United States Court of Appeals
for the
Eighth Circuit

Case No. 25-3088

SHELLEY HAUSE; STEPHEN HAUSE,

Plaintiffs-Appellants,

– v. –

CITY OF FAYETTEVILLE, ARKANSAS,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, CASE NO. 5:24-CV-05143-TLB, HON. TIMOTHY L. BROOKS, CHIEF DISTRICT JUDGE

BRIEF OF THE MANHATTAN INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF *AMICUS CURIAE*[*]

The Manhattan Institute ("MI") is a nonpartisan public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, MI has historically sponsored scholarship and filed briefs opposing government overreach.

This case interests MI because discriminatory restrictions on *any* housing arrangements—but especially those that have no proven predisposition to do socioeconomic harm—threaten fundamental property rights and require sufficient justification from the enacting government. Failure to provide such justification threatens to legitimate an expansive view of the state's police powers that inevitably erodes individual liberties that are elemental to the common-law tradition.

INTRODUCTION AND SUMMARY OF ARGUMENT

This lawsuit challenges a Fayetteville, Arkansas ordinance that discriminates against out-of-state owners of short-term rentals. While local residents may obtain short-term rental permits upon request, out-of-staters must either find a local tenant

[*] No counsel for either party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, or its counsel made any monetary contribution to fund its preparation or submission.

for at least nine months and *then* share it with short-term guests *or* otherwise seek a conditional-use permit subject to several overburdensome restrictions.

Amicus agrees with Plaintiffs-Appellants' arguments for reversal—in particular, that the ordinance seeks to protect in-state residents in violation of the Commerce Clause—but files this briefs to contextualize the case within the broader national discourse on whether and to what extent state and local governments can restrict short term-rentals. To wit, America faces an ever-worsening housing situation. With each passing year, the number of available units—from single-family homes to high-rise apartments—falls ever-further behind total population growth and trending changes in patterns of geographic concentration. There are simply not enough homes, especially where they are needed most, which has attracted reform proposals from the free-market right, "abundance" left, and YIMBY center.

The common law has never been wedded to the ideal of the picket-fence homeowner. Instead, it has long recognized market-driven housing arrangements suited to a dynamic society—particularly short-term rentals. For centuries, those in mobile professions—farmhands, soldiers, clergy, among others—have depended on temporary housing as a practical necessity.

Americans wander, plain and simple. So much so, in fact, that as early as 1850 "a lodger or roomer or boarder was present in 35 percent of the households in the central cities of metropolitan areas with fifty thousand or more people." David T.

Beito & Linda Royster Beito, *The "Lodger Evil" and the Transformation of Progressive Housing Reform, 1890-1930*, 20 Indep. Rev. 485, 486–87 (2016). While the figure would sink to less than 10 percent by 1940, *id.* at 487, this was not because itinerant work had declined but because the most recent wave of industrialization demanded more systematized worker housing *and* provided the technical knowhow to produce it. *See* Tatjana Schneider & Jeremy Till, *Flexible Housing* 21 (Architectural Press, 2007) (noting that "expanding technical capacity together with a rising demand for housing led to increased interest in standardization in housing production at the start of the twentieth century," such that "architects began to develop designs for residential dwellings that could be mass-produced by means of industrial prefabrication.").

Several factors particular to 21st century life have only sharpened the demand for short- to medium-term housing. Most notable among these being the advent and popularization of remote work and its acceleration during Covid. With each passing year, more of America's nurses, consultants, site managers, and other professionals divide their time between two or more metropolitan areas. *See* Joshua D. Gottlieb & Avi Zenilman, *When Nurses Travel: Labor Supply Responses to Peak Demand for Nurses*, 2024 Rev. Econ. & Stats. 1, 5 (2024) ("When demand increases in specific geographic areas, nurses' travel ability can help mitigate a local shortage.").

Yet supply has not kept pace with rising demand. *See generally* Lawrence Yun et al., *Housing Affordability & Supply: Rising Inventory, But For Whom? A Look at Inventory Gaps By Price Range and Income Level in 2025*, Nat'l Ass'n Realtors: Res. Grp. (May 2025) (available at: https://tinyurl.com/2dnw3zm6), Part of the blame falls squarely on the shoulders of those homeowners and other "homevoters" who will dedicate substantial time and resources pushing to prohibit short-term rentals (or to oppose efforts to ease restrictions already in place). Labeled "NIMBYs" (shorthand for "not in my backyard"), what these less-than-neighborly residents lack in numbers they often make up for in volume and vociferousness. While sometimes mild, NIMBY opposition far too often assumes an alarmist tone which overstate or outright concoct the risks short-term rentals pose to the "character" of their existing neighborhood. This playbook often works, however.

