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 MOTION TO DISMISS (ECF 18, 19)

INTRODUCTION

Last month, this Court issued a temporary restraining order in favor of Plaintiffs Debi Brumit and Andy Simpson, finding that their "Complaint demonstrates a 'better than negligible' likelihood of success on the merits for purposes of a TRO." Mem. & Order 2 (ECF 12). That makes Granite City's 12(b)(6) motion a straightforward candidate for denial. To secure a TRO or preliminary injunction, a plaintiff must show "a 'better than negligible' chance of succeeding on the merits." *Id*. To move past a 12(b)(6) motion, by contrast, a complaint must only "plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level.'" *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008). Given those standards, the Court need not read beyond this paragraph to deny the City's motion to dismiss. Plaintiffs' due-process and equal-protection claims are "better than negligible" under Rule 65. It follows that they are also better than "speculative" under Rule 12(b)(6). *Accord YTB Travel Network of Ill. v. McLaughlin*, No. 09-cv-369-JPG, 2009 WL 1609020, at *6 (S.D. Ill. June 9, 2009). Plaintiffs' takings and associational claims are equally plausible, and the case should proceed to the merits.

BACKGROUND

A. Legal background

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

One of those terms relates to crime. In 1988, Congress enacted a "one-strike" policy for public housing: Every public-housing lease must provide that the tenants may be evicted if they, or members of their household, or guests, commit certain crimes. 42 U.S.C. § 1437d(*l*)(6). As with other lease terms, the decision whether to enforce a one-strike clause rests with the public-housing authority—the landlord. The federal government even urges those agencies to "consider all circumstances" before evicting. 24 C.F.R. § 966.4(*l*)(5)(vii)(B); Kathryn V. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting a Flawed Federal Eviction Law*, 65 UCLA L. Rev. 1146, 1169-72 (2018).

The Supreme Court upheld the federal one-strike policy in 2002, in *HUD v. Rucker*, 535 U.S. 125. As a statutory matter, the Court ruled that Congress gave public-housing authorities discretion to evict tenants for their guests' crimes, "regardless of whether the tenant knew, or had reason to know, of that activity." *Id.* at 128. As for the Constitution, evicting those "so-called 'innocent' tenants" raised no due-process concerns. *Id.* at 129. A public-housing authority is merely "acting as a landlord of property that it owns." *Id.* at 135. And like any landlord, it can choose to invoke—or not invoke—its lease terms. *See id.* at 133-34, 135.

At the same time, the Court added, the due-process analysis is "entirely different" when the government acts "as sovereign." *Id.* at 135. If a state actor were "attempting to criminally

punish or civilly regulate [people] as members of the general populace," *id.*, the Due Process Clause would apply with full force.

2. Granite City took *Rucker*'s warning as a blessing, enacting a compulsory-eviction law a few years later. Unlike the policy at issue in *Rucker*, Granite City's law governs rental housing that is private, not public. Compl. ¶¶ 17-18. The law applies across the board to everyone who rents a home within city limits. *Id.* ¶ 19. (It also applies to many people buying homes by installment contract. Granite City Mun. Code § 5.142.010(B).)

In 2013, Granite City's city attorney identified the compulsory-eviction law as the "[m]ost controversial issue [he had] worked on." Compl. ¶ 14. Whereas the policy in *Rucker* "entrust[ed]" public landlords with "discretion" to evict tenants, 535 U.S. at 129, 134, Granite City's law takes a different tack: It strips landlords of discretion. When the City demands it, a private landlord must evict his tenants if any member of the tenants' household—or even a guest—commits a crime anywhere within city limits (and sometimes, anywhere on earth). Compl. ¶¶ 21-23, 28. No matter where the crime takes place, it is no defense that the tenants had nothing to do with it. *Id.* ¶¶ 45-47. Nor do landlords have discretion to forgo eviction. *Id.* ¶¶ 29-34. If a landlord declines to evict, the City will "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); Compl. ¶¶ 20, 35.

From 2014 to the present, the City has issued more than 300 compulsory-eviction demands against people living within city limits. Compl. ¶ 48.

