No. 25-50025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, LLC, ENRICO MARFIL, NAOMI MARFIL, KOREY A. RHOLACK, DANIEL OLVEDA, and DOUGLAS WAYNE MATHES
Plaintiffs - Appellants,

v.

CITY OF NEW BRAUNFELS, TEXAS,
Defendant - Appellee.

Appeal from the United States District Court
for the Western District of Texas, Waco Division
No. 6:20-CV-248 (Hon. Alan D. Albright)

BRIEF *AMICI CURIAE* OF THE MANHATTAN INSTITUTE, REASON FOUNDATION, SOUTHEASTERN LEGAL FOUNDATION, CITIZEN ACTION DEFENSE FUND, AND TEXAS CONSERVATIVE COALITION RESEARCH INSTITUTE IN SUPPORT OF APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the following *amici curiae* (with state of incorporation) hereby proffer that each has no parent companies, subsidiaries, or affiliates that have issued shares to the public:

Manhattan Institute for Policy Research (New York);

Reason Foundation (California)

Southeastern Legal Foundation (Georgia);

Citizen Action Defense Fund (Washington); and

Texas Conservative Coalition Research Institute (Texas).

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(a), the Manhattan Institute for Policy Research ("MI"), Reason Foundation ("Reason"), Southeastern Legal Foundation ("SLF"), Citizen Action Defense Fund ("CADF") and Texas Conservative Coalition Research Institute ("TCCRI") submit this brief as *amici curiae* in support of Appellants.[1]

MI is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, it has historically sponsored scholarship and filed briefs supporting constitutional protections for property rights and meaningful judicial review of government actions that violate those protections.

Reason is a national, nonpartisan, nonprofit think tank founded in 1978. Reason's mission is to advance a free society by applying and promoting libertarian principles and policies—including free markets,

[1] In accordance with Fed. R. App. P. 29(a)(4)(E), counsel for all parties were timely notified of and have consented to the filing of this brief. *Amici* affirm that no counsel for any party authored this brief in any part and that no person other than *amici*, their members, or their counsel have made a monetary contribution to fund its preparation or submission.

individual liberty, and the rule of law. Reason supports dynamic market-based policies that allow and encourage individuals and voluntary institutions to flourish. Reason advances its mission by publishing Reason magazine, as well as commentary on its websites, and by issuing policy research reports.

Founded in 1976, **SLF** is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic. For nearly 50 years, SLF has advocated, both in and out of the courtroom, for the protection of private property interests from unconstitutional governmental takings. SLF regularly represents property owners challenging overreaching government actions in violation of their property rights and frequently files amicus curiae briefs in support of property owners before the Supreme Court and federal courts of appeals.

CADF is an independent, nonprofit organization based in Washington State that supports and pursues strategic, high-impact litigation to advance free markets, restrain government overreach, and defend constitutional rights. As a government watchdog, CADF files lawsuits, represents affected parties, intervenes in cases, and files *amicus* briefs when a state enacts laws that violate the state or federal

constitutions, when government officials take actions that infringe upon the Fifth Amendment or other constitutional rights, and when agencies promulgate rules in violation of state law.

TCCRI was founded in 1995 by conservative leaders determined to implement conservative public policies in state government. TCCRI's work is guided by its core principles of limited government, individual liberty, free enterprise, and traditional values (the "LIFT" principles). Its research reports, Task Forces, and policy summits have been instrumental in generating proposals that are shaping Texas government and influencing a new generation of conservative leadership

In filing this brief, *amici* urge the Court to hold that short-term rental bans, to the extent they interfere with the fundamental property rights to permit or exclude others onto one's property, per se violate the Takings Clause. This case interests *amici* because bans on any housing arrangement threaten fundamental property rights and require precise justification from the enacting government. Failure to provide such justification threatens to legitimate an expansive view of the state's—and, by extension, municipalities'—police powers that inevitably erodes individual liberties that are elemental to the common-law tradition.

