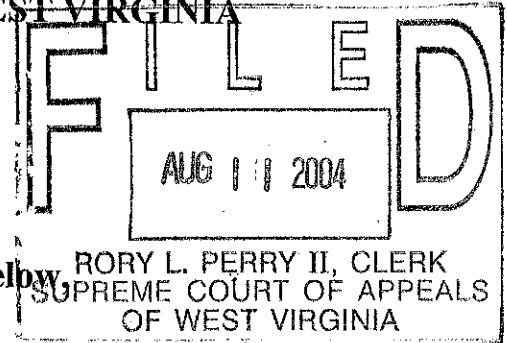


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 31792



SAMUEL J. SWIGER, et al., Plaintiffs Below
Appellees

v.

UGI/AMERIGAS, INC., a foreign corporation,
d/b/a AMERIGAS, INC., Defendants Below,
Appellants

BRIEF OF THE *AMICI CURIAE*

NISOURCE, INC. and WEST VIRGINIA PROPANE GAS ASSOCIATION as *Amici Curiae*

By Counsel

Ancil G. Ramey, Esq.
WV State Bar ID No. 3013
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
Telephone (304) 353-8112
Facsimile (304) 353-8180

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I. INTRODUCTION

This is a brief *amici curiae* by NiSource, Inc. [NiSource] and the West Virginia Propane Gas Association [Association].

The *amicus curiae*, NiSource, Inc., is a public utility holding company. Its subsidiaries engage in the business of natural gas transmission, storage, and distribution and electric generation and transmission. NiSource companies deliver energy to 3.7 million customers, including West Virginia customers, from the Gulf Coast through the Midwest to New England. NiSource subsidiaries include Columbia Gas Transmission Corporation, which has its operations and customer service center in Charleston, West Virginia, and deliver an average of 1.3 trillion cubic feet of natural gas each year to customers in eleven states, including West Virginia. A former NiSource subsidiary was involved in the propane distribution business in West Virginia and, accordingly, NiSource has an interest in the outcome of this litigation.

The Association is an association of companies and individuals engaged in the propane gas industry in West Virginia, including large and small businesses engaged in the retail marketing of propane gas and appliances; manufacturers and distributors of propane equipment; fabricators of propane gas cylinders and tanks; and propane transporters. The Association has a newsletter and sponsors meetings in West Virginia to discuss issues facing the propane industry, including environmental, regulatory, and safety concerns. The Association is a member of the National Propane Gas Association [NPGA], which is the national trade association representing the United States propane industry. NPGA's website includes information about decisional, legislative, and regulatory issues facing the propane industry; consumer advice on topics such as the safe

usage of propane grills; and industry trends. www.npga.com. This case has important implications for West Virginia's propane gas industry,¹ and the Association has an interest in the outcome of this litigation.

This case involves the applicability of the State Fire Code to one and two-family dwellings. Section 1.5 of the State Fire Code states that, "The State Fire Code has no application to . . . buildings used wholly as dwelling houses for no more than two families." In *Redden v. Comer*, 200 W. Va. 209, 213, 488 S.E.2d 484, 488 (1997), this Court previously recognized that Section 1.5 should be applied as written when it held:

Consequently, this Court concludes that the exemption in the State Fire Code is dispositive and precludes the appellant's action against the appellees. As stated in the *Reed* opinion: "Where there is no legal duty to take care, there can be no actionable negligence." 192 W. Va. at 396, 452 S.E.2d at 712. Clearly, the State Fire Commission was authorized, by statute, to create a State Fire Code. That Code, as adopted, contained a clear exemption regarding "buildings used wholly as dwelling houses for no more than two families [.]". Under the circumstances of this action, that exemption is dispositive.

Likewise, Section 1.5 of the State Fire Code should have been held dispositive in the instant case, precluding the Appellees' claims. The Circuit Court clearly erred in failing to follow *Redden*.