"Homevoters," as Professor William Fischel calls them, obviously hold more local clout than non-resident property owners seeking to enter the local market. *See generally* William Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (2002). "This means that the people who would benefit most from new housing are the least likely to be vocal participants in the [local] political process. As a result, at the local level, NIMBYs still tend to dominate policymaking." N.R. Brouwer & Jessica Trounstine, *NIMBYs, YIMBYs, and the Politics of Land Use in American Cities*, 27 Ann. Rev.

Pol. Sci. 165, 177 (2024). Fayetteville's protectionist scheme is a pointed reminder of this permanent influence imbalance between established and aspirant residents.

ARGUMENT

I. WITHOUT CONSTITUTIONAL LIMITS, LOCAL LAND-USE RESTRICTIONS INHIBIT NATURAL AND NECESSARY GROWTH

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. Despite the moniker, the period in many respects witnessed a hardening of economic inequalities, especially on the geographic front. As Professor Fischel observes:

> New transport technologies, specifically the bus and truck in the 1910s and the development of the interstate highway system in the 1960s, put suburban home-owners at risk from value-reducing development in their neighborhoods and communities. Because home-owners had no means of insuring their assets against these new threats, they and the developers of new homes responded with public land-use regulations that have become increasingly exclusionary.

William A. Fischel, *An Economic History of Zoning and a Cure For Its Exclusionary Effects*, 41 Urb. Studs. 317, 318 (2004). Fischel agrees with an earlier scholar's assessment that by the 1970s "zoning is best understood as an alternative to currently non-existent home-value insurance." *Id.*

In practice, the widespread introduction land-use controls often prevented productive and unharmful uses because it handed existing residents the collective

action capability to impose anti-market rules meant specifically to shut out potential newcomers wishing to make new and more productive uses of local lands. *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); Fischel, *An Economic History of Zoning*, *supra*, at 319 (disagreeing with "[t]he conventional explanation for zoning's birth invokes the increasing interdependence of urban land use that arose after the dawn of the 20th century and the need to deal with incompatible uses by means other than traditional nuisance law and private covenants.").

Hadacheck demonstrated the 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). After *Ambler*, even the least imaginative local land-use officials could conjure some "justification" to shield even obviously compatible uses from independent judicial analysis. Much of early zoning law was the product of contemporary prejudices more than anything else. 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, e.g., 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. *See, e.g., Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985). Restrictions to protect the economic interests of established residents, at the cost of newcomers, comes with economic and social costs too, as discussed in Part II below.

B. Discriminatory Restrictions on Short-Term Rentals Serve No Justifiable Public Interest Sufficient to Overcome Their Infringement of Private Rights

Fayetteville's short-term regulatory scheme is, in practice, no mere anti-Airbnb law. As with any transaction, short-term rental agreements produce social costs that neither owners nor tenants can ever fully internalize. Government is well within its right—arguably even obligated—to regulate market to minimize externalities in a way that does not unduly jeopardize *Pareto efficiency*—optimizing chances of producing the most efficient outcome feasible, given all the input variables. *See, e.g.,* Apostolos Filippas & John J. Horton*, The Tragedy of Your Upstairs Neighbors: The Negative Externalities of Home-Sharing Platforms*, Working Paper, at 3–4 (Nov. 2, 2023) (emphasizing the need for regulations, but noting that the most "attractive" regulatory model is the one that still leaves most "decision rights to building owners") (available at https://apostolos-

filippas.com/papers/airbnb.pdf). *See also* Francisco Vergara-Perucich, *Housing Affordability in the United States: Price-to-Income Ratio By Pareto Distribution*, Geographies, at 11 (2025) (noting that "restrictive" land-use counties nearly always have higher housing prices than counties that have fewer or even a "near-total absence of these pressures").

