes are a major source of housing for older Americans. In its efforts to promote independence, AARP works to foster economic security of individuals as they age.

AARP has a significant interest in manufactured housing because a substantial number of its members live in manufactured housing. In 2001, owners age 50 or older accounted for 43 percent of the manufactured-housing units occupied year round as primary residences.

AARP conducts research and engages in educational activities and advocacy on behalf of manufactured home residents. AARP's Public Policy Institute has issued a series of reports that monitor the mobilehome industry. *See, e.g.*, Jean C. Accius, *Issues in Manufactured Housing* (Oct. 31, 2007);¹ Carolyn Carter, *et al.*, *Manufactured Housing Tenants: Shifting the Balance of Power* (June 1, 2002).²

AARP is deeply concerned about the ability of the oldest and most vulnerable portion of the population being able to remain in their homes, including

¹ Available at http://www.aarp.org/research/ppi/liv-com/housing/articles/fs16r_housing.html.

² Available at http://assets.aarp.org/rgcenter/consume/d18138_housing.pdf.

manufactured homes, and to use their limited and fixed incomes to pay for critical needs such as food, medicine, and other health care needs.

B. California Coalition for Rural Housing

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

C. Housing California

Housing California is a statewide nonprofit organization whose mission is to promote and support affordable home development and effective anti-homelessness policies statewide and in local jurisdictions throughout California. Housing California carries out its mission through policy and legislative advocacy, outreach and education campaigns and conferences/trainings. Virtually all localities in California have lower-income residents who lack a decent affordable

place to live. Housing California represents the interests of these Californians and the interests of nonprofit affordable home developers working throughout the state to address this problem. Rent control ordinances are an important tool to achieve housing affordability in communities around the state. Additionally, Housing California's members provide training and technical assistance to increase manufactured housing opportunities.

D. Legal Services of Northern California

Legal Services of Northern California (LSNC) is a nonprofit organization founded in 1956 that provides no-cost civil legal services and representation to low-income persons in 23 northern California counties. LSNC's service area encompasses urban, suburban, and rural areas. LSNC's mission is to provide quality legal services that empower the poor to identify and defeat the causes and effects of poverty. Consistent with its mission and in response to overwhelming client demand for assistance in maintaining and securing affordable housing, LSNC has made enforcing laws that preserve and improve existing affordable housing resources one of its highest priorities.

LSNC has carried out this priority by counseling and representing tens of thousands of persons and families, including significant numbers of mobilehome residents faced with loss of their housing or loss of affordability, rent or other protections. Mobilehome parks are an important source of affordable housing for

many of LSNC's clients, who, in many cases, have no other affordable housing options. LSNC's work on behalf of mobilehome park residents takes many forms. On a daily basis, LSNC counsels and represents individual mobilehome park residents and households facing improper eviction or other mistreatment by park owners. LSNC also regularly litigates on behalf of mobilehome residents to enforce mobilehome park code enforcement standards, and lease and rental rights. Specifically, LSNC has successfully represented mobilehomes residents in actions in which park owners were violating rent control ordinances.

A number of localities within LSNC's service area have adopted mobilehome rent control or rent stabilization ordinances, including the cities of Fairfield, Vacaville, Vallejo, and Woodland. These ordinances are the reason the lower- and fixed-income individuals residing in mobilehome parks in these jurisdictions are able to remain in their homes. But for these ordinances, many of these individuals could not live in their homes because finding another affordable space would be unlikely, and they could not afford the high cost of moving their units. If these ordinances were invalidated, these residents would be forced into very poor housing or homelessness.

LSNC has a strong interest in the outcome of this matter because without regulation of increases in the rents of mobilehome park spaces and other local regulation that preserves and promotes affordable housing sources and

development, its clients will have an even greater difficulty securing a decent affordable place to live, and LSNC will be unable to carry out a core component of its organizational mission.

E. Non-Profit Housing Association of Northern California

Non-Profit Housing Association of Northern California (NPH) comprises over 700 members that provide a collective voice of those who support, build, and finance affordable housing. NPH promotes the proven methods of the nonprofit sector and focuses government policy on housing solutions for lower-income people who suffer disproportionately from the housing crisis. NPH monitors housing and land-use policies of concern to local governments, affordable housing providers, and housing advocates. NPH participates in those cases of statewide or nationwide significance, and has determined that this is such a case.

The members that NPH represents provide and support affordable housing in dozens of cities and counties that have adopted some form of mobilehome rent control and thus will be directly affected by the outcome in this case. These jurisdictions have determined that mobilehome owners are in a uniquely vulnerable position warranting enactment of ordinances to protect investment in their homes.