The *amici curiae* note that, for a quarter century, the Section 1.5 exemption has been part of the State Fire Code. Homeowners and those who provide goods and services to homeowners have relied on the exemption. This case involves underground propane

¹ Propane is an important, affordable energy source for many West Virginians, a considerable number of whom reside in rural areas without ready access to alternative energy sources. Many West Virginians reside in manufactured housing and, according to one national study, propane's market share in manufactured housing, which serves more than 20 million Americans, has grown from 18 to 33 percent. LPGas Magazine, "Home Sweet (Propane) Home," July 1, 2004.

gas lines, but if this Court invalidates the exemption for one and two family homes or restricts its application solely to homeowners, it will have implications far beyond the propane gas industry, both in terms of affordability and potential retroactive liability for the providers a host of goods and services.

For example, Section 3 of the State Fire Code exempts one and two-family dwellings from the prohibition against unvented heaters, which pose certain risks, but are an affordable heat source, and safe when used as directed. CSR § 87-1-3. Invalidation of the exemption will deprive homeowners of that affordable heat source. Moreover, the manufacturers, distributors, retailers, and installers of unvented heaters, which have been sold in reliance on the Section 1.5 exemption, will be exposed to unanticipated liability if the Circuit Court's decision is affirmed.

Section 9 of the State Fire Code prohibits rendering fire extinguishing or warning systems inoperable or inaccessible except in certain circumstances. CSR § 87-1-9. If the Section 1.5 exemption for one and two family homes is invalid, parents could not make fire extinguishers inaccessible to their children or homeowners could not inactivate home security systems with integrated fire warning features without violating the State Fire Code. Indeed, a homeowner could not hire the security company to render a malfunctioning home security system inoperable without violating the State Fire Code and exposing the security company to liability. Instead, the homeowner would be forced to repair, replace, or remove the system. Manufacturers, distributors, retailers, and installers of home security systems, who have relied upon Section 1.5 in doing business in West Virginia, should not be exposed to liability under the Circuit Court's ruling.

Similarly, Section 11 of the State Fire Code imposes many requirements with respect to "Fire Alarm System[s]" for "All Occupancies." CSR § 87-1-11. Section 11.1.10 provides, "Visual signal devices shall be provided in all new fire alarm systems." CSR § 87-11-1.1.10. Obviously, whether a builder, homeowner, or a service provider is installing a new fire alarm system in a one or two-family dwelling, the requirement of "visual signal devices" would add to the cost of such system. The Legislature has wisely left such decisions to the homeowner. This Court should not, like the Circuit Court, invalidate this exception in order to allow, for example, a homeowner to sue his or her builder or alarm company because it did not install "visual signal devices" with a new security system that included a fire alarm.

The exemption for one and two family homes is a legislative decision, not a judicial one for which a court's judgment as to appropriate public policy may be substituted in order to sustain a cause of action. The Legislature has elected to exempt all one and two-family dwellings from the State Fire Code. Manufacturers, distributors, retailers, and installers, including those involved in the propane gas industry, have justifiably relied upon the Section 1.5 exemption. Whatever the relative merits of the decision to exempt one and two-family dwellings from the State Fire Code, the Circuit Court was wrong to substitute its judgment for that of the Legislature.

II. STATEMENT OF FACTS

This case arises from a single fire, allegedly as a result of the negligent placement of an underground propane gas line. The Swigers instituted a cause of action against AmeriGas, seeking damages as a result of the fire. At issue, as in *Redden*, is simply the duty of care. As there is no common law duty of care with respect to the burial depth of

underground propane gas lines, the Appellees must look towards other sources for a duty of care.

There are various published codes that address the burial depth of utility lines, including standards published by the Building Officials & Code Administration International ("BOCA") and the Council of American Building Officials ("CABO"). Specifically, the 1996 BOCA National Building Code, the 1996 BOCA International Mechanical Code, and the 1995 CABO One- and Two-Family Dwelling Code all contain provisions regarding the proper burial depth of utility lines.

