

From the Desk of **L. A. “Tony” Kovach**

4.12.2023 A.D.

To: Sec. Jennifer Granholm and Whom It May Concern at the Department of Energy (DOE)

Subject: EERE-2009-BT-BC-0021

2023-03-24 Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date; Notice of proposed rulemaking

These remarks are my own, but I will reference information that has been provided by others to bolster my request, allegations, and advocacy regarding [2023-03-24 Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date; Notice of proposed rulemaking](#). In a phrase, it is my view that the [DOE Energy Rule should be scrapped and redone](#).

Please consider every linked item as evidence in support of my statements and this DOE energy regulations comments submission. [DOE's Energy Rule harms consumers and independents](#). While DOE argues that the energy savings may recoup over time the added costs, [you can't recoup a cost you can't afford](#). That's the plight that potentially millions of consumers will find themselves in.

- 1) I'm a [30+ year veteran of the manufactured home industry](#).
- 2) [My wife and I personally own a HUD Code manufactured home where we live with our teenage son](#).
- 3) I'm a former Manufactured Housing Institute (MHI) member who was elected by my peers to serve on the board of directors for MHI's Suppliers Division.
- 4) In my view, the evidence is strong that the process for the manufactured housing 'negotiated rulemaking' has been fatally flawed. [Please consider every linked item a part of my submitted comments](#). That said, see the record provided Danny Ghorbani, former MHI vice president and the founding president and CEO of the Manufactured Housing Association for Regulatory Reform (MHARR) at this link below. Ghorbani argued for a lawsuit to stop the corrupt method creating the current rule <https://www.manufacturedhomeprnews.com/masthead/manufactured-housing-institute-leaders-lawyers-asked-about-explosive-allegations-by-nonprofit-veteran-on-high-profile-mh-industry-threat-exclusive-qa-claims-downturn-less-than-1-year-away-if-mhi-fai>
- 5) Be it accident or design, MHI did file suit, but arguably did so later than they should have. <https://www.manufacturedhomeprnews.com/masthead/crow-time-manufactured-housing-institute-mhi-texas-manufactured-housing-association-tmha-file-suit-v-does-mh-energy-rule-regs-case-no-23-cv-00174-docs-mharr-factor-analysi/>
- 6) The manufactured home industry is now in its 5th month of downturn. Note that Ghorbani predicted that [months in advance in the Q&A linked here and above](#). <https://www.manufacturedhomeprnews.com/masthead/conventional-housing-sales-rise-in-february-2023-per-nahb-but-manufactured-home-sales-plunged-what-data-suggests-about-manufactured-housing-corporate-or-manufactured-housing-institute-leaders/>
- 7) MHARR has publicly said that delay to date when MHI-TMHA filed suit against the DOE in [Case No. 23-cv-00174](#) may have been timed to cause 'maximum chaos' for the manufactured home industry's producers. <https://manufacturedhousingassociationregulatoryreform.org/doe-delays-energy-rule-manufactured-home-industry-must-now-demand-total-revocation-of-destructive-regulation/>

8) While Samuel Strommen at Knudson Law was not speaking specifically of the DOE manufactured housing energy rule when he produced his extensive thesis on what he called a “felony” case of corruption in manufactured housing, Strommen did point to the evidence in his well footnoted allegations that MHI was acting on behalf of the “Big Three” manufacturers in manufactured housing.

<https://www.manufacturedhomelivingnews.com/strommen-felony-conspiracy-case-monopolization-of-affordable-manufactured-housing-and-manufactured-home-communities-rube-goldberg-machine-of-human-suff/>

PROUD MEMBER OF

MHI
MONOPOLISTIC HOUSING INSTITUTE

Clayton
homes

SKYLINE
CHAMPION

Cavco
INDUSTRIES, INC.

