Protections of (Im)mobile Home Owners from the Consequences of (Im)mobile Home Park Closures

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ABSTRACT

Roughly three million households in the United States own mobile homes that are on rented spaces in mobile home parks. Investments in mobile home parks are highly profitable. However, in recent decades, as urban areas densify and alternate land uses, such as condominium projects, commercial centers, or high end subdivisions, become more profitable, mobile home park closures have become widespread and are now becoming a national concern. When a mobile home park closes, it usually wipes out the owner's entire investment in the mobile home and displaces the mobile home owner. Park closures are a large problem, as appellate courts have noted for decades, because of the "captive" nature of mobile home park tenancies and the role of public regulations in severely limiting the possible locations of mobile homes. As a practical matter, after they are moved from the factory and installed on a plot of land, "mobile" homes cannot be relocated. Generally, they are only sold in place, an unavailable option when a park closes.

Concerns about the dire consequences of closures have led many states and localities to adopt legislation with one or more of the following requirements: 1) extended notice periods for evictions in order to close a mobile home park, 2) financial mitigation for displaced home owners, 3) bars on closures of parks, and 4) mobile home park only zoning applicable to land with existing parks. In some states, the protections and required mitigations are substantial, while in most they are only nominal. Now that there is substantial public interest in adopting new protections and augmenting existing protections, appellate courts in six states have reached conflicting conclusions about the constitutionality of such laws,

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which square up park owners' rights against public rights to provide mobile home owners with security of tenure. In light of the high economic stakes associated with conversions, increasing mitigation requirements for closures or restrictions on closures, and the fact that validity of new tenant protections has always been subject to legal challenges, it is virtually certain that there will be more challenges to closure laws. This Article discusses the circumstances leading to the demands for closure legislation, the types of legislation that have been adopted, and the constitutional issues that have been raised.

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I. INTRODUCTION

In the United States, roughly three million households live in "mobile" homes, which they own, that are installed on rented spaces in "mobile" home parks.[1] Although investments in mobile home parks are highly profitable, park closures have become widespread in recent decades, as urban areas densify and alternate land uses such as commercial

1. Florida and California each have about 350,000 mobile home park spaces; Texas and Arizona each have about 250,000 spaces; and Michigan and Ohio each have over 100,000 mobile home park spaces. *See infra* Appendix tbl.A1 for available data by state.

The U.S. Census Bureau surveys whether a household lives in a mobile home, but it does not obtain information on whether or not the mobile home is located in a mobile home park or on land owned by the mobile home owner. Overall, 6.6 million households live in a mobile home, including mobile homes on rented sites in mobile home parks and mobile homes on land owned by the mobile home owner. *See* U.S. Census Bureau, *American Community Survey*: *Physical Housing Characteristics for Occupied Housing Units*, tbl.S2504 (2021), https://perma.cc/A8X7-76HT. In 2011, the American Housing Survey conducted by the Census Bureau included a question about whether a mobile home is in a group of "7 to 20" or "21 or more" mobile homes. The survey indicated that 577,000 mobile homes were in a group of seven to 20 mobile homes and 2,273,000 were in a group of 21 or more mobile homes. *See* U.S. CENSUS BUREAU, CURRENT HOUSING REPORTS, SERIES H150/11, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 2011, tbl.C-01-AH (Sept. 2013), https://perma.cc/9MJ5-34G6. Some states, including California, and Florida, require annual registrations of mobile home parks which include information on the number of spaces in each park and compile a data base with this information. *See infra* Appendix.

centers or condominium projects become more profitable.[2] "[W]hen parks close . . . [f]ortunate residents lose communities, neighbors, and local social ties but salvage their homes . . . . Unfortunate residents . . . lose their community, their equity, and their homes."[3] Most of the time, as a practical matter, it is impossible to relocate a mobile home from one mobile home park to another. In parallel, especially within the past few years, the adverse consequences of closures on evicted households have become more severe as the supply of affordable alternatives for displaced households has been contracting.[4]

The purposes of this Article are to discuss and compare state and local legislation that requires mitigation for mobile home park closures and/or places curbs on closures and to discuss legal challenges to the validity of such legislation. In response to increasing concerns about closures, states and localities are introducing new closure laws or bolstering current closure protections and mitigation requirements.[5] As is standard for new types of legislation protecting tenants, the scope of public powers to regulate closures is subject to debate and legal challenges based on constitutional claims. Issues are raised about property owners' "rights to exclude" (evict their current tenants) and convert their properties to more profitable uses versus public rights to provide security of tenure. Appellate courts in six states have reached conflicting conclusions about the constitutionality of mitigation requirements and restrictions on closures. In light of the high economic returns associated with conversions of parks to more profitable uses and the increasing public interests in protecting mobile home owners from the consequences of closures, one constitutional challenge has already been filed and it is virtually certain that others will follow.[6]

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2. *See infra* text accompanying notes 131–140 (discussing losses in mobile home park spaces due to closures); *see also* FANNIE MAE, DUTY TO SERVE UNDERSERVED MARKETS PLAN 2022–2024, 18 (2021), https://perma.cc/GF5M-872X ("In suburban areas, MHCs [mobile home communities] are in danger of being replaced by either traditional apartment buildings or other commercial properties."); Andrew Keel, *Five Reasons Why Mobile Home Parks in the United States are Disappearing,* FORBES, https://perma.cc/G8VA-PXUY (last visited Jan. 30, 2024).

3. Esther Sullivan, *Displaced in Place: Manufactured Housing, Mass Eviction, and the Paradox of State Intervention*, 8 AM. SOC. REV. 243, 248 (2017).

4. *See, e.g.*, JOINT CTR. FOR HOU. STUD. HARVARD UNIV., AMERICA'S RENTAL HOUSING 2022, 35–36 (2022), https://perma.cc/Z3RF-KE9R.

5. In the past three years, California and Colorado have substantially augmented closure mitigation requirements. *See* CAL. GOV. CODE § 65863.7 (AB 2782, § 4, (2020)); COL. REV. STAT. § 32-12-203.5 (2022 Ch. 255 § 6 (2022)).

6. The history of legislation that provides protections of tenants has been marked by continual legal challenges. In regard to challenges to legislation providing protections of mobile home owners, a Ninth Circuit panel explained: "Fifth Amendment takings challenges to mobile home rent control laws are ubiquitous in this and other circuits.

In response to concerns about the consequences of closures, many states and localities have adopted one or more of the following types of laws: 1) extended notice periods for evictions that are for the purpose of closing a park, 2) requirements of financial mitigation payments to displaced mobile home owners, 3) zoning that restricts the use of land with existing mobile home parks to mobile home park uses, and 4) requirements to preserve mobile home parks.[7]

Most state laws require mitigation for displacement, which is small relative to the home values lost by the displaced home owners and to the increased land values that a park owner realizes as a consequence of the closure.[8] On the other hand, some state laws require mitigation that covers the "in-place" value of mobile homes that cannot be relocated (e.g., $25,000 to $100,000 or more).[9] Some laws authorize denials of permits to close mobile home parks based on consideration of adverse effects on the affordable housing supply.[10] Mobile home park-only zoning applicable to land with mobile home parks is becoming increasingly widespread.

The immobility of mobile homes is the result of a combination of 1) the high costs of moving and setting up mobile homes in a new location,[11] 2) the difficulty or impossibility of moving older mobile homes, 3) shortages of vacant spaces in mobile home parks, 4) a common practice in the mobile home park industry of not accepting new installations of mobile homes that are more than a few years old,[12] and/or 5) municipal prohibitions on placements of mobile homes in a new location if they are

Quoting Yogi Berra, we have previously characterized these claims as 'deja vu all over again.'" MHC Fin. Ltd. P'ship v. City of San Rafael, 714 F.3d 1118, 1122 (9th Cir. 2013). Another Ninth Circuit panel explained: "Each time a court closes one legal avenue to mobile home park owners seeking to escape rent control regimes, the owners, undaunted, attempt to forge a new path via another novel legal theory." Rancho de Calistoga v. City of Calistoga, 800 F.3d 1083, 1087 (9th Cir. 2015). A challenge to the closure ordinance of Petaluma California is now pending. Little Woods Mobile Villa LLC v. City of Petaluma, No. 3:23-cv-05177-CRB (N.D. Cal. filed Oct. 10, 2023).

7. For a discussion of mobile home park closure issues and legislation in Canada, see Anna Jane Lund, *Tenant Protections in Mobile Home Park Closures*, 53 U.B.C. L. REV. 755, 778–92 (2021).

8. *See infra* text accompanying note 147.

9. *See infra* text accompanying notes 148–151.

10. *See infra* text accompanying notes 168–172.

11. *See, e.g.*, Roger Colton & Michael Sheehan, *The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion*, 8 J. AFFORDABLE HOUS. & CMTY. DEV. L 231, 232 (1999).

12. *See, e.g.,* STAR MANAGEMENT, MOBILEHOME PARK CLOSURE IMPACT REPORT, FOR CONEJO MOBILE HOME PARK 18, https://perma.cc/CD8Z-8Z2Y (last visited Apr. 2, 2024) (noting that "[t]here are very few, if any, parks in Ventura, Santa Barbara, Los Angeles, Orange, and San Diego Counties that will accept used homes onto their spaces").

over a certain age or do not meet other design criteria.[13] When mobile home owners move out of their homes in mobile home parks, they nearly always sell their homes in-place to an incoming park tenant.[14]

For decades, legislative findings, court opinions, real estate industry literature, and relocation impact reports for park closures have noted the severe adverse consequences of park closures on mobile home owners. The Supreme Judicial Court of Massachusetts concluded that mobile homes are "almost worthless" if they could not be sold in-place;[15] the Supreme Court of Minnesota noted that "residents stand to lose all or most of the value in their homes when a park owner chooses to sell park property for a different and likely more profitable use";[16] and the Ninth Circuit Court of Appeals concluded that displacement from a mobile home park can mean "economic ruin" for the mobile home owner.[17] Findings about the hardships of displacement have not been disputed and have been included in opinions striking down protections of mobile home park tenants, as well as opinions upholding such measures.[18] Apart from causing displacement, closures portend the possibility of a substantial loss in a significant source of affordable housing, especially in prosperous metropolitan areas.[19]

To place the concerns about the adverse impacts of closures on displaced mobile home owners in perspective, it is critical to note that concerns about closures have been commonly countered by local support

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13. For example, prohibitions on installing mobile homes that are over ten years old. *See* LAKE STATION, IND. CODE. § 7-173 (2020); O'FALLON, MO. CODE § 520.035; MOUNT OLIVE, N.C. CODE, § 59-240(a)(1) (2019).

14. *See* CONSUMER FIN. PROT. BUREAU, MANUFACTURED-HOUSING CONSUMER FINANCE IN THE UNITED STATES, 41–42 (Sept. 2014), https://perma.cc/4XAW-SK5G. For example:

> One large community operator [Sun Communities] with over 50,000 sites in 161 communities reported that the average length of time that a home resides in their communities is 40 years, while the average resident tenure is 13 years, indicating that multiple owners cycle through the same home within such communities.

Id. In 2020, Sun Communities reported that "over the past three years, homes placed in their communities were only moved out at a rate of 0.8% per year on average." *Multifamily Market Commentary: Manufactured Housing Landscape 2020*, FANNIE MAE (May 21, 2020), https://perma.cc/WPH8-VXBJ.

15. Commonwealth v. Gustafsson, 346 N.E.2d 706, 713 (Mass. 1976).

16. Arcadia Dev. Corp. v. City of Bloomington, 552 N.W.2d 281, 284 n.2 (Minn. Ct. App. 1996).

17. Laurel Park Community, LLC v. City of Tumwater, 698 F.3d 1180, 1185 (9th Cir. 2012).

18. *See, e.g.*, Palm Beach Mobile Homes v. Strong, 300 So. 2d 881, 886 (Fla. 1974); Guimont v. Clarke, 854 P.2d 1, 3–4 (Wash. 1993), *abrogated by* Yim v. Seattle, 415 P.3d. 675, 682 (2019).

19. *See* TANYA ZAHALAK, FANNIE MAE, MULTIFAMILY MARKET COMMENTARY – JUNE 2016: MANUFACTURED HOUSING COMMUNITIES – A CLOSER LOOK, at 6 (2016), https://perma.cc/7FFG-ZPH6.

for facilitating park closures. Such support may be based on a desire to obtain the fiscal benefits that will result from replacing a park with another use (commonly described as a "higher and best use"), which provides a city with increased property and sales tax revenues and/or new residents with higher incomes. Other local motives include a desire to remove types of communities which are seen as undesirable.[20]

Part II of this Article sets forth the context for closure legislation. It includes discussion of the affordability and the immobility of mobile homes, the profitability of mobile home parks in their current use, and the role of land use regulations in restricting (virtually barring) mobile home park construction and severely curbing the placement of mobile homes outside of mobile home parks.

Part III of the Article summarizes and compares state and local closure legislation in the United States. While the consequences of closures are comparable throughout the country, there are vast differences among state laws regarding required notice periods for closures, the levels of required mitigations, and the limitations on closures.

Part IV of this Article contains a discussion of the constitutional issues and claims raised regarding closure legislation. Notably, reflecting the reality that mobile home park ownership is very profitable, the challenges have not been based on regulatory taking claims that mobile home parks are not an economically viable use. Instead, they have been based on claims regarding "physical" takings, rights to exclude, and whether the laws "forc[e] [park owners] alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."[21]

II. THE CONTEXT: IMMOBILITY OF MOBILE HOMES, A DIMINISHING SUPPLY OF PARK SPACES, AND THE CLOSURE CRISIS

There has been voluminous discussion in academic publications and public reports about mobile homes and mobile home parks.[22]

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20. *See generally* Esther Sullivan, *Halfway Homeowners: Eviction and Forced Relocation in a Florida Manufactured Home Park*, 39 LAW & SOC. INQUIRY 474 (2014) (discussing how the benefits of a park closure were set forth in local proceedings to approve a closure).

21. Armstrong v. United States, 364 U.S. 40, 49; *see* text accompanying notes 179–205.

22. For the history and a discussion of mobile home ownership and the development of mobile home parks, see generally EARL W. MORRIS & MARGARET E. WOODS, HOUSING CRISIS AND RESPONSE: THE PLACE OF MOBILE HOMES IN AMERICAN LIFE (1971); MARGARET J. DRURY, MOBILE HOMES: THE UNRECOGNIZED REVOLUTION IN AMERICAN HOUSING (1972); INST. FOR LOC. SELF GOV'T, WHY THE WHEELS: THE IMMOBILE HOME (1972); HAROLD A. DAVIDSON, HOUSING DEMAND: MOBILE, MODULAR, OR CONVENTIONAL? (1973); ARTHUR D. BERNHARDT, BUILDING TOMORROW (1980); THOMAS

As is commonly understood, the bulk of mobile homes are actually small- or modest-sized, factory-made prefabricated houses, typically ranging in size from 400 to 1,500 square feet (sq. ft.). The average size of new mobile homes increased from 350 sq. ft. in the 1950s to 720 sq. ft. in 1966; 883 sq. ft. in 1973; 1,050 sq. ft. in 1980; and 1,360 sq. ft. in 1995.[23] A substantial portion of the mobile homes are "double-wide," homes which are manufactured in two sections, about forty to sixty feet long and ten to twelve feet wide, that are transported separately and attached on-site.[24] A share of the mobile homes in mobile home parks are recreational vehicles with wheels (RVs) used as permanent dwellings. In federal legislation and numerous state and local laws, the terms "manufactured housing" and "manufactured housing communities" are commonly used in lieu of the terms "mobile home" and "mobile home park," based on a recognition that the homes are not really mobile.[25]

In 1992, in a unanimous opinion in *Yee v Escondido*, the Supreme Court explained that mobile homes are "largely immobile as a practical matter":

> 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

E. NUTT-POWELL, MANUFACTURED HOMES: MAKING SENSE OF A HOUSING OPPORTUNITY (1982); ALLAN D. WALLIS, WHEEL ESTATE (1991); Zoe Ann Stoltz, *From Camping to Permanence: A History of Montana Mobile and Manufactured Homes*, UNI. MONTANA 470 (2011) (including national history and detailed descriptions of efforts to obtain approvals for specific mobile home park developments); ESTHER SULLIVAN, MANUFACTURED INSECURITY: MOBILE HOME PARKS AND AMERICANS' TENUOUS RIGHT IN PLACE (2018).

23. *See* DRURY, *supra* note 22, at 102 (1955 and 1966 data); NUTT-POWELL, *supra* note 22, at 53 (1973 and 1980 data); MANUFACTURED HOUSING INST., QUICK 2003 FACTS, TRENDS AND INFORMATION ABOUT THE MANUFACTURED HOUSING INDUSTRY, 3 (2003), https://perma.cc/B2HF-SLCD (providing 1995 data).

24. There are no systematic sources of data on the characteristics of mobile homes in mobile home parks (such as size, whether single-wide or double-wide, or age).

25. National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401-5426; MINN. STAT. ANN. § 327C; TEX. PROP. CODE § 94 (2023).

> mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.[26]

While park closures have a drastic adverse impact on mobile home owners, the practical impact of closure legislation on mobile home park owners is a standard outcome of zoning restrictions under which a conversion of the land to a more profitable use is not permitted or is conditioned on compliance with mitigation requirements.

A. Ownership of a Mobile Home in Mobile Home Park

Ownership of a mobile home on a rented space in a mobile home park is fraught with insecurity and uncertainty about future rents as well as the possibility of a closure. However, commonly, mobile homes and parks offer a type of homeownership with lower overall housing costs than conventional home ownership and apartment rentals, taking into account the combination of costs of purchasing and maintaining the mobile home and the space rents. Apart from providing economic advantages and recreational facilities and the benefits of living in a detached dwelling, mobile home parks commonly impart substantial social benefits, evolving into supportive tight-knit social communities.[27] A significant portion of park spaces are in seniors-only parks with a minimum age requirement of 55 years.[28]

Mobile home parks range from small, crowded parking-lot-type arrangements with minimal facilities to large parks with spacious arrangements including recreational clubhouses and swimming pools. A majority of mobile home park spaces are in parks with 100 or more spaces, and a substantial portion are in parks with 200 or more spaces.[29] In

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26. Yee v. Escondido, 503 U.S. 519, 523 (1992) (citations omitted); Galland v. Clovis, 16 P.3d 130, 135–36 (2001); ROBERT S. SAIA, APPRAISING MANUFACTURED (MOBILE) HOME COMMUNITIES AND RECREATIONAL VEHICLE PARKS, AM. INST. OF APPRAISERS 7 (2017) ("The high cost of moving [a mobile home] and the near impossibility of finding a suitable replacement site make relocation infeasible."); Colton & Sheehan, *supra* note 11.

27. *See* SULLIVAN, *supra* note 22, at 32 (describing the social benefits of all-age mobile home parks: "separation between mobile home parks and 'conventional' homes, . . . lead[s] to the development of self-contained communities"); Andree Tremoulet, *Manufactured Home Parks: NORCs Awaiting Discovery*, 24 J. OF HOUS. FOR THE ELDERLY 335 (2010) ("NORC" refers to Naturally Occurring Retirement Communities); Andree Tremoulet, *Policy Responses to the Closure of Manufactured Home Parks in Oregon*, DISSERTATIONS AND THESES, at 118 (2010) (Ph.D. dissertation, Portland State University), available at https://perma.cc/JS97-5XAK (describing the benefits of senior parks: "[t]he sense of community at senior parks appeared to play a role in helping residents remain independent and age in place in their own home").

28. Systematic data on whether a park is senior-only and the number of spaces in the park was only located for Oregon; 32% of the mobile home park spaces in Oregon are in age 55+ parks. *See infra* Appendix.

29. *See infra* Appendix.

California, 77% of all spaces are in parks with recreation buildings, and 72% are in parks with swimming pools.[30] In Florida, 36% of park spaces are in parks with pools.[31]

B. The Growth of Mobile Home Ownership and Development of Mobile Home Parks

From 1968 to 1980, new mobile homes captured a substantial share of the housing construction market in the United States. In half of those years, shipments of new mobile homes accounted for over 25% of single-family housing starts.[32] From 1980 through 1999, mobile home production accounted for 16% of single-family production.[33] Since 2007, annual sales of new mobile homes have been under 100,000 units per year, in the range of 7.4% to 11.6% of single-family housing starts.[34] From 1960 to 2000, the number of mobile homes in the United States increased from 770,000 to 8.8 million, out of which 7.3 million were occupied,[35] and the portion of dwelling units that are mobile homes increased from 1.3% to 7.6%.[36] In eight southeastern states, the share of housing units that are mobile homes has increased to 14% or more.[37]

From the 1960s to around 1980, the growth in the supply of mobile homes was accompanied by widespread construction of mobile home parks, despite severe restrictions on where the parks could be constructed.[38] By 1974, out of a total of 3.9 million mobile homes in the United States, 1.6 million were in mobile home parks.[39] Mobile home park construction was profitable in outer portions of metropolitan areas in

30. *See Mobilehome Parks in California: A Survey of Mobilehome Park Owners Pursuant to SB 1835*, CAL. DEPT. OF HOUS. AND CMTY. DEV., at 26 (Feb. 1986), https://perma.cc/6394-N23M. Virtually all mobile home parks in California were already constructed when this data was compiled.

31. *See infra* Appendix (Author's calculation based on Florida Park Listing).

32. *See Manufactured Home Shipments versus Single-Family, Site Built Housing Starts and Homes Sold (1980-2020)*, MANUFACTURED HOUS. INST. (2021), https://perma.cc/422B-WWEF.

33. *Id.* (Author's calculation based on data from Manufactured Housing Institute Data).

34. *Id*.

35. Robert Bonnette, *Census 2000 Brief: Structural and Occupancy Characteristics of Housing: 2000*, U.S. CENSUS BUREAU (Nov. 2003), https://perma.cc/9WRN-MPDP (reporting that there are 5.85 million owner-occupied mobile homes, as compared to 1.53 million renter-occupied mobile homes).

36. *Census of Housing: Historical Census of Housing Tables*, U.S. CENSUS BUREAU (2000), https://perma.cc/PX8Y-2VXG (containing data on type of dwelling from decennial census data from 1940 through 2000).

37. *Id*.

38. *See* BERNHARDT, *supra* note 22, at 217.

