No. 22-2828

In the United States Court of Appeals for the Seventh Circuit

DEBORAH BRUMIT AND ANDREW SIMPSON, Plaintiffs-Appellants,

v.

THE CITY OF GRANITE CITY, ILLINOIS, Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Illinois (Civ. No. 19-1090)
(Hon. Staci M. Yandle)

BRIEF OF APPELLANTS AND SHORT APPENDIX

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-2828

Short Caption: Deborah Brumit et al. v. The City of Granite City, Illinois

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Plaintiffs-Appellants Deborah Brumit and Andrew Simpson

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

(a) Institute for Justice; and (b) Fox Smith LLC (formerly known as Fox Galvin LLC)

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Samuel B. Gedge Date: 01/17/2023

Attorney's Printed Name: Samuel B. Gedge

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Attorney's Signature: /s/ Robert McNamara Date: 01/17/2023

Attorney's Printed Name: Robert McNamara

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

Attorney's Signature: /s/ Caroline Grace Brothers Date: 01/17/2023

Attorney's Printed Name: Caroline Grace Brothers

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Attorney's Signature: /s/ Bart C. Sullivan Date: 01/17/2023

Attorney's Printed Name: Bart C. Sullivan

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 because this action arises under the following laws of the United States: Title 42 U.S.C. § 1983 and the First, Fifth, and Fourteenth Amendments to the U.S. Constitution.

The jurisdiction of this Court is based on 28 U.S.C. § 1291. The district court entered final judgment disposing of all parties' claims on September 15, 2022. App. 20. That final judgment followed (a) entry of an order on February 9, 2021, granting appellee Granite City's motion to dismiss as to three of appellants' four claims (App. 1-12); and (b) entry of an order on September 15, 2022, granting Granite City's motions for summary judgment as to appellants' fourth and final claim (App. 13-19).

No motion was filed that tolled the time within which to appeal. Plaintiffs-appellants Deborah Brumit and Andrew Simpson timely filed their notice of appeal on October 14, 2022. Dist. Ct. Doc. 153.

STATEMENT OF THE ISSUES

Throughout the 2010s, the City of Granite City, Illinois, enforced a "crime-free-housing" ordinance under which the City forced private landlords to evict entire households if any member of the household was charged with committing a felony anywhere within city limits. The district court upheld the ordinance against constitutional challenge.

The issues presented on appeal are:

1. Whether appellants' complaint plausibly alleged that Granite City's ordinance violated the Due Process Clause of the Fourteenth Amendment.

2. Whether appellants' complaint plausibly alleged that Granite City's ordinance violated the Equal Protection Clause of the Fourteenth Amendment.

3. Whether Granite City's ordinance violated appellants' federally protected associational rights.

INTRODUCTION

This case involves a municipal compulsory-eviction law that was unparalleled in its scale, senselessness, and cruelty. For years, the City of Granite City, Illinois, forced private landlords to evict entire households if any member was charged with committing a felony anywhere within city limits. Hundreds of compulsory-eviction demands issued. Through its law (labeled a "crime-free-housing" ordinance), the City systematically coerced the evictions of innocent people for the crimes of husbands, wives, partners, children, and parents. In the name of expelling the culpable, it visited life-altering sanctions on the blameless. In time, even the originator of the "crime-free-housing" concept would disavow the City's law as a distortion of his theories.

Appellants Debi Brumit and Andy Simpson were two of Granite City's many victims; the City ordered their landlord to evict them because Brumit's adult daughter stole a van within city limits. The City freely admitted that Brumit and Simpson had nothing to do with the crime. The City admitted that they didn't even know about the crime until after it happened. It didn't matter. Under the compulsory-eviction law, all were tarred with the wrongs of one.

Such a law contravenes a cross-section of protections secured by the federal Constitution. It violates due-process rights by exemplifying a regime of

guilt by association, "a philosophy alien to the traditions of a free society." *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (citation omitted). It violates equal-protection rights, by singling out an illogical subset of the community—people who rent—for an oppressive legal burden: collective responsibility for acts of their household members. And it violates associational rights (secured under the First and Fourteenth Amendments) by imposing liability on innocents for "association alone," whether or not they "held a specific intent to further [a householder's] illegal aims." *See id.* at 920. Under our Constitution, governments cannot punish people based purely on their associations with others. It's as simple as that.

In rejecting that rule, the district court's analysis reduced to two propositions. First, the right to be free from collective punishment is "novel[]." Second, the government's goal of "crime deterrence and prevention" excuses a system that irreparably harms law-abiding citizens by design. Both propositions are wrong, and they misdirected the court at every turn. The dismissal of the due-process and equal-protection claims should be reversed and those claims allowed to proceed. The entry of summary judgment on the associational-rights claim also should be reversed; on that claim, judgment should be rendered for the plaintiffs or, at minimum, the judgment for the City set aside.

STATEMENT OF THE CASE

A. Legal background

1. In many ways, public rental housing resembles private rental housing, except the landlord is a government agency. Like private landlords, public-housing authorities execute leases with their tenants. Like their private counterparts, they also may enforce the terms of those leases.

One of those terms relates to crime. In 1988, Congress enacted a "one-strike" policy for public housing: Every public-housing lease must give the public-housing authority discretion to terminate the lease if a tenant, a member of the tenant's household, or a guest commits certain crimes. If a tenant, householder, or guest commits either a drug offense or a crime that "threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants," the public-housing authority has the contractual right to end the tenancy. 42 U.S.C. § 1437d(*l*)(6). As with other lease terms, the right to enforce this provision rests with the public-housing authority—the landlord. The agency may "consider all circumstances" in deciding whether to exercise that right. 24 C.F.R. § 966.4(*l*)(5)(vii)(B).

The Supreme Court upheld the one-strike policy in 2002, in *HUD* v. *Rucker*, 535 U.S. 125. As a statutory matter, the Court ruled that public-

housing agencies had been granted discretion to evict their tenants for crimes of their householders or guests, "whether or not the tenant knew, or should have known, about the activity." *Id.* at 130. As for the Constitution, the Court held that evicting those tenants raised no due-process concerns. *Id.* at 135. A public-housing agency "act[s] as a landlord of property that it owns," the Court reasoned. *Id.* Like any landlord, it can choose to invoke, or not invoke, its lease terms to terminate the agreement. *Id.* at 133-34, 135.

At the same time, the Court observed, the due-process analysis would be "entirely different" were the government to act "as sovereign." *Id.* at 135. If a state actor were "attempting to criminally punish or civilly regulate [people] as members of the general populace," *id.*, the Due Process Clause would apply with full force.

2. The City of Granite City, Illinois, took that warning as a blessing, enacting its compulsory-eviction law a few years later. (For its part, the City favors the more benign, if less accurate, label, "crime-free-housing" ordinance.) Unlike the policy at issue in *Rucker*, Granite City's law applied not just to public-housing agencies, but "to private landlords, renting private property to private tenants who pay their rent with privately earned income." Dist. Ct.

Doc. 61, at ¶ 19 (answer). It regulated everyone who rented a home within city limits. *Id.* at ¶ 16; Granite City Mun. Code § 5.142.010 (2019) (App. 76).[1]

In 2013, Granite City's city attorney identified the compulsory-eviction law as the "[m]ost controversial issue [he had] worked on." Dist. Ct. Doc. 1, at ¶ 14. Whereas the federal policy in *Rucker* "entrust[ed]" public-agency landlords with "discretion" to evict tenants, 535 U.S. at 129, 135, Granite City's law took a different tack: It applied to private landlords, and it stripped them of discretion. When the City demanded it, private landlords were required to evict entire households if any member of the household committed a felony anywhere within city limits. It was no defense that other household members had nothing to do with the crime. Dist. Ct. Doc. 1, at ¶¶ 42-47; *see also* App. 71. Nor did the landlords have discretion to forgo eviction. If they were to decline to evict, they would be exposed to fines and to revocation of their landlord license. Granite City Mun. Code § 5.142.050(A), (B) (App. 78-79); *see also* Dist. Ct. Doc. 61, at ¶ 20 (answer).

[1] The law also applied to certain people buying their homes under an installment contract (Granite City Mun. Code § 5.142.010(B)), an arrangement commonly known as the "poor man's mortgage." Caelin Moriarity Miltko, Comment, "*What Shall I Give My Children?": Installment Land Contracts, Homeownership, and the Unexamined Costs of the American Dream*, 87 U. Chi. L. Rev. 2273, 2282 (2020). A complete copy of the ordinance at issue in this case is reproduced at pages 76-83 of appellants' appendix.

The ordinance was structured as follows. By law, every landlord and tenant was required to sign a city-created "lease addendum." Dist. Ct. Doc. 61, at ¶ 25. They were "not free to change or opt out of the addendum," *id.*, and signed or not, it was "deemed" to be part of every rental agreement for homes within city limits. Granite City Mun. Code § 5.142.060 (App. 80). Among other terms, the addendum provided that "[l]essee or any member of lessee's household, shall not engage in criminal activity . . . within the city limits of the City of Granite City." App. 88.[2] Certain crimes committed by guests were covered also. *Id.*; *see also* Dist. Ct. Doc. 1, at ¶ 23. And if any "violation of the . . . addendum" took place, the landlord was required by law to "take prompt, diligent and lawful steps" to remove the entire household. Granite City Mun. Code § 5.142.050(A)(3)(c) (App. 78). In the City's words, "[c]ommission of a felony anywhere in the City of Granite City, while residing at rental property in the City of Granite City, is a violation of the Crime Free Multi Housing Ordinance and subjects all occupants of that rental property to eviction." Dist. Ct. Doc. 86-5, at 2; *see also* Dist. Ct. Doc. 86-4, at 12 ("The -- if there was a felony

[2] The lease addendum is reproduced at pages 88-89 of appellants' appendix. Page citations to documents on the district-court docket refer to the .pdf page as it appears in the docket information at the top of each filed document.

committed anywhere in the City of Granite City, the City was -- was compelling an eviction from -- from the actual landlord.").

The City enforced its law relentlessly. For example:

- In 2019, the City ordered a family's eviction because one family member kicked a police officer's leg at a church picnic over a mile away from the family's home. Dist. Ct. Doc. 125-3, at 2; Dist. Ct. Doc. 125-4 (notice of manual filing of audio exhibit); Dist. Ct. Doc. 125-5, at 20-26; Dist. Ct. Doc. 125-6, at 2-3. The City had no reason to think that other family members had any involvement in the incident. Dist. Ct. Doc. 125-5, at 25-26.
- In 2019, the City ordered another household's eviction because a household member shoplifted from the Walmart across town. Dist. Ct. Doc. 125-7, at 2-3; Dist. Ct. Doc. 125-8, at 13-15. The City had no reason to think that other household members had any involvement in the incident. Dist. Ct. Doc. 125-8, at 15.
- In 2018, the City ordered another household's eviction because a household member drove a vehicle with a revoked license. Dist. Ct. Doc. 125-9, at 2; Dist. Ct. Doc. 125-8, at 15-17. The City had no

reason to think that other household members had any involvement in the incident. Dist. Ct. Doc. 125-8, at 16-17.

- In 2018, the City ordered another household's eviction because a guest stole mail. Dist. Ct. Doc. 125-10, at 2; Dist. Ct. Doc. 125-8, at 20-22. The City had no cause to think that the household members had any involvement in the incident. Dist. Ct. Doc. 125-8, at 21-22.
- In 2018, the City ordered a woman's eviction because her child's father was caught with drugs and he often would care for their son at her home. Dist. Ct. Doc. 125-11 (notice of manual filing of audio exhibit); Dist. Ct. Doc. 125-8, at 24-28; Dist. Ct. Doc. 125-12, at 2-3. The City had no reason to think that the woman had any involvement in the incident. Dist. Ct. Doc. 125-8, at 28.
- In December 2019, the City ordered a father's (and four children's) eviction because his wife was caught with drugs elsewhere in town. Dist. Ct. Doc. 33-12, at 2-12; *see also* Dist. Ct. Doc. 125-13 (notice of manual filing of audio exhibit); Dist. Ct. Doc. 125-14, at 18-24; Dist. Ct. Doc. 125-5, at 26-27. The City had no reason to think the man or the four children had any involvement in the incident. Dist. Ct. Doc. 125-5, at 27.

All told, Granite City issued more than 300 compulsory-eviction demands between 2014 and 2019 alone. Dist. Ct. Doc. 61, at ¶ 48 (answer). Over 100 were based on crimes that did not take place at the homes targeted for eviction. *Id.*[3]

B. Factual background

1. Debi Brumit and Andy Simpson moved to Granite City in 2016 and began living in a modest rental home on Briarcliff Drive. Dist. Ct. Doc. 86-9, at ¶¶ 2-3 (Brumit declaration); Dist. Ct. Doc. 1, at ¶¶ 49-51 (complaint).

Dist. Ct. Doc. 1, at ¶ 50. As required by law, Brumit, Simpson, and their private

[3] After this action was filed, Granite City amended its ordinance several times. *See* Dist. Ct. Docs. 28-29, 52, 54. In denying the City's motion to dismiss the case as moot, the district court indicated (correctly) that appellants' request for nominal damages sustained a live controversy over the pre-amendment ordinance discussed above. App. 5; *see also* App. 15 n.2 ("The Court previously rejected Defendant's argument that the amendments to the [crime-free-housing ordinance] rendered Plaintiffs' claim moot."); *see generally Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 796 (2021).

landlord signed the City's crime-free lease addendum. *See* App. 88-89.