THE NATIONAL ASSOCIATION
SERVING CONSOLIDATORS OF THE
MANUFACTURED HOUSING INDUSTRY

SUN
SUN COMMUNITIES, INC.

els
Equity LifeStyle Properties

IMPACT
COMMUNITIES

MHI LivingNews
Journal Entry for 2018

HAVEN PARK
COMMUNITIES

rhp PROPERTIES
american's home

Flagship
COMMUNITIES

"The Manufactured Housing Institute [MHI] acts not only as the public mouthpiece of the Big 3 manufacturers (in the name of the industry) but also appears to act directly on its behalf in its various lobbying endeavors."

Samuel Strommen
mckinstry.com

Strommen said he "submits that the MHI's conduct in obfuscation judicious decision-making by the [FHFA and HUD] constitutes a conspiracy to restrain trade under Section 1 of the Sherman Act, and by virtue of the misrepresentative nature of the conduct, should not be afforded Noerr protection."

– Sam Strommen, The Monopolization of the American Manufactured Home Industry and the Formation of REITs: a Rube Goldberg Machine of Human Suffering.

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SOUTH DAKOTA
COYOTE

MHI LivingNews
Journal Entry for 2018

9) Minneapolis Federal Reserve senior economist and researcher James A. "Jim" Schmitz Jr and his colleagues have done extensive research on what they have referred to as 'sabotaging monopoly' tactics deployed in the manufactured housing industry.

https://www.einnews.com/pr_news/571069719/monopolies-sabotage-and-destroy-markets-successfully-sabotaged-u-s-factory-production-of-homes-prof-james-schmitz

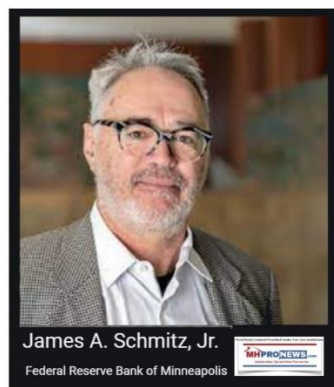
<https://researchdatabase.minneapolisfed.org/downloads/ff365548j> = "Solving the Housing Crisis will Require Fighting Monopolies in Construction December 2020."

<https://www.promarket.org/2020/08/14/monopolies-silent-spreaders-of-poverty-and-economic-inequality/>



"Monopolies [oligopolies] are difficult to detect...they form power relationships of infinite complexity that are hard to untangle..." ~ "Sabotaging Monopolies" researchers.

<https://www.manufacturedhomepronews.com/sabotaging-monopolies-minneapolis-fed-researchers-charge-hud-collusion-w-builders-to-sabotage-manufactured-housing-independents-created-u-s-housing-crisis/>



"Monopolies sabotage and destroy markets.

Monopolies also use their weapons to manipulate and sabotage public institutions for their own gains..."

~ James A. "Jim" Schmitz
Senior Economist and his antitrust research colleagues, cited by economist John Cochrane, Senior Fellow of the Hoover Institution at Stanford.
Note: their term 'monopolies' should be understood to include 'oligopolies.'

John H. Cochrane



The Grumpy Economist

<https://www.manufacturedhomepronews.com/grumpy-economist-cochrane-sun-communities-sui-favorable-demand-drivers-with-supply-constraints-investor-data-yields-quick-case-study-in-buffett-moat/> Note: please consider linked items as well as the cross-linked items from those linked posts all as part of my submission on the DOE's comments.

<https://www.manufacturedhomepronews.com/affordable-homes-for-low-income-must-produce-in-factory-years-to-unravel-sabotage-grad-students-interest-in-manufactured-housing-factory-home-solutions-plus-sun/>



Federal Reserve Bank of Minneapolis
James A. Schmitz, Jr. | Federal Reserve Bank of Minneapolis


"This [pattern of obscured sabotaging monopoly tactics] leads to whole new set of monopolies, those in [the] manufactured housing industry itself." ~

James A. "Jim" Schmitz Jr., in an presentation to university students. See that full presentation and these

comments in context at the link below.

