IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBORAH BRUMIT and ANDREW SIMPSON, *Plaintiffs,* v. THE CITY OF GRANITE CITY, ILLINOIS, *Defendant.*	Case No. 3:19-cv-01090-SMY-RJD

PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

In accordance with Federal Rule of Civil Procedure 65, Plaintiffs Deborah Brumit and Andrew Simpson move for a temporary restraining order—followed by a preliminary injunction—enjoining the City of Granite City from (1) enforcing its compulsory-eviction law (Granite City Mun. Code §§ 5.142.010 *et seq.*) against Plaintiffs; (2) taking any steps to remove Plaintiffs from their home; and (3) taking any steps against Plaintiffs' landlord for declining to evict Plaintiffs. In accordance with Rule 65(b)(1)(B), a certified account of Plaintiffs' efforts to notify Defendant of this *ex parte* application accompanies this filing.

INTRODUCTION

Without this Court's immediate intervention, Plaintiffs Debi Brumit and Andy Simpson—as well as two of Debi's grandchildren—face the imminent prospect of losing their home. These facts directly parallel another case pending before this Court, *Barron v. City of Granite City*, No. 3:19-cv-00834-SMY-MAB. Like the plaintiffs in *Barron*, Debi Brumit and Andy Simpson live in Granite City. Like the plaintiffs in *Barron*, they wish to keep living in their home. And, as in *Barron*, Granite City is coercing their landlord to evict them: Under

compulsion from the City, their landlord served them with a 30-day notice to vacate on September 13. V. Compl. ¶¶ 92-93.

The basis for Granite City's demand is not that Debi or Andy have done anything wrong or that there is anything wrong with or dangerous about their home. Instead, it is that Debi's adult daughter and the daughter's new boyfriend allegedly stole a van elsewhere in town. There is no allegation that Debi or Andy knew about this crime, aided in it, or had any legal authority to prevent it. In fact, Debi's daughter didn't even live with them. She was in town only because Debi had driven her *from Missouri* to a hospital in Granite City to try to get her treatment for substance abuse. No matter. Under its compulsory-eviction law, the City compels private landlords to evict entire families if any member of the household (or even a guest) commits a crime anywhere within city limits (or, sometimes, anywhere at all). Compl. ¶¶ 21-23, 28; Granite City Mun. Code § 5.142.050(A)(3). And for the City, it is enough that Debi's daughter used to live in the home and that she might someday visit her mother for Christmas. *See* V. Compl. ¶¶ 81-83.

Like the eviction demand complained of in the parallel *Barron* case, this demand is a profoundly unconstitutional exercise in collective punishment. Moreover, the City's concessions in *Barron* confirm that the Court's immediate intervention is needed here. In *Barron*, the City seized on a pending "grievance" hearing, which it claimed might lead to the rescission of the compulsory-eviction demand against Jessica Barron and Kenny Wylie. In the City's view, that possibility of an about-face made Jessica Barron and Kenny Wylie's injuries "remote and speculative." Opp. to Prelim. Inj. Mot. 6 (*Barron*) (ECF 14). Yet even the City admitted that once the grievance process "terminate[d] with a ruling in the City's favor," *id.* 9, the threat of eviction would be imminent enough to justify this Court's intervention. That is precisely the

situation here. Debi and Andy's grievance "terminate[d] with a ruling in the City's favor," *see id.*, and their landlord has taken first steps towards evicting them. V. Compl. ¶¶ 91-93; Baker Decl. ¶¶ 12-14. Only a temporary restraining order—followed by a preliminary injunction—will safeguard Debi and Andy's rights (and their home) against immediate irreparable harm.

BACKGROUND

A. Granite City's compulsory-eviction law

1. In 1988, Congress enacted a "one-strike" policy for public housing: Every public-housing lease must provide that the tenants may be evicted if they, or members of their household, or guests, commit certain crimes. 42 U.S.C. § 1437d(*l*)(6). As with other lease terms, the decision whether to enforce a one-strike clause rests with the public-housing authority—the landlord. The federal government even urges those agencies to "consider all circumstances" before evicting. 24 C.F.R. § 966.4(*l*)(5)(vii)(B); *see generally* Kathryn V. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting a Flawed Federal Eviction Law*, 65 UCLA L. Rev. 1146, 1166-72 (2018).