Initially in this case, the parties and the Circuit Court believed that National Fire Protection Association standards, including NFPA 54 -- known as the National Fuel Gas Code -- applied to the proper burial depth of underground propane gas lines. Eventually, however, the parties and the Circuit Court all concluded that NFPA 54, did not apply to underground propane gas lines, but a dispute then arose over which standard, if any, did apply.

AmeriGas argued that NFPA 58 -- known as the Liquefied Petroleum Gas Code -- applied to the proper burial depth of underground propane gas lines. NFPA 58 permits lines to be buried to depth of 12 inches unless there is a likelihood of external damage at which point the depth is to be 18 inches. Conversely, the Appellees have argued that (1) BOCA's International Mechanical Code, requiring a burial depth of 18 inches, applied, or (2) NFPA 58 applied, but mandates a burial depth of 18 inches. Eventually, on June 19, 2002, the Circuit Court ruled that the State Fire Code's NFPA standards prevailed over the Building Code standards. Yet, accompanying this finding was another finding that the express exemption of one and two-family dwellings from the State Fire Code did not

apply. This second ruling conflicts with Section 1.5 of the State Fire Code and this Court's decision in *Redden*, which exempts one and two-family dwellings, like the Swigers' home, from all of the State Fire Code's provisions, including NFPA 58.

Upon a motion for reconsideration by AmeriGas, which focused on the Section 1.5 exemption, the Circuit Court summarily dismissed *Redden* and rejected assertion of the Section 1.5 exemption. First, the Circuit Court held that the exemption "was never intended to apply to an entity such as AmeriGas, a sophisticated commercial business entity which installs and delivers a hazardous substance such as propane." Order at 4. Second, the Circuit Court held that the exemption should not apply because "to adopt AmeriGas' theory would deprive the vast majority of citizens who live in homes, trailers, and small apartments of any protection of the State Fire Code." Order at 5. Finally, the Circuit Court held that "I don't think the Supreme Court was asked to fully analyze what they did or what the impact of that exclusion of one and two family dwelling houses or residences would be on the State." Order at 6. Essentially, the Circuit Court substituted its policy judgments for that of the Legislature and this Court. This, the *amici curiae* respectfully submit, was improper and warrants a reversal by this Court.

III. DISCUSSION OF LAW

A. THE CIRCUIT COURT CLEARLY ERRED IN FAILING TO APPLY THE SECTION 1.5 EXEMPTION OF THE STATE FIRE CODE TO THE BURIAL DEPTH OF UNDERGROUND PROPANE GAS LINES

1. The Decision of the Circuit Court is Contrary to this Court's Decision in *Redden*.

W. VA. CODE § 29-3-16(a) provides, "On or before the first day of July, one thousand nine hundred and ninety-one, an operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings."

In *Reed v. Phillips*, 192 W. Va. 392, 397-98, 452 S.E.2d 708, 713-14 (1994), this Court considered this provision in conjunction with a suit arising from a house fire, but determined that no cause of action could be predicated upon violation of the smoke detector statute because W. VA. CODE § 29-3-16(g) provided, "A violation of this section shall not be deemed . . . to constitute evidence of negligence . . . in any civil action or proceeding for damages."

Alternatively, however, the *Reed* plaintiffs argued that because the State Fire Code incorporates the NFPA Life Safety Code, which requires the installation of smoke detectors in one and two-family private dwellings, the lack of a smoke detector in their home constituted a violation of statute. This violation, the *Reed* plaintiffs asserted, constituted *prima facie* evidence of negligence. This Court agreed, holding that in light of the provisions of the State Fire Code which incorporated the NFPA Life Safety Code, the landlord/defendant's failure to install a smoke detector constituted a *prima facie* showing of negligence, thereby allowing the *Reed* plaintiffs to proceed with their action, with the NFPA Life Safety Code as providing the applicable duty of care. *Id.* at 398, 452 S.E.2d at 714. The landlord/defendant in *Reed*, however, never raised the Section 1.5 exemption of one and two-family dwellings from the operation of the State Fire Code.

