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

DEBORAH BRUMIT and ANDREW SIMPSON, *Plaintiffs,* v. THE CITY OF GRANITE CITY, ILLINOIS, *Defendant.*	Case No. 3:19-cv-01090-SMY-RJD

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Granite City's compulsory-eviction law (since-repealed) was unparalleled in its scale, senselessness, and cruelty. For years, the City would force private landlords to evict entire households if any single member committed a felony within city limits; in the City's view, all were tainted by the wrongs of one. Plaintiffs Debi Brumit and Andy Simpson were but two of the City's many victims; the City sought to evict them because Debi's adult daughter stole a van. Their lawsuit against the City has been pending for nearly two years. And as relevant here, this case presents a straightforward claim: By forcing people from their homes based purely on their associations with other people, the City violated Debi and Andy's associational rights. On that claim, the undisputed record confirms that Plaintiffs are entitled to summary judgment; punishing people *because of* their associations with others is punishing people *for* their associations with others in a way the Constitution forbids.

The City's testimony captures the point. At deposition, the City testified that Debi and Andy faced eviction because they "allowed members of their household to commit crimes in the City of Granite City." City 30(b)(6) Dep. 47:9-47:10 (ECF 86-2). At the same time, however, the City conceded that Debi and Andy had nothing to do with Debi's daughter's crime. Parkinson Dep. 77:12-78:18, 88:16-89:6 (ECF 86-3). The City also conceded that the couple didn't even know about the crime until after it happened. City 30(b)(6) Dep. 49:14-50:3 (ECF 86-2). Yet somehow, they stood to lose their home for "allowing" it. *But see NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982) ("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."). And remarkably, their experience was far from unique; for years, Granite City enforced its compulsory-eviction law against countless people for the crimes of husbands, wives, partners, children, and parents.

A law that applies in this way marks an unprecedented violation of associational rights; tarring entire households for the misdeeds of one member is not only wrong, but unconstitutional. Plaintiffs' summary-judgment motion should be granted.

STATEMENT OF FACTS

1. When it came to its crime-free housing law, Granite City got a lot wrong. The City imposed a compulsory-eviction regime—something even the creator of crime-free laws counseled against. City 30(b)(6) Dep. 21:8-21:11 (ECF 86-2) ("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."). And it enforced its law relentlessly, coercing hundreds of people out of their homes over the course of a decade. Compl. ¶ 48 (ECF 1); Answer ¶ 48 (ECF 61). It ordered an entire family's eviction because one family member kicked a police officer's shin at a church picnic.[1] It ordered another household's eviction because a member shoplifted from the Wal-Mart across town.[2] It ordered another's eviction because one household member drove drunk.[3] And another's because a guest stole mail from a front porch.[4] It ordered a woman's eviction because her child's father was caught with drugs and he often would "babysit" their son at her home.[5] It ordered a father's (and four children's) eviction because his wife was caught

[1] Gedge Decl. Supp. Pls.' MSJ Ex. 1, at 1 (City 30(b)(6) Dep. Ex. 20); *id.* Ex. 2 (City 30(b)(6) Dep. Ex. 21); *id.* Ex. 3 (City 30(b)(6) Dep. 85:22-91:5); *id.* Ex. 4, at 1-2.

[2] *Id.* Ex. 5, at 1 (Parkinson Dep. Ex. 24); *id.* Ex. 6 (Bedard Dep. 72:20-74:20).

[3] *Id.* Ex. 7, at 1 (Parkinson Dep. Ex. 25); *id.* Ex. 6 (Bedard Dep. 74:21-79:12).

[4] *Id.* Ex. 8, at 1 (Parkinson Dep. Ex. 26); *id.* Ex. 6 (Bedard Dep. 79:13-81:18).

[5] *Id.* Ex. 9 (Bedard Dep. Ex. 16); *id.* Ex. 6 (Bedard Dep. 83:13-87:21); *id.* Ex. 10, at 1-2.

with drugs within city limits.[6] The list goes on. Too often, Granite City treated innocent children, husbands, wives, parents, siblings, and loved ones as collateral damage. In the name of expelling the culpable, it visited life-altering sanctions on the blameless.