The Supreme Court upheld the federal one-strike policy in 2002, in *HUD v. Rucker*, 535 U.S. 125. As a statutory matter, the Court ruled that Congress gave public-housing authorities discretion to evict tenants for their guests' crimes, "regardless of whether the tenant knew, or had reason to know, of that activity." *Id.* at 128. As for the Constitution, evicting those "so-called 'innocent' tenants" raised no due-process concerns. *Id.* at 129. A public-housing authority is merely "acting as a landlord of property that it owns," the Court reasoned. *Id.* at 135. And like any landlord, it can invoke—or not invoke—its lease terms. *See id.* at 133-35.

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

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

2. Granite City took *Rucker*'s warning as a blessing, enacting a compulsory-eviction law a few years later. Unlike the policy at issue in *Rucker*, Granite City's law governs rental housing that is private, not public. Compl. ¶¶ 17-19. It applies across the board to everyone renting a home within city limits. *Id.*; *see also* Granite City Mun. Code § 5.142.010.

In 2013, Granite City's city attorney singled out the compulsory-eviction law as the "[m]ost controversial issue [he had] worked on." Compl. ¶ 14. Whereas the policy in *Rucker* "entrust[ed]" public landlords with "discretion" to evict tenants, 535 U.S. at 129, 134-35, Granite City's law takes a different tack: It strips landlords of discretion. When the City demands it, a private landlord must evict his tenants if any member of the tenants' household—or even a guest—commits a crime anywhere within city limits (and sometimes, anywhere on earth). Compl. ¶¶ 21-23, 28; *see also* Gedge Decl. Ex. 1, at ¶¶ 1, 3, 8-9 (Lease Addendum for Crime Free Housing). No matter where the crime occurs, it is no defense that the tenants had nothing to do with it. Compl. ¶¶ 42-43, 45-46. Nor do landlords have discretion to forgo eviction. *Id.* ¶ 34. If a landlord declines to evict, the City will "compel compliance" by revoking the landlord's license and levying fines. Opp. to Prelim. Inj. Mot. 2 (*Barron*) (ECF 14); Compl. ¶¶ 27-35.

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

B. Debi Brumit and Andy Simpson

1. Debi Brumit and Andy Simpson have been in a committed relationship for several years and are engaged to be married. V. Compl. ¶ 49. In August 2016, they moved to Granite City and began renting a small home at 7 Briarcliff Drive. *Id.* At first, Debi's daughter Tori lived there too. *Id.* ¶ 52. At the time, Tori was 20 years old and seven months pregnant. *Id.*

A few months later, in January 2017, Tori moved out and began living with Debi's other daughter, in Missouri. *Id.* ¶ 53. She lived there for the next two years. In April 2018, she gave birth to a second child. *Id.* A few months after that (as Debi and Andy understand it), she began struggling with drug abuse. *Id.* ¶ 54.

This past January, Tori and her children began staying with Debi and Andy again. *Id.* ¶ 55. (Tori's sister no longer had room for them. *Id.*) At first, Debi and Andy had no idea about the extent of Tori's substance-abuse problem. *Id.* ¶ 56. But by May of this year, it had become clear to Debi that Tori was engaging in self-destructive behavior and failing to care for her children. *Id.* So around the middle of May, Debi resorted to tough love: She told Tori to get out. *Id.* ¶ 57. If and when Tori proved that she was ready to get clean, Debi made clear that she and Andy would do everything they could to help her turn her life around. *Id.* Until then, Tori would no longer be welcome in their home. *Id.*

In Debi and Andy's understanding, Tori promptly moved back to Missouri and began "couch-surfing" with a new boyfriend. *Id.* ¶ 58. Debi and Andy have been caring for her two children ever since, and they are seeking guardianship. *Id.* ¶ 59.

On Saturday, June 8, Tori called Debi. She told Debi that she (and her boyfriend) were ready to get treatment for their addiction. *Id.* ¶ 60. Immediately, Debi drove to Missouri, picked Tori up, and brought her to the Gateway Regional Medical Center in Granite City. *Id.* ¶ 61. She brought the boyfriend too. *Id.* Debi stayed there while Tori and her boyfriend were registered. *Id.* ¶ 62. Eventually, the two were taken back to triage, and Debi left. *Id.* She got home around 9:30 or 10:00 P.M., confident her daughter would get the help she needed. *Id.*

