No. 03-17-00812-CV

IN THE COURT OF APPEALS
FOR THE THIRD JUDICIAL DISTRICT
AUSTIN, TEXAS

AHMAD ZAATARI, MARWA ZAATARI, JENNIFER GIBSON HEBERT, JOSEPH "MIKE" HEBERT, LINDSAY REDWINE, RAS REDWINE VI, AND TIM KLITCH,

Plaintiffs-Appellants,

&

STATE OF TEXAS,

Intervenor-Appellees

v.

CITY OF AUSTIN, TEXAS AND
STEVE ADLER, MAYOR OF THE CITY OF AUSTIN

Defendant-Appellees.

On Appeal from the 53rd Judicial District, Travis County, Texas
Cause No. D-1-GN-16-00260-CV

BRIEF AMICUS CURIAE OF GOLDWATER INSTITUTE IN SUPPORT OF PLAINTIFFS/APPELLANTS

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INTEREST OF *AMICUS CURIAE*[1]

The Goldwater Institute ("GI") was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research, policy briefings and advocacy. Through its Scharf–Norton Center for Constitutional Litigation, GI litigates cases and files amicus briefs when its or its clients' objectives are directly implicated.

Among GI's principal goals is defending the vital constitutional principle of private property rights. Protecting responsible homeowners' right to rent their homes is one of GI's top national property rights priorities. GI has successfully litigated or appeared as amicus curaie in important property rights cases, *see, e,g.*, *Goodman v. City of Tucson*, C-20081560 (Pima Cnty. Super. Ct. Aug. 16, 2010); *Aspen 528, LLC v. City of Flagstaff*, 1 CA-CV 11-0512, 2012 WL 6601389 (Ariz. App. 2012); *Town of Florence v. Florence Copper, Inc.*, S1100CV201302511 (Pinal Cnty. Super. Ct. 2014), including challenges to home-sharing bans and regulations in Arizona. *See McDonald v. Town of Jerome*, P1300CV201500853 (Yavapai Cnty. Super. Ct. June 13, 2016); *Sedona Grand, LLC v. City of Sedona*, 270 P.3d 864 (Ariz. App. 2012). GI also inspired the nation's first comprehensive home-sharing law to protect people's rights to share their homes, while allowing government to enforce reasonable rules against nuisances. *See* S.B. 1350 (Ariz. 2016); A.R.S. §§ 9-500.39, 11-269.17. GI attorneys are currently challenging

[1] Counsel for *amici curiae* affirms that no counsel for any party authored this brief in whole or in part and that no person or entity, other than *amici*, their members, or counsel, made a monetary contribution to the preparation or submission of this brief.

Chicago's anti-home-sharing regulations, which involve restrictions similar to the ordinance at issue in this case. *See Mendez v. City of Chicago,* 2016-CH-15489 (Cook Cnty. Cir. Ct., filed Nov. 29, 2016).

GI believes its legal and policy experience with home-sharing and other property rights issues nationwide will benefit this Court in its consideration of the Motions for Summary Judgment.

INTRODUCTION

"Home-sharing" may sound like a modern invention, but in fact it is a centuries-old American tradition. For generations, people have let visitors stay in their homes, rather than in hotels, sometimes in exchange for money or for doing chores. New immigrants frequently stayed in the homes of more established immigrants. *See, e.g.*, BRIAN MCCOOK, THE BORDERS OF INTEGRATION: POLISH MIGRANTS IN GERMANY AND THE UNITED STATES, 1870–1924 at 31 (2011); DIANA C. VECCHIO, MERCHANTS, MIDWIVES, AND LABORING WOMEN: ITALIAN MIGRANTS IN URBAN AMERICA 68 (2006). During the days of segregation, traveling businessmen or musicians would often spend nights in the homes of local residents because they were excluded from hotels. *See, e.g.*, THOMAS J. HENNESSEY, FROM JAZZ TO SWING: AFRICAN AMERICAN JAZZ MUSICIANS AND THEIR MUSIC, 1890–1935 at 132 (1994); CARLOTTA WALLS LANIER, A MIGHTY LONG WAY: MY JOURNEY TO JUSTICE AT LITTLE ROCK CENTRAL HIGH SCHOOL 148-50 (2009).