B. Factual background

1. Debi Brumit and Andy Simpson have been in a committed relationship for several years and are engaged. *Id.* ¶ 49. Since 2016, they have lived at 7 Briarcliff Drive, in Granite City. *Id.* They rent the home from their landlord, Clayton Baker, on a month-to-month basis. *Id.* ¶ 51.

Debi has three adult children. And at first, her youngest—Tori—lived with her and Andy at 7 Briarcliff Drive. *Id.* ¶ 52. When they moved in, Tori was 20 years old and pregnant. *Id.*

Tori moved out in January 2017 and began living with her older sister, in Missouri. In April 2018, she gave birth to her second child. *Id.* ¶ 53. As Debi and Andy understand it, Tori began struggling with substance abuse a few months later. *Id.* ¶ 54.

This past January, Tori's older sister no longer had room to house her. So Tori (and her two children) began staying with Debi and Andy again, in Granite City. *Id.* ¶ 55. At first, Debi and Andy had no idea about the extent of Tori's substance-abuse problem. But by May of this year, it had become clear to Debi that Tori was engaging in self-destructive behavior and failing to care for her children. *Id.* ¶ 56. Around the middle of May, 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. Until then, Tori would no longer be welcome in their home. *Id.* ¶ 57.

In Debi and Andy's understanding, Tori moved back to Missouri and began "couch-surfing" with a new boyfriend. *Id.* ¶ 58. She left her two small children behind. *Id.* ¶ 59.

On Saturday, June 8, 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.* ¶ 60. Debi immediately drove to Missouri, picked Tori up, and brought her to the Gateway Regional Medical Center in Granite City. She brought the new boyfriend too. *Id.* ¶ 61. 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.* ¶ 62.

At around 3:00 or 4:00 A.M., Debi and Andy were awoken by a phone call. It was Tori; she and her boyfriend were standing outside the house. *Id.* ¶ 63. Debi and Andy refused to allow

the boyfriend into their home, letting Tori alone come in. Tori told Debi that the hospital had released them. She said she still wanted to get help. But after talking with Debi for about an hour, Tori (and her boyfriend) left. *Id.* ¶ 64.

Debi and Andy heard nothing from Tori the next day, a Sunday. *Id.* ¶ 65. At around 2:30 A.M. on Monday, however, Debi noticed two recent missed calls from her older daughter. She called back, and her older daughter told her that Tori had been arrested for stealing a van the night before. That was the first Debi and Andy had heard of the crime. *Id.* ¶ 66.

2. Within days of her daughter's arrest, Debi received a compulsory-eviction demand from Granite City police. *Id.* ¶ 69. The demand cited Tori's and her boyfriend's arrest for "[o]ffenses relating to motor vehicles." Compl. Ex. 2, 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. Compl. ¶¶ 75-77. At the hearing, Debi explained that her daughter no longer lived with them. *Id.* ¶ 78. 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.* ¶ 79.

At that point, the City's Crime Free Housing Officer interrogated her. *Id.* ¶ 81. He asked whether Debi would ever let Tori—her daughter and the mother of her grandchildren—back into her home. *Id.* ¶ 82. He even demanded to know whether Tori might visit on Christmas. *Id.* ¶ 83.

In due course, the City's hearing officer decided that the City's police had properly invoked the City's compulsory-eviction law. *Id.* ¶¶ 84-89. Hence, he wrote,"[t]he landlord, Clayton Baker, must begin eviction proceedings against the tenants listed above." *Id.* ¶ 90.

3. Clayton Baker does not want to evict Debi and Andy. *Id.* ¶ 91. 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.* ¶ 92. To protect their home, Debi and Andy promptly filed this lawsuit against the City. Last month, this Court issued a temporary restraining order. Simultaneously, the Court entered parallel relief in a related case, *Barron v. Granite City*, No. 19-cv-834-SMY. At the City's request, the Court then entered preliminary injunctions against it in both cases. *See* J. Mot. Entry Agreed Order on Prelim. Inj. (ECF 14).