ISSUES ADDRESSED BY *AMICI*

1. Whether local bans on short-term rentals in residential neighborhoods is *per se* unconstitutional.
2. The extent to which short-term rentals and similar increased access points to housing advance the dual policy objective of increasing housing at reduced prices.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2011, the City of New Braunfels passed an ordinance banning Short-Term Rentals (STRs) in large portions of the city. A coalition of STR owners challenged the ban, arguing it violated their property rights under the Fourteenth Amendment and the Texas Constitution.

The city initially moved to dismiss the case without any discovery, claiming STRs were nuisances. The lower court granted the motion, but this Court—after considering party briefing and supporting amicus briefs--reversed, directing the district court to weigh the evidence after discovery.

Discovery revealed the city's claims were baseless. STRs in New Braunfels are prevalent and the city had issued no nuisance citations against STR properties. Studies and data contradicted the city's

assertions about property values and neighborhood character. Nevertheless, the district court granted the city's motion for summary judgment in a cursory opinion that ignored the evidence and this Court's directive. This appeal thus seeks to restore meaningful judicial scrutiny to property-rights cases.

This controversy highlights two unresolved aspects of the ongoing housing debate—one legal, the other political. **First**, under the common-law conception of ownership, private proprietors are firmly within their "bundle of rights" to lease realty for as long or as short as they wish. They can only be prohibited from engaging in nuisant or harmful uses. Since at least *Cedar Point Nursery v. Hassid* (2021), the Supreme Court has clarified that property rights are fundamental and thus subject to at least a *heightened* degree of judicial scrutiny. 594 U.S. 139, 158 (2021) ("We cannot agree that the right to exclude is an empty formality, subject to modification at the government's pleasure. On the contrary, it is a 'fundamental element of the property right' that cannot be balanced away.") (cleaned up).

This contrasts with "rational basis review," which attaches to rules and regulations that do not implicate fundamental rights and are

therefore permitted for any conceivable police-power purpose. This is certainly the case under Texas law. *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App.–Austin 2019) (holding city ordinance banning short-term rentals of single-family residences not owner occupied was infringed on fundamental property rights). As *amici* will discuss, heightened constitutional protection against restrictions specifically on short-term rentals is *not* limited to the property rights of owners, but to guests' reciprocal "right to establish a home." *See, e.g.*, *Keen v. City of Manhattan Beach*, 292 Cal. Rptr. 3d 366, 370 (Cal. App. 2022) ("It is possible to reside somewhere for a night, a week, or a lifetime"); *Wilkinson v. Chiwawa Comms. Ass'n*, 327 P.2d 614, 620 (Wash. 2014) ("If a vacation renter uses a home 'for the purposes of eating, sleeping, and other residential purposes,' this use is residential, not commercial, no matter how short the rental duration.").

Second, America's housing sector has been in turmoil for decades now—at least as early as the mid-2000s. Despite widespread awareness and justified concern for the ever-dwindling supply of available units, innovative solutions—including short-term rentals alongside accessory-

dwelling units and rowhouse developments—remain relatively few and far between.

Short-term rentals are acute targets of powerful NIMBY ("not in my backyard") pushback and the longtime failure of proponents to organize a coherent political and policy response. As one among several correctives, *amici* strongly believe that caselaw on the topic of increasing access to housing should begin integrating a growing research literature demonstrating the economic, social, and cultural benefits of these alternatives that far outweigh the exaggerated externalities.

ARGUMENT

I. BANS ON SHORT-TERM RENTALS ARE SUBJECT TO EXACTING CONSTITUTIONAL SCRUTINY

A. Zoning: Its Justifications and Limits

Zoning is a product of the modern regulatory state. For better or worse, it did not exist in any widespread, systemic form until the first decades of the 20th century, at the height of the so-called Progressive Era. Favoring the maximalization of utility—or at least those objects progressives of the age perceived as "useful"—over the rights for which government was in the first place devised, cities and towns on both sides of the Atlantic began to regulate where and how owners could use their

properties. *See generally*, Allison Shertzer et al., *Zoning and Segregation in Urban Economic History*, 94 REG'L SCI. & URB. ECON. 1 (2022).