The only difference now is that the practice has become more efficient: the internet has enabled homeowners and travelers to connect better than ever before, and online home-sharing platforms such as Airbnb and HomeAway now help

millions of homeowners rent rooms or houses to travelers. Home-sharing is not just limited to vacationers. A study by the travel-expense company Concur found that home-sharing bookings by business travelers grew fifty-six-percent in 2016 alone. *Global Business Travel and Spend Report Reveals New Sharing Economy Trends, Business Traveler Behaviors*, SAP Concur (July 18, 2016).[2]

Home-sharing helps homeowners pay their mortgages and other bills and gives entrepreneurs an incentive to buy dilapidated houses and restore them. Most importantly, home-sharing is an important way for property owners to exercise their basic right to choose whether to let someone stay in their home—a right the United States Supreme Court has called "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979).

Unfortunately, the City of Austin has not welcomed this economic opportunity or respected the rights of property owners, but rather imposed draconian rules that deprive homeowners of some of their most basic constitutional rights. In addition to chipping away at property rights, Austin's anti-home-sharing rules deprive property owners of the rights to due process of law, equal protection under the law, and privacy.

Austin's regulations restrict the number and activity of guests of short-term (but not long-term) rentals, STR Ordinance § 25-2-795(D), (E), (G); subject home-

[2] https://www.concur.com/newsroom/article/global-business-travel-and-spend-report-reveals-new-sharing-economy

sharers to warrantless searches, 2 CR 510-11; and completely ban non-homesteaded short-term rentals, § 25-2-950. This hurts communities and punishes the responsible majority of property owners, including Plaintiffs, for the *potential* wrongs of a few irresponsible homeowners.

The City does not—indeed, it *cannot*—show how these regulations are related to *actual* nuisance abatement or any other legitimate government purpose. *See* 4 CR: 83, 86, 94-95 (claiming the purpose of the anti-home-sharing regulations is to mitigate public disturbances, but admitting that the regulations do not depend on whether home-sharers have caused an actual disturbance). Instead, it seeks nothing less than *carte blanche* to impose regulations on property owners without justification. But Texas courts require restrictions on property rights to "bear a substantial relationship" to a legitimate government interest, *City of Pharr v. Tippitt*, 616 S.W.2d 173, 177 (Tex. 1981), and do not permit such regulations to be "unreasonably burdensome." *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 87 (Tex. 2015).

If the ruling below is left to stand, Texas cities will be able to restrict property rights by merely asserting *without any foundation in fact* that their restrictions on homeowners' rights are related to their stated purpose and not unduly burdensome. That would render Texas's constitutional protections for property rights hollow.

ARGUMENT

I. Austin's anti-home-sharing regulations deprive home-sharers of constitutional privacy protections.

Austin's anti-home-sharing regulations violate constitutional privacy protections by forcing home-sharers to relinquish their constitutional rights against arbitrary searches. It does not require any independent official to find probable cause, or to obtain a warrant before inspecting a private home, and it requires home-sharers to give City officials "free access" to "all buildings, dwelling units, guest rooms, and premises" whenever officials consider such an inspection "reasonable." STR Ordinance § 1301. Worse, since Austin only allows owners to rent out their own primary *residences*, the property subject to search under the ordinance is not business or investment property, but *the owner's own private home*.

The Fourth Amendment to the U.S. Constitution and Article 1, Section 9, of the Texas Constitution protect Texans against unreasonable searches and seizures, *State v. Ibarra*, 953 S.W.2d 242, 244–45 (Tex. Crim. App. 1997), and the Texas Constitution protects the right to privacy. *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 264 (Tex. 2002) (recognizing "that the Texas Constitution protects personal privacy from unreasonable governmental intrusions and unwarranted interference with personal autonomy"). Forcing homeowners to waive these rights in exchange for permission to allow overnight guests in their homes violates essential privacy rights. Austin may not deprive homeowners and their guests of their constitutionally protected privacy rights simply because they offer their

homes for rent, nor may it force business or homeowners to give up their right to be free from unwarranted searches as a condition of using their property. *City of L.A. v. Patel*, 135 S. Ct. 2443, 2451–52 (2015); *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, 1220 (N.D. Ill. 1998); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 311–12 (1978).