F. R. Keith Traphagen

R. Keith Traphagen is a 60-year-old low-income mobilehome owner who resides in the Rancho Mobile Estates Mobile Home Park (the “Park”) which is the

subject of this rehearing en banc. Mr. Traphagen seeks to present the Court with the perspective of an actual home owner residing in the very mobilehome park that would be directly impacted by the decision of this Court. Mr. Traphagen concurs with the stated Purpose by the City of Goleta in its Mobilehome Rent Control law (as well as that of Santa Barbara County's Mobilehome Rent Control ordinance), justifying the necessity for mobilehome rent control to protect the housing rights and existent investments of tenant-homeowners in their homes, and agrees with the City's position that this law is an effective and rational means for preserving affordable housing.

Mr. Traphagen, low-income and permanently and totally disabled, would be imperiled if Goleta's rent stabilization measures were to be invalidated because his mobilehome is immovable. He would lose virtually all equity he has built over three decades in his mobilehome in the event of an involuntary sale, and with the shortage of affordable housing and mobilehome parks in Goleta and throughout Santa Barbara County, he would be unable to relocate to another park and would have unimaginable difficulty securing other housing. Mr. Traphagen fears that economic and housing stability for himself and others in similar predicaments in the Park and throughout Santa Barbara County, as well as all California, will be forever devastated should Goleta's policy and legislative prerogatives be annulled.

As a mobilehome owner in California and vice-president of the mobilehome homeowners' association in the Park, Mr. Traphagen is also concerned with the significant deviations from past U.S. Supreme Court takings precedent by the now de-certified *Guggenheim* panel decision, and asks that the City of Goleta's Mobilehome Rent Control law be upheld.

G. Tenants Together

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

Amici are filing this brief with the consent of all parties and pursuant to this Court's April 21, 2010 Order extending the deadline for filing amicus curiae briefs to May 15.

II. SUMMARY OF ARGUMENT

This brief will address the importance of mobilehomes as an affordable housing option and the critical role of rent control and vacancy control regulations adopted by local governments in preserving the viability of this option. The

Supreme Court and this Court have repeatedly held, and even the panel recognized in its decision, that rent control laws comport with due process because they are rationally related to a legitimate public purpose. The Ordinance at issue in this case promotes the same legitimate objectives advanced by similar ordinances previously found constitutional by this Court: protecting mobilehome owners from oppressively high rents, preserving mobilehome owners' investments in their homes, and preserving affordable housing.

The panel erred when it determined that the City should have chosen an alternative method for providing affordable housing, *Guggenheim v. Goleta*, 582 F.3d 996, 1030 (9th Cir. 2009), because the effectiveness of an ordinance in promoting such legitimate governmental interests is a legislative question that has no proper place in takings jurisprudence. *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 540 (2005). Further, requiring an alternative method will constrict local governments' ability to preserve mobilehomes as part of a strategy to serve the housing needs of elderly, disabled, and low-income families.

Amici write to explain the critical role that mobilehomes play in housing a mainly low-income group that cannot afford to purchase detached dwellings but have invested substantial sums in their prefabricated homes. In the absence of rent regulation and vacancy control provisions, mobilehome owners would experience devastating rent increases and the loss of years of investments in their homes. The

City's decision to enact the Ordinance was entirely rational in light of the special vulnerability of mobilehome owners who have made substantial investments in their immobile homes, the scarcity of mobilehome housing, the disproportionate percentage of income the City's residents spend on housing, the lack of other affordable homeownership options within the community, and the City's efforts to enact several other complementary policies and programs to preserve and promote affordable housing.

This valid exercise of the City's police power was entitled to deference, and this Court should affirm the decision of the district court holding that the Ordinance is constitutional.

III. MOBILEHOME RENT CONTROL PROMOTES THE LEGITIMATE GOVERNMENTAL OBJECTIVE OF PRESERVING AND PROMOTING AFFORDABLE HOUSING

“California is experiencing a severe housing shortage that compounds itself further each year.” Cal. Health & Safety Code § 50840. This shortage is particularly severe for low and moderate income households. Cal. Gov't Code § 65913 subd. (a). “The lack of housing is a critical problem that threatens the economic, environmental, and special quality of life in California . . . [where] housing has become the most expensive in the nation. . . .” § 65589.5(a)(1).