ARGUMENT

A motion to dismiss under Rule 12(b)(6) serves "to test the sufficiency of the complaint, not to decide the merits." *Gibson v. Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). For that reason, a complaint need overcome only "'two easy-to-clear hurdles.'" *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008). It must plead its claims "in sufficient detail to give the defendant fair notice." *Id.* (Nowhere does the City's motion dispute that this requirement is met.) And with all factual allegations taken as true, the complaint "must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level.'" *Id.* Last month's TRO and agreed preliminary injunction confirm that Plaintiffs' due-process and equal-protection claims meet this standard. The same is true of their takings and associational claims.

I. Plaintiffs plausibly allege that Granite City's compulsory-eviction law violates the Due Process Clause (First Claim).

A. "No property is more sacred than one's home," *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 704-05 (1897), and Debi Brumit and Andy Simpson have core property and liberty interests in theirs. Granite City seeks to extinguish those interests and make Debi and Andy homeless. The City does not base this action on anything Debi or Andy did. Rather, it is enough that Debi's adult daughter stole a van within city limits. Compl. ¶¶ 73-74, 127-29.

The complaint plausibly alleges that these actions violate the Due Process Clause. The Supreme Court has "regularly observed" that "the Due Process Clause specially protects

those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). And in trying to strip an innocent family of their home, Granite City is working a double harm. The City is infringing "the sanctity of the home"—an "overriding respect" for which "has been embedded in our traditions since the origins of the Republic." *Payton v. New York*, 445 U.S. 573, 601 (1980). Worse, the City is imposing this sanction because of someone else's crime. That, too, breaks with "[o]ur Nation's history, legal traditions, and practices." *Glucksberg*, 521 U.S. at 721. "In our jurisprudence guilt is personal." *Scales v. United States*, 367 U.S. 203, 224 (1961). Yet the premise of the City's actions is guilt by association. Someone associated with Debi and Andy broke the law; for that, the City seeks to make Debi and Andy homeless.

Imputing guilt in this way is "contrary to fundamental principles of our justice system." *See United States v. Garcia*, 151 F.3d 1243, 1246 (9th Cir. 1998). In fact, this sort of "guilt by association" has been described as "one of the most odious institutions of history." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 178 (1951) (Douglas, J., concurring). It is "a philosophy alien to the traditions of a free society . . . ." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (citation omitted). One California judge even branded a similar compulsory-eviction law "carcinogenic," citing "the Damoclean substantive due process issue which hangs over this statutory scheme." *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 10 (2005) (Bedsworth, Acting P.J., concurring); *see also id.* ("I am concerned . . . about its sweeping requirement that *all* occupants of the premises must be evicted for the sins of one . . . ."). If anything, moreover, Granite City's law is worse than the one invalidated in California. For all its "fundamental constitutional infirmities," *id.*, the California law required

eviction only for crimes "in or near the rental property." *Id.* at 3 (majority opinion). No such half-measures here: Granite City forces innocent people out of their homes if a householder or guest breaks the law anywhere within city limits. With all the complaint's allegations presumed true, this exercise in collective punishment plausibly violates the Due Process Clause.

B. The City does not dispute that punishing one person for the crimes of another violates due process. Nor does the City dispute that extinguishing Debi and Andy's interest in their home is punishment. Nor, for that matter, does the City stand by the theory it pressed in the parallel *Barron* case: that it can punish innocent people for "allow[ing]" others to commit crimes. Mem. Supp. Mot. Dismiss 5 (*Barron*) (ECF 22).

With that theory jettisoned, the City introduces a new one. Ordinarily, the City seems to agree, the Due Process Clause might bar collective punishment of the sort the City performs. But Granite City is different. As a condition of living there, renters must sign a "Crime-Free Housing Lease Addendum." That addendum—part of the compulsory-eviction law—provides that the City can demand the eviction of innocent renters for the crimes of their householders and guests. Compl. ¶¶ 21-25 & Ex. 1; Granite City Mun. Code § 5.142.050(A)(3)(c). And in the City's view, the signatures make all the difference: By writing their names on the addendum, people like Debi and Andy have "voluntarily" given up their due-process rights. City Mem. 6 (ECF 19).