Three years later, in *Redden, supra*, this Court was again presented with a case involving the duty of care for the installation of smoke detectors in one and two-family dwellings. In *Redden*, however, the defendants pointed to the Section 1.5 exemption, exempting one and two-family dwellings, and argued that the exemption prohibits any application of any provision of the State Fire Code to a single-family home, including the provision related to the installation of smoke detectors. Thus, this Court was presented

with the same issue presented in the instant case, i.e., does the Section 1.5 exemption prohibit application of the State Fire Code to one and two-family dwellings? As previously noted, this Court held that the State Fire Code, including its provisions governing the installation of smoke detectors, had no application to one and two-family dwellings. 200 W. Va. at 213, 488 S.E.2d at 488. Thus, this Court affirmed the award of summary judgment to the landlord/defendant. *Id.*; see also *Steele v. McNatt*, 102 Ohio App. 3d 558, 566, 657 N.E.2d 575, 580 (1995) (“We have carefully reviewed the relevant ordinance and have come to an unfortunate conclusion that appellees owed no duty to provide smoke detectors to the single-family dwelling leased by appellants at the time of the fire.”). Respectfully, the instant case is no different and the result should be the same.

2. There is No Common Law Requirement for the Burial Depth of Underground Propane Gas Lines and the State Fire Code Does Not Apply to One and Two-Family Dwellings.

The Swigers’ case is about the proper burial depth of underground propane gas lines at one and two-family dwellings.² As in *Reed and Redden*, where there was no common law requirement for the installation of smoke detectors in one and two-family dwellings, there is no common law requirement for the burial depth of underground propane gas lines. Thus, the Appellees, as the plaintiffs in *Reed and Redden*, have to find alternative sources of a duty of care upon which a cause of action can be predicated. The only sources for such duty of care, in this case, are statutory or regulatory. As will be shown below, there is no such duty from either source.

² Although the Class includes the owners or occupants of one and two-family dwellings, it also includes businesses and multi-family dwellings. The focus of this brief, however, is one and two-family dwellings and the Section 1.5 exemption.

W. VA. CODE § 29-3-1 provides, "This article shall be known and may be cited as the 'Fire Prevention and Control Act.'" With regard to its purpose, W. VA. CODE §§ 29-3-1(a) and (b) provide:

(a) A significant part³ of the population of this state needs improved fire prevention and control;

(b) The establishment and maintenance of a coordination program for fire prevention and control for the entire state is necessary to promulgate the safety and well-being of the citizens and residents of this state;

W. VA. CODE § 29-3-5(b) provides, "Pursuant to the provisions of chapter twenty-nine-a of this code, the state fire commission, by the first day of January, one thousand nine hundred seventy-seven, shall promulgate comprehensive regulations for the safeguarding of life and property from the hazards of fire and explosion to be known as the state fire code. Regulations embodied in the state fire code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state. . . ." Pursuant to this legislative grant of authority, the State Fire Commission, with the Legislature's approval, has adopted the State Fire Code.

Section 1.1 of the State Fire Code provides, "This rule establishes the State Fire Code for the safeguarding of life and property from the hazards of fire and explosion." CSR § 87-1-1.1. With respect to its application, Section 1.5 of the State Fire Code provides, "This State Fire Code has no application to personal care homes caring for three or less patients or buildings used wholly as dwelling houses for no more than two

³ As noted in the brief by AmeriGas, the very first statement of legislative purpose in this Act indicates that the Legislature never intended for it to be universal in application.

families and has no application to farm structures. . . .” CSR § 87-1-5. [Emphasis supplied]. Thus, by its own provisions, the State Fire Code “has no application to . . . buildings used wholly as dwelling houses for no more than two families.” As the Swigers’ home is a “building[] used wholly as [a] dwelling house[] for no more than two families,” just as in *Redden*, the State Fire Code, including its NFPA standards, have no application.

