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)

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TABLE OF CONTENTS

Page

Introduction 1

Argument 3

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 3

A. The complaint plausibly alleged that the compulsory-eviction law infringed a fundamental right 4

B. The City's residual arguments lack merit 8

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 12

A. The City's demand for "similarly situated" comparators is foreclosed by Circuit precedent 12

B. The complaint plausibly alleged that the compulsory-eviction law's classification failed every level of scrutiny 14

1. The City's latest rationale—that renters are less "motivated" to be good citizens—is one the Supreme Court has held irrational 15

2. The City's remaining arguments confirm the equal-protection claim's merit 18

III. By targeting people based purely on their associations with others, Granite City's compulsory-eviction law violated appellants' associational rights 22

A. The compulsory-eviction law is subject to strict scrutiny 23

1. The City does not meaningfully dispute that the Constitution protects the associational right at issue 23

2. The compulsory-eviction law directly burdened the associational right at issue 26

B. The summary-judgment record confirms that the compulsory-eviction law failed even rational-basis review 31

Conclusion 32

TABLE OF AUTHORITIES

Page(s)

Cases

Ariz. Free Enter. Club's Freedom Club PAC v. *Bennett*,
564 U.S. 721 (2011) 31

Bd. of Directors of Rotary Int'l v. *Rotary Club of Duarte*,
481 U.S. 537 (1987) 2-3, 25, 26, 27, 30

Bowen v. *Gilliard*,
483 U.S. 587 (1987) 29

City of Cleburne v. *Cleburne Living Ctr.*,
473 U.S. 432 (1985) 16

City of Dallas v. *Stanglin*,
490 U.S. 19 (1989) 24

Doe v. *City of Lafayette*,
377 F.3d 757 (7th Cir. 2004) (en banc)..5

Douglas ex rel. Douglas v. *Hugh A. Stallings, M.D., Inc.*,
870 F.2d 1242 (7th Cir. 1989)..22

Fair Hous. Council v. *Roommate.com, LLC*,
666 F.3d 1216 (9th Cir. 2012)..25

FCC v. *Beach Commc'ns, Inc.*,
508 U.S. 307 (1993) 19

Hameetman v. *City of Chicago*,
776 F.2d 636 (7th Cir. 1985)..29

HUD v. *Rucker*,
535 U.S. 125 (2002) 8, 9, 20

In re Ameriquest Mortg. Co.,
No. 5-cv-7097, 2006 WL 1525661 (N.D. Ill. May 30, 2006)....................................6

Jones v. *City of Faribault*,
No. 18-cv-1643, 2021 WL 1192466 (D. Minn. Feb. 18, 2021)..............................14

La. Debating & Literary Ass'n v. *City of New Orleans*,
42 F.3d 1483 (5th Cir. 1995)...25

Lyng v. *Castillo*,
477 U.S. 635 (1986) 28

Lyng v. *UAW*,
485 U.S. 360 (1988) 28, 29, 31

Meyer v. *Nebraska*,
262 U.S. 390 (1923) 7

Monarch Beverage Co. v. *Cook*,
861 F.3d 678 (7th Cir. 2017)...12, 13, 21

N.Y. State Club Ass'n, Inc. v. *City of New York*,
487 U.S. 1 (1988) 19

NAACP v. *Claiborne Hardware Co.*,
458 U.S. 886 (1982) 10

Nguyen v. *INS*,
533 U.S. 53 (2001) 21

Quinn v. *Millsap*,
491 U.S. 95 (1989) 2, 16, 17, 20

Racine Charter One, Inc. v. *Racine Unified Sch. Dist.*,
424 F.3d 677 (7th Cir. 2005) 12

Reed v. *Town of Gilbert*,
576 U.S. 155 (2015) 11

Roberts v. *U.S. Jaycees*,
468 U.S. 609 (1984) 23

Scales v. *United States*,
367 U.S. 203 (1961) 10

Schware v. *Bd. of Bar Exam.*,
353 U.S. 232 (1957) 3

Smith v. *Shalala*,
5 F.3d 235 (7th Cir. 1993)....................29

St. Joseph Abbey v. *Castille*,
712 F.3d 215 (5th Cir. 2013)....................19

Timbs v. *Indiana*,
139 S. Ct. 682 (2019) 6, 7

Turner v. *Glickman*,
207 F.3d 419 (7th Cir. 2000)....................22

U.S. Dep't of Agric. v. *Moreno*,
413 U.S. 528 (1973) 21

United States v. *Carolene Prod. Co.*,
304 U.S. 144 (1938) 19

Washington v. *Glucksberg*,
521 U.S. 702 (1997) 4

Weber v. *Aetna Cas. & Sur. Co.*,
406 U.S. 164 (1972) 10

STATUTES

Granite City Mun. Code § 5.142.010 13

<u>OTHER AUTHORITIES</u>

Br. for Appellees, *Quinn* v. *Millsap*,
1989 WL 1127769 (U.S. Apr. 6, 1989) 17

Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, Pew Research Ctr. (Aug. 2, 2021) 17

Giovanna Shay, *Similarly Situated*, 18 Geo. Mason L. Rev. 581 (2011) 14

James W. Loewen, Sundown Towns: A Hidden Dimension of American Racism (2018 ed.) 17

Leo Tolstoy, Anna Karenina (Rosamund Bartlett trans., Oxford Univ. Press 2d ed. 2016) (1878) 30

Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century*, 16 Geo. Mason C.R. L.J. 269 (2006) 26

INTRODUCTION

Granite City coerced hundreds of law-abiding citizens from their homes; for years, police forced private landlords to evict entire households if any member was charged with committing a felony anywhere within city limits. Shoplifting. Kicking an officer's leg. Driving with a suspended license. Or in the case of Debi Brumit and Andy Simpson, a van theft—committed without their knowledge by one of Brumit's adult daughters. For renters, the sins of one were visited on the heads of all.