At the time, Debi Brumit had three adult children, the youngest of whom was Tori Gintz, then twenty years old. Shortly after Brumit and Simpson moved into their Briarcliff home, Gintz—pregnant with her first child—moved in with them. Dist. Ct. Doc. 86-9, at ¶¶ 4-5. Gintz moved out a few months later and began living with her older sister in Missouri, where she gave birth to a second child in the spring of 2018. *Id.* at ¶ 6. As her mother understands it, Gintz began struggling with substance abuse a few months after that. *Id.*; *see also* Dist. Ct. Doc. 1, at ¶¶ 52-54. (Gintz would ultimately die in 2021 at age twenty-five. *See* Dist. Ct. Doc. 112, at 9.)

Around January 2019, Gintz's older sister no longer had room to house her. Dist. Ct. Doc. 86-9, at ¶ 7. So Gintz and her two children began staying with Brumit and Simpson in Granite City on an off-and-on basis. *Id.* At first, the couple had no idea about the extent of Gintz's substance-abuse problems. *Id.* But within months, it became clear to them that Gintz was engaging in self-destructive behavior and failing to care for her children. *Id.* In May 2019, Brumit resorted to tough love. She told Gintz that she and Simpson would do everything they could to help Gintz turn her life around. *Id.* at ¶ 8. But until Gintz

showed that she was ready to get clean and do right by her children, she was no longer welcome in their home. *Id.*; *see also* Dist. Ct. Doc. 1, at ¶¶ 55-57.

As Brumit understands it, Gintz moved back across the river and began staying at various spots in Missouri with a boyfriend. Dist. Ct. Doc. 86-9, at ¶ 9. She left her children behind. Dist. Ct. Doc. 1, at ¶ 59; *see generally* Dist. Ct. Doc. 101-7, at ¶¶ 1-8 (detailing Brumit's later appointment as the children's guardian).

Several weeks later, Gintz called her mother and told Brumit that she and her boyfriend were ready to get treatment for their addiction. Dist. Ct. Doc. 86-9, at ¶ 10. Immediately, Brumit drove to Missouri and brought Gintz back to Illinois to take her to the local hospital. *Id.* at ¶ 11. (Gintz's boyfriend came too. *Id.*) Gintz wanted to see her children, so she and her boyfriend spent that night at Brumit and Simpson's home. *Id.* The next evening, Brumit brought the two to Gateway Regional Medical Center, in Granite City. *Id.* Gintz and the boyfriend were taken back to triage, and Brumit returned home around 9:30 or 10:00 P.M. *Id.* at ¶ 12; *see also* Dist. Ct. Doc. 1, at ¶¶ 60-62.

In the predawn hours, Brumit was awakened by a phone call. Dist. Ct. Doc. 86-9, at ¶ 13. It was Tori Gintz; she and her boyfriend were outside the house. Brumit and Simpson refused to let the boyfriend inside, but they

allowed Gintz in. *Id.* Gintz told Brumit that the hospital had released her. She and her mother argued for about an hour, after which Brumit went back into her bedroom. *Id.* When Brumit came out a little while later, Gintz and the boyfriend were gone. *Id.*; Dist. Ct. Doc. 1, at ¶¶ 63-64.

Brumit heard nothing from Gintz the next day, a Sunday. Dist. Ct. Doc. 86-9, at ¶ 14. In the early morning hours of Monday, however, she learned from her other daughter that Gintz had been arrested for stealing a van. *Id.* The crime had taken place within the city limits of Granite City. *See* App. 74.

2. Within days, Brumit and Simpson received a notice from Granite City police. It stated that Tori Gintz and her boyfriend had been charged with "Offenses relating to motor vehicles (Class 2) Felonies." *Id.* That crime, the notice stated, was "a clear violation of the Crime Free Lease Addendum and grounds for eviction." *Id.* City officials would later confirm that the City had no reason to think Brumit or Simpson had participated in the crime. App. 62-63, 65-66. Or that the couple had any involvement in the crime. *Id.* Or that they had known the crime would take place. App. 42-43. Under the compulsory-eviction law, it was enough that someone the City viewed as a member of their household had committed a felony within city limits. On that ground, the City ordered their landlord to evict them. App. 74-75; *see also* App. 66 ("I had no

evidence that they were involved in that crime other than allowing these people to be at that property which is part of the crime-free lease addendum."); Dist. Ct. Doc. 86-8, at 2 ("The police report . . . was reviewed to determine whether or not a felony was committed within the city limits."); *see generally* Dist. Ct. Doc. 1, at ¶¶ 68-74, 127-29.

The landlord, for his part, had no desire to evict. Dist. Ct. Doc. 114, at 1. But following a grievance hearing, the City reaffirmed that "[a] violation has occurred" and that he "must begin eviction proceedings." App. 86. To comply, he sent Brumit and Simpson a thirty-day notice in mid-September 2019. *See* App. 15 n.1; *see also* Dist. Ct. Doc. 1, at ¶¶ 92-93, 98-101.

C. Proceedings below

1. Brumit and Simpson filed this action early the next month. As relevant here, they pleaded three claims. They asserted, first, that the City's compulsory-eviction law violated their rights under the Fourteenth Amendment's Due Process Clause by stripping innocent people of their homes based on the crimes of others. Dist. Ct. Doc. 1, at ¶ 116. They also asserted that the law violated the Equal Protection Clause by saddling renters with household-wide collective responsibility while leaving untouched materially identical people who owned their homes in fee simple or subject to a mortgage. *See, e.g.*, *id.* at

¶ 144 ("If, at the time Debi's daughter committed her offense, Debi and Andy had owned their home in fee simple subject to a traditional mortgage, the City could not have enforced its compulsory-eviction law against them."). Lastly, they asserted that the law violated their associational rights secured by the First and Fourteenth Amendments. *Id.* at ¶¶ 184-96.[4]

Two days after the case's filing, the district court entered a temporary restraining order. Dist. Ct. Doc. 12. The court found that enforcement of the City's compulsory-eviction law would inflict "irreparable harm," particularly "where Plaintiffs are living paycheck to paycheck and caring for their two minor grandchildren ages three years and 18 months old." *Id.* at 2-3. Having found the other TRO factors met, the court barred the City "from enforcing [its] compulsory-eviction law . . . against Plaintiffs Deborah Brumit and Andrew Simpson, from taking any action to remove Plaintiffs Brumit and Simpson from their home, and from taking any action against Plaintiffs' landlord for declining to evict Plaintiffs." *Id.* at 3-4.

[4] The complaint also included a claim under the Fifth Amendment's Takings Clause. Dist. Ct. Doc. 1, at ¶¶ 174-83. As detailed below (at 16-17), the district court entered preliminary relief that prevented the City from ordering Brumit and Simpson's eviction. Because the couple remained in their home, the court later accepted that "no taking has actually occurred" and dismissed the takings claim as unripe. App. 10. The dismissal of that claim is not challenged in this appeal.

Nine days later, with the City's acquiescence, the court entered a similarly worded preliminary injunction. Dist. Ct. Doc. 15. With the threat of coerced eviction lifted, the couple would remain in their home for another two years. Dist. Ct. Doc. 136, at 1-2 (noting relocation from Granite City in 2022).

2. The City moved to dismiss the case under Rule 12(b)(6). The district court granted the motion in part and denied it in part. App. 1-12.

The court first dismissed Brumit and Simpson's due-process claim. App. 6-9. The court acknowledged that the couple "allege[d] that it is fundamentally unfair to deprive them of their home based on the actions of third-parties." App. 6. Looking to the Supreme Court's decision in *HUD* v. *Rucker*, the court also acknowledged that, in coercing household-wide evictions, Granite City was "not acting as a landlord and managing property that it owns" but was instead "regulating the general populace through a backdoor." App. 8. Even so, the court held that Brumit and Simpson failed to state a claim. "The 'fundamental right' Plaintiffs seek to invoke is the right to not be punished (by eviction from a rental property) due to the criminal acts of a third party," the court reasoned. *Id.* In the court's view, that right was "novel[]" and not one specially protected by the Due Process Clause. *Id.* (citation omitted).

The court dismissed the equal-protection claim as well. At base, the Equal Protection Clause tests the validity of governmental "classifications." *Monarch Beverage Co.* v. *Cook*, 861 F.3d 678, 682 (7th Cir. 2017). And as alleged in Brumit and Simpson's complaint, the compulsory-eviction law failed any level of scrutiny because it singled people out for coerced homelessness based on the happenstance of their home-financing arrangements. The district court held otherwise. Given its view that the City's ordinance implicated no fundamental right, the court applied rational-basis review. App. 9. It acknowledged that the ordinance "was striking in its breadth and reach." App. 10. But it dismissed the equal-protection claim with a single sentence: "Crime deterrence and prevention are rational and legitimate reasons to evict renters." App. 9. In so holding, the court did not mention the haphazard classification of renters that formed the basis for the claim. *See* Dist. Ct. Doc. 1, at ¶¶ 140-51. Nor did the court entertain whether the complaint plausibly alleged that singling out renters for special burdens was divorced from the City's stated interest in fighting crime. *See id.*

Lastly, the court denied the City's motion to dismiss the associational-rights claim, citing "the limited argument made by [the City]." App. 11.

3. Following discovery, the parties cross-moved for summary judgment on the associational-rights claim. The district court granted the City's motions and denied Brumit and Simpson's. App. 13-19. The court reasoned that ordering the couple's eviction for having associated with Brumit's daughter did not implicate their associational rights because it did not "directly prevent[]" them "from forming or maintaining their intimate familial association with Brumit's adult daughter." App. 17. The court thus applied rational-basis review. In doing so, the court acknowledged (with some understatement) that the summary-judgment record showed that the compulsory-eviction law "may not have accomplished the degree of protection that the City intended." App. 18; *see also* Dist. Ct. Doc. 125-1, at 11-12 (citing evidence that, between 2017 and 2019, more than 90% of charged felonies did not implicate the law at all). But as a general matter, the court maintained, "crime deterrence and prevention are rational and legitimate reasons for a municipality to enact legislation." App. 18. On that basis, it upheld the law.

4. Across Illinois (and elsewhere), many cities retain compulsory-eviction laws much like the one at issue here. *E.g.*, Calumet City Mun. Code §§ 54-2234–54-2236; East Hazel Crest Mun. Code § 10-5; Park Forest Mun. Code § 22-473; Rantoul Mun. Code § 20-310; Lexi Cortes, *Not Just Granite*

City: There's Statewide Scrutiny of Crime-Free Housing Rules in Illinois, St. Louis Public Radio (Jan. 30, 2020) <https://tinyurl.com/stl-pr>; *see generally* Kathryn V. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting A Flawed Federal Eviction Law*, 65 UCLA L. Rev. 1146, 1153 (2018).

SUMMARY OF ARGUMENT

Through its compulsory-eviction law, the City of Granite City, Illinois, forced private landlords to evict entire households if any member was charged with having committed a felony within city limits. In enforcing its law against appellants Debi Brumit and Andy Simpson, the City plausibly violated the couple's due-process and equal-protection rights (dismissed at the 12(b)(6) stage below). The City also violated their federally protected associational rights, disposed of at summary judgment. The district court's rulings to the contrary were unsound, and its judgment should be reversed.

I. The Due Process Clause specially protects those rights that are embedded in the Nation's history and tradition and implicit in the concept of ordered liberty. The right not to be punished for the crimes of another is one of those rights; the "basic concept" of our justice system is that "legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972); *cf. Washington* v.

Glucksberg, 521 U.S. 702, 713 (1997) ("There can be no greater cruelty, than the inflicting [of] a punishment, as the forfeiture of goods, which must fall solely on the innocent offspring of the offender . . . ." (citation omitted)). In targeting entire households for the crime of any member, Granite City broke with that principle at a bedrock level.

In holding otherwise, the district court's key error was as simple as it was profound: In that court's view, the right of innocent people not to be coercively made homeless by their government is "novel[]." App. 8 (citation omitted). That is incorrect. The right to be free from collective punishment dates to the Framing. And while Granite City's precise tool for *violating* that right may be a modern innovation, the right itself is not. Below, even Granite City did not press the district court's theory. Simply, the City visited irreparable harms on innocent families because they were associated with someone the City viewed as a criminal. As alleged in the complaint, it was at least plausible (indeed, obvious) that such a regime violated its victims' due-process rights.

II. The equal-protection claim was no less plausible. The City's compulsory-eviction law targeted innocent people—but only certain ones. For people who could afford to own their homes or who had the credit for a mortgage, the City imposed no household-wide collective punishments. Renters alone

(and a subset of installment buyers) faced that unprecedented legal burden. As in the due-process context, that classification implicated a fundamental right—not to be punished for someone else's crimes—and triggered strict scrutiny, a standard the City has never claimed to meet.

The classification was also so inherently, indefensibly arbitrary that it plausibly failed even rational-basis review. As alleged in the complaint, singling out people based on their home-financing arrangements no more related to the City's crime-fighting goals than would classifying them based on student-loan debt or credit score or alphabetized surnames. The later summary-judgment record would bear out these allegations: Even as the compulsory-eviction law visited irreparable harms on innocents, more than 90% of charged felonies in Granite City did not trigger the law at all. In the name of protecting law-abiding citizens, the City made hundreds of law-abiding citizens homeless—while leaving a lopsided supermajority of suspected offenders unaffected. In its basic design, the law's classification was irrational.