In practice, these novel land-use controls often prevented productive and unharmful uses simply because local proponents of apparently incompatible uses outpaced the former's social and political capital. *See, e.g.*, *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (permitting the removal of an existing industrial use to make way for residential tracts). *Hadacheck* demonstrated the U.S. Supreme Court's early readiness—more out of misunderstanding than anything else—to rubberstamp zoning schemes, culminating in a full-throated endorsement in *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). There the Court held that land-use regulation was a core governmental function; that is, one generally falling under what courts now call "rational basis review." Permissible so long as any conceivable purpose behind such rules were "rationally related" to a legitimate governmental purpose—most often described as the sovereign's existential power to ensure the public's health, safety, and general welfare.

But *Euclid* and its progeny did not forever cast every aspect of land-use control to the rational-basis wolves. There remained—and still

remains—a pantheon of uses and sub-uses (*i.e.*, "nontraditional" households) that in their theoretical and constitutional provenance and import, still require the most stringent judicial scrutiny. In recent decades, the locus of legal challenges to land-use regulations has centered on whether a particular *use or user* fall under the "fundamental" umbrella—that is, set apart from the din of workaday regulations that are easily dispensed under the aegis of "rational basis review" (*e.g.*, requiring the installation of fire alarms).

Answering this question in a given case demands contextual considerations. But even still there are several elemental rules. Among these is that uses and users are *compatible* provided that their presence poses no cognizable (and not merely conceivable) danger to the public weal. Residential desegregation, for example, was once thought of—extremely wrongly—as a risk to public welfare. Its enforcement via zoning, therefore, was subject to rational-basis review—with some exceptions pertaining to the right to contract. *See Buchanan v. Warley*, 245 U.S. 60 (1917). Today, properly, a race-based zoning rule would be subject to the highest judicial scrutiny.

Fortunately, no contemporary local government would dare enact

or hope to justify such a law. Discrimination against non-nuclear-family households and homes for the mentally impaired endured even longer, with the Supreme Court removing each from the "rational basis" column in 1977 and 1985, respectively. *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). Short-term rental bans are among the last targets of pervasive discrimination—based in no small measure on mischaracterizations of short-term rentals and renters, even among hosts.

B. Generalized Bans on Short-Term Rentals Serve No Justifiable Public Purpose Sufficient to Overcome Constitutional Shortcomings

Amici recognize that short-term rentals—like any economic arrangement—can produce social costs that their owners and tenants can never fully internalize. And that *regulating* them is well within a local government's prerogative. The fear that short-term rentals erode a locale's sense of community and aesthetic character animates its opponents like nothing else.

But given the rights implicated on the other side of the ledger, bans on short-term rentals of any duration cannot rely on mere buzzwords (*e.g.*, "neighborhood character") or *any* conceivable purpose to stave off

judicial scrutiny. Far from Justice William O. Douglas's much-derided declaration that when a legislature speaks, the public interest has been declared in terms "well-nigh conclusive," *Berman v. Parker*, 348 U.S. 26, 32 (1954), when lawmakers target a fundamental attribute of ownership—here the right to gainful use—they must clearly delineate the public interests involved and explain how a particular ban or regulation furthers that interest.

As one scholar put it:

> Sharing and bartering housing resources is not new. Historically, the concept has long existed in the context of lodging purchased on a time- or space-limited basis in inns and boarding houses, rooms for rent, housing cooperatives, and informal arrangements. The catalyst for such sharing has often been the quest for affordability, coupled with housing scarcity. In the contemporary context, we see a home sharing proliferation, the catalyst of which is also the scarcity of resources-both affordable housing itself and the monetary resources to maintain home ownership. What is unique to home sharing in the new economy is not the sharing, but rather the way in which such sharing is facilitated by technology and how the use of such technology is causing innovation in sharing to outpace changes in housing regulation.

Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern Sharing Economy: Are Short-Term Rental Restrictions an Unconstitutional Taking*, 42 Hastings Con. L.Q. 557, 561 (2015).

