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

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF DEBORAH BRUMIT (ECF 76) AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF ANDREW SIMPSON (ECF 78)

INTRODUCTION

The City's two summary-judgment motions largely duplicate its Rule 12(c) motion, and they should be denied for much the same reasons. For years, the City would force 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 it presents a straightforward claim: By forcing people from their homes based purely on their associations with other people, the City violated their associational rights.

In asking the Court to enter judgment in its favor, the City resorts to increasingly improbable readings of Supreme Court precedent. Yet the simplest approach is the right one: Punishing people *because of* their associations with others is punishing people *for* their associations with others.

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.[1] At the same time, however, the City conceded that Debi and Andy had no involvement in Debi's daughter's crime. Parkinson Dep. 77:12-78:18, 88:16-89:6. 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: 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."); *id.* at 925 n.69 ("A legal duty to 'repudiate'—to disassociate oneself from the acts of another—cannot arise unless, absent the repudiation, an individual could be found liable for those acts."). And remarkably, Debi and Andy's experience was far from unique; throughout the 2010s, 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; in our justice system, tarring entire households for the misdeeds of one member is not only wrong, but unconstitutional. The City's summary-judgment motions should thus be denied.

BACKGROUND

1. When it came to its crime-free housing law, Granite City got a lot of things wrong. It imposed a compulsory-eviction regime—something even the creator of crime-free laws counseled against. City 30(b)(6) Dep. 21:8-21:11 ("He said it was never meant to be a mandatory

[1] Excerpts from the transcripts of the depositions of the City, Mike Parkinson, and Tim Bedard accompany this brief as Exhibits 1, 2, and 3, respectively, to the declaration of Samuel Gedge.

thing. It wasn't supposed to be an ordinance-based thing. It was supposed to be a voluntary cooperative effort."). 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). Too often, it 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 tenant's household committed a felony anywhere within city limits. Bedard Dep. 10:2-10:5 ("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. Ex. 4 (Parkinson Dep. Ex. 3, at 1) ("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."). No matter where the crime took place, it was no defense that the tenants had nothing to do with it. *Compare* Compl. ¶¶ 42-47, *with* Answer ¶¶ 42-47; *see also* Parkinson Dep. 161:10-163:22; Gedge Decl. Ex. 5 (Parkinson Dep. Ex. 4, at 3-10 (ordinance)); Ex. 1 to Mem. Supp. City's 1st MTD, at 5-6 (ECF 19-1) (crime free lease addendum). 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. Opp. to Mot. Prelim. Inj. 2, *Barron v. Granite City*, No. 19-cv-834-SMY (ECF 14); Parkinson Dep. 185:2-185:9.

2. Debi Brumit and Andy Simpson learned all this the hard way. They've been in a committed relationship for a half-decade, and since 2016, they have lived at 7 Briarcliff Drive in Granite City, a rental property. Brumit Decl. ¶¶ 2-3; Simpson Decl. ¶ 3.

Debi has three adult children. Brumit Decl. ¶ 4. And for a time, her youngest—Tori—lived with her and Andy at 7 Briarcliff Drive. When she moved in, Tori was 20 years old and pregnant. *Id.* ¶ 5.

Tori moved out around January 2017 and began living with her older sister, in Missouri. In April 2018, she gave birth to her second child. *Id.* ¶ 6. As Debi understands it, Tori began struggling with substance abuse a few months later. *Id*.

Around January 2019, Tori's older sister no longer had room to house her. So Tori (and her two children) began staying with Debi and Andy again on an off-and-on basis. *Id.* ¶ 7. At first, Debi and Andy had no idea about the extent of Tori's substance-abuse problem. But by May of that year, it had become clear that Tori was engaging in self-destructive behavior and failing to care for her children. *Id*. So Debi resorted to tough love: She told Tori to get out. If and when Tori could prove that she was ready to get clean and do right by her children, Debi made clear that she and Andy would do everything they could to help her turn her life around. *Id.* ¶ 8.

In Debi's understanding, Tori moved back to Missouri and began "couch-surfing" with her boyfriend. *Id.* ¶ 9.