Here, too, the district court dismissed the claim on the pleadings. In doing so, however, the court applied nothing like the standard equal-protection analysis. The crux of any equal-protection claim is "the link between classification and objective." *Romer* v. *Evans*, 517 U.S. 620, 632 (1996). Yet the

district court failed even to mention Granite City's jigsaw classification of homeowners, mortgagors, and renters—the main basis for the equal-protection claim here. The court instead recited "[c]rime deterrence and prevention" as a legitimate objective and went no further. That is not rational-basis review. As for the City, its conspicuous inability to present even a single straight-faced justification for its law drives home that the equal-protection claim was, at minimum, plausible.

III. Lastly, the district court erred in granting the City summary judgment on Brumit and Simpson's associational-rights claim. Much like the Due Process Clause, the First and Fourteenth Amendments guard against association-based punishments. Once again, however, the district court declined to apply more than rational-basis review, reasoning that associational-rights precedent demands heightened scrutiny only if the government has "directly prevented" an act of association. In this, the district court erred; whether or not the government directly prevents a relationship, the Constitution constrains its power "to impose liability on an individual solely because of his association with another." *Claiborne Hardware Co.*, 458 U.S. at 918-19. The district court was thus wrong not to either hold the City's law per se invalid or apply heightened scrutiny—a standard the City nowhere tried to meet.

In applying rational-basis review, moreover, the court repeated its error from the motion-to-dismiss stage: Its analysis reduced to a single-sentence reciting "crime deterrence and prevention." Nowhere did it consider whether that stated goal could rationally be furthered by a system that—in its basic structure—gave a free pass to almost all suspected criminal offenders while inflicting irreparable harms on law-abiding citizens. Given the undisputed record, Debi Brumit and Andy Simpson were entitled to summary judgment. This Court should so hold or, at a minimum, should reverse the district court's grant of summary judgment for the City.

STANDARD OF REVIEW

The district court dismissed appellants' due-process and equal-protection claims under Rule 12(b)(6). This Court reviews such a dismissal de novo, construing the complaint in the light most favorable to the plaintiffs to determine whether it states a claim that is plausible on its face. *Bilek* v. *Fed. Ins. Co.*, 8 F.4th 581, 586 (7th Cir. 2021). On the associational-rights claim, the district court ruled against appellants at summary judgment. Such a decision is likewise reviewed de novo. *Kemp* v. *Liebel*, 877 F.3d 346, 350 (7th Cir. 2017).

ARGUMENT

I. Because Granite City's compulsory-eviction law imposed household-wide collective punishment, the complaint plausibly alleged that the law violated the Due Process Clause.

Granite City's compulsory-eviction law visited devastating burdens on untold innocent people. For years, the City would force private landlords to evict entire households if any member committed a felony within city limits; in the City's view, all were tainted by the wrongs of one. As alleged in the plaintiffs' complaint, this exercise in collective punishment plausibly violated the Fourteenth Amendment's guarantee of due process of law. The district court's contrary conclusion began and ended with a basic proposition: The right of innocent people not to face government-coerced homelessness is somehow "novel[]." Below, not even the City urged such a view, which breaks with history, tradition, and precedent alike. The alternative theories pressed by the City—none of which the district court accepted—are equally without merit. The due-process claim should be permitted to proceed.

A. A law that targets entire households for the crimes of a single member contravenes the Due Process Clause.

"No property is more sacred than one's home," *Sentell* v. *New Orleans & C.R. Co.*, 166 U.S. 698, 704-05 (1897), and Debi Brumit and Andy Simpson had core property and liberty interests in theirs. Granite City sought to

extinguish those interests by forcing their landlord to evict them. The City did so because Brumit's adult daughter (and the daughter's boyfriend) stole a van within city limits. Dist. Ct. Doc. 1, at ¶ 74; *see also* pp. 14-15, *supra*. Debi Brumit did not steal the van. Dist. Ct. Doc. 1, at ¶ 128. Andy Simpson did not steal the van. *Id.* Neither Brumit nor Simpson had any involvement in the theft. *Id.* Neither knew the theft would take place. *Id.* at ¶ 129. They were innocent of any wrongdoing. And at no point did the City think differently. *Id.* at ¶ 127.[5] Yet the City sought to strip them of their home anyway. In the City's view, people associated with Brumit and Simpson had committed a crime within city limits. The City maintained that those people were members of Brumit and

[5] *See generally* App. 42-43:

> Q. (By Mr. Gedge) And just to be clear, I'm asking whether factually before the City issued the notice of violation against Ms. Brumit and Mr. Simpson, did the city have any basis to believe that Ms. Brumit knew that Tori Gintz and Tyler Sears would steal the van before they stole the van?
>
> A. No.
>
> Q. Okay. Same question with regard to Mr. Simpson, before the City issued the notice of violation against Debbie [sic] Brumit and Andrew Simpson in June of 2019, did the City have any reason to believe Andrew Simpson had known that Tori Gintz and Tyler Sears would steal the National Rent to Own van before they stole the van?
>
> A. No.

Simpson's household. On that basis alone, the City's compulsory-eviction law required that the couple be forced from their home. *See* pp. 14-15, *supra*.

A law that applies in this way plausibly (indeed, obviously) violates the Due Process Clause. The Due Process Clause "specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty.'" *Washington* v. *Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). And the right not to be penalized for someone else's crime has been embedded in the Nation's history, legal traditions, and practices from the start. The "basic concept" of our justice system, in fact, is that "legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972); *cf. Glucksberg*, 521 U.S. at 713 ("There can be no greater cruelty, than the inflicting [of] a punishment, as the forfeiture of goods, which must fall solely on the innocent offspring of the offender . . . ." (quoting 2 Zephaniah Swift, A System of the Laws of the State of Connecticut 304 (1796))). Yet Granite City's compulsory-eviction law started from the opposite premise: collective punishment. Someone associated with Brumit and Simpson committed a crime in Granite City; for that, Granite City sought to make Brumit and Simpson homeless.

Imputing guilt in this fashion is "contrary to fundamental principles of our justice system." *See United States* v. *Garcia*, 151 F.3d 1243, 1246 (9th Cir. 1998). Indeed, this sort of "guilt by association" has been described as "one of the most odious institutions of history." *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123, 178 (1951) (Douglas, J., concurring). It is "a philosophy alien to the traditions of a free society." *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (citation omitted). In California, one judge branded a similar compulsory-eviction law "carcinogenic." *Cook* v. *City of Buena Park*, 126 Cal. App. 4th 1, 10 (2005) (Bedsworth, J., concurring); *see also id.* ("I am concerned, inter alia, about its sweeping requirement that *all* occupants of the premises must be evicted for the sins of one . . . ."). If anything, moreover, Granite City's law was worse than the one invalidated in California. For all its "fundamental constitutional infirmities," *id.*, the California law mandated evictions only for crimes "in or near the rental property." *Id.* at 3 (majority opinion). No such half-measures in Granite City; it coerced families out of their homes for crimes anywhere within city limits. *See* pp. 7-10, *supra*. With all the complaint's allegations presumed true, this exercise in collective punishment plausibly violated the Due Process Clause.

B. The district court erred in concluding that the right to be free from collective punishment is "novel[]."

In holding otherwise, the district court erred. The court did not deny that, as alleged in the complaint, Granite City sought to inflict a crippling legal burden on Brumit and Simpson by forcing them from their home. Nor did the court deny that the City sought to visit this irreparable harm on them because of someone else's crime. *See* App. 6, 8; *accord* Dist. Ct. Doc. 12, at 2-3 (temporary restraining order) (finding that enforcement of the compulsory-eviction law "constitutes irreparable harm"). Even so, the court dismissed their due-process claim on the pleadings. Developing a theory even the City did not advance, the court posited that the right "to not be punished (by eviction from a rental property) due to the criminal acts of a third party" is "novel[]" and not rooted in our legal tradition. App. 8 (citation omitted).

The district court was wrong. The right against collective punishment traces to the 18th century, it is fortified by decades of precedent, and it applies straightforwardly to the facts pleaded here.

1.a. Far from novel, the Nation's repudiation of collective-punishment regimes dates to the Framing. Article III's Corruption of the Blood Clause, for example, was designed precisely to prevent the government "from extending the consequences of guilt beyond the person of its author." The Federalist

No. 43 (James Madison); *see generally* Max Stier, Note, *Corruption of the Blood and Equal Protection: Why the Sins of the Parents Should Not Matter*, 44 Stan. L. Rev. 727, 729 (1992) (detailing that the corruption-of-the-blood penalty barred heirs from inheriting property from or through the person attainted). As Joseph Story would later recount, such collective punishments were anathema to the founding generation. For a society could not possibly subsist in ordered liberty if government had the power to make "the innocent . . . the victims of a guilt, in which they did not, and perhaps could not, participate." 2 Joseph Story, Commentaries on the Constitution of the United States § 1299, at 177 (4th ed. 1873). Another authority of the era likewise affirmed that imposing collective liability on innocents (specifically, innocent sailors) would contravene basic "principles of justice" and the "immovable foundations" of our legal system. 3 James Kent, Commentaries on American Law 194 (1844); *see also Spurr* v. *Pearson*, 22 F. Cas. 1011, 1014 (C.C.D. Mass. 1816) (Story, J.) ("Why should a mariner . . . be responsible for the acts of others, in which he has had no participation or connivance?"). A Constitution that allowed for collective punishment would have been unrecognizable to those who ratified it.

b. More modern precedent reinforces the point. Throughout the twentieth and twenty-first centuries, the courts have held consistently that governments cannot "impose liability on an individual solely because of his association with another." *Claiborne Hardware Co.*, 458 U.S. at 918-19 (applying First Amendment). As the Supreme Court explained in narrowly construing a subversive-organizations statute, "[i]n our jurisprudence guilt is personal." *Scales* v. *United States*, 367 U.S. 203, 224 (1961). For that reason, punishing someone merely for their association with a bad actor would self-evidently break with "the accepted limits of imputation of guilt." *See id.* at 225 n.17. Indeed, much of conspiracy law hinges on this teaching, in recognition of the principle that governments cannot target "all those who have been associated in any degree whatever with the main offenders." *United States* v. *Falcone*, 109 F.2d 579, 581 (2d Cir.) (L. Hand, J.), *aff'd*, 311 U.S. 205 (1940). The rare case in which the Supreme Court has embraced anything approaching a different proposition earned a place in the anti-canon of American law. *Korematsu* v. *United States*, 323 U.S. 214, 243 (1944) (Jackson, J., dissenting) ("[I]f any fundamental assumption underlies our system, it is that guilt is personal and not inheritable."), *abrogated by Trump* v. *Hawaii*, 138 S. Ct. 2392 (2018).

Nor is the right to be free from collective punishment unique to criminal sentences; it applies equally to other legal burdens as well. Drawing on *Scales*, the Supreme Court has confirmed that "[c]ivil liability," too, "may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence." *Claiborne Hardware Co.*, 458 U.S. at 920. The Court has thus "consistently disapproved governmental action[s]" that impose liability or "deny[] rights and privileges solely because of a citizen's association with an unpopular organization." *See Healy* v. *James*, 408 U.S. 169, 185-86 (1972).

The lower courts are in accord. The Fifth Circuit, for instance, has observed that "[s]ubstantial Supreme Court authority" supports the view that "predicating punishment only upon personal guilt" is a "fundamental" right. *St. Ann* v. *Palisi*, 495 F.2d 423, 425 (1974); *see also id.* ("Freedom from punishment in the absence of personal guilt is a fundamental concept in the American scheme of justice."). On that premise, the court held that a public school violated two siblings' due-process rights when it suspended them for their mother's misconduct. *Id.* at 429; *cf. United States* v. *Polasek*, 162 F.3d 878, 883 (5th Cir. 1998) ("[T]hat one is married to, associated with, or in the company of a criminal does not support the inference that that person is a criminal

or shares the criminal's guilty knowledge." (citation omitted)). In the civil-tort context, this Court has likewise confirmed the obvious: "[P]roximity to a wrongdoer does not authorize punishment." *Colbert* v. *City of Chicago*, 851 F.3d 649, 659 (7th Cir. 2017) (citation omitted). At base, the district court was wrong to think it "novel[]" that Brumit and Simpson enjoy the right not to face city-coerced eviction for a crime they had nothing to do with.

2. The district court also suggested (if opaquely) that the above precedent did not speak to Brumit and Simpson's "particular" right with enough specificity. App. 8. The court earlier had agreed that the City's compulsory-eviction law visited an "irreparable harm" on its targets. Dist. Ct. Doc. 12, at 2-3; *see also* Dist. Ct. Doc. 1, at ¶¶ 102-08. The court also appears not to have seriously contested that the right "not to be punished for the actions of others" is fundamental. App. 8. Yet because city-coerced eviction is a modern method of *violating* that right, the court held that the Due Process Clause secures no meaningful protection. App. 8.

The court was mistaken on this front also. Even if a specific ordinance may be novel, the right it infringes still can be fundamental and merit special protection under the Due Process Clause. The Supreme Court said as much four Terms ago, in the related context of Fourteenth Amendment

incorporation. *Timbs* v. *Indiana*, 139 S. Ct. 682, 690 (2019) ("[W]e ask whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted."); *see also Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2247 (2022) (noting that the historical analysis is similar for all due-process rights).