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

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

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

2. Granite City's "Crime Free Housing Unit" wasted no time; within days of her daughter's arrest, Debi received a compulsory-eviction demand. *Id.* ¶ 69. The demand was directed to "Andrew Simpson, Deborah Brumit, Tori Gintz, Tyler Sears, and any and all known or unknown occupants." V. Compl. Ex. 2, at 1. (Tyler Sears was Tori's boyfriend. V. Compl. ¶ 72.) The demand cited Tori's and Tyler's arrest for "[o]ffenses relating to motor vehicle." V. Compl. Ex. 2, at 1. And it stated that the offense was "a clear violation of the Crime Free Lease Addendum and grounds for eviction." *Id.*

In accordance with the Granite City Municipal Code, Debi and Andy requested a grievance hearing at city hall. V. Compl. ¶¶ 75-77. At the hearing, they were joined by their landlord, Clayton Baker. *Id.* ¶ 77. Debi explained that her daughter no longer lived with them. *Id.* ¶ 78. She presented several pieces of mail addressed to Tori at a Missouri address. *Id.* She also presented a copy of hospital-release papers from the night of the theft, showing that Tori had been in the hospital. *Id.* ¶ 79. Clayton Baker also said that, as far as he knew, Tori had not been living at 7 Briarcliff Drive for some time. *Id.* ¶ 80.

At that point, Lieutenant Parkinson (of the Crime Free Housing Unit) interrogated them. *Id.* ¶ 81. He asked whether Debi would ever let Tori—her daughter and the mother of her

grandchildren—back into her home. *Id.* ¶ 82. He even demanded to know whether Tori would be allowed to visit on Christmas. *Id.* ¶ 83.

In due course, the City's hearing officer decided that the City's police department had properly invoked the City's compulsory-eviction law. In a written decision, the hearing officer stated that "[a] violation has occurred pursuant to" the compulsory-eviction law. *Id.* ¶ 85. Hence, he wrote,"[t]he landlord, Clayton Baker, must begin eviction proceedings against the tenants listed above." *Id.* ¶ 90.

3. Clayton Baker does not want to evict Debi and Andy. Baker Decl. ¶¶ 10, 14. But for Granite City's compulsory-eviction demand, he would not even consider doing so. *Id.* ¶¶ 14-17. Given the City's demand that he "must begin eviction proceedings," however, Clayton Baker feels that he has to comply. *Id.* ¶¶ 11-12. So in August, he prepared a 30-day notice demanding that the couple "vacate and surrender the leased premises" *Id.* ¶ 13; V. Compl. ¶ 92. After a failed delivery attempt, Debi and Andy received the notice on September 13. V. Compl. ¶ 93.

If the City were prevented from enforcing its compulsory-eviction law, Clayton Baker would take no further steps to evict Debi and Andy. Baker Decl. ¶¶ 15-17. For that reason, Debi and Andy have no choice but to seek this Court's immediate intervention.

ARGUMENT

A temporary restraining order "is an emergency remedy issued to maintain the status quo until a hearing can be held on an application for a preliminary injunction." *Crue v. Aiken*, 137 F. Supp. 2d 1076, 1082 (C.D. Ill. 2001). A preliminary injunction, in turn, preserves the status quo and the rights of the parties until final judgment. *Ed's Pallet Servs., Inc. v. Applied Underwriters, Inc.*, No. 15-cv-1163-SMY-SCW, 2015 WL 12851786, at *1 (S.D. Ill. Dec. 15, 2015). The standards for the two remedies are "identical." *Trustees of the Carpenters' Health v. Darr*, No. 10-cv-130-SMY-SCW, 2016 WL 2766615, at *1 (S.D. Ill. May 13, 2016). Thus, a

temporary restraining order or a preliminary injunction should issue if the plaintiff establishes: (1) "he is likely to succeed on the merits"; (2) "he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *D.U. v. Rhoades*, 825 F.3d 331, 335 (7th Cir. 2016) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). "[T]he plaintiff's chances of prevailing need only be better than negligible," and a stronger showing on one element may offset a weaker showing on another. *Id.* at 338.

Each element favors immediate relief here. Debi, Andy, and Debi's grandchildren face the immediate prospect of a quintessential irreparable harm. They present an overwhelming legal case against Granite City's crusade to punish innocent tenants for the crimes of third-party houseguests. And the remaining equitable factors also support preliminary relief. A temporary restraining order should issue, followed by a preliminary injunction.

