

ShortCircuit264

📅 Mon, Apr 29, 2024 8:30PM ⌚ 54:27

SUMMARY KEYWORDS

granite, landlord, city, eviction, crime, evict, law, laws, ordinances, katie, tenant, talking, commits, debbie, sam, government, city limits, rental, case, home

SPEAKERS

Housing Court Audio, Katy Ramsey Mason, Sam Gedge, Anthony Sanders

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Anthony Sanders 00:24

Hello, welcome to Short Circuit, your podcast on the Federal Courts of Appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on March 21 2023. And I'm very happy to say today is a special Short Circuit. We have a couple of experts in the area of crime free rental ordinances and related issues here today. And you might think, what is a crime free rental ordinance? Well, I'm glad you asked, you will learn that it is a fascinating subject. That cuts to a lot of constitutional problems we have in our cities today, and how cities are dealing with endemic issues in those cities. But also, it just provides a window into talking about some really fundamental issues, about how our society and our laws are structured. So I really hope that you enjoy this conversation that we're going to have with a very special guest and a regular guest who both know a lot about this issue. Now, first, I do want to give one more plug to a conference that we at the Center for Judicial Engagement are holding next week as we are recording this. So that's Friday, March 31 2023. We have our all day conference on Capitol Hill right by the Supreme Court at the top of the Hill Conference Center in Washington D.C., on the 100th anniversary of the case, Meyer v. Nebraska, the famous foreign language teaching case, that then led to all kinds of developments in constitutional law over the last 100 years. We hope that if you are in the area you might want to join us it is free with a free lunch. And if you're not, you can join us online either during the conference or thereafter and we'll put a link once again in the show notes. If you do want to come in person, Please RSVP ASAP. But now for today's show. So we have a very special guest with us today. She is the Assistant Professor of Law and Director of the Medical Legal Partnership Clinic at Humphrey School of Law, which is at the University of Memphis. And her name is Katy Ramsey Mason, she's a graduate like me, but in a much more distinguished way of the University of Wisconsin- Madison, where she got her J.D. and M.A. And she joins us to talk about crime free rental ordinances, something that she has litigated when she has worked with the impoverished with their problems and also in a scholarly capacity. So, Katy, welcome to Short Circuit.

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Katy Ramsey Mason 03:27

Thank you very happy to be here.

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Anthony Sanders 03:30

And also joining me is IJ is favorite ship captain Sam Gedge. Today he is not talking about his white weight, a whale of younger abstention. But perhaps talking about a different whale, hopefully not a white whale. Sam, welcome back. And he's going to talk about his his pending case at the Seventh Circuit. Thanks, Anthony. All right, Katy, let's get let's get to you. And in the work you've done in this area, I keep saying crime-free rental ordinance because that's kind of the angle on this whole issue that I've written a little bit about and looked into in the past. But I know it's it's larger than than just that type of law. So tell us what the problem is with renters who get in trouble with the law or know people who might come visit them who get in trouble with the law, and where that can leave them and why the government is interested in that subject.

K

Katy Ramsey Mason 04:30

Thank you for having me very happy to be here. crime free rental ordinances are municipal laws that exist in over 2000 cities and towns across the United States. They take various forms, but most frequently, they will either require or strongly encourage a landlord. And again, we're talking about private landlords in this situation. We're not talking about any kind of government subsidy as housing, these are laws that apply to private property that they will either require or strongly encourage a landlord to evict a tenant for a single alleged incident of criminal activity. And while the purported aim of the law is to keep cities and towns crime free as as part of the name of the ordinances, the reality is that the kind of activity, the location of the activity, and who commits the allegedly criminal activity can vary pretty widely and a lot of places have taken have painted a very with a very broad brush to draw in people who don't live at the property who were involved in something that never gets proven in a court of law, or who maybe engaged in the alleged activity very far away from the rental property where there's no real relation to the tenancy. So, Sam was going to talk about his case in Granite City, but I think that's really a great example. But one of the things that I say is that it could be a situation if you live in a place where it's a crime free rental ordinance, that you sign a lease with your landlord, you're often required to sign an additional addendum to the lease that they usually call a crime free lease addendum that basically says, If you or anyone you know, a household member, a guest, anyone who might be visiting you, is involved in criminal activity that can be grounds for eviction. If that happens, let's say for example, that a Your cousin is visiting for the weekend, staying with you and goes out to a bar downtown, gets in a fight downtown gets arrested gives your address as the place where he's staying in town. Even though he's only been there for 24 hours, even though he's intending to leave the next day, and has no intent to stay. It is entirely possible in cities that have these kinds of laws, that that could be a reason for your landlord to be required to evict you. One of the things that is particularly interesting, and I think also very troublesome about these laws is that normally, when you're dealing with a landlord tenant situation, there's a contractual relationship between the tenant and the landlord, where the landlord is the owner of the property, decides if the tenant has violated the terms of the tenancy in a way that the landlord wants to proceed with an eviction to seek possession repossession of the property many times with these ordinances, that decision by the landlord is no longer the landlord's decision. It's something that the local government decides for the landlord. So it's often the police department, who might call the landlord and say, Hey, we arrested somebody over the weekend who gave the address of the property that you own, you need to either evict the tenant who lives there, or you could face fines that can