Other precedent shows this principle in practice. For example, the state law in *Meyer* v. *Nebraska* was a decidedly novel one, a post-Great War statute criminalizing the teaching of foreign languages. 262 U.S. 390, 396-97 (1923). Yet the right it infringed—that of "parents to control the education of their own"—was entrenched in the Nation's history. *Id.* at 401. So despite the statute's novelty, it was held to impinge on a fundamental right and triggered searching review under the Due Process Clause. *Id.* at 402-03. Other cases are similar. *Skinner* v. *Oklahoma ex rel. Williamson* involved forced sterilization, a 20th-century modernism that infringed "a basic liberty" of long standing. 316 U.S. 535, 541 (1942). *Moore* v. *City of East Cleveland* involved a mid-century zoning ordinance that likewise infringed a "deeply rooted" right (that of family members to live together). 431 U.S. 494, 503 (1977) (plurality opinion). Even if the precise *law* were new, the *right* it violated was not.

That lesson has equal application here. Neither the district court nor Granite City denied that the right to be free from household-wide punishment is fundamental and carefully described. *See generally Glucksberg*, 521 U.S. at 721. Nor did they deny that the complaint alleged a collective-punishment regime in its purest form. *E.g.*, App. 6, 8. The most the district court could suggest was that the City had targeted innocent people with an innovative *type* of legal burden. App. 8. As the above precedent illustrates, however, constitutional rights cannot be circumvented merely by "novel applications" of state power. *See Timbs*, 139 S. Ct. at 690. Granite City sought to strip Brumit and Simpson of their home—an "overriding respect" for which "has been embedded in our traditions since the origins of the Republic." *Payton* v. *New York*, 445 U.S. 573, 601 (1980). It sought to visit that irreparable harm on them for a crime in which they had no involvement. Dist. Ct. Doc. 1, at ¶¶ 114-30. Particularly at the pleadings stage, it is at least plausible that coercing the wholesale eviction of innocent people contravenes the Fourteenth Amendment's guarantee of due process. In fact, the City has yet to identify any case where any court has upheld anything remotely resembling its compulsory-eviction law.

C. The City's lower-court arguments lacked merit.

In urging dismissal of the due-process claim below, the City relied not on the theory the district court ultimately adopted, but on two others. The district court accepted neither one, and each remains without merit.

1. The City labored under the misimpression that the Supreme Court had ratified its type of compulsory-eviction law in *HUD* v. *Rucker*, 535 U.S. 125 (2002). But as noted (at 5-6), *Rucker* only spotlights how far afield the City strayed. When the government "act[s] as a landlord of property that it owns," the Court in *Rucker* reasoned, it may of course invoke "a clause in a lease to which [its tenants] have agreed." *Id.* at 135. That includes clauses providing for the eviction of even innocent tenants for the crimes of household members. But the due-process analysis is "entirely different," the Court observed, when the government acts "as sovereign." *Id.* When "attempting to criminally punish or civilly regulate [people] as members of the general populace," *id.*, the government does not have a blank check to punish the blameless.

Granite City claimed just such a blank check here. Unlike the public-housing authority in *Rucker*, the City was not Debi Brumit and Andy Simpson's landlord. A private citizen named Clayton Baker was, and he didn't want to evict them for a crime they did not commit. Dist. Ct. Doc. 1, at ¶¶ 91, 95-102;

see also App. 2, 15 n.1. Unlike a public-housing authority, the City was not invoking a lease to which it was a party; it was blundering into the private leases of others, armed with a battery of government sanctions. Unlike the program in *Rucker*, the City's law did not "entrust[]" landlords with "discretion" to exercise contractual rights. 535 U.S. at 129, 135. Quite the opposite: The City stripped landlords of discretion and gave it to the police. Dist. Ct. Doc. 1, at ¶¶ 25-34; *see also* Dist. Ct. Doc. 83, at 1 (acknowledging testimony of City's former crime-free-housing officer that "[o]ur -- [o]ur Crime Free lease addendum that we mandate landlords use, [is] much stricter than what the federal government's is"). These actions are paradigmatically sovereign; as the district court observed, the City coerced evictions to "regulat[e] the general populace through a backdoor." App. 8. *Rucker* offers no support for such a regime.

2. Separately, the City ascribed significance to the fact that Brumit and Simpson (like every renter) had to sign the City's "Lease Addendum for Crime Free Housing," which worked in tandem with the compulsory-eviction law to mandate household-wide evictions. *See* pp. 8-9, *supra* (discussing addendum and ordinance). By signing the addendum, the City contended,

renters "voluntarily" gave up whatever due-process rights they might otherwise enjoy. Dist. Ct. Doc. 19, at 6. That theory fails.

First, the complaint alleged that signing the City's lease addendum was in fact "an empty act" with no legal effect. Dist. Ct. Doc. 1, at ¶ 25. That is because the addendum applied with full force whether signed or not. By law, "[e]very agreement for lease of residential real estate located within the corporate limits of the city of Granite City" was "deemed to include all terms listed on the lease addendum." Granite City Mun. Code § 5.142.060 (App. 80). Even if "no one were to sign it," then, "the addendum still would apply." Dist. Ct. Doc. 1, at ¶ 25; *see also* Dist. Ct. Doc. 61, at ¶ 25 ("Defendant admits that landlords and tenants are not free to change or opt out of the addendum."). Contrary to the City's suggestion, the addendum was no more "voluntar[y]" than any other law.

Second, the City's surrendered-rights theory started from a mistaken premise: that the City can require people to sign away their constitutional rights as a condition of living within city limits. Dist. Ct. Doc. 19, at 12 (motion-to-dismiss brief) ("Plaintiffs are not required to rent a home in Granite City and should they wish to not be regulated or subject to the Ordinance and/or Lease Addendum, they simply can opt not to rent a home in Granite City.").

At risk of stating the obvious, the Constitution cannot be thwarted so easily. Granite City cannot lawfully condition even a "gratuitous governmental benefit" on the recipient's "giv[ing] up constitutional rights." *Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013). That tenet applies with even greater force here: The City cannot condition *living within its borders* on residents' giving up their constitutional rights. The City could not have required renters to sign away their First Amendment rights as a condition of living there. Or their Third Amendment rights, or their Fourth. No more can the City require them to sign away their rights under the Due Process Clause. The district court's dismissal of Brumit and Simpson's due-process claim should be reversed.

II. Because Granite City's compulsory-eviction law singled out an arbitrary subset of targets, the complaint plausibly alleged that the law violated the Equal Protection Clause.

Brumit and Simpson's equal-protection claim is no less plausible. The compulsory-eviction law targeted innocent people—but only certain ones. For people who could afford to buy their homes outright, the City imposed no household-wide collective responsibility. Likewise for people who qualified for a traditional mortgage. Likewise for (some) people buying their home by installment contract. *See* p. 7 n.1, *supra*. It was a different story, though, for

people who rented. That subset of people was held responsible for any felony—from driving with a revoked license to murder—that any household member committed anywhere within city limits. As alleged in the complaint, classifying residents along these lines plausibly violated the Equal Protection Clause, and the district court erred in dismissing this claim also.

A. The compulsory-eviction law singled out a class of people, renters, for a uniquely onerous regulatory burden.

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Unlike the Due Process Clause, it homes in on the validity of governmental "classifications"—as, for example, when an ordinance singles out "a specific class of persons" for special "regulatory burdens." *Monarch Beverage Co.* v. *Cook*, 861 F.3d 678, 682 (7th Cir. 2017).

Here, the classification Brumit and Simpson challenge appeared on the face of the compulsory-eviction law. By its terms, the City's law applied to a specific subset of people: those who rent their homes. On pain of having all rights in their home extinguished, those people were encumbered with an extraordinary burden: collective responsibility for the acts of all members of their household at all places and at all times within the city limits of Granite City. By comparison, their homeowner and mortgagor neighbors were subject

to no such duty. Dist. Ct. Doc. 1, at ¶¶ 140-51. The equal-protection question is thus a simple one: Did singling out renters have the necessary means-end fit? Whatever the level of scrutiny, the complaint plausibly alleged that it did not.

B. The complaint plausibly alleged that the compulsory-eviction law's classification failed every level of scrutiny.

"The equal-protection guarantee is 'concerned with governmental classifications that "affect some groups of citizens differently than others."'" *Monarch Beverage Co.*, 861 F.3d at 682. When a governmental classification infringes a fundamental right, that distinction is subject to strict scrutiny. *St. Joan Antida High Sch. Inc.* v. *Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1008 (7th Cir. 2019). And regardless of the right infringed, no classification is valid if "arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446. Under either standard, the complaint plausibly alleged that Granite City's classification of renters was invalid.

1. The complaint plausibly alleged that the City's classification merited strict scrutiny.

As discussed (at 25-35), the "basic concept" of our justice system is that "legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972). Yet the City's compulsory-eviction law carved out a different rule for people who

rented their homes. Those people would be forced from their houses if the City decided that any member of their household had committed a felony anywhere within city limits. Dist. Ct. Doc. 1, at ¶¶ 21-24, 28. In this way, the City singled them out for a grave burden on a basic right: the right not to be punished for someone else's crime. *See* pp. 25-35, *supra*. In 12(b)(6) terms, Brumit and Simpson plausibly alleged that the City's classification "impinge[d] upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny." *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 17 (1973).

That should have been enough for the equal-protection claim to move past the pleadings. The City's motion to dismiss nowhere tried to defend its law under strict scrutiny. *See generally* Dist. Ct. Docs. 18, 19. Such a defense would have been premature in any event; under heightened scrutiny, the government bears an affirmative burden that can "rarely [be] carried at the pleadings stage." *Finch* v. *Peterson*, 622 F.3d 725, 728 (7th Cir. 2010). For this reason alone, the district court erred in dismissing the equal-protection claim.

2. The complaint plausibly alleged that the City's classification failed even rational-basis scrutiny.

Brumit and Simpson also would be entitled to proceed were the City's law subject only to rational-basis review.

a. The Equal Protection Clause demands that governmental classifications "rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Johnson* v. *Robison*, 415 U.S. 361, 374 (1974) (citation omitted). True, when a classification does not involve suspect classes or fundamental rights, a court must uphold it if it "bears a rational relationship" to a legitimate legislative goal. *St. Joan Antida High Sch. Inc.*, 919 F.3d at 1011. But that review is not "'toothless,'" *Sutker* v. *Ill. State Dental Soc'y*, 808 F.2d 632, 634 (7th Cir. 1986), and "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446. Nor, for that matter, does the rational-basis standard "defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." *Wroblewski* v. *City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). If a complaint "allege[s] facts sufficient to overcome the presumption of rationality that applies to government classifications," *id.* at 460, the claim is entitled to proceed.

b. The complaint alleged sufficient facts here. In a single sentence of analysis, the district court alluded to "[c]rime deterrence and prevention" as a legitimate goal for the City. App. 9. Nowhere, however, did the court (or the City) address the question presented by the equal-protection claim: whether

singling out renters for a special legal burden "bears a rational relationship" to that crime-fighting goal. *St. Joan Antida High Sch. Inc.*, 919 F.3d at 1011. That silence speaks volumes; as alleged in the complaint, it is (at minimum) plausible that singling out innocent people based on the vagaries of their home-financing arrangements "bears no relation to the statutory purpose" of combatting crime. *See Williams* v. *Vermont*, 472 U.S. 14, 24 (1985). If you had the credit for a mortgage, your daughter could steal the same van Brumit's did—under identical circumstances—and your home would be safe. Dist. Ct. Doc. 1, at ¶¶ 143-44. The same would be true if you owned your home outright. *Id.* In fact, your daughter could steal ten vans. Or a hundred. You could steal the vans yourself. You could kill the van's driver. No matter the crime, the compulsory-eviction law would not apply, and the City would not order that your interest in your home be extinguished.

But things were different for people who happened to rent. People like Debi Brumit and Andy Simpson were saddled with an unprecedented legal burden: Unlike their neighbors, they stood to lose their home for any felony allegedly committed by any householder anywhere within city limits. The compulsory-eviction law applied to them whether or not they participated in the crime, whether or not they were complicit in the crime, whether or not they

could have prevented the crime, whether or not they knew the crime had taken place. *Id.* at ¶¶ 42-47; *see also* App. 71; *see generally* pp. 9-10, *supra* (citing driving with a revoked license, kicking an officer's leg, and shoplifting). The law targeted the entire household indiscriminately. And in so doing, it necessarily was triggered by only a haphazard slice of crimes—ones committed by people linked to rental homes—while turning a blind eye to the rest. In its basic design, it was arbitrariness made manifest. Dist. Ct. Doc. 1, at ¶¶ 148-51.

The record would bear this out.[6] Even as it imposed crushing burdens on the people targeted—innocent and guilty alike—the compulsory-eviction law was triggered by only a fraction of overall crime. In 2019, for example, Granite City recorded over 675 charged felonies. The number of compulsory-eviction demands? Sixty. That year, the law was triggered by less than 10% of felonies—whichever happened to be traceable to someone associated with a rental home. Nor was 2019 an outlier. Over 450 felonies were recorded in 2017. Only 59 compulsory-eviction demands issued. Over 500 felonies in 2018. Only

[6] While Brumit and Simpson's equal-protection claim was dismissed on the pleadings, their associational-rights claim yielded discovery that bears out many of the equal-protection allegations. The Court properly may take account of that material in considering the dismissal of the equal-protection claim. *Geinosky* v. *City of Chicago*, 675 F.3d 743, 745 n.1 (7th Cir. 2012) ("A party appealing a Rule 12(b)(6) dismissal may elaborate on his factual allegations so long as the new elaborations are consistent with the pleadings.").