A. Plaintiffs face imminent and irreparable harm.

"Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." 11A Charles Alan Wright et al., Fed. Prac. & Proc. § 2948.1, at 129 (3d ed. 2013). And "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Ezell v. Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (quoting Wright, *supra*, at § 2948.1). Here, moreover, Debi Brumit and Andy Simpson face a textbook irreparable harm: the "potential loss of [their] home." *Vignola v. 151 N. Kenilworth Condo. Ass'n*, No. 16-cv-713, 2016 WL 6476547, at *5 (N.D. Ill. Nov. 2, 2016). For Debi and Andy, that harm is particularly acute. Debi is recently unemployed. V. Compl. ¶ 103. She and Andy are caring for two of her grandchildren (ages three years and 18 months). *Id.* ¶¶ 59, 105. With Andy's income as a dump-

truck driver, they are living paycheck to paycheck. *Id.* ¶ 103. If they were to be evicted, they would likely need to rely on charity from family to avoid becoming homeless. *Id.* ¶ 104.

By the City's own admission, these harms are imminent enough to demand the Court's intervention. In *Barron*, the City claimed that any need for preliminary relief would be ripe if and when the plaintiffs' grievance "terminate[d] with a ruling in the City's favor." Opp. to Prelim. Inj. Mot. 9 (*Barron*) (ECF 14); *see also id.* 6. That is precisely the situation here. The City ordered Debi and Andy's landlord to evict them. Their grievance hearing "terminate[d] with a ruling in the City's favor." *Id.* 9; V. Compl. ¶¶ 84-90. And their landlord has even taken steps—unwillingly—to comply with the City's command that he "begin eviction proceedings." V. Compl. ¶¶ 91-93. Even by the City's lights, Debi and Andy's request for preliminary relief is ripe for immediate action.

Debi and Andy's circumstances also resemble those of another case in which the federal courts entered preliminary relief against a compulsory-eviction law. In *Victor Valley Family Resource Center v. City of Hesperia*, the district court for the Central District of California preliminarily enjoined a "Crime Free Rental Housing Program" that raised "serious questions" of procedural due process. No. 16-cv-903, 2016 WL 3647340, at *2, 5 (July 1, 2016) (Birotte, J.). As relevant here, the court observed that the plaintiffs' landlords had recently served three-day notices to quit, a preliminary step for eviction in California. *Id.* at *6. The court found the challenged ordinances "the driving force" behind the landlords' actions. *Id.* And "[w]ith the threat of eviction imminent," the court held that "Plaintiffs have demonstrated that they will suffer irreparable harm." *Id.*; *see also id.* at *6 n.9 (noting that the "*threat* to evict Plaintiffs created a likelihood of irreparable harm" (emphasis in original; citation omitted)); *id.* at *6 ("'[W]rongful eviction is not an injury for which remedies available at law are adequate.'"); *see*

generally Rene Ray De La Cruz, *Hesperia settles $485K lawsuit with ACLU over alleged unlawful housing practices*, The Daily Press (Apr. 10, 2018). The need for the Court's intervention is no less pressing here.

B. Plaintiffs are likely to succeed on the merits.

As discussed above, the threat of irreparable harm tips sharply in favor of a temporary restraining order and preliminary injunction. And Debi and Andy easily hurdle the "low" threshold "for demonstrating a likelihood of success on the merits." *Rhoades*, 825 F.3d at 338; *see also id.* (describing "sliding scale" approach). The legal claims here are the same as those raised in the parallel *Barron* case. *Compare* V. Compl. (*Brumit*) ¶¶ 112-96 *with* V. Compl. (*Barron*) ¶¶ 120-218 (ECF 1). Over the past two months, the parties in *Barron* have thoroughly ventilated the merits of those claims, with a fully briefed motion for preliminary injunction[1] and a nearly fully briefed motion to dismiss.[2] (Given the similarities between the two cases, the two sets of plaintiffs today moved to consolidate their litigation. Mot. Consolidate (*Brumit*) (ECF 5).) The plaintiffs' due-process and equal-protection arguments in *Barron* apply with equal force here, and for ease of reference, we recapitulate them below.