10) There is a strong evidence-based case that several of the leading brands at MHI are deftly using the regulatory regime of the federal and other governmental entities in a manner that restricts the industry's growth. **Doing so has the effect of restricting the size of the industry which benefits consolidators.** Those consolidators are routinely members of MHI and/or MHI 'state affiliates.' From this page:

<https://www.fhfa.gov/Videos/Pages/FHFA-Public-Listening-Session-Enterprise-Housing-Goals-ANPR.aspx>

are these comments by me to the FHFA, which summarize and link up an array of sources that lead to that troubling but logical conclusion. <https://www.fhfa.gov/Media/Documents/Kovach-statement.pdf> = "A Pimple on an Elephant's Ass."

11) The lawsuit that MHI-TMHA filed **against the DOE in Case No. 23-cv-00174 may never have been necessary had not the Sierra Club sued the DOE with respect to the MH energy rule.** The research linked below indicates that funds flowing from Warren Buffett are among the donors to the Sierra Club. That broadly fits the thesis of Schmitz et al about stealthy sabotaging monopoly tactics.

<https://www.manufacturedhomepronews.com/masthead/energy-environment-institute-big-donors-conflicts-warren-buffett-mike-bloomberg-undermine-manufactured-housing-via-sierra-club-lawsuit/>

12) **Carol Roth** has pointed out that big businesses 'secretly' favor regulations because they tend to harm smaller competitors.



Carol Roth | Fox News


"...all regulation, that excessively impacts small business...In fact, big companies secretly love regulation because regulations are in fact anti-competitive -- every new rule, law or compliance measure limits the ability of existing smaller competitors or new start-ups to compete."


- **Carol Roth**

- American television personality, bestselling author, entrepreneur, radio host, and investor. Roth appears regularly on national cable television networks including *Fox Business*, *CNBC*, *CNN*, *Fox News* and *MSNBC*, per Wikipedia.




13) Kevin Clayton, CEO of Clayton Homes, has ironically help make the case that Berkshire Hathaway chairman Warren Buffett 'hates' competition. Clayton Homes and their lending are Berkshire Hathaway (BRK) subsidiaries. A loyal MHI member - [Andy Gedo - explained as part of an online debate that Clayton Homes 'moat' in manufactured housing was fostered by their advantage in chattel lending.](#) That chattel lending advantage of Berkshire Hathaway would not exist, said Doug Ryan of CFED (since rebranded as Prosperity Now) without MHI's tacit support.



Andy Gedo 

ManageAmerica
Online Property Management Systems



"So, six years before the conventional mortgage meltdown, MH chattel lending virtually disappeared for anyone with a flawed credit history..."

"Clayton's finance capability is a barrier to entry (what you [MHIProNews/MHLivingNews like to call a "moat") that limits competition. Barriers to entry can sometimes be exploited through unfair competition to gain monopoly power in a market..."

To see this in context go to the original debate linked below.

Let's note that our publications call it "the Moat" because Warren Buffett, Kevin Clayton and others in that mindset call it "the moat." It is Buffett's term, not one we created.

That noted, Gedo is quite right in saying that **"barriers to entry can sometimes be exploited..."** Why is the Duty to Serve (DTS) manufactured home lending passed in 2008 as part of the Housing and Economic Recovery Act (HERA) still not being properly implemented? Why is FHA Title I or FHA Title II – among other possible federal lending plans that could be named – not being properly implemented in the post-Berkshire era? Is it a coincidence? Or have they used their influence and resources to limit and divert those options and thus maintain their moat as a barrier to entry, and maintenance in the industry?



Kevin Clayton, left, Warren Buffett, right.
Photo credit:
Seattle Times expose portrays Warren




"Warren [Buffett] is very competitive ...he paints such an image in each of our manager's minds about this moat, this competitive moat, and our job is very simple and we share this..."

Deepen and widen your moat to keep out the competition...

But some of our competitors do a good job, but our plans are to make that difficult for them."

- **Kevin Clayton,**
President and CEO of Clayton Homes,
a Berkshire Hathaway brand.
Source – video transcript posted on [MHLivingNews.com](#).