41 compulsory-eviction demands. From all appearances, over 90% of felonies were alleged to have been committed by people *not* living in a rental home.

Year	Total Felony Charges in Granite City	Total Compulsory-Eviction Demands
2017	450+	59
2018	500+	41
2019	675+	60

Dist. Ct. Doc. 107, at 3-9; Dist. Ct. Doc. 133-1, at 21-22, 25; Dist. Ct. Doc. 133-2, at 4-5.

These on-the-ground facts confirm the core defect in the law's design: Singling out people based on their home-financing arrangements no more related to "crime deterrence and prevention" than would classifying them based on student-loan debt or credit score or adjusted gross income. Crime-fighting may be a legitimate goal in the abstract. But the complaint plausibly alleged that a law targeting innocent people—and leaving a supermajority of guilty ones unaffected—reflects a "legislative classification" so divorced from that goal that it "lack[s] any reasonable support in fact." *N.Y. State Club Ass'n, Inc.* v. *City of New York*, 487 U.S. 1, 17 (1988) (describing plaintiffs' evidentiary burden under rational-basis standard). In time, even the founder of

crime-free-housing programs would disavow Granite City's ordinance as a distortion of his life's work. Dist. Ct. Doc. 1, at ¶ 26.[7]

That the City has a separate "Chronic Public Nuisance Properties" ordinance cements the equal-protection claim's plausibility. Wholly apart from the compulsory-eviction law, the City enacted a public-nuisance law in 2017, which serves to address properties that are hotspots for crime within city limits. Unlike the compulsory-eviction law, the public-nuisance law is written in evenhanded terms. It gives people two chances to "abate the nuisance activities." Granite City Mun. Code § 8.97.050; *see also* Dist. Ct. Doc. 91-1, at 5-6. It creates a defense for those who cannot "control" the nuisance. Granite City Mun. Code § 8.97.060(B). Most importantly for equal-protection purposes, it furthers the City's crime-fighting goals with none of the compulsory-eviction

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[7] *See also* App. 33:

> Q. (By Mr. Gedge) Did he say anything about his views on, I guess, what we call mandatory crime-free ordinances?
>
> Ms. Phillips: Same objection. You can show it as a continuing objection.
>
> The Witness: Yes, he did. He said it was never meant to be a mandatory thing. It wasn't supposed to be an ordinance-based thing. It was supposed to be a voluntary cooperative effort.
>
> Q. (By Mr. Gedge) Did you respond to that at all?
>
> A. No. I was actually shocked by that because I never heard that before.

law's jigsaw distinctions between owners, mortgagors, renters, and installment-contract buyers. *Id.* § 8.97.020 (defining "owner"). That regime "necessarily casts considerable doubt" on the notion that the compulsory-eviction law "could rationally have been intended to" achieve those same goals. *U.S. Dep't of Agric.* v. *Moreno*, 413 U.S. 528, 536-37 (1973); *see generally Monarch Beverage Co.*, 861 F.3d at 685 (positing that *Moreno* and *City of Cleburne* might have less force in cases involving purely "economic regulation[s]").

c. As noted above (at 43-44), the district court neglected virtually every aspect of the equal-protection analysis. The court maintained that the rational-basis standard applied. App. 9. Yet having done so, the court appears to have viewed dismissal as automatic. The court was silent on the different regulatory burdens for renters, homeowners, and mortgagors—the core of the equal-protection claim. *See id.*; *see also* Dist. Ct. Doc. 1, at ¶¶ 141-51; Dist. Ct. Doc. 24, at 16 ("That classification is the main basis for Plaintiffs' equal-protection claim . . . ."). Beyond a "bald assertion[]" of rationality, *Keenon* v. *Conlisk*, 507 F.2d 1259, 1261 (7th Cir. 1974), the court nowhere considered why it could make sense to require renters—and no one else—to police their householders citywide. In fact, the court did not refer to that classification at all. *See* App. 9-10. It cited crime-fighting as a legitimate goal—and stopped.

That is not rational-basis review. For it is not the mere existence of a governmental objective, but rather "the link" between objective and classification, that "gives substance to the Equal Protection Clause." *Romer* v. *Evans*, 517 U.S. 620, 632 (1996); *cf. Miller* v. *Carter*, 547 F.2d 1314, 1316 (7th Cir. 1977) (per curiam) (invalidating as irrational a classification among ex-offenders, "regardless of the importance of the public safety considerations underlying the statute"), *aff'd by an equally divided court*, 434 U.S. 356 (1978). The district court bypassed that inquiry entirely, and in so doing, it erred badly; whatever leniency the rational-basis standard may afford, it demands something more than nothing. *See Romer*, 517 U.S. at 632; *cf. Catherine H. Barber Mem'l Shelter, Inc.* v. *Town of N. Wilkesboro*, 576 F. Supp. 3d 318, 343 (W.D.N.C. 2021) ("[S]uch deference cannot be an excuse for the Court to abdicate its duty to protect the constitutional rights of all people.").

d. The City's rational-basis analysis was similarly impoverished. Far from supporting a rational link between means and end, the City's evolving arguments showed nothing so clearly as contempt for the rights of its citizens.

First, in a related, earlier lawsuit (later voluntarily dismissed), the City let the cat out of the bag: It sought to justify singling out people who rent because, in the City's telling, their homes simply matter less. As the City put it,

homeowners and mortgagors enjoy "increased protections" in their property. *See* Mem. in Supp. Def.'s Mot. to Dismiss at 11, *Barron* v. *City of Granite City*, No. 19-cv-834 (S.D. Ill.) (Aug. 23, 2019) (Doc. 22). But with fewer property rights in their "bundle of sticks," the City suggested, people who rent have no cause to complain if the City makes them homeless. *See id.*

That was an improvident theory to say out loud. As a matter of property law, there are of course differences between fee-simple estates and leasehold estates. But *as against the government*, Debi Brumit and Andy Simpson's home was no less their castle because they had a leasehold. The Constitution protects them just as it protects "the Lord of the Manor who holds his estate in fee simple." *Minnesota* v. *Carter*, 525 U.S. 83, 95 (1998) (Scalia, J., concurring). The Fourth Amendment, for example, protects tenants and owners alike. *Chapman* v. *United States*, 365 U.S. 610 (1961). So does the Fifth Amendment, *Mid-Am. Waste Sys., Inc.* v. *City of Gary*, 49 F.3d 286, 289 (7th Cir. 1995), and the Fourteenth, *Dyson* v. *Calumet City*, 306 F. Supp. 3d 1028, 1042 (N.D. Ill. 2018). No difference between fee-simple and leasehold estates can justify the government's singling out renters alone for collective punishment. Prudently, the City elected not to reprise this theory—too candid by half—at any point in this case.

Second, the City in *Barron* tested out another rationale: Singling out renters for collective punishment is rational, it said, because no other people—homeowners, for example—are "subject to eviction under Illinois law." Mem. in Supp. Def.'s Mot. to Dismiss at 13, *Barron* v. *City of Granite City*, No. 19-cv-834 (S.D. Ill.) (Aug. 23, 2019) (Doc. 22). In the City's telling, it simply lacks the "legal option" to make others of its citizens homeless. *Id.* This argument, too, ended up on the cutting-room floor when it came time for the City's briefing in this case. *See* Dist. Ct. Doc. 24, at 17 (response to motion to dismiss) ("That the City has abandoned so many arguments from a sibling case signals that Plaintiffs' claims are at least plausible."). And for good reason. "[E]ven in the ordinary equal protection case calling for the most deferential of standards," what matters is "the relation between the classification adopted and the object to be attained." *Romer*, 517 U.S. at 632. In the City's own telling, however, there was no such relation here. The City singled out renters not because that classification related to its claimed *object*, crime-fighting. It singled them out because they were vulnerable to its preferred *punishment*—eviction.

That is not how the rational-basis standard works; punishment is not in itself an independent governmental objective. Yet rather than design its law in service of "an independent and legitimate legislative end," *id.* at 633, the

City appears to have first picked the punishment it wanted to impose, then worked backwards. That is why its law's classification had everything to do with home-financing arrangements and nothing to do with public safety. *See, e.g.*, Dist. Ct. Doc. 1, at ¶¶ 142-51. That is also why any link between classification and crime-control "is not only 'imprecise,'" but "wholly without any rational basis." *Moreno*, 413 U.S. at 538.

Finally, the City resorted to dystopia. Singling out renters for collective punishment is rational, the City posited, because it would "incentivize[]" landlords to "carefully select" tenants who are "less likely to be involved in criminal activity." Dist. Ct. Doc. 19, at 16. The law would make landlords "less likely" to rent to those who might be "likely" to commit crimes someday. *Id.* The end-result, said the City, is that "would-be criminals"—or whoever landlords think look like "would-be criminals"—would have a harder time finding housing. *Id.*

Those comments of course raise questions about the City's exposure under other federal laws. *See generally* Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019). But as with the City's other theories, they do not move the needle in its favor here; nowhere did the City even begin to explain why "would-be criminals" are cause for concern when they associate with

renters but not when they associate with homeowners or mortgagors. Simply, the law's classification was arbitrary. That arbitrariness reflected more than just an "imperfect fit between means and end." *Heller* v. *Doe*, 509 U.S. 312, 321 (1993). It was built into the law at a structural level. In its design, the law ignored *most* serious crime in Granite City while visiting life-altering sanctions on the blameless. In the name of protecting law-abiding citizens, the City made law-abiding citizens homeless. Whatever the level of scrutiny, Brumit and Simpson's equal-protection claim is at least plausible. The judgment below should be reversed.

III. By targeting people based purely on their associations with others, Granite City's compulsory-eviction law violated appellants' associational rights.

Unlike the due-process and equal-protection claims, Brumit and Simpson's associational-rights claim was resolved at summary judgment. App. 13-19. Here, too, the district court erred in ruling for the City.

Much like the Due Process Clause (pp. 25-39, *supra*), the First and Fourteenth Amendments more broadly guard against association-based punishments. As relevant here, the rule is simple: "For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to

further those illegal aims." *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982). For its part, however, Granite City systematically forced people from their homes based purely on crimes committed by people with whom they associated. It was enough, under city law, that the guilty had spent some amount of time in the home of the innocent. All were tainted by the sins of one.

Such a law is unconstitutional. If not per se invalid, it fails all the tiers of scrutiny—from strict to rational basis. The summary-judgment record confirms as much. In holding otherwise, the district court misapplied Supreme Court precedent, and on this claim, too, its judgment should be reversed.

A. The summary-judgment record confirms that the compulsory-eviction law was either per se invalid or subject to strict scrutiny.

1. A law that punishes people because of their associations with others punishes them *for* their associations with others in a way the Constitution forbids. Granite City's was just such a law. The summary-judgment record confirms what Brumit and Simpson's complaint alleged: Under its compulsory-eviction law, Granite City would coerce the eviction of entire households if a single member (or someone the City thought a member) was charged with having committed a felony within city limits. *See* pp. 7-10, *supra*. It did not matter, for example, that Brumit and Simpson had nothing to do with Tori

Gintz and her boyfriend's stealing a van. It did not matter that they were unaware of the crime. It did not matter that, by any measure, they were blameless. *See* pp. 14-15 & 26 n.5, *supra*. It was enough that they had at some point "allowed these people to be at the property that they rent." App. 63. (The City took no steps to determine when Gintz and her boyfriend had last been physically present at the home. App. 63-64.). That triggered the City's order for household-wide eviction.

A law that applies in this way is per se invalid or, at minimum, subject to strict scrutiny—a standard the City has never tried to meet. The City tried to coerce Brumit and Simpson from their home, not because of any action they had taken, but because the City viewed them as tainted by their ties to Brumit's daughter. It coerced evictions whether or not the household "itself possessed unlawful goals" (an improbable domestic arrangement). *Claiborne Hardware Co.*, 458 U.S. at 920. It did so whether or not those targeted for eviction "held a specific intent to further th[e] illegal aims" of the suspected wrongdoer. *See id.* It did so, as in this case, even where innocent householders were actively trying to rehabilitate their loved ones. *See* p. 13, *supra*. In short, it targeted innocent people "by reason of association alone." *Claiborne Hardware Co.*, 458 U.S. at 920. Decades of precedent forbid such an experiment.

A recent district-court decision illustrates the point persuasively. In *Rueda Vidal* v. *U.S. Department of Homeland Security*, the government denied a student's DACA application because her parents had committed drug crimes and the student "'has lived into adulthood' at her parents' addresses." 536 F. Supp. 3d 604, 625 (C.D. Cal. 2021). "No other reason was identified for denying [her] application, such as a finding that she was a threat to public safety or that she herself had engaged in some wrongdoing." *Id.* On that record, the court easily concluded that the government "violated [the student's] Fifth and First Amendment familial association rights." *Id.* at 626.[8] "[T]he Constitution protects the right of a child to associate with a parent without being tainted by the parent's crime absent her own participation in it," the court wrote. *Id.* at 625. By "visit[ing] the sins of the parent upon the daughter," the government thus "burdened [her] fundamental rights in a manner that is 'arbitrary, or conscience shocking, in a constitutional sense.'" *Id.* at 626. On that ground, the court held the government's action per se invalid; it ruled for

[8] Because the government actor in *Rueda Vidal* was the federal government, the court relied on the Due Process Clause of the Fifth Amendment rather than the Fourteenth. *See Dusenbery* v. *United States*, 534 U.S. 161, 167 (2002).

the plaintiff on her associational-rights claim without performing any type of scrutiny. *Id.*

This case is similar. Under Granite City's law, Brumit and Simpson "w[ere] tainted by [their] familial relationships untethered to any wrongdoing on [their] part." *See id.* In the City's view, the couple had opened their home to Brumit's daughter. That act of association—lawful in itself—was the basis for the City's exercising coercive power against them. *See* pp. 14-15, *supra*. As under the Due Process Clause, such an exercise in collective punishment is invalid under associational-rights precedent; the Constitution secured Brumit and Simpson's right to associate with Brumit's daughter without being punished for her crimes. To hold otherwise (as the court in *Rueda Vidal* remarked) "would be both 'illogical and unjust,' given 'the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing.'" 536 F. Supp. 2d at 626.