Indeed, the U.S. Supreme Court has held that government cannot impose "unconstitutional conditions" on people who seek permits, licenses, or government benefits. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013); *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 837 (1987); *Black*, 20 F. Supp. 2d at 1220. This rule "functions to insure that the Government may not indirectly accomplish a restriction on constitutional rights which it is powerless to decree directly." *Louisiana Pac. Corp. v. Beazer Materials & Servs., Inc.*, 842 F. Supp. 1243, 1248 (E.D. Cal. 1994).

Yet Austin's anti-home-sharing regulations do just that: they force people to give up their constitutional rights to be free from warrantless searches in exchange for being allowed to share their homes with overnight guests. And the potential for abuse is heightened in the home-sharing context, where the "permission" at issue is the bedrock principle that property owners have the right to decide whether or not to let others stay in their homes. *Minnesota v. Carter*, 525 U.S. 83, 107 (1998) (Ginsburg, J., dissenting) ("Our decisions indicate that people have a reasonable expectation of privacy in their homes in part because they have the prerogative to exclude others.").

Under the Fourth Amendment to the U.S. Constitution and Article I, Section 9 of the Texas Constitution, "[a] search of [their] private houses is presumptively unreasonable"—and unconstitutional—"if conducted without a warrant." *See v. City of Seattle*, 387 U.S. 541, 543 (1967); *see also Patel*, 135 S. Ct. at 2452 ("[S]earches conducted outside the judicial process, without prior approval by [a] judge or [a] magistrate [judge], are *per se* unreasonable … subject only to a few specifically established and well-delineated exceptions." (citation and quotation marks omitted)). These protections do not just extend to homeowners. The U.S. Supreme Court has held that even a guest can have "a legally sufficient interest" in privacy "in a place other than his own home," such "that the Fourth Amendment protects him from unreasonable governmental intrusion into that place." *Minnesota v. Olson*, 495 U.S. 91, 97–98 (1990) (citations omitted). Indeed, the Supreme Court has categorically held that Fourth Amendment protections extend to guests in hotels. *Hoffa v. United States*, 385 U.S. 293, 301 (1966). Yet Austin's ordinance forces *homeowners* into the classic unconstitutional-conditions position of having to give up these traditional privacy protections in exchange for being allowed to exercise their other constitutional rights—their fundamental right to decide whether to allow overnight guests to stay in their home.

Nor is the ordinance saved simply because it states that the purpose of the searches is for "making inspections." In *Marshall*, 436 U.S. 307, the Supreme Court struck down a provision of the Occupational Health and Safety Act that gave inspectors similarly "unbridled discretion" to decide "when to search and whom to search" for potential violations of the Act. *Id.* at 323. However important it may be

for enforcement officers to seek evidence of potential violations, the Constitution did not allow government officers to exercise unbridled discretion to determine, on the fly, whether to search a property. "'The businessman, *like the occupant of a residence*, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property,'" the Court held. *Id.* at 312 (*quoting See*, 387 U.S. at 543) (emphasis added). That right would be worthless "'if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant.'" *Id.*

A warrant or other equivalent form of pre-approval by an independent magistrate must be in place to ensure that inspections are reasonable, statutorily authorized, and within the scope of a specific purpose "beyond which limits the inspector is not expected to proceed." *Id.* at 323; *see also Patel*, 135 S. Ct. at 2452–53 (ordinance authorizing searches of hotel records without a warrant or precompliance review violated Fourth Amendment).

Under these principles, Austin's warrantless search rule is plainly unconstitutional. It does not even afford home-sharers the basic "precompliance review" that *commercial* premises like hotels or business must be provided, let alone the warrant protections that private residences enjoy. The ordinance provides no review, no limits, and no guidelines—indeed, it gives the City "free access" to the *entire* home. STR Ordinance § 1301. It does not require probable cause or reasonable suspicion. It provides none of the assurances or boundaries that would be required for a warrant. It does not even require code enforcement officials to

state any particular reason for conducting a search. While "broad statutory safeguards are no substitute for individualized review" of a warrant application by a judge, *Camara v. Municipal Ct. of S.F.*, 387 U.S. 523, 533 (1967), Austin's ordinance fails to provide even those minimal protections for citizens' rights. In short, it "leave[s] the occupant subject to the discretion of the official in the field," *id.* at 532, which is precisely what *Marshall* found unconstitutional. *Cf.* 436 U.S. at 323.