This so-called "sharing stick" in the "bundle" of property rights occupies the flipside of a coin with the right to exclude others from one's property. The right to exclude is, arguably the "*sine qua non*" of property rights. Thomas Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 730 (1998) (emphasis original). And the *protection* of this and other elemental property rights is the reason for which government is in the first place constituted. *See* John Locke, Second Treatise on Government, Ch. 9, §124 (1689) ("The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property.) *See also Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 310 (1795) ("The preservation of property . . . is a primary object of the social compact.").

Both of these factors—(1) property as the right to exclude and its correlative right to *include* (read: to share) and (2) that government exists to protect it—presuppose a right to *use* one's property however one wishes. It is, after all, through use that objects in the world become property. Per Locke:

> Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it

> his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men[.]
>
> Locke, *supra*, Ch. 5, § 27.

Provided, of course, that a specific use is not so harmful to the public interest—to the person and property of others—as to justify (or perhaps even *require*) government's intervention. *See, e.g.*, *Mugler v. Kansas*, 123 U.S. 623 (1887) (finding legitimate a limited exercise of the state police power to regulate the use of private property to protect the public from harm); *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1969) (same). *See generally* Elmer E. Smead, *Sic Utere Tuo Ut Alienum Non Laedas: A Basis of the State Police Power*, 21 CORNELL L. REV. 276 (1936). And if a particular exercise of the fundamental rights to exclude, include, and use *does* harm a public interest then, as discussed, the lawmaking body should at least be required to "show receipts." To explain to the court why and how a particular infringement on fundamental property rights is fine-tuned to the task of protecting a specified public interest.

The same common-law tradition that imbues ownership with fundamental rights also *contours* it in various ways, but just to the extent necessary to prevent or abate uses that produce certain public harms. *See*

Cedar Point Nursery v. Hassid, 594 U.S. 139, 160–61 (2021) (explaining the various "background principles" of Anglo-American law—*e.g.*, "entry to avert imminent public disaster" or "entry to prevent serious harm to a person, land, or, chattels" that permit government action *without* triggering eminent domain).

Carveouts for the sake of public protection are not ancillary to a sovereign's police power. They *are* that police power. Scott M. Reznick, *Empiricism and the Principle of Conditions in the Evolution of the Police Power: A Model for Definitional Scrutiny*, 1978 WASH. U. L.Q. 1, 2–3 (1978) ("*Sic utere* [tuo *alienum non laedas*]"—essentially, prevention of harm to other persons and property—"is the fountainhead maxim from which both the common law of nuisance and the police power arose."). Courts must "trust, but verify." As renowned constitutional scholar Ernst Freund famously put it:

> Effective judicial limitations on the police power would be impossible, if the legislature were the sole judge of the necessity of the measures it enacted . . . [T]he maintenance of private rights under the requirements of the public welfare is a question of proportionateness of measures entirely. Liberty and property yield to the police power, but not to the point of destruction.
>
> Ernst Freund, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS 60–61 (1904).

C. Particularized Bans on Short-Term Rentals Must Be Narrowly Tailored to Ensure Maximal Protection of Property Rights and the Right to "Establish a Home"

Bans on short-term rentals lacking sufficient police-power justification or the narrow-tailoring to ensure only as-necessary restrictions implicates more than just the property rights to exclude and include—*viz.*, to host. Adjacent to these rights is a tenants' right—indeed anyone's right—to "establish a home." In the seminal case on the topic, the U.S. Supreme Court confirmed that "*exclusion* of the new [philanthropic] home [for indigent children and elderly] from" the relevant zone was "*not* indispensable to the general zoning plan," and that Seattle officials had, at least, to proffer a "determination that the proposed building use would be inconsistent with public health, safety, morals, or general welfare." *State of Washington ex rel. Settle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928). Instead, exclusion of the home merely required enough of its would-be neighbors to say "no," and for whatever reasons they wished, no matter how arbitrary. *Id.* at 118.

Roberge presents a particularly stark dichotomy between justified and unjustified exclusionary purposes, but the lesson is the same in closer cases—that the right to "establish a home" shares with property

rights the protections of a heightened judicial scrutiny. One that does not trust lawmakers' mere claims that their police-power purposes are "well nigh conclusive," *Berman*, *supra*, at 31, but that demands legislatures explain, in at least *some* detail, why an exclusionary measure is warranted and how less drastic alternatives *are not feasible*.