Such an extraordinary regime demands an extraordinary justification. Granite City comes nowhere close. On the due-process claim, the City nowhere denies that the right not to be penalized for someone else's crimes is fundamental to our system of ordered liberty. The most it can say is that penalizing innocent people through city-coerced eviction is a novel means of *violating* that right. Yet Supreme Court precedent makes clear that the Due Process Clause cannot be so easily manipulated. For its part, the City ignores that precedent, while renouncing any need to have "case law in hand" to defend its competing position. The due-process claim should be allowed to proceed.

So too with the equal-protection claim. The City saddled innocent people with collective responsibility for the acts of their household members. But only

some innocent people: those whose homes were rented. For those who could afford to buy or had a mortgage, the City imposed no such burden. The City's defense of that mismatch? Unlike freeholders, people who rent "may lack the same level of motivation to protect against criminal activity" in their community. Whatever the level of scrutiny, this justification cements the equal-protection claim's plausibility. For the government "may not rationally presume" that "all citizens . . . whose estates are less than freehold" are less "attached to their community." *Quinn* v. *Millsap*, 491 U.S. 95, 108 (1989) (citation omitted) (rational-basis case). No level of scrutiny is so permissive as to tolerate a rationale that singles out one third of the Nation's households as simply having less moral worth than the rest.

Lastly: the associational-rights claim. Here also, Brumit and Simpson's right to relief is simple. Granite City targeted innocent people for coerced eviction because of whom they chose to make a home with. That burden on associational rights triggers strict scrutiny, which the City has never tried to satisfy. Its main defense is to insist that it targeted people based not on their "family" associations, but on their "household" associations. The right to intimate association, however, is not "restricted to relationships among family members." *Bd. of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 545

(1987). Nor does the City dispute that the "household" is a protected intimate association. And forcing people from their homes based on that association self-evidently burdens their rights and fails any level of scrutiny.

Whether viewed through the Due Process Clause or the Equal Protection Clause or associational-rights precedent, "[i]ndiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power." *Schware* v. *Bd. of Bar Exam.*, 353 U.S. 232, 246 (1957) (citation omitted). That principle controls here. The judgment below should be reversed.

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 sought to exercise coercive government power to strip Debi Brumit and Andy Simpson of their home. It did so not because Brumit and Simpson had done any wrong. It did so not because the home was a public nuisance. Or because the couple's landlord wanted them out. (He didn't.) It did so for a reason as simple as it is corrosive: people associated with the couple—Brumit's adult daughter and the daughter's boyfriend—were charged with having committed a crime within city limits. City Br. 5. For that, the City demanded that Brumit and Simpson be evicted.

A wealth of precedent confirms that this exercise in collective punishment violated the Due Process Clause. Appellants' Br. 27-33. That Clause specially protects certain fundamental rights—those "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington* v. *Glucksberg*, 521 U.S. 702, 721 (1997) (citation omitted). The right not to be penalized for someone else's crime—not to be targeted by coercive sovereign power on that basis—is just such a right. Brumit and Simpson's complaint plausibly alleged that the City violated that right, and the City's arguments to the contrary are without merit.

A. The complaint plausibly alleged that the compulsory-eviction law infringed a fundamental right.

In defending the district court's dismissal, Granite City puts most of its eggs in one basket: under the guise of "carefully defin[ing]" the right at issue, the City attempts to shrink it to an impossible level of granularity. *E.g.*, City Br. 4. The City nowhere denies that Americans have a fundamental right "not to be punished for the actions of others." App. 8. The City nowhere denies the precedential support for that right (Appellants' Br. 27-28, 31-33) or its historical provenance (Appellants' Br. 27, 29-30). Nor does the City deny that its ordinance plausibly violated that right. Instead, the City devotes itself to reframing the right and cabining it to the precise type of coercive state action

the City happened to deploy. Without precedent declaring "the right to not be punished (by eviction from a rental property) due to the criminal acts of a third party," the City asserts, Brumit and Simpson cannot state a due-process claim. City Br. 16.