It is true that there is an "administrative search" exception to the usual Fourth Amendment rules in "certain carefully defined classes of cases" in which an industry is so closely regulated by the government "that no reasonable expectation of privacy" applies. *Camara*, 387 U.S. at 529. But the Court has categorically held that the hotel industry is not one of them, *id.*, and certainly a private *home* cannot be. Moreover, even if the "administrative search" exception did apply, business owners still have the right to be free from inspections made without the equivalent of a warrant. *Marshall*, 436 U.S. at 323–24. *Some* form of prior approval by an independent magistrate is constitutionally required even for regulatory compliance inspections, because they "provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria" and because such procedures "advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed." *Id.*; *see also Feller v. Township of W. Bloomfield*, 767 F. Supp. 2d 769 (E.D. Mich. 2011) (zoning inspectors violated Fourth Amendment by entering homeowner's backyard without

a warrant to investigate a claimed violation of a stop work order). The Austin ordinance provides no such protection. It is therefore unconstitutional.

II. Austin's anti-home-sharing regulations violate due course of law because they are not tied to nuisance abatement.

Because Austin's anti-home-sharing regulations do not "bear a substantial relationship" to addressing or preventing actual nuisances, they violate Plaintiffs' due course of law rights. *Tippitt*, 616 S.W.2d at 177. Austin attempts to justify its restrictions on the theory that home-sharing disrupts neighborhoods and causes noise or traffic, even though *the City's own studies* prove otherwise. Appellants' Br. 4-10. But even if home-sharing was causing disruptions, the City's restrictions are not tailored to thwart nuisances. The ordinance subjects home-sharers to warrantless searches, STR Ordinance § 1301, *regardless* of whether the City has received any complaints about guests and regardless of whether the home is actually being rented out at the time. It prohibits a person from offering her home as a short-term rental at all if the home is not the homeowner's primary residence, § 25-2-950, *regardless* of whether the homeowner is on-site during the rental or whether the guests are causing any disruptions. And it restricts the number of people who can be outside and inside the home, § 25-2-795(E), (G), and imposes a 10pm bedtime on guests, § 25-2-795(D), *regardless* of whether those people are being noisy. Thus, the City's anti-home-sharing regulations bear no rational relationship to their stated purpose—or to any legitimate governmental purpose.

This resembles a recent case in Sedona, Arizona, in which a state court barred the City from using similar excuses to justify anti-home-sharing rules

because the regulations were not tied to the City's purported health and safety objective. Arizona law requires cities to compensate property owners for unduly burdensome regulations, but exempts land-use rules from the compensation requirement if they protect public safety and health. A.R.S. § 12-1134(B)(1). Sedona officials therefore claimed that their ban on home-sharing protected public safety. But, like Texas's Due Course of Law Clause, which requires courts to "consider the entire record, including evidence offered by the parties" when determining whether a law aims to mitigate harm to the public, *Patel*, 469 S.W.3d at 87, Arizona law requires realistic judicial review when officials assert the public safety exception. As the Arizona Court of Appeals recognized, "the nexus between prohibition of short-term occupancy and public health is not self-evident." *Sedona Grand*, 270 P.3d at 870 ¶ 26. Thus the government must have some actual evidence of a harm to the public to justify restricting the rights of property owners. But despite Sedona's vague references to "the peace, safety and general welfare of the residents," the evidence did not show that Sedona's anti-home-sharing ordinance prevented any real public dangers. *Id.* at 869 ¶ 23. Instead, the evidence showed that the City sought to ban home-sharing based simply on the complaints of neighbors—which was "entirely distinct" from protecting public health and safety. *Id.* at 870 ¶ 26.

The complaints Sedona officials had received did not relate to any specific public harm, but only to general grievances about home-sharing and a desire to maintain "a quiet, friendly, family" neighborhood—not to protect public safety. Def.'s Statement of Facts at 2 ¶ 5, Ex. B, *Sedona Grand, LLC v. City of Sedona*,

No. V1300CV82008-0129 (Yavapai Cnty. Super. Ct., Sept. 4, 2014). Without actual evidence that home-sharing threatened public health and safety, the court refused to blindly defer to the City's claim that its ban was justified. Under Advisement Ruling on Motions for Partial Summary Judgment, at 5–6, *id.* (Feb. 24, 2015).