Here's how the law worked. Unlike the federal "one-strike" law on which it was modeled, Granite City's "crime free housing ordinance" forced private landlords to evict private tenants if any member of the household committed a felony anywhere within city limits.[7] No matter where the crime occurred, it was no defense that the tenants had nothing to do with it.[8] Nor did landlords have discretion to forgo eviction: If a landlord were to decline to evict, the City could "compel compliance" by revoking the landlord's license and levying fines.[9] Between 2014 and 2019, the City issued more than 300 compulsory-eviction demands. Compl. ¶ 48 (ECF 1); Answer ¶ 48 (ECF 61).

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[6] *Id.* Ex. 11 (Parkinson Dep. Ex. 28); *id.* Ex. 12 (Parkinson Dep. 176:22-182:25); *id.* Ex. 3 (City 30(b)(6) Dep. 91:6-92:18); Gedge Decl. Opp. 2d Mot. to Dismiss Ex. 11, at 1-11 (ECF 33-12).

[7] Bedard Dep. 10:2-10:5 (ECF 86-4) ("The -- if there was a felony committed anywhere in the City of Granite City, the City was -- was compelling an eviction from -- from the actual landlord."); *see also* Gedge Decl. Opp. Def.'s MSJs Ex. 4 (Parkinson Dep. Ex. 3, at 1) (ECF 86-5) ("Commission 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."); Gedge Decl. Supp. Pls.' MSJ Ex. 3 (City 30(b)(6) Dep. 82:15-83:16) (similar); *id.* Ex. 12 (Parkinson Dep. 37:10-37:21) (similar); *id.* Ex. 6 (Bedard Dep. 22:24-23:1) ("We had to enforce the law, blanket. There was no picking and choosing who you -- who you enforced it upon."); *id.* (Bedard Dep. 28:10-28:15) ("Q. Okay. And then as I -- I understood it, you replied, quote 'It's anywhere in the City. The way the ordinance is written, it's anywhere in the City.' That was who [sic] you who said that, right? A. Correct.").

[8] *Compare* Compl. ¶¶ 42-47 (ECF 1), *with* Answer ¶¶ 42-47 (ECF 61); *see also* Parkinson Dep. 161:10-163:22 (ECF 86-3); Gedge Decl. Opp. Def.'s MSJs Ex. 5 (Parkinson Dep. Ex. 4, at 3-10 (ordinance)) (ECF 86-6); Mem. Supp. Def.'s 1st Mot. to Dismiss Ex. 1, at 5-6 (ECF 19-1) (crime free lease addendum).

[9] Opp. to Mot. Prelim. Inj. 2, *Barron v. Granite City*, No. 19-cv-834-SMY (ECF 14); Parkinson Dep. 185:2-185:9 (ECF 86-3); Gedge Decl. Supp. Pls.' MSJ Ex. 6 (Bedard Dep. 64:8-64:19).

2. Plaintiffs Debi Brumit and Andy Simpson learned all this the hard way. They have been in a relationship for years, and since 2016, they have lived in a privately owned rental property in Granite City. Brumit Decl. Opp. Def.'s MSJs ¶¶ 2-3 (ECF 86-9). In June 2019, one of Debi's adult daughters—who sometimes stayed with them—was arrested in Granite City for stealing a van. *See id.* ¶ 14.