39. *See id.* at 217 tbl.10.7 (Distribution of Mobile Homes in Park and Non-Park Locations, by State: 1974). This Author was unable to locate systematic data on the total number of mobile home spaces in mobile home parks in the following years.

locations with low land costs and less restrictive controls on development.[40] Consequently, the combined cost of purchasing an existing mobile home in a mobile home park—a fraction of the cost of purchasing a stick built single-family dwelling—and paying the space rent was substantially lower than the costs of purchasing an existing conventional single-family house, especially for households that could pay all or mostly cash for a mobile home.[41]

In general, the proportion of mobile homes located on land owned by the mobile home owner was high in the southeast and in rural states, where land prices were lower; in comparison, the proportion of mobile homes in mobile home parks was high in California, Florida, and several northeastern states.[42]

Mobile homes and mobile home parks were viewed as a potential source for solving problems of housing affordability.[43] The President's 1970 annual report on national housing goals noted the affordability of mobile home ownership in a mobile home park compared to the cost of conventional homes and the role of mobile homes in meeting housing needs.[44] In 1982, the President's Commission on Housing stated that mobile homes were an important source of affordable housing, while also

40. *See, e.g.,* MAX S. WEHRLY, TECH BULLETIN 68, MOBILE HOME PARKS PART 2, AN ANALYSIS OF COMMUNITIES, URBAN LAND INST. (1972) (noting that development costs, including land and infrastructure, were typically in the range of $3,000 to $5,000 per space); Bank of America, *Mobile Home Parks*, 9 SMALL BUS. REP., 1, 8 (1970), https://perma.cc/NL2G-URX2; THE MOBILE HOME INDUSTRY IN CALIFORNIA AND THE NATION, UNITED CAL. BANK, 12 (1973), https://perma.cc/W2T2-5UMC (projecting costs to be $5,350 per space); *Study of a Proposed Mobile Home Park*, 39 APPRAISAL J. 52 (Jan. 1971) (projecting costs to be $3,300 per space in a suburb of Kansas City).

41. In 1971, rent levels in parks with higher ratings ranged from $39 to $70. *See* WEHRLY, *supra* note 40, at 14. The median apartment rent was $108 in 1970. *Historical Census of Housing Tables,* CENSUS OF HOUSING, https://perma.cc/R8PZ-B9AU (last visited Mar. 5, 2024). In 1974, the average cost of a new mobile home was $9,800, compared to an average price of an existing conventional single-family dwelling of $32,000; in 1979, the average price of a mobile home was $17,600 compared to an average price of $55,700 for an existing single-family dwelling. *See* U.S. HOUSING MARKET CONDITIONS, HISTORICAL DATA, U.S. DEP'T OF HOUSING AND URBAN DEV. at tbl.5: *Manufactured (Mobile) Home Shipments, Residential Placements, Average Prices, and Units for Sale: 1974–Present*, https://perma.cc/H3TJ-76BU (last visited Apr. 2, 2024); U.S. HOUSING MARKET CONDITIONS, HISTORICAL DATA, U.S. DEP'T OF HOUSING AND URBAN DEV. at tbl.8A: *New Single Family Home Prices: 1963–Present*, https://perma.cc/P333-RFSP (last visited Mar. 5, 2024).

42. *See* BERNHARDT, *supra* note 22, at 217 tbl.10.7 (reporting the Percent of Mobile Home Units in Parks: United States—41.5%, California—81.8%, Florida—68.6%).

43. *See, e.g.*, John F. Lawrence, *Mobile Homes May be Answer to Low-Cost Housing Problem*, L.A. TIMES, Jan. 27, 1969, at A1.

44. *See* MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, SECOND ANNUAL REPORT ON NATIONAL HOUSING GOALS, H.R. DOC. NO. 91-292, at 14–15 (2d. Sess. 1970).

extensively discussing the local regulatory obstacles to their use.[45] Mobile homes continue to be touted as a potential source of affordable housing,[46] subject to a standard qualification that local regulations severely limit where they may be located.[47]

C. The Creation by Public Regulation of "Captive" (Oligopoly) Markets

While mobile homes may be a substantial source of affordable housing due to their low production cost, their overall usage has been severely repressed by regulatory restrictions. Until federal law preempted building code standards for mobile homes in 1974, localities commonly adopted codes that barred the use of mobile homes.[48] Since the 1960s, both municipal bars on the placement of mobile homes outside of mobile home parks and prohibitions on the construction of mobile home parks have been standard.[49] For example, as of 1980, over 80% of the municipalities in twelve states restricted allowable locations of mobile homes to mobile home parks.[50] In six states in the Northeast and Middle Atlantic, mobile homes were prohibited in half or more of all municipalities.[51] Commonly permissible locations of mobile home parks have been limited to areas that are undesirable for residential uses, such as industrial areas, highway frontage, or flood plains, and/or have been limited to only a tiny percentage of all land.[52]

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45. *See* PRESIDENT'S COMMISSION ON HOUSING, THE REPORT OF THE PRESIDENT'S COMMISSION ON HOUSING, 85–86 (1980), https://perma.cc/XK9J-Y6BE. For a discussion of regulatory impediments to the use of mobile homes, see *id.* at 199–203, noting that "[i]n many localities, mobile homes are segregated into special areas, often in disadvantageous locations set aside as 'trailer parks.'"

46. *See, e.g.*, WILLIAM APGAR ET AL., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY, NEIGHBOR WORKS PROG. (Sept. 2002), https://perma.cc/5YE9-KR9P; *see also* Karan Kaul & Daniel Pang, *The Role of Manufactured Housing in Increasing the Supply of Affordable Housing,* URBAN INST. (July 5, 2022), https://perma.cc/5D3P-ULRX.

47. *See, e.g.*, Kaul & Pang, *supra* note 46, at 6; CASEY DAWKINS ET AL., CNTR. FOR HOUSING RSCH., REGULATORY BARRIERS TO MANUFACTURED HOUSING PLACEMENT IN URBAN COMMUNITIES (Jan. 2011), https://perma.cc/99HZ-JK3Q.

48. *See* BERNHARDT, *supra* note 22, at 377.

49. For detailed information on zoning regulations excluding mobile home parks or prohibiting the placement of mobile homes outside of mobile home parks as of the 1970s, see *id.* at 329–54 .

50. *See id*. at 334 tbl.16.2. (Percentage of Municipalities Allowing Mobile Homes that Restrict Them to Parks).

51. *See id*. at 332 tbl.16.1. (Percentage of All Municipalities that Exclude Mobile Homes).

52. *See, e.g.*, G. Shen, *Location of Manufactured Housing and its Accessibility to Community Services: A GIS-Assisted Spatial Analysis*, 39 SOCIO-ECON. PLANNING SCIS. 25 (2005); *see also* Gregory Pierce et al., *Improperly-Zoned, Spatially-Marginalized, and Poorly-Served? An Analysis of Mobile Home Parks in Los Angeles County*, 76 LAND USE POL. 178 (May 2018).

The longstanding patterns of exclusions of mobile homes and mobile home parks and the market imbalances that they have created have been exhaustively documented.[53] For a recent, detailed discussion of the use of a broad range of imaginable and unimaginable local legislative strategies to exclude mobile homes and mobile home parks, see Daniel R. Mandelker's work *Zoning Barriers to Manufactured Housing.*[54]

Consequently, although production of mobile homes and mobile home park spaces was substantial in the 1950s through the 1980s notwithstanding the extensive restrictions, such production was continually short relative to the demand.[55] Public regulation, rather than the laws of nature or free markets, provided mobile home park owners with a "captive" market.[56] These imbalances have been noted in state studies, state legislation, and state appellate court opinions. In 1970, the

53. *See, e.g.*, Comment, *Regulation and Taxation of House Trailers*, 22 U. CHI. L. REV. 738 (1955); Paul A. Germain, Note, *Regulation of Mobile Homes*, 13 SYRACUSE L. REV. 125 (1961); W. Richard Eshelman, *Municipal Regulation of House Trailers in Pennsylvania*, 66 DICK. L. REV. 301 (1962); Rolf A. Worden, *Zoning–Townships–Complete Exclusion Of Trailer Camps And Parks*, 61 MICH. L. REV. 1010 (1963); Richard W. Bartke & Hilda R. Gage, *Mobile Homes Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970); Byron D. Van Iden, *Zoning Restrictions Applied to Mobile Homes*, 20 CLEV. ST. L. REV. 196 (1971); Gerald E. Hertach, Note, *Mobile Homes in Kansas: A Need for Proper Zoning*, 20 U. KAN. L. REV. 87 (1971); Marvin M. Moore*, The Mobile Home and the Law*, 6 AKRON L. REV. 1 (1973); Lyle F. Nyberg, *The Community and the Park Owner Versus the Mobile Home Park Resident*, 52 B.U. L. REV. 810 (1972); Edward Flippen, *Constitutionality of Zoning Ordinances Which Exclude Mobile Homes*, AM. BUS. L. J. 15 (Spring 1974); Robert L. Schwartz, Note, *'Mobile' Homes?--Public and Private Controls*, 29 WAYNE L. REV. 177 (1983); Susan Chernoff, *Behind the Smokescreen: Exclusionary Zoning of Mobile homes*, 25 WASH. J. URB. & CONTEMP. L. 235 (1983); Kathleen M. Flynn, *Impediments to the Increased Use of Manufactured Housing*, 60 U. DET. J. URB. L. 485 (1983); Rita L. Berry, *Restrictive Zoning of Mobile Homes: The Mobile Home is Still More "Mobile" Than "Home" Under the Law*, 21 IDAHO L. REV. 141, 157 (1985); CAL. DEPT. OF HOUSING & CMTY. DEV., *Local Government Mobilehome and Mobilehome Park Policies in California* (1986), https://perma.cc/DS3B-5F2X; James Milton Brown & Molly A. Sellman, *Manufactured Housing: The Invalidity of the "Mobility" Standard*, 19 URB. LAWYER, 367 (1987); Howard J. Barewin, *Rescuing Manufactured Housing from the Perils of Municipal Zoning Laws*, 37 WASH. J. URB. & CONTEMP. L. 189 (1990); Casey J. Dawkins & C. Theodore Koebel (2009), *Overcoming Barriers to Placing Manufactured Housing in Metropolitan Communities*, 76 J. AM. PLAN. ASS'N 73; DAWKINS ET AL., *supra* note 47; David W. Owens, *Manufactured Housing, Modular Housing, and Zoning*, UNC SCH. GOV'T (May 2023), https://perma.cc/9MLL-8285 (discussing North Carolina state and local laws); Esther Sullivan et al, *Affordable but Marginalized: A Sociospatial and Regulatory Analysis of Mobile Home Parks in the Houston Metropolitan Area*, 88 J. AM. PLAN. ASS'N 232 (2021); Andrew Rumbacu et al., *You Don't Need Zoning To Be Exclusionary: Manufactured Home Parks, Land-Use Regulations And Housing Segregation in the Houston Metropolitan Area*, LAND USE POL'Y 123 (2022).

54. Daniel R. Mandelker*, Zoning Barriers to Manufactured Housing,* 48 URB. LAW. 233 (2016).

55. *See* Bernhardt, *supra* note 22, at 260. As of 1980, 47% of parks had no vacant spaces and 41% had waiting lists. *Id*. at 344.

56. *Id*. at 336–344. ("The various limitations on parks may have the effect of creating monopolies.").

Florida Department of Community Affairs noted the extensive restrictions on the supply of spaces where mobile homes could be located and the role of density restrictions which made other types of potential land uses more competitive. It concluded that a "veritable monopolistic situation" existed in the mobile home park space market.[57] In 1980, the Maryland Court of Appeal explained that, due to zoning exclusions and severe limitations on the placement of mobile homes, "the mobile home owner is compelled to rent space from the park owners who, because of the limited availability of space and the high cost of relocation, are able to dictate unfavorable rental terms and conditions."[58] In 1988, the Connecticut Supreme Court noted that the mobile home park industry had a "near-monopoly status."[59]

In 2002, the Real Estate Center of Texas A&M reported that exclusions of mobile homes outside of mobile home parks were widespread and that construction of mobile home parks may be feasible only in unincorporated areas due to local political opposition.[60] In 2010, an *en banc* panel of the Ninth Circuit Court of Appeals declared that, "[b]ecause the owner of the mobile home cannot readily move it to get a lower rent, the owner of the land has the owner of the mobile home over a barrel."[61] A 2011 study commissioned by the U.S. Department of Housing and Urban Development (HUD) and performed by the National Association of Homebuilders concluded that "[p]erhaps the most significant barrier to the siting of new manufactured homes in metropolitan areas is the presence of zoning codes which restrict the size, design, and location of manufactured units."[62]

While park owners are not responsible for the policies that have severely constricted the locations where mobile homes can be placed, they have been the beneficiaries of publicly created oligopolies. Individual park owners do not have a legal monopoly on the overall supply of mobile home park spaces within their area. However, in another sense, park owners have a monopoly in relation to their tenants. Once a mobile home is located on a space in a park, the park owner owns the only space where (as a practical matter) that mobile home can be located—its current location in that park.[63]

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57. STATE OF FLORIDA COUNCIL ON COMMUNITY AFFS., REPORT HEARINGS ON MOBILE HOME PARK OPERATIONS IN FLORIDA, at 4 (1970), https://perma.cc/5YMN-CTJU.

58. Cider Barrel Mobile Home v. Eader, 414 A.2d. 1246, 1248 (Md. 1980).

59. Eamiello v. Liberty Mobilehome Sales, 546 A.2d 805, 820 (Conn. 1988).

60. *See* JACK C. HARRIS, MANUFACTURED HOME COMMUNITY DEVELOPMENT & OPERATIONS, REAL EST. CTR. TEX. A&M UNIV. 4–5 (2000), https://perma.cc/2YTV-SNW6.

61. Guggenheim v. City of Goleta, 638 F.3d 1111, 1114 (9th Cir. 2010).

62. DAWKINS ET AL., *supra* note 47, at 4.

63. For judicial recognition of the public interest in regulating "virtual monopolies," see Munn v. Illinois, 94 U.S. 113, 132 (1876).

D. Legislative and Judicial Pushback Against Exclusionary Land Use Regulations: Too Weak, Too Late, and Without Impact

Starting in the 1970s, there were efforts in Congress, in state legislatures, and in the courts to counter public discrimination against the use of mobile homes. As indicated, in 1974, local building code standards, which were a major bar to the placement of mobile homes outside of mobile home parks,[64] were preempted by federal building codes for mobile homes (reclassified as "manufactured housing").[65] Also, many states have adopted curbs on local exclusions of mobile home parks and mobile homes, including requirements that localities allow mobile home parks and allow mobile homes in residential zones.[66] In some states, courts have struck down zoning exclusions of mobile homes.[67]

Whatever steps have been taken to counter exclusionary policies have been more than outmatched by the combination of the exclusionary regulations that have remained in place and trends that have transformed land values in urban and semi-urban areas. Critically, ceilings on mobile home park density in the range of six to ten units per acre or minimum required areas for each mobile home space (which is separate from the area used for roads and common areas) in the range of 2,500 to 4,000 sq. ft. are standard in local zoning codes.[68] In contrast, apartments are allowed at much higher densities, often ensuring that apartment projects and retail shopping projects can yield higher returns.[69] Also, commonly, parks must meet substantial minimum acreage standards, which are difficult to meet in built-up areas.[70]

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64. *See* National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. § 5403(d).

65. *See* Housing and Community Development Act of 1980, Pub. L. No. 96-399 § 308(c), 94 Stat. 1614, 1640–41, (1980).

66. *See* NAT'L CONSUMER L. CTR., MANUFACTURE HOUSING RESOURCE GUIDE: ADVOCATING AT THE LOCAL LEVEL 4 (2018), https://perma.cc/VDG5-FC8H; *see also* Mandelker, *supra* note 54, at 251–59. On the other hand, prohibitions on the use of mobile homes as permanent residences outside of mobile home parks are still common. *See, e.g.*, MIAMI-DADE , FLA., CODE, § 33-168 (1971).

67. *See, e.g.,* Mandelker, *supra* note 54, at 250–51.

68. *See, e.g.,* FAIRFAX, VA., CODE § 2101-14B tbl.2102.23: R-MHP LOT AND BUILDING STANDARDS (2023) (allowing a maximum of 6 units per acre and requiring an average mobile home lot size of 4,000 square feet); MAPLETON, UTAH, CODE §§ 18.84.250.M.1., 18.84.270.D (requiring a minimum area of 4,000 square feet for each mobile home space, plus two parking spaces per mobile home space); MARICOPA, ARIZ., CODE § 1203.1.1 (1985) (requiring a minimum area of 3,000 square-feet for each space and a minimum width of 44 feet).

69. Allowable densities typically range from 16 to 30 units per acre. *See, e.g.*, Rolf Pendall et al., *Shifts Toward the Extremes: Zoning Change in Major U.S. Metropolitan Areas from 2003 to 2019*, 88 J. AM. PLAN. ASS'N. 55, 62 tbl.2.

70. *See, e.g.*, MIAMI-DADE , FLA., CODE § 33-171 (1971) (five-acre minimum); *see* FAIRFAX, VA., CODE, § 2101-14B tbl.2102.23: R-MHP LOT AND BUILDING STANDARDS (2023) (15-acre minimum).

Apart from laws specifically restricting the location of mobile homes and mobile home parks, subjective use permit standards, which typically apply to applications for permits for projects of a significant size, commonly provide for nearly unbounded discretion for local planning commissions to deny requests for permits based on findings of adverse impacts.[71] Faced with stiff neighborhood opposition, the commissions feel compelled to reject unpopular types of projects, including mobile home parks.

Judicial rulings and state laws curbing local restrictions on the placement of mobile home parks and mobile homes are commonly countered with "fine tuning" of the restrictive practices.[72] States and localities intent on preventing the development of mobile home parks and/or the placement of mobile homes on residentially zoned land have a toolbox of regulatory strategies to accomplish exclusionary results.[73] As one type of exclusion is barred, it is replaced with another regulatory obstacle. For example, North Carolina law prohibits zoning that has "the effect of excluding manufactured homes from the entire zoning jurisdiction or that exclude[s] manufactured homes based on the age of the home."[74] However, the law authorizes localities to adopt "appearance and dimensional criteria for manufactured homes. . . . [which] shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community."[75]

While blanket exclusions of mobile homes have been struck down by many courts, in other cases, courts have upheld exclusions of mobile homes justified by concerns about increased crime or that manufactured housing tends "stunt growth potential of the land and have an adverse

71. *See, e.g.*, Ashira Pelman Ostrow, *Judicial Review of Local Land Use Decisions: Lessons from RLUIPA*, 31 HARV. J.L. & PUB. POL'Y 717 (2008).

72. *See, e.g.,* Mandelker, *supra* note 54; Marvin M. Moore*, The Mobile Home and the Law*, 6 AKRON L. REV. 1 (1973).

73. *See* KY. REV. STAT. ANN. § 100.348(3) (LEXIS 2003) ("The compatibility standards shall be designed to ensure that when a qualified manufactured home is placed in a residential zone it is compatible, in terms of assessed value, with existing housing located with a one-eighth (1/8) mile or less radius from the proposed location of the qualified manufactured home."). However, the purpose of allowing mobile home construction is to allow housing that has a lower cost and, therefore, would not be "compatible in terms of assessed value." *Id.*; *see also* TAYLOR, W.VA., ORDINANCE (2006), https://perma.cc/VVL8-9UEF ("[P]roliferation of mobile home parks throughout the County is detrimental to the health, safety, and welfare of the community due to [the] deleterious effect upon property values in the vicinity of establishments . . . . No mobile home park shall locate closer than one thousand (1000) feet from a residential dwelling . . .").

74. N.C. GEN. STAT. § 160D-910(c) (2019).

75. *Id.* § 160D-910(d)**.**

effect upon the development potential of a neighborhood."[76] Some courts have upheld limitations on the design of mobile homes based on aesthetic or maintenance of property value objectives, thereby enabling localities to circumvent federal preemption of local building code standards for mobile homes, which were formerly relied on to achieve their exclusion.[77]

E. State and Local Regulation of the Terms of Mobile Home Park Tenancies

Ownership of a mobile home in a mobile home park is undertaken within the context of substantial regulation of the terms mobile home park space rentals. In response to the imbalance in bargaining power and special circumstances associated with the landlord-tenant relationship in mobile home parks, a majority of states have adopted legislation providing protections specifically for mobile home park tenants, which extend beyond the protections provided to apartment tenants.[78]

Most laws require just cause for eviction.[79] In addition, state laws applicable to mobile home park tenancies usually provide tenants with the right to sell their mobile homes in-place.[80] State laws also prohibit park owners from requiring that incoming park residents purchase mobile homes from park owners or pay fees for exiting a park.[81] Other types of provisions include requirements to offer residents leases for a minimum

76. Duckworth v. Bonney Lake, 586 P.2d 860, 867 (Wash. 1978); *see, e.g.,* People of Cahokia v. Wright, 311 N.E.2d. 153 (Ill. 1974); Colo. Manufactured Hous. Ass'n, v. City of Salida, 977 F. Supp. 1080, 1085 (D. Colo. 1997); and cases cited in Mandelker, *supra* note 54, at 247–48.

77. *See* Georgia Manufactured Hous. Ass'n v. Spalding Cnty., 148 F.3d. 1304, 1307 (11th Cir. 1998) (upholding roof slope minimums on the basis that it was an aesthetic standard that was not preempted by federal building standards); Lauderbaugh v. Hopewell Twp., 319 F.3d 568, 578 (3d Cir. 2003) (holding that exclusion of mobile homes outside of mobile home parks would not be preempted by federal building codes if based on aesthetic considerations "even if, by using that permissible criteria, the locality bans most, or even every, manufactured home"); Tex. Manufactured Hous. Ass'n v. City of Nederland, 101 F.3d. 1095, 1105 (5th Cir. 1996) (upholding exclusion of mobile homes outside of mobile home parks for the purpose of protecting property values).

78. For a summary and listing of state statutes regulating the terms of mobile home park tenancies, see *Protecting Fundamental Freedoms in Communities: The Precarious Rights of Homeowners in Land-Lease Communities*, NAT'L CONSUMER L. CTR. (Jan. 2015), https://perma.cc/Y6JY-SK6C. For summaries of each state law as of 2004, see CAROLYN L. CARTER ET AL., MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER, AARP (2004) https://perma.cc/UA7H-UFZX.

79. In contrast, most legislation applicable to apartment tenancies in the United States, apart from legislation connected to the 2020 pandemic and legislation in rent-controlled jurisdictions, allows for the termination of tenancies at will without just cause.