Distilled, the rule is as simple as it is intuitive: Governments cannot punish people based purely on their associations with others. If not per se invalid, *see id.*, such a law imposes on the government the most rigorous standard of scrutiny, *cf. St. Ann* v. *Palisi*, 495 F.2d 423, 427-28 (5th Cir. 1974) (applying strict scrutiny, under the Due Process Clause, to a rule that punished students

for parents' misconduct). Granite City has never tried to meet that standard—or any standard besides rational-basis review. Dist. Ct. Doc. 131, at 14-17; Dist. Ct. Doc. 79, at 19-20; Dist. Ct. Doc. 77, at 18-19. That makes Brumit and Simpson's associational-rights claim an easy candidate for reversal.

2. The district court's reasons for holding differently are unsound.

Foremost, the district court misapplied governing precedent in concluding that no level of heightened scrutiny applied. The court accepted that the right to "intimate" association is "a fundamental element of personal liberty." App. 16-17. The court also observed that the compulsory-eviction law would be "subject to strict scrutiny" if it "impose[d] a direct and substantial burden on . . . intimate relationship[s]." App. 17. The court then concluded, however, that the law "d[id] not place a direct and substantial burden on the right to intimate familial association." App. 18. Only if it had "directly prevented" Brumit and Simpson "from forming or maintaining their intimate familial association with Brumit's adult daughter" would the law implicate more than rational-basis review. App. 17-18; *see also* App. 18 ("[N]o one from Granite City had ever told [Brumit] that she could not associate or have a relationship with her daughter, Tori.").

The district court was mistaken. The right to be free from association-based punishment is not limited to scenarios where the government "directly prevents" people from associating with one another. While holding the opposite, in fact, the district court admitted as much. *See* App. 17 ("[A]ssociational rights 'are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference' . . . ."). In *Claiborne Hardware Co.*, for instance, the NAACP and its members were not "directly prevented" from associating. App. 17. Even so, the Court held that imposing liability "solely because of" that association infringed their associational rights. 458 U.S. at 918-19 ("The First Amendment . . . restricts the ability of the State to impose liability on an individual solely because of his association with another."). The Court made the point even more explicitly six years later: "Exposing the members of an association . . . to civil liability merely because of their membership in that group," the Court remarked, would pose a "danger to the exercise of associational freedoms." *Lyng* v. *UAW*, 485 U.S. 360, 367 n.5 (1988). That principle translates readily to the record here. Granite City tried to strip Brumit and Simpson of their home. It did so purely because of their association with Brumit's daughter. That is a clear-cut burden on associational rights and triggers heightened scrutiny or per se invalidation.

The precedent on which the district court relied is not to the contrary. Like the City, the court looked mainly to a decision of this Court, *Hameetman* v. *City of Chicago*, which observed that "state or local regulations are not unconstitutional deprivations of the right of family association unless they regulate the family directly." App. 17 (quoting 776 F.2d 636, 643 (7th Cir. 1985)). As an initial matter, the Court in *Hameetman* appears not to have viewed the controversy as an associational-rights case. 776 F.2d at 642-43. In any event, to describe *Hameetman* is to distinguish it. On its face, the Chicago ordinance had nothing to do with associations, intimate or otherwise. It merely required that city employees be "actual residents" of the city. *Id.* at 639. For Robert Hameetman, that requirement happened to affect his domestic arrangements; he had "a hyperkinetic child who was doing well in [an] Indiana school system and might have found adjustment to Chicago difficult." *Id.* at 642. Not surprisingly, however, this Court held that those idiosyncratic "collateral consequences" did "not bring the constitutional rights of family association into play." *Id.* at 643.

Granite City's compulsory-eviction law was qualitatively different. By design, it meted out devastating, coercive legal burdens on innocent people—and it did so *because of* their associations, not as an "incidental" or "collateral"

byproduct of them. *See id.* The City ordered Brumit and Simpson's eviction, for instance, precisely because it viewed their relationship with Tori Gintz to be so close that her sins could be imputed to them as well. *See, e.g.*, App. 40. It did the same to many others. *See* pp. 9-11, *supra*. Directly regulating people based on their associations was the law's *raison d'être*.

The contrast with *Hameetman* could hardly be starker. Granite City's law visited debilitating burdens on innocent people. It did so because (in the City's view) those people resided with other, bad people. Such a law infringes a textbook associational right. *See Bd. of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 545 (1987) (describing contours of "intimate" associations). And nothing in the district court's analysis suggests otherwise. If not per se invalid, the law's burden on associational rights merited a heightened scrutiny that the City did not even try to meet.[9]

[9] Below, the City contended that the Supreme Court's associational-rights precedent secures heightened protection only for associations that can be classified as either political or intimate. Dist. Ct. Doc. 77, at 5. But while it often has focused on those two categories of association, the Court has never suggested that the government has a free hand to collectively punish people for associating with other types of groups. At all events, the associations implicated by the compulsory-eviction law (householders and residential guests) qualify as "intimate" under the Court's precedent. *See Bd. of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 545-46 (1987); *Fair Hous. Council* v. *Roommate.com, LLC*, 666 F.3d 1216, 1221 (9th Cir. 2012).

B. The summary-judgment record confirms that the compulsory-eviction law failed even rational-basis review.

Based on the errors discussed above, the district court declined to apply anything more than rational-basis review. App. 18. For a second time, however, the court misapplied even that forgiving standard. *See* pp. 42-49, *supra*. As in its equal-protection opinion, the court's analysis reduced to a one-sentence truism: "There can be no question that crime deterrence and prevention are rational and legitimate reasons for a municipality to enact legislation." App. 18. As discussed, though, even rational-basis review demands more than just reciting a legitimate government end. *See* p. 49, *supra*. And the district court could identify not one reason why "crime deterrence and prevention" could rationally be furthered by a system that—in its design—gave a free pass to almost all suspected criminal offenders while inflicting irreparable harms on innocents. Bluntly, the compulsory-eviction regime was designedly and irrationally inept. *See* pp. 42-53, *supra*. Because the undisputed record confirmed as much, the district court erred in denying Brumit and Simpson's request for summary judgment. At minimum, the record more than sufficed to deny the City's cross-motions. *See EEOC* v. *Sears, Roebuck & Co.*, 233 F.3d 432, 437 (7th Cir. 2000). Whatever level of scrutiny might apply, Granite City was not entitled to judgment as a matter of law.

* * *

Viewed singly, each of the district court's rulings is unsound. And the whole is worse than the sum of its parts. The basic question in this case has an easy answer: Under our constitutional order, can a city collectively punish entire households and systematically coerce innocent people from their homes? Of course not. It's not a close call. Yet under the rule of law embraced below, there is no constitutional backstop. On the district court's view, reciting "crime deterrence and prevention" trumps the right of innocents to be secure in their homes. It trumps the right not to be punished for someone else's crimes. It excuses arbitrary, senseless cruelty inflicted on hundreds of law-abiding people. Worst, the district court's rule admits of no logical stopping point, and it sets a dangerous marker: Government can impose even paradigmatically irreparable injuries on innocent people, and the Constitution will secure them no meaningful protection. Such a rule parts ways with precedent, history, and our system of ordered liberty. And it promises real harm in a state like Illinois, where laws like Granite City's remain stubbornly common. *See* pp. 19-20, *supra*. The judgment below should be reversed.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Dated: January 17, 2023.

Respectfully submitted,

/s/ Samuel B. Gedge

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Cir. R. 32(c) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 13,956 words.

I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Cir. R. 32(b) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Expanded font.

Dated: January 17, 2023.

/s/ Samuel B. Gedge
Samuel B. Gedge

Counsel for Appellants

SHORT APPENDIX

SHORT APPENDIX

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30

Pursuant to Circuit Rule 30(d), I certify that all material required by Circuit Rule 30(a) is in the appendix bound with this brief. I further certify that all material required by Circuit Rule 30(b) is in the separate appendix.

Dated: January 17, 2023.

/s/ Samuel B. Gedge
Samuel B. Gedge

Counsel for Appellants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH BRUMIT and ANDREW SIMPSON,	)	
Plaintiffs,	)	
	)	**Case No. 19-CV-1090-SMY**
vs.	)	
CITY OF GRANITE CITY, ILLINOIS,	)	
Defendants.	)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiffs Deborah Brumit and Andrew Simpson assert First, Fifth, and Fourteenth Amendment claims related to Defendant Granite City, Illinois' efforts to evict them from their rental house pursuant to an ordinance. On October 18, 2019, the undersigned issued a preliminary injunction preventing their eviction (Doc. 15).

Now pending before the Court are Defendant's motion to dismiss for failure to state a claim (Doc. 18) and motion to dismiss for lack of jurisdiction (Doc. 28). The Court conducted a hearing on these motions (Doc. 42). Following the hearing, Plaintiffs filed a Notice of Supplemental Authority (Doc. 44) and the parties filed supplemental briefs (Docs. 52, 53). For the following reasons, the motion to dismiss for failure to state a claim is **GRANTED in part and DENIED in part** and the motion to dismiss for lack of jurisdiction is **DENIED**.

Background

Plaintiffs make the following allegations in the Complaint (Doc. 1): Brumit and Simpson live in a single-story house at 7 Briarcliff Drive in Granite City, Illinois ("Granite City") and pay rent to Clayton Baker, their landlord. They have three adult children, including their daughter,

Tori Gintz who moved in with them in January 2019. Gintz move out in May 2019, leaving her two minor children with Plaintiffs. In the early morning of June 9, 2019, Gintz came to Plaintiffs' house, came inside and talked to Plaintiffs for an hour, and left. That night, Gintz and her boyfriend, Tyler Sears, were arrested for stealing a van in Granite City.

Two days later, Plaintiffs received a "Notice of Violation" letter from Lt. Mike Parkinson, a Crime Free Multi-Housing Officer, advising them that pursuant to a Granite City Ordinance, they were subject to eviction because of the crime committed by Gintz and Sears (Doc. 1-2). At the time, Granite City's Municipal Code § 5.142.010, *et seq.*, ("Crime-Free Housing Ordinance" or "CFHO") required eviction of tenants who committed or permitted the commission of a felony in the rental unit, acquired four ordinance violations, or who violated the "crime-free housing lease addendum" ("CFHLA"), which tracks language in the CFHO. In relevant part, the CFHLA mandated eviction if a lessee, a member of the lessee's household, or guest engaged in or facilitated criminal activity in or near the leased property or engaged in drug related activity, violence, or forcible felonies within city limits or "otherwise" (Doc. 1-1). Plaintiffs and Gintz signed the CFHLA agreeing to its terms on December 2, 2016.[1]

After receiving the Notice of Violation, Brumit submitted a grievance to Granite City's Office of the Building and Zoning Administrator. A hearing was held on July 22, 2019 during which Plaintiffs explained that their daughter no longer lived with them. The hearing officer determined that Plaintiffs must be evicted for violating the CFHO and CFHLA and their landlord (who opposed eviction) gave them the mandatory 30 days' notice to vacate the premises. The hearing officer provided no individualized findings of fact but simply copied decisions from

[1] Attached to the Complaint is an unsigned copy of the CFHLA (Doc. 1-1). Defendant attached a signed copy of the CFHLA to their motion to dismiss (Doc. 19-1, pp. 5-6). The Court may consider these documents and the ordinance at issue in ruling on the motions to dismiss. *Amin Ijbara Equity Corp. v. Village of Oak Lawn*, 860 F.3d 489, 493 n.2 (7th Cir. 2017).

previous hearings.

Plaintiffs filed the instant lawsuit on October 7, 2019 raising due process (Count I), equal protection (Count II), takings (Count III), and freedom of association (Count IV) claims. They seek a declaration that the CFHO is unconstitutional, preliminary and permanent injunctive relief against enforcement of the ordinances, $1.00 in nominal damages, attorney fees, and "such further legal and equitable relief as the Court may deem just and proper."[2] [3]

Discussion

Motion to Dismiss for Lack of Jurisdiction (Doc. 28)

[2] The CFHO was amended in the Fall of 2019 (after this case was filed) when Illinois' Human Rights Act ("IHRA"), 775 Ill. Comp. Stat. § 5/1-101, *et seq*., was amended making it a civil rights violation for "an owner or any other person engaging in a real estate transaction . . . because of . . . an arrest record . . . to . . . [r]efuse to engage in a real estate transaction . . . [or] [a]lter the terms, conditions or privileges of a real estate transaction . . . ." *Id*. §5/3-102. For purposes of the statute, an "arrest record" includes "an arrest not leading to a conviction." *Id*. §5/1-103(B-5). The statute further provides:

> The prohibition against the use of an arrest record under Section 3-102 shall not preclude an owner or any other person engaging in a real estate transaction, or a real estate broker or salesman, from prohibiting the tenant, a member of the tenant's household, or a guest of the tenant from engaging in unlawful activity on the premises. *Id*. § 5/3-102.5.