Within days of her daughter's arrest, Debi received a compulsory-eviction demand from Granite City police. The demand cited the daughter's (and her boyfriend's) arrest for "[o]ffenses relating to motor vehicles." Gedge Decl. Opp. Def.'s MSJs Ex. 5, at 1 (ECF 86-6). It also stated that the offense was "a clear violation of the Crime Free Lease Addendum and grounds for eviction." *Id.* Officials would later confirm that the City had no reason to think Debi or Andy had participated in the crime. Parkinson Dep. 77:12-78:18, 88:16-89:5 (ECF 86-3). Or that Debi and Andy had any involvement in the crime. Or that they had known the crime would take place. City 30(b)(6) Dep. 49:14-50:3 (ECF 86-2). Under the compulsory-eviction law, it was enough that someone associated with their home had committed a felony in Granite City. *See* p. 3 & nn.7-8, above. On that ground, the City ordered Debi and Andy's landlord to evict them. Parkinson Dep. 89:2-89:5 (ECF 86-3); *see also* Gedge Decl. Opp. Def.'s MSJs Ex. 7 (City 30(b)(6) Dep. Ex. 23, at 1) (ECF 86-8) ("The police report . . . was reviewed to determine whether or not a felony was committed within the city limits."); Gedge Decl. Opp. Def.'s MSJs Ex. 6 (Parkinson Dep. Ex. 11, at 2) (ECF 86-7).

3. To protect their home, Debi and Andy filed this lawsuit in early October 2019. They asserted (among other claims) that the City's compulsory-eviction law violated their associational rights. Compl. ¶¶ 184-96 (ECF 1). This Court promptly entered a temporary restraining order, followed by an agreed preliminary injunction that remains in force today.

ARGUMENT

Granite City's compulsory-eviction law violated Plaintiffs' federally protected associational rights.

For a decade, Granite City systematically coerced people out of their homes based on crimes committed by people they associated with. Precedent nationwide confirms that such an exercise in collective punishment amounted to a per se violation of the U.S. Constitution (Section A, below). The same result would obtain were the Court to evaluate the case using any of the traditional tiers of scrutiny—from strict to rational basis (Section B). For their part, the City's contrary arguments rest on Supreme Court precedent that, fairly read, cuts decisively in Plaintiffs' favor (Section C). Plaintiffs' summary-judgment motion should be granted.

A. Granite City's compulsory-eviction law was per se invalid.

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 compulsory-eviction ordinance was just such a law. Consider the undisputed facts. Debi's adult daughter may have stolen a van, but Debi did not. Brumit Decl. Opp. Def.'s MSJs ¶ 15 (ECF 86-9). Andy did not. Simpson Decl. Opp. Def.'s MSJs ¶ 5 (ECF 86-10). Neither Debi nor Andy had any involvement in the theft. Brumit Decl. Opp. Def.'s MSJs ¶ 15 (ECF 86-9); Simpson Decl. Opp. Def.'s MSJs ¶ 5 (ECF 86-10). Neither Debi nor Andy knew the theft would take place. Brumit Decl. Opp. Def.'s MSJs ¶ 16 (ECF 86-9); Simpson Decl. Opp. Def.'s MSJs ¶ 6 (ECF 86-10). At no point did the City think otherwise. Parkinson Dep. 77:12-78:18, 88:16-89:5 (ECF 86-3).[10] Yet

[10] *See also* City 30(b)(6) Dep. 49:14-50:3 (ECF 86-2):

> 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?

the City sought to punish them anyway. For the City, it was enough that Debi and Andy had at some point "allowed these people to be at the property that they rent." *Id.* 78:17-78:18. (The City took no steps to determine when Debi's daughter had last been physically present at the home. *Id.* 78:19-78:24.) On that basis alone, the City sought to make Debi and Andy homeless.[11]

A law that applies in this way is per se invalid. The City tried to coerce Debi and Andy from their home, not because of any action they had taken, but because the City viewed them as tainted by their ties to Debi's daughter. Decades of precedent make clear that governments cannot punish people in this way, purely for their associations with others. "For liability to be imposed by reason of association alone," the Supreme Court has stressed, "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); *see also* Pls.' Opp. to Def.'s MSJs 9 n.4 (ECF 86) (collecting authority).

A. No.

Q. Okay. Same question with regard to Mr. Simpson, before the City issued the notice of violation against Debbie 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.