80. For a list of states requiring good cause for eviction, see CARTER ET AL., *supra* note 78, at 68.

81. *See id.*

period and required notice periods for rent increases that exceed the required notice periods for increases in apartment rents.[82]

Rent regulations that apply only to mobile home parks have been adopted in seven states in response to the special nature of mobile home park tenancies. Four states—Delaware, New York, Rhode Island, and Vermont—have adopted statewide rent legislation applicable only to manufactured home community spaces.[83] In three other states, numerous localities (including about 90 in California and about 20 in Massachusetts) have adopted rent control ordinances applicable only to mobile home parks.[84] On the other hand, thirty-six states have banned local rent control ordinances.[85] Typically, mobile home park rent legislation ties allowable annual rent increases to the percentage increase in the Consumer Price Index (CPI). Under the specific provisions of virtually all rent regulations, and as a constitutional right, park owners may petition for rent increases in excess of otherwise allowable annual increases on the basis that they are not obtaining a fair return.[86]

F. The Economics of Owning a Mobile Home in a Mobile Home Park

Notwithstanding uncertainty about future rent levels and no guarantees that a park will not close, ownership of a mobile home (a freestanding, single-family structure) on a rented space in a mobile home

82. *See, e.g.*, 765 ILL. COMP. STAT. 745/6(a) (2008) (tenant must be offered a two-year lease); Arizona, ARIZ. REV. STAT. ANN. § 33-1413(G) and 765 ILL. COMP. STAT. 745/6(d) (90 days' notice of rent increase required).

83. *See* 25 DEL. C. §§ 7050-7056 (2019); N.Y. REAL PROP. LAW § 233-B (2019); 31 R.I. GEN. LAWS § 31-44.1-2 (2022); VT. STAT. tit. 10, §§ 6252-6253 (2022).

84. See *California MHP Rent Stabilization Ordinances (RSO aka SRSO)*, MOBILE HOME PARK OWNERS ALLEGIANCE (Sept. 4, 2023), https://perma.cc/866S-KFCD (listing local ordinances and summarizing their provisions).

85. *See Rent Control: Policy Issue,* NAT'L APARTMENT ASSN., https://perma.cc/X99H-SK8Z (last visited Jan. 18, 2024). In 1989, the Florida Supreme Court concluded that mobile home owners face an "absence of a meaningful choice" when their space rents are increased, providing a basis for the "class action requirement of procedural unconscionability." Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd., 541 So. 2d 1121, 1124 (Fla. 1988) (internal quotations omitted), *cert. denied*, 493 U.S. 964 (1989). However, Florida legislation bars local rent regulations. FLA. STAT. §166.043 (1)(a).

86. *See* Birkenfeld v. City of Berkeley 550 P.2d 1001, 1027 (Cal. 1976) (holding that a rent control ordinance must permit those who administer it to avoid confiscatory results); *see also* Hutton Park Gardens v. Town Council of W. Orange, 350 A.2d 1, 16 (N.J. 1975) ("Every rent control ordinance must be deemed to intend . . . to permit property owners to apply . . . for relief on the ground that the regulation entitles the owner to a just and reasonable rate of return.") For discussion of fair return standards, see generally Kenneth Baar, *Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches*, 29 REAL PROP. L. REP. 333 (Cal. Continuing Education of the Bar, Sept. 2006).

park continues to be an attractive alternative for millions of low-income households with limited options. Commonly, ownership of a mobile home on a rented space in a mobile home park continues to be more affordable than renting an apartment. This is especially true if a household has enough cash to purchase a mobile home, obviating the necessity of costly purchase financing. This is a common situation for seniors who have sold their single-family homes in a step to retirement. In 2023, the average U.S. mobile home park space rent was $717 for age 55+ mobile home parks and $624 for all-age parks,[87] which compared with an average asking rent of $1,465 for apartments.[88]

The prices of mobile homes in parks largely reflect regional and localized differences in the cost of the other housing alternatives, as well as the differences in the size and condition of the mobile home, and the quality of a park. Purchase costs of mobile homes that are in-place in mobile home parks typically range from $20,000 to $150,000, with the higher prices common in areas with higher rents and housing prices. The Census Bureau compiles thorough data on the sale price and size of newly manufactured mobile homes.[89] However, there are no public or private systematic sources of data on the purchase prices of mobile homes that are sold in-place in mobile home parks, even though those sales constitute about 90% of all mobile home sales in parks.[90] (An exception has been the State of Vermont, which has published reports on the average in-place sale price of mobile homes in mobile home parks.)[91]

Data on in-place purchase prices provides a rough sense of the scale of mobile home owners' investments. A park closure impact report prepared in 2010 for Carson, California, a city in the Los Angeles area, identified 196 mobile homes for sale within the county with a median price

87. Publicly available sources of data on average rents in mobile home parks are limited. *See* FANNIE MAE, *Multifamily Market Commentary, Lack of Communities Leaves Fundamentals at MHCs Tight*, (Sept. 18, 2023), https://perma.cc/LW24-UQ3B (Average Rent Age 55+ parks: $717, All Ages Parks: $624 (Q2 2023)). These averages may be high due to higher reporting rates by larger parks. The multifamily market commentaries provide information on sales prices of mobile home parks per space, the volume of sales, capitalization rates, and new mobile home park construction.

88. *See Housing Vacancies and Homeownership,* U.S. CENSUS BUREAU, https://perma.cc/NG8H-B85N (last visited Apr. 3, 2024).

89. *See Manufactured Housing Survey (MHS),* U.S. CENSUS BUREAU (July 12, 2022), https://perma.cc/F2ZA-EXU7.

90. Only about 30,000 new mobile homes are installed in mobile home parks each year. *See* TANYA ZAHALAK, FANNIE MAE, MULTIFAMILY ECONOMIC AND MARKET COMMENTARY: MANUFACTURED HOUSING LANDSCAPE 2020, 6 (May 21, 2020), https://perma.cc/2DEP-7X3W (reporting that from 2014 through 2018, 32% to 37% of new mobile homes were placed in mobile home parks). Assuming that mobile homes in mobile home parks sell once every ten years on average, the annual volume of mobile home sales in parks would be in the range of 300,000 out of about 3 million spaces. *See id.*

91. *See* Vt. Dep't. Hous. Cmty. Dev., *Vermont Mobile Home Park Registry & 2022 Mobile Home Parks Report*, 3 (Feb. 1, 2023), https://perma.cc/JE8Q-U9JW.

of $68,000.[92] A relocation impact report prepared in 2018 for a closure in the Fort Lauderdale, Florida area indicated that the median asking price for mobile homes on rental spaces in mobile home parks in neighboring areas was about $50,000 and that about 2% of the mobile home park spaces were vacant.[93] In New Hampshire, the average price of mobile homes in rental parks from 1999 to 2005 was $41,318.[94] In 2021, the average price of "used" mobile homes in Vermont was $44,687.[95] Since 2010, in line with increases in rents and housing prices, there have been steep increases in the prices of mobile homes in mobile home parks in California, with average prices exceeding $100,000 in the San Francisco Bay Area.[96] Most certainly, average prices have increased dramatically in the past few years, in conjunction with the national upsurge in rents and house prices.

G. The Economics of Owning a Mobile Home Park

To place the economics of mobile home park development in perspective, it may be noted that the investments of mobile home owners necessary for the successful establishment of mobile home parks exceed park owners' investments in the infrastructure associated with park development.[97]

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92. *See Planning Commission Staff Report: Relocation Impact Report for Rancho Dominguez Mobile Estates*, CITY OF CARSON, 4 and Appendix (Apr. 27, 2021), https://perma.cc/M7R3-9PU6 (Calculation of median sale price by author based on data in the report).

93. *See* Urban Group, Inc., *Replacement Housing Resources for Mobile Home Owners: Sunset Colony Mobile Home Park Fort Lauderdale, Florida*, at 11, 13 (2018), https://perma.cc/FH7H-TWK3.

94. *See* SALLY WARD ET AL., RESIDENT OWNERSHIP IN NEW HAMPSHIRE'S "MOBILE HOME PARKS:" A REPORT ON ECONOMIC OUTCOMES, CARSEY INST. 4 (2010), https://perma.cc/K42C-AEXQ.

95. Vt. Dep't. Hous. Cmty. Dev., *supra* note 91.

96. A park closure relocation impact report prepared for the owner of a park in the San Francisco Bay Area (Palo Alto) in 2015 indicated that the asking prices of two-thirds of the 186 mobile homes for sale within 35 miles were over $100,000 and that only ten of the mobile homes had a price under $50,000. *See Hearing on Buena Vista Mobilehome Park Residents Association's Appeal of Hearing Officer's Decision Relating to Mitigation Measures Proposed by Buena Vista Mobilehome Park Owner in Connection with Mobilehome Park Closure Application,* PALO ALTO CITY COUNCIL (Apr. 13, 2015), https://perma.cc/HP5A-DFPL (showing price range data based on Author's tabulation using data contained in Attachment 42 of the report).

97. In the 1970s, the costs of developing mobile home parks, excluding land costs, was in the range of $3,500 to $7,000. *See, e.g.*, Bank of America, *Mobilehome Parks*, 13 SMALL BUS. REP. No. 6, 1 (1976), https://perma.cc/UE9Z-47EA. This was while average mobile home prices ranged from $9,800 in 1974 to $17,600 in 1979. *See* U.S. HOUSING MARKET CONDITIONS, *supra* note 41. In a 1984 survey of park owners and mobile home owners in Los Angeles, park owners reported purchase prices averaging $6,000 per space and mobile home owners reported an average purchase price of $21,979 for their homes.

Especially in recent decades, the real estate industry has viewed mobile home park investments as particularly desirable.[98] Attractions include parks' extremely low vacancy and turnover risks, insulation from the impacts of downward cycles in the real estate market due to the captive nature of mobile home park tenancies, and an absence of a potential of any increase in competition emerging from an increase in the supply of mobile home park spaces.

Mobile home park operating expenses typically fall in the range of 35 to 50% of rental income.[99] Usually, gas and electricity services are either sub-metered or individually metered. Consequently, 50 to 65% of rental income is available to provide a return (net operating income) on the investment in the land and improvements in a mobile home park. In 2019, average sale prices of mobile home parks per mobile home space ranged from $38,800 in the Midwest to $53,800 in Florida and $69,300 in California.[100] In 2022, the Fannie Mae Multimarket commentary indicated that the average per-space value had increased by 38% over a two-year period and that the average price per space was $77,000.[101]

The advantages of investments in mobile home parks over other types of real estate investments have been recognized for decades. In 1994, an article in a prominent financial journal, *Forbes*, described the benefits of mobile home park ownership:

> For the landlord, owning the ground under a customer's $30,000 investment makes timely collection of rents relatively easy. It costs about $3,000 to move a double-wide home to another park's site. Park turnover rates are just 10% to 15%, compared with 50% in apartment buildings.[102]

See HAMILTON ET AL., CITY OF LOS ANGELES, MOBILE HOME PARKS UNDER RENT STABILIZATION, 11–12 (May 1985), https://perma.cc/6NFV-ZCYQ (providing Exhibit 2-13, Average Mobilehome Purchase Price, and 33 (purchase price of mobilehome park space/space).

98. *See, e.g.*, Anthony Effinger & Katherine Burton, *The Next Mobile Frontier: Trailer Parks Lure White Collar Types Seeking Double-Wide Profits*, WASH. POST (May 10, 2014), https://perma.cc/6HW4-MABS; *Why Mobile Home Parks are Wowing Wall Street*, NU-WIRE INVESTOR (Nov. 4, 2014), https://perma.cc/VLQ8-6TBJ.

99. *See* SAIA, *supra* note 26, at 80. An operating cost ratio of 40% is considered standard in the industry. *See* George Allen, *Not Your Grandfather's Mobile Home Park*, NAT'L REAL ESTATE INVESTOR (Apr. 3, 2019), https://perma.cc/8ACW-H7K3.

100. *See* FANNIE MAE, MULTIFAMILY MARKET COMMENTARY – AUGUST 2019: GROWING INVESTMENT IN MANUFACTURED HOUSING COMMUNITY ASSET CLASS 3 (Aug. 2019), https://perma.cc/R76P-BBRJ.

101. *See* FANNIE MAE, MULTIFAMILY MARKET COMMENTARY: A SLIGHT INCREASE IN THE SUPPLY OF NEW MANUFACTURED HOUSING COMMUNITIES 1, (Sept. 21, 2022), https://perma.cc/57LA-CDCE.

102. Howard Rudnitsky, *New Life for Old Mobile Home Parks*, FORBES, Nov. 7, 1994, at 44; *see also* George Allen, *Developing and Financing in Land-Lease Communities*, URB. LAND, 1996, at 35, https://perma.cc/479N-QD23.

In 2020, the *Wall Street Journal* article "Investors Discover There's Gold in the Mobile-Home Park" recounted the extraordinary returns obtained from mobile home park investments:

> One of the best-performing investments since last decade's housing crash: trailer parks . . . It is as if apartment owners didn't have to maintain or pay taxes on their buildings but still collected rent from those who lived inside . . . Even if residents can afford to move their homes, there aren't many places to plop an old double-wide. Plans for new parks usually meet local resistance. The right zoning is hard to find. Meanwhile, demand for manufactured homes has been stoked by retiring baby boomers, millennials with a taste for minimal living and prices for site-built single-family houses that have risen beyond the reach of many Americans . . . A who's who of big investors has joined the trailer-park hunt, boosting competition for facilities. Buyers have included pensions, sovereign-wealth funds and private equity firms . . . .[103]

The recession-proof nature of mobile home park investments has been repeatedly noted. In 2002, a prominent mobile home park industry data source described the advantages of park ownership relative to other real estate investments during a recession:

> MH Communities really shine during a recession. Those who can no longer scrape together $600-$1,000 every month for apartment rent flock to this property type to purchase next-to-new homes for $30,000 and less.[104]

In 2011, an article by a prominent advisor on mobile home park investments explained that "[t]his locked-in tenant base is what enables park owners to enjoy phenomenally stable revenue figures, even in major recessions."[105] If there is a decline in market demand, it will be reflected in a reduction in the price that prospective purchasers will pay for a mobile home, rather than being absorbed by a park owner in the form of a reduction in the rent.[106] The outcomes during the COVID-19 pandemic

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103. Ryan Dezember, *Investors Discover There's Gold in the Mobile-Home Park,* WALL ST. J., Feb. 26, 2020, at B1–B2, https://perma.cc/KZ34-L6XV. *See also* Rupert Neate, *America's Trailer Parks: The Residents May Be Poor but the Owners are Getting Rich*, THE GUARDIAN (May 3, 2015), https://perma.cc/RLG6-B4EJ.

104. George Allen, *Manufactured Communities Take Recession in Stride*, 67 J. OF PROP. MGMT. 70, 70 (2002), https://perma.cc/6XFR-AM8Y.

105. Frank Rolfe, *Why Investors like Warren Buffet are Bullish on Mobile Home Parks*, WEALTHMANAGEMENT.COM, (Apr. 15, 2011), https://perma.cc/6JVT-8TWD.

106. The interplay between space rent and mobile home prices is a commonly understood phenomena. *See, e.g.*, Werner Z. Hirsch, *An Inquiry into Effects of Mobile Home Park Rent Control*, 24 J. URB. ECON. 212, 215 (1988). When agreeing on a home price, purchasers of mobile homes in mobile home parks take into account the overall cost

downturn in rental housing markets in 2020 and 2021 confirmed this conclusion. While the apartment rental industry was beset by declines in average rent levels and massive levels of rent non-payment, mobile home parks stood out as solid investments, with increasing revenues.[107]

H. The Cessation of Mobile Home Park Construction

Now, the average age of mobile home parks in the United States is 43 years.[108] Mobile home park construction declined sharply in the 1990s and virtually ceased by 2000. One national survey based on data from 16,000 mobile home parks nationwide indicated that 11% of the parks were built in 1990s, and only 3% were constructed between 2000 and 2019.[109] The data also indicated that, in each year from 2007 to 2015, less than 1,500 spaces were added.[110] As of September 2023, only three mobile home parks with 450 spaces were under construction.[111]

Conceivably, the feasibility of mobile home park construction could be significantly altered in outer portions of metropolitan areas with lower densities and lower land values if major zoning reforms were adopted. Possible measures include 1) increases in allowable mobile home park densities well above the standard ceiling of six to ten mobile homes per acre, 2) reductions in minimum acreage requirements for mobile home parks, and 3) restrictions on the allowable grounds for rejections by local governments of proposals to construct mobile home parks. In a radical departure from standard mobile home park zoning in the United States, Portland Oregon, increased the allowable density of existing and new mobile home parks to 29 spaces per acre in 2018.[112] However, the history

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of the housing package, which is the combination of the space rent and the cost of the mobile home.

107. *See* Sebastian Obando, *Institutional Investors Bet on Manufactured Housing as Occupancy, Rents Continue to Grow*, WEALTHMANAGEMENT.COM (Sept. 29, 2020), https://perma.cc/QH79-JZGL; *see also* Bloomberg, *Property Investors Tap Mobile Home Parks for COVID-Era Returns*, WEALTHMANAGEMENT.COM (Sept. 2, 2020), https://perma.cc/W5QR-3SYN.

108. FREDDIE MAC, DUTY TO SERVE UNDERSERVED MARKETS PLAN 2022–2024, at MH2, (Jan. 12, 2023), https://perma.cc/2UXN-NM95.

109. FANNIE MAE, DUTY TO SERVE UNDERSERVED MARKETS PLAN FOR THE MANUFACTURED HOUSING MARKET, at MH14 (Dec. 20, 2019), https://perma.cc/GNB8-CC5J (Author's calculation of percentages).

110. FANNIE MAE, MULTIFAMILY MARKET COMMENTARY, at 3 (June 16, 2016), https://perma.cc/K583-PCLN (providing data in table on "Construction in Manufactured Housing Communities by Number of Pads").

111. *See* FANNIE MAE, MULTIFAMILY MARKET COMMENTARY, at 4 (Sept. 18, 2023), https://perma.cc/KJ3R-45U3.

112. *See* PORTLAND, OR., CODE § 33.120.030.F. This type of standard would be more likely to have an impact in the peripheries of urban areas with lower land values associated with alternate uses.

of public aversion to mobile home parks does not support an expectation that other jurisdictions might adopt this type of policy.

I. Increasing Concentration of Ownership of Mobile Home Parks

Historically, investment in mobile home parks was considered as a low-class or low-prestige investment, catering to low-class clientele. Mobile home parks were largely owned by "small" investors who owned only one park.[113] By the 1980s, the lack of prestige of mobile home park ownership among investors was replaced by the realization of the strength of investments in parks and the extensive entry of wealthier investors and major real estate investment trusts ("REIT"s) into mobile home park ownership.[114] The increasing interest of large investment entities in mobile home park investments has led to a substantial concentration of mobile home park ownership. A few national real estate firms have purchased a substantial portion of the national supply of mobile home park spaces.[115] Currently, three real estate entities each own between 60,000 and 90,000 mobile home park spaces.[116] Large scale investments in numerous mobile home parks are now standard fare in the real estate industry. For example, in 2017, one U.S. company invested $1.8 billion to obtain 117 mobile home parks, and one foreign-based company invested $1.5 billion to obtain a 71% interest in 178 parks.[117] Impersonalization of park owner/mobile home owner relationships and increasing rates of rent increases and exceptional rent increases for some parks have been attributed to this trend.[118]

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113. *See* Bernhardt, *supra* note 22, at 215–20 (discussing park ownership patterns in the 1970s).

114. *See* Rudnitsky, *supra* note 102, at 44.

115. *See, e.g.*, Effinger, *supra* note 98; Drew Harwell, *Mobile Home Park Investors Bet on Older, Poorer America*, TAMPA BAY TIMES (May 19, 2014), https://perma.cc/YF2Q-D4VX; *Why Mobile Home Parks are Wowing Wall Street*, *supra* note 98; Arleen Jacobius, *More Managers Make Move to Mobile Homes*, PENSIONS & INVS. (Apr. 1, 2019, 1:00 AM), https://perma.cc/5ZSD-JNNC; Rana Foroohar, *Why Big Investors are Buying up American Trailer Parks*, FT MAGAZINE, Feb. 7, 2020, https://perma.cc/CSG7-T6AG; Michael Casey & Carolyn Thompson, Associated Press, *Rents Spike as Big-Pocketed Investors Buy Mobile Home Parks*, LA TIMES, (July 25, 2022) https://perma.cc/XZH6-7H8R.

116. In contrast, as of 1994, the four largest REITs each owned between 10,000 and 25,000 spaces. *See* Rudnitsky, *supra* note 102.

117. FANNIE MAE, MULTIFAMILY MARKET COMMENTARY—SEPTEMBER 2017: MANUFACTURED HOUSING COMMUNITY PROPERTY SALES SLOWED IN FIRST HALF 2017, at 2 (Sept. 15, 2017), https://perma.cc/HKQ8-W53A.

118. *See, e.g.*, Liam C. Conrad, *Immobile Homes: The Lack of Permanence in Mobile Home Parks and the Risk for Owner-Tenants*, 109 IOWA L.R. 837 (2024). Half of Iowa's mobile home parks are owned by out-of-state investment firms. *See id*. at 839; Abha Bhattarai*, We're all afraid': Massive Rent Increases Hit Mobile Homes*, WASH POST (June 6, 2022), https://perma.cc/DJ73-RKKK; Sheelah Kolhatkar, *What Happens When*

Table 1. Top Mobile Home Park Community Owners (2021 Data)[119]

No. of Spaces Owned	No. of Owners
60,000 – 90,000	3
40,000 – 49,999	1
30,000 – 39,000	1
20,000 – 29,000	2
10,000 – 19,999	13
5,000 – 9,999	21

III. LEGISLATION REQUIRING MITIGATION OF THE ADVERSE IMPACTS OF MOBILE HOME PARK CLOSURES AND LIMITATIONS ON CLOSURES

As indicated, state closure legislation is now widespread. Laws mitigating, moderating, or restricting mobile home park closures include the following types of provisions:

- Increased time periods for advance notice of evictions for park closures;
- Requirements to prepare relocation impact reports and/or relocation plans;
- Mitigation payments park owners must provide;
- Mitigation payments from state funds;
- Mobile home park only zoning;
- Limits on closures of mobile home parks; and
- Other measures.

In some states, state closure laws preempt local legislation,[120] while local laws are authorized in other states.[121]

Investment Firms Acquire Trailer Parks, NEW YORKER, Mar. 15, 2021, https://perma.cc/C87X-P2EP; Jennifer Brown & Kevin Simpson, *Mobile Home Parks Move From Mom-And-Pop to Corporate*, AP NEWS (Sept. 17, 2019), https://perma.cc/QW55-KW85.