<https://www.manufacturedhomepronews.com/epic-kevin-clayton-moat-rant-analysis-lesli-gooch-debate-defense-doug-ryan-charge-end-clayton-monopoly-over-manufactured-housing-breaching-buffett-berkshire-clayton-monopolistic-moat-method/>



Doug Ryan | Prosperity Now

PROSPERITY NOW

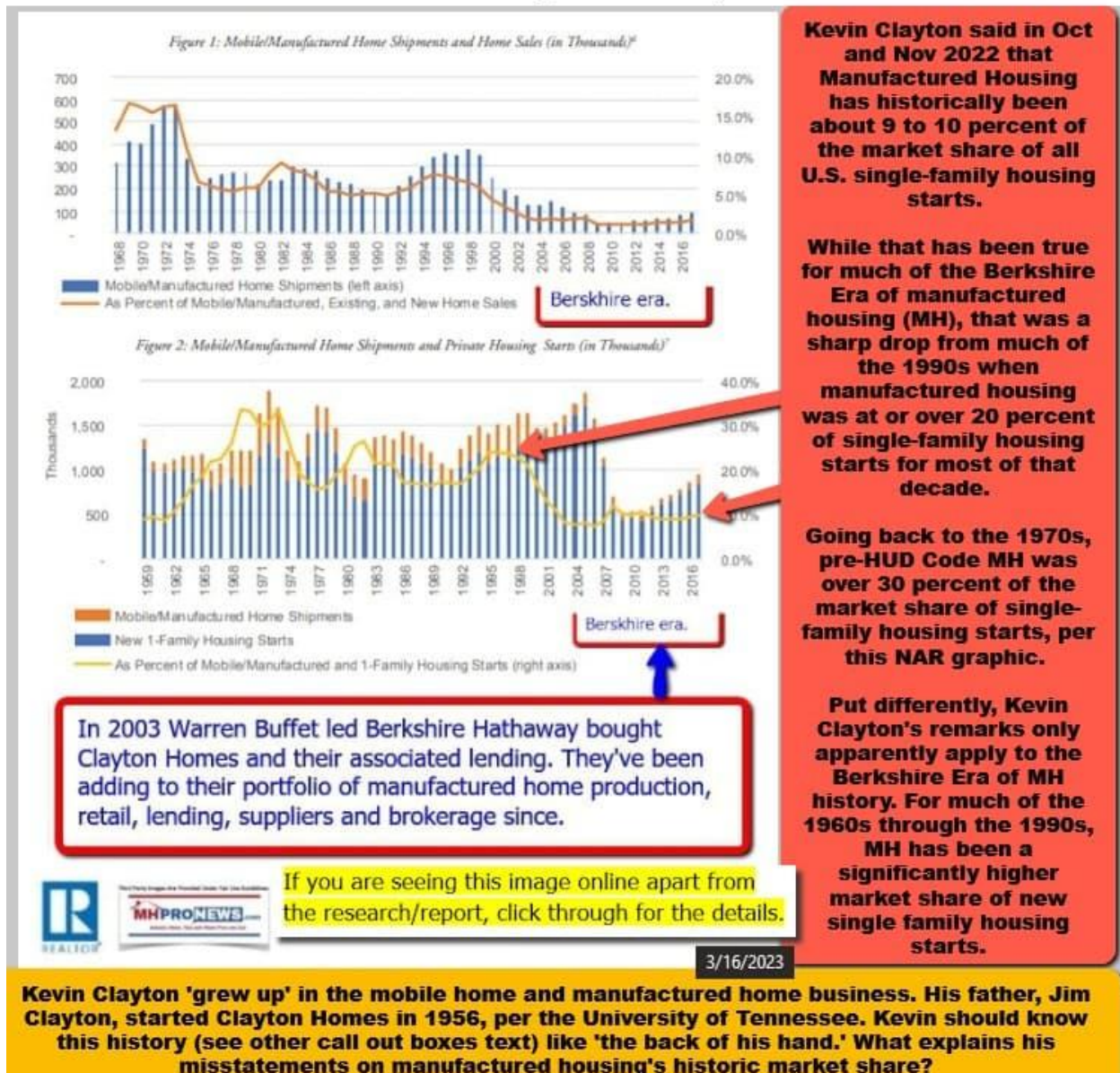
"This [capital access advantage held by Clayton Homes] is likely why it and the Manufactured Housing Institute — the industry's trade association — have been unwilling to criticize the exclusion of chattel loans from the rule, even though including such loans could bolster manufactured home sales by attracting new lenders."