[11] *See, e.g.*, Parkinson Dep. 89:2-89:5 (ECF 86-3) ("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."); Gedge Decl. Opp. Def.'s MSJs Ex. 7 (City 30(b)(6) Dep. Ex. 23, at 1) (ECF 86-8) ("The police report created by the officer was reviewed to determine whether or not a felony was committed within the city limits. Thereafter the address that was provided by Tori Gintz and Tyler Sears at booking to officers was 7 Briarcliff Drive. That was the address that was listed on the police report. This was address cross referenced with the rental properties in the city. Thereafter it was determined that the address that was a rental property within city limits and the offenders identified the residence as their residence. Charging documents were reviewed to confirm that felonies were being charged by the States Attorney."); Gedge Decl. Supp. Pls.' MSJ Ex. 12 (Parkinson Dep. 65:5-67:2, 83:20-89:5) (similar); *id.* Ex. 3 (City 30(b)(6) Dep. 39:5-40:15, 63:16-64:2) (similar); *id.* Ex. 6 (Bedard Dep. 37:19-40:23) (similar).

A recent example illustrates the point. 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." No. 18-cv-9276, 2021 WL 1731606, at *13 (C.D. Cal. Apr. 30, 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 *14.[12] "[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 said. *Id.* at *13. 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 *14. On that ground, the court held the government's action per se invalid; it ruled for the plaintiff on her associational-rights claim without performing any type of scrutiny. *Id.*

The same principles apply here. Under Granite City's law, Debi and Andy "w[ere] tainted by [their] familial relationships untethered to any wrongdoing on [their] part." *Id.* In the City's view, Debi and Andy had opened their home to Debi's daughter. That act of association—lawful in itself—was the basis for the City's exercising coercive power against them. *See* pp. 5-6 & nn.10-11, above. Such an exercise in collective punishment is invalid; the Constitution secured Debi and Andy's right to associate with Debi'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

[12] 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 of the Fourteenth. *See Dusenbery v. United States*, 534 U.S. 161, 167 (2002).

individual responsibility or wrongdoing.'" *Rueda Vidal*, 2021 WL 1731606, at *14; *cf. Colbert v. City of Chicago*, 851 F.3d 649, 659 (7th Cir. 2017) ("[P]roximity to a wrongdoer does not authorize punishment." (citation omitted)). Whether under the First Amendment or the Fourteenth, governments cannot punish people based on their associations with others. Because Granite City did just that, Plaintiffs are entitled to summary judgment.

B. If not per se invalid, Granite City's compulsory-eviction law failed every level of scrutiny.

The same result would obtain were the Court to evaluate the case using the traditional tiers of scrutiny. Under that framework, strict scrutiny would be appropriate. In any event, the record shows that the City's compulsory-eviction law flunked every level of scrutiny on the books—from strict scrutiny to rational basis.

1. Both strict scrutiny and rational-basis review evaluate a law's means-end fit. For strict scrutiny, the question is whether the law "promotes a compelling interest in the least restrictive manner." *Georges v. Carney*, 546 F. Supp. 469, 473 (N.D. Ill. 1982). For rational-basis review, the question is whether the law "bears a rational relationship to legitimate legislative goals." *Smith v. Shalala*, 5 F.3d 235, 239 (7th Cir. 1993). For much the same reasons detailed above (at 5-8), strict scrutiny would be warranted here. *St. Ann v. Palisi*, 495 F.2d 423, 427-28 (5th Cir. 1974) (applying heightened scrutiny to a regulation that punished students for parents' misconduct). Because the compulsory-eviction law fails even more deferential rational-basis review, however, the Court could invalidate the law without "decid[ing] whether any enhanced scrutiny is called for." *Zobel v. Williams*, 457 U.S. 55, 60-61 (1982).

2. Though deferential, rational-basis review is not "toothless," *Sutkier v. Ill. State Dental Soc'y*, 808 F.2d 632, 634 (7th Cir. 1986), and "[t]he standard of rationality 'must find some footing in the realities of the subject addressed by the legislation.'" *Ill. Sporting Goods*

Ass'n v. Cook County, 845 F. Supp. 582, 590 (N.D. Ill. 1994) (quoting *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 321 (1993)). Granite City's compulsory-eviction law enjoyed no such footing. The law's stated goal was "[c]rime deterrence and prevention." Def.'s Mem. Supp. MSJ 19 (ECF 77) (quoting Mem. & Order 9 (ECF 59)); City 30(b)(6) Dep. 29:4-29:20 (ECF 86-2). Yet on its face, it bore no "rational relationship to th[at] end." *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1011 (7th Cir. 2019). It applied based not on the crime, but on the fortuity of the offender's (or their family's) home-financing situation. If you had the credit for a mortgage, your daughter could have stolen the same van Debi's daughter did—under identical circumstances—and your home would be safe. Likewise if you owned your home outright.