The changes became effective on January 1, 2020. In response to these amendments, Granite City issued Ordinance 8805 limiting application of the CFHO to criminal conduct occurring on leased premises or "conviction of lessee, a member of lessee's household, or a guest of lessee for drug related activity, or a Forcible Felony anywhere in the corporate limits of the City of Granite City . . . ." (Doc. 29-2). During the hearing before this Court on February 10, 2020, Defendant represented that it had withdrawn the Notice of Violation issued to Plaintiffs and that, as a practical matter, it could not compel their landlord to institute eviction proceedings in state court in light of the amended IHRA (Doc. 42). There is no showing that the amendments to the CFHO apply retroactively.

[3] Due to the novel Coronavirus, Covid-19, Governor J. B. Pritzker issued Executive Orders 2020-30 and 2020-48 prohibiting all evictions through August 22, 2020. https://www2.illinois.gov/government/executive-orders (last visited July 31, 2020). The prohibition is continued through March 31, 2021 through Executive Orders 2020-72 and 2021-04. https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2021-04.aspx (last visited February 8, 2021).
Granite City has since repealed the CFHO and replaced it with a version adopted on September 1, 2020. The amended ordinance does not include mandatory eviction language. Instead, it places a limit on occupancy licenses for landowners and requires a "mitigation plan" if criminal acts occur on the property, there are four or more ordinance violations, or a violation of a new CFHLA (Doc. 52-3 and 52-4). City of Granite City Mun. Code § 5.142.050 (2020), https://library.municode.com/il/granite_city/codes/municipal_code?nodeId=TIT5BUTALIRE_VIOTBU_CH5.142LILEREUN (last visited February 8, 2021); City of Granite City, IL Ordinances 8856 and 8873, https://library.municode.com/il/granite_city/ordinances/municipal_code?nodeId=1038951 (last visited February 8, 2021). The record does not contain a copy of the revised CFHLA.

Article III of the United States Constitution limits federal jurisdiction to live cases and controversies. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). Thus, a case becomes moot and a court lacks jurisdiction if "the dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights." *Id.* (quotation marks and citations omitted). A live case or controversy must be apparent throughout all stages of the litigation. *Arizonians for Official English v. Arizona*, 520 U.S. 43, 67 (1997). "A question of mootness arises when [ ] a challenged ordinance is repealed during the pendency of litigation" and the plaintiff is seeking only prospective injunctive relief. *Federation of Advertising Industry Representatives, Inc. v. City of Chicago*, 326 F.3d 924 (7th Cir. 2003). However, a claim is not moot if a plaintiff seeks damages. *Buckhannon Bd. Of Care Home, Inc. v. West Virginia Dept. of Health and Human Res.*, 532 U.S. 598, 608-9 (2001). Defendant argues that Plaintiffs' claims are moot because the CFHO has been materially altered so that they would not be subject to eviction under the circumstances underpinning this lawsuit.

When a private party voluntarily ceases challenged conduct, a case is not necessarily moot because he is "free to return to his old ways." *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953). However, when the defendant is a public entity "we place greater stock in their acts of self-correction, so long as they appear genuine." *Federation*, 326 F.3d at 929 (quotation marks and citation omitted). The Court does not presume public officials are acting in bad faith "unless there is evidence creating a reasonable expectation that the City will reenact the ordinance or one substantially similar." *Id.* at 930.

Plaintiffs claim that suspicious timing, lack of amended legislation in other jurisdictions in reaction to the amended IHRA, and reliance on the pandemic to enact policies undercuts confidence in Granite City's actions. These considerations alone, however, cannot support a

finding of bad faith. That said, because the amendments to the CFHO do not have retroactive effect, there is also no guarantee that Granite City will not again issue a notice of violation and attempt to have Plaintiffs evicted. There is similarly no indication the CFHLA that residents are directed to sign will be materially different from the document signed by Plaintiffs.

Moreover, this Court is not persuaded that Plaintiffs' request for nominal damages moots their claims. *See Chafin v. Chafin*, 568 U.S. 165, (2013) ("'a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have concrete interest, however small, in the outcome of the litigation, the case is not moot." (quotation marks and citations omitted)); *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 799 (7th Cir. 2016) (stating in dicta that a request for nominal damages "saves the case from mootness" where the challenged statute had been repealed); *but see Freedom from Religion Foundation, Inc. v. Concord Community Schools*, 885 F.3d 1038, 1053 (7th Cir. 2018) (leaving open the question of "whether a suit for nominal damages alone is a sufficiently justiciable controversy under Article III"). Accordingly, the Motion to Dismiss for Lack of Jurisdiction (Doc. 28) is **DENIED.**[4]

Motion to Dismiss for Failure to State a Claim (Doc. 18)

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts all allegations in the Complaint as true. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The federal system of notice pleading requires only that a plaintiff provide a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). However, the allegations must be "more than labels and

[4] In light of this conclusion, it is unnecessary to consider more recent versions of the CFHO. Therefore, Defendant's Motion to file Additional Supplemental Authority (Doc. 54) is **DENIED as MOOT.**

conclusions." *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008). This requirement is satisfied if the Complaint (1) describes the claim in sufficient detail to give the defendant fair notice of what the claim is and the grounds upon which it rests and (2) plausibly suggests that the plaintiff has a right to relief above a speculative level. *Twombly*, 550 U.S. at 555; *see Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 556).

Due Process (Count I) and Equal Protection (Count II)

Plaintiffs allege that the CFHO, on its face and as applied, violates the Due Process Clause of the Fourteenth Amendment. Leaseholders have a "significant" property interest in leased property; therefore, they are entitled to due process prior to any deprivation. *Greene v. Lindsey*, 456 U.S. 444 (1982); *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 135 (2002). Due process "centrally concerns the fundamental fairness of governmental activity" and Plaintiffs allege that it is fundamentally unfair to deprive them of their home based on the actions of third-parties. *See Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992), overruled on other grounds, *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, ___, 138 S.Ct. 2080, 2092-2093 (2018).

Defendant argues that Plaintiffs' due process claim fails as a matter of law because they signed the CFHLA which permits eviction for the commission of a felony. As an initial matter, Plaintiffs argue the Court cannot consider material outside of the pleadings and that their signature on the CFHLA is meaningless because no person is required to sign away their constitutional rights as a condition of living in Granite City. Plaintiffs are incorrect on this point; the Court may in fact consider the signed CFHLA. Plaintiffs attached an unsigned copy of the document to their

Complaint and Defendant attached the signed copy to its motion. The Court may consider documents attached to the Complaint and central to allegations in the Complaint when ruling on a Rule 12(b)(6) motion. *Amin Ijbara Equity Corporation*, 860 F.3d at 493 n.2.

In the CFHLA, Plaintiffs and Gintz agreed that they and their guests or other persons under their control would not "engage in criminal activity, including drug-related criminal activity" or equivalents to forcible felonies in the city limits or on or near the premises leased (Doc. 19-1). Plaintiffs also agreed that a violation of the CFHLA "shall be good cause for the termination of lease, unless otherwise provided by law" (*Id.*). Plaintiffs argue however that the "unconstitutional conditions doctrine" makes the CFHLA a nullity. That doctrine prevents the government from using conditions to produce a result that it cannot directly require. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013) ("As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury."). Thus, Plaintiffs argue that because Granite City cannot directly evict a private leaseholder because of the criminal actions of a lessee/guest, it also cannot force an eviction through the CFHLA.

Defendants counter that the CFHO is sanctioned by *Dep't of Housing and Urban Dev. v. Rucker*, 535 U.S. 125 (2002). In *Rucker*, the Supreme Court analyzed a statute directing public housing authorities to use leases to terminate tenancy if the tenant, a member of his household, a guest, or other person under his control engages in criminal activity or drug-related criminal activity on or off the premises. *Id.* at 127-8. The court noted that the statute, 42 U.S.C. § 1437d(l)(6), "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests

whether or not the tenant knew, or should have known, about the activity." 535 U.S. at 130. It found it significant that the statute gave housing authorities discretion in evicting tenants and concluded "it was reasonable for Congress to permit no-fault evictions" in order to curb crime and provide safe housing. *Id*. 134-5. The Court also distinguished between the government acting as a landlord and acting as a sovereign; thus, "the government is not attempting to criminally punish or civilly regulate respondents as members of the general populace. It is instead acting as a landlord of property that it owns, invoking a clause in a lease to which respondents have agreed and which Congress expressly required." *Id*. 135. This is the very distinction Plaintiffs draw in their Complaint – Granite City is not acting as a landlord and managing property that it owns. Rather, through the CFHLA, it is regulating the general populace through a backdoor. In this respect, Plaintiffs argue that the CFHO, on its face and as applied, violates the Due Process Clause rendering the CFHLA a nullity.

The "fundamental right" Plaintiffs seek to invoke is the right to not be punished (by eviction from a rental property) due to the criminal acts of a third party. They cite various cases for the general propositions that one ought not to be punished for the actions of others and that one's home is sacrosanct. *See e.g. Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 704-5 (1897) ("No property is more sacred than one's home.") and *Scales v. United States*, 367 U.S. 203, 224 (1961) ("In our jurisprudence guilt is personal."). What is missing, however, is precedent for the existence of the particular fundamental right Plaintiffs urge this Court to recognize. Indeed, the undersigned wonders whether "[t]he mere novelty of such a claim is reason enough to doubt that 'substantive due process' sustain it . . . ," *Reno v. Flores*, 507 U.S. 292, 303 (1993), in light of the admonition that the list of fundamental rights is a "short one" that the Supreme Court has cautioned should not be expanded. *Sung Park v. Indiana University School of Dentistry*, 692 F.3d 828, 832

(7th Cir. 2012). But this does not end the inquiry.

Plaintiffs argue that even if a fundamental right is not at issue, substantive due process and the equal protection clause protect them against arbitrary and irrational governmental actions. *See, Eby-Brown Co., LLC v. Wisconsin Dept. of Agriculture*, 295 F.3f 749, 754 (7th Cir. 2002) (while noting the differences between a substantive due process claim and an equal protection claim, analyzing both claims under a rational basis test when no fundamental right or suspect class is involved). Under a rational basis test, a statute is upheld "so long as it bears a rational relation to some legitimate end" even if the statute is "'unwise, improvident, or out of harmony with a particular school of thought.'" *Eby-Brown Co., LLC.*, 295 F.3d at 754 (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955); *Campos v. Cook County* 932 F.3d 972, 975 (7th Cir. 2019) ("Substantive due process protects against only the most egregious and outrageous government action."). At the pleading stage, "a plaintiff must allege facts sufficient to overcome the presumption of rationality that applies to government classifications." *Wroblewsk v. City of Washburn*, 965 F.2d 452, 460 (7th Cir. 1992) (analyzing a class-of-one equal protection claim). Here, Plaintiffs allege that there is no rational reason for Granite City to treat them differently than "everyone else in the world" (Doc. 1, ¶ 165). They point out that even if they were evicted, they could simply move in next door, to another rental property, or could become homeowners who are not subject to the CFHO.

Crime deterrence and prevention are rational and legitimate reasons to evict renters. *See*, *Univ. Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO v. Edgar*, 114 F.3d 665, 667 (7th Cir. 1997) ("No quantum of evidence is necessary to demonstrate this relationship between means and end: to defeat an equal protection claim subject to rational-basis scrutiny, defendants-appellees

must only proffer a sound reason for the legislation.").[5] Although the CFHO, as it applied to Plaintiffs, was striking in its breadth and reach, Plaintiffs have failed to allege facts sufficient to overcome the presumption of rationality that applies to government classifications. Therefore, Counts I and II will be dismissed for failure to state a claim.

Takings Clause (Count III)

Plaintiffs assert that they have spent their own money maintaining the property with the expectation that they would reside there "for as long as is mutually agreeable to them and Clayton Baker" and claim they are entitled to a "reasonable market return on their interest in 7 Briarcliff Drive" and that the CFHO "upset their investment-backed expectations." Defendant argues Plaintiffs' claim is not ripe because no taking has actually occurred and that the allegations are threadbare. A takings claim is not ripe until just compensation has been denied (either through a formal or informal state process or otherwise). *See e.g. Pakdel v. City and County of San Francisco*, 952 F.3d 1157, 1163 (9th Cir. 2020) (noting that a takings claim is not ripe until a final decision of the applicability of a regulation at issue). There is no allegation here that Granite City has denied compensation for the interest that Plaintiffs claim, finally or otherwise. Accordingly, Count III will be dismissed without prejudice.

Freedom of Association (Count IV)

Plaintiffs allege that they are being punished for associating with their adult daughter and that being held "strictly liable for crimes committed by people they associate with burdens the right to association." In *Lyng v. Int'l Union, United Auto., Aerospace and Agr. Implement Workers of America, UAW*, 485 U.S. 360 (1988), the Court considered whether a statute prohibiting a

[5] While Plaintiffs hint that Defendant's rationale is perhaps a pretext for impermissible discrimination, no such claim is raised in the Complaint.