3. The State Fire Code, Which Has Been Legislatively-Approved, Has the Force and Effect of Statute.

As noted in the AmeriGas brief, the State Fire Code is legislatively-approved. It has the force and effect of statute. See Syl. pt. 5, *Smith v. Human Rights Comm’n*, No. 31645 (July 2, 2004)(“A regulation that is proposed by an agency and approved by the Legislature is a ‘legislative rule’⁴ as defined by the State Administrative Procedures Act, W. Va. Code, 29A-1-2(d) [1982], and such a legislative rule has the force and effect of law.”). Because the State Fire Code has been approved by the Legislature, it is subject to attack only if it is unconstitutional. See *Appalachian Power Co. v. State Tax Dept.*, 195 W. Va. 573, 585, 466 S.E.2d 424, 436 (1995)(“Once a disputed regulation is legislatively approved, it has the force of a statute itself. . . . Being an act of the West Virginia Legislature, it is entitled to more than mere deference; it is entitled to controlling weight. .

⁴ W. VA. CODE § 29A-1-2(d), defines a “legislative rule” as “every rule . . . proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule.” As the State Fire Code has been promulgated after and pursuant to legislative authorization, has the force of law, and even the Appellees allege supplies a basis for the imposition of civil liability, it is plainly a “legislative rule.”

.. Under this scenario, unless we are persuaded by the plaintiffs' arguments attacking the rule's constitutionality, or for other reasons stated above, the plaintiffs must lose under the 'clear legislative intent' doctrine."). In the instant case, the Appellees mount no constitutional challenge to Section 1.5; thus, unless there is some ambiguity in its provisions, this Court is bound to hold that "buildings used wholly as dwelling houses for no more than two families" are exempted from the State Fire Code.

4. The Language of Section 1.5 Plainly Provides that the State Fire Code Has No Application to "Buildings Used Wholly as Dwelling Houses for No More Than Two Families," and Should Be Applied and Not Construed.

This Court first looks to the language itself in searching for the meaning or proper application of a statute. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968); Syl. pt. 1, *Peyton v. City Council of Lewisburg*, 182 W. Va. 297, 387 S.E.2d 532 (1989); Syl. pt. 3, *Hose v. Berkeley County Planning Commission*, 194 W. Va. 515, 460 S.E.2d 761 (1995); Syl. pt. 2, *Mallamo v. Town of Rivesville*, 197 W. Va. 616, 477 S.E.2d 525 (1996). There is nothing in Section 1.5 to interpret or construe. It is clear. It exempts "buildings used wholly as dwelling houses for no more than two families" from application of the State Fire Code.

5. Section 1.5 is a Standard Exception or Proviso that is Often Employed by the Legislature to Limit the Application of Statutes.

In Syllabus Point 2 of *State v. Ellsworth J.R.*, 175 W. Va. 64, 331 S.E.2d 503 (1985), this Court held, "The function of a proviso in a statute is to modify, restrain, or conditionally qualify the preceding subject to which it refers." *See also* Syl. pt. 5,

Robbins v. McDowell County Board of Education, 186 W. Va. 141, 411 S.E.2d 466 (1991). Similarly, it has been stated, “Provisos serve the purpose of restricting the operative effect of statutory language to less than what its scope of operation would be otherwise.” 2A Norman J. Singer, SUTHERLAND STATUTORY CONSTRUCTION § 47.08, at 156 (5th ed. 1992)(citations omitted).” *State ex rel. Browne v. Hechler*, 197 W. Va. 612, 614, 476 S.E.2d 559, 561 (1996); *see also* 1A Norman J. Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 21:6 (6th ed. Fed. 2004)(“When an act is drafted in general terms its limitation may be achieved through the use of the proviso, exception, or saving clause.”). “Provisos,” as this Court observed in *Charter Communications IV, PLLC v. Community Antenna Service, Inc.*, 211 W. Va. 71, 76, 561 S.E.2d 793, 798 (2002), “are construed using the same general criteria of decision applied to other kinds of provisions.” The State Fire Code is an enactment of general application. It was perfectly appropriate for the Legislature to use an exception or proviso to exclude one and two-family dwellings.