But things were different for people who happened to rent. On pain of losing their home, people like Debi and Andy were saddled with an unprecedented legal burden: Unlike their neighbors, they stood to lose their home for the crime of any householder anywhere within city limits. The City's 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 even knew the crime had taken place. *Compare* Compl. ¶¶ 42-47 (ECF 1), *with* Answer ¶¶ 42-47 (ECF 61); *see also* Parkinson Dep. 163:2-163:22 (ECF 86-3). The law targeted the guilty and the innocent indiscriminately. And in doing so, it applied to an arbitrary subset of crimes (ones committed by people associated with rental homes) while turning a blind eye to the rest.

The record bears this out. Even as it imposed crushing burdens on the people targeted—innocent and guilty alike—the compulsory-eviction law applied haphazardly to only a fraction of overall crime in Granite City. In 2019, for example, the City recorded over 675 charged felonies. The number of compulsory-eviction demands that year? Sixty, meaning the compulsory-eviction law did not apply to over ninety percent of the City's felonies (those committed by anyone who

happened not to live in a rental home within city limits). *See* Figure A, below. Nor was 2019 an outlier. Over 450 felonies were recorded in 2017; only 59 compulsory-eviction demands issued. *Id.* Over 500 felonies in 2018; only 41 compulsory-eviction demands. *Id.* And so on. Over time, in fact, crime citywide appears to have *increased*. *Id.* In short, the record confirms what is clear from the face of the law: Singling out residents 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. In its basic design, the law was arbitrariness made manifest.

Offense	Total Within Granite City[13]	Total Violations of Compulsory-Eviction Law[14]
Total Felonies		
2017	> 450	59
2018	> 500	41
2019	> 675	60
Felony Burglary		
2017	> 20	2
2018	> 14	1
2019	> 35	6
Felony Aggravated Battery		
2017	> 30	6
2018	> 25	2
2019	> 25	3

Figure A

The City's separate "Chronic Public Nuisance Properties" ordinance reinforces the compulsory-eviction law's irrationality. Pls.' 2d Reqs. for Admission 5, 6 & Ex. 1 (ECF 91, 91-

[13] *See* Def.'s Resp. to Pls.' 2d Set of Reqs. for Admission 12, 13, 15, 18, 19, 21, 24, 25, and 27 (ECF 107).

[14] *See* Gedge Decl. Supp. Pls.' MSJ Ex. 13, at 20-21, 23-24 (City 30(b)(6) Dep. Ex. 5); *id.* Ex. 14, at 3-4; *see also id.* Ex. 3 (City 30(b)(6) Dep. 30:20-31:7) ("Q. (By Mr. Gedge) But does the city have any numbers showing that the amount of crime in the city was reduced because of the

1); Def.'s Resp. to 2d Reqs. for Admission 5, 6 (ECF 107). Since 2017, the public-nuisance law has addressed properties that are hotspots for crime. Yet unlike the compulsory-eviction law, the public-nuisance law is written in evenhanded terms. It gives people two chances to "abate the nuisance activities." Pls.' 2d Reqs. for Admission Ex. 1, at 4-5 (ECF 91-1) (Granite City Mun. Code § 8.97.050). It creates a defense for those who cannot "control" the nuisance. *Id.* 6-7 (Granite City Mun. Code § 8.97.060(B)). Most importantly, it achieves the City's crime-fighting goals with no distinctions between owners, mortgagors, renters, and installment buyers. *See id.* 3 (Granite City Mun. Code § 8.97.020 (defining "owner")). That more tailored regime "necessarily casts considerable doubt" on the notion that the City's compulsory-eviction law "could rationally have been intended to" achieve those same crime-fighting goals. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973).[15]

C. The contrary arguments lack merit.

In moving for summary judgment this past summer, the City addressed none of the points above. The City instead favored two main theories: (1) "guilt by association" is permissible so long as the government avoids deliberately targeting a narrow class of "expressive" or "intimate" relationships; and (2) the compulsory-eviction law did not "directly and substantially" burden Plaintiffs' associational rights in any event. Each argument lacks merit.