amount sometimes to up to \$1,000 a day, for the time that they don't evict the person, or the loss of their business license if they're in a town where that requires a landlord to have a business license. So you know, sometimes, sometimes people think, does this really matter to me, because I don't, I don't rent my home. I don't necessarily, and I certainly don't know anybody who would be involved in criminal activity. But this is really an issue for everyone. Certainly, if you own property, if you are ever considering becoming a landlord, this is something that could be very important to you. And also, if you or someone you know, does rent their property, the these laws are so broad, sweeping that it's entirely possible that that's something that that a person does, that you have no knowledge of, and no connection to could result in the eviction of you or someone, a loved one a family friend, whatever the case may be.

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Anthony Sanders 09:23

And Sam, how does that relate to some of the experiences that you've had in Granite City, either your clients or, you know, other stories you've heard?

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Sam Gedge 09:34

Absolutely. And thanks, Anthony. So I agree with everything that Katy just said about how these laws operate. The standard line is that there are about 2000 of these kind of municipalities nationwide. It's not clear exactly how many of them have these kinds of mandatory eviction programs where the government is actively forcing unwilling landlords to evict their tenants versus more voluntary programs. They're kind of different kinds of issues that arise depending on the specifics of each program. But I think the city of Granite City, which is an Illinois really manages to capture all of the kind of the cruelest and the most arbitrary and the most malevolent aspects of the crime free housing concept that Katy was talking about. So I guess just to give a little bit of background on Granite City and the way that its laws worked, it's a relatively small town. It's across the river from St. Louis, Missouri, and throughout the 2010s, Granite City and forced what they called a crime free housing ordinance. But, I think that that labels kind of benign, right, like who nobody likes crime, like we like things to be crime free, right. But I think Granite City's example really kind of puts in sharp relief that that's a benign label, and it can really be a cover for ultimately, a systematic, and really kind of shocking compulsory eviction law. In Granite City, the law applied across the board to everybody who lived in a rental home within city limits. So not just public housing, but private rental housing, private landlords renting private property to tenants who are paying rent with private income, and the law was mandatory. So landlords and tenants were automatically subject to it, they couldn't opt out of it. They couldn't contract around it, this law applied to them. And under the law, city, police would force private landlords to evict entire households, if any household member was charged with having committed a crime anywhere within city limits. I think Granite City is something like 20 square miles, if someone in your household commits, even a low level federal felony anywhere within that 20 square mile area, the city would come in and would compel your landlord to evict your entire family. So if your husband or your wife...

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Anthony Sanders 11:56

And it's not a like, as Katy was saying, it's not a conviction. Right? It's that there's some evidence, does it have to be a charge and arrest at what level do they need before this process

begins?

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Sam Gedge 12:08

Yeah, so the way it worked in Granite City, is that if somebody was charged with having committed a felony within city limits, that would be the trigger. And theoretically, people could appeal to City Hall and it would be a preponderance of the evidence standard. But I think that kind of distracts almost from the more fundamental problem, which is that kind of whatever the standard of proof, what the city is trying to prove is not that you've done anything wrong, but that somebody who's associated with you did something wrong.

A

Anthony Sanders 12:36

Is there a defense like, okay, that was my cousin who came. I know, he's had problems in the past, but I thought he had cleaned up his act. And so it was out of left field to me that he got in that fight, or is it just kind of a straight line from the offense to you can't live there anymore?

S

Sam Gedge 12:54

There was no no defense along those lines. And we can talk in a few minutes about, our clients experience, which I think really puts a fine point on this. It didn't matter whether you knew that the crime was going to take place, it doesn't matter whether you were a co conspirator, it doesn't matter whether you reasonably should have known, it didn't matter whether your landlord wanted to keep you all that mattered was that someone who the city thought was, a household members with you committed or was charged with committing, even a low level felony within city limits, that on off switches on and the police send a letter to your landlord saying everyone's gotta go. Now, I know, when I first learned about this, and I kind of got up to speed on it first by reading Katy's article in the UCLA Law Review, which I've said many times, it's an excellent article, so I'll say it again. But I was kind of shocked by the entire system. And I imagined that kind of someone some of your listeners might think that we're kind of exaggerating this a little bit. Anthony, we talked about having some audio excerpts and we pulled together a few clips of the city's own officials in City Hall hearings, describing in their own words how the law works, so I think it might be worth just taking a minute to play those these are the folks who are enforcing it and this is how they're describing it right.