119. The Author's compilation is based on data listing the number of parks and spaces owned by the top 50 owners. *See* Patrick Revere, *Top 50 Manufactured Housing Community Owners,* MH INSIDER (Apr. 15, 2021), https://perma.cc/E2ND-ZNLA.

120. *See, e.g.*, FLA. STAT. §723.004; MINN. STAT. § 327C.095, subdiv. 15.

121. *See, e.g.*, CALIF. GOV. CODE § 65863.7(K) (authorizing "more stringent local measures"); Lauren Malpica, *Move It Or Lose It: Washington State's Mobile Home Park Conversion Process and its Failures*, 16 SEATTLE J. FOR SOC. JUST. 487, 504–07 (2018) (discussing local ordinances in Washington); Thunderbird Mobile Club, LLC v. City of

A. Increased Time Periods for Advance Notice of Evictions for Park Closures

The length of advance notice periods for closures varies greatly among the states that have adopted closure legislation, ranging from four months to two years. Also, state notice requirements contain varying provisions regarding when notices may be issued. Some states only allow a notice after a relocation plan has been approved and/or only after a permit for an alternative land use has been granted.[122] In some states, notices of planned closures must be provided to a state agency, as well as to the residents.[123] Also, states have adopted varying requirements in regard to what types of additional notices are required, such as advance notice of applications to the local government for permission to change the land use[124] or notification of the availability of state assistance and/or tax credits.[125]

Wilsonville, 228 P.3d 650, 657–63 (Or. Ct. App. 2010) (rejecting view that Oregon state law preempted local regulation of mobile home park closures).

122. *See, e.g.*, MONT. CODE, § 70-33-433 (2)(b); NEV. REV. STAT. § 118B.183.2.(c). For discussion of mobile home owners' political efforts before local governments in the face of proposals to close parks, see Esther Sullivan, *Becoming Visible in the Public Sphere: Mobile Home Park Residents' Political Engagement in City Council Hearings*, 44 QUALITATIVE SOCIOLOGY 349 (2021).

123. *See, e.g.*, CONN. GEN. STAT. § 21-70(c); Fla. Stat. § 723.061(1)(d)(2); NEV. REV.STAT. § 118B.183.2.(a).

124. *See, e.g.*, CAL. CIVIL CODE § 798.56 (g)(1) (imposing a 60-day notice requirement).

125. *See, e.g.*, OR. REV. STAT. § 90.645(3)(c).

Table 2. Required Notice Periods for Evictions for Mobile Home Park Closures[126]

Required Notice Period	No. of States	States
100 days	1	Missouri
6 months	13	Arizona; California (12 months if no permits required for change in use); Idaho; Montana; Nevada; New Mexico; New York; North Carolina; North Dakota; Pennsylvania; Texas; Virginia; West Virginia
9–11 months	2	Alaska (a locality may require a longer period); Utah
12 months	8	Colorado; Delaware; Illinois; Maine; Michigan; Minnesota; Oregon; Rhode Island
18 months	4	Connecticut; New Hampshire; New Jersey; Vermont
24 months	3	New York; Washington (shortened to one year if park owner pays "assessed market value" (in-place value) for the mobile home, shortened to 18 months if park owner pays $15,000 for double-wide and $10,000 for single-wide); Massachusetts (additional requirements: four years notice required if notice of closure issued within one year of a park purchase by new owner, five years notice requires to mobile home owners who purchased their mobile home from the park owner)

Typically, the closure laws prohibit or limit rent increases after the closure notice.[127] Some state laws do not permit closure notices or applications for changes in a land use if the rents were increased within specified periods preceding the application or notice of termination.[128] Otherwise, the intent of the notice protections and required mitigations could be circumvented through rent increases that force residents to vacate

126. ALASKA STAT. § 34.03.225 (A)(4); ARIZ. REV. STAT. § 33-1476.01.A; CAL. CIV. CODE § 798.56 (G)(1); COLO. REV. STAT. § 38-12-203(1)(D)(II); CONN. GEN. STAT. § 21-80(B)(1)(E); DEL. CODE TIT. 25, § 7010(B)(1); FLA. STAT. § 723.061(1)(d); IDAHO CODE § 2010(1)(1); 765 ILL. COMP. STAT. 745/8.5; MASS. GEN. LAWS. Ch.140, § 32l(8); ME. STAT. TIT. 10, § 9097.1.F; MINN. STAT. § 327C.095, SUBDIV. 1; MO. REV. STAT. § 700.600.2; MONT. CODE § 33-433 (2)(B); NEV. REV. STAT. § 118B.183.2(C); N.H. REV. STAT. § 205-A:3; N.M. STAT. § 47-10-5.E; N.J. ADMIN. CODE § 5.24-1.7(A) & (B); N.Y. REAL PROP. LAW SEC 233.B.6.(I); N.C. GEN. STAT. § 42-14.3 (A); N.D. CENT. CODE §10-13; OR. REV. STAT. § 90.645(1)(B); PA. CONS. STAT, § 398.11.2 (A)(1); R.I. GEN. LAWS § 31-44-3.2(A)(1); TEX. PROP. CODE § 94.204; UTAH CODE § 57-16-18.(1)(A); VT. STAT. TIT 10, § 6237A(A); VA. CODE § 55.1-1308.B; WASH. REV. CODE § 59.20.080(1)(e); W.VA. CODE § 37-15-6a(A)(2)

127. *See, e.g.*, DEL. CODE TIT. 25, § 7010(B)(2); NEV. REV.STAT., § 118B.177.9; OR. REV.STAT. § 90.645(7).

128. *See, e.g.*, NEV. REV STAT, 118B.183.7(a) (providing no rent increase "[f]or 180 days before filing an application for a change in land use, permit or variance affecting the manufactured home park").

before qualifying for the minimum notice protections and any entitlement to relocation benefits.

The Delaware and Massachusetts laws provide for damage awards if the closure notice was not given in good faith.[129] Under the Massachusetts closure law, there is a presumption of a lack of good faith when "the discontinuance notice contains no planned alternative use for the land upon which the manufactured housing community sits or where the current zoning of the land does not allow for any stated planned alternative use."[130] Such measures are adopted to offset strategies designed to reduce park occupancy and consequently potential opposition before introducing a proposal for an alternate land use.

B. The Extent of Mobile Home Park Closures—Trends & Determinants

Generally, states do not systematically compile and publish data on the number of park closures and the number of spaces eliminated because of closures. Exceptions include Vermont and Washington, which require that notices of proposed mobile home park closures be supplied to a state agency that prepares annual lists of closures.[131] At various times, states have undertaken systematic studies of the magnitude of closures in response to concerns over their adverse impacts.[132] These studies document that closures have been connected to increasing profit levels that can be realized through conversions to alternative land uses, rather than a lack of profitability of mobile home park investments, and that the level of closures has declined during downturns in the real estate market.[133]

While the percentage of overall park spaces that have been lost to closures may not be a substantial percentage of national supply up to now, in some areas, the losses have been substantial relative to the local or state supply. In Florida, between 1994 and 2006, 263 mobile home parks with 24,613 spaces closed. A report by a Florida Senate committee in 2006 attributed this wave of closings to the strength of the real estate market and

129. *See, e.g.*, DEL. CODE, tit. 25, § 7024(c).

130. MANUFACTURED HOUSING CMTY. REGS. § 940 CMR 10.10(1)(f).

131. *See* Vt. Dep't. Hous. Cmty. Dev., *supra* note 91 (including a list of parks that have closed and the number of spaces in those parks); *Manufactured/Mobile Home Community Closures as of 8/11/2023*, WASHINGTON STATE DEP'T OF COMM., https://perma.cc/89JL-WSWG (last visited Feb. 9, 2024).

132. For a detailed economic analysis of the potential for park closures and related issues, see McClanaghan & Associates, *Manufactured Home Study: An Examination of Issues Facing Mobile Home Park Communities Across B.C.*, (Feb. 2007), https://perma.cc/BH5H-KCMN.

133. For a detailed study of the distribution and timing of mobile home park closures in Houston, Texas, see generally Esther Sullivan, *Moving Out: Mapping Mobile Home Park Closures to Analyze Spatial Patterns of Low-Income Residential Displacement*, 16 CITY & CMTY. 304 (Sept. 2017).

noted that, as real estate appreciation accelerated, the level of park closures increased.[134] In Oregon, which has about 65,000 mobile home park spaces, a total of 66 mobile home parks with 2,654 spaces closed between 1997 and June 2009. In a 2011 report, Oregon's Department of Housing and Community Services attributed its significant level of park closures to a robust economy prior to 2008 and noted how closures declined to a very low level following the downturn in 2008.[135]

Increasing closure rates and uncertainty about the future of mobile home parks have been reported from all around the United States.[136] In 2007, Idaho's manufactured home advisory committee estimated that 85% of the mobile home parks in Boise were threatened by redevelopment.[137] A study of the future prospects of mobile home parks in Anchorage, Alaska concluded that a substantial portion of the 4,500 mobile home park spaces in that city faced a substantial risk of closure.[138] A study about mobile home parks in San Antonio, Texas—*Endangered: San Antonio's Vanishing Mobile Home Parks and a Path for Preservation*—reported that nine out of 88 mobile home parks in the city had closed between 2014 and 2020 and that park owners were allowing their parks to become rundown and subject to closure orders based on code violations in anticipation of a conversion to more profitable uses.[139] A press report on park closures in the Phoenix, Arizona area, indicated that from 2000 to 2018, the number of mobile homes in the county had decreased by 4,500.[140]

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134. *See* Florida Senate, Committee on Community Affairs, *Mobile Home Relocation: Interim Project Report 2007-106*, at 3 (Oct. 2006), https://perma.cc/VWJ3-YGA8.

135. *See Oregon Housing and Community Services 2011 Annual Report*, MANUFACTURED COMMUNITIES RES. CTR., 15 (Mar. 2012). For a detailed study of mobile home park closures in Oregon, see Tremoulet, *Policy Response*, *supra* note 27.

136. *See, e.g.*, DAREN NYQUIST, CNTR. FOR URB. AND REG'L AFFS., PARK CLOSING ORDINANCES 2–3 (Feb. 2007), https://perma.cc/H2SU-VVMW; Jamie Smith Hopkins, *Zoning, Hot Land Prices Reduce Md. Trailer Parks*, BALT. SUN, Apr. 8, 2004, https://perma.cc/PMN8-EW5M; Corey Kilgannon, *Trailer-Park Sales Leave Residents with Single-Wides and Few Options*, N.Y. TIMES, Apr. 18, 2007, https://perma.cc/9APG-YDHY; Jason Buch, *Clock's Ticking for Mobile Home Parks in Red-Hot Seattle*, N.Y. TIMES, Jul. 22, 2019, https://perma.cc/4GYC-WFSU.

137. *See* JIM BIRDSALL ET AL, MOBILE HOME LIVING IN BOISE: ITS UNCERTAIN FUTURE AND ALARMING DECLINE, BOISE STATE UNIV. 5 (Nov. 2007), https://perma.cc/9LZM-Z4TK.

138. *See* Tyler Robinson, *Preservation or Redevelopment Options, Conditions and Risks Facing Mobile Home Parks in Anchorage, Alaska and the Case for Affordable Housing*, UNIV. OF MINN. (2009), https://perma.cc/3LLC-ZXX2.

139. *See generally* HEATHER K. WAY ET AL., ENDANGERED: SAN ANTONIO'S VANISHING MOBILE HOME PARKS AND A PATH FOR PRESERVATION, UNIV. TEX. AT AUSTIN (Jan. 2020), https://perma.cc/83F8-LFZF.

140. Catherine Reagor & Jerod MacDonald-Evoy, *As Land Values Rise in Phoenix Area, Mobile-Home Parks Disappear*, ARIZ. REPUBLIC (July 26, 2018), https://perma.cc/QH67-CDAP.

C. Requirements to Prepare Closure Impact Studies and/or Relocation Plans

Some states require the preparation of relocation impact reports ("RIR"s) in conjunction with proposed mobile home park closures.[141] Several states require that the plan be submitted to a state agency as well as to the residents and the local government.[142] In jurisdictions which require RIRs, rights to close parks are contingent on the submission of an adequate relocation plan.

RIRs usually provide documentation about available housing alternatives, with information about the costs of mobile homes, rents in other mobile home parks, and apartment rents, and describe the mitigation measures that will be undertaken. However, RIRs usually do not address the question of where the displaced mobile home owners can actually relocate, taking into account their actual resources and income levels. Often, while not acknowledging so explicitly, RIRs commonly demonstrate that, in addition to a lack of vacant mobile home spaces where displaced homes could be moved, apartment rentals are unaffordable for a substantial portion of the mobile home owners that will be displaced, especially in areas with high housing costs.

Commonly, California municipal and county ordinances set forth detailed requirements for RIRs and/or standards for appraisals of the in-place value of mobile homes. Some ordinances provide that the park owner shall prepare the impact analysis and relocation plan. A conflict of interest is inherent in this approach, which leaves the home owners with the legal, political, and financial burden of rebutting a plan that likely will be most favorable to the park owner.[143] Other ordinances provide that the city shall select the consultant and/or the appraiser to prepare the relocation impact report and appraisals of the in-place value of the mobile homes.[144]

Under some California ordinances, park closure applicants must submit appraisals of the park in its current use and its planned replacement use.[145] Such information provides a valuable understanding of the economic benefits for a park owner of a closure. Similarly, New York law requires consideration of the value of the development rights for the park

141. *See, e.g.*, CAL. GOV'T CODE § 65863.7 (2023) (applying to all conversions, except conversions pursuant to the subdivision map act); CAL. GOV'T CODE § 66427.4 (D2023) (applying to closures pursuant to the subdivision map act); DEL. CODE ANN. tit. 25, § 7010(b)(3) (2019); MD. CODE ANN., REAL PROP. §8A-1201(2023); MINN. STAT. § 327C.095 (2023).

142. *See, e.g.*, DEL. CODE tit. 25, § 7010(b)(4) (2019).

143. *See, e.g.*, LAGUNA BEACH, CA., MUN. CODE §§ 1.11.001 - .060.

144. *See, e.g.*, PETALUMA, CA., CODE § 8.34.050.C.; CONCORD, CA, CODE § 58-54(a).

145. *See, e.g.*, HUNTINGTON BEACH, CA., MUN. CODE § 234.09.D.4; PALO ALTO, CA., MUN. CODE § 9.76.030(f).

owner that are associated with a planned closure and conversion to a new use in setting the amount of the required mitigation.[146]

D. Mitigation Payments Park Owner Must Provide

A substantial portion of state laws require park owners to provide for some mitigation of the financial impacts of closures on mobile home owners. Typically, the laws set forth mitigation levels at the cost of physically moving a mobile home. Others require mitigation for the loss of the in-place value of mobile homes that cannot be relocated to another park within a specified area.

Some state laws specify fixed amounts of required mitigation fees. Other state laws set forth detailed standards for determining the required payment to each displaced household, with a ceiling on the total amount. In general, specific amounts set forth in state laws (typically in the range of $2,000 to $12,000) are small relative to the increase in value of the park land that will be realized because of a closure and conversion to a more profitable use. The following table illustrates gains from the conversion of a mobile home park to condominium use, subject to the obvious qualification that the economics of every conversion is different.

146. *See* N.Y REAL PROP. LAW § 233 b.6.(iii)(B)(5).

Table 3. Gains from Closure of a Mobile Home Park and Conversion to Condominium Development—Hypothetical Cases

Mobile Home Park Land Use				
Monthly MH space rent	300	400	600	800
Annual MH space rent	3,600	4,800	7,200	9,600
Annual net operating income (NOI)/MH space (60% of annual space rent)	2,160	2,880	4,320	5,760
Land value/MH space (using 6% capitalization rate) (Annual NOI/.06)	36,000	48,000	72,000	96,000
Mobile home spaces/acre	8			
Land Value per acre (8 MH spaces/acre)	**288,000**	**384,000**	**576,000**	**768,000**
Condominium Land Use				
Sale price/Condo unit[147]	300,000	400,000	500,000	750,000
Value of land /Condo unit (20% of condo sale price)	60,000	80,000	100,000	150,000
Land Value/Acre 16 Condominium Units/Acre	**960,000**	**1,280,000**	**1,600,000**	**2,400,000**
Land Value/Acre 32 Condominium Units/Acre	**1,920,000**	**2,560,000**	**3,200,000**	**4,800,000**

Under Massachusetts law and recently adopted laws in California and Colorado, the required mitigation for mobile home owners who cannot move their mobile homes to another park is the "in-place" value of the mobile home.[148] Under the Massachusetts law, if the mobile home was purchased from the park owner, the valuation shall also take into account any value of the mobile home attributable to below-market rent.[149] Some Oregon cities require mitigation to be the "real market value of the home as reported in the most recent property tax assessment" (an amount higher

147. In November 2023, the average price of an existing condominium in the United States was $350,100. Nat'l Assoc. of Realtors, *Existing-Home Sales Expanded 0.8% in November, Ending Five-Month Slide* (Dec. 20, 2023), https://perma.cc/5N92-UKNZ.

148. *See* MASS. GEN. LAWS, ch. 140, § 32 (7A); COL. REV. STAT. § 32-12-203.5 (1)(b)(2)(b) (2022). Under the California law, in-place value is defined as the value in "the current in-place location of the mobilehome and shall assume the continuation of the mobilehome park." CAL. GOV'T CODE, § 65863.7 (a)(2)(B). Local ordinances provide varying procedures for determining value and resolving disputes over value.

149. *See* MASS. GEN. LAWS, ch. 140, § 32 (7A).

than the mitigation required by state law).[150] New York law lists criteria which shall be considered in determining the amount of required mitigation, subject to a ceiling of $15,000 per space, without setting forth a specific formula.[151]

Under some state laws, mobile home owners who cannot relocate their mobile homes are entitled to greater mitigation payments than the owners who can relocate their homes, while, under one state law, residents who cannot move their homes are entitled to a lower amount.[152] Providing lower relocation allowances for mobile home owners who cannot move their homes makes little sense because those home owners are more severely impacted by a closure than mobile home owners who can save their home and part or all of their investment by relocating it.

State laws have varying provisions regarding the required timing of relocation payments of relocation costs. Some states require that relocation payments be made before a displaced household moves[153] or provide for direct payment to the moving contractor.[154] Under other state laws, reimbursement can only be applied for and obtained after the move occurs, thereby placing burdens on low-income households which may be unaffordable.[155] Commonly, states prohibit park owners from charging mobile home owners for the cost of removing their mobile homes if they are abandoned as a consequence of the closure.[156] Texas does not provide for any mitigation for displaced mobile home owners and does not require park owners to pay for the cost of removing homes that are abandoned because of a closure.[157]

150. *See e.g.*, OREGON CITY, ORE., MUN. CODE 15.52.050.B; WEST LINN, ORE CODE § 5.840(2); WILSONVILLE ORE, CODE OF ORDINANCES, § 6.341(1)(b). In some cities, this mitigation is a condition to obtaining a density bonus. BEND ORE CODE § 7.45.025.A.2.

151. *See* N.Y. REAL PROP. LAW § 233.a.6 (iii)(B).

152. *See* sources cited *infra* notes 158 and 162 and tables in accompanying text. Under Arizona law, providing for relocation assistance from the State fund, mobile home owners who cannot relocate their homes are only eligible for one quarter the amount of allowed for home owners who can relocate their home. Under the Florida statute, home owners who cannot relocate their homes are entitled to only one half the amount allowed for home owners who can relocate their home. *See id.*

153. *See, e.g.*, OR. REV. STAT. § 90.645(6). Half of the required mitigation must be paid within seven days of the eviction notice to the tenant; the second half is due within seven days after the tenant moves. *See id.*

154. *See, e.g.*, ARIZ. REV. STAT. § 33-1476.01; MINN. STAT. § 327C.095, subdiv. 13(d) (2016).

155. *See, e.g.*, WASH. REV. CODE § 59.21.050 (2011); Malpica, *supra* note 121, at 518–522 (2018) (giving a critique of the law).

156. *See, e.g.,* OR. REV. STAT. § 90.645(5)(b)(B) (2024).

157. *See* TEXAS. PROP. CODE § 94.204(a)(1)(B) (2024).

Table 4. State Laws—Mobile home Park Closures Required Mitigation Payments from Park Owner[158]

Required Mitigation	If MH Relocated	If MH Not Relocated
California	In-place value of mobile home	
Colorado	Actual relocation costs	The greater of $7,500 or in-place value
Connecticut	Actual relocation costs up to $10,000	$10,000
Florida	Payment to state relocation fund, $2,750 single-wide, $3,750 double-wide	Payment to state relocation fund, $1,375 single-wide, $2,750 double-wide
Maryland	10 months rent paid in mobile home park	
Massachusetts	Actual relocation costs	In-place value
Minnesota	Up to $3,250 single-wide and $6,000 double-wide-payment to state relocation fund (payments limited for parks worth less than $500,000)	
Nevada	Actual relocation costs	"Market value," determined by National Auto Dealers Ass'n ("NADA") guidelines[159]
New Jersey	5 months rent	
New York	Up to $15,000 based on consideration by a court of specified factors, including the "value of development rights" and any other factors that the court "determines are relevant"	
Oregon	$6,000 single-wide, $8,000 souble-wide Annually adjusted by increases in the Consumer Price Index. Cities may require higher payments	
Pennsylvania	Relocation costs up to $4,000 single-wide and $6,000 double-wide adjusted by CPI	Greater of $2,500 or appraised value

158. *See* CAL. GOV'T CODE § 65863.7(a)(2)(A) (2024); COLO. REV. STAT. § 38-12-203.5 (2024); CONN. GEN. STAT. § 21-70a (2024); FLA. STAT. 723.062 (2024); MASS. GEN. LAWS ch. 140, § 32L (7a) (2024); MD. REAL PROP. CODE § 8A-1201(2024); MINN. STAT. § 327C.095, subdiv. 12(a) (2024); NEV. REV. STAT. §§ 118B.183.6(b), 118B.183.7 (2024); N.J. ADMIN. CODE § 5:24-1.7 (2024); N.Y. REAL PROP. LAW § 233.b.6(iii) (2024); OR. REV. STAT. § 90.645(1)(B) (2024); 68 PA. STAT. AND. CONS. STAT. §§ 398.11.2(c), (d) (2024); R.I. GEN. LAWS § 31-44-3.2(a)(2) (2024); VA. CODE § 55.1-1308.1 (2024); WASH. REV. CODE § 59.20.080(1)(E)(2024).