That view was wrong when the district court first developed it, and it is wrong still. "[T]he characterization of a right" of course "plausibly can fall at a number of points along a continuum of generality." *Doe* v. *City of Lafayette*, 377 F.3d 757, 769 (7th Cir. 2004) (en banc). But the "interest *truly* at issue" here (*id.*) is not the right to be free from city-coerced "eviction from a rental property" specifically—devastating as that is—but the right to be free from *any* governmental sanction for the crimes of another. Brumit and Simpson's due-process claim would look much the same had the City imprisoned them for Tori Gintz's crime, if only for a day. Or had the City criminally fined them, if only a dollar. Or imposed a civil monetary penalty, if only a dime. The City does not dispute that each of those actions would infringe the couple's fundamental rights. City Br. 14-15 (appearing to accept that it could not "criminally punish" the couple or hold them "collectively liable" in a "civil suit"). In all material respects, however, those hypotheticals mirror the reality alleged in the complaint. And nowhere does the City reconcile how fining Debi Brumit

$50.00 for her adult daughter's crime could support a viable due-process claim while the irreparable harm of forcing her from her home does not. *Cf. In re Ameriquest Mortg. Co.*, No. 5-cv-7097, 2006 WL 1525661, at *5 (N.D. Ill. May 30, 2006) ("[T]here can be no adequate remedy at law for loss of a home.").

At base, the City's fundamental-rights analysis reduces to the same error as the district court's. Like that court, the City nowhere denies that the right "not to be punished for the actions of others" is fundamental. App. 8. But because government-coerced eviction is a novel means of *violating* that right, the City maintains that the Due Process Clause secures no meaningful protection. That breaks with precedent and common sense alike. As recently as 2019, the Supreme Court has made emphatically clear that the correct question is "whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted." *Timbs* v. *Indiana*, 139 S. Ct. 682, 690; *see also* Appellants' Br. 34 (observing that the analysis is similar across incorporated and unenumerated rights). Thus, the Court in *Timbs* asked whether the right to be free from "excessive fines" is fundamental, not the right to be free from "excessive fines (by forfeiture of automobiles)." *See* 139 S. Ct. at 690-91; *see also id.* at 689 (rejecting argument that "the Clause's specific application to such forfeitures is neither fundamental nor deeply

rooted"). The Court in *Meyer* v. *Nebraska* framed the right as that of "parents to control the education of their own," not that of "parents to control the education of their own (by enrolling them in German language classes)." *See* 262 U.S. 390, 401 (1923). The list goes on. Appellants' Br. 34. Even if a law reflects a "novel application" of state power, the right it infringes still can be fundamental. *Timbs*, 139 S. Ct. at 690. Were the rule otherwise, the Constitution's guarantee of fundamental rights would mean next to nothing.

These teachings apply straightforwardly here. And despite every opportunity, *see* Appellants' Br. 33-35 (giving every opportunity), the City has yet to offer a response. The City nowhere denies the obvious: that Americans have a fundamental right to not be penalized by their government for someone else's crimes. The City nowhere denies that the Supreme Court has recognized such a right. Appellants' Br. 27, 31-32. It nowhere denies that lower federal courts have recognized such a right. Appellants' Br. 28, 31-33. It nowhere denies that James Madison and Joseph Story and Chancellor Kent recognized such a right (though not, the City hastens to note, in reaction to city-ordered evictions particularly). City Br. 20. The City nowhere denies that forcing innocent families from their homes plausibly *violates* that right. The City makes no effort to square its gerrymandered analysis with the precedent detailed

above and in the opening brief. It even disclaims any need to have "case law in hand" to support its position. City Br. 18. In short, the correct course is the simplest one. Brumit and Simpson have defined their right precisely and accurately. That right is fundamental. The City's law plausibly violated it. The due-process claim thus should be allowed to proceed to the merits.

B. The City's residual arguments lack merit.

The City salts its brief with additional theories. Each is unsound.

1. The City first resorts to *HUD* v. *Rucker*, 535 U.S. 125 (2002). City Br. 19-20. As detailed in the opening brief (at 5-6, 36-37), the Supreme Court in *Rucker* addressed the "one strike" policy that applies to public housing. When the government "act[s] as a landlord of property that it owns," the Court reasoned, it of course may invoke "clause[s] in a lease to which [its tenants] have agreed." 535 U.S. at 135. That includes clauses providing for the eviction of even innocent tenants for the crimes of householders. *Id.* at 131. In part for that reason, the Court upheld the federal one-strike law, which gives public-housing authorities (government landlords) "discretion" to evict if a member of a tenant's household commits a crime. *Id.* at 135. At the same time, however, the Court in *Rucker* observed that the due-process analysis would be "entirely different" were the government to act "as sovereign"—by, for example,

"attempting to criminally punish or civilly regulate [people] as members of the general populace." *Id.*

Not for the first time, Granite City draws the wrong lesson from *Rucker*. In the City's view, it would be anomalous for innocent private renters to have a right not to be forced from their homes by local police when *Rucker* says public-housing tenants can be evicted by their "governmental landlords" under like circumstances. City Br. 19. Yet a unanimous Court in *Rucker* articulated that very line—between government "as a landlord" and "as sovereign." 535 U.S. at 135. When "attempting to criminally punish or civilly regulate [people] as members of the general populace," *id.*, the government is not exercising contractual rights *vis-à-vis* a counterparty; it is exercising sovereign power against its citizens.

As the district court recognized, the compulsory-eviction law put Granite City in that second, "sovereign" camp; the City "[wa]s not acting as a landlord and managing property that it owns," but "regulating the general populace through a backdoor." App. 8. Contrary to the City's suggestion, then, the due-process claim does not presume that public-housing tenants "have fewer fundamental rights than other renters with private landlords." City Br. 19. Their relation to the government "as a landlord" simply differs from that of

the general populace to the government "as sovereign." And a key check on the government's power as sovereign is the Due Process Clause.