There is more at stake than racial equality and pure economics, however (though these are of course vital grounds to ease strict zoning regimes). This case squarely implicates several fundamental property rights—without which "liberty could not exist." John Adams, "Discourses on Davilia: A Series of Papers on Political History" in Charles Francis Adams, *The Works of John Adams* (Little Brown 1851). As the Court reads Fayetteville's short-term rental regulation against the federal Commerce Clause, it should also consider with the "strictest scrutiny" how the ordinance interferes with out-of-state owners' fundamental property rights. In doing so—and especially in recent years—the Supreme Court has diverged from Justice William O. Douglas's arcane declaration, in a case involving Congress's condemnation of an entire city block, 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). In particular, the Court has rejected wholesale the notion that in the regulation of property, there are no fundamental rights that enough "justification" elbow grease cannot fix. *See* James Burling, *The Roberts Court: "Lockeing" in*

Property Rights and Regulatory Takings Through History and Tradition, 13 Prop. Rts. J. 45, 64–76 (2024) (surveying the panoply of rulings from the last decade that have focused not on whether a regulation is justified, but first asks whether their target uses can be subject to regulation in the first place). *See also, e.g., Horne v. U.S. Dep't of Agric.*, 576 U.S. 351, 461 (2015) ("*Horne II*") ("Whatever *Lucas* had to say about reasonable expectations with regard to regulations, people still do not expect their property, real or personal, to be actually occupied or taken away."). And in this context the modern Court emphatically rejects deference for its own sake:

> The Constitution provides "no textual justification for saying that the existence or the scope of a State's power to expropriate private property without just compensation varies according to the branch of government effecting the expropriation. . . . [S]pecial deference for legislative takings would have made little sense historically, because legislation was the conventional way that governments exercised their eminent domain power.

Sheetz v. Cnty. of El Dorado, 601 U.S. 267, 276–77 (2024).

Upholding Fayetteville's restrictive short-term regulation is inapposite to this latest—and long-overdue—reorientation. Here we have a clear case for judicial intervention to set aside a local ordinance that treats in-state and out-of-state owners differently with no explanation for how this distinction addressed the supposed social ills resulting from increased short-term rentals. As one scholar explained, shared housing is not a new concept:

> 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 . . . .

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

This so-called "sharing stick" in the "bundle" of property rights is a companion to the right to exclude others from one's property, which is the *sine qua non* of property rights. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021) (citing Thomas Merrill, *Property and the Right to Exclude*, 77 Neb. L. Rev. 730, 730 (1998)). The safeguard of this and other fundamental attributes of private ownership property rights are the reasons for which men conjure and then coalesce behind government. *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. *Id.* at Ch. 5, § 27 ("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."). Locke's formulation is the primary basis for creating a property-owning, liberal society in the first place, but it is limited by whether 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 also 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 limits it in various ways in order, specifically, to prevent uses that produce certain public harms. *See Cedar Point Nursery*, 594 U.S. at 160–61 (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).

These and other carveouts for the sake of public protection are not merely ancillary to a sovereign's police power; they *are* that 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"—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."). 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). In this vein, the Court can exercise independent judgment to preserve Plaintiff's fundamental rights to exclude, include, and use their home, and that will not unduly restrict the city's existing police powers.

II. SHORT-TERM RENTALS ARE AN INDISPENSABLE COMPONENT OF AMERICA'S MODERN ECONOMY

A. The American Economy Requires Dynamic and Elastic Housing Stock

The American economy today requires far more elastic housing options than in any prior period of peacetime. According to the Congressional Research Service, short-term rentals now represent upwards of 1.6% of the entire national housing stock (roughly 1.5 million units out of 147 million total), with precise numbers fluctuating based "on seasonality and consumer demand." *Short-Term Rental Markets: A Primer*, Cong. Res. Serv.: In Focus (Feb. 24, 2025).

Since 1964, long-term exclusionary zoning has cost the American economy upwards of *one-third* of what it otherwise might have yielded. Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 Am. Econ. J.: Macroeconomics 1, 1 (2019). Further "research suggests that restrictive zoning laws, as opposed to short-term rentals, have had a greater effect on housing availability and affordability." Grant Wills, *To Be or Not to Airbnb: Regulation of Short-Term Rentals in South Carolina*, 68 S.C. L. Rev. 821, 841 (2017) (citing Andrew Moylan, *Roomscore 2016: Short-Term Rental Regulation in U.S. Cities*, 55 R Street Pol'y Study, at 4 (March 2016) (noting Charleston's designation of a "C-" grade in 2016 for failing to create a tailored legal framework to regulate short-term rentals). Finally, while the "increase supply of short-term rental units" obviously "decrease[s] the supply of long-term rental units," averages prices tend to level out. One economic

paper calculated 0.018% and 0.026% upticks in average rental and sales prices in zip codes that permit short-term rentals without discriminatory restrictions. Kyle Barron et al., *The Effect of Home-Sharing on House Prices and Rents: Evidence From Airbnb*, Working Paper (March 4, 2020) (available at https://ssrn.com/abstract=3006832).