- **Doug Ryan**
Prosperity Now via op-ed in *American Banker*.



Manufactured Housing's Market Share of Single-Family Housing Plunged in the 21st Century.

Facts & Expert Commentary



<https://www.manufacturedhomepronews.com/kevin-clayton-video-interview-w-transcript-historic-claims-claytons-call-double-production-illuminates-decades-of-manufactured-housing-industry-und/> and <https://www.manufacturedhomepronews.com/warren-buffetts-pledge-to-kevin-clayton-you-can-access-plenty-of-capital-for-projects-quotes-facts-video-transcript-and-implications-for-manufactured-housing>

14. That backdrop illustrates how time and again, MHI and their leading brands collectively behave in a fashion that is often contrary to the interests of independent producers of HUD Code manufactured homes. This is done in an open, but obscured fashion, because on the surface MHI and MHARR often *seem* to take similar stances. But upon closer inspection, MHARR's thinking and behavior are clear and consistent. By contrast, MHI often postures in a way that may look convincing to the uninformed. But

when the various pieces of the puzzling behavior are assembled – they routinely reflect the obscuring ‘sabotage monopoly’ tactics that Schmitz has broadly described and which Strommen more specifically documented. How that played out in the DOE energy rule is exemplified in MHI’s bizarre ‘effort’ to pass 11th hour legislation to ‘fix’ the DOE energy rule mess [that they arguably helped create](#). That legislation, this writer said a year ago, **was doomed to go nowhere**. I cited Skopos Labs and GovTrack as support, but it is apparent to anyone that grasps the legislative process that MHI’s bill to ‘stop’ the DOE energy rule in manufactured housing was dead on arrival. There was only a House bill (HR 7651), no companion Senate bill, and only a small number of Republicans signed on. It would have required a super-majority to make it veto proof, given that Democrat Joe Biden is sitting the White House. Biden has made ‘green’ policies a centerpiece of his administration. Note that months later, my prediction that HR 7651 would fail proved to be correct. Why didn’t MHI ‘experts’ know as much? [Follow the money](#).

<https://www.manufacturedhomeproneews.com/masthead/h-r-7651-manufactured-housing-affordability-and-energy-efficiency-act-of-2022-skopos-labs-govtrack-reveal-duplicity-or-madness-of-manufactured-housing-institute-mhi-advocacy-claims/>

15. MHI’s leading brands make up the [bulk of their board of directors](#). These are routinely educated and experienced professionals. Yet their behavior is routinely late, inept, and self-contradictory when closely examined. Instead of manufactured housing soaring during an affordable housing crisis, manufactured housing is in its [5th month of a downturn](#). MHI’s excuses for this [downturn arguably don’t stand up to scrutiny](#). DOE advancing this energy rule as is will cost jobs, kill off or force the consolidation of businesses, and will cost potentially millions of consumers the opportunity to become a homeowner.

16. MHARR explains in detail their legal rationale for a redo of the energy rule. I concur with that logic.

<https://manufacturedhousingassociationregulatoryreform.org/why-manufactured-home-industry-members-must-comment-on-the-doe-manufactured-housing-energy-rule-to-demand-its-delay-and-withdrawal/>

<https://manufacturedhousingassociationregulatoryreform.org/wp-content/uploads/2023/04/mharr.doeenergyextensioncomments-MHARR-Download-Version.pdf>