The City is incorrect. First, a procedural point: The City's argument relies on matters outside the pleadings, which is reason enough to disregard it. "[A] Rule 12(b)(6) motion must be decided solely on the face of the complaint and any attachments that accompanied its filing." *Miller v. Herman*, 600 F.3d 726, 733 (7th Cir. 2010). Here, though, the City's argument depends on factual assertions (and even an exhibit) that are not in the complaint. For example, the City says that "it appears" Debi's daughter remained "listed as a household member on all the

paperwork filed with the City." City Mem. 3-4. The complaint alleges no such thing. The City asserts that Debi and Andy signed the City's "Crime-Free Housing Lease Addendum." *Id.* 3, 6. The complaint alleges no such thing. The City avers that Debi "testified that she would continue to allow [her daughter] access to the residence." *Id.* 5, 6-7. The complaint alleges no such thing. *See* Compl. ¶¶ 81-83. The City declares that "Plaintiffs continue to allow access to the rental property to [Debi's daughter]." City Mem. 7. The complaint alleges no such thing. For 12(b)(6) purposes, that should be the end of the matter. The City offers no reason favoring "the evaluation of evidence outside the pleadings." *Navarrete v. Madison Cty.*, No. 17-cv-347-SMY, 2018 WL 3438842, at *2 (S.D. Ill. July 17, 2018); *see also* Fed. R. Civ. P. 12(d). In fact, many of the City's statements are supported by no evidence at all. Particularly given these irregularities, the City's extra-pleading assertions should be excluded and its motion denied.

The City's argument is also wrong on the law. In the City's view, Debi and Andy "voluntarily" gave up their due-process rights when they "signed and executed" the City's Lease Addendum for Crime Free Housing. City Mem. 6. For two reasons, that contention lacks merit.

First, signing the City's addendum has no legal effect; whether or not a renter signs it, the addendum applies with full force. By law, "[e]very agreement for lease of residential real estate located within the corporate limits of the city of Granite City . . . , whether oral or written, shall be deemed to include all terms listed on the lease addendum." Granite City Mun. Code § 5.142.060; *see also* City Mem. 1. So even "if no one were to sign it, the addendum still would apply." Compl. ¶ 25. In this way, the addendum is like any other law. It applies no matter if members of the community perform the "empty act" of affixing their names. *Id.* For renters in Granite City, the addendum is no more "voluntar[y]" than the rest of the Municipal Code. City Mem. 6.

Second, the City's argument starts from a mistaken premise: that the City can require people to sign away their constitutional rights as a condition of living within city limits. *See, e.g.*, *id.* 12 ("Plaintiffs are not required to rent a home in Granite City and should they wish to not be regulated or subject to the Ordinance and/or Lease Addendum, they simply can opt not to rent a home in Granite City."). That is wrong. Under the unconstitutional-conditions doctrine, Granite City cannot condition even a "gratuitous governmental benefit" on the recipient's "giv[ing] up constitutional rights." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013); *see also Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699 F.3d 962, 986 (7th Cir. 2012). That principle applies with even greater force here: The City cannot condition *living in Granite City* on residents' giving up their constitutional rights. The City could not require renters to sign away their First Amendment rights as a condition of living within city limits. Or their Third Amendment rights, or their Fourth Amendment rights. No more can the City require residents to sign away their rights under the Due Process Clause.

Granite City is not a Constitution-free zone. The City does not dispute that a law punishing Person *A* for the crimes of Person *B* plausibly violates the Due Process Clause. The City does not dispute that its compulsory-eviction law punishes innocent people for the misdeeds of others. The City does not dispute that the law—including the "Lease Addendum"—applies directly to everyone who rents a home within city limits. The most the City can say is this: If you want to keep your constitutional rights, live somewhere else. The Fourteenth Amendment is not so easily circumvented, and Debi and Andy's due-process claim is—at minimum—plausible.

C. As in the *Barron* case, the City continues to labor under the misimpression that the Supreme Court blessed its compulsory-eviction scheme in *HUD v. Rucker*, 535 U.S. 125 (2002). That continues to be incorrect. When the government "is . . . acting as a landlord of

property that it owns," the Court reasoned in *Rucker*, it may exercise a contractual right to evict even innocent tenants for the crimes of their guests. *Id.* at 128-29, 135. Like any other landlord, public-housing authorities can invoke "a clause in a lease to which [their tenants] have agreed." *Id.* at 135. But the Court made clear that the due-process analysis is "entirely different" when the government acts "as sovereign." *Id.* When "attempting to criminally punish or civilly regulate [people] as members of the general populace," *id.*, the government does not enjoy a blank check to punish the blameless.