According to the California Department of Housing and Community Development (“HCD”), as of 2002, “only one in five households [could] afford a typical home. . . and more than three million California households [paid] more than they [could] afford for their housing.” Cal. Dep’t of Hous. & Cmty. Dev., *Myths & Facts About Affordable & High Density Housing*, p. 2 (2002). The dramatic cuts in federal programs local governments once relied on to accommodate growth coupled with local tax and spending freezes “requires a larger local commitment [to affordable housing] than ever before.” *Id.*

California’s affordable housing crisis has worsened amidst the ongoing financial and housing market meltdown. “The State’s chronic housing affordability gaps, particularly in higher cost urban areas, have not been solved despite the improved affordability of ownership housing due to the foreclosure crisis.” Cal. Dep’t of Hous. & Cmty. Dev., *The State of Housing in California 2009: Supply and Affordability Problems Remain*, p. 2 (2009). Moreover, the foreclosure crisis has increased rental housing needs because an estimated one-fourth of foreclosed properties were rentals. *Id.* Of the state’s lower-income renter households, 64 percent have unaffordable rent cost burdens. *Id.* Seven of 12 of the nation’s least affordable rental markets are in California. *Id.* “These conditions have swelled the ranks of the homeless, with many families struggling to meet food, housing, and transportation costs.” *Id.*

Mobilehome parks are a precious source of affordable housing for thousands of lower-income households throughout California, households with few, if any, other affordable housing options. The California Legislature enacted a comprehensive set of planning and housing laws in recognition of the state's dire housing shortage and the importance of preserving existing sources of affordable housing, including mobilehome parks. *See* Cal. Gov't Code § 65582.1. These laws obligate local governments to adopt planning and zoning policies that address the housing needs of all economic segments. Placing reasonable control on mobilehome rents is one of many important ways in which local governments can meet both the local housing needs of their residents and the state housing mandate.

A. *Mobilehome parks are a significant source of affordable housing in California*

Manufactured homes, also known as mobilehomes,³ are a critical component of the affordable housing market in California. Of the 7.2 million manufactured housing units occupied as primary residences in the U.S., an estimated one-third

³ “Manufactured homes” are only those that are factory built in accordance with the HUD code created under the Federal Manufactured Housing Construction and Safety Standards Act (FMHCSSA). The term “mobile home” has not been used since that change in industry standards, but it is still commonly used interchangeably with the term “manufactured home.” Neighborhood Reinvestment Corp. & Joint Center for Housing Studies of Harvard University, *An Examination of Manufactured Housing as a Community and Asset-Building Strategy 2* (Ford Found. 2002).

are located in manufactured home communities, including mobilehome parks.

Carter, *supra*, at 1. In California, there are 370,000 mobilehomes in mobilehome parks. See Kenneth K. Baar, *The Right to Sell the “Im” mobile Manufactured Home in Its Rent-controlled. Space in the “Im” mobile Home Park: Valid Regulation or Unconstitutional Taking?*, 24 Urb. Law. 157 (1992).

Families living in manufactured homes tend to be those with very low incomes, and, therefore, have few housing options. A substantial portion of mobilehome park tenants are elderly persons or individuals/families on fixed incomes. Carter, *supra*, at 1.⁴ Individuals and families residing in mobilehome parks generally have incomes of less than 50 percent of the area median.

Neighborhood Reinvestment Corp. & Joint Center for Housing Studies of Harvard University, *An Examination of Manufactured Housing as a Community and Asset-*

⁴ See also, e.g., Sonoma County Mun. Code, ch. 2, art. XIX, § 2-910, http://www.municode.com/content/7735/16331/HTML/Level3/PRE_C2_AXIX.html (Majority of residents of mobilehome parks in the County are age 65 or older while 70 percent of mobilehomes have a retired resident on a fixed income.); Vallejo Mun. Code, ch. 5.64 § 5.64.020, <http://library.municode.com/index.aspx?clientId=16106&stateId=5&stateName=California&customBanner=16106.jpg&imageclass=L&c1=16106.txt> (Approximately 60 percent of mobilehome residents are over the age of 55, most of who are retired on fixed incomes.); Modesto Code § 4-19.01, http://search.municode.com/html/16494/level2/T4_C19.html (Mobilehome parks within the city are occupied significantly by the elderly and persons on fixed or of low income.).

Building Strategy, p. 3 (Ford Found. 2002). Because of their dire economic circumstances, many of these low-income families cannot relocate.

The unique structure of mobilehome parks, in which the land on which the units sit is leased rather than owned and the home is manufactured in a factory rather than being constructed on-site, results in a cost that is significantly below that of conventional homes. *See id.* Commonly, manufactured homes are the only affordable homeownership option for low-income families. Amy J. Schmitz, *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, J. Affordable Hous., Vol. 13, No. 3, pp. 384-415 (2004).