2. The City cautions that a ruling for Brumit and Simpson "would likely have widespread and lasting effects across civil, criminal, and regulatory law." City Br. 15. Yet the City identifies not one civil, criminal, or regulatory law that would be called into question by an opinion in the couple's favor. Nor is that (conspicuous) silence surprising. Because "the basic concept" of our legal 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), most civil, criminal, and regulatory laws operate successfully without visiting indiscriminate, irreparable harms on entire households.

3. The City also assigns significance to the fact that it required Brumit and Simpson (and Brumit's daughter) to "sign[] the Lease Addendum" that exposed them to household-wide eviction. City Br. 15. That unelaborated fact is the City's one ground for distancing this case from precedent like *Scales* v. *United States*, 367 U.S. 203 (1961), and *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982)—both of which make clear that neither criminal nor civil sanctions can "be imposed merely because an individual belonged to a group, some members of which" committed crimes. *Id.* at 920; Appellants' Br.

31-32. As in the district court, the City's implication appears to be that Brumit and Simpson voluntarily opted into its compulsory-eviction regime and thereby surrendered whatever due-process rights they otherwise might enjoy. As detailed in our opening brief, that is wrong. In Granite City, "landlords and tenants [we]re not free to change or opt out of the addendum," Appellants' Br. 38 (quoting City's answer), meaning the addendum was "no more 'voluntar[y]' than any other law," Appellants' Br. 38. As with other difficulties, the City addresses this one, too, by ignoring it.

4. Lastly, the City portrays compulsory-eviction laws as "widespread" and finds it "hard to imagine" that so many cities would unwittingly abridge the rights of their citizenry. City Br. 18. But it's hardly unprecedented for even commonplace ordinances to be held to violate fundamental rights. *E.g.*, *Reed* v. *Town of Gilbert*, 576 U.S. 155, 185 (2015) (Kagan, J., concurring in the judgment). More to the point, the City overstates the prevalence of its particular brand of compulsory-eviction law. As noted in our opening brief (at 19-20), such laws have an obstinate foothold in Illinois. But most of the 2,000 "crime-free programs" across the Nation differ materially from Granite City's. For most, participation is voluntary, and, for most, cities do not mandate evictions. Far from reflecting mainstream practice, Granite City's law stood as a

defiant outlier—disavowed even by the author of the Crime Free Housing concept. Appellants' Br. 46-47 & n.7.

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 similarly plausible. Granite City singled out people who rent for an unprecedented legal burden—citywide responsibility for the acts of any member of their household. No such burden was imposed on their homeowner and mortgagor neighbors. The City's response brief confirms that this classification fails every level of scrutiny.

A. The City's demand for "similarly situated" comparators is foreclosed by Circuit precedent.

As a first-order issue, the City devotes several pages to arguing that the equal-protection claim fails because the complaint "did not sufficiently identify a group or person who was 'similarly situated' who was treated differently than Appellants." City Br. 25 (quoting *Racine Charter One, Inc.* v. *Racine Unified Sch. Dist.*, 424 F.3d 677, 680 (7th Cir. 2005)). That view is foreclosed by precedent; in this Circuit, such a "similarly situated comparator class" is required in "class-of-one" cases only. *Monarch Beverage Co.* v. *Cook*, 861 F.3d 678, 682 (7th Cir. 2017). Briefly, a class-of-one plaintiff "doesn't challenge a statute or ordinance but argues instead that a public official . . . has treated him

differently than other persons similarly situated for an illegitimate or irrational reason." *Id.* For that kind of case—one alleging ad hoc discrimination—the plaintiff usually must identify "a similarly situated comparator." *Id.* Otherwise, "it may not be clear that the challenged governmental action entails any classification at all." *Id.*

The rule is different for plaintiffs who "challenge[] a statute or ordinance that by its terms imposes regulatory burdens on a specific class of persons." *Id.* Those plaintiffs have "no need to identify a comparator" since "the classification appears in the text of the statute itself." *Id.*

This case fits neatly in that second category. By its terms, the compulsory-eviction law imposed burdens on a specific class of people: those who rent their homes (and some installment buyers). Granite City Mun. Code § 5.142.010 (App. 76). The law imposed no such burdens on homeowners and mortgagors. The challenged classification thus "appear[ed] in the text of the statute itself," meaning the City's "reliance on the class-of-one line of cases is misplaced." *Monarch Beverage Co.*, 861 F.3d at 682. On this same basis, in fact, the Court in *Monarch Beverage Co.* distinguished the one federal-law decision the City cites. *Id.* (addressing *Racine Charter One, Inc.*). As for the City's other authority (a district-court opinion from Minnesota), that court's

analysis concerned a state-law claim under "the Minnesota Equal Protection Clause." *Jones* v. *City of Faribault*, No. 18-cv-1643, 2021 WL 1192466, at *23 (D. Minn. Feb. 18, 2021).

Simply, the City is wrong that equal-protection plaintiffs must show an identical comparator as a threshold matter in cases based on express statutory classifications. Rather, whether plaintiffs were treated differently from others "similarly situated" collapses into "the substantive equal protection inquiry"—that is, evaluating whether "the legislative classification bear[s] a close enough relationship to the purpose of the statute." Giovanna Shay, *Similarly Situated*, 18 Geo. Mason L. Rev. 581, 588 (2011). And whatever level of scrutiny applies here, Brumit and Simpson's complaint plausibly alleges that the City's classification of renters fails the substantive requirements of the Equal Protection Clause. *See* Appellants' Br. 41-53; *see also* pp. 14-22, *infra*.