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Anthony Sanders 14:07

What we're about to play are proceedings in the housing court in Granite City where they're going to discussing legally how this law operates.

H

Housing Court Audio 14:26

"According to the crime free housing we put in them here Granite City, any lessee or any member of lessee's household shall not engage in criminal activity, including drug related

criminal activity within the city limits of grand city." "So that's what we're doing today. The hearing is basically for me to determine whether the crime free housing ordinance in Grant has been violated or not. If it has, my options are only option two is to help landlords and if you haven't violated that, then I don't have to instruct landlords evict you. Would you sign your lease? Do you remember? Did your properties present you with an agreement. You would know that for the crime free housing act that visitors and residents are responsible for if they commit acts on or near somewhere in the city that you're responsible for. You can be evicted. "I didn't know that he had given my address, knowing that he don't live here. He only know my address. He don't know His mother's address. I don't even know his mother's address."

S

Sam Gedge 15:33

So that's the city officials describing how the law works. Household wide collective punishment for want of a better term. And throughout the 2010s Granite City really enforced this system relentlessly in 2019. Just to give you a couple of examples, but in 2019, the city ordered a family's eviction because one family member had kicked a police officer's shin at a church picnic, which had taken place more than a mile away from the rental home. There was no suggestion that any other family members had been involved in the shin kicking incident, but everybody was forced to be evicted from their home. That same year, the city ordered another households eviction because one member had been charged with shoplifting from the Walmart across town. They had ordered another household eviction because one household member drove on a revoked license within city limits. The list really goes on and we could talk about it for an hour. But But between 2014 and 2019 alone the city issued more than 300 compulsory eviction demands to rental families within city limits. More than 100 of those compulsory eviction demands, involve alleged crimes that didn't actually take place at the rental home but just took place within city limits. So this really was kind of unprecedented, I think in the scale and cruelty that we saw on display just as a matter of daily life within Granite City. But I do think it might be worth talking for a minute about our clients because as you mentioned, Anthony we've been litigating a challenge to Granite City's law for the past few years. We represent a couple, Debi Brumit and Andy Simpson, Debi and Andy moved to a small neatly kept rental home in Granite City in 2016. And Debi's youngest daughter, Tory at that time, she was in her early 20s. She lived with them on and off sometimes as as people with children's experienced I think a lot of us can relate to. And by early 2019, Tory had two young kids of her own. They were I think one and three years old at the time. So she and her kids start staying with with Debi and Andy in Granite City. But it soon became clear to Debi and Andy that Tory that Debi's daughter was struggling with substance abuse. So they they tried to help her for a while. But ultimately they kind of resorted to tough love. So Debi tells her daughter Tory, you gotta go, we will of course, do anything we can to help you turn your life around. But until you're able to show us that you're willing to get clean and take care of your kids, you're not welcome in our home anymore. And so Tory leaves, and she leaves her children with Debi and Andy in Granite City. And a few weeks later, Tory, the daughter calls up her mom and says, I'm ready to get treatment, my boyfriend and I would like your help and getting addiction treatment. So Debi, the mom drives and picks up her daughter immediately in Missouri, takes her and her boyfriend to Granite City. And the next night she takes them to the local hospital and checks them in, they go back to triage, Debi goes home. And she's I think confident that that her daughter will get the help that she needs. But it's gonna make a long story short things go wrong. So the hospital releases the couple that night, and the couple ended up stealing or trying to steal a national rent to own van. They do a apparently a pretty bad job of trying to steal the van they get immediately pulled over and arrested and they're charged and as far as that goes that's kind of unremarkable. Right? They've they've tried to steal a car and they're,

they're put in jail for it. But days later city police in Granite City sent a letter to Debi and Andy and their landlord as well. And it turns out that when Debi's daughter stole that van she had done so within the city limits of Granite City. And in the city's view, Debi's daughter was a resident of their rental home with them. And just on that basis alone, the city said, you may not have had anything to do with the car theft, you may not have known about it and they didn't. You may not have been able to do anything about it and they couldn't have and your landlord may want to keep you in your home. And he did. But the city said it doesn't matter. Someone associated with your household committed a crime within city limits and you have to be evicted, whether or not your landlord wants you to. So their experience I think really captures some of the just the arbitrariness and cruelty of how this law worked. And I'm happy to kind of talk about the legal theory that we're presenting and the course of litigation but that's I think a really powerful example of just how it kind of in the name of protecting law abiding citizens cities like Granite City would make law abiding citizens homeless and visit these really irreparable harms on them.