B. *Placing rent controls on mobilehome sites is reasonable given the unique character of mobilehome parks*

Mobilehome parks constitute a unique sector of the housing market. As Justice O'Connor explained in *Yee v. City of Escondido*, 503 U.S. 519 (1992):

The term “mobile home” is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. . . . 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.

Id. at 523 (citations omitted).

The California Supreme Court has also considered the special factors present in the mobilehome owner – park owner economic relationship as a rationale for mobilehome rent control:

[T]he mobilehome owner generally makes a substantial investment in the home and its appurtenances—typically a greater investment in his or her space than the mobilehome park owner. . . . The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners . . . that has in turn led many California cities to adopt mobilehome rent control ordinances.

Galland v. Clovis, 24 Cal. 4th 1003, 1009-10 (2001) (citations omitted).

C. *State law mandates that local governments consider mobilehomes as a source of affordable housing*

State law requires municipalities to provide housing such as manufactured housing in the housing element of its general plan in order to meet the needs of very low-income residents. Cal. Gov't Code § 65583 (The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community.).

Indeed, California's Housing Element Law begins with the following declaration:

The availability of housing is of vital statewide importance, and early attainment of decent affordable housing and a suitable living environment for every California family is a priority of the highest order.

§ 65580, subd. (a).

Housing Element Law specifically identifies mobilehomes as a type of housing for which local governments must develop preservation, improvement and development planning policies. §§ 65583 and subsec. (c)(1), 65583.2(c).

In further recognition of the importance and uniqueness of mobilehome parks as affordable housing stock, the California Legislature adopted a comprehensive set of laws that regulate mobilehomes and parks either exclusively, or in the context of broader housing protections and programs. Cal. Health & Safety Code § 18551 requires the adoption of regulations pertaining to the manufacture and installation of mobilehomes and operation of mobilehome parks. Financing programs for mobilehomes are addressed in California Health & Safety Code § 50000 et seq. Section 50007.5 provides that

the Department of Housing and Community Development and the California Housing Finance Agency, in implementing [housing financing] programs. . . shall encourage increased availability and affordability of manufactured housing for persons and families of low and moderate income.

See also § 50003, subsec. (b) (“The Legislature . . . recognizes the need to provide assistance to persons and families of low and moderate income and very low income households to purchase manufactured housing. . .and to increase the supply of manufactured housing affordable to [these families.]”). The Legislature also enacted the Mobilehome Residency Law (Cal. Civ. Code § 798 *et seq.*) which confers many rights and protections on mobilehome park residents.

In enacting the Mobilehome Residency Law, the Legislature found that their unique characteristics, including the “high cost of moving mobilehomes,” entitle mobilehome park residents to “unique protection from actual or constructive eviction[,]” (§ 798.55), and limited the circumstances under which a park owner may terminate a mobilehome owner’s tenancy (§ 798.56), among many other resident protections. § 798 *et seq.* While the Law does not impose rent control itself, it permits local jurisdictions to adopt park rent control ordinances because of the unique nature of mobilehome parks and the residents’ vulnerability to exorbitant rent increases. §§ 798.45-798.49.

D. *Mobilehome rent control is one part of a larger strategy adopted by many local governments to meet the needs of lower-income residents and to promote housing affordable to these residents as mandated by state law*

While beneficial in itself, the importance of mobilehome rent control is best assessed in a broader context, both with respect to other local laws within a jurisdiction and state statutes and regulations. Optimally, mobilehome rent control operates together with other local measures and state law and policy to preserve and create a range of affordable housing options and programs including mobilehome parks.

Indeed, local governments do not promote and preserve affordable housing through mobilehome rent control alone. As with many other local jurisdictions, the City of Goleta enacted a variety of policies and programs directed at maintaining and creating affordable housing, including restrictions on condominium conversions, housing rehabilitation funds for very low-, low-, and moderate-income households, second dwelling unit incentives, and rental assistance. *See* City of Goleta, General Plan Ch. 10, Housing Element 10-24 to 10-40 (Sept. 2006);⁵ City of Goleta, Community Development Block Grant 2009-2010 Action Plan 3-15 (July 21, 2009);⁶ (TT 4/11/2007 pp. 441:16–442:9 [Brown].)⁷

If the rents at mobilehome parks are allowed to rise above rent-controlled levels, such housing is not viable for low-income residents due to the significant costs involved with moving a mobilehome. As the governmental entities on the front lines of providing affordable housing, cities have a significant interest in promoting mobilehomes and mobilehome parks and ensuring the parks function to

⁵ Link at <http://www.cityofgoleta.org/index.aspx?page=194>.