17. Once upon a time I was a ‘loyal’ MHI member. One that was praised by many in a public fashion. But as [insiders began to advise](#) me on [how the association actually operates, as opposed to the veneer](#), I began to ask question and raise those concerns privately and then publicly. Instead of explaining why I or others at MHI might be mistaken in my reading of the scenario there, MHI and its leading brands arguably began a campaign of attempting to marginalize our publications, [which they previously supported and praised](#). The publications I help lead have carefully documented, step by step, the evidence for the concerns raised herein, not only on the DOE manufactured housing energy rule, but also on an array of other issues. [No one could be as inept as MHI leaders](#). As but one document-supported example of purported corruption, MHI’s current CEO Lesli Gooch was credibly accused by an apparent insider via a document drop to MHProNews of collecting income from a rival trade group of manufactured housing while she was on the MHI payroll and ‘time.’

<https://www.manufacturedhomeproneews.com/whistleblowers-documents-on-lesli-gooch-manufactured-housing-institute-ceo-new-discoveries/>

What was her punishment for such a conflict of interest? None discernable. A book could and perhaps should be written on just how corrupt the process and several of the insiders at MHI appear to be.

<https://www.manufacturedhomeproneews.com/masthead/rest-of-story-residents-media-complain-rhp-properties-on-evictions-discrimination-stiff-hikes-havenpark-communities-named-where-is-manufactured-housing-institutes-code/>

18. MHARR previously said to federal regulators that MHI does not speak for the entire industry. That's true.

<https://www.einpresswire.com/article/565550569/mhi-does-not-represent-entire-industry-manufactured-housing-assoc-slams-manufactured-housing-institute-on-energy-rule>

19. Sadly, in America, there is all too often a two-tiered justice system. The deeper pockets get more political access. The deeper pockets often seem to get away with bad, corrupt, or immoral behavior and may even attempt to project that bad behavior onto others who are their rivals. The Biden-Harris 2020 campaign website aptly noted that access is a form of currency in Washington, D.C. While they claimed to eschew that they would play that game if elected, the evidence seems to contradict that Biden-Harris campaign pledge. Right track-wrong track polling reveals that time and again the interests of the [majority of Americans from all ethnic or other backgrounds are undermined by the policies in place today](#).

20. The Biden White House published a fact sheet that made a credible case for why most industries and professions in the U.S. are consolidating. While manufactured housing was not among them, the evidence from Schmitz et al, Strommen, and others illustrates why that Biden Fact Sheet on competition and consolidation is worthy of a close look. [Paltering, posturing](#), and projecting must be kept in mind, but once understood, they made several points that are relevant to most Americans.