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Anthony Sanders 20:04

Especially it seems the arbitrariness of this because this years ago, I was watching a City Council meeting about a different kind of rental regulation, but one that I thought was terrifically unfair and unconstitutional. Which was banning people from being able to rent their houses out at all, but not because of anything they did. And the city attorney said, Well, this law gives us another tool in the toolbox. As in, maybe we'd use it, maybe we wouldn't, but it's good to have this authority that you can swing around if you think you need it. And I'm guessing, Sam, that when this happens, the city doesn't always pull the trigger for for anyone who commits a crime, anyone who commits a crime in the city, they don't immediately trace it to wherever they lived. And then if it's a if it's a rental immediately tried to evict that, that family, they use it as, as another tool in case they want to do it anyway.

S

Sam Gedge 21:10

So you might think that, I think fairly Anthony, I'm sure there are cities where that's true. What I think set Granite City apart, in fact, is that they actually had a pretty sophisticated system where they would do just that, where there were two police officers whose entire job was to like, read through the previous night's arrests and charges. And they would cross reference the addresses that people gave at that booking. And if the address was a rental address on their list of rental properties, like they would, you know, fire up the compulsory eviction machine and send off a letter within a day or two. So it really was this very blunt instrument.

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Anthony Sanders 21:47

Well they would they would have a defense then to my critique, which is at least consistent.

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Sam Gedge 21:54

Yes, they were consistent across the board. Yeah, I was just gonna say, I think Katy can probably speak to this more than I can. But there is certainly a concern nationwide when it comes to these laws that they are in fact being used strategically to target certain people or

comes to these laws that they are in fact being used strategically to target certain people or certain demographics who the people in power don't like or are or find untrustworthy. So I'm certainly not the expert on advocating maybe maybe you have some thoughts on that.

K

Katy Ramsey Mason 22:19

There certainly are places that are enforcing these laws in exactly the way you described, Anthony. I've read a lot of crime free ordinances, as I have been researching these over the last five to six years. And you do find some that are very detailed, Granite City's was more detailed than many that you see, but the lack of detail that a lot of them have going back to a point you made earlier about credit or simply an arrest be enough of a basis to trigger the enforcement of these laws. In many places, the answer is yes. And there's really no no specificity around what the the alleged criminal activity has to entail. What level of the criminal justice system you have to get to, is it an arrest? Is it a report? Is it a charge? Is it a conviction, whatever the case may be, and who these laws are intended to be enforced against. And so there have been a couple of other lawsuits, some of which the DOJ has gotten involved in, in California and Florida and Minnesota, where there have been very specific allegations of racial discrimination on the part of the government and the enforcement of these laws.

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Anthony Sanders 23:39

I know, the ACLU in Minnesota has been involved in in one particular case, and I did a op ed about that case, a little over a year ago. And we'll put a link to some of that information in the show notes. One other thing that we will definitely link in the show notes is a Katy's UCLA law review article that Sam mentioned earlier. I had a couple of questions for you about that. Katy, you give a great history. And I think when you get into an area like this, it's always good to know that the history of this regulation, that really this idea, I mean, we've had right we've had people committing crimes living in rental housing for a very long time. Rental Housing being associated with various problems of course, it's been with us very long time whether that's justified or not by the by the evidence that perception, but what you what you describe is that the idea of kicking someone out for one bad offense started in public housing. And there you can kind of get where the government's coming from because they're the landlord. They don't want troublemakers living in public housing, you're getting it as a kind of benefit in the first place. But that somehow that kind of that accretion jumped from public housing to just applying it across the board, at the city level, kind of because of how that the the powers that cities have that they really haven't always had, if you could describe a little that, that history, and I really like your point about cities that have a lot more power than they used to have quite some time ago, and being kind of little states unto themselves with full police powers has led to them doing things that maybe wouldn't happen at the state level and such in such an arbitrary way as we get with this particular kind of law.

K

Katy Ramsey Mason 25:41

Yes, the these crime free housing ordinances are based on a federal law that is commonly referred to as the one strike policy. And this was something that was actually first put into place for federal public housing back in the 1980s. And then it's called The One strike policy,

because President Clinton and his 1996, State of the Union Address, talked about this policy and said, when it comes to people committing crimes and doing drugs and public housing, it's one strike and you're out.