Exclusionary zoning rules come in all shapes and sizes. *See generally* Robert C. Ellickson, *Measuring Exclusionary Zoning in the Suburbs*, 23 Cityscape: J. Pol'y Dev. & Res. 249 (2021) (surveying the diversity of zoning rules, from variable lot-size requirements, rules on detachment, restrictions on multifamily use, and in-fill permissions). Some of these were created for morally repugnant reasons—*e.g.*, racial discrimination. *See generally* Jade A. Craig, *"Pigs in the Parlor": The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 Miss. Coll. L. Rev. 5 (2022) (presenting a comprehensive history of the race-based provenance of many—if not most—zoning regulations, including those still in place to this day). *See also* M. Nolan Gray, *Arbitrary Lines: How Zoning Broke the American City and How to Fix It* 30 (Island Press 2022) ("Zoning is not a good institution gone bad. Its purpose is not to address traditional externalities or coordinate growth with infrastructure, as suggested by zoning defenders and envisioned in the sanitized SimCity version of city planning. On the contrary, zoning is a mechanism of exclusion designed to inflate property values, slow the pace of

new development, segregate cities by race and class, and enshrine the detached single-family house as the exclusive urban ideal—always has been.").

Amicus urges the Court to incorporate into its analysis whether Fayetteville's ordinance is a bona fide effort to preserve existing neighborhood character, and even if so, whether potential knock-on effects of removing a large chunk of short-term rentals out of the market is the best solution.

B. Short-Term Rentals Do Not Threaten Neighborhood Character

NIMBY critiques typically focus on stereotypes of the short-term rental—think a bachelorette weekend in Napa or a last-minute fishing trip on Lake Superior. The NIMBY fixation on Airbnb is an at-best misplaced and, at worst, an intentional red herring meant to broadbrush all short-term rentals as consumer escapism at the lasting cost of communal disintegration everywhere it proliferates.

Deeper analysis reveals that short-term rentals are not the neighborhood-killing bogeyman their harshest critics make them out to be. There is scant research to suggest that short-term rentals of any duration are at all responsible for communal displacement in recent decades. *See, e.g.*, Sophie Calder-Wang et al., *What Does Banning Short-Term Rentals Really Accomplish?*, Harv. Bus. Rev., Feb. 15, 2024 (available at: https://tinyurl.com/msfvcjyh) ("Put simply, restricting Airbnb is not going to be an effective tool for solving the housing-affordability problems in many U.S. cities."); Tobias Peter, *Setting the Record Straight on Short-Term Rentals,*

Housing Affordability, and Misguided Government Market Interventions, AEI Hous. Ctr. (Nov. 2023) (available at: https://tinyurl.com/33aczfae) ("The true culprit for high housing costs is a variety of government distortions that have made hotel room capacity scarce, zoning and land use regulations that have made housing both scarce and expensive, and demand boosters like low interest rates that have gotten capitalized into higher prices."); Michael Salinger, *Short-Term Rentals in New York City: An Economic Analysis of Proposed Rules*, Charles River Assocs., at 1 (Dec. 2022) (available at: https://tinyurl.com/mt97crf7) ("Even if the proposed rules could be justified by concerns about the potential effect of STRs on permanent housing supply or rental prices, removing or discouraging STRs that would not otherwise be used for permanent housing will do nothing to accomplish the goal of making permanent housing more affordable").

The fraying of communities everywhere was the result of housing commoditization, and the desperate contemporary scramble for alternatives to fill in the gaps this decades-long process created is what fuels the popularization of short-term rentals. *See generally* Christopher Serkin & Ganesh, *Post-Neoliberal Housing Policy*, Penn. L. Rev. (forthcoming 2026) (discussing how decades of "neoliberal housing policies"—primarily the cultural obsession with detached single-family homes—produced the mid- to late-2000s housing bubble that destroyed social and civic bonds everywhere and all at once).