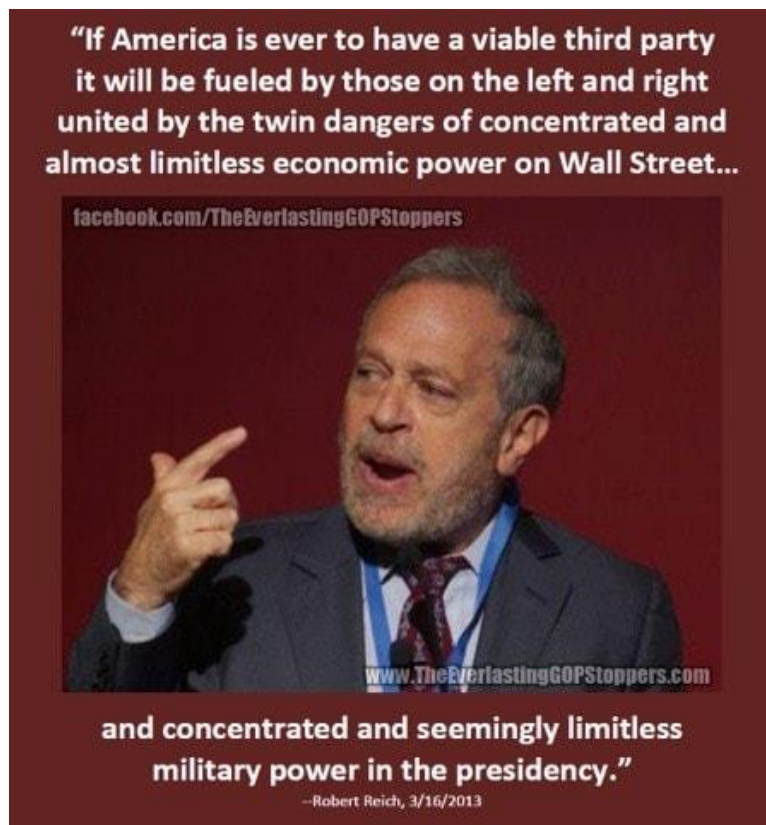
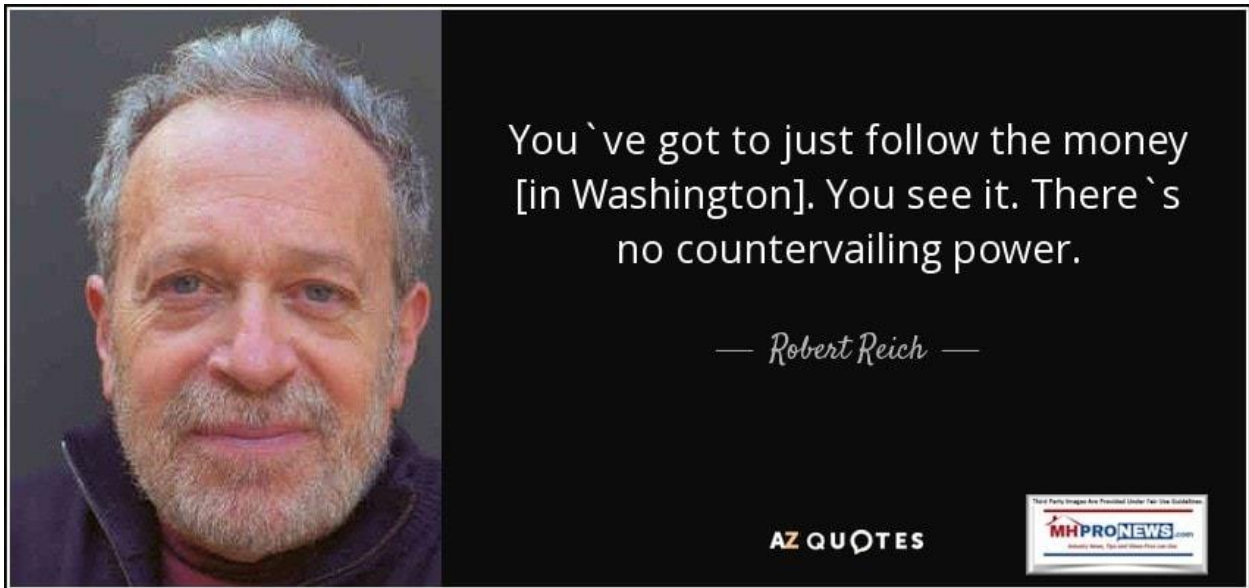


<https://www.manufacturedhomepronews.com/examining-joe-bidens-white-house-fact-sheet-on-executive-order-on-promoting-competition-in-the-american-economy-plus-sunday-mhville-manufactured-home-industry-he/>

What went unmentioned by too many in media is that the Biden White House plan for housing, which cited manufactured housing several times, resulted in not a growth, but a retreat in housing sales.

<https://www.manufacturedhomepronews.com/despite-biden-housing-promises-cnn-nar-say-1st-time-homebuyers-fall-to-all-time-low-mhi-input-unpacking-info-for-mhville-advocates-plus-sunday-mhpronews-weekly/>

21. A growing number of Americans are coming to realize [just how rigged and corrupt the system is in Washington, D.C. and in big business, big media, big tech, etc.](#) Credible voices from across the political spectrum are and have been talking about this pattern for years. Strommen's politics is unknown to this writer. The same could be said of Schmitz and his colleagues. But Strommen hung his hat in a more conservative state when he penned his thesis cited above, while Schmitz hails from a more liberal one. While I disagree with some aspects of Robert Reich's arguments, that Democrat and former Clinton Administration official's broad points that Washington has been corrupted by big money and that antitrust action is necessary makes sense to me. That is mentioned because it too sheds an indirect light on the arguably corrupt DOE manufactured housing energy rule process.