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Anthony Sanders 26:13

That was back when Dick Morris was writing his speeches, by the way,

K

Katy Ramsey Mason 26:19

Yeah. So it's, that's where the term one strike policy comes from. So this was being pretty regularly used and enforced in public housing for a while before it started to make its way into municipal law, and non the non public housing context. But in 2002, the Supreme Court decided a case that was called Department of Housing and Urban Development v. Rucker. This was a case out of Oakland, California, where the Oakland Housing Authority was trying to evict four tenants for essentially this very similar situation to what Sam described in Granite City. They were all public housing tenants, and they had all had guests or family members arrested or charged for drug crimes, but there was no allegation that the tenant themselves were involved in or aware of any of this. And so the the tenant sued and said, This isn't fair. We we had no knowledge of this, you can't punish us for something that other people did. The Supreme Court. Well, the District Court and the Ninth Circuit agreed with the tenants and the Supreme Court said actually, no, the if the government had, the government has an interest in reducing and preventing crime in property that it owns and manages as the landlord, and therefore, they are within their authority to enact such a law Congress was entirely within within its power to to pass this law and HUD was within its authority to enact a regulation that required these terms to be put into the lease. There was no discussion in that decision about the private market contexts, I think, largely because it didn't really exist at that time, at least not on the scale that we see it today. And so, the case was really about statutory interpretation and Congress's authority to make laws about property that it owns. There is dicta in the case, that says, if we were talking about the private market, we might be having different conversations around constitutional issues that the tenants raise, but because we're not, we're not going to deal with that. So that case, has really been used by many governments, including Granite City to justify the constitutionality of their ordinance as it applies to private property, even though that's not what the case talks about at all. And so, the Anthony, I'm forgetting the second part of your question.

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Anthony Sanders 29:15

How it jumps from the realm of regulating public property to just being a law for everyone. You would think that's a pretty hard barrier, because, understandably, it's very different. And yet, it seems like it flows naturally from one to the other in some of the regulators minds.

K

Katy Ramsey Mason 29:36

Yeah. So, I remember you had asked about the expanded police power that cities have and how that has contributed to the to the promulgation of these laws across the country. And one of the things that I often say when I talk about these laws is that I think they they fly under the

one thing that I often say when I talk about these laws is that I think they they fly under the radar. There is not a whole lot of scrutiny happening of local government lawmaking. And so while of course, it is supposed to be a public and transparent process, a lot of it is not. There's not a lot of attention being paid as these laws are being passed, or, to the extent that there is, it's the government, the mayor, the police chief, saying, Hey, we're trying to prevent and reduce crime in our city. And of course, who's going to disagree with that, but there's not really a close look being taken at what these laws mean, how they're written, how they're structured, how they're being enforced. And I think that that's how we see a lot of these really broad, and, as Sam said, blunt instruments being put into place. And not a lot of challenges happening to them yet. It's also hard, because of course, with 2000+ municipalities in the country with these laws in place, it's hard to go after all of those cities. And so it's, it's kind of taking it bit by bit. And, of course, the Institute for Justice and the ACLU have been proactive on starting to challenge some of them, which I think is great. But definitely, this is a this is an expansion of the traditional understanding of a local governments police power.

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Anthony Sanders 31:32

Yes, this is a latest iteration of lots of regulations of the landlord tenant relationship that kind of go beyond the making sure the tenant safe type of regulation that I think we all are okay with, but the landlord licensing the restrictions of the number of landlords, landlords come out and kind of fight against those are, they're often seen as the bad guy, when, when that happens. But when it gets to this level, where it's the landlord can evict someone because he's told by the city that he has to, I think maybe the landlord's less likely to fight against that. And the people who will fight who would fight against it, it's more just an A esoteric, constitutional reason that people don't usually organize against Sam.

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Sam Gedge 32:25

Yeah. And so me, I think Katy's comment on Rucker, the the Supreme Court case from oh two is actually a really good point. And it's always struck me as kind of an interesting quirk about this whole system. Because in that case, as Katy said, like what the court really said it's not really a constitutional problem, if you have the government acting as a landlord, kind of like dealing with its own tenants like in the same way that like a private landlord, dealing with their own tenants kind of has contractual rights, and they can enforce their contractual rights. And that's not a due process problem, according to the court and Rucker. But the court really was kind of clear and saying that, but of course, the situation will be entirely different if you have the government acting as a sovereign, and trying to punish entire households, like as a way of regulating people just as members of the general population. That would be an entirely different kind of due process analysis. And as I read Rucker and obviously, I have my own views on what's right and wrong in this area. But it seems pretty clear that you read the opinion. And I don't know anyone could read it and think, yes, household wide collective punishment imposed by governments is a okay under the Constitution. The Supreme Court has never said that, it didn't say that in Rucker and in fact, has said the opposite many times over the course of our history, that of course, governments don't have the power constitutionally to punish Person A for the crimes of Person B. And I think crime free laws, like Granite Cities, and certainly Granite City isn't the only the only municipality that's had this kind of law really kind of puts into sharp relief, these really kind of fundamental questions about how our system of

government is supposed to work, right? Like, can the government punish entire families because one member commits a crime? Can the government, saddle entire households with collective responsibility for one another's acts?