Granite City claims just such a blank check here. Unlike the public-housing authority in *Rucker*, the City is not Debi and Andy's landlord. Clayton Baker is, and he doesn't want to evict them for a crime they did not commit. Compl. ¶¶ 91, 95-99. Unlike a public-housing authority, the City is not invoking a lease to which it is party; it is intruding on the leases of others, armed with a battery of sanctions. These actions are paradigmatically "sovereign." *Rucker*, 535 U.S. at 135. In *Rucker*'s words, the City is "civilly regulat[ing]" Debi and Andy "as members of the general populace." *Id.* And it is doing so by punishing one person for the crimes of another. That exercise in collective punishment cannot be squared with the Due Process Clause.

As against all this, the City maintains that any line between the government as sovereign and the government as landlord is "irrelevant." City Mem. 8. What of *Rucker*'s reasoning to the contrary? That, says the City, is "dicta." *Id.* It's not. But regardless, "the Seventh Circuit has cautioned lower courts to avoid 'treat[ing] lightly' dicta 'until disavowed.'" *Leeway Media Grp., LLC v. Joachim*, No. 13-cv-822, 2014 WL 345291, at *4 n.4 (S.D. Ind. Jan. 30, 2014). And nothing in the City's motion counsels a different approach here. For example, the City minimizes *Rucker*'s reasoning with the observation that "neither the Seventh Circuit nor the Supreme Court" has yet invalidated a compulsory-eviction law like Granite City's. City Mem. 9. But

presumably, that's because most lawmakers respect their constituents enough not to enact such "controversial" laws in the first place. Compl. ¶ 14. The rest tend to cave long before federal lawsuits go up on appeal.[1] Put simply, "'[t]he easiest cases don't even arise.'" *Eberhardt v. O'Malley*, 17 F.3d 1023, 1028 (7th Cir. 1994). And as the TRO and the agreed preliminary injunction confirm, this case should proceed to the merits.[2]

II. Plaintiffs plausibly allege that Granite City's compulsory-eviction law violates the Equal Protection Clause (Second Claim).

Plaintiffs' equal-protection claim is no less plausible. Granite City's compulsory-eviction law targets innocent people—but only certain ones. For people who can afford to buy their homes outright, the City imposes no citywide duty to "exercis[e] control" over householders and guests. *See* City Mem. 7; *see also* Compl. ¶ 141. Likewise for people who qualify for a traditional mortgage. Compl. ¶ 141. Likewise for (some) people buying their home under installment contract. It's a different story, though, for people who rent. *Id.* ¶¶ 16, 142. That subset of people is held responsible for any offense that any household member or any guest commits anywhere within city limits (and sometimes, anywhere at all). *Id.* ¶¶ 21-23, 28.

As alleged in the complaint, the City's classifying residents along these lines plausibly violates the Equal Protection Clause. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*,

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[1] *See, e.g.*, Kirsten Swanson, *St. Louis Park suspends enforcement of controversial crime-free, drug-free ordinance*, abc5 (Dec. 18, 2018); Sean Evans, *City of Savannah suspends Crime Free Housing Program*, WTOC (Feb. 2, 2018); Carl Rotenberg, *$495K court settlement with ACLU, Norristown resident approved by council*, The Times Herald (Sept. 2, 2014).

[2] The City's assurance that it offers "the full gamut procedural due process" is questionable but beside the point. City Mem. 10; Compl. ¶¶ 40-41, 87-89. Whatever process it might afford, the City expels people from their homes for the crimes of others. That is why Plaintiffs plausibly allege that the law is unconstitutional. *Cf. Zinermon v. Burch*, 494 U.S. 113, 125 (1990) ("[T]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'").