159. NADA values do not take into account the in-place value of mobile homes. *See* SAIA, *supra* note 26; *Manufactured Housing Resource Guide: Protecting Fundamental Freedoms in Communities,* NAT'L CONSUMER LAW CTR. GUIDE, 7 (Jan. 2015), https://perma.cc/5RQC-9HPC. NADA values have been criticized:

> A common technique of community owners is to insist, as a condition of the lease, on an option to purchase the home on resale. Sometimes these lease clauses specify that the community owner can purchase the home at the NADA value. The *NADA Manufactured Housing Appraisal Guide* is a publication of the National Automobile Dealers Association and is similar to the "blue book" used to value used cars. The NADA guide has built-in depreciation assumptions and denies the homeowner the "as sited" value of the home.

Manufactured Housing Resource Guide, supra, at 7.

E. Mitigation Payments from State Funds

Some states provide relocation assistance from a state relocation trust fund. Commonly, such funds are financed with annual per-space assessments of park owners and/or park residents. Florida adopted this type of legislation after a state court ruled that park owners could not be required to make mitigation payments when they closed their parks.[160] Oregon provides a tax credit of $5,000 to displaced home owners, which is available regardless of whether or not the homeowner is liable for any payments of state taxes.[161]

Table 5. State Laws—Mobile home Park Closures Mitigation Payments by the State[162]

Required Mitigation	If MH Relocated	If MH Not Relocated
Alaska	State fund, amount determined by locality	
Arizona	Actual relocation costs up to $7,500 for single-wide, up to $12,000 for double-wide, plus extra $2,500 if mobile home is "groundset"	¼ of maximum mitigation required for relocation costs
Delaware	Actual relocation costs up to $8,000 for single-wide, up to $12,000 for double-wide	If MH cannot be relocated, lesser of appraised value of mh or $5,000 for single-wide and $9,000 for double-wide, mh owner must pay for appraisal
Florida	Actual relocation costs up to $3,000 for single wide, up to $6,000 for double-wide	Single-wide: $1,375, Double-wide: $2,750
Minnesota	Relocation costs up to $7,000 for single-wide, up to $12,500 for double-wide	Appraised value – max am't: Single-wide: $8,000; Double-wide: $14,500
Oregon	$5,000 state tax credit, regardless of whether taxes due, in addition to mitigation required from park owner	

160. *See* 2001 Fla. Laws. 2100–01, § 8; *accord* 1995 Wash. Sess. Laws 428–35.

161. *See* OR. REV. STAT. § 316. 090 (2024).

162. *See* ALASKA STAT. § 34.03.225(a)(4) (2024); ARIZ. REV. STAT. § 33-1476.01.C (2024); 1 DEL. ADMIN CODE §§ 201.1.3 (detailing allowable mobile home relocation costs), 1.6 (specifying amount of mitigation when a mobile home cannot be relocated) (2024); FLA. STAT. § 723.0612(1)(b), (7) (2024); MINN. STAT. § 327C.095, subdiv. 13(e); OR. REV. STAT. § 316.116; 2007 Or. Laws 2788–89, §§ 17–18; WASH REV. CODE § 59.21.021 (2024); WASH. ADMIN. CODE §§ 365-212-030, 050 (2024). WASH. REV. CODE § 59.21.021 (2024).

F. Mobile Home Park Only Zoning

In recent years, local governments in several states have adopted zoning ordinances that only allow mobile home park uses on parcels with mobile home parks or severely restrict other types of uses. Numerous California and Washington local jurisdictions have adopted laws that limit allowable uses of land with mobile home parks to this use or only allow other low density uses in addition to mobile home parks (such as single-family dwellings and accessory uses).[163] Austin, Texas has adopted similar restrictions.[164] In 2018, Portland, Oregon adopted a mobile home park only land use designation after documenting a widespread potential for park closures to realize more profitable land uses.[165] Its ordinance includes measures designed to preserve existing park spaces by providing transferable development rights to park owners in lieu of increases in allowable density, as well as permitting higher park densities.[166] Several California jurisdictions have adopted zoning requiring that senior-only parks remain senior-only as long as they are in this use.[167]

G. Limits on Closures of Mobile Home Parks

Under a few state laws and some local laws, limits on closures of mobile home parks, apart from notice and mitigation requirements, have been extensive. Massachusetts has adopted enabling legislation for individual municipalities with standardized provisions authorizing the denial of applications to discontinue a park on the basis of detrimental impacts of a closure on park residents and the supply of affordable housing.[168] Enactments by Massachusetts municipalities require consideration of the aggravation of the shortage of safe, decent, and affordable mobile home park sites in the town that would be caused by a

163. *See, e.g.,* CAPITOLA, CAL., CODE § 17.16.010.B.3 (2024); HUNTINGTON BEACH, CAL., CODE §§ 227.02–10 (2024); LANCASTER, CAL., CODE §§ 17.08.350–410 (2024); SAN JUAN CAPISTRANO, CAL., CODE, § 9-3.301 (2024); SANTA CRUZ COUNTY, CAL., CODE § 13.10.456–458 (2024); BOTHELL, WASH., CODE § 12.64.104.B.3 (2024); KENMORE, WASH., CODE §§ 18.21.045, 055 (2024); SNOHOMISH COUNTY, WASH., CODE §§ 30.21.020–040 (2024).

164. *See* AUSTIN, TEX., CODE § 25-2-491 (2024).

165. *See* PORTLAND, ORE. CODE § 33.120.200, tbl.120-2, n.2 (2023).

166. *See id.* § 33.120.206, tbl.120-3 (2023) (stating maximum density as 1 unit per 1,500 square feet; but with the affordable housing density bonus, the maximum is 1 unit per 1,000 square feet).

167. *See, e.g.,* HUNTINGTON BEACH, CAL. CODE, ch. 228 (2023); LANCASTER, CAL. CODE § 17.08.470 (2023); SAN JUAN CAPISTRANO, CAL. CODE §§ 9-3.301(4)(B)(5), (6) (2023).

168. *See, e.g.,* An Act Relative to the Discontinuance of Mobile Home Parks in the Town of West Bridgewater, 1992 Mass. Acts ch. 15. In *Hebshie v. Board of Selectman of West Bridgewater*, 653 N.E.2d 612, 615 (Mass. App. Ct. 1995), an appellate court upheld the right of cities to bar closures in cases in which the notice of closure had been given before a local restriction on closures was adopted.

closure, hardships imposed on the tenant residing in the mobile home park sites proposed to be discontinued, mobile home park vacancies, the availability of other land zoned for mobile home parks, and any circumstances demonstrating inequity to the park owner.[169]

Under Florida law, "[n]o agency . . . shall approve any application for rezoning or take any other official action, which would result in the removal or relocation of mobile home owners . . . without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners."[170]

A state attorney general opinion concluded that "the zoning authority would have to *consider the financial abilities* of the mobile home owners to relocate to other facilities."[171] However, these protections are effectively extinguished by another section of the state code which allows for evictions with six months' notice for the purpose of closing a park prior to submitting an application for rezoning, prior to actually submitting an application for a new use.[172] As a result, such evictions provide a way of eliminating any possibility that the approval of the alternate use will displace mobile home owners, because the zoning review process will occur after the home owners have been evicted.

H. Other Measures to Reduce Closures or Mitigate Their Impacts

State requirements that mobile home owners be provided with a right to purchase a park prior to sale to a third party and/or prior to a closure are now common. In a few cases, courts have struck down first right of refusal laws.[173] Some states have adopted tax incentives to sell parks to residents

169. *See, e.g.,* BOSTON, MASS. CODE § 10-2.13 (2022); SALISBURY, MASS. CODE. § 145-13 (2022).

170. FLA. STAT. § 723.083 (2023).

171. Charlie Crist, Florida Attorney General., Opinion Letter on the Interpretation of § 723.083, (Dec. 13, 2005), https://perma.cc/4TZJ-B9H6 (addressed to Representative Susan Bucher) (emphasis added). The opinion relies on a 1986 prior Attorney General opinion regarding the meaning of "the phrase 'adequate mobile home parks or other suitable facilities.'" *Id*. at 2.

172. *See* FLA. STAT. § 723.061(1)(d).2 (2019). *See* Gallo v. Celebration Pointe Townhomes, 972 So. 2d 992, 996 (Fla. Dist. Ct. App. 2008) (holding that a park owner is not required to await the results of a zoning decision prior to sending a notice of eviction for the purpose of closing a mobile home park and the requirement that adequate relocation facilities exist is not applicable if the state has provided the relocation compensation required by state law).

173. Some courts have held that first right of refusal laws are an unconstitutional infringement of a mobile home park owner's "fundamental property right": the right of alienation to a buyer of one's choice. *See* Gregory v. City of San Juan Capistrano, 142 Cal. App. 3d 72 (Cal. Ct. App. 1983). In 2000, Washington's State Supreme Court struck down such a provision. *See generally* Manufactured Housing Cmtys. of Washington v. State of Washington, 13 P.3d 183 (Wash. 2000). Notwithstanding the U.S. Supreme Court decision

or non-profit organizations and/or support provide financial and technical support for resident purchases of mobile home parks.[174] Description and discussion of the details of such measures, which may be critical to their effectiveness, is beyond the scope of this Article.

IV. JUDICIAL DOCTRINE—THE CONSTITUTIONALITY OF CLOSURE LEGISLATION

A. Overview

The aim of this Section is to provide an overview of the web of precedent that relates to the constitutional takings issues raised in cases involving mobile home park closure laws.

Closure laws do not provide a basis for two of *Penn Central*'s classic piers of a regulatory taking claim—denial of a viable economic use and impairment of "investment backed expectations."[175] Also, closure laws do not provide a basis for the third pier of a regulatory takings claim—"particular circumstances"—with no "set formula" about how to weigh

in *Hawaii Housing Authority v. Midkiff,* 467 U.S. 229 (1984)*,* upholding state legislation that compelled landowners to sell their properties to the tenants who own the houses on their leased land, rather than just requiring that they provide a first right of refusal if they do sell. In 2019, *Manufactured Housing Cmtys.* was *"disavowed"* in *Yim v. Seattle*, 451 P.3d. 675, 682 (Wash 2019). In 1996, the Supreme Judicial Court of Massachusetts upheld a first right of refusal law, concluding that such laws are a minor restriction on property rights. *See* Greenfield Country Estates Tenants Ass'n v. Deep, 423 Mass. 81, 86 (1996); *see also* Carolyn Carter, *Compendium of Existing Laws That Foster Resident Ownership of Manufactured Home Communities*, NAT'L CONSUMER L. CTR. (Nov. 2, 2023), https://perma.cc/UGE4-BVQB.

174. Less than 1% of all mobile home parks are resident owned or owned by non-profits. For discussions of legislation providing mobile home owners with first rights to purchase their parks when offered for sale and state and private efforts to promote resident or non-profit ownership, see TANYA ZAHALAK, FANNIE MAE, MULTIFAMILY MARKET COMMENTARY – MAY 2019: A NEED FOR NON-TRADITIONAL OWNERSHIP OF MANUFACTURED HOUSING COMMUNITIES (May 2019), https://perma.cc/634D-5PHQ. *See Promoting Resident Ownership of Communities*, NAT'L CONSUMER L. CTR. (Jan. 2021), https://perma.cc/NN8W-DDVR (including "Summary of State Manufactured Home Notice and Right of First Refusal Laws"); *see also* Julie Gilgoff, *Opportunity to Purchase Policies: Preserving the Affordability of Manufactured Home Communities*, 68 VILL. L. REV 405 (2023). Vermont has undertaken extensive efforts to promote resident and non-profit ownership. As of 2022, out of 7,094 spaces in mobile home parks, 3,451 spaces were in parks owned by nonprofits or cooperatives. Vt. Dep't. Hous. Cmty. Dev., *supra* note 91, at 2–3.

175. Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 127, (1978). For a case reiterating this standard, see Lingle v. Chevron, 544 U.S. 528, 538–39 (2005) ("[R]egulatory takings challenges are governed by the standards set forth in *Penn Central* . . . . Primary among those factors are 'the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.' In addition, the 'character of the governmental action . . .'") (citation omitted).

such circumstances.[176] On the contrary, closure laws do not reduce the returns earned by mobile home parks, and the "particular circumstances" of mobile home parks justify such laws. These circumstances include 1) the captive nature of mobile home park tenancies, 2) the creation by public regulation (zoning codes) of oligopolies (in effect exclusive franchises) over the supply of the limited number of spaces where mobile home parks can be placed, 3) the special economic benefits that park owners realize as a consequence of the public restrictions on the supply, and 4) the severe adverse impacts of park closures on mobile home owners.

However, Florida appellate courts and Washington courts, in opinions that were subsequently abrogated, struck down closure mitigation requirements on other constitutional grounds related to unfair burdens and/or physical takings of the right to exclude.[177] Also, in *dicta,* a Maryland Court of Appeal raised questions about the constitutionality of laws that would not permit the conversion of a mobile home park to another land use, and the Florida Supreme Court indicated that a law which did not allow terminations of tenancies upon 12-months' notice would be invalid.[178]

The essence of the concepts striking down closure laws or containing *dicta* adverse to such laws have been that they do the following:

1) impose an unfair burden on park owners;
2) take away a constitutional right of park owners to convert their mobile home parks to another land use; and/or
3) take away park owners constitutional "rights to exclude." (The right to convert land to another use depends on having a "right to exclude" the current tenants.)

In contrast to the precedents in these three states, appellate courts in three other states, Minnesota, Oregon, and Massachusetts, have rejected similar constitutional challenges to closure laws that have higher mitigation requirements and/or higher bar for conversions of a mobile home park to another use than the laws that were struck down in Florida and Washington.

B. Unfair Burdens Issues

The basis for Washington decisions striking down closure protections—and one of the bases of the Florida decisions—has been that the protections impose unfair burdens. The unfair burdens test is based on

176. This standard was set forth in *Penn Central*, and has been reiterated in subsequent Supreme Court opinions. *See, e.g.*, Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency, 535 U.S. 302, 318 (2002); Arkansas Game And Fish Comm'n v. United States, 568 U.S. 23, 37 (2012).

177. *See infra* text accompanying notes 183–189.

178. *See infra* text accompanying notes 236–238, 335.

the principle, framed in *Armstrong v. United States*, that "[t]he Fifth Amendment's guarantee . . . was 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*."[179]

The unfair burdens test has been recited in several Supreme Court decisions since *Armstrong*.[180] However, it has not been a stand-alone basis for a holding by the Supreme Court that a taking has occurred.[181] On the other hand, it has been the basis for federal and state court decisions striking down bars on terminations of affordable housing uses or requiring mitigations for their termination. These include Florida and Washington decisions that were abrogated decades later, involving closure laws. Those holdings rested on the conclusion that such legislation imposes unfair burdens on landlords by forcing them to compensate for the adverse impacts of displacement on their tenants, which are the outcome of overall housing conditions rather than the fault of the landlord.

In 1989, Florida adopted a law that required a "mobile home park owner who wishe[d] to change his land use to either 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."[182] In *Aspen Tarpon Springs Limited Partnership v. Stuart*, the state District Court of Appeal struck down these requirements on the basis that they imposed an unfair burden.[183] The court concluded that, in this case, the mitigation fees would have been so high as to make closure economically infeasible.[184] More broadly, the court also stated that "*any form of remuneration* to recover the right to possess and occupy one's own property *would seem to be confiscatory*."[185] It concluded that a mitigation requirement "*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."[186]

179. Armstrong v. United States, 364 U.S. 40, 49 (1960) (emphasis added).

180. *See* Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001); Dolan v. Tigard, 512 U.S. 374, 384 (1994); *Penn Cent. Transp. Co.*, 438 U.S. at 123.

181. *See generally* Michael Pappas, *The* Armstrong *Evolution*, 76 MD. L. REV. ENDNOTES 35, (2016–2017) (including a history of the emergence and evolution of the unfair burdens standard).

182. Aspen Tarpon Springs Ltd. Partnership v. Stuart, 635 So. 2d 61, 63 (Fla. Dist. Ct. App. 1994) (noting the year the law was adopted and describing the law).

183. *Id*.

184. *See id*. at 68.

185. *Id.* (emphasis added).

186. *Id*. at 64, 68 (emphasis added) (concluding that that mobile home owners were responsible for their predicament and explaining that they are "a limited class who are lessees . . . who have chosen not to become owners of his land" (quoting trial court opinion)).

In 1993 in *Guimont v. Clarke*, the Washington Supreme Court held that any mitigation requirements for no-fault evictions in its state closure law would force park owners to bear an unfair burden: "[P]roblems of maintaining an adequate supply of low income housing[] are more properly the burden of society as a whole than of individual property owners."[187] In support of this conclusion, the court reasoned that, although a park owner is the "*immediate cause*" of a park closure, society, rather than the park owner, is the "fundamental" cause of the adverse consequences of the closure.[188] It explained:

> While the closing of a mobile home park is the immediate cause of the need for relocation assistance, it is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary. An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem.[189]

While the Florida court found a regulatory taking, the Washington court rejected this type of claim but found that the unfair burdens constituted a denial of due process.[190]

In 2019, in *Yim v. Seattle*, the Washington Supreme Court "disavowed" *Guimont* and other state precedents in which the same unfair burdens theory was the basis for striking required mitigations for the termination of affordable types of apartment rental uses.[191] Relying on U.S. Supreme Court precedent subsequent to *Guimont*, the court explained that, "[a]s a matter of federal law, such categorical treatment [as opposed to a regulatory taking analysis] is appropriate for only . . . regulations that 'require an owner to suffer a permanent physical invasion of her property' and 'regulations that completely deprive an owner of all "economically beneficial use."'"[192] While *Guimont* may no longer be considered authoritative in Washington, it is likely that its reasoning will be used in future challenges to closure legislation in other states.[193]

In contrast, appellate courts in Minnesota and Oregon upheld mitigation requirements that were much greater than the amounts required

187. Guimont v. Clarke, 854 P.2d 1, 15 (Wash. 1993), *cert. denied*, 510 U.S. 1176 (1994).

188. *Id.* (emphasis added).

189. *Id.*

190. *See Aspen Tarpon Springs*, 635 So. 2d at 68; *see also Guimont*, 854 P.2d 1 at 11–16 (no physical taking and denial of due process).

191. *See* Yim v. Seattle, 451 P.3d 675, 682 (Wash. 2019).

192. *Id.* at 683.

193. *See* discussion *supra* note 6.

under the Florida and Washington laws. In *Arcadia Development Corp. vs. Bloomington*, the Minnesota Court of Appeals rejected the view that mitigation requirements for closures violate substantive due process because they place an unfair burden on park owners.[194] Instead, it concluded that *Arcadia* was responsible for the problems caused by a park closure and, as a beneficiary of the immobility of mobile homes, could be held responsible for "remedying problems caused by its decision."[195] The court observed that "the immobile nature of mobile homes subjects tenants to extreme financial loss upon park closure; at the same time, this immobility makes the rental of pads profitable for the park owner."[196] On these bases, it explained why a mitigation requirement is reasonable:

> Arcadia asserts that an unconstitutional taking has occurred because the ordinance unfairly "singles out" or places the burden of solving the City's housing problems on the shoulders of a few property owners. Arcadia, however, chose to sell and change the use of its property and may be called upon to bear the costs of remedying problems caused by its decision.[197]

The *Arcadia* court held that public powers include the power "to redistribute benefits and burdens of economic life or otherwise to restore an equitable balance to an economic relationship, particularly at the end of that relationship."[198] On this basis, the court also concluded that the law met the "nexus" requirement.[199]

In *Quinn v. Rent Control Board of Peabody*, the Massachusetts Court of Appeals upheld legislation which authorized a city to deny permits for closing a mobile home park, without offering a mitigation alternative.[200] The applicable local regulation authorized denial of a permit to close a park on the basis of the "public interest," taking into account "the aggravation of the shortage of safe, decent[,] and affordable mobile home park accommodations . . . which may result from the discontinuance."[201] The court concluded that the combination of rent controls and regulation of discontinuances served a public purpose. "The [law] appears necessary in the public interest to prevent the predicated 'emergency' in which needful tenants would lose their homes" and the fact that regulation "may

194. Arcadia Dev. Corp. vs. City of Bloomington, 552 N.W.2d 281, 286–87 (Minn. Ct. App. 1996) .

195. *Id.* at 287.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. Quinn v. Rent Control Board of Peabody, 698 N.E.2d 911 (Mass. App. Ct. 1998).

201. *Id*. at 916.

contribute to some loss of economic benefits [to a] park owner[] does not invalidate the regulation."[202]

In *Thunderbird Mobile Club LLC v. Wilsonville,* the Oregon Court of Appeals rejected a facial challenge to the constitutionality of the mitigation requirements in a city closure ordinance, which would range from range from $1.5 to 3 million for a 184-space park (the equivalent of $12,000 to $24,000 per space.)[203] In that case, the park owner did not raise any claims based on nexus or physical takings issues, instead relying on undue burden, due process, equal protection, and state preemption claims. The court concluded that the facial challenge could not prevail because the park owner did not even lodge a claim, under a procedure authorized by the ordinance, to justify relief from the mitigation requirements on the basis that "application of the ordinance is unduly oppressive under the circumstances then and there existing."[204] Since 1998 through 2022, *Thunderbird* has been the only published appellate opinion on the constitutionality of mitigation requirements in laws regulating mobile home park closures.

The diametrically opposite conclusions about whether closure laws impose unfair burdens illustrate the subjectivity of such a standard and problems associated with the use of a "causation," "fundamental reason," or "fair allocation" standard as a determinant of the constitutionality of closure legislation.[205] Central purposes of land use regulations are to either prevent or mitigate the adverse impacts of losses of current uses as well as to prevent or mitigate adverse impacts of new development. The validity of such laws has not been dependent on whether they distribute regulatory burdens on the basis of the "fundamental reasons" or guilt for the occurrence of the conditions that justify the adoption of the regulation. If a fault standard was employed when considering the validity if restrictions on land uses, the impacts of individual development projects or terminations of existing uses could virtually always be viewed as the fault of societal conditions, rather than the fault of the owners of property subject to the use restrictions. If it were not for intervening societal

202. *Id.* at 924.

203. *See* Thunderbird Mobile Club, LLC v. Wilsonville, 228 P.3d. 650, 652 (Or. Ct. App. 2010).

204. *Id.* at 664.