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crime-free housing ordinance? A. I don't know that we have that specific information, no. . . . Beyond the annual reports I'm not aware of that.").

[15] In dismissing Plaintiffs' due-process and equal-protection claims, this Court held that the City's compulsory-eviction law triggered rational-basis review and satisfied that standard. Mem. & Order 9-10 (ECF 59). That decision does not necessarily control the separate question whether the law triggers or satisfies rational-basis review under Plaintiffs' separate associational-rights claim. Particularly given the record detailed above, moreover, Plaintiffs continue to respectfully maintain that the Court's application of the rational-basis standard in its earlier order was error.

1. The right to be free from guilt by association extends beyond "expressive" and "intimate" associations.

In recent decades, the Supreme Court has held that the Constitution demands heightened protection for the right to associate for the purpose of engaging in expressive activity as well as for the purpose of maintaining certain intimate human relationships. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-20 (1984). On that much the parties agree. Distorting the premise, however, the City contends that those two categories define the universe of associational rights. Def.'s Mem. Supp. MSJ 5 (ECF 77). Outside those two categories, the City maintains, government has a free hand to punish people for the mere fact of their association with others. And because the City's compulsory-eviction law did not deliberately target political groups or the nuclear family (so the argument goes), its program of guilt by association implicates no associational rights at all.

That is wrong. It is true that the Supreme Court has parsed associational types in evaluating whether and when governments may prohibit organizations from excluding certain members. (Typically, the cases involve enforcement of anti-discrimination laws against groups with exclusionary membership rules.) But the Court has never suggested that the same framework would apply were a government to punish all members of a group for the misdeeds of one. As an example, take *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987), *cited at* Def.'s Mem. Supp. MSJ 5 (ECF 77). In that case, the Court voiced doubt that the Rotary Club qualified as either an "expressive" association or an "intimate" one. *Id.* at 546-49. In part for that reason, the Court held that California could validly require the club to admit female members. *Id.* at 549. In no world, however, would the Court have let California fine or imprison (or evict) every Rotary Club member if any one of them committed a felony within state lines. Nor does any of the precedent Granite City has cited suggest that any court in the Nation would do so.

Equally unpersuasive is the City's effort to deconstruct whether the First Amendment or the Fourteenth Amendment secures "intimate" associational rights. Def.'s Mem. Supp. MSJ 6-9 (ECF 77). In the City's telling, the Fourteenth Amendment, not the First, is the proper source of constitutional protection. That contention is hard to square with Supreme Court precedent. *Bd. of Dirs. of Rotary Int'l*, 481 U.S. at 545 (remarking that "[w]e have emphasized that the First Amendment protects" certain intimate associations). But whether Plaintiffs' claim sounds in the First Amendment or the Fourteenth (or both), it is valid. *See generally* Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century,* 16 Geo. Mason C.R. L.J. 269, 277-78 (2006) ("With the freedom of intimate association encompassing both First and Fourteenth Amendment dimensions, the Court [in *Roberts v. U.S. Jaycees*] may have decided that the specific roots of that freedom are not as important to emphasize as intimate association's broader meaning and protections in any given case.").