473 U.S. 432, 439 (1985). It tests the validity of governmental "classifications." *Monarch Beverage Co. v. Cook*, 861 F.3d 678, 682 (7th Cir. 2017). And against this backdrop, Plaintiffs' equal-protection claim rises well "above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). On its face, the compulsory-eviction law treats people differently based on whether they are homeowners, mortgagors, installment buyers, or renters (Section A, below). That classification burdens a fundamental right—the right not to be punished for another's crime—meaning it merits strict scrutiny (Section B.1). Even if a fundamental right were not at stake, moreover, Plaintiffs plausibly allege that the classification lacks even a rational basis (Section B.2). Whatever level of scrutiny, Plaintiffs have a right to move past the pleadings.

A. By its terms, the compulsory-eviction law singles out renters and installment buyers for special burdens.

First things first. As in the *Barron* case, the City suggests that Debi and Andy seek to assert a "class of one" theory. City Mem. 11, 14. That misapprehends their claim; as in *Barron*, Debi and Andy's current complaint does not include a class-of-one claim. 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." *Monarch Beverage Co.*, 861 F.3d at 682. Here, by contrast, Debi and Andy are "challeng[ing] a statute or ordinance that by its terms imposes regulatory burdens on a specific class of persons." *Id.* By its terms, the City's compulsory-eviction law applies to specific classes: (1) people who rent their homes; and (2) people buying homes using certain installment contracts. No one else has any citywide duty to police their householders or guests. The City's challenged classification "appears in the text of the statute itself," *id.*, and the equal-protection question is straightforward: Does singling out renters (and installment buyers) have the necessary means-end fit? As discussed below, the complaint plausibly alleges that it does not.

B. Plaintiffs plausibly allege that the compulsory-eviction law's classification fails constitutional scrutiny.

"The equal-protection guarantee is 'concerned with governmental classifications that "affect some groups of citizens differently than others."'" *Id.* If "the state-crafted classification . . . 'impermissibly interferes' with a fundamental right," it merits strict scrutiny. *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1008 (7th Cir. 2019). And even if no fundamental right is implicated, a classification cannot stand if "arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446. Under either standard, Plaintiffs plausibly allege that Granite City's classifications are invalid, so their case should proceed.

1. Plaintiffs plausibly allege that the City's classification merits strict scrutiny.

The "basic concept" of our justice system is that "legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972). Yet the City's compulsory-eviction law carves out a different rule for certain people: those who rent their homes or buy them under short-term installment contracts. Those people stand to lose their homes if the City decides that any member of their household or any guest has committed any crime anywhere within city limits or, sometimes, anywhere at all. Compl. ¶¶ 21-24, 28. In this way, the City singles them out for a direct burden on a fundamental right: the right not to be punished for someone else's misdeeds. *See* pages 6-12, above. In 12(b)(6) terms, Plaintiffs plausibly allege that the classification "impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). That is enough for their equal-protection claim to move past the pleadings. The City's motion does not try to defend its law under strict scrutiny. Such a defense would be premature in any event; under heightened

scrutiny, the government bears an evidentiary burden that cannot be met at this stage. For this reason alone, Plaintiffs have a right to proceed to the merits on their equal-protection claim.

2. Plaintiffs plausibly allege that the City's classification fails even rational-basis scrutiny.

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

Plaintiffs' complaint alleges sufficient facts here. The City states that its compulsory-eviction law "aims to prevent, reduce, and deter criminal activity within the City." City Mem. 15. But as in its 12(b)(6) motion in *Barron*, the City remains silent on why classifying people based on their home-financing arrangements "bears a rational relationship to th[at] end." *St. Joan Antida High Sch. Inc.*, 919 F.3d at 1011. If you have the credit for a traditional mortgage, your daughter could steal the same van Tori did—under identical circumstances—and your home would be safe. Compl. ¶¶ 143-44. For people with fee-simple title, or mortgages, or certain

installment contracts, the City imposes no duty to "control" householders or guests. City Mem. 7. But things are different for renters. On pain of losing their home, people like Debi and Andy are saddled with an unprecedented legal burden: Unlike their neighbors, they are liable for the misdeeds of any householder or guest anywhere "within the city limits." Compl. ¶¶ 22-23, 142.