6. The Exercise of the State’s Police Power to Enact a Fire Code is Almost Plenary, Limited Only By the Federal and State Constitutions, Which are not Implicated in this Case.

The enactment of fire codes and building codes are proper exercises of the Legislature’s police power. *See* Syl. pt. 1, *Harris v. Poulton*, 99 W. Va. 20, 127 S.E. 647 (1925). “The police power is the power of the state, inherent in every sovereignty, to enact laws, within constitutional limits, to promote the welfare of its citizens.” Syllabus Point 5, in part, *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 143 S.E.2d 351 (1965).” *Wampler Foods, Inc. v. Workers’ Compensation Div.*, Nos. 31599, 31600, and 31653 (W. Va. July 1, 2004). “The general powers of the legislature,” this

Court recently remarked in Syllabus Point 11, in part, of *Wampler, supra*, “within constitutional limits, are almost plenary. . . . ‘ Syllabus Point 1 of *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 143 S.E.2d 351 (1965).” See also Syl. pt. 4, *State ex rel. Cities of Charleston and Huntington v. West Virginia Economic Development Auth.*, 214 W. Va. 277, 588 S.E.2d 655 (2003); Syl. pt. 2, *State ex rel. Riley v. Rudloff*, 212 W. Va. 767, 575 S.E.2d 377 (2002). The Legislature has clearly expressed its intention that the State Fire Code not apply to one and two-family dwellings. No federal or state constitutional provisions are implicated.

7. The Circuit Court’s Reasons for Invalidating Section 1.5 or Restricting its Application to the Owners of One and Two-Family Dwellings are Erroneous.

All of the Circuit Court’s reasons for invalidating Section 1.5 or restricting its application to the owners of one and two-family dwellings are legally erroneous.

First, the Circuit Court’s rationale that Section 1.5 is invalid because it conflicts with the State Fire Prevention and Control Act ignores the fact that Section 1.5 is part of the State Fire Code. Many statutes contain provisions exempting certain classes from their application. A “proviso” is not invalid because it is inconsistent with the overall purposes of the statute involved.⁵ The Legislature can selectively exercise its police power in any manner it sees fit as long as such exercise is not violative of any constitutional limitation. In the Legislature’s wisdom, one and two-family dwellings should not be saddled with the many restrictions contained in the State Fire Code. Similarly, the Legislature has chosen to exempt one and two-family dwellings from the

⁵ Only where a proviso leads to an absurd result will this Court invalidate one. See, e.g., *Charter, supra*. Exempting one and two-family dwellings does not lead to an absurd result; rather, it reflects a conscious and deliberate choice by the Legislature.

responsibility of the State Fire Marshal. W. VA. CODE § 29-3-12(a)(4). In *Redden*, this Court did not disturb this exercise of legislative prerogative and there is no justification for a different result in this case.

Second, the Circuit Court's reasoning that the exemption was intended to be limited to the owners of one and two-family dwellings has no support in the State Fire Code as the exemption applies to "buildings," not the owners of those buildings. Whether a one or two-family "building" is owned by its residents, by a landlord as in *Redden*, or by a multi-national corporation, the State Fire Code simply does not apply. Finally, the Circuit Court's creation of a "sophisticated commercial business entity" exception to the Section 1.5 exemption finds no support in the State Fire Code. Whether work is performed by the builder, the owner or a third-party, bringing a one or two-family dwelling in compliance with all of the requirements of the State Fire Code will increase the cost of home ownership. The Legislature has elected to give West Virginia homeowners a break by exempting their "buildings" from the application of the State Fire Code. This Court should not substitute its wisdom for that of the Legislature.