1. The City's compulsory-eviction law violates the Due Process Clause.

a. "No property is more sacred than one's home," *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 704-05 (1897), and Debi Brumit and Andy Simpson have core property and liberty interests in theirs. Granite City seeks to extinguish those interests and make the family

[1] Mot. Prelim. Inj. (*Barron*) (ECF 6); Opp. to Prelim. Inj. Mot. (*Barron*) (ECF 14); Mot. to File Reply (*Barron*) (ECF 15); Opp. to Mot. to File Reply (*Barron*) (ECF 20); Reply Supp. Prelim. Inj. (*Barron*) (ECF 25).

[2] Mot. Dismiss (*Barron*) (ECF 21); Mem. in Supp. Mot. Dismiss (*Barron*) (ECF 22); Opp. to Mot. Dismiss (*Barron*) (ECF 26); Mot. Leave to File Reply (*Barron*) (ECF 27).

homeless. The City does not base this action on anything Debi or Andy did. It is enough that Debi's adult daughter committed a crime within city limits. *See* V. Compl. ¶¶ 66, 70-74, 84-90; *id.* Ex. 2, at 1.

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

Imputing guilt in this way is "contrary to fundamental principles of our justice system." *See United States v. Garcia*, 151 F.3d 1243, 1246 (9th Cir. 1998). In fact, this sort of "guilt by association" has been described as "one of the most odious institutions of history." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 178 (1951) (Douglas, J., concurring). It is "a philosophy alien to the traditions of a free society . . . ." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (citation omitted). One California judge even branded a similar compulsory-eviction law "carcinogenic," citing "the Damoclean substantive due process issue

which hangs over this statutory scheme." *Cook v. City of Buena Park*, 126 Cal. App. 4th 1, 10 (2005) (Bedsworth, Acting P.J., concurring); *see also id.* ("I am concerned . . . about its sweeping requirement that *all* occupants of the premises must be evicted for the sins of one . . . ."). Put simply, Granite City's experiment with guilt by association "has no place" in our system of ordered liberty. *Elfbrandt v. Russell*, 384 U.S. 11, 19 (1966).

b. In *Barron*, the City has now taken two swings at rehabilitating its compulsory-eviction law. *See* page 10 nn.1-2, above. The most it can muster is this: It is not punishing people like Debi and Andy for other people's crimes; it is punishing them for "allow[ing]" those other people's crimes. Mem. Supp. Mot. Dismiss 5 (*Barron*) (ECF 22).

That sleight of hand amounts to guilt by association repackaged. The City would fault Debi and Andy for "allow[ing]" Debi's adult daughter to break the law and for "fail[ing] to responsibly control" her. *Id.* But absent a legal duty and authority to prevent Tori's crime, Debi and Andy cannot be liable for "allow[ing]" it. In fact, the Supreme Court made this point explicitly in one of the leading cases rejecting guilt by association. In the Court's words, "[a] legal duty to 'repudiate'—to disassociate oneself from the acts of another—cannot arise unless, absent the repudiation, an individual could be found liable for those acts." *Claiborne Hardware Co.*, 458 U.S. at 925 n.69. And that rule makes perfect sense. Were it otherwise, state actors could always do what the City seeks to do here: arbitrarily punish Person *A* for "allowing" Person *B*'s misdeeds.

With two rounds of briefing behind it in *Barron*, the City still has no response to this hard truth. That silence speaks volumes. The "core" of the Due Process Clause is "protection against arbitrary action." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998). And punishing someone for a crime they did not commit—and that they had neither duty nor power to stop—is

arbitrariness made manifest. The City can offer no basis for ascribing to Debi and Andy a citywide obligation to police Debi's adult daughter. *Cf. Graham v. McGrath*, 363 F. Supp. 2d 1030, 1035 (S.D. Ill. 2005) ("[I]n Illinois, one does not owe a duty to protect another from criminal acts of third parties unless the plaintiff and defendant are in one of a very limited number of special relationships . . . ."). The City fails even to say what it thinks Debi and Andy should have done differently. The couple had no hand in Tori's crime. V. Compl. ¶ 66. They had no foreknowledge. *Id.* They have repeatedly tried to help Tori turn her life around—from kicking her out, to driving her to the hospital, to caring for her children. *Id.* ¶¶ 57, 59-62. They've done everything right, but the City wants to punish them anyway. That breaks with the "basic concept" of our justice system: that "legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972).

c. The City continues to labor under the misimpression that the Supreme Court blessed its compulsory-eviction scheme in *HUD v. Rucker*, 535 U.S. 125 (2002). That is wrong. When the government "is . . . acting as a landlord of property that it owns," the Court reasoned in *Rucker*, it may exercise a contractual right to evict even innocent tenants for the crimes of their guests. *Id.* at 128-29, 135. Like any other landlord, public-housing authorities can invoke "a clause in a lease to which [their tenants] have agreed." *Id.* at 135. But the Court made clear that the due-process analysis is "entirely different" when the government acts "as sovereign." *Id.* When the government "attempt[s] to criminally punish or civilly regulate [people] as members of the general populace," *id.*, it does not enjoy a blank check to punish the blameless.