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

The City does not deny that Brumit and Simpson's complaint states an equal-protection claim if the compulsory-eviction law infringed a fundamental right. Appellants' Br. 41-42. If any scrutiny more searching than the rational-basis standard applies, there is thus no dispute that the claim should proceed. The claim would be entitled to proceed, too, even were rational-basis review

the correct standard. Protecting law-abiding citizens is not rationally furthered by singling out law-abiding citizens for coerced homelessness. And classifying them based on "economic factors" like the happenstance of their home-financing arrangements no more relates to "fighting crime" than would classifying them based on education or salary or tax bracket. *See* City Br. 23, 30. For its part, the City's brief executes an unusual feat: erasing any possible doubt about the equal-protection claim's plausibility.

1. The City's latest rationale—that renters are less "motivated" to be good citizens—is one the Supreme Court has held irrational.

Three and a half years into the case, the City appears to have at last jettisoned every one of the justifications it aired in the district court. Appellants' Br. 49-53 (rebutting them). Now, it goes all-in on a new one. Singling out renters for household-wide punishments is rational, the City posits, because people who rent have fewer "motivations and incentives" than do homeowners to dissuade their household members from committing crimes in the community. City Br. 26, 43. Because they "do not own the real estate in fee simple," says the City, people who rent have "fewer property rights, obligations, expenses, and benefits related to their ownership of property." City Br. 26. They are less likely to be "permanent residents of a community," will be less affected

by changes in "property values," and "therefore may lack the same level of motivation to protect against criminal activity." City Br. 26-27, 43. Hence, systematic, coerced eviction of law-abiding citizens "was rationally related to the legitimate state interest in reducing, preventing, and/or deterring such crime." City Br. 10.

This is a case study in how to lose a rational-basis case. The rational-basis standard puts an evidentiary thumb (or two) on the government's side of the scale. Appellants' Br. 43. But it is not a cover for "undifferentiated fears" and "irrational prejudice." *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 449-50 (1985). And with last month's brief, the City's mask is fully off. Singling out people who rent is rational, it asserts, because they simply have less of a stake in the community than their homeowner neighbors.

Whatever the level of scrutiny, this maneuver damns the City's law; the City's latest, final-answer rationale has been rejected by the Supreme Court itself—unanimously and in a rational-basis case. In *Quinn* v. *Millsap*, the State of Missouri sought to justify a rule that landowners alone were eligible for service on a government board. 491 U.S. 95, 96 (1989). It defended the classification on the theory that "a real-property owner 'has a tangible stake in the long term future of his area.'" *Id.* at 107. Without dissent, however, the

Supreme Court "squarely rejected" that rationale and held the challenged law invalid. The State "may not rationally presume"—the Court reasoned—that "all citizens of the county whose estates are less than freehold" are less "attached to their community." *Id.* at 108 (citation omitted).

That principle applies with equal force here. Nationwide, over one-third of American households rent—more than 40 million.[1] (Statistically, the racial group most likely to rent is Black, whom Granite City barred from living within its borders until "[a]round 1980." James W. Loewen, Sundown Towns: A Hidden Dimension of American Racism 411 (2018 ed.).) And whatever imprecisions the rational-basis standard may tolerate, one thing is clear: it is not rational to brand one-third of American households lesser members of society simply because their "estates are less than freehold." *Quinn*, 491 U.S. at 108 (citation omitted). Indeed, the City's verbiage bears a frozen-in-time likeness to that offered up—and rejected—in *Quinn*.[2] It is the City's last line of

[1] Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, Pew Research Ctr. (Aug. 2, 2021).

[2] *Compare* City Br. 27 ("Should a neighborhood or municipality become an undesirable place to live due to high crime rates, renters can more easily and quickly relocate than homeowners."), *with* Br. for Appellees, *Quinn* v. *Millsap*, 1989 WL 1127769, at *41-42 (U.S. Apr. 6, 1989) ("Someone who owns a smaller estate in real estate may wish his community well, but if problems

defense, and if anything, it makes the strongest case yet for reversing the judgment below.

2. ***The City's remaining arguments confirm the equal-protection claim's merit.***

The City's other arguments drive home that the equal-protection claim should proceed.

First, the City dismisses the factual material that fortifies the complaint's allegations of irrationality. *See* Appellants' Br. 45 n.6 (noting that such material may be considered on 12(b)(6) appeal). The City suggests, for example, that there is reason to doubt the reliability of the plaintiffs' "self-created statistical analysis" showing that over 90 percent of the City's felonies involve suspects who do not live in rental homes. City Br. 44. But those numbers come from the City's own documents and Rule 36 admissions. Appellants' Br. 46 (citing them by page). And at no point (including at summary judgment) has the City given cause to doubt their accuracy.

More fundamentally, the City contends that, no matter how accurate, facts "should have no bearing on whether a rational basis existed." City Br. 44. That, too, is wrong. While a plaintiff's evidentiary burden may be

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arise or if the grass looks greener in the next county, it is relatively simple for him to sublease or refuse to renew his lease.").