New Braunfels and other jurisdictions seeking to preserve a neighborhood's "residential character" can (and should) rest assured. , in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), the U.S. Supreme Court clarified that "[a] quiet place where yards are wide, people few, and motor vehicles restricted *are* legitimate guidelines in a land-use project addressed to family needs." *Id.* at 9 (citing *Berman*, 348 U.S. at 31) (emphasis added). But the question here—as in any emergent case—is whether such restrictions are designed and implemented in due consideration of individuals' most vaunted constitutional rights (i.e., those deemed fundamental, including the rights to vote, to enter into free association, to access the courts, to privacy, etc.). *Id.* at 7 (internal citations omitted).

What are New Braunfels proffered justifications for banning short-term rentals? Providing a cogent answer to this question is especially

vital in light of the historical record, wherein short-term leases were long viewed as permissible in Texas jurisdictions. *See JBrice Holdings, L.L.C. v. Wilcrest Walk Townhomes Ass'n*, 644 S.W.3d 179, 185 (Tex. 2022); *Tarr v. Timberwood Park Owners Ass'n*, 556 S.W.3d 274, 291 (Tex. 2018). As expected, New Braunfels argues that the ban is needed to reduce or prevent noise pollution and increased traffic, despite a panoply of data points indicating no such danger:

> As was true in other cities, the City conducted several "workshops" where these groups suggested ways the City could dictate lease terms for private property owners. ROA.1223–1224 (Looney Dep. 168:22–169:8). And, as was true in other cities, advocates for restricting short-term rentals argued that an ordinance was needed to preserve residential character, to prevent nuisances, and to preserve property values. ROA.73. But, as was true in other cities, the City has since admitted that short term rentals are a residential use ROA.858 (City's Motion for Summary Judgment); ROA.1196 (Looney Dep. 58:5–12), that it had no data showing that short-term rentals cause nuisances, ROA.1204 (Looney Dep. 91:25–92:22), and that it had no data showing that short-term rentals had any effect on property values in New Braunfels. ROA.1226–27 (Looney Dep. 179:19–181:1).

App. Op. Br. at 11. Crucial, too, is that despite paeans to "preservation," New Braunfels, evidently, has not issued any nuisance abatements against properties used as short-term rentals

Preventing and abating noise pollution and increased traffic are

legitimate police-power bases for interfering with fundamental individual rights *provided* this is what the challenged measures aim to achieve. New Braunfels's longstanding socio-economic composition at least suggest that its near-blanket short-term rental ban is not even tailored to those ends. Officials might have more constitutional support had the ban targeted specific neighborhoods (*e.g.*, low-decibel residential zones that do not already host a broad array of guest accommodations). New Braunfels, in turn, might at least have done studies on the extent, if any, to which short-term rentals cause nuisances or reduce existing property values. The city did none of these things but still expect the Court to take its lawmakers' at their word. To trust that the ban furthers legitimate public purposes, despite any evidence and the "workshop" manner through which it was deliberated—a process that bears unflattering similarities to the majoritarian consent requirement struck down in *Roberge*.

The data points on New Braunfels in particular, App. Op. Br., *supra*, at 11, severely undermine any nexus between workaday regulations to prevent or reduce noise pollution and traffic congestion, on the one hand, and prohibiting short-term rentals, on the other.

Especially since many existing short-term rentals—apparently vital to New Braunfels' tourism-based economy—have been grandfathered out of the ban. *Id.* at 12. *See* New Braunfels Convention and Visitors Bur., *The Economic Impact of New Braunfels' Hospitality Industry* 9 (2023) ("The value added supported by the hospitality industry accounts for 10.8% of the estimated gross area product in New Braunfels."). *See also* New Braunfels Econ. Dev. Corp., NEW BRAUNFELS WORKFORCE HOUSING STUDY 12–14 (2018) (analyzing housing data and recommending more renter-friendly policies).