Beyond imposing caps on short-term rentals permits—which are already in widespread operation—reclaiming that lost sense of "neighborliness" is not nearly as simple as depriving short-term renters of the chance to enter and involve themselves in such reclamation projects. Just as short-term rentals are not to blame for the fraying of communal bonds which began decades prior, neither is there reason to believe (nor is there much scholarship discussing) that short-term renters are a disproportionate source of local nuisances. "It is illogical to think that [] nuisance concerns only occur with short-term renters. There are an abundance of permanent residents that make similar, if not the same, irritating decisions." Alexander W. Cloonan, *The New American Home: A Look at the Legal Issues Surrounding Airbnb and Short-Term Rentals*, 42 U. Dayton L. Rev. 1, 43 (2017).

In its research, *amicus* found just one source at the heart of the claim that short-term renters were more likely to cause nuisances than "homevoters," but the article—Filippas & Horton, *The Tragedy of Your Upstairs Neighbors*, *supra*—itself only ever discusses "externalities" like sound and light pollution as foregone premise. *Id.* at 2 ("If hosts bring in loud or disreputable guests but, critically, still collect payment, then the platform would seem to help create a classic case of un-internalized externalities that existing illegal hotel laws are intended to prevent: the host gets the money and her neighbors get the noise.").

One need look no further than America's "Rust Belt"—the string of deindustrialized regions from Illinois to Maine—for examples of cities whose established residents found out too late that exclusionary zoning will only go so far to preserve existing home values when the area's entire economic premise is in tatters. *See generally* Stephen Eide, *Rust Belt Cities and Their Burden of Legacy Costs*, Report, Manhattan Inst. (2017) (surveying the fundamental failure of representative "rust-belt" cities to address long-term economic displacement).

The logic is simple: towns stripped of their economic prospects have no chance of making up for it by restricting new housing. The consequences are especially dire as the aging population becomes more and then eventually mostly incapable of muscle- and precision-centered labor. *See* Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in Its Place: Affordable Housing and Geographical Scale*, 40 Fordham Urb. L.J. 1667, 1672 (2013) ("Every region needs some low-wage workers-whether in service, manufacturing, or government sectors of the regional economy-but no particular municipality wants to house them. Likewise, every region has a dependent population that requires some government support, but every municipality would rather it be provided somewhere else."); Corianne Scally et al., *Rental Housing For a 21st Century Rural America,* Urb. Inst.: Metro. Hous. & Comms. Pol'y Ctr., 3–4 (2018) ("Two primary demographic patterns drive the aging of rural America: the outmigration of young adults to work

centers and the natural aging of existing rural residents. The combined result is that seniors disproportionately live in rural areas. . . . they are home to over 25 percent of the nation's seniors. With an aging population come the risks and problems of housing the elderly in rural communities that are less accessible and are more socially isolated . . . .") (internal citations omitted).

Eventually, new generations leave and skilled, upwardly mobile workers from elsewhere bypass them for more welcoming—and accommodating—pastures. *See generally Daniel Shoag, Removing Barriers to Accessing High-Productivity Places*, Hamilton Proj. (2019) (noting that while high-productivity places are now experiencing prohibitive housing costs, this is the inverse of what rust-belt towns and cities experienced as stubborn pricing—largely the result of maintaining exclusionary zoning regimes—disincentivized reinvestment and drove out younger residents at the bottom of the hiring totem).

Fayetteville risks following that lead here—missing the forest for the trees by buoying home values in the short term while likely dooming their city to a future at the margins of the new economy. Plaintiffs-Appellants have made convincingly clear that the federal Commerce Clause requires a far greater degree of scrutiny. *Amicus* hopes this brief will persuade the Court also to consider the economic role short-term rentals play in America's modern, dynamic economy and to discount the

exaggerated (and sometimes fantastical) claims that NIMBYs and other entrenched interests make regarding short-term rentals' social and economic "drawbacks."

CONCLUSION

For these reasons and those stated by the Plaintiffs-Appellants, this Court should reverse the court below and enter judgment for the Hauses.

Respectfully submitted,

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February 17, 2026

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains **4,543** words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared using Microsoft Word version 2408 in 14-point Times New Roman font.

February 17, 2026

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CERTIFICATE OF SERVICE

I certify that on February 17, 2026, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATE: February 17, 2026

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