The same reasoning applies here. The evidence does not show that home-sharing causes any more disruptions than other residential uses do, and the City, which has not even cited any non-homesteaded short-term rentals in the past five years, Appellants' Br. 39 n.134, relies entirely on broad, unsubstantiated, NIMBY-style public comments to support its claim that its regulations are needed. *Id.*

Like almost every city in Texas, Austin already has the tools to address genuine nuisances such as noise or traffic problems, without violating homeowners' constitutional rights. City ordinances already forbid such disruptions of public order. The City should be using traditional tools to address noise, traffic problems, and other nuisances that may arise in a minority of home-sharing cases. It has a 911 system, 311 system, code-enforcement officers, and an entire police force at its disposal. It should not punish innocent homeowners for the improper behavior of a few bad apples. After all, cities do not outlaw all backyard barbecues just because some get noisy, or prohibit all birthday parties or baby showers because guests sometimes take up parking spots on the street. Instead, they rely on existing rules that limit noise, enforce parking restrictions, and proscribe other nuisances.

Additionally, home-sharing platforms *themselves* provide resources to help neighbors deal with disruptive rental guests. For example, Airbnb opened an online hotline that allows neighbors—anonymously if they prefer—to file complaints about noisy guests, parking violations, and more. *See Airbnb Neighbors—Contact Us*, AIRBNB.[3]

In fact, diverting valuable public resources to policing all home-sharing, instead of enforcing existing anti-nuisance laws, is likely to make things worse by fostering "underground" rentals and creating an atmosphere of snooping and suspicion. That was one reason why police in Nashville, Tennessee, recently announced that they did not want to enforce that city's anti-home-sharing restrictions: "police officers," they declared, "have plenty on their plates answering calls for service and proactively working to deter criminal activity." Eric Boehm, *Nashville Cops Don't Want to Enforce Airbnb Regulations Because They'd Rather Focus on Stopping Actual Crime*, Reason.com, Sep. 27, 2016.[4]

In 2015, San Francisco voters rejected a ballot initiative that would have restricted short-term rentals, in part because it threatened to turn neighbors into spies watching over each other's back fences to ensure that the guests are just friends rather than Airbnb customers. Mollie Reilly, *San Francisco Votes Down Tough Airbnb Regulations*, Huffington Post (Nov. 4, 2015).[5] The following year,

[3] https://www.airbnb.com/neighbors

[4] http://reason.com/blog/2016/09/27/nashville-cops-wont-enforce-airbnb-regul. A Tennessee state court later held the Nashville ordinance invalid. Joyce Hanson, *Nashville Airbnb Ordinance is Unconstitutional, Judge Says*, LAW360.COM, Oct. 25, 2016, https://www.law360.com/articles/855286/nashville-airbnb-ordinance-is-unconstitutional-judge-says.

[5] http://www.huffingtonpost.com/entry/airbnb-san-francisco-

San Francisco Mayor Ed Lee vetoed an ordinance that would have capped home-sharing at sixty days a year, because it "risk[ed] driving even more people to illegal rent units." Mollie Reilly, *San Francisco Mayor Rejects Tough Restrictions on Airbnb,* Huffington Post (Dec. 9, 2016)[6]

The additional reasons the City cites for anti-home-sharing restrictions—protecting the hotel industry and keeping visitors away—are equally offensive from a due course of law standpoint. First, protecting hotels from competition[7] is not a legitimate purpose of government. *See Patel*, 469 S.W.3d at 122 (Willett, J., concurring) ("Naked economic protectionism" is not a "constitutionally permissible end[]."); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222–23 (5th Cir. 2013) (same). If it were, Austin should also prohibit homeowners from allowing friends or relatives to spend the night for free, or from hosting dinner parties in their homes, to avoid diverting business from Holiday Inn or Applebee's.

Additionally, the desires of locals to keep visitors away is not a proper reason for Austin to limit homeowners' property rights.[8] Indeed, local officials have often improperly used this excuse to justify targeting politically unpopular groups or individuals. *See, e.g.*, *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985); *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 502 (1977); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *Buchanan v. Warley*, 245 U.S. 60, 80–81 (1917). The U.S. Constitution was designed to

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[6] https://www.huffingtonpost.com/entry/san-francisco-airbnb-regulations_us_584af753e4b04c8e2bafabbc

[7] 4 CR: 23.