Granite City claims just such a blank check here. Unlike the public-housing authority in *Rucker*, the City is not Debi and Andy's landlord. Clayton Baker is, and he doesn't want to evict them for a crime they did not commit. Baker Decl. ¶¶ 4, 9-17. Unlike a public-housing authority,

the City is not invoking a lease to which it is party; it is intruding on the leases of others, armed with a battery of sanctions. These actions are paradigmatically "sovereign." *Rucker*, 535 U.S. at 135. In *Rucker*'s words, the City is "civilly regulat[ing]" Debi and Andy "as members of the general populace." *Id.* And it is doing so by punishing one person for the crimes of another. That exercise in collective punishment cannot be squared with the Due Process Clause. At minimum, Plaintiffs' due-process claim stands a far "better than negligible" likelihood of success, the merits standard at the preliminary-injunction stage. *Rhoades*, 825 F.3d at 338.

2. The City's compulsory-eviction law violates the Equal Protection Clause.

Plaintiffs also are likely to prevail on equal-protection grounds. Granite City's compulsory-eviction law targets innocent people—but only certain ones. For people who can afford to buy their homes outright, the City imposes no citywide duty to "responsibly control" householders and guests. *See* Mem. Supp. Mot. Dismiss 5 (*Barron*) (ECF 22); *see also* Compl. (*Brumit*) ¶¶ 140-44; Granite City Mun. Code § 5.142.010. Likewise for people who qualify for a traditional mortgage. Compl. ¶¶ 140-44. Likewise for (some) people buying their home under an installment contract. [3] It's a different story, though, for people—like Debi and Andy—who rent. *Id.* They are held responsible for any offense that any householder or any guest commits anywhere within city limits (and sometimes, anywhere on earth). *Id.* ¶¶ 21-23, 28.

Classifying residents along these lines violates the Equal Protection Clause. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). When a governmental classification impinges on a fundamental right, that distinction is subject to strict

[3] As detailed in the *Barron* briefing, Granite City's compulsory-eviction law also regulates many installment-contract purchasers as renters and subjects them to the same threat of eviction. Mot. Prelim. Inj. 5, 15-16 (*Barron*) (ECF 6).

scrutiny. *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). And regardless of the right infringed, no classification is valid if irrational. *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982). Here, for the reasons discussed above (at 10-13), Americans enjoy a fundamental right not to be punished for other people's crimes. For that reason, Plaintiffs are likely to succeed in invoking strict scrutiny and, in turn, to prevail under that standard. *See* Opp. to Mot. Dismiss 13-14 (*Barron*) (ECF 26).

Plaintiffs would also be likely to prevail if the Court were to subject the compulsory-eviction law to only rational-basis review. While the rational-basis standard is deferential, "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446. And here, classifying people based on their home-financing arrangements no more relates to crime-control (the City's avowed goal) than would classifying them based on student-loan debt or child support or car color. *See* Opp. to Mot. Dismiss 14-18 (*Barron*) (ECF 26).

Debi and Andy's experience illustrates the point. If they could have afforded a mortgage or to buy a home outright, Debi's adult daughter could have committed any crime imaginable without subjecting them to any punishment at all. For people with fee-simple title, or mortgages, or longer-term installment contracts, the City imposes no duty to "control" householders or guests. Mem. in Supp. Mot. Dismiss 5 (*Barron*) (ECF 22). But things are different for people who rent. On pain of losing their home, people like Debi and Andy are saddled with an unprecedented legal burden: Unlike their neighbors, they are liable citywide for the misdeeds of any householder or guest—or anyone whom the City conceives to be a householder or guest.