8. The Installation of Underground Propane Gas Lines Is Still Subject to Regulation in West Virginia.

The Circuit Court's decision also ignores the fact that merely because Section 1.5 exempts one and two-family dwellings from the State Fire Code, does not mean that the installation of underground propane gas lines is completely unregulated. The State Building Code requires a 12-inch underground burial depth or burial in conduit at a shallower depth if 12 inches cannot be achieved. Three counties and 49 cities and towns have adopted the State Building Code. If citizens in West Virginia's other fifty-two counties and/or other cities and towns want the protections of the State Building Code,

they are free to lobby their county commissions, city councils, and/or town councils to adopt the State Building Code. Many statutes leave matters to local determination. Sunday hunting is but one example. Plainly, the Legislature is free to exempt one and two-family dwellings from the application of the State Fire Code and leave to local judgment the application of the State Building Code.

IV. CONCLUSION

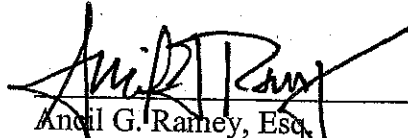
As noted in AmeriGas' brief, a number of other states have exempted one and two-family dwellings from the application of their state fire codes. There is not a single reported case invalidating such exemption and there is no reason for West Virginia to be the only state where such exemption has been invalidated. The invalidation or restriction of the Section 1.5 exemption has broad implications for every West Virginia homeowner and every business associated with homes. Whether installing, repairing, or replacing utility lines, heating systems, cooling systems, fire detection systems, carbon dioxide detection systems, fire suppression systems, fire alarm systems, exhaust systems, electrical lighting systems, roofing systems, cable or satellite television systems, shortwave radio systems, electrical appliances, carpeting, or wall covering, invalidation or restriction of the Section 1.5 exemption will significantly increase the cost of home ownership in West Virginia and will increase the potential liability of associated businesses.

WHEREFORE, the *amici curiae*, NiSource, Inc., and the West Virginia Propane Gas Association, respectfully request that the rulings of the Circuit Court of Monongalia County be reversed and that this Court hold that Section 1.5 of the State Fire Code

exempts one and two-family dwellings from application of its provisions regarding the burial depth of underground propane gas lines.

NISOURCE, INC. and WEST
VIRGINIA LIQUID PROPANE
GAS ASSOCIATION as *Amici
Curiae*

By Counsel



Anril G. Ramey, Esq.
WV State Bar ID No. 3013
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
Telephone (304) 353-8112

CERTIFICATE OF SERVICE

I, Ancil G. Ramey, Esq., do hereby certify that on the 11th day of August, 2004, I served the foregoing "BRIEF OF THE *AMICI CURIAE*" upon the following by facsimile transmission and by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

Counsel for Appellants

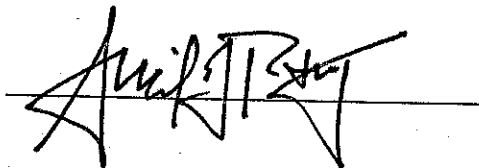
Jay N. Varon, Esq.
Melinda F. Levitt, Esq.
Akita N. Adkins, Esq.
FOLEY & LARDNER LLP
3000 K Street, N.W.
Washington, D.C. 20007
Facsimile No. 202-672-5399

Billy Atkins, Esq.
ATKINS & OBLAK PLLC
5000 Hampton Center, Suite 4
Morgantown, West Virginia 26505
Facsimile No. 304-598-2712

Counsel for Appelles

David J. Romano, Esq.
ROMANO LAW OFFICE
363 Washington Avenue
Clarksburg, West Virginia 26301
Facsimile No. 304-624-5627

Michael J. Romano, Esq.
ROMANO & MILEY
128 South Second Street
Clarksburg, West Virginia 26301
Facsimile No. 304-326-1800

A handwritten signature in black ink, appearing to read "Ancil G. Ramey", is written over a horizontal line.