II. SHORT-TERM RENTALS AND OTHER INCREASED ACCESS POINTS TO HOUSING SERVE VITAL ROLES IN INCREASING AMERICA'S HOUSING STOCK AT DECREASED COSTS

Casting aside for a moment concerns over community and aesthetic considerations, it remains that there is great need for short-term rentals, even (in many contexts, especially) those with terms less than thirty consecutive days. If local governments are permitted to proscribe them pell-mell, either via the letter of the law or through discretionary decisionmaking, it will fuel a wave of bans which, coupled with existing exclusionary zoning regimes against multifamily housing and other non-single-family builds, has since 1964, cost the American GDP upwards of

36% of what it otherwise would have accumulated. Chang-Tai Hsieh & Enrico Moretti, H*ousing Constraints and Spatial Misallocation*, 11 AM. ECON. J.: MACROECONOMICS 1, 1 (2019).

Forcing traveling nurses, pilots, hotel workers, management and technical consultants, and substitute teachers to sign month-plus leases instead of terms of weeks—as is more financially efficient for some—will not solve community erosion. Neither will a tourism-driven city's decision to ban short-term rentals that lend vital support to that economic base. It will, however, increase the costs of engaging in these careers, reducing the number of participants, and ultimately redound to the serious detriment of those communities who have come to rely on the highly transient sector of the workforce. And all to preserve relatively *de minimis* benefits. Last year, the *Harvard Business Review* noted that "the presence of short term rentals increases the annual rent of the median tenant" in New York City "by $125." Sophie Calder-Wang *et al.*, *What Does Banning Short Term Rentals Really Accomplish?*, HARV. BUS. REV. (Feb. 15, 2024) (https://tinyurl.com/3eybtbna). That small increase pales in comparison to the "overall rise in housing costs in the recent past," the solution for which is more housing *of all kinds*.

From an economic perspective, *amici* disagrees that the drawbacks of even very short stays (*e.g.*, a weekend away) outweigh their advantages. *See, e.g.*, Peter Coles et al., *Airbnb Usage Across New York City Neighborhoods: Geographic Patterns and Regulatory Implications in* THE CAMBRIDGE HANDBOOK OF THE LAW OF THE SHARING ECONOMY 127 (2018) ("Given the limited incentives to convert housing units that we observe in the data, along with the downward trend in these incentives over time, it seems unlikely that Airbnb is currently having a major effect on the affordability of rental housing in New York City.").

Evidence suggests that short-term rentals are housing and economic boons—or at least no detriment—in most settings, not just the nation's largest metropolis. *See, e.g.*, Ron Bekkerman *et al.*, *The Effect of Short-Term Rentals on Residential Investment*, 5–6 (2022) ("Taken all together, our results show that STR platforms like Airbnb incentivize residential real estate investment. . . . Our results suggest that the time may be ripe to revisit stringent STR regulations that ultimately can be more detrimental than beneficial for the cities that enact them. If the migration trend from cities to suburban areas spurred by work-from-home and COVID-19 continues, STRs may play a crucial role in

revitalizing city centers when travel demand rebounds."); Memorandum, City of Dallas, *Short-Term Rental Data: As Analysis of the Impact of Short-Term Rental Properties in the City of Dallas* (May 3, 2021) (https://shorturl.at/OIv8X) (analyzing 911 and 311 call data and determining that short-term rental properties do not materially increase crime or nuisances). *See City of Dallas v. Dallas Short-Term Rental Alliance*, Case No. 05-23-01309-CV, 2025 WL 428514 (Tex. App. Feb. 7, 2025).

Municipal governments certainly have the devolved power to restrict tourism and short-term-work stays. But such measures should not be taken lightly—not just in view of potential constitutional traps, but considering the emergent economic importance of gap-filling housing arrangements.

CONCLUSION

For the reasons set forth above, and those outlined in Plaintiff's filings, *amici* urge this Court to reverse the court below and render a decision in favor of the Appellants.

Dated: April 1, 2025.

Respectfully submitted,

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s/ Sam Spiegelman
Sam Spiegelman

Attorney for Amici Curiae

Dated: April 1, 2025.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

s/ Sam Spiegelman
Sam Spiegelman