On Friday, June 7, Tori called Debi. She told Debi that she wanted to turn her life around and that she and her new boyfriend were ready to get treatment for their addiction. *Id.* ¶ 10. Debi immediately drove to Missouri, picked Tori up, and brought her back to Illinois to take her to the hospital. Tori's boyfriend came too. (Until recently, Debi had thought she picked them up on Saturday, but she recently reviewed a message that reminded her that she had picked them up on Friday. *Id.* ¶ 11.) Because Tori wanted to spend some time with her children, Debi let them stay the night. She then took them both to the Gateway Regional Medical Center, in Granite City, the following evening. *Id.* Once the two went back to triage, Debi left. She got home around 9:30 or

10:00 that night, confident her daughter was where she needed to be and would get the help she needed. *Id.* ¶ 12.

In the early-morning hours of June 9, Debi was awoken by a phone call. It was Tori; she and her boyfriend were standing outside the house. *Id.* ¶ 13. Debi and Andy refused to allow the boyfriend into their home, letting Tori alone come in. *Id.* Tori told Debi that the hospital had released them. *Id.* Debi argued with Tori for about an hour and then went back into her bedroom. When Debi came out a little while later, Tori (and her boyfriend) were gone. *Id.*

Debi heard nothing from Tori the next day, a Sunday. *Id.* ¶ 14. In the early-morning hours of that Monday, however, Debi noticed two recent missed calls from her older daughter. *Id.* She called back, and her older daughter told her that Tori had been arrested for stealing a van. *Id.* That was the first Debi had heard of the crime. *Id.*

3. Within days of her daughter's arrest, Debi received a compulsory-eviction demand from Granite City police. *Id.* ¶ 17. The demand cited Tori's and her boyfriend's arrest for "[o]ffenses relating to motor vehicles." Gedge Decl. Ex. 5 (Parkinson Dep. Ex. 4, at 1). It also stated that the offense was "a clear violation of the Crime Free Lease Addendum and grounds for eviction." *Id*.

Debi and Andy requested a grievance hearing at city hall. Brumit Decl. ¶ 18. At the hearing, Debi explained that her daughter no longer lived with them. *Id*. She presented pieces of mail addressed to Tori at a Missouri address. *Id.* She also presented a copy of hospital-release papers from the night of the theft, showing that Tori had been in the hospital. *Id*.

At that point, the City's Crime Free Housing Officer questioned her. *Id.* ¶ 19. He asked whether Debi would ever let Tori—her daughter and the mother of her grandchildren—back into her home. *Id.* He even demanded to know whether Debi's kids might visit for holidays. *Id.*

In due course, the City's hearing officer decided that the City had properly invoked its compulsory-eviction law. Hence, he wrote, "[t]he landlord, Clayton Baker, must begin eviction proceedings against the tenants listed above." Gedge Decl. Ex. 6 (Parkinson Dep. Ex. 11, at 2).

Clayton Baker did not want to evict Debi and Andy. Baker Decl. ¶¶ 4, 10 (ECF 8-3). Given the City's demand that he "must begin eviction proceedings," however, he felt that he had to comply and sent Debi and Andy a 30-day notice. *Id.* ¶¶ 12-13.

4. 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. *See* Compl. ¶¶ 184-96.

ARGUMENT

The "crux" of the City's summary-judgment motions (in the City's words) is "the legal standard applicable to the cause of action remaining in Plaintiffs' Complaint." Mot. to Stay All Proceedings 7 (ECF 80). In the City's telling, household-wide punishment is constitutional so long as the City is not deliberately targeting the nuclear family unit or forbidding close biological relations from associating with one another. That, simply, is not the right legal standard. For a decade, Granite City systematically forced people out of their homes based solely on crimes committed by people they associated with. Precedent nationwide confirms that such an exercise in collective punishment violates the Constitution. (Section A, below.) The City's competing view misreads Supreme Court decisions. (Section B.1.) And even under the City's framing of the doctrine, the record easily supports Plaintiffs' right to proceed on their claim. (Sections B.2, B.3). The City's summary-judgment motions should be denied.

A. Because Granite City sought to punish Plaintiffs based on their association with a third party, the City violated their associational rights.

The record bears out Plaintiffs' allegations. Debi's adult daughter may have stolen a van, but Debi did not. Brumit Decl. ¶ 15. Andy did not. Simpson Decl. ¶ 5. Neither Debi nor Andy had any involvement in the theft. Brumit Decl. ¶ 15; Simpson Decl. ¶ 5. Neither Debi nor Andy knew that the theft would take place. Brumit Decl. ¶ 16; Simpson Decl. ¶ 6. At no point did the City think otherwise. Parkinson Dep. 77:12-78:18, 88:16-89:6.[2] Yet 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.) And on that basis alone, the City sought to make Debi and Andy homeless. *Id.* 89:2-89:5 ("As I noticed [sic (noted)] earlier, 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.").