2. The compulsory-eviction law burdened associational rights in a way the Constitution forbids.

As discussed, the City is wrong in saying that associational rights extend only to intimate and expressive associations. Even accepting the City's framing, however, Plaintiffs still are entitled to summary judgment. The City has conceded that certain "intimate" associations merit special constitutional protection. Def.'s Mem. Supp. MSJ 9 (ECF 77). It says only that its attempts to render Debi and Andy homeless did not violate those protections—either because the right to intimate association does not extend to the right to associate with people other than minor children (*id.* 11-12) or because punishing someone for associating with a third party does not burden their right to do so (*id.* 12-18). Here, too, the City's arguments lack merit.

a. Debi and Andy's association with Debi's daughter was one the Supreme Court would classify as "intimate." Tori Gintz was Debi's daughter. Brumit Decl. Opp. Def.'s MSJs

¶ 5 (ECF 86-9). At various times, Debi and Andy let Tori stay in their home. *See id.* ¶¶ 5-8. Indeed, that is precisely why the City sought to evict them for Tori's wrongdoing. *See, e.g.*, Parkinson Dep. 89:2-89:5 (ECF 86-3) ("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."). And to state the obvious, punishing people based on whom they let in their home implicates their intimate associations. Constitutional protection for intimate associations extends to "those relationships, including family relationships, that presuppose 'deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.'" *Bd. of Dirs. of Rotary Int'l*, 481 U.S. at 545 (quoting *Roberts*, 468 U.S. at 619-20). That principle controls here. The City sought to evict Debi and Andy because of their association with someone they allowed into their home. That association is one meriting heightened protection; if private social clubs are sufficiently "intimate" (they are)[16] and if the roommate relationship is sufficiently intimate (it is),[17] then the same is true of the association here.

In arguing otherwise, the City has stressed that Debi's daughter was an adult. Def.'s Mem. Supp. MSJ 11-12 (ECF 77). But the Supreme Court has never held "that constitutional protection is restricted to relationships among family members"—much less to those between parents and minor children. *Bd. of Dirs. of Rotary Int'l*, 481 U.S. at 545. The question, rather, is "whether a particular association is sufficiently personal or private to warrant constitutional protection." *Id.* at 546. By that metric, Debi's association with her daughter merited full constitutional protection.

[16] *La. Debating & Literary Ass'n v. City of New Orleans*, 42 F.3d 1483, 1497-98 (5th Cir. 1995).

[17] *Fair Hous. Council v. Roommate.com, LLC*, 666 F.3d 1216, 1221 (9th Cir. 2012).

The City also has observed that Debi and Andy's relationship with Tori Gintz was often strained. Mot. to Compel 2 (ECF 105). That is true but beside the point. "[E]very unhappy family is unhappy in its own way," Leo Tolstoy, *Anna Karenina* 2 (Rosamund Bartlett trans., Oxford Univ. Press 2016) (1878), and the Constitution protects them all equally. Indeed, the City ordered Debi and Andy's eviction precisely because it viewed their relationship with Tori to be so close that the government could validly punish them for her crimes. *See, e.g.*, City 30(b)(6) Dep. 47:8-47:10 (ECF 86-2) ("They were in violation of the lease addendum that they allowed members of their household to commit crimes in the City of Granite City."); *id.* 47:16-47:21 ("They are in violation of the lease addendum and as far as allowing -- that's their child. They should certainly be aware of what their child is up to, and can take steps to make sure that does not happen; that their child is not involved in criminal activity.").

In a similar vein, the City has prided itself on issuing wholesale eviction demands for the crimes of *any* householder or guest, not just members of the traditional nuclear family. Def.'s Mem. Supp. MSJ 13, 14-15 (ECF 77). That is not a point in the City's favor. Again, the Supreme Court has made clear that associational rights are not limited to the nuclear family. *Bd. of Dirs. of Rotary Int'l*, 481 U.S. at 545. So in confessing its law's breadth, the City only underscores how severely it violated its citizens' associational rights.