205. In some senses, the "immediate cause" versus "fundamental reason" type of test is reminiscent of past precedents which distinguished between "harm preventing" and "benefit producing" legislation to determine whether the legislation was in the scope of the police powers. *See, e.g.*, Robinson v. Seattle, 830 P.2d 318, 328 (Wash. 1992). In the majority opinion in *Lucas v. S.C. Coastal Council,* Justice Scalia commented that such distinctions are, "often in the eye of the beholder . . . . [and are] difficult, if not impossible, to discern on an objective, value-free basis." Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1024, 1027 (1992).

conditions usually there would not be any need for mitigation requirements and the public purposes that land use policies address.

The opinions of the U.S. Supreme Court regarding legitimate exercises of the police power are counter to the reasoning in the Florida and Washington appellate court opinions concluding that mitigations conditions for closures or bars to closures impose unfair burdens which make them unconstitutional.

The principles set forth in *Penn Central* clearly establish the constitutionality of legislation that requires the preservation of a type of property or use of property valued by the public.[206] In that case, the Court upheld New York City's historic preservation law, which compelled the owners of the Grand Central train station to preserve their landmark structure and as a consequence forego development of a portion of the airspace above the station.[207] The Court's opinion provides perspective and direction in regard to the constitutionality of preservation requirements.

The Court reasoned that no taking had occurred because the law did not interfere with investment backed expectations, the "primary expectation concerning the use of the parcel," because it did not interfere with a continuation of the property use of the past 65 years and the owner was obtaining a profit from the current use.[208] To the extent that closure laws compel the continuation of an existing use which is profitable, they may be seen as comparable to the historic preservation law upheld in *Penn Central*. Mobile home park uses typically date back to sometime in the 1960s to the 1980s. Only a very small percentage of mobile home parks are less than 20 years old.[209]

The Court rejected the claim that the preservation law imposed unfair burdens by singling out a tiny portion of properties without providing reciprocity in benefits.[210] The Court reiterated the principle that legislative powers include the authority to preserve one class of property, which is of greater value to the public, at the expense of another class of property.[211] The Court also noted that when a state tribunal reasonably concludes that "'the health, safety, morals, or general welfare' would be promoted by prohibiting particular contemplated uses of land, this Court has upheld

206. *See* Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 127 (1978); *see also supra* note 175 and accompanying text.

207. *See Penn Cent. Transp. Co.*, 438 U.S. at 135.

208. *Id.* at 136.

209. *See* sources cited *supra* notes 108–109 and accompanying text.

210. *See Penn Cent. Transp. Co.*, 438 U.S. at 123–26.

211. *See id.* at 126.

land-use regulations that destroyed or adversely affected recognized real property interests."[212]

As in the case of New York's historic preservation law, closure laws only impact a small percentage of all properties. The *Penn Central* majority stated that "[l]egislation designed to promote the general welfare commonly burdens some more than others."[213] It would be common that legislation that requires preservation of existing uses impacts only a small portion of properties because a common objective of preservation legislation is to preserve scarce uses or resources.

The dissenting justices concluded that a regulatory taking had occurred because the historic preservation law did not provide Penn Central with "reciprocal" benefits—they were not "harmed by one aspect of the zoning [but] benefitted by another."[214] However, a closure law would meet this standard. While the owners of Penn Central may not have realized any benefits from the historic preservation legislation distinct from those shared with the general public, mobile home park owners realize distinct reciprocities from aspects of zoning that are not realized by the general public. As appellate courts have repeatedly noted, park owners have benefitted substantially from the zoning laws that have severely restricted the supply of mobile home parks, thereby curbing competition.[215]

In *San Remo Hotel v. San Francisco*, the California Supreme Court relied on *Penn Central* in upholding legislation that required either the preservation of low-cost housing or substantial mitigations for a change in

212. *Id.* at 125. Also, it may be noted that closure regulations are in accord with the understandings in the era of the Framers about the scope of public powers to compel particular land uses. During that era, public powers included powers to compel property owners to continue land uses that were deemed beneficial to the public and to prohibit property owners from leaving their lands idle. Some laws even compelled landowners to either change the current uses of their properties to other uses that were deemed more desirable by the public or forfeit their land. *See, e.g.*, John F. Hart, *Colonial Land Use Law and its Significance for Modern Takings Doctrine*, 109 HARV. L. REV. 1252, 1276–79 (1996); Matthew P. Harrington, *Regulatory Takings and the Original Understanding of the Takings Clause*, 45 WM. & MARY L. REV. 2053, 2062 n.41 (2004) (citing numerous examples of colonial legislation which subjected landowners to forfeiture of their land if it was left idle or requiring that they devote their land to specific designated uses that were deemed beneficial to the public or risk the forfeiture of that property); FRED BOSSELMAN ET AL., THE TAKING ISSUE: A STUDY OF THE CONSTITUTIONAL LIMITS OF GOVERNMENTAL AUTHORITY TO REGULATE PRIVATELY-OWNED LAND WITHOUT PAYING COMPENSATION TO THE OWNERS 82–83 (1973) (noting New York and Virginia laws of the 1600s that required land owners to grow particular crops); Hope M. Babcock, *Should Lucas v. South Carolina Coastal Council Protect Where the Wild Things Are? Of Beavers, Bob-o-Links, and Other Things that Go Bump in the Night*, 85 IOWA L. REV. 849, 862–77 (2005).

213. *Penn Cent. Transp. Co.*, 438 U.S. at 133.

214. *Id*. at 147.

215. *See* sources cited *supra* note 56–62 and accompanying text.

use.[216] The ordinance conditioned the right to convert a residential hotel into a hotel used for short term rentals to tourists upon the payment of substantial mitigation fees to cover the loss of a usage of public importance. The court rejected the argument that mitigation could not be required for the termination of particular types of residential uses because the property owners were not "directly responsible" for the social ills creating the need.[217] Relying on *Penn Central*, the court ruled that such restrictions do not constitute a taking because they permit the continuation of a preexisting use of the property and, therefore, do not interfere with an owners' "primary expectation."[218] The court held that a change in use, even if the new use is not harmful, "may nonetheless call for mitigation when the change of property to that use results in the loss of an existing use of public importance."[219]

On the other hand, in *Levin v. San Francisco*, a U.S. District Court held that the City's mitigation requirement for tenants displaced by owner-occupancy evictions, which was based on the increased rents that a tenant would face as a result of displacement, did not meet the nexus standard.[220] The court held that the new rents were "not sufficiently related to the impact of the withdrawal" based on its conclusion that the City, rather than the landlord, was responsible for the housing market conditions that led to higher rents for vacant apartments.[221] While the Court struck down this standard, it indicated that other mitigation requirements could meet the nexus test, including the City's previous standard which tied the required mitigation payments to cover moving costs and the time required to find another apartment.[222]

From a practical and economic point of view, closure laws have an impact (impose a burden) typical under zoning laws. Commonly, zoning

216. *See generally* San Remo Hotel v. San Francisco, 41 P.3d 87 (Cal. 2002).

217. *Id*. at 110.

218. *Id.* at 109 ("[L]ike the landmarks law upheld in *Penn Central*, the HCO allows the property owner to continue the property's preordinance use unhindered; . . . therefore, the HCO 'does not interfere with what must be regarded as the property owner's primary expectation concerning the use of the parcel.'").

219. *Id*. at 110; *see also* Com. Builders of N. Cal. V. City of Sacramento*,* 941 F.2d 872, 875 (9th Cir. 1991) (upholding an impact fee on new construction projects imposed for the purpose of mitigating for affordable needs arising as a consequence and stating that "*Nollan* does not stand for the proposition that an exaction ordinance will be upheld only where it can be shown that the development is directly responsible for the social ill in question").

220. *See* Levin v. City & Cnty. Of San Francisco, 71 F. Supp. 3d 1072, 1085 (N.D. Cal. 2014).

221. *Id.* at 1074*. But see* N.Y. State Division of Hous. & Cmty. Renewal, *Operational Bulletin 2009-1* (Feb. 10, 2009), https://perma.cc/L5Y8-VXQ4 (discussing how New York State regulations requiring mitigations to tenants displaced by demolitions contain a standard comparable to the standard that was struck down in *Levin*).

222. *See Levin*, 71 F. Supp. 3d at 1074.

laws do not authorize more profitable uses than the current use or condition a conversion to a more profitable use on meeting mitigation requirements.[223] In this manner, these laws operate to preserve uses which are deemed desirable (such as single-family or residential-only zoning or limits on development to serve environmental resources). By not allowing a more profitable use, these laws effectively guarantee the continuation of the current use, since a more remunerative use is not permitted.

From a legal point of view, closure laws differ from zoning restrictions that only bar more profitable uses. They also restrict or place mitigation conditions on the right to terminate the current use, independent of any restrictions on a conversion to a more profitable use. They are adopted within the context that 1) in the case of mobile home park closures, in reality, the act of "going out of business" is part of the act of going into the business of converting the land to a more profitable use and 2) a closure of a mobile home park has devastating consequences for the mobile home owners who are tenants.[224]

Due to the special circumstances of mobile home park tenancies, the approach of regulating the termination of the current use, as opposed to only limiting the introduction of a new use, is essential to achieving the objectives of closure laws. Otherwise, a park owner who plans to convert land with a mobile home park to a more profitable use may elect to evict the current tenants prior to applying for a conversion of the land to a more profitable use. The cost of such a closure for a park owner is small compared to the cost of terminating other types of commercial uses because most of the physical improvements that will be lost as a result of a termination will be lost by the displaced.[225] Furthermore, a park closure eliminates any public rationale for not allowing a conversion to a more profitable use or even placing any mitigation conditions or limits on such a conversion because, after a closure, there are no longer any households or more affordable types of housing left to protect from the impacts of the conversion to the new use.[226] Also, terminating the existing mobile home

223. *See* Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 130 (1978) ("[T]he submission that appellants may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable.").

224. *See* sources cited *supra* notes 3–4 and 15–18 and accompanying text. Challenges to the constitutionality of closure laws, which have been based on multiple grounds, have not been based on claims of a regulatory taking on the basis that the current use is not economically viable.

225. *See* sources cited *supra* notes 40–41 (comparing original costs of mobile homes and of mobile home park construction).

226. Commonly, closure laws condition the approval of conversion of a mobile home park to another land use upon complying with the applicable relocation mitigation conditions. *See, e.g.*, SEATTLE, WA. CODE § 22.904.410; CHULA VISTA, CA. CODE § 9.40.030.

park use before applying for a permit for a new use eliminates the tenants, a potential source of vehement opposition to an authorization of a new use.

C. Mobile Home Park Owners' "Rights to Exclude" Versus Public Rights to Provide Mobile Home Owners with Security of Tenure[227]

The principle constitutional issue raised regarding closure laws and legislation providing apartment tenants with security of tenure has involved the scope of "rights to exclude," "rights to possess," and "physical taking" issues. Consideration of these issues in the context of mobile home park tenancies requires finding the appropriate balance between the common understanding in our society that property owners have a right to control who is on their land and public powers to provide mobile home owners in mobile home parks with security of tenure. These issues are likely to remain in the forefront in future litigation regarding the validity of closure laws.

This Section includes discussions of 1) the roots and history of the right to exclude in the colonial era, 2) U.S. Supreme Court guidance since *Penn Central* on the boundaries on the scope of the right to exclude in the context of residential landlord-tenant legislation and in other commercial contexts, and 3) federal and state precedents regarding the right to exclude under landlord-tenant law. These discussions are preceded with an overview to position these issues in the context of legislation governing mobile home park closures.

The "right to exclude" has been recognized as a fundamental property right, exemplified by the common saying "a man's home is a man's castle." This right is based on common law rather than the Constitution.[228] The U.S. Supreme Court has characterized this right as "one of the most essential sticks in the bundle of property rights."[229] On the other hand, the right to exclude is not an absolute right, with significant limitations when property is open to the public for business.[230] In recent decades, there has been voluminous debate about the nature and scope and limits of the right

227. This Article does not consider the constitutional issues raised in cases involving the eviction moratoria adopted during the COVID-19 pandemic, which are distinguishable from the types of eviction restrictions in mobile home park landlord-tenant laws because the COVID-19 moratoria included bars on evictions for non-payment of rent during emergency periods.

228. *See* sources cited *infra* notes 255–264 and accompanying text.

229. Kaiser-Aetna v. United States, 444 U.S. 164, 176 (1979).

230. *See e.g.*, Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74 (1980).

to exclude and about what legal doctrine in regard to its scope would be the most reasonable.[231]

Limits on a right to exclude (also known as a right to evict) have been recognized as a necessity to accomplish a public purpose of providing tenants with security of tenure. In 1921, in *Block v. Hirsh*, the U.S. Supreme Court upheld a bar on no-fault evictions under rent control, which contained an exception for owner-occupancy evictions.[232] The *Block* Court explained why this restriction on a right to evict was essential: "If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."[233] Restrictions on rights to exclude without a just cause based on either a breach of tenant duties or owner occupancy or going out of the rental business have been standard in peacetime rent controls, which began in New York after World War II and commenced in California, Massachusetts, New Jersey, and Washington, D.C. in the 1970s.[234] Some of the laws do not allow for owner-occupancy evictions of specified classes of tenants (e.g. senior and disabled tenants).[235] Within this framework, for decades, courts have grappled with issues about rights to exclude and the scope of allowable restrictions on no-fault evictions. In the case of mobile home park tenancies, limitations on a right to exclude are more vital than for apartment tenants because the mobile home park tenants have an

231. *See, e.g.*, Steven Sutherland, Note, *Patron's Right of Access to Premises Generally Open to the Public*, 1983 U. ILL. L. REV. 533 (1983); Joseph William Singer, *No Right to Exclude: Public Accommodations and Private Property*, 90 NW. U. L. REV. 1283 (1996); Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 731 (1998); David L. Callies & J. David Breemer, *The Right to Exclude Others from Private Property: A Fundamental Constitutional Right*, 3 WASH. U. J.L. & POL'Y 39 (2000); Adam Mossoff, *What is Property? Putting the Pieces Back Together*, 45 ARIZ. L. REV. 371, 373 (2003); Henry E. Smith, *Exclusion versus Governance: Two Strategies for Delineating Property Rights*, 31 J. LEGAL STUD. 453 (2002); Henry E. Smith, *Exclusion and Property Rules in the Law of Nuisance*, 90 VA. L. REV. 965 (2004); Shyamkrishna Balganesh, *Demystifying the Right to Exclude: Of Property, Inviolability, and Automatic Injunctions*, 31 HARV. J.L. & PUB. POL'Y 593 (2008); Eric R. Claeys, *Exclusion and Exclusivity in Gridlock*, 53 ARIZ. L. REV. 9 (2011); Larissa Katz, *Exclusion and Exclusivity in Property Law*, 58 U. TORONTO L.J. 1710 (2008); John Makdisi, *Uncaring Justice: Why* Jacque v. Steenberg Homes *Was Wrongly Decided*, 51 J. CATH. LEGAL STUD. 111 (2012); Katrina M. Wyman, *The New Essentialism in Property*, 9 J. LEGAL ANALYSIS 183, 184 (2017); GREGORY S. ALEXANDER, *The Right to Exclude*, *in* PROPERTY AND HUMAN FLOURISHING, 169 (2018); Lee Anne Fennell, *Escape Room: Implicit Takings After Cedar Point Nursery*, 17 DUKE J. CONST. L. & PUB. POL'Y 1 (2022).

232. *See generally* Block v. Hirsh, 256 U.S. 135 (1921).

233. *Id.* at 157–58.

234. *See* Edward H. Rabin, *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 534 (1983–1984). Typically, the laws also authorize no-fault evictions for occupancy by designated classes of relatives of the owner. *See, e.g.*, LOS ANGELES, CA. MUN. CODE § 151.09.A.8.(b) (authorizing evictions for occupancy by the landlord's spouse, grandchildren, children, parents, or grandparents).

235. *See, e.g.*, D.C. CODE § 42-3402.08 (2).

immovable investment (most likely the largest asset of a low-income household) that will be lost if a right to remain in-place is lost.

While restrictions on no-fault evictions, which do not have a sunset date, have been standard under regulations of apartment rents, in *Palm Beach Homes v. Strong*, the Supreme Court of Florida held that mobile home park owners had a constitutional right to undertake evictions upon 12-months' notice.[236] Under the state law, park owners had a right to evict for enumerated just causes which included a "[v]iolation of any rule or regulation established by the park owner."[237] In addition, under state law, park owners also had a right to evict upon three months' notice to change the use of the land.[238]

The court concluded that a park owner's right to establish regulations included a right to adopt a regulation providing the owner with a right to terminate tenancies upon twelve months.[239] The basis for this conclusion was that "perpetual occupancy rights on another's property cannot, consistent with the constitution, be granted by law" and that the court had a duty to construe the section allowing park owners to adopt reasonable tenancy regulations "in such a manner as to preserve [the Act's] purpose while operating within the framework of the Constitution."[240] In other words, the court held that the constitutional right of park owners to possess (exclude) included the right to undertake evictions upon 12-months' notice without any just cause other than the park owner's desire to terminate the lease, as long as the park owner adopted a regulation setting forth this right.

In *Aspen-Tarpon Springs*, as well as holding that mitigation requirements constituted a regulatory taking by imposing an unfair burden, the Florida District Court of Appeal held that such requirements constituted an unconstitutional physical taking because they extinguished the right of mobile home park owners to "physically occupy one's land."[241] This holding extended to any mitigation requirements as well as the particular requirements in the state law.[242] On the other hand, while the Washington Supreme Court struck down mitigation requirements for park closures on the basis of unfair burdens in *Guimont*, it rejected the view that

236. Palm Beach Homes v. Strong, 300 So. 2d 881, 888 (1974).
237. *Id*. at 883.
238. *See id*. at 887.
239. *Id*. at 888.
240. *Id*.
241. Aspen-Tarpon Springs Ltd. v. Stuart, 635 So. 2d 61, 67–68 (Fla. Dist. Ct. App. 1994); *see* Ballinger v. City of Oakland, 24 F.4th 1287, 1292 (9th Cir. 2022) (holding that a mitigation requirement to take possession is not a physical taking), petition for *cert*. *denied* 142 S.Ct. 2777 (2022); Levin v. City and Cnty. of San Francisco, 71 F. Supp. 3d 1072, 1080 (N.D. Cal. 2014) (stating that a mitigation requirement would be constitutional).
242. *See Aspen-Tarpon*, 635 So. 2d at 67–68.

such measures constituted a physical taking.[243] The basis for its holding was that the law regulated transactions with invitees, rather than authorizing uninvited invasions.[244] Issues related to physical takings and rights to exclude were not raised in the unsuccessful constitutional challenges to the mitigation requirements in the Minnesota and Oregon closure laws and the bars to closures under Massachusetts law.[245]

In 1992, the issue of the right to exclude in the context of mobile home park tenancies came before the U.S. Supreme Court in *Yee v. Escondido*.[246] In that case, the Court upheld a municipal ordinance that regulated mobile home park space rents. That law was within the framework of a state law requiring just cause for evictions from mobile home parks and provided mobile home owners with the right to sell their homes in-place to incoming tenants (who could not be unreasonably refused by the park owner).[247] While the mobile home owners could sell their home in-place, park owners could evict their tenants to convert their land to another use.[248]

In line with the reasoning set forth in the landmark physical takings holding in *Loretto v. Teleprompter Manhattan CATV Corp*,[249] the *Yee* Court rejected a physical taking claim on the basis that the park owner voluntarily rented the park spaces to the tenants, as opposed to being subjected to occupations by uninvited third parties.[250] However, the Court qualified the scope of its holding about physical takings by stating that "[*a*] *different case would be presented were the statute . . . to compel a landlord . . . to refrain in perpetuity from terminating a tenancy*."[251] But, it did not indicate how it might be "different." Also, the Court did not define "to refrain in perpetuity from terminating a tenancy," except to indicate that, in this case, the park owner was not refrained "in perpetuity" because

243. *See* Guimont v. Clarke, 121 Wash. 2d 586, 608 (Wash. 1993).

244. *See id*. at 607.

245. *See* Arcadia Dev. Corp. v. City of Bloomington, 552 N.W.2d 281, 286 (Minn. Ct. App. 1996); Thunderbird Mobile Club, LLC. v. City of Wilsonville, 228 P.3d 650 (Or. Ct. App. 2010); and Quinn v. Rent Control Bd. of Peabody, 698 N.E.2d 911 (Mass. App. Ct. 1998).

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

247. *See id*. at 524–25.

248. *See id*. at 524.

249. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

250. *See Yee,* 503 U.S. at 527–28.

251. *Id*. at 528 (emphasis added). Five years earlier, the Court set forth a similar qualification in a case involving commercial tenancies. In *FCC v. Florida Power Corporation*, the Court upheld restrictions on rights to terminate rentals of space on utility poles for cable installations on the basis that the renters were "invitees." FCC v. Florida Power Corp., 480 U.S. 245 (1987). However, the Court stated that it was not deciding how a distinction between rights to exclude invitees and rights to evict interlopers would apply if the tenancy of an invitee could not be terminated. *See id.* at 252 n.6.

going out of business was a just cause for eviction under the city law.[252] Consequently, the issue of whether a law falls within the "refrain in perpetuity" category has moved to the forefront.[253]

1. Historical Perspective

Rights to exclude are rooted in common law, rather than specific provisions in the Constitution. Blackstone's legal treatise, which was considered an authoritative work on common law in the era of the Founders,[254] includes a characterization of the right to exclude as an absolute right. It states:

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, *in total exclusion of the right of any other individual in the universe*.[255]

Now, this passage is central in contemporary scholarly discussions about the right to exclude.[256] In 2021, it was noted by the U.S. Supreme Court in *Cedar Point Nursery v. Hassid*.[257]

However, while the foregoing passage characterizes the property right to exclude as absolute, other statements in Blackstone's treatise qualified common law rights with a recognition of legislative powers to limit property rights to serve the public welfare. Blackstone described common law rights as "that *residuum* of natural liberty, which is not required by the laws of society to be sacrificed to public convenience."[258] Also, he noted legislative powers to modify the common law to adopt "remedial statutes" that address "defects . . . in the common law, as arise either from the general imperfection of all human laws, from change of

252. *Yee*, 503 U.S. at 528–29.

253. See discussion *infra* notes 324–332.

254. *See, e.g.*, Robert P. Burns, *Blackstone's Theory of the "Absolute" Rights of Property*, 54 U. CIN. L. REV. 67, 68 (1985); Albert W. Alschuler, *Rediscovering Blackstone*, 145 U. PENN. L. REV. 1, 1–55 (1996) (discussing the historical and contemporary role of Blackstone's work).

255. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 1 (1766) (emphasis added).