"considerable," the Supreme Court has been clear: "the plaintiff can carry this burden by submitting evidence to show that the asserted grounds for the legislative classification lack any reasonable support in fact." *N.Y. State Club Ass'n, Inc.* v. *City of New York*, 487 U.S. 1, 17 (1988). In its canonical rational-basis decision, in fact, the Court observed that "facts may properly be made the subject of judicial inquiry" when "the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice." *United States* v. *Carolene Prod. Co.*, 304 U.S. 144, 153 (1938).[3]

Those lessons apply here. Granite City's latest explanation for its compulsory-eviction law rests on an assumption that the Supreme Court has repudiated as irrational. Brumit and Simpson's complaint plausibly alleges that the law's classification is indeed irrational. Dist. Ct. Doc. 1, at ¶¶ 140-51. The record bears out their allegations. And even if (not surprisingly) some small percentage of crime is "committed by renters or their household members" (City Br. 45), the City's law is no less arbitrary. Leaseholders—like freeholders—

[3] *See also, e.g.*, *St. Joseph Abbey* v. *Castille*, 712 F.3d 215, 223 (5th Cir. 2013) ("[A]lthough rational basis review places no affirmative evidentiary burden on the government, plaintiffs may nonetheless negate a seemingly plausible basis for the law by adducing evidence of irrationality." (citing *FCC* v. *Beach Commc'ns, Inc.*, 508 U.S. 307, 314-15 (1993))).

are not a class of saints. But the real-world facts betrayed by the record confirm what the Court saw as self-evident in *Quinn*: it is irrational for the government to single out renters based on the undifferentiated assumption that they have less of a "tangible stake in the long term future" of their community than do freeholders. 491 U.S. at 107 (citation omitted).

Second, the City again cites *HUD* v. *Rucker*. Because *Rucker*'s public-housing authorities—landlords—have discretion to evict tenants based on the crimes of householders, the City contends that its compulsory-eviction law is necessarily rational. City Br. 42. Again, though, the differences are obvious. The federal program from *Rucker* "does not *require* the eviction of any tenant who violated the lease provision." *Rucker*, 535 U.S. at 133-34. Rather, it "entrusts" public landlords with "discretion" to enforce their lease terms—recognizing that the landlord is "in the best position to take account of" all the circumstances. *Id.* at 129, 134. Granite City's law was different: it applied to private landlords across the board, and it stripped them of discretion in their dealings with tenants. To quote the City's former "crime-free-housing" officer, it was "much stricter than what the federal government's is." Appellants' Br. 37 (citation omitted). As above, *Rucker* offers the City no support.

Third, the City minimizes the significance of its separate public-nuisance ordinance. As detailed in our opening brief (at 47-48), the public-nuisance law serves the same crime-fighting goals the compulsory-eviction law purported to. But it does so without singling out renters for arbitrary, irreparable harms. The existence of that parallel regime "necessarily" casts further doubt on the compulsory-eviction law's rationality. *U.S. Dep't of Agric.* v. *Moreno*, 413 U.S. 528, 536-37 (1973).

As with facts, so with laws: the City contends that its other, seemingly more effective ordinance cannot inform the rational-basis analysis. City Br. 47. Yet that consideration *has* informed the Supreme Court's rational-basis analysis in cases, like this one, involving arbitrary burdens on households. *Moreno*, 413 U.S. at 536-37. The City's counterpoint? A dissent—misportrayed in the City's brief as a majority opinion. City Br. 47-48 (discussing *Nguyen* v. *INS*, 533 U.S. 53, 77 (2001) (O'Connor, J., dissenting)).

In fairness to the City, it is not the first to make this error; this Court in *Monarch Beverage Co.* similarly mistook Justice O'Connor's dissent for the opinion of the majority. 861 F.3d at 685. In part based on that oversight, this Court viewed *Moreno* and *City of Cleburne* as "extraordinary rather than exemplary rational-basis cases." *Id.* Whether that characterization is faithful to

Supreme Court precedent (or this Court's) is doubtful. *Douglas ex rel. Douglas* v. *Hugh A. Stallings, M.D., Inc.*, 870 F.2d 1242, 1247 (7th Cir. 1989) ("*Cleburne* . . . do[es] not represent a deviation from the traditional rational relationship analysis."). Even after *Monarch Beverage Co.*, however, Granite City's less arbitrary, more effective public-nuisance law would appear to remain "a relevant factor" in the analysis, even if not "decisive." *Turner* v. *Glickman*, 207 F.3d 419, 425 n.2 (7th Cir. 2000); *see also* Appellants' Br. 48.

At base, laws that fail the rational-basis standard may be uncommon. But the complaint's allegations—paired with the City's own arguments—set this case apart. Even if subject only to rational-basis review, the compulsory-eviction law plausibly violated Brumit and Simpson's rights under the Equal Protection Clause. On this claim also, 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.

Lastly, the compulsory-eviction law is invalid under associational-rights precedent, the claim resolved at summary judgment below. The law targeted people for coerced eviction because of whom they chose to make a home with. Such a model of guilt by association triggers strict scrutiny. For much the same reasons detailed above, it would fail even rational-basis review as well.