That classification is the main basis for Plaintiffs' equal-protection claim, and the complaint plausibly alleges that it "bears no relation to the statutory purpose." *Williams v. Vermont*, 472 U.S. 14, 24 (1985). Classifying residents based on their home-financing arrangements no more relates to "prevent[ing], reduc[ing], and deter[ring] criminal activity" than would classifying them based on student-loan debt or child support or car color. *See* City Mem. 15. Nor does the City argue otherwise. Beyond "bald assertions" of rationality, *Keenon v. Conlisk*, 507 F.2d 1259, 1261 (7th Cir. 1974), the City nowhere explains why it makes sense to require renters and short-term installment buyers—and nobody else—to police their householders and guests citywide.

The City's separate "Chronic Public Nuisance Properties" law gives still more reason to question this disparate treatment. Granite City Mun. Code §§ 8.97.010 *et seq.*, tinyurl.com/y6o6htep. The public-nuisance law addresses properties that are hotspots for crime—but unlike the compulsory-eviction law, it is written in evenhanded terms. It gives people two chances to "abate the nuisance activities." *Id.* § 8.97.050. It creates a defense for those who could not "control" the nuisance. *Id.* § 8.97.060(B). Most importantly, it achieves the City's public-safety goals with no distinctions at all between owners, mortgagors, renters, and installment buyers. *See id.* § 8.97.020 (defining "owner"). That, too, "necessarily casts considerable doubt" on the jigsaw classifications in the City's compulsory-eviction law. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973).

b. The City's motion to dismiss is also notable for the arguments it abandons. In the *Barron* case, for example, the City seeks to justify singling out renters by saying that renters' homes simply matter less than owner-occupied homes. Mem. Supp. Mot. Dismiss 11 (*Barron*) (ECF 22). Homeowners enjoy "increased protections," the City posits, while people with "only" equitable title have no cause to complain if the government kicks them out. *Id.* That argument—too candid by half—appears nowhere in the City's motion here.

The City has discarded a second line of argument also: that it singles out renters not because that classification relates to the City's claimed *object* (crime-control), but because renters are vulnerable to the City's preferred *punishment*—eviction. *Id.* 13. That argument gave the game away in *Barron*. "[E]ven in the ordinary equal protection case calling for the most deferential of standards," what matters is "the relation between the classification adopted and the object to be attained." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Yet by the City's own admission, there is no such relation here. Instead of writing its law in service of "an independent and legitimate legislative end," *id.* at 633, the City first picked the punishment it wanted to impose, then worked backwards. That is why the City's classification has everything to do with private real-estate disputes and nothing to do with public safety. *See* Compl. ¶¶ 141-51. That is also why any link between classification and crime-control "is not only 'imprecise,'" but "wholly without any rational basis." *Moreno*, 413 U.S. at 538.

That the City has abandoned so many arguments from a sibling case signals that Plaintiffs' claims are at least plausible. And if anything, the City's latest submission suggests that the City may be violating not just the Constitution, but other federal laws as well. In the City's telling, its compulsory-eviction law "incentivize[s]" landlords to "carefully select" tenants who are "less likely to be involved in criminal activity." City Mem. 16. The law makes landlords

"less likely" to rent to people who they think "likely" to commit crimes. *Id.* And the end-result, says the City, is that "would-be criminals"—or whoever landlords think are "would-be criminals"—will have a harder time finding housing. *Id.*

Those statements raise serious questions about the City's exposure under other federal laws. *See generally* Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019). But they do nothing to move the needle toward a 12(b)(6) dismissal here; nowhere does the City even begin to explain why "would-be criminals" are cause for concern when they associate with renters but not when they associate with homeowners. That gap confirms that Plaintiffs' equal-protection claim should proceed. Debi and Andy plausibly allege that the City's classification infringes a fundamental right, meriting strict scrutiny. They also allege—in far more than "conclusory" terms (City Mem. 15)—that the classification lacks even a rational basis. With all inferences in their favor, they have a right to proceed to the merits.

III. Plaintiffs properly assert a claim under the Takings Clause (Third Claim).

The City's request to dismiss Plaintiffs' takings claim tracks its *Barron* motion. So for the reasons set forth by the plaintiffs in *Barron*, Debi and Andy's takings claim is proper here. The City seeks to extinguish their "entire property interest" in their home. Compl. ¶ 177. That makes the City's actions "functionally equivalent" to a "classic taking," in which the government "ousts the owner from his domain." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 539 (2005).