256. *See, e.g.,* Balganesh, *supra* note 231, at 596; Merrill, *supra* note 231, at 734–36, 754; Fennell, *supra* note 231, at 20–21.

257. Cedar Point Nursery v. Hassid, 141 S. Ct. 2063 (2021); *see* Bethany R. Berger, *Eliding Original Understanding in Cedar Point Nursery v. Hassid*, 33 YALE J.L. & HUMAN. 307 (2022) (discussing and critiquing *Hassid*); Fennell, *supra* note 231, Aziz Z. Huq, *Property Against Legality: Takings After Cedar Point*, 109 VA. L. REV. 233, 268–72 (2023).

258. BLACKSTONE, *supra* note 255, at 129.

time and circumstances."[259] The context for Blackstone's work was an era marked by fear over the excesses of colonial rule, including the fear of uncompensated physical takings, but also guided by "a concept of property which permitted extensive regulation of the use of [] property for the public benefit."[260]

In any case, the history of the actual scope of a right to exclude counters the concept that this right to exclude was considered absolute (or what Blackstone characterized as encompassing "total exclusion of the right of any other individual in the universe").[261] In colonial times and well into the nineteenth century, rights to exclude were commonly subject to public rights of entry without permission for a variety of purposes including hunting, passage, water use, gathering wood, and grazing.[262] A centuries-old exception to the right to exclude in England involved requirements that innkeepers accept travelers in need of shelter.[263] Mid-nineteenth and early twentieth century decisions supported the concept of a right to access to land of others in cases of necessity—including rights of passage across privately owned land when public ways were impassable and a right to moor at a stranger's dock in the case of a storm.[264] The foregoing examples of exceptions to a right to exclude may be distinguished from restrictions on evictions of mobile home owners on the basis that they did not require acquiescence to long term occupations. On the other hand, the other exceptions did not involve the rights of invitees who provided compensation for their occupation and were required to make substantial investments to become occupants.

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259. *Id.* at 86. In regard to the public power to regulate property rights, the Florida Supreme Court has stated:

> [T]he right to use one's property as he wills are fundamental constitutional guaranties, but the degree of such guaranties must be determined in the light of social and economic conditions that prevail at the time the guaranty is proposed to be exercised rather than at the time the Constitution was approved securing it; otherwise the power of the legislature becomes static and helpless to regulate and extend them to new conditions that constantly arise.

Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881, 884 (1974).

260. BOSSELMAN ET AL., THE TAKING ISSUE, *supra* note 212, at 80.

261. *See supra* text accompanying note 256.

262. *See* Joan C. Williams, *The Rhetoric of Property*, 83 IOWA L. REV. 277, 282 (1998)*; see also* Hart, *supra* note 212, at 1272; Huq, *supra* note 257, at 268–72.

263. *See, e.g.*, David S. Bogen, *The Innkeeper's Tale: The Legal Development of a Public Calling*, 1996 UTAH L. REV. 51 (1996).

264. For examples, see discussion in John Makdisi, *Uncaring Justice: Why Jacques v. Steenberg Homes Was Wrongly Decided*, 51 J. OF CATHOLIC LEGAL STUD. 111, 124–26 (2012), including Campbell v. Race*,* 61 Mass. 408, 408 (1851); Morey v. Fitzgerald*,* 56 Vt. 487, 489–90 (1884) (passage across privately owned land); Ploof v. Putnam, 71 A. 188, 189 (1908); Vincent v. Lake Erie Transp. Co.*,* 124 N.W. 221, 221 (1910**)** (right to moor in case of storm).

2. Supreme Court Limits on the Right to Exclude—Apart from Cases Involving Landlord-Tenant Laws

Fast forwarding from the time of Blackstone to the past fifty years, as noted in several instances, the U.S. Supreme Court has characterized the right to exclude as "fundamental"[265] and/or "one of the most essential sticks in the bundle of rights."[266] However, it has also repeatedly indicated that the scope of the right is tempered by other considerations, including whether

1) the occupant entered the property as an "invitee,"
2) the right to exclude is "essential" to the "use or economic value" of the property, and
3) the limitation on the right to exclude impinges on a "private use."

In *Pruneyard Shopping Center v. Robins*, the Court considered a claim by the owner of shopping center of a constitutional right to exclude persons entering for the purpose of political expression.[267] In that case, the Court set forth the principal that, while a taking of a property right may occur in a "literal" sense, "not every destruction or injury to property by governmental action has been held to be a 'taking' in the constitutional sense."[268] Instead, such a determination requires an examination of whether the restriction on private property "forces some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."[269] As discussed above, the reasoning of *Penn Central* undermines the concept that a requirement to preserve an existing use which is profitable would constitute an unfair burden.

Furthermore, the Court qualified the scope of the right to exclude on the basis of whether this right was "*so essential to the use or economic value of their property*"—"[H]ere appellants have failed to demonstrate that the 'right to exclude others' is so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a 'taking.'"[270] Viewing this principle in the context of closure legislation, the right to undertake no-fault evictions of mobile home owners is not "*essential to the use or economic value of the property*" in its current use.[271] On the contrary, the continuing occupation of the mobile home owners provides the "economic value of their property" in its current

265. *E.g.*, Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 179–80 (1978).
266. *Id.* at 176.
267. *See* Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74 (1980).
268. *Id.* at 82–83 (internal quotation marks omitted).
269. *Id*. at 83.
270. *Id*. at 84 (emphasis added).
271. *Id.* (emphasis added).

use and the right to exclude is only essential for effectuating a change to a more profitable land use.[272]

In *Nollan v. Coastal Commission*, the Court considered the constitutionality of a requirement that a property owner of a beachfront lot dedicate a right of public passage as a condition to obtaining a permit to replace a bungalow with a larger single-family house.[273] In this case, the Court qualified its characterization of "the right to exclude" as a right applicable to "property reserved by its owner for private use."[274] The Court explained: "We have repeatedly held that, as to *property reserved by its owner for private use*, "the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'"[275]

In 2021, in *Cedar Point Nursery v. Hassid,* the Court revisited issues regarding the right to exclude.[276] However, that case involved the rights of uninvited union representatives to enter onto the farm owner's property to meet with farm workers who did not reside at their worksite, instead of tenants who were invitees.[277]

3. Rights to Exclude Residential Tenants

Issues about rights to exclude in the landlord-tenant context bring into play a situation in which limits on these rights are essential for carrying out public purposes of providing households with security of tenure in their homes. Prior to *Yee*, the U.S. Supreme Court addressed physical taking rights to exclude issues in one case involving limits on evictions of residential tenants. Also, the Court addressed physical takings issues regarding landlord-tenant legislation in extensive *dicta* in *Loretto*, a case which did not involve landlord-tenant legislation.

In *Loretto*, the Court held that a law authorizing the installation of cable lines in apartment buildings by uninvited third parties constituted a "physical" taking.[278] The Court elucidated that a "physical" taking is a

272. *Id.*

273. *See generally* Nollan v. California Coast Commission, 483 U.S. 825 (1987).

274. *Id.* at 832.

275. *Id.* at 831 (emphasis added) (quoting Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433 (1982)).

276. Cedar Point Nursery v. Hassid, 141 S. Ct. 2063 (2021).

277. *See id*. One law review article on the "right to exclude" was cited by the majority in *Cedar Point Nursery*. *See id.* at 2073. In that article, the author explained: "[T]he fee simple absolute in land can be seen as a qualified complex of exclusion rights, in which owners exercise relatively full exclusion rights with respect to certain kinds of intrusion (e.g., by strangers) but highly qualified or even nonexistent exclusion rights with respect to other kinds of intrusions . . . ." Merrill, *supra* note 231*,* at 753. *See infra* text accompanying note 330 (distinguishing *Cedar Point* from cases involving controls on evictions).

278. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 421 (1982).

taking *per se*, explaining that "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve,"[279] and it reiterated the doctrine that the right to exclude was "one of the most treasured strands in an owner's bundle of property rights."[280] The Court found that a loss of possession was "*qualitatively more severe* than a regulation of the *use* of property, . . . since the owner may have no control over the timing, extent, or nature of the invasion."[281]

On the other hand, the Court went out of its way to distinguish this precedent from cases considering the constitutionality of the regulation of evictions in landlord-tenant legislation. It explained that landlord-tenant relationships involve occupations by "invitees," rather than occupations compelled by the government, and that this ruling was not intended to limit the government's broad power to adjust landlord-tenant relationships.[282] Furthermore, it rejected the view that this ruling could have "dire consequences for the government's power to adjust landlord-tenant relationships."[283] Also, the Court declared that the constitutionality of protections of tenants would be "analyzed under the multifactor inquiry generally applicable to nonpossessory governmental activity," the standard applicable to regulatory taking claims, rather than the *per se* taking standard applicable to physical takings.[284]

One year after *Loretto*, in *Fresh Pond Shopping Center v Callahan*, the Court considered physical takings issues in a case involving protections of apartment tenants.[285] A city ordinance barred Fresh Pond from evicting its tenants and demolishing its apartment building to gain additional parking spaces for its neighboring department store.[286] The Court "dismissed" a physical taking challenge to this law for "want of substantial federal question."[287] The only opinion accompanying this dismissal was the opinion of the sole dissenter, Justice Rehnquist.[288]

Since the dismissal, *Fresh Pond's* precedential weight has been disputed. In his dissent, Justice Rehnquist concluded that the case

279. *Id.* at 426.

280. *Id.* at 435.

281. *Id*. at 436 (emphasis added). However, most any apartment owner would prefer this kind of invasion by a cable line over most any regulation that limited potential development or imposed additional costs.

282. *Id*. at 441.

283. *Id.* at 440.

284. *Id*.

285. *See* Fresh Pond Shopping Ctr. v. Callahan, 464 U.S. 875 (1983).

286. The facts of the case were not set forth in the decisions of the Massachusetts Supreme Judicial Court or the U.S. Supreme Court, but were set forth in a subsequent opinion of the California Supreme Court. *See* Nash v. Santa Monica, 688 P.2d 894, 901–02 (Cal. 1984).

287. *Fresh Pond Shopping Ctr.*, 464 U.S. at 875.

288. *Id.* at 875–76.

established precedent because the Court had acted on the merits.[289] Subsequently, the U.S. Supreme Court, two federal courts, and two state appellate courts have cited the dismissal as authoritative.[290] However, in some court opinions and in some dissenting opinions, the dismissal has been viewed as having limited weight or no weight at all. [291]

In regard to substantive issues, Justice Rehnquist concluded that, although the ordinance insured the right to a fair return, it transgressed the "power to exclude [] 'one of the most treasured strands in an owner's bundle of property rights'" and, therefore, constituted a "physical" taking.[292] In support of his justification about the essential nature of the right to exclude, he cited the Court's conclusion in *Loretto* that "the permanent occupation of that space by a stranger would ordinarily empty the right of any value, since the purchaser will also be unable to make any use of the property."[293] However, the type of physical occupation in issue in *Fresh Pond*, was an occupation by tenants rather than strangers. Furthermore, the occupation provided an income; therefore, it did not empty the ownership right of "any value."

In *Yee,* which followed nine years after *Fresh Pond*, the plaintiffs only made a physical taking claim, and the Court noted that it did not intend to address how it would view a regulatory taking claim.[294] The plaintiffs contended that the rights of mobile home owners to remain in occupancy constituted a physical taking.

The plaintiffs also contended that the economic outcome of the rights of mobile home owners to sell their homes in place to purchasers who could assume the regulated rents created a physical taking. Prior to *Yee*, two federal circuit courts held that this economic combination constituted a "physical" taking.[295] These courts reasoned that a physical taking of a park owner's property occurs because the tenants can capture a "premium" in the value of their mobile homes as a consequence of their right to sell

289. *See id*. at 876 (Rehnquist, J., dissenting) ("[T]he case presents important and difficult questions. . . . They might be postponed or avoided if the case were here on certiorari, but the case is an appeal; we act on the merits whatever we do.").

290. The *Fresh Pond Shopping Center* dismissal relied on the following as authority: FCC v. Fla. Power Corp.**,** 480 U.S. 245, 252 (1987); Troy v. Renna, 727 F.2d. 287, 303 (3rd Cir. 1984); Gibbs v. Se. Inv. Corp., 705 F. Supp. 738, 744 (D. Conn. 1989); *Nash*, 688 P.2d at 902; Edgewater Inv. Assocs. v. Borough of Edgewater**,** 493 A.2d 11, 19 n.5 (N.J. Super. 1985).

291. *See* Ross v. City of Berkeley, 655 F. Supp. 820, 839 n.19 (N.D. Cal. 1987) (viewing the dismissal as "very narrow precedent"); *see also Nash,* 688 P.2d at 905 ("[*Fresh Pond*] creates no persuasive, let alone binding, authority for anything.").

292. *Fresh Pond Shopping Ctr.*, 464 U.S. at 878.

293. *Id.*

294. *See* Yee v. Escondido, 503 U.S. 519, 538 (1992).

295. *See generally* Hall v. Santa Barbara, 833 F.2d 1270 (9th Cir. 1987) (amended opinion), *cert denied* 485 U.S.1947; Pinewood v. City of Barnegat*,* 898 F.2d 347 (3d Cir. 1990). Both *Hall* and *Pinewood* were abrogated by *Yee,* 503 U.S. at 526–32.

their homes in-place on land with a "reduced rent."[296] In the absence of rent regulations or under a rent law which authorized park owners to reset rent levels when a home was sold in place, this premium could be realized by a park owner in the form of a rent increase when a mobile home was sold in-place.

The unanimous opinion in *Yee* squarely rejected the holdings in *Hall* and *Pinewood* that the transfer of wealth caused by the regulations was a "physical" taking. Instead, the U.S. Supreme Court viewed transfers in wealth as an ordinary outcome of regulation, rather than a physical taking. It noted that ordinary rent regulations and zoning laws also transfer wealth: "[W]hen 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."[297] Also, the Court rejected a claim that the regulations resulted in a "physical" taking because the mobile home park spaces could be occupied by persons who purchased the mobile homes from the departing tenants, although they were not invited by the park owner.[298] In the absence of this opinion, the transfer-of-wealth theories adopted in *Hall* and *Pinewood* might also be raised in challenges to closure legislation on the theory that such laws cause a transfer of wealth to mobile home owners by preserving their right to remain in-place.[299] While the Court in *Yee* rejected the physical taking claim based on the wealth transfer (premium) theory, it also noted that its holding regarding physical takings issues was limited to the case before it, which did not include a bar from terminating a tenancy "in-perpetuity."[300]

4. Limits on Rights to Exclude Under Landlord-Tenant Laws—Federal and State Precedent

The restrictions on rights to undertake no fault evictions have fallen into two categories:

1) exceptions to the general right of landlords to evict for owner occupancy (or family member occupancy); or

296. *Hall*, 833 F.2d at 1280.

297. *Yee,* 503 U.S. at 529.

298. *Id.* at 532.

299. *Id.* at 529–30. In fact, takings claims based on the "premium" theory reappeared in new takings challenges to legislation indistinguishable from the ordinance upheld in *Yee*. In each case those challenges were initially upheld only to be overturned in a further round of appellate review. *See* Cashman v. City of Cotati, 374 F.3d. 887 (9th Cir. 2004), *vacated by* Cashman v. City of Cotati, 415 F.3d 1027 (9th Cir. 2005) (vacating original opinion based on Lingle v. Chevron, 544 U.S. 528 (2005)); *see also* Guggenheim v. Goleta, 582 F.3d 996, 1020–22 (9th Cir. 2009), *reversed by en banc panel*, 638 F.3d. 1111 (2010).

300. *Yee,* 503 U.S. at 528.

2) limits on no-fault evictions that are solely for economic purposes, including limits on the removal of units or whole properties from rental use (or the current type of rental use).

Numerous challenges have been made to these laws on constitutional grounds, with mixed outcomes. As noted, the U.S. Supreme Court has characterized the right to exclude as a right related to "property reserved by its owner for private use."[301] While this passage has not been cited in opinions about the validity of just cause for eviction requirements, the principle of a right to evict for owner occupancy—a private use—has carried great weight. The distinction between evictions for owner occupancy and restrictions on evictions for economic purposes has played a prominent role in legislation and in court opinions about the constitutionality of such legislation.

5. Evictions for Personal Use—Owner or Family Occupancy

Owner occupancy is a standard just cause for eviction in rent control laws. However, consistent with the concept that the right to exclude is not absolute, the right to evict for owner occupancy has been subject to exceptions and a type of balancing standard. Commonly, rights to evict for owner occupancy are subject to consideration of 1) whether the owner-occupancy justification is in "good faith" (or, in the alternative, is motivated by an intent to create a vacancy to have an opportunity to reset the rents for a new tenant at market levels);[302] 2) whether there have been prior evictions from the same property for owner occupancy;[303] 3) the tenant's age or disability;[304] and/or 4) whether the owner has at least a specified percentage ownership interest in the property.[305] Mitigation requirements for owner-occupancy evictions are common under rent regulations and condominium conversion laws.[306]

The various types of restrictions on owner-occupancy evictions have been subject to numerous challenges. Judicial review of the constitutionality of these restrictions has focused on reasonable expectations and balancing of competing public interests, rather than on whether or not the eviction restrictions compel an owner to refrain in-perpetuity from terminating a tenancy. Court decisions addressing the constitutionality of restrictions on owner-occupancy evictions have

301. *See* sources cited and accompanying text, *supra* notes 273–275.

302. *See, e.g.*, LOS ANGELES, CAL. CODE §151.30.B.

303. *See, e.g.*, SAN FRANCISCO, CAL. CODE § 37.9(a)(8)(vi.).

304. *See, e.g.*, N.Y. COMP. CODES R. & REGS. tit. 9 § 2524.4 (a)(2)

305. *See, e.g.,* SAN FRANCISCO, CAL. CODE § 37.9(a)(8)(iii).

306. *See, e.g.*, LOS ANGELES, CAL. CODE § 151.30.E. (requiring, under rent ordinance, relocation fees for owner-occupancy evictions from buildings with more than four units); BOSTON, MA. CODE § 10-2.10.C.2 (requiring relocation benefits for owner-occupancy evictions in buildings converted to condominiums).

included holdings that 1) a bar on owner-occupancy evictions is of "doubtful" constitutionality;[307] 2) there is a constitutional right to evict for owner occupancy only if this was a statutory right when the property was purchased; [308] 3) the constitutional right to evict for owner occupancy is limited to properties which are typically used for owner occupancy (buildings with only a few units);[309] 4) there is no constitutional right to evict for owner occupancy if the property was used a rental property as of the time it was acquired (the interest in a right to owner occupancy is outweighed by a public necessity to conserve the rental housing stock); [310] and 5) the right to evict for owner occupancy may be subject mitigation requirements.[311]

6. Rights to Exclude (Evict) for Economic Purposes

Apart from considering the validity of curbs on owner-occupancy evictions, courts have considered the constitutionality of bars and/or mitigation conditions on evictions for the purpose of changing the economic use of the property, as opposed to personal occupancy.[312] Such measures parallel the types of restrictions on evictions in park closure legislation.

In determining the scope of rights to exclude, there is strong rationale for making a critical distinction between limits on evictions for owner occupancy and limits on evictions for solely economic motives. One author questions whether the right to exclude should be considered as

307. Chan v. Town of Brookline, 484 F. Supp. 1283 (D. Mass. 1980) (in *dicta*). Two courts have held that a bar on evictions of commercial tenants for the purpose of owner use is a taking. *See* Rivera v. R. Cobian Chinea & Co., 181 F.2d 974 (1st Cir. 1950); Ross v. Berkeley, 655 F. Supp. 820, 839 n.19 (N.D. Cal. 1987).

308. *See* Loeterman v. Brookline, 524 F. Supp. 1325, 1329 (D. Mass 1981).

309. N.J. STAT. § 2A:18-61.1.l (3) (stating that owner occupancy is a just cause for eviction from units in buildings with three units or less); *see* Sabato v. Sabato, 342 A.2d 886 (N.J. 1975) (holding that state law restrictions on an owner's right to evict for owner occupancy from units in buildings with two units or more was "disproportionate" to the goals the measure could accomplish). In *dicta*, the *Sabato* court stated that the legislature might deem it "appropriate or desirable," to adopt new legislation which limited rights of owner-occupancy evictions "to certain types of property" (e.g., large apartment houses or garden apartment complexes clearly representing "investment type" properties). *Sabato*, 342 A.2d at 897.

310. *See* Flynn v. Cambridge, 418 N.E.2d 335, 339 (Mass. 1981).

311. *See* Ballinger v. City of Oakland, 24 F.4th 1287, 1292 (2022) (rejecting the claim that conditioning the right to evict for owner occupancy upon the payment of a relocation fee of $6,000 constituted a physical taking. In this case the dwelling had been used as the principal residence of the owners until they relocated while fulfilling military assignments and the mitigation requirement was adopted after the execution of the tenancy agreement). *Id*. at 1291.

312. *See infra* notes 316–323 and accompanying text.

"fundamental" when it is invoked for "nonpossessory" purposes.[313] Another commentary is critical of opinions that do not adequately weigh purchasers' expectations about whether the property would be used for personal or investment purposes when determining the scope of the right to exclude.[314] The commenter distinguishes between cases in which a particular non-personal economic use had been in effect for a long period (as in *Penn Central*) and cases involving the primary investment backed expectations of condominium purchasers who had a right to evict for owner occupancy when they purchased a type of property that is traditionally used for owner occupancy.[315] Clearly, investments in mobile home parks, which are solely for economic purposes, may be distinguished from investments in single-family dwellings, individual condominium units, or buildings with only a few dwelling units, which are standardly for personal uses.

The precedent regarding the constitutionality of bars to the closure of rental apartment buildings or evictions for other purposes than owner occupancy has been mixed. In 1949, the New York Court of Appeals rejected a landlord's constitutional challenge to a law that required relocation mitigation payments as a condition to a right to evict tenants to demolish a 20-unit building.[316] The court noted that the plaintiff did not contend that the building failed to provide a reasonable return in its current use and that the eviction was justified by an emergency.[317]

In *Nash v. City of Santa Monica*, the California Supreme Court upheld a municipal law prohibiting terminations of residential rental uses and demolitions of apartment buildings.[318] The court concluded that the "dismissal" of the taking claim by the U.S. Supreme Court in *Fresh Pond* constituted binding precedent in a case involving a law which was "nearly identical" to the Santa Monica ordinance.[319] On this basis, the court rejected the plaintiff's physical and regulatory takings claims. Also, the

313. Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 WIS. L. REV. 925, 1000 (1989). One commentary notes: "The common law historically, and properly, attached great weight to the interests of home owners in protecting their privacy and associational autonomy by recognizing a robust right of home owners to exclude the public from entering their property without permission." Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 743, 816 (2009).