[8] 4 CR: 25.

"withdraw certain subjects from the vicissitudes of political controversy," so that special interests could not hijack government to undermine others' liberties. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). "One's right to life, liberty, and *property*, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Id.* (emphasis added). When local officials decide what a neighborhood should "look like," they frequently—sometimes unconsciously—decide it should look like *them*, and not like a disfavored minority group. *See, e.g.*, *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2522 (2015).

Tailoring rules to legitimate government public health and safety concerns is necessary to protect homeowners' property rights as well as ensure that government is not using regulation as a façade to achieve an inappropriate end. Austin's extreme regulations fail this test at every turn, while ignoring existing nuisance laws that would allow the City to achieve its stated goals without damaging property rights.

III. Austin's anti-home-sharing regulations deny home-sharers equal protection because they arbitrarily treat short-term rentals differently from long-term rentals.

Austin's anti-home-sharing ordinance discriminates unfairly against one class of homeowners—those who offer their homes as short-term rentals—without a legitimate justification for doing so.

When determining whether a shared housing arrangement is consistent with local residential or family zoning, state supreme courts have considered *how a*

home is being used rather than the duration or characteristics of the transaction. For example, the Pennsylvania Supreme Court found that a group of elderly residents who lived together, shared kitchen facilities, and paid dues to participate qualified as a single family residence. *In re Miller*, 515 A.2d 904, 909 (Pa. 1986). The court held that, in determining whether a rental is consistent with the local zoning scheme, "the focus … should be directed to the *quality* of the relationship during the period of residency rather than its *duration*." *Id.* at 909 (emphasis added). It also rejected the idea that a contract to pay dues substantively altered the living arrangement into a commercial transaction. *Id.* at 907. Requiring local governments to treat home-sharing the same as other residential occupancies, without regard for the duration of the rental, protects homeowners against unclear rules and arbitrary enforcement.

IV. Austin's anti-home-sharing regulations deny home-sharers equal protection because they treat non-homesteaded properties differently from primary residences.

Austin's anti-home-sharing ordinance also limits who may rent a home based on where a property owner resides: it prohibits homeowners of non-homestead properties (homes that are not a homeowner's primary residence) from offering their homes as short-term rentals, and phases out existing licenses for such homeowners after April 1, 2022. STR Ordinance § 25-2-950. But there is no reason to believe that the guests of non-homesteaded properties pose a greater threat to the public's health, safety, or welfare than guests who rent a homeowner's primary residence. Prohibiting an Austin home-owner—or a person from another

city or state who owns a home in Austin—from renting out that home, simply because it is not his primary residence, is unconstitutional.

Restricting home-sharing to owners' primary residences does nothing to protect people against any danger that home-sharing might cause because the City's rules do not require home-owners to be *present* when renting out a home. They do not ensure that home-sharers will monitor guests to prevent noise or other disturbances. A regulation actually directed toward protecting the public's health, safety, or welfare would address *how* homes are used—*i.e.*, it would be directed at ensuring that actions taken by home-sharing guests do not harm others or create nuisances by limiting noise, enforcing parking restrictions, etc. Indeed, the City already has such ordinances at its disposal. Given Austin's long history of hosting college students, music and film festivals, and other gatherings, surely the City knows how to curb unruly behavior without resorting to draconian restrictions on property rights.

CONCLUSION

Local control is not an end in itself. It is a tool that allows communities to come together and make decisions, such as how to deal with nuisances, within the proper scope of government power. Local control should never be used as a weapon against individual rights. Because Austin's ordinance deprives people of the right to privacy, to assemble together in groups, to keep the fruits of their labor, and to provide for their future and that of their families, this Court should reverse the decision below.

Respectfully Submitted this 9th day of May, 2018,

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CERTIFICATE OF CONFERENCE

As required by Texas Rule of Appellate Procedure 10.1(a)(5), I certify that I have conferred, or made a reasonable attempt to confer, with all other parties, which are listed below, about the merits of this motion with the following results:

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CERTIFICATE OF COMPLIANCE

Pursuant to Tex. R. App. P. 9.4, I hereby certify that this Amicus Brief contains 4,282 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Matthew R. Miller
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was filed and served via ECF on the 9th day of May, 2018, upon the following individuals listed:

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