⁶ Link at <http://www.cityofgoleta.org/index.aspx?page=464>.

⁷ Similarly, in addition to a Manufactured Home Space Rent Control Ordinance (Woodland Mun. Code, Chapter 16B), the City of Woodland has enacted an ordinance that requires new residential developers to set aside units or dedicate land for lower-income households (Woodland Municipal Code, Chapter 6A – Affordable Housing) and a condominium conversion ordinance that provides notice protections and purchase rights for elderly and lower-income tenants (Chapter 25 – Zoning Ordinance § 25-20-40). City of Woodland, Cal., Municipal Code, http://www.cityofwoodland.org/municipal_code//maintoc.htm.

achieve the goal of providing a housing option for their lowest income residents, including the elderly and people on fixed incomes.⁸ *Ventura Mobilehome Communities Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046 (9th Cir. 2004); *Yee v. City of Escondido*, 503 U.S. 519, 112 S. Ct. 1522, 118 L. Ed.2d 153 (1992). Ordinances providing for rent control and vacancy control—a provision that prohibits park owners from increasing rents upon termination of tenancy or sale of a mobilehome—at mobilehome parks are key tools in the cities' arsenals for achieving this goal.

Viewing mobilehome rent control in this light counters the notion that such local measures unfairly burden or single out one sector of housing. In fact, by legislative design, the obligation to carry out the state's mandate to plan and promote affordable housing for all Californians is shared by many: the state, local government, private owners, and the public.

Reversal of the district court's decision would have severe consequences for indigent, elderly, and disabled mobilehome owners statewide. Mobilehome owners such as amicus R. Keith Traphagen who cannot pay the rent increases that will inevitably result if the rent stabilization measures are repealed have nowhere to move their homes. As a result, park owners will have the power to drive

⁸ Cities have an affirmative responsibility to use their delegated land-use powers to “contribut[e] to the attainment of the state housing goal.” Cal. Gov't Code § 65581, subd. (a).

mobilehome prices down to salvage, wiping out the decades of investments individuals such as Mr. Traphagen have made in their homes and endangering their economic stability.

This destruction of the housing security of vulnerable populations has the potential to expand to the more than 100 jurisdictions throughout the state that have enacted similar ordinances. *See Cashman v. City of Cotati*, 374 F.3d 887, 902 (9th Cir. 2004) (Fletcher, J., dissenting) *withdrawn by* 415 F.3d 1027 (9th Cir. 2005). Much like the City, these governments repeatedly cite low vacancy rates, the difficulty and cost of moving mobilehomes, the age and income level of mobilehome owners, and the ability of park owners to take advantage of these factors as reasons for implementing rent control.⁹ Reversal of the district court's decision would jeopardize widespread protections enacted to shield some of the

⁹ *See, e.g.*, Sonoma County Municipal Code, ch. 2, art. XIX, § 2-190, http://www.municode.com/content/7735/16331/HTML/Level3/PRE_C2_AXIX.html (finding that without vacancy control, mobile home owners were subject to unreasonably suppressed resale rates due to oppressively high rental adjustments upon rent de-control); Salinas Code § 17.1-1, <http://library.municode.com/index.aspx?clientId=16597&stateId=5&stateName=California> (finding that because of the shortage of mobile home spaces, regulation was necessary to prevent economic hardship to mobile home park tenants, many of whom are elderly and on fixed incomes); Modesto Code § 4-19.02, http://search.municode.com/html/16494/level2/T4_C19.html (finding that due to increasing rents, mobile home owners had to sell their homes for drastically reduced prices or even abandon them entirely).

state's most vulnerable citizens against excessive and unreasonable rent increases and destruction of their investments.

IV. THE CITY'S ORDINANCE PROMOTES THE SAME PUBLIC PURPOSES PREVIOUSLY UPHELD BY THIS COURT

The Ordinance's purpose is rationally related to the same legitimate objectives advanced by similar ordinances previously found constitutional by this Court: protecting mobilehome owners from rapidly increasing rents, preserving mobilehome owners' investments in their homes, and preserving affordable housing. *See Carson Harbor Vill. Ltd. v. City of Carson*, 37 F.3d 468, 472-73 (9th Cir. 1994). The rationality of the City's enactment of the Ordinance becomes all the more apparent when considered in light of its need for affordable housing, its overall strategy for addressing this need, and its recognition of park owners' need to receive a reasonable return on their investment.