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Anthony Sanders 34:11

Corruption of blood clause in the Constitution? Or I know, it's a different context, but that value is out there.

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Sam Gedge 34:19

I am so glad you mentioned that, Anthony, because there is and yeah, right. The framers didn't write the corruption of the blood clause, while thinking about city coerced evictions from rental properties, this was in 1790 or 91. But the principle is really similar, right? The idea that you don't want the government punishing entire families or entire household or entire units based on the crimes of one person, because, the government doesn't have the power to do that. And there's just no justification for being able to do that. Now, I guess I'm kind of saying this, like, it's obvious and correct and I think it is obvious and correct, but I should add at this point, and that the district court in Debi and Andy's case did not find it obvious and correct. So she entered kind of early interim orders that preserved their ability to stay in their home. She entered a temporary restraining order, saying that that Granite City could not force them out of their home. But ultimately, she ruled against them. And she said that Granite City's compulsory eviction law was constitutional. And so that's the case. It's on appeal to the Seventh Circuit right now. Katy authored a fantastic amicus brief, which I think shared some some of the insights that she's talked about today. But but it really does, I think, tee up these fundamental issues about like, what kind of power does the government have to punish innocent people while blaming citizens for crimes they had nothing to do with? It raises questions about can the government single out people who rent for these really unprecedented burdens just based on the assumption that people who rent just kind of have less of a stake in their community than people who own and that that is literally the argument that Granite City has made for why it makes sense to single out renters for this kind of collective punishment, but not single out people who owned their homes or who have mortgages.

A

Anthony Sanders 36:08

I'd like to get back to Katy, in a moment about some of the broader issues that we're talking about here. But could you tell us what kind of where the case exactly is that at the Seventh Circuit, and also the claims that you're bringing in that you're looking forward to the court ruling on?

S

Sam Gedge 36:29

So the district court ultimately ruled against Debi and Andy, without getting too in the weeds legally, on a motion to dismiss and a motion for summary judgment. But the claims, I think, are really fundamental ones. First, we have a due process claim. And the idea here is simple that the government cannot constitutionally punish entire households because one member

commits a crime, that just violates the Due Process Clause, we have a fundamental right not to be penalized by the government for other people's crimes. The other main claim is an Equal Protection claim, the idea that the government cannot single out renters alone for these kinds of unprecedented burdens. You know, if Debi, and Andy had owned their home, for example, or if they had a mortgage, then Debi's daughter could have stolen all the vans in the city. And nobody would be holding Debi and Andy accountable for that. It's only because they happen to rent that they faced this burden. And the final claim is an associational rights claim, the idea that the the Supreme Court has held that the Constitution protects certain intimate associations and other associations. And if you have a city like Granite City, and others that is imposing this really irreparable harm, like taking your home, based purely on who you choose to make a home with, that is an obvious unconstitutional burden on your right to associate with people as members of your household. So again, those issues are all teed up in the Seventh Circuit. And I'm happy I can talk about that forever. But I'll turn it back to you, Anthony.

A

Anthony Sanders 37:49

Okay, great. Do you know when oral argument will be?

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Sam Gedge 37:53

No, we don't have a scheduled if I had to guess I would say late spring, early summer of this year.

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Anthony Sanders 37:57

Okay. Well, we'll look forward to that. Katy, did I have a broad question for you in a moment, but anything else you'd like to say about your scholarship on the matter? And in the how it all relates to the wind strike policy?

K

Katy Ramsey Mason 38:13

Sure, I had the article in 2018, in the UCLA Law Review, that really covered some of the survey of the constitutional issues that I identified with these with these ordinances, and the the one strike policy, it just was never intended to be applied to the private housing market. And so I think the fact that it has been that it has been applied on such a widespread manner is really troubling. And I think especially when it when you're talking about the discretion that the landlord typically has had to decide whether or not to evict a tenant, because of anything that the tenant does, and taking that away from the landlord and placing it with the local government, which again, usually means the police department, I think, is really one of the one of the most disturbing aspects of these of these laws. I'm working on another paper right now that I'm hoping will be out later this year or early next year on the the, what I believe is the attempt to circumvent the criminal justice system through the use of the civil justice system, because especially in places where there is some level of proof that is less than a conviction that's required. People are not always convicted of the criminal activity that can result in the eviction, yet sometimes the end result is the same the removal of supposedly undesirable

people from the community which would happen if somebody was incarcerated at the end of a criminal justice proceeding is accomplished through eviction under these crime free ordinances. So I'll keep you posted on the progress of that.