314. *See* John N. Drobak, *Constitutional Limits on Price and Rent Control: The Lessons of Utility Regulation,* WASH. U.L.Q. 107, 134–35 (1986).

315. *See id*.

316. *See generally* Loab Estates, Inc. v. Druhe, 300 N.Y. 176, (NY 1949).

317. *See id*. at 180. Since 1949, the courts have abandoned the doctrine that rent controls must be justified by an emergency. *See also* Birkenfeld v. City of Berkeley, 17 Cal. 3d. 129, 157 (1976) and cases of other state supreme courts cited therein.

318. *See* Nash v. City of Santa Monica, 688 P.2d 894, 894 (1984). Under the municipal law, owners who could not make a reasonable return on investment were exempted from the regulation. *See id.* at 897 n.3.

319. *Id.* at 902.

court rejected the plaintiff's contention that the law imposed an involuntary servitude because it compelled him to pursue a particular business against his will.[320] The court reasoned that because the apartment owner could exit the business by selling the property, the actual limitation on the owner's property rights was "minimal and indirect" while serving important public objectives.[321] Three dissenting justices equated the law with the imposition of an "involuntary personal service"[322] and argued that "less intrusive means may be found for achieving [its purpose]" because "Santa Monica could make new construction on lots formerly containing rent controlled property subject to rent control."[323] However, this type of legislation would not accomplish a purpose of protecting the current tenants from displacement.

7. To "Refrain In-Perpetuity from Terminating a Tenancy"

Prior to *Yee*, the "in perpetuity" issue had not been raised in cases involving laws regulating apartment rents which usually require just cause for evictions (even though such laws do not have sunset clauses). However, the "in perpetuity" issue arose in several cases related to legislation providing protections for tenants in units that were converted to condominiums, as well as cases involving restrictions on evictions from mobile home parks. Both before and after *Yee*, most courts have rejected the view that laws which only allow evictions for breaches of tenant obligations are "permanent" or "in perpetuity." As discussed, one exception is the ruling of the Florida Supreme Court that any requirements of more than one year's notice in a law governing mobile home park tenancies to evict would be an unconstitutional infringement on the right to possess.[324]

In 1981, a U.S. District Court held that a condominium conversion law that only authorized evictions for just cause did not compel a landlord to "Refrain In-Perpetuity from Terminating a Tenancy" because the ordinance may be repealed, the tenant may die or voluntarily vacate the property, landlords retained the right to evict an unsatisfactory tenant, and

320. *See id.* at 898; Marcus Brown Holding Company, Inc., v. Feldman et al. 256 U.S. 170, 199 (1921) (rejecting the claim that compelling the type of services associated with operating an apartment building is an involuntary servitude); *see also* Maher v. New Orleans, 516 F.2d. 1051, 1066–67 (5th Cir. 1975) (rejecting the view that historic preservation requirement is an involuntary servitude).

321. *Nash*, 688 P.2d at 899. For a discussion of claims that restrictions on the closure of residential apartment businesses are a regulatory taking and the author's conclusion that the guarantee of a right to a fair return precludes such claims, see John N. Drobak, *Constitutional Limits on Price and Rent Control: The Lessons of Utility Regulation*, 64 WASH. U.L.Q. 107, 123–50 (1986).

322. *Nash*, 688 P.2d at 906.

323. *Id.* at 911.

324. *See* Palm Beach Mobile Homes v. Strong, 300 So. 2d 881, 888 (Fla. 1974).

the regulated owner retained the right "to use their property in an economically viable manner."[325] In 1984, in *Troy v. Renna*, the Second Circuit Court of Appeals held that a 40-year prohibition on no-fault evictions of low- and moderate-income seniors and disabled tenants living in apartment buildings which had been converted to condominium ownership was not a "permanent" bar on evictions.[326]

Since *Yee*, the issue of whether a law "compel[s] a landlord . . . to *refrain in perpetuity from terminating a tenancy*" has been an issue in several cases.[327] In *Aspen-Tarpon Springs*, the Florida Court of Appeal relied on *Yee* to support its conclusion that a mitigation requirement for mobile home closures is a physical taking because it compels park owners to "surrender *indefinitely* their rights to possess and occupy their land and to exclude others."[328]

On the other hand, in a case involving rent controls of apartments, the New York Court of Appeals held that the fact "[t]hat a rent-regulated tenancy might itself be of indefinite duration—as has long been the case under rent control and rent stabilization—does not, without more, render it a permanent physical occupation of property."[329] In 2023, in *Community Housing Improvement Program v. City of New York*, a Ninth Circuit Court of Appeals held that a law which only allows evictions for failures to perform tenant obligations does not compel a landlord "*to refrain in perpetuity from terminating a tenancy*."[330] The court explained:

> [G]rounds on which a landlord may terminate a lease. . . . include failing to pay rent, creating a nuisance, violating provisions of the lease, or using the property for illegal purposes. It is well settled that

325. Loeterman v. Brookline, 524 F. Supp. 1325, 1330 (D. Mass. 1981).

326. Troy Ltd v. Renna (1984) 727 F.2d 287, 301 (3rd Cir.1984).

327. Kingstown Mobile Home Park v. Strashnick, 774 A.2d 847, 855 (R.I. 2001) (emphasis added) (upholding a law limiting grounds for evictions from mobile home parks and, on the basis that the law allowed evictions for a change in use of a park, distinguishing the law from a compulsion to rent in "perpetuity," and, therefore concluding that the law fit into the category of regulations upheld in *Yee*).

This Article does not consider cases addressing physical taking claims raised in challenges to moratoria on evictions for non-payment of rent during the COVID-19 pandemic (thereby requiring landlords to accept continuations of occupations of their property without compensation).

328. Aspen-Tarpon Springs Ltd. Partnership v. Stuart, 635 So. 2d 61, 67–68 (1994) (emphasis added).

329. Rent Stabilization Ass'n. v. Higgins, 630 N.E.2d 626, 632 (N.Y. 1993). The court held that an extension of tenancy rights to surviving family members of a tenant is not a physical taking. *Id*.

330. Cmty. Hous. Improvement Program v. City of New York, 59 F.4th 540, 552 (2nd Cir. 2023) (emphasis added) (quoting Yee v. Escondido, 503 U.S. 519, 528 (1992)), *cert denied*, 144 S. Ct. 264 (2023)); *see also* 74 Pinehurst LLC v. New York, 59 F.4th 557, 563 (2nd Cir. 2023), *cert denied* 601 U.S. ___ (2024).

> limitations on the termination of a tenancy do not effect a taking so long as there is a possible route to an eviction.[331]

The court distinguished this case from *Cedar Point Nursery* on the basis that this case involved occupations by invitees, rather than uninvited third parties (union organizers).[332]

D. Mobile Home Park Only Zoning

The courts that have struck down closure statues on the basis that they impose an "unfair burden" have also held or indicated in *dicta* that park owners have a constitutional right to convert their land to other uses. In *Palm Beach Homes v. Strong,* the Florida Supreme Court stated that "permanently *depriving the owner of the land upon which a mobile home park is located* . . . . would ordinarily raise serious doubts as to the constitutionality *vel non* of the act . . . ."[333] In *Guimont*, the Washington Supreme Court held that the state closure statute was unduly oppressive because park owners could not "alter their present or planned uses without subjecting themselves to the Act's onerous obligation."[334] In *Cider Barrel*, the Maryland Court of Appeal stated that "there is insufficient evidence to show that the park owner has been permanently deprived *of his right* to use his land for purposes other than a mobile home park."[335] This statement by the Maryland court may have only been intended to indicate that the existence of a right to convert a mobile home park to a more profitable use undercuts a regulatory taking challenge. Or, it may have been a declaration that there is an absolute right of mobile home park owners to convert their land to more profitable uses.

On the other hand, as indicated, a growing number in localities in several states have adopted land use regulations which limit allowable uses of land with existing mobile home parks to only this type of use.[336] While precedent regarding the validity of mitigation requirements for terminations of mobile home park tenancies and restrictions on evictions

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331. *Id*. at 552.

332. *Id*. at 553.

333. Palm Beach Homes v. Strong, 300 So. 2d 881, 887 (Fla. 1974) (emphasis added).

334. Guimont v. Clarke, 854 P.2d 1, 16 (Wash. 1993).

335. Cider Barrel Mobile Home Court v. Eader, 414 A.2d 1246, 1252 (Md. 1980) (emphasis added).

336. *See supra* text accompanying notes 163–166. In California, some local ordinances require that as long as a property is in use as a senior-only mobile home park, to remain, it must continue to be a senior-only park. *See* Putnam Family Partnership v. Yucaipa, 673 F.3d 920, 933 (9th. Cir. 2012) (upholding senior zoning for mobile home parks); *see also Opinion of the Attorney General,* No. 04-704 (Op. Att'y Gen. Oct. 20, 2004) (concluding that senior-only mobile home park zoning is constitutional).

to termination a park use has been mixed, this author did not locate any reported cases striking down mobile home park only zoning.

In the single reported appellate court decision considering a constitutional challenge to such zoning, *Laurel Park Community LLC v. Tumwater*, the Ninth Circuit Court of Appeals upheld a municipal ordinance that limits allowable uses on land with mobile home parks to mobile home parks, and other uses which are less profitable than mobile home parks.[337] Multifamily uses and other types of "dense" uses, which had been allowed under the prior zoning ordinance, are no longer permitted. Exemptions from the new restrictions are permitted if an owner can demonstrate that a mobile home park is not an economically viable use.[338]

The stated intent of Tumwater's municipal ordinance is to "promote residential development that is high density, single family in character and developed to offer a choice in land tenancy. The MHP zone is intended to provide sufficient land for manufactured homes in manufactured home parks."[339] The ordinance also sets forth reasons why this zoning supports a wide range of goals, including "'healthy residential neighborhoods which continue to reflect a high degree of pride in ownership or residency' and . . . the stability of established residential neighborhoods."[340]

The court held that the park owner was not in a position to make any assertions other than those that could be made by any other property owner adversely impacted by any zoning law.[341] It reasoned that, while the law may have blocked a use that the owner "heretofore had believed was available," the law did not interfere with the "primary expectation" of a right to continue the use of the property when the ordinance was adopted.[342] Also, the court rejected the park owners' substantive due process claims based on state law and illegal spot zoning claims on the bases that the law had a "substantial relationship to the general welfare of

337. *See* Laurel Park Cmty. LLC v. Tumwater, 698 F.3d 1180, 1195 (9th Cir. 2012), *aff'g* 790 F. Supp. 2d 1290 (W.D. Wash. 2011).

338. *See id*. at 1195–96 (noting that the plaintiffs did not present evidence to support this type of claim).

339. *Id*. at 1186 (reciting the ordinance provisions).

340. *Id.* at 1187.

341. *See id*. at 1189. For example, farmland-only zoning, which is common, has been consistently upheld by the courts, except when arbitrary or motivated by the desire of a public entity to be able to obtain the land for a low price. *See* Mark W. Cordes, *Takings, Fairness, and Farmland Preservation*, 60 OHIO ST. L.J. 1033, 1062–69 (1999). In terms of reciprocity, economic impacts, and concerns about unfair burdens, it appears that mobile home park only zoning compares favorably with farmland only zoning. Unlike mobile home park owners, farm owners do not realize special benefits from land use regulations in the form of restrictions on possible competition in the supply of their product.

342. *Laurel Park Cmty. LLC*, 698 F.3d at 1189–90.

the affected community" and was consistent with the general plans for the community.[343]

V. CONCLUSION

The circumstances of mobile home park space rentals and mobile home park closures are largely undisputed and indisputable. While mobile homes are a more affordable type of housing, public regulations have severely restricted where mobile homes and mobile home parks can be located. The result has been to create *de facto* oligopolies over where mobile homes can initially be installed and *de facto* monopolies over where they can be located after they are installed in a mobile home park. This set of circumstances has been a principal incentive for investors taking on this type of property ownership.

There can be infinite debate in public forums and legislatures over whether society or a park owner is the cause of harsh adverse impacts of closures on mobile home owners and where responsibility for mitigating their impacts should rest. The weight that a closure law may place on park owners, requiring mitigation for closures or blocking closures, may be a new burden that was not in effect when a park was constructed or purchased by the prior or current owner.[344] However, the problems associated with the captive nature of mobile home park tenancies and public interests in protecting mobile home owners have been a public issue for over half a century. In the context of a myriad of public land use regulations in our system, the burdens imposed by such legislation on park owners are light compared with the "burdens" that arise from the introduction of other common types of zoning measures, such as down-zonings that sharply reduce the value of a property before it has been developed. At the same time, the regulatory benefits that park owners obtain due to restrictions on the development of mobile home parks and the placement of mobile homes outside of parks are extensive.

Invoking a "right to exclude" to invalidate closure legislation overrides consideration of factors relevant to the application of this right set forth in Supreme Court opinions since *Penn Central.* These factors include whether the right to exclude is "essential to the use or economic value of the property,"[345] whether it involves "property reserved by its owner for private use,"[346] and whether the exclusion of the owner would "empty the right [of ownership] of any value, . . . unable to make any use of the property."[347] Barring or limiting the scope of closure legislation

343. *Id*. at 1195.
344. Once upon a time, zoning was a new burden on property owners.
345. Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74, 84 (1980).
346. Nollan v. Cal. Coastal Comm'n, 483 U.S. 825, 831 (1987).
347. Fresh Pond Shopping Ctr., Inc. v. Callahan, 464 U.S. 875, 878 (1983).

would be contrary to a history of upholding restrictions on evictions of apartment tenants, although the rationale for securing the tenancies of mobile home owners is even more compelling. Invocation of a constitutional right to exclude mobile home owners to convert land to a more profitable use would place public powers to protect mobile home owners on a lower constitutional rung than public powers to compel property owners to use their land in a manner which preserves natural resources or wildlife or historic buildings or serve other public interests.[348] Claims of unfair burdens rest on the assumption that land use regulations which block a conversion to a more profitable use is an unfair burden. In fact, such regulations are central to our zoning system.

As the history of the right to exclude illustrates and the treatise of Blackstone expounds, the reality is that, from the beginning, property rights, including the right to exclude, have been limited by common understandings of reason, fairness, and the needs of society, rather than being absolute. Since the 1970s, if not decades earlier, the common understanding has been that legislative powers include the power to provide tenants with security of tenure in their dwellings and to place restrictions on property owners' rights to exclude (evict) their tenants. In order to serve the common good, closure legislation mitigates or prevents the particularly deleterious economic outcomes of closures for mobile home owners, while preserving the rights of park owners to continue property uses which were selected because of their profitability, continue to be highly profitable, and are largely risk free due to the captive nature of mobile home park tenancies.

348. One commentary proffers the following question about whether a right to exclude mobile home owners turns the right to exclude upside down: "[I]f a landlord has the constitutional right to exclude others from his home because it is his 'castle,' does he have the same constitutional right to evict a tenant from her castle?" Manheim, *supra* note 313, at 986.

APPENDIX

Table A1. Mobile Home Park Spaces by State

State	No. of Parks	No. of Spaces	% Spaces in Parks*	
			100+ spaces	200+ spaces
Arizona	1,400	250,000		
California	3,519	327,439	71%	36%
Colorado	760	58,303	68%	52%
Connecticut	205	10,080	51%	17%
Delaware	182	24,639	84%	65%
Florida	3,751	361,377	77%	60%
Idaho	1,100	45,000		
Illinois	574	38,909	60%	39%
Indiana	1,070	89,476	60%	42%
Maine	552	19,702		
Maryland	493	17,987		
Massachusetts	251	20,698		
Michigan	1,126	178,267		
Minnesota		48,361	58%	33%
Montana	975	19,158		
Nevada	448	24,567		
New Hampshire	327	29,100		
New York		83,829	47%	22%
Ohio	1,630	106,724	65%	34%
Oregon	1,082	62,504		
Rhode Island	46	3,527	86%	55%
Texas		256,323		
Vermont	238	7,094		
Washington	1,174	64,789	42%	13%
Total in States with Available Data	**20,455**	**2,149,873**		

* Tabulations computed by Author based on source data. See *infra* Appendix tbl.A2. The American Housing Survey by the Census Bureau does not include a question about whether a mobile home is on a rented space in a mobile home park. It includes a question on whether the mobile home is in a group of 7 to 20 or 21 or more mobile homes. The 2011 survey indicated that 577,000 mobile homes were in a group of 7 to 20 mobile homes and 2,273,000 were in a group of 21 or more mobile homes. U.S. Census Bureau, Current Housing Reports, Series H150/11, American Housing Survey For The United States: 2011, at 4, tbl.C-01-AH (Sept. 2013), https://perma.cc/9MJ5-34G6.

Table A2. Home Park Spaces by State—Data Sources

State	Source of Data
Arizona	ARIZONA HOUSING ALLIANCE, PRESERVING AND EXPANDING MOBILE/MANUFACTURED HOME COMMUNITIES: AN AFFORDABLE HOUSING SOLUTION (Jan. 2017), https://perma.cc/3AJV-M8WT.
California	Email from Jamie Candelaria, Staff Servs. Manager at California Housing and Cmty. Mgmt., to Ken Baar, author (Feb. 8, 2022 6:46 AM), https://perma.cc/H9ZU-PHBX (including an attached excel table documenting active mobile home and special occupancy parks in California) (author's tabulation excludes parks with one to three mobile home spaces).
Colorado	COLORADO DEPT. OF LOCAL AFFAIRS, DIVISION OF HOUSING, MOBILE HOME PARK OVERSIGHT PROGRAM, 16 (2022–2023), https://perma.cc/5UWF-8AC8 (reporting 4,451 spaces with park owned mobile homes).
Connecticut	Email from DCP License Services, to Ken Baar, author (Nov. 10, 2021 1:17 AM), https://perma.cc/TE85-95NE (including an attached excel table documenting the number of mobile home spaces in each park (available at https://perma.cc/F7DL-GZ5K)).
Delaware	DELAWARE MANU. HOUSING RELOCATION AUTH., *Communities with Number of Homes* (Oct. 8, 2021), https://perma.cc/ZXT4-F3GA (reporting that 5% of homes are park owned).
Florida	MOBILE HOME/RV PARK LISTING, FLORIDA HEALTH (Aug. 18, 2023), https://perma.cc/7BSX-CVN9 (indicating which parks have pools).
Idaho	GOVERNORS MANUFACTURED HOME PARK ADVISORY COMMITTEE REPORT, 1 (2008), https://perma.cc/2HFB-D3UF.
Illinois	*Licensed Manufactured Home Communities Directory,* ILLINOIS DEP'T OF PUB. HEALTH, https://perma.cc/DHY5-4XK6 (last visited Apr. 1, 2024).
Indiana	Email from Mike Mettler, REHS Dir. Env't Pub. Health Div., to Ken Baar, author (Mar. 22, 2024 1:32 AM), https://perma.cc/YN4B-QEY5 (including a list of Indiana park data (available at https://perma.cc/F6B5-JUG7)).
Maine	Jane Irish, *Resident-Owned Mobile-Home Parks in Maine*, COMMUNITIES & BANKING, 29 (Mar. 3, 2014), https://perma.cc/4LEJ-UX8W (reporting 2006 data).
Maryland	Ovetta Wiggins, *Legislation Gives Mobile-Home Owners Protection if Land is Sold*, WASH. POST, June 17, 2010, at B1, https://perma.cc/UVJ7-X74H (citing Dept. of Assessment and Taxation data).
Massachusetts	*Massachusetts Parks by City,* STATE DEPT. OF HOUSING & CMTY. DEV., https://perma.cc/G4V2-Q2DG (last visited Apr. 2, 2024).
Michigan	Email from Larry Lehman, Michigan Dep't of Licensing & Regul. Affairs, to Ken Baar, author (Nov. 13, 2013), https://perma.cc/9HRS-2PKW.
Minnesota	*Complete List of Manufactured Home Parks in Minnesota*, ALL PARKS ALLIANCE FOR CHANGE (July 2009), https://perma.cc/BDE6-5DEY.

State	Source of Data
Montana	RAND KENNEDY & JULIE FLYNN, COMMUNITY DEV. AND MGMT. SERVS., MOBILE HOME DECOMMISSIONING & REPLACEMENT AND MOBILE HOME PARK ACQUISITION STRATEGIES FOR MONTANA: A PRELIMINARY ANALYSIS AND REPORT (June 2006), https://perma.cc/HX48-YQ3U.
Nevada	Legislative Commission of the Legislative Counsel Bureau, *Study of the Problems of Owners of Mobile Homes Who Rent Space in Mobile Home Parks,* 13 (Sept. 1990), https://perma.cc/A5C5-G48P.
New Hampshire	*2017 New Hampshire Manufactured Housing Data Snapshot*, PROSPERITY NOW (Sept. 2017), https://perma.cc/8KUH-UWJ8 (reporting the total after excluding Resident Owned Communities).
New York	*Historic Manufactured Home Park Registrations: 1989-2019*, DATA.GOV (Nov. 29, 2021), https://perma.cc/FEY4-GERF.
Ohio	Email from Mo Nusbaum, Assistant Div. Couns., to Ken Baar, author (Aug. 1, 2023), https://perma.cc/V8CP-WRP9 (providing a list of manufactured home parks by county).
Oregon	*State Of Oregon Manufactured Dwelling Park Directory*, https://perma.cc/L8J2-EU2L (last visited Jan. 13, 2024).
Rhode Island	Post by the Federation of Rhode Island Mobile Home Owners Organization, https://perma.cc/J6GW-XJMG (last visited Apr. 21, 2024) (providing data on the total spaces as of 2001).
Texas	Kevin Jewell, *Manufactured Homeowners Who Rent Lots Lack Security of Basic Tenants Rights*, CONSUMER'S UNION, 2 (Feb. 2001), https://perma.cc/7ZL3-XXME.
Vermont	VERMONT DEPT. OF HOUSING & COMMUNITY DEV., VERMONT MOBILE HOME PARK REGISTRY & 2022 MOBILE HOME PARKS REPORT 3 (Feb. 1, 2023), https://perma.cc/JK75-W4Q4 (reporting that 3,451 spaces are in parks owned by non-profits or cooperatives).
Washington	*Registered Manufactured/Mobile Home Communities in Washington*, WASH. STATE DEPT. OF COMMERCE, https://perma.cc/EW37-AFQN (last visited Apr. 2, 2024).