A law that applies in this way infringes directly on associational rights. The City tried to coerce Debi and Andy from their home, not because of any action they had taken, but because

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

> 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 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.

the City viewed them as tainted by their ties to Debi's daughter; simply, the City sought to punish them *because of* their association with Debi's daughter. And decades of precedent make clear that governments cannot punish people purely for their associations with others. 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 "'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 reviewing court easily concluded that the government "violated [the student's] Fifth and First Amendment familial association rights." *Id.* at *14.[3] "[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 reasoned. *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.

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, e.g.*, Parkinson Dep. 89:2-89:5; *see also* Gedge Decl. Ex. 7 (City 30(b)(6) Dep. Ex. 23, at 1) (detailing steps the City took to enforce law against Plaintiffs). Simply, the sanction flowed not from

[3] 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).

personal wrongdoing, but from Debi and Andy's association with someone the City viewed as a criminal. That exercise in collective punishment is invalid. The Constitution secures 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 individual responsibility or wrongdoing.'" *Rueda Vidal*, 2021 WL 1731601, at *14 (quoting *Plyler v. Doe*, 457 U.S. 202, 220 (1982)).

Moreover, *Rueda Vidal* is hardly an outlier. The Fifth Circuit, for example, has held that a school could not constitutionally suspend two children because their mother had struck a teacher. *St. Ann v. Palisi*, 495 F.2d 423, 424 (1974). "Traditionally," the court observed, "under our system of justice[,] punishment [m]ust be founded upon an individual's act or omission, not from his status, political affiliation or domestic relationship." *Id.* at 425 (footnote omitted). And against that backdrop, "attribut[ing] a parent's misconduct to other family members" amounted to "guilt by association wholly alien to American liberty." *Id.* (characterizing and accepting the plaintiffs' argument). Similar examples arise in other contexts as well. Just last week, a federal court denied a motion to dismiss a claim alleging that a Florida city's predictive-policing program imposed a "'guilt-by-association' paradigm [that] burdens the plaintiffs' associational rights by punishing a targeted person's close relations." Order 5, *Taylor v. Nocco*, No. 8:21-cv-555 (M.D. Fla. Aug. 4, 2021).[4] In short, "[p]roximity to a wrongdoer does not authorize

[4] *See also State v. Arevalo*, 470 P.3d 644, 649 (Ariz. 2020) (invalidating gang statute that increased "punishment based solely on associational status"); *State v. Bonds*, 502 S.W.3d 118, 158 (Tenn. Crim. App. 2016) (invalidating gang statute that "impose[d] mandatory punishment on an eligible defendant by imputing to him responsibility for the criminal activity of the gang as a collective without requiring the defendant's knowledge of and intent to promote such activity"); *Kipps v. Caillier*, 205 F.3d 203, 206 (5th Cir. 2000) (holding that university violated coach's associational rights by firing him because his son attended a different school); *O.C. v.*

punishment." *Colbert v. City of Chicago*, 851 F.3d 649, 659 (7th Cir. 2017) (citation omitted). Whether viewed through the First Amendment or the Fourteenth, governments cannot punish people based solely on their association with others. Because the record shows that Granite City sought to do just that, the City is not entitled to summary judgment.[5]

B. Granite City's arguments lack merit.

The City raises two main arguments: (1) "guilt by association" is constitutionally permissible so long as the government avoids deliberately targeting a narrow class of "expressive" or "intimate" relationships; and (2) the City's compulsory-eviction law did not "directly and substantially" burden Plaintiffs' associational rights in any event. Each argument lacks merit, as do the residual theories peppered throughout the City's motions.

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

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State, 722 So. 2d 839, 842 (Fla. Dist. Ct. App. 1998) (invalidating gang statute that "increased punishment . . . based on association with other people, who may or may not have committed unrelated criminal acts"), *aff'd*, 748 So. 2d 945 (Fla. 1999); *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)); *Sawyer v. Sandstrom*, 615 F.2d 311, 316 (5th Cir. 1980) ("An enactment which criminalizes ordinary associational conduct not constituting a breach of the peace runs afoul of the first amendment.").

[5] In the context of Plaintiffs' separate due-process claim, this Court reasoned that "the right to not be punished (by eviction from a rental property) due to the criminal acts of a third party" was "novel[]." Mem. & Order 8 (ECF 59). Plaintiffs respectfully maintain that this reasoning is incorrect. *See, e.g.*, *St. Ann*, 495 F.2d at 425 ("Freedom from punishment in the absence of personal guilt is a fundamental concept in the American scheme of justice.").