A. The compulsory-eviction law is subject to strict scrutiny.

The compulsory-eviction law directly burdened the right to "intimate association," meaning strict scrutiny (if not per se invalidation) is appropriate. The City's contrary arguments lack merit.

1. The City does not meaningfully dispute that the Constitution protects the associational right at issue.

Foremost, the City contends that the Constitution protects against association-based sanctions only when the associations being targeted are "expressive" or "intimate." City Br. 30-31. That is wrong. In any event, the City does not dispute that it targeted innocent people based on a quintessentially "intimate" association—with members of their own household.

a. In recent decades, the Supreme Court has held that the Constitution demands heightened protection for the right to associate for engaging in "expressive" activity as well as for maintaining certain "intimate" relationships. *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 617-20 (1984). That much appears to be common ground. City Br. 31. Distorting the premise, however, the City asserts that those two categories define the universe of associational rights. Outside those categories, the City maintains, government has a free hand to punish people for the mere fact of their association with others. City Br. 32.

The City is incorrect. It is true that the Supreme Court has taxonomized types of associations, typically when addressing whether governments may restrict access to certain venues or may prohibit organizations from excluding certain members. But neither that Court nor this one ever has 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 *City of Dallas* v. *Stanglin*, 490 U.S. 19 (1989), the City's chief authority. City Br. 31. There, the Court determined that patrons at youth dance halls were engaged in neither "intimate association" nor "expressive association." 490 U.S. at 25. For that reason, the Court held that Dallas could validly limit admission to teenagers alone. *Id.* at 27-28. In no world, however, would the Court have let Dallas fine or imprison (or evict) every dance-hall patron if any one of them committed a felony within city limits. Nor does any of the precedent the City cites suggest that any court in the Nation would uphold such a law.

b. In any event, even under the City's preferred view of the doctrine, its compulsory-eviction law targeted people based on their "intimate" associations. Protection for intimate associations extends beyond the nuclear family 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* v. *Rotary Club of Duarte*, 481 U.S. 537, 545 (1987). And here, the City targeted innocent people because of their association with "household member[s]." City Br. 40 (admitting that the law was "triggered if a household member was charged with committing a felony in Granite City"). That is a quintessential "intimate" association; if the roommate relationship is sufficiently intimate (it is)[4] and private social clubs are sufficiently intimate (they are),[5] then the same is true of the "household" association here. *See* Appellants' Br. 61 n.9.

Beyond a stray sentence (City Br. 32), the City's brief does not contest this point. Nor could it credibly do so; a *premise* of the compulsory-eviction law was that household members are so closely linked that they can be saddled with citywide collective responsibility for one another's acts. *E.g.*, App. 40 ("They were in violation of the lease addendum that they allowed members of

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[4] *Fair Hous. Council* v. *Roommate.com, LLC*, 666 F.3d 1216, 1220-21 (9th Cir. 2012).

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

their household to commit crimes in the City of Granite City."). Even accepting the City's intimate/expressive paradigm, the association here readily qualifies as "intimate" and is entitled to heightened protection.[6]

2. *The compulsory-eviction law directly burdened the associational right at issue.*

Having failed to dispute that its compulsory-eviction law implicates intimate associations, the City nonetheless resists heightened scrutiny on the ground that the law did not "directly and substantially interfere" with those associations. City Br. 35. This theory lacks merit. The City coerced hundreds of innocent people from their homes based on the identity and citywide acts of their household members. That burdens the right to intimate association, and the City's arguments cast no doubt on that proposition.

a. The City points out that its compulsory-eviction law targeted people based not on "familial connection[s]," but on associations in "household[s]" instead. City Br. 37-38; *see also, e.g.*, City Br. 39 ("The [ordinance] was neutral

[6] The City's brief may be read to suggest that the Fourteenth Amendment, not the First, is the proper source of protection for intimate associations. City Br. 32. That view would be hard to square with precedent. *Bd. of Directors of Rotary Int'l*, 481 U.S. at 545 ("We have emphasized that the First Amendment protects [intimate associations]."). But whether the claim sounds in the First Amendment or the Fourteenth (or both), it is valid. Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century*, 16 Geo. Mason C.R. L.J. 269, 277-78 (2006); *see also* App. 17 n.3.

to any familial relationship."). But the "constitutional protection" for intimate associations is not "restricted to relationships among family members." *Bd. of Directors of Rotary Int'l*, 481 U.S. at 545. And as discussed, the City does not dispute that joining in a "household" is an intimate association meriting heightened constitutional protection. Nor does the City deny that it targeted innocent people for irreparable harms—coerced eviction—based on that intimate association. That the City pursued not just blood relatives, but "friends," "roommates," and householders more broadly (City Br. 38) does not somehow lessen the burden on protected associational rights.

b. In related vein, the City places peculiar emphasis on the notion of "registered" household members. City Br. 5, 38, 39. That adjective does not alter the analysis. That the City may have kept a record of residential occupants does not translate to a license to violate their rights. At all events, the City's suggestion that its compulsory-eviction law "applied based on household member registration" is factually inaccurate. City Br. 38. If officers thought a felony offender lived (or spent time) in a rental home, the City ordered wholesale eviction whether or not the suspect was "registered" there. *E.g.*, Dist. Ct. Doc. 125-9, at 2 (ordering household-wide eviction based on crime committed

by a man who "is currently living at [the home] . . . without . . . being placed on the occupancy permit" (capitalizations altered)).