As in *Barron*, the City appears not to dispute that its actions—once completed—will amount to a taking. *See* City Mem. 18 (asking that claim be dismissed "without prejudice"). Yet the City asserts that Debi and Andy's takings claim will not be "ripe" until after the City has ousted them. *Id.* 17. That is incorrect. "[T]here is nothing in the Constitution that prohibits anticipatory litigation over whether a taking that would entitle a property owner to compensation

has occurred or is being threatened." Thomas W. Merrill, *Anticipatory Remedies for Takings*, 128 Harv. L. Rev. 1630, 1633 (2015). And while the federal courts typically cannot use equitable decrees to undo takings once completed, *see Knick v. Township of Scott*, 139 S. Ct. 2162, 2179 (2019), the Supreme Court has long entertained claims for relief against ones that are threatened. *See, e.g.*, *Babbitt v. Youpee*, 519 U.S. 234, 242 (1997); *Duke Power Co. v. Carolina Envtl. Study Grp.*, 438 U.S. 59, 71 n.15 (1978). *Knick*, in fact—the only case the City cites for its ripeness theory—included a claim for forward-looking relief much like Plaintiffs' here. 2d Am. Compl. ¶¶ 44-53, 14-cv-2223 (M.D. Pa. Nov. 16, 2015) (ECF 21).[3]

IV. Plaintiffs plausibly allege a freedom-of-association claim (Fourth Claim).

Debi and Andy's final claim is proper as well. The City seeks to punish them because of their association with Debi's daughter. They have a right not to be punished on that ground.

In another departure from *Barron*, the City now contends that this claim is "foreclosed" by two Supreme Court opinions: the first, *Rucker*, and the second, a decision involving food-stamp eligibility, *Lyng v. Automobile Workers*, 485 U.S. 360 (1988). City Mem. 18. That argument is wrong for much the same reason the City's due-process argument is wrong: In neither *Rucker* nor *Lyng* was the government "attempting to criminally punish or civilly regulate [people] as members of the general populace." 535 U.S. at 135. *Rucker* involved the government's "acting as a landlord of property that it owns." *Id. Lyng* involved the temporary "withdrawal of a government benefit." 485 U.S. at 367 n.5.

Here, by contrast, Granite City is exercising coercive sovereign power. It seeks to evict Debi and Andy because of their connection with Debi's adult daughter. It appears to view even

[3] The City states in passing that the complaint's allegations about harm to Debi and Andy's property interests are "threadbare." City Mem. 18. But the complaint alleges that the City will "destroy[]" Debi and Andy's "entire property interest" if it coerces their eviction, and the harm of being thrown out of one's home is obvious. Compl. ¶ 177; *see also* Compl. Ex. 2, at 1.

the prospect that Debi's daughter might one day visit them for Christmas as unlawful. Compl. ¶¶ 82-83. Even under the City's conception of *Lyng* and *Rucker*, these allegations describe a plausible freedom-of-association claim. In fact, *Lyng* says as much. Temporarily freezing a family's eligibility for benefits might not "directly and substantially" burden their associational rights, the Court reasoned. 485 U.S. at 366. But subjecting the family as a whole to "civil liability" would be a different matter. *Id.* at 367 n.5.

Of course, all this distracts from a more basic point: Governments cannot constitutionally punish "all those who have been associated in any degree whatever with the main offenders." *United States v. Falcone*, 109 F.2d 579, 581 (2d Cir.) (L. Hand, J.), *aff'd*, 311 U.S. 205 (1940). Whether viewed through the lens of due process or associational freedom, that precept applies across our nation's legal system. It applies within the corporate limits of Granite City too—no matter what paperwork the City makes its residents sign. In arguing otherwise, the City breaks faith with "the accepted limits of imputation of guilt," *Scales*, 367 U.S. at 225 n.17, and for that reason above all this case should proceed.

CONCLUSION

For the foregoing reasons, Granite City's motion to dismiss should be denied.

Dated: November 27, 2019.

Respectfully submitted,

s/Samuel B. Gedge

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, I electronically filed this Plaintiffs' Response to Motion to Dismiss with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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