City contends that those two categories define the universe of associational rights. 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.

The City is incorrect. 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. (Brumit) 5 (ECF 77) *and* Def.'s Mem. (Simpson) 4 (ECF 79). 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. And 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. *Cf.* Gedge Decl. Ex. 4 (Parkinson Dep. Ex. 3, at 1) ("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."). Nor does any of the precedent the City cites suggest that any court in the Nation would uphold such a law.

Which spotlights Granite City's paradox. On the one hand, the City insists that Debi and Andy's relationship with Tori Gintz is close enough to justify evicting them for Tori's crimes. On the other, it says the relationship is so distant as to be of no constitutional moment at all. Solving that puzzle is simple: The City's theory of associational rights is wrong. Americans enjoy the right to choose their associates—whether those associates be friends or relatives, roommates or romantic partners—without being punished merely for the fact of that association. Granite City's attempt to evict Debi and Andy violated that basic principle, and the City's motion for summary judgment should therefore be denied.

2. Even under the City's proposed rule, it is not entitled to summary judgment on Plaintiffs' associational claim.

As detailed above, the City's view of associational rights is illogically narrow. Even accepting the City's framing, however, Plaintiffs' claim survives summary judgment. The City concedes that certain "intimate" associations merit special constitutional protection. Def.'s Mem. (Brumit) 9; Def.'s Mem. (Simpson) 7-8. 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 (Def.'s Mem. (Brumit) 11-12; Def.'s Mem. (Simpson) 10-13) or because punishing someone for associating with a third party does not burden their right to do so (Def.'s Mem. (Brumit) 12-18; Def.'s Mem. (Simpson) 13-19). Neither argument has merit.

a. First, Debi and Andy's association with Tori Gintz is one the Supreme Court would classify as "intimate." Tori is Debi's daughter. Brumit Decl. ¶ 5. 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 ("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 Directors of Rotary Int'l*, 481 U.S. at 545 (quoting *Roberts*, 468 U.S. at 619-20). That principle applies straightforwardly here. Granite City sought to evict Debi and Andy because of their association with someone they allowed into their home. That association is one meriting heightened constitutional protection; if private social clubs are sufficiently "intimate" (they are)[6] and if the roommate relationship is sufficiently intimate (it is),[7] then the same is true of the association pleaded here. *Cf. Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (describing the home as "the center of the private lives of our people" (citation omitted)).

In arguing otherwise, the City stresses that Debi's daughter is an adult. Def.'s Mem. (Brumit) 11-12. 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. *See Bd. of Directors 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. In conducting that analysis, the courts "consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship." *Id.* And by those metrics, Debi's association with her daughter merits full constitutional protection. For this

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

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

reason, too, the City's focus on Andy Simpson's strained relationship with Tori (Def.'s Mem. (Simpson) 10-13) is beside the point; the Constitution protects more than *Leave It to Beaver* households. 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 ("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 similar vein, the City emphasizes that it would issue wholesale eviction demands for the crimes of *any* householder or guest, not just the nuclear family. Def.'s Mem. (Brumit) 13, 14-15; Def.'s Mem. (Simpson) 16-17. 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 traditional nuclear family. *Bd. of Directors 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.

The City also suggests that, along with pleading a sufficiently intimate association, Plaintiffs must also "allege[] a fundamental right at issue." Def.'s Mem. (Brumit) 9; Def.'s Mem. (Simpson) 8. That is wrong—or more precisely, double-counting. As the City's cited authority makes clear, a plaintiff who alleges an "intimate association" *has* alleged a fundamental right. *Christensen v. Cty. of Boone*, 483 F.3d 454, 462-63 (7th Cir. 2007) (per curiam); *see also id.* at 463 ("In this second category of decisions, 'freedom of association receives protection as a fundamental element of personal liberty' under the Due Process Clause." (quoting *Roberts*, 468 U.S. at 618)).