Lastly, the City has at times harnessed cases involving parents' seeking to recover for "loss of society and companionship" following police shootings of their adult children. *See, e.g.*, *Russ v. Watts*, 414 F.3d 783, 791 (7th Cir. 2005), *cited at* Def.'s Mem. Supp. MSJ 12 (ECF 77). From these decisions, the City discerns a rule that associational claims "do not extend to the parent-child relationship when the child is an adult child." Def.'s Mem. Supp. MSJ 12 (ECF 77). To repeat, however, the Supreme Court has said that associational claims are not so limited. *See*

Bd. of Dirs. of Rotary Int'l, 481 U.S. at 545. At most, then, the City's police-shooting cases hold that the Constitution does not support a parent's loss-of-companionship claim based on the death of an adult child. They do not stand for the City's broader rule: that it had a free hand to punish people for associating with their grown children.

b. Also without merit is the City's view that its law "d[id] not directly and substantially burden" Plaintiffs' associational rights. Def.'s Mem. Supp. MSJ 12 (ECF 77) (capitalizations altered). In the City's telling, the only way to burden associational rights is to "directly place restrictions on what constitutes a family." *Id.* 14. But courts nationwide agree that "[o]bviously the government burdens a constitutional right when it imposes a direct penalty such as a criminal fine on its exercise." *McCabe v. Sharrett*, 12 F.3d 1558, 1562 (11th Cir. 1994) (stating the principle in the context of an associational-rights claim). And here, the City told Debi and Andy that it would make them homeless because of their association with Debi's daughter. That act of enforcement burdened their associational rights in obvious ways; as the Supreme Court noted in *Lyng v. International Union*, "[e]xposing the members of an association . . . to civil liability merely because of their membership in that group" poses a real "danger to the exercise of associational freedoms." 485 U.S. 360, 367 n.5 (1988). That is just how Granite City's compulsory-eviction law operated. In that way, it differed fundamentally from the laws the City has analogized to most stridently: ones involving not punishment, but public benefits and employment. *E.g.*, Def.'s Mem. Supp. MSJ 13, 15 (ECF 77). Notably, one of the City's main authorities remains—of all cases—*Lyng* itself. *Compare* Mot. to Compel 2 (ECF 117) (citing *Lyng*), *with* Mem. & Order 11 (ECF 59) (denying 12(b)(6) motion and noting *Lyng*'s consistency with Plaintiffs' theory of the case).

The City also has suggested that Debi and Andy must show that the compulsory-eviction law destroyed or "deteriorat[ed]" their relationship with Debi's daughter. Mot. to Compel 2-3 (ECF 105). But that "misunderstands the nature of plaintiffs' alleged constitutional injury." *Kipps v. Caillier*, 205 F.3d 203, 205 (5th Cir. 2000) (rejecting same argument). It is of course true that the compulsory-eviction law did not destroy Debi and Andy's relationship with Debi's daughter. But that fact did not make the law any less a burden on their rights. It is "clear," after all, that associational rights "can be abridged even by government actions that do not directly restrict individuals' ability to associate freely." *Lyng*, 485 U.S. at 367 n.5. And "expos[ure] . . . to civil liability" because of one's associations exemplifies such an abridgement. *See id.*; *see also Claiborne Hardware Co.*, 458 U.S. at 920 ("[C]ivil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence."). That principle translates easily here. The City tried to make Debi and Andy homeless because of their association with Debi's daughter. That coercive state action is an "evident and inherent" burden on their associational rights—regardless of whether the relationship was destroyed as a result. *Cf. Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 745 (2011).

Precedent proves the point: In none of the associational-rights cases cited above did the courts test whether the challenged state action succeeded in eliminating the association at issue. (The City has yet to identify a contrary example.) Rexford Kipps—fired as a college coach because his son went to a different school—did not have to show that his parent-child relationship was "totally destroyed." *Kipps*, 205 F.3d at 205. Claudia Sarahi Rueda Vidal did not have to show that she no longer saw her parents. 2021 WL 1731606, at *13. Eartha St. Ann's kids did not have to prove they no longer associated with their mother. 495 F.2d 423. The activists in *Claiborne Hardware* did not have to show that they had withdrawn from the

NAACP. 458 U.S. 886. Simply, having your city punish you because of whom you associate with burdens your associational rights. If not per se invalid, such a guilt-by-association regime fails whatever level of scrutiny may apply.

CONCLUSION

Plaintiffs' motion for summary judgment should be granted.

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Respectfully submitted,

s/Samuel B. Gedge

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