Goleta's Ordinance promotes the City's interest in protecting mobilehome owners from "rapidly rising and exorbitant rents" and preserving "the substantial investment of mobilehome owners in such homes" *See* Vol. 1 ER 53 (Ordinance § 11A-1). The supply of mobilehome housing in Goleta is constricted, comprised of 621 mobilehome units (or just 5.4 percent of the City's total housing units) and only 4 percent of all residentially zoned land, resulting in particularly low vacancy rates for this type of housing. *See* City of Goleta, 2009-2014 Consolidated Plan for

the Community Development Block Grant (CDBG) Program 3 (July 21, 2009) [hereinafter Consolidated Plan];¹⁰ Goleta General Plan Background Report No. 8, Existing Land Uses, VIII-8 (Dec. 20, 2004).¹¹ There is no question that the Ordinance protects vulnerable residents from exponential and unpredictable rent hikes by clearly defining allowable rent increases.

These protections are especially critical where, as here, park owners' investments in mobilehome spaces are dwarfed by the investments made by mobilehome owners. The Park Owners' investment in purchasing the 150-space park in 1997 was \$2,776,999.50, or \$18,513 per mobilehome space. Vol. VI ER 1081. In real dollars (the 1997 investment adjusted for approximately 40% inflation since 1997), the imputed investment is \$25,918 per space. This is dramatically exceeded by the \$119,091 average investment of the mobilehome owners under the Ordinance. Vol. 5 ER 769. The Park Owners offered evidence that without regulation, rents for each regulated space would be \$1,000 per month as opposed to \$215 to \$230. Vol. VII ER 1400. At that point, the annual rents per space of \$12,000 would provide an annual rate of return exceeding an astounding 40 percent of the Park Owners' inflation-adjusted investment of \$25,918 per space. In the absence of regulation, the vast majority of mobilehome owners, especially

¹⁰ Link at <http://www.cityofgoleta.org/index.aspx?page=464>.

¹¹ Link at <http://www.cityofgoleta.org/index.aspx?page=421>.

those who, like amicus R. Keith Traphagen, are disabled, would be forced to remain in place and watch as their investments are swallowed up by rent increases imposed at will by park owners.

The Ordinance is rationally related to the City's interest in preserving the affordability of housing for its residents, many of whom are overburdened by housing costs. Approximately 35.7 percent of the City's households spend more than 30 percent of their income on housing. Consolidated Plan at 10. Of the city's elderly households, 61.6 percent pay more than 30 percent of their income on housing. *Id.* Homeownership is out of reach for the City's low- and moderate-income households, with a median sales price of \$773,500 for all residential units. *Id.* at 30.

As part of its effort to address its obvious need for affordable housing, the City made the rational decision to protect its least expensive form of homeownership—mobilehomes—by enacting the Ordinance. In light of the City's average site-built home prices, the evidence introduced by the Park Owners regarding average mobilehome prices actually demonstrates that mobilehomes are, by far, a more affordable option than ownership of any other residential unit in the City. Further, evidence introduced by the City demonstrated that the Ordinance has been effective in keeping this source of housing affordable, as many residents in

the Park did not pay a premium and continue to enjoy the benefits of low-cost housing as a result of the Ordinance. Vol. VII ER 1406.

Contrary to the Panel's ruling, the City did not single out the Park Owners for shouldering the "burden" of providing affordable housing.¹² A more accurate characterization would be that the Park Owners selected for investment one of the few properties in the City that was subject to rent regulation and benefited from the fact that it was a virtually risk-free type of investment due to the captive nature of mobilehome park tenancies. Further, the Ordinance is but one component of the City's overall efforts to preserve and increase affordable housing, which include but are not limited to inclusionary housing requirements, restrictions on condominium conversions, tax increment set-asides, housing rehabilitation funds for very low-, low-, and moderate-income households, and rental assistance. City of Goleta, CDBG 2009-2010 Action Plan 3-15 (July 21, 2009).¹³

Notably, the Ordinance seeks to address the above objectives "while at the same time recognizing the need for mobilehome park owners to receive a fair

¹² Contrary to the Panel majority's view, the "character of the governmental action" prong focuses not on whether a regulation "singles out" a property owner, but on whether "the interference with property can be characterized as a physical invasion by government," or "arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). In any event, as discussed above, when properly viewed in the context of affordable housing regulation, the Ordinance did not single out the Park Owners.