Lastly, the City harnesses a line of 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. (Brumit) 12 *and* Def.'s Mem. (Simpson) 10. 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. (Brumit) 12; Def.'s Mem. (Simpson) 10. To repeat, the Supreme Court has said that associational claims are not so limited. *See Bd. of Directors of Rotary Int'l*, 481 U.S. at 545. At most, therefore, 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 the government has a free hand to punish people for associating with their grown children.

b. Likewise without merit is the City's view that its compulsory-eviction law "d[id] not directly and substantially burden" Plaintiffs' associational rights. Def.'s Mem. (Brumit) 12 (capitalizations altered); Def.'s Mem. (Simpson) 13 (same). In the City's telling, the only way to burden a constitutional right is to "directly place restrictions" on it. Def.'s Mem. (Brumit) 14; Def.'s Mem. (Simpson) 17. 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) (articulating the principle in the context of a freedom-of-association claim); *see also United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 812 (2000) (remarking, in the context of the First Amendment, that "[t]he distinction between laws burdening and laws banning speech is but a matter of degree"). It's of course true that the City did not tell Debi and Andy that they were forbidden from associating with Debi's adult daughter. Instead, the City told them that it would render them homeless

because they exercised their right to associate with Debi's adult daughter. Constitutionally, that's a distinction without difference, and the sanction of government-mandated eviction differs in obvious ways from the case the City analogizes to most forcefully: one involving an in-city residency requirement for city firefighters. *Hameetman v. City of Chicago*, 776 F.2d 636, 642-43 (7th Cir. 1985), *cited at* Def.'s Mem. (Brumit) 13, 15, 18 *and* Def.'s Mem. (Simpson) 18-19.

The City also posits that Plaintiffs must show that the compulsory-eviction law "impacted" their association with Debi's daughter. Def.'s Mem. (Brumit) 17; Def.'s Mem. (Simpson) 19. Because the law did not rupture the relationship, the City contends, no associational-rights claim will lie. Def.'s Mem. (Brumit) 15-18; Def.'s Mem. (Simpson) 13-19. But that "misunderstands the nature of plaintiffs' alleged constitutional injury." *Kipps v. Caillier*, 205 F.3d 203, 205 (5th Cir. 2000). Plaintiffs claim that the City has violated their rights by seeking to evict them because of their association with others. And whether or not Debi and Andy broke off contact with Debi's daughter—and whether or not the relationship was strained—Granite City cannot constitutionally punish them based on their association with her. In none of the associational-rights cases cited above, in fact, did the courts test whether the challenged state action succeeded in eliminating the association at issue. 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." *Id.* 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. 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 demands a level of heightened scrutiny that the City's motions do not even try to meet.

3. The City's remaining arguments lack merit.

The City's residual arguments do not change the analysis.

First, the City devotes a substantial part of its briefs to whether the First Amendment or the Fourteenth secures "intimate" associational rights. Def.'s Mem. (Brumit) 6-9; Def.'s Mem. (Simpson) 5-7. In the City's view, 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 Directors 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 U. 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.").

Second, the City states in passing that, if the Court were to apply rational-basis review, the compulsory-eviction law would pass muster. Def.'s Mem. (Brumit) 18-19; Def.'s Mem. (Simpson) 19-20. (The City does not contend that summary judgment is warranted if anything but rational-basis review applies.) For support, the City cites only this Court's February order stating that "[c]rime deterrence and prevention are rational and legitimate reasons to evict renters." Def.'s Mem. (Brumit) 19 (quoting Mem. & Order 9 (ECF 59)); Def.'s Mem. (Simpson) 20. Without further argument from the City on this point, Plaintiffs stand on their response to the City's first motion to dismiss (pp. 15-18, ECF 24) and the lack of any evidence of the law's effectiveness (City 30(b)(6) Dep. 31:8-32:6), and they respectfully maintain that the Court's application of the rational-basis standard in its February order was error.

Third, the City notes that it has "filed a Motion to Dissolve the Preliminary Injunction and Strike the Request for Permanent Injunctive Relief" and repeats its request from that motion—that the Court "deny Plaintiffs' request for forward looking injunctive relief." Def.'s Mem. (Brumit) 19; Def.'s Mem. (Simpson) 20. For the reasons set forth in Plaintiffs' response to that motion, forward-looking relief remains appropriate. Pl.'s Resp. to Mot. Dissolve Prelim. Inj. and Strike Req. for Inj. Relief (ECF 82).

CONCLUSION

The motions for summary judgment should be denied.

Dated: August 13, 2021.

Respectfully submitted,

s/Samuel B. Gedge

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2021, I electronically filed this Plaintiffs' Response to Defendant's Motion for Summary Judgment Against Plaintiff Deborah Brumit (ECF 76) and Defendant's Motion for Summary Judgment Against Plaintiff Andrew Simpson (ECF 78) (and accompanying declarations, transcripts, and exhibits) using the CM/ECF system, which will send notification of such filing to the following:

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