A

Anthony Sanders 40:19

Look forward to that. And I have to say that also sounds very familiar, probably to many listeners, because it sounds a lot like civil forfeiture, which, of course, is different than criminal forfeiture, as we talked about it. So that also goes into this bigger question I have for you, for your kids, so some defenders of this law, or at least the spirit behind this type of law are going to say, look, there are people who live in live in a city. And because of their history and their behavior, they're not in a position to own a home. So somehow, they live somewhere that's usually a rental home, and they create societal problems, maybe they don't commit a crime is that going to lock them up for several years, but they are committing enough, either crimes or other behavior, that they are antisocial. And the the people's people who live around them, whether on the same block, or in this, in the extended community are affected by them. And so we need a way to get them out of where they live. And people associated with them? Well, they are, they're part of the problem, too, because they're not preventing them from living there. Now, my response to that is well, if you take that to its logical conclusion, you're basically saying, it's okay to have, if you're not going to lock someone up, it's okay to just exile them from a community because that's essentially what you're doing and saying you can't live in rental housing, and of course, they're not going to be able to buy a home. So they basically are either homeless, or they can't live in that city. But they have a point that, if everyone just then this is the whole point of most of this kind of regulation, if everyone just lived a nice bourgeois life, we would not have any of these problems, people would not be committing crimes, people would be taking care of their property, getting a job going about their way. But of course, we know the world isn't like that people act this way, for all kinds of reasons, have very little to do with what, City Hall has a control over. And so we need to live together in a way where people like people who maybe have a strike or two against them, and rely on the their family and friends for looking after them and making it through whatever period in their life, they have. They need to live somewhere. And we can deal with when they when they slip up occasionally, but to the extent that we go to people who have done nothing wrong, and are maybe trying even to help them out, and taking it out on them really seems like it goes past, whatever lying that there should be constitutionally. But getting back to the point that these people have that there has to be a way to dealing with this antisocial behavior. And this is a this is a good faith effort at dealing with it. What is your best response to them? Do you have an alternative?

K

Katy Ramsey Mason 43:41

Yeah, that brings up a lot of questions. And usually, what I say in response to questions like that is the existing landlord tenant law already allows for landlords to evict people from rental properties who they believe are not following the terms of their tenancy. So, if you have, say, a house located on a street, where there seems to be a lot of drug activity, people coming and going, loud music or, parties or whatever, and that's disturbing the neighbors and disturbing the community. There's no, I don't think that anybody would disagree that something needs to be done to deal with that. But in every state landlords already are allowed to bring an eviction against people for as a nuisance situation like that without the use of these crime free

ordinances. So someone mentioned earlier about the the additional tool in the toolbox. This is something that is that is an additional tool in the toolbox that's not needed for those types of situations. And also, it really is targeted at people who can't afford to buy a home or who choose not to buy. And so as Sam said, about the plaintiffs in Granite City, if they had a mortgage, they would not be in this situation, their daughter could have committed all the crimes in the world, and they would not have lost their home. And so, when we're talking about people who are more likely to rent, those tend to be people who are lower income, oftentimes people of color. And what what we see is that a lot of these cities that have these ordinances have a pretty high percentage of owner occupied housing and a lower percentage of rental housing. And the rental housing tends to be occupied by people who are poor. And there is a pretty clear link that you can draw to the different treatment that people who are renters receive, versus home owners. You could have a nuisance house on the street. And if the if the person who is creating the nuisance is the owner of the property, it would be much harder to deal with that property than if it was renters. And so, that's just not fair. That's really what I keep coming back to. I know that's a that's a relatively simplistic statement. But it really and again, not to say that there is, that preventing and reducing crime is not a legitimate purpose of the government or a legitimate goal of neighborhoods and communities at all. But there are already ways in when it comes to rental properties for landlords and for governments to deal with that without requiring the use of these types of ordinances that just sweep up so many people outside of the orbit of the actual criminal activity.

S

Sam Gedge 47:19

Can I chime in? Because I think I answered your question. And Katy, your response kind of reminded me of something which jumps out a lot and kind of crime free literature, which is that proponents of crime free housing laws often like to use the shorthand phrase that criminals are like weeds, and we're using these laws to to pull up the weed by the roots. And I don't know that that's always struck me as kind of a creepy way of describing it. But I mean, what they're really saying is that, these criminals gonna pull out the weeds and the roots. But but when they say roots, what they mean are, like all of the innocent people who happen to live with and have relationships with criminals, and, they're kind of collateral damage almost. And it's always struck me as entirely paradoxical if the proponents of these laws are kind of holding them up as a way of protecting the good law abiding citizens of the community. At the same time, they're purporting to achieve that goal by visiting these devastating irreparable harms on good law abiding members of their community. And they're doing it in large part just because they think those people are less worthy of their respect, and then their protection.

K

Katy Ramsey Mason 48:20

I think it's actually pretty hard for any of us to not have associations with people who have committed some kind of criminal activity.