<https://www.manufacturedhomepronews.com/u-s-should-break-up-monopolies-democrat-robert-reich-guardian-plan-would-hit-clayton-homes-skyline-champion-and-cavco-industries-with-costly-antitrust-lawsuit-statements-facts/>

22. There are voices like Reich's that span the left-center-right spectrum. Regulations are part of the game that is played in Washington. Big companies can afford to play that game. Smaller ones that can't navigate the system may get consolidated (mergers and acquisitions (M&A)).



<https://www.manufacturedhomepronews.com/wp-content/uploads/2022/01/WarrenBuffettMoat21stMortgageLetterTimWilliamsSchmitzStrommenKevinClaytonCoriBushGuruFocusRobinHardingFinacialTimesMHProNewsQuoteCollageManufacturedHomeLendingManufacturedHomeProNews-scaled.jpg>

23. Clicking on the link above can open that quotation laden document into a larger size. It begins to paint the picture from an array of sources of that shed light on why manufactured housing is underperforming during an affordable housing crisis. More on that are found at this [link here](#) and another below.

<https://www.einpresswire.com/article/561961420/why-is-manufactured-housing-underperforming-during-an-affordable-housing-crisis-legal-updates-reports-explore-concerns>

24. That may seem at times to drift a distance from the DOE manufactured housing energy rule. But closely examined, the DOE rule as it stands is part of a broader pattern. Manufactured housing is much needed. I'm a sincere believer in the good that the product can provide when it is honestly and honorably sold, installed, serviced, and maintained. Manufactured homes have the potential to change millions of lives for the better. Manufactured homes have the potential for multi-generational wealth creation.



"...I have said before that home ownership is the quickest way to build wealth..."

"Manufactured housing could cure most of the ills we have in this country as it pertains to the housing shortage.

Why then is it not being utilized as it could be?"

– Rev. Donald Tye, Jr.

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<https://www.manufacturedhomelivingnews.com/affirmatively-furthering-fair-housing-a-novel-yet-proven-solution-to-the-affordable-housing-crisis-that-will-create-opportunities-based-upon-existing-laws/>

Rev. Donald Tye Jr.'s point is an apt one. LendingTree and the Urban Institute are among those that have documented the wealth creating potential of affordable manufactured housing, see that linked here.

<https://www.manufacturedhomelivingnews.com/unpacking-manufactured-homes-as-an-investment-lendingtree-mobile-home-values-are-rising-faster-than-single-family-home-values-when-do-mobile-and-manufactured-homes/>

25. MHI postures concerns blacks and minorities. But when given a specific opportunity to help a black family in North Carolina to become a manufactured homeowner in the face of local opposition, MHI's Gooch said some nice words *but they did nothing*, per Mayor Pro-Tem Ivory Mewborn.



<https://www.manufacturedhomelivingnews.com/mhi-manufactured-housing-institute-will-grant-request-via-prayer-mayor-pro-tem-ivory-mewborn-on-affordable-plant-a-home-millions-are-waking-up-to-surpri/>

https://www.reflector.com/legal-moral-and-pragmatic-reasons-support-manufactured-homes/article_3416c595-df44-546b-8fcf-0705a4c8cdfa.html

Summary and Conclusion. DOE officials know several of the facts outlined herein. [MHARR](#) said they obtained documents via FOIA requests that support their allegations against MHI that are stated herein. DOE has apparently erred in this rule making process. **The MHI-TMHA lawsuit is an opportunity for DOE to withdraw the rule completely and start fresh.** That is what I'm asking for – **that DOE scrap the current rule.** That DOE start fresh with a sincere interest in what consumers can afford and what smaller businesses can do. Anything else will simply look like corruption that benefits a few deep pocketed insiders. Thank you. Sincerely, L. A. "Tony" Kovach.

<https://LATonyKovach.com>