¹³ Link at <http://www.cityofgoleta.org/index.aspx?page=464>.

return on their investment and rent increases sufficient to cover their increased costs.” *See* Vol. 1 ER 53 (Ordinance § 11A-1). The provision of automatic rent increases and fair return petition mechanisms for obtaining rent increases based on increased costs and expenses guarantee Park Owners a growth in net operating income.¹⁴ In fact, it is undisputed in this case that the return on investment in the Park Owners’ property was comparable or superior to that of other real estate investments—the value of the Park Owners’ property has appreciated significantly over the past several years, and cash distributions were paid to equity holders. Vol. VII ER 1400-1404. The level and type of rent increases authorized under the Ordinance are well within the mainstream of the overall regulation of mobilehome parks in California. These ordinances are not unduly burdensome to the commercial industry they affect, especially where, as here, they contain provisions enabling park owners to receive a fair return on their investment.

¹⁴ California courts have held that Park Owners under rent regulations have a right to an increasing net operating income. *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 683 (1984).

V. *VACANCY CONTROL ORDINANCES FOR MOBILEHOME PARKS
SERVE A VALID PUBLIC PURPOSE OF MAINTAINING A CRITICAL
SUPPLY OF AFFORDABLE HOUSING IN CALIFORNIA*

A. *Mobilehome rent control/vacancy control laws do not violate the Due
Process Clause*

Substantive due process provides a basis for overturning validly enacted legislation only if the legislation is “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *Vill. of Euclid v. Ambler Realty*, 272 U.S. 365, 395 (1926). This test, the rational basis test, is an extremely deferential standard of review. *Equity Lifestyle Props., Inc., v. County of San Luis Obispo*, 548 F.3d 1184, 1194 (9th Cir. 2008). The panel correctly held that the Park Owners’ traditional substantive due process claims are foreclosed by precedent because both the Supreme Court and the Ninth Circuit have upheld rent control laws such as the one at issue in this case as rationally related to a legitimate public purpose. *See Pennell v. City of San Jose*, 485 U.S. 1, 13 (1988); *Equity Lifestyle Props.*, 548 F.3d at 1194; *Ventura Mobilehome Communities Owners Ass’n v. City of San Buenaventura*, 371 F.3d 1046, 1055 (9th Cir. 2004); *Carson Harbor Vill. Ltd. v. City of Carson*, 37 F.3d 468 (9th Cir. 1994), *overruled in part on other grounds by WMX Techs. v. Miller*, 104 F.3d 1133, 1136 (9th Cir.1997) (en banc); *Levald, Inc. v. City of Palm Desert*, 998 F.2d

680 (9th Cir. 1993); *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951, 958 (9th Cir. 1991), *vacated in other part* 987 F.2d 662 (9th Cir. 1993).

In *Pennell*, the U.S. Supreme Court upheld the challenged rent control ordinance, finding that it

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. . . . We have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare.

485 U.S. 1, 13; *see also Yee v. City of Escondido*, 503 U.S. 519 (1992) (discussion of the unique situation of mobilehome parks to provide affordable housing).

The Ninth Circuit squarely addressed this issue in *Carson Harbor*, 37 F.3d 468, which was an action brought by owners of a mobilehome park challenging a rent control ordinance on numerous grounds including a violation of substantive due process. The rent control law contained a vacancy control provision that prohibited park owners from increasing rents upon termination of tenancy or the in-place sale of a mobilehome. 37 F.3d at 470-71. The legislative findings in support of the ordinance established that the purpose was to mitigate rising rents and to protect tenants from losing their investments if they sold their mobilehomes. *Id.*

The trial court dismissed the park owners' substantive due process cause of action for failure to state a claim. This Court affirmed, finding that there was

unquestionably a rational relationship between the goal to be achieved and the legislation. *Id.* at 472-73. In testing the sufficiency of a substantive due process challenge to a generally applicable rent-control ordinance, this Court explained that it would invariably survive such a challenge if it was “*designed* to accomplish an objective within the government’s police power, and if a rational relationship existed between the provisions and the purpose of the ordinances.” *Id.* at 472 (citations omitted).