A

Anthony Sanders 48:27

Absolutely. Well, Sam, would we maybe want to close by hearing a little bit more from the housing court and in relating to the what these real people have to go through?

S

Sam Gedge 48:42

I think that'd be great, Anthony. So I guess just to maybe do a little bit of scene setting for a minute, so that folks can know what we're listening to. These were a couple of more audio clips, than I think at least they really illustrate, the unfairness that is, I think intuitive to all of us when it comes to these kinds of laws. So I think we're gonna hear excerpts from three women in Granite City, all of them received compulsory eviction orders, because men that they were associated with had been arrested for crimes within city limits. For one, I think it's her adult son, for the other two, it's the fathers of their children. And each of these excerpts, the city officials are holding these public hearings, to decide whether to order the women's landlords to evict them based on the acts of the men in their lives. And I think that in each of them, the city ultimately said that these women did in fact have to lose their homes. So with that as the kind of the background, maybe we can play their their clips now.

A

Anthony Sanders 49:38

Okay, let's roll.

H

Housing Court Audio 49:41

"I've got a question. Do you know where your son was going when he left your house that day?"

H

Housing Court Audio 49:51

"No, because he wasn't at my house. He was just around because he had friends and he graduated from Granite City High School."

H

Housing Court Audio 49:57

"Okay, so he was living with you when he went to Granite City High School?"

H

Housing Court Audio 50:00

"Yeah."

H

Housing Court Audio 50:02

"And so he doesn't he doesn't come to your house at all? You're his mom."

H

Housing Court Audio 50:07

"Yeah, he comes, but he wasn't there for that day."

H Housing Court Audio 50:09
He hadn't been there that day?"

H Housing Court Audio 50:11
"No."

H Housing Court Audio 50:11
"Was it possible he was there and you didn't see him?"

H Housing Court Audio 50:16
"Probably I work. Okay."

H Housing Court Audio 50:17
So he could have been there that day and you just didn't see him."

H Housing Court Audio 50:19
"But I don't think he was there."

H Housing Court Audio 50:22
"He comes and visit you."

H Housing Court Audio 50:24
"Yes, he does."

H Housing Court Audio 50:25
"Nothing further."

H Housing Court Audio 50:26
"So you can go on and testify."

H Housing Court Audio 50:33

"Darnell Forman don't live with me. That is my child's father. Yes, I work. I work every day, tonight I have to work. He come watch with my son. And that's the only babysitter I have. Other than that I will lose my house. He lives in Madison, with his mother, he did not live with me."

H Housing Court Audio 50:59

"I don't lose my place because he was an idiot and did something stupid and had something on him he shouldn't have had. Because we're going through our own personal issues, and he hasn't even been staying with me. I don't want to lose my place because of something he did. He wasn't at our house or anything. But I don't know why he came my address. Me and him done had like six fights because of that."

H Housing Court Audio 51:31

"He's lived there for a year."

H Housing Court Audio 51:36

"He hasn't actually even stayed there he stays the night every now and then to visit his daughter."

A Anthony Sanders 51:41

Well, that's an experience I hope none of us ever have to go through. And those listening never have to go through. Katy, before we close do you have anything additional, you'd like to say about what you've seen on this issue, your scholarship and what the maybe the listeners maybe should take away?

K Katy Ramsey Mason 52:01

Yeah, so I think that it's important for people to take a look at your municipal code in the city or town where you live and see if your community actually has one of these laws and think about what the effect might be on you, your friends, your loved ones. And think about whether there is a better way for your local government to approach whatever the problem is that they're trying to address through the law, or prevent through the law. Because the likelihood that you, you or somebody that you know, could be caught up in the periphery of the enforcement of these laws is is pretty high, depending on where you live. And I think it's really important for people to just be aware that this is so widespread, because until I started reaching researching this, I had no idea how many of these ordinances existed and how fundamental these issues are that we've been talking about, when it comes to constitutional protections. And the lack of definition around those protections, as the law currently stands. And of course, cases like Sam's

are going a long way towards helping put some more definition and limit around what the constitutional protections should or should not be for people under these ordinances. But right now, it's a pretty gray area.

A

Anthony Sanders 53:33

Well, we hope that gets a little less gray, at least at the Seventh Circuit and the future will look forward to Sam's work in his colleagues work on that case, pay attention to Short Circuit, the newsletter for the ruling in that case, which will be a little ways away as of yet. And both of you thanks so much for coming on the Short Circuit podcasts and again, Katy Ramsey Mason, she is a professor at the University of Memphis and we'll put a link up to her fabulous article in the show notes. And in the meantime, for everyone else, I hope you've enjoyed this special Short Circuit. And I hope that all of you get engaged.