c. The City also analogizes to cases involving public employment and public benefits. Far from supporting the City's view, however, those cases offer an instructive contrast. In *Lyng* v. *UAW*, for example, the Supreme Court considered a challenge to a law providing for "withdrawal of a government benefit"—full eligibility for food stamps—when a food-stamp-eligible household included a member on strike. 485 U.S. 360, 362, 367 n.5 (1988). "Eligibility and benefit levels in the federal food stamp program are determined on a 'household' rather than an individual basis." *Lyng* v. *Castillo*, 477 U.S. 635, 636 (1986). Against that backdrop, the Court held that adjusting benefits based on whether a member of the household unit is on strike does not "'directly and substantially' interfere" with associational rights. *Lyng*, 485 U.S. at 366.

The City contends that *Lyng* "generally supports" its compulsory-eviction law. City Br. 34. Yet the Court in *Lyng* expressly distinguished between (i) the government's adjusting household-wide benefits and (ii) the government's imposing household-wide liability. Modifying the level of a household-calculated benefit might not "directly and substantially" burden associational rights. 485 U.S. at 366. But exposing the household as a whole to collective

"civil liability" would of course "pose[] a much greater danger to the exercise of associational freedoms." *Id.* at 367 n.5. The City's rebuttal? That the Supreme Court made this point in "a footnote." City Br. 34.

The rest of the City's precedent is equally inapt. City Br. 35-37. Most involve claims of "family" or "marital" rights, which courts treat as distinct from the concept of intimate association. More importantly, most are like *Lyng*: they involve welfare benefits that, by design, are calculated based on characteristics of the household as a unit. *E.g.*, *Bowen* v. *Gilliard*, 483 U.S. 587, 589, 602 (1987); *Smith* v. *Shalala*, 5 F.3d 235, 238 (7th Cir. 1993). That such programs (as in *Lyng*) have been held not to violate constitutional rights says nothing about whether Granite City's compulsory-eviction law did so.

Hameetman v. *City of Chicago* is of a piece. 776 F.2d 636 (7th Cir. 1985), *cited at* City Br. 40. As our opening brief explained in some detail (at 60-61), Chicago's conditioning city employment on living in the city might fairly be said to impose only an "incidental" or "collateral" burden on its employees' "family rights." 776 F.2d at 642-43; *see also* Appellants' Br. 60 ("[T]he Court in *Hameetman* appears not to have viewed the controversy as an associational-rights case."). But here also, the contrast with Granite City is plain. By design, Granite City visited devastating, coercive legal burdens on innocent

people—and it did so *because of* their intimate associations, not as an "incidental" or "collateral" byproduct of them. If that sounds familiar, it's from the opening brief. The City's response? To once more proclaim that its law targeted people not based on "family," but based on "household." City Br. 40 (blurring "familial association" and "intimate association"). Far from a saving grace, that is a major problem. To repeat: the Supreme Court has said that the right to intimate association is *not* "restricted to relationships among family members." *Bd. of Directors of Rotary Int'l*, 481 U.S. at 545. The City does not dispute that the household is an intimate association. And by "trigger[ing]" irreparable harms on people based on their choice of "household member[s]" (City Br. 40), the City burdened the right to intimate association in a way that calls for heightened scrutiny.

d. Lastly, the City notes that its compulsory-eviction law did not prevent Debi Brumit and Andy Simpson from having a relationship with Brumit's daughter. City Br. 39. The City also observes that, in the years before Tori Gintz's death, the couple's relationship with her was strained. City Br. 3, 39.

That is all 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 2d ed. 2016) (1878), and the Constitution protects them

equally. Contrary to the City's view, moreover, the fact that its law did not stop Brumit from trying to preserve her relationship with her daughter does not make the law any less a burden on associational rights. For one thing, the law's enforcement was swiftly enjoined by the district court—a decree that would stay in place for the rest of Gintz's life. For another, the City's system of wholesale evictions visited obvious burdens—no matter if it destroyed any particular relationship. As the City admits, Brumit and Simpson "could not associate" with Gintz within the four walls of their home without exposing themselves to the threat of city-coerced eviction. City Br. 40. That they did not abandon their efforts to help her does not make the City's law any less an "evident and inherent" burden on their rights. *Ariz. Free Enter. Club's Freedom Club PAC* v. *Bennett*, 564 U.S. 721, 745-46 (2011); *Lyng*, 485 U.S. at 367 n.5 ("[Associational] rights can be abridged even by government actions that do not directly restrict individuals' ability to associate freely.").

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

As discussed, the City's infringement on associational rights calls for heightened scrutiny—a standard the City has not tried to meet. Its law also would fail even rational-basis review. The summary-judgment record confirmed all the complaint's allegations of irrationality. And the City's now-open

disdain for leaseholders' moral worth is the final nail. Given the undisputed record, Brumit and Simpson were entitled to summary judgment on their associational-rights claim for the reasons detailed above and in our opening brief. The Court should so hold or, at minimum, should reverse the grant of summary judgment for the City.

CONCLUSION

The judgment of the district court should be reversed.

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Respectfully submitted,

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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 6,996 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: March 9, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 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.

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