This Court further explained that it was irrelevant whether, as the plaintiff alleged, the ordinance granted a windfall to the tenants who sell or if the ordinance falls short of the objectives, because “[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.* at 473 (internal quotations omitted). Since the ordinance in question presented a rational legislative means to correct the identified evil, the substantive due process claim was properly dismissed. *Id.*; accord *Equity Lifestyle Properties*, 548 F.3d at 1194; *Sierra Lake*, 938 F.2d. 951, 958 (Vacancy control provision does not violate substantive due process because the City Council could reasonably believe that in the majority of cases, the

ordinance would serve the valid public purpose of keeping mobilehome rent from becoming prohibitively high.).¹⁵

In 1995, the California Legislature substantially revised the state's laws governing local rent controls and prohibited vacancy control, but excluded mobilehomes from the prohibition. Cal. Civ. Code §§ 1954.53, 1954.51(b). This evidenced a continuing state policy supporting mobilehome vacancy control at mobilehome parks. *Id.* Since rent-control ordinances, including those with vacancy control provisions, have been found by this Circuit and the U.S. Supreme Court to be rationally related to a legitimate governmental interest as a matter of law, the Park Owners' substantive due process claim was properly dismissed in this case.

B. *Vacancy control regulations protect mobilehomes as an important source of housing for residents on fixed incomes*

As discussed above in Section III, California cities have a significant governmental interest in preserving the affordability of housing for their residents, including residents on fixed incomes. *See Ventura Mobilehome Communities Owners Ass'n*, 371 F.3d at 1055. Mobilehomes are a particularly attractive option

¹⁵ California courts have also long recognized the rationality of mobilehome vacancy rent control. *Montclair Parkowners Ass'n v. City of Montclair*, 76 Cal. App. 4th 784, 795 (1999).

for such residents who may have enough savings to purchase such a home, but thereafter have limited income for monthly rental payments.

Vacancy control protects fixed-income residents because it decreases the amount of rent each homeowner has to pay on a monthly basis. Courts in the Ninth Circuit have acknowledged that vacancy control regulations promote a legitimate and significant public purpose in maintaining affordable rental housing in California for persons on fixed incomes. *Id.*; *Adamson Cos. v. City of Malibu*, 854 F. Supp. 1476, 1490 (C.D. Cal. 1994).

C. *Vacancy control provisions protect mobilehome owners' investments in their homes*

The investment of mobilehome owners in their homes is generally substantial, particularly in relation to their income levels. *See* Section IV, *supra*. Due to the unique situation of mobilehome parks where the owner of the home leases the real property space from the park owner, the value of a mobilehome is inversely related to the rent charged for leasing the pad it rests upon. If rents increase, the value of the home decreases. *Baar, supra*, at 158-59. Since the costs involved in moving a mobilehome are so high, they are rarely moved after they are sited at a particular location. *Yee*, 503 U.S. at 523 (only one in 100 mobilehomes is ever moved); *Baar, supra*, at 158 n.1; *Schmitz, supra*, at 385. This makes

mobilehome owners a captured population without much ability to protect their investment. Schmitz, *supra*, at 385; Yee, 503 U.S. at 523.

If the investments of mobilehome owners are not protected from abuse by park owners, mobilehome parks will no longer be a viable affordable housing option. Thus, cities have a significant interest in protecting mobilehome owners' investments in their homes, and rent control and vacancy control provisions are critical tools in achieving this goal.¹⁶

VI. CONCLUSION

For the reasons stated above, amici respectfully urge this Court to affirm the decision of the district court.

Dated: May 15, 2010

NATIONAL HOUSING LAW PROJECT

By: s/ Meliah Schultzman
MELIAH SCHULTZMAN
Attorney for Amici Curiae

¹⁶ Under California Health & Safety Code § 18250, the Legislature has acknowledged the importance of protecting mobilehome owners' investments:

Because of the relatively permanent nature of residence in [mobilehome] parks and the substantial investment which a manufactured home or mobilehome represents, residents of mobilehome parks are entitled to live in conditions which assure their health, safety, general welfare, and a decent living environment, and which protect the investment of their manufactured homes and mobilehomes.

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 32(a)(7)(B), the attached BRIEF OF AMICI CURIAE IN SUPPORT OF REHEARING EN BANC is proportionately spaced and has a typeface of 14 points or more. According to Microsoft Word's "Statistics," this document contains 6,658 words.

Dated: May 15, 2010

NATIONAL HOUSING LAW PROJECT

By: s/ Meliah Schultzman
MELIAH SCHULTZMAN
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2010, I electronically filed the foregoing BRIEF OF AMICI CURIAE IN SUPPORT OF REHEARING EN BANC with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that the below-identified participant in the case is not a registered CM/ECF user, and that on the date stated below I have mailed the foregoing document by First-Class Mail, postage prepaid to that participant at the following address:

Radford, R. S., Attorney
PACIFIC LEGAL FOUNDATION
3900 Lennane Drive
Sacramento, CA 95834

By: s/ Meliah Schultzman

May 15, 2010