"household" from receiving food stamps if one member was on strike interfered with the associational rights guaranteed by the First Amendment. In finding that it did not, the Court held that the statute neither "ordered" individuals not to associate nor did it "directly and substantially interfere with family living arrangements." *Id*. at 364-5. And, in *Rucker*, 535 U.S. at 136 n.6, the Court approved the Ninth Circuit's reasoning that "[j]ust as it does not violate the Constitution to deny an entire household food stamps on the basis of one member's decision to participate in a strike, it is not unconstitutional to evict an entire household on account of one member's drug use." *Rucker v. Davis*, 203 F.3d 267, 647 (9th Cir. 2000).

In this case, Plaintiffs allege that the CFHO substantially burdens their association with their daughter by subjecting them to civil sanctions and liabilities. They point out that both *Lyng* and *Rucker* concerned regulations that conferred a benefit on people; food stamps and subsidized housing. They argue that by contrast, Granite City is not conferring a benefit so much as using coercive tactics to modify behavior – justifications that the Supreme Court rejected in *Lyng* and *Rucker* as being marginal results. They further argue that neither case applies because "[e]xposing the members of an association to physical and economic reprisals or to civil liability merely because of their membership in that group poses a much greater danger to the exercise of associational freedoms than does the withdrawal of a government benefit based not on membership in an organization but merely for the duration of one activity that may be undertaken by that organization." *Lyng*, 485 U.S. at 367 n.5.

At this stage of the proceedings and based on the limited argument made by Defendant, the undersigned cannot conclude that Plaintiffs have failed to state a plausible claim in Count IV. The claim will therefore proceed.

Conclusion

Defendant's Motion to Dismiss (Doc. 18) is **GRANTED in part and DENIED in part**; the Motion to Dismiss for Lack of Jurisdiction (Doc. 28) is **DENIED**. Defendant's Motion to file Additional Supplemental Authority (Doc. 54) is **DENIED as MOOT.** Accordingly, Counts I and II are **DISMISSED with prejudice** and Count III is **DISMISSED without prejudice**.

IT IS SO ORDERED.

DATED: February 9, 2021

STACI M. YANDLE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH BRUMIT and ANDREW SIMPSON,	)	
Plaintiffs,	)	
vs.	)	**Case No. 19-cv-1090-SMY**
THE CITY OF GRANITE CITY, ILLINOIS,	)	
Defendant.	)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiffs Deborah Brumit and Andrew Simpson filed the instant lawsuit against the City of Granite City, Illinois, alleging the City's enforcement of compulsory eviction pursuant to its Crime Free Housing Ordinance violates their constitutional rights in various respects (Doc. 1). One claim remains at this juncture – alleged violation of Plaintiffs' First and Fourteenth Amendment right to associate.

The case is now before the Court for consideration of the parties' cross-motions for summary judgment (Docs. 76, 78, 125) and responses in opposition (Docs. 86, 131). For the following reasons, Defendant's motions are **GRANTED**, and Plaintiffs' motion is **DENIED**.

Factual Background

The following relevant facts are undisputed unless otherwise noted: at the time this lawsuit was initiated, Plaintiffs Deborah Brumit and Andrew Simpson were in a committed relationship and had resided in a rental property located at 7 Briarcliff Drive in Granite City, Illinois ("the home") since 2016 (Doc. 86-9 at ¶¶2-3; Doc. 86-10 at ¶¶2-3). Brumit has three adult children

(Doc. 86-9 at ¶4). Her youngest, Tori, lived with Brumit and Simpson at the home until approximately January 2017 (Doc. 86-9 at ¶6).

In approximately January 2019, Tori again began living with Brumit and Simpson, off-and-on, until approximately May 2019 (Doc. 86-9 at ¶7). She called Brumit in June 2019, indicating that she wanted to get help for her addiction (Doc. 86-9 at ¶10). Brumit brought Tori and her boyfriend to the home to stay for one night before she took them to Gateway Regional Medical Center (Doc. 86-9 at ¶11). Tori returned to the home early the next morning but did not stay (Doc. 86-9 at ¶13). Brumit and Simpson did not hear anything further from Tori or her boyfriend until they were advised by Brumit's older daughter that Tori had been arrested for stealing a van (Doc. 86-9 at ¶¶13, 14).

At all relevant times, Granite City had in place a Crime Free Housing Ordinance ("CFHO") and Crime Free Lease Addendum ("CFLA") that required private landlords to evict private tenants if any member of the tenant's household committed a felony anywhere within city limits (Doc. 86-4 - Deposition of Timothy Bedard, pg. 10, lines 2-5; Doc. 86-5). On June 11, 2019, a Notice of Violation citing Tori and her boyfriend's theft of a vehicle as an offense relating to motor vehicles (Class 2 felonies) was served on Brumit and Simpson by the Granite City Police Department (Doc. 79-1). The Notice advised that the offenses were a clear violation of the CFLA and grounds for eviction. (*Id.*).

Pursuant to the Notice, Brumit and Simpson requested a grievance hearing (Doc. 86-9 at ¶18). Brumit presented evidence that Tori no longer lived at the home, that she had mail addressed to a Missouri address, and that she had been in the hospital and not at the home on the night of the theft. (*Id.*). The City's hearing officer ultimately found that the City had properly invoked the "compulsory-eviction law" and directed that "[t]he landlord, Clayton Baker, must begin eviction

proceedings against the tenants listed above." (Doc. 86-7). In response, Baker issued a 30-day eviction notice to Brumit and Simpson (Doc. 8-3).[1]

On December 17, 2019, Granite City amended the CFHO pursuant to Ordinance No. 8805 (Doc. 73-3). The amendment prohibits the termination of a lease for criminal activity occurring off of the rental property (consistent with the Illinois Human Rights Act). The CFHO was again amended on July 7, 2020 by Ordinance No. 8856, repealing Section 5.142.050 of the Granite City Municipal Code as it existed in July 2020 and the mandatory eviction language contained in Ordinance 8186 (Doc. 73-6). On October 1, 2020, Ordinance No. 8873 was enacted to provide a mechanism by which the Granite City Building and Zoning Administrator can review the status of a residential rental unit license to determine whether action to change the status of the license is needed (Doc. 73-7). Ordinance No. 8873 further provides that any actions challenging licensure and demanding evictions based on prior Section 5.142.050 were to be dismissed and not reinstated. (*Id.*).[2]

By letters dated December 19, 2019, Granite City notified Brumit and Simpson (through Counsel) and Clayton Baker, their landlord, that the June 11, 2019 Notice of Violation of the CFLA was withdrawn and that "…no action is required to be taken in relation to this Notice of Violation." (Docs. 73-4, 73-5).

Discussion

Summary judgment is proper only if the moving party can demonstrate there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R.

[1] Baker asserts he only issued a 30-day notice to Brumit and Simpson because of potential penalties he would face if he did not comply with the ordinance. *Id*.

[2] The Court previously rejected Defendant's argument that the amendments to the CFHO rendered Plaintiffs' claim moot (Doc. 59).

Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); s*ee also Ruffin-Thompkins v. Experian Information Solutions, Inc.*, 422 F.3d 603, 607 (7th Cir. 2005). Any doubt as to the existence of a genuine issue must be resolved against the moving party. *Lawrence v. Kenosha County*, 391 F.3d 837, 841 (7th Cir. 2004). The Court must evaluate each cross-motion independently, making all reasonable inferences in favor of the nonmoving party. *Franklin v. City of Evanston,* 384 F.3d 838 (7th Cir. 2004).

Here, Granite City makes several arguments in favor of summary judgment: that Plaintiffs have failed to establish that they were engaged in an expressive association protected by the First Amendment; that Plaintiffs cannot establish an intimate or familial association to support a First Amendment claim; that Plaintiffs' relationship with Tori is not one that has been recognized as creating a fundamental right under the Fourteenth Amendment; that there is no fundamental right not to be punished due to criminal acts of a third party; that the ordinance in question does not directly and substantially burden Plaintiffs' association with Tori, and is therefore subject to rational basis review; that the ordinance is rationally related to a legitimate governmental interest and is therefore constitutional; and, that there is no longer any need for forward-looking injunctive relief. In support of their motion, Plaintiffs argue that Granite City's compulsory-eviction law was per se invalid; that if not per se invalid, it fails every level of scrutiny; that the right to be free from guilt by association extends beyond "expressive" and "intimate" associations; and, that the compulsory-eviction law burdened associational rights in a way the Constitution forbids.

Freedom of intimate association is the constitutionally protected right to "enter into and maintain certain intimate human relationships." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617 (1984). It is a fundamental element of personal liberty which is protected by the due process clauses. *Id.*

at 618; *Montgomery v. Stefaniak*, 410 F.3d 933, 937 (7th Cir. 2005).[3] The parent-child relationship lies at the heart of protected familial associations and extends to parents and adult children. *Jones v. Brennan*, 465 F.3d 304, 308 (7th Cir. 2006). The threshold question here is whether the CFHO imposes a direct and substantial burden on that intimate relationship. If so, it is subject to strict scrutiny; if not, it is subject to rational basis review. *Montgomery*, 410 F.3d at 938 *citing Zablocki v. Redhail*, 434 U.S. 374, 383-387 (1978).

Government action has a "direct and substantial influence" on intimate association "only where a large portion of those affected by the rule are absolutely or largely prevented from [forming intimate associations], or where those affected by the rule are absolutely or largely prevented from [forming intimate associations] with a large portion of the otherwise eligible population of [people with whom they could form intimate associations.]" *Anderson v. Lavergnem*, 371 F.3d 879, 882 (6th Cir. 2004); *Vaughn v. Lawrenceburg Power Sys.*, 269 F.3d 703, 710 (6th Cir. 2001) *citing Montgomery v. Carr*, 101 F.3d at 1117, 1124-1125 (6th Cir. 1996). While associational rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference," *Bates v. Little Rock*, 361 U.S. 516, 523 (1960), "…state or local regulations are not unconstitutional deprivations of the right of family association unless they regulate the family **directly**." *Hameetman v. City of Chicago*, 776 F.2d 636, 643 (7th Cir. 1985) (emphasis added). "The collateral consequences of regulations not directed at the family…do not bring the constitutional rights of family association into play." *Id.*

There is no evidence on record that Brumit and Simpson were directly prevented from forming or maintaining their intimate familial association with Brumit's adult daughter. Brumit

[3] While the parties disagree on whether freedom of association claims are to be analyzed under the First Amendment or the Fourteenth Amendment, this dispute is of no consequence; the analysis that applies to claims arising under either provision is the same. See, *Swank v. Smart*, 898 F.2d 1247, 1251-1252 (7th Cir. 1990); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 919-920 (1982).

testified that no one from Granite City had ever told her that she could not associate or have a relationship with her daughter, Tori. (Doc. 131-6, pp. 12-13 at lines 23-25, 1). And neither the CFHO nor the CFLA directly regulate the family. The ordinance did not take into consideration who resides at the residences or the type of relationship the individuals have with each other. Although it may ultimately impact families in some respect, its impact on familial association is too indirect to bring the constitutional rights of family association into play. Simply put, the CFHO does not place a direct and substantial burden on the right to intimate familial association; it will be upheld herein if it bears a rational relation to some legitimate end. *See Romer v. Evans*, 517 U.S. 620, 631 (1996); *Heller v. Doe*, 509 U.S. 312, 319-20 (1993); *National Paint & Coatings Ass'n v. City of Chicago*, 45 F.3d 1124, 1127 (7th Cir. 1995) ("[A] legislative decision 'is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data.'") (*quoting FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993)).

Granite City's stated purpose in implementing the CFHO was to "protect the health, safety, and welfare of the citizens" by "protecting against crime." (Doc. 125-5, Deposition of 30(b)(6) Timothy Bedard at p. 5). Although Plaintiffs submitted statistics to show that the CFHO may not have accomplished the degree of protection that the City intended (Doc. 125-1 at pp. 11-13), they have presented no evidence sufficient to negate the stated basis for enactment of the ordinance. There can be no question that crime deterrence and prevention are rational and legitimate reasons for a municipality to enact legislation. *See generally Univ. Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO v. Edgar*, 114 F.3d 665, 667 (7th Cir. 1997). As such, in the absence of evidence of pretext, the CFHO satisfies rational basis constitutional review and does not violate Plaintiffs' right to freedom of association.

Conclusion

For the foregoing reasons, Defendant Granite City's Motions for Summary Judgment with respect to the claims of Plaintiff Deborah Brumit (Doc. 76) and Plaintiff Andrew Simpson (Doc. 78) are **GRANTED in their entirety**. Plaintiffs' Motion for Summary Judgment (Doc. 125) is **DENIED**.

All pending motions are **TERMINATED** as **MOOT**. As no claims remain, the Clerk of Court is **DIRECTED** to enter judgment accordingly and close this case.

IT IS SO ORDERED.

DATED: September 15, 2022

STACI M. YANDLE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH BRUMIT and ANDREW SIMPSON,	)	
Plaintiffs,	)	
vs.	)	**Case No. 19-cv-1090-SMY**
THE CITY OF GRANITE CITY, ILLINOIS,	)	
Defendant.	)	

JUDGMENT IN A CIVIL ACTION

IT IS HEREBY ORDERED AND ADJUDGED that by Order dated September 15, 2022 (Doc. 148), Plaintiffs' claims against the Defendant are **DISMISSED with prejudice.** Accordingly, the Clerk of Court is **DIRECTED** to close this case.

DATED: September 15, 2022

MONICA A. STUMP, Clerk of Court

By: s/ Stacie Hurst, Deputy Clerk

Approved:

STACI M. YANDLE
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Samuel B. Gedge
Samuel B. Gedge

Counsel for Appellants