That classification "bears no relation" to the City's public-safety ends. *Williams v. Vermont*, 472 U.S. 14, 24 (1985). And the City's briefing in *Barron* let slip why. In *Barron*, the City admitted it singles out renters because no other people—homeowners, for example—are

"subject to eviction under Illinois law." Mem. in Supp. Mot. Dismiss 13 (*Barron*) (ECF 22). As the City explains, it simply lacks the "legal option" to evict anyone else. *Id.* That admission gives the game away. "[E]ven in the ordinary equal protection case calling for the most deferential of standards," what matters is "the relation between the classification adopted and the object to be attained." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Yet in the City's own telling, there is no such relation here. The City singles out renters and short-term installment buyers not because that classification relates to the City's claimed *object*, public safety. The City singles them out because they are vulnerable to the City's preferred *punishment*—eviction.[4]

Punishment is not in itself a lawful governmental objective. But instead of designing its law in service of "an independent and legitimate legislative end," *id.* at 633, the City first picked the punishment it wanted to impose, then worked backwards. That is why the City's classification has everything to do with private real-estate disputes and nothing to do with public safety. *See* Compl. ¶¶ 140-44. That is also why any link between classification and crime-control "is not only 'imprecise,'" but "wholly without any rational basis." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973).

To the extent Granite City can legitimately punish innocent people for the misdeeds of their adult houseguests, the City must be able to articulate why it wields that awesome power against renters but not homeowners. To date, the best the City has come up with is that renters' homes simply matter less. *See* Mem. in Supp. Mot. Dismiss 11 (*Barron*) (ECF 22). Yet that remarkable argument is not one the courts can accept. As a matter of property law, there are of course differences between fee-simple estates and leasehold estates. But as against the

[4] The compulsory-eviction law in fact applies to some people who are not subject to eviction under Illinois law. *Compare* Granite City Mun. Code § 5.142.010(B), *with* 735 ILCS 5/15-1106(a)(2).

government, Debi and Andy's home is no less their castle because they have "only" a leasehold. *Id.* The Constitution protects them just as it protects "the Lord of the Manor who holds his estate in fee simple." *Minnesota v. Carter*, 525 U.S. 83, 95 (1998) (Scalia, J., concurring); *see also* Opp. to Mot. Dismiss 18 (*Barron*) (ECF 26) (collecting authority). That, presumably, is why the City has yet to identify any decision—in any jurisdiction—approving anything like its ordinance. Whatever the level of scrutiny, Plaintiffs' equal-protection claim is likely to succeed.

C. The equitable factors favor preliminary relief.

1. The balance of hardships tips lopsidedly in Plaintiffs' favor.

On one side of the scale stands the prospect of homelessness for Debi, Andy, and the two small children under their care. On the other side stands nothing: A preliminary injunction would not harm the City at all. For one thing, "there can be no irreparable harm to a municipality when it is prevented from enforcing an unconstitutional statute." *Horina v. Granite City*, No. 05-cv-79-MJR, 2005 WL 2085119, at *3 (S.D. Ill. Aug. 29, 2005). For another, there is no suggestion that Debi, Andy, Debi's three-year-old grandchild, or her 18-month-old grandchild, pose any threat to the community at large. Indeed, both of the people who allegedly committed the crime triggering the City's compulsory-eviction demand have long since been released on bond. V. Compl. ¶ 67. If the community is secure with the alleged criminals at large until trial in their case, it will be no less secure if Debi and Andy keep living in their home pending trial here. And of course, preliminary relief would in no way interfere with the City's ability to protect the public through legally appropriate means (for example, by arresting people who commit crimes). Relief for Debi and Andy would simply prevent the City from taking away the only home they and Debi's grandchildren have available.

2. The public interest favors preliminary relief.

A temporary restraining order and preliminary injunction would also be in the public interest. *See Whole Woman's Health All. v. Hill*, No. 19-2051, 2019 WL 3949690, at *8 (7th Cir. Aug. 22, 2019) ("Enforcing a constitutional right is in the public interest."). Granite City's enforcement of its compulsory-eviction law is aggressive, coercive, and pursued with blinkered disregard for innocence, constitutional limits, and common sense. Put simply, the City cannot be trusted to honor the rights of its citizens. Its relentless efforts to make innocent people homeless violate the U.S. Constitution, and this Court's intervention is needed.[5]

CONCLUSION

For the foregoing reasons, a temporary restraining order should issue without delay and a preliminary injunction should be granted.

Dated: October 7, 2019.

Respectfully submitted,

s/Samuel B. Gedge

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[5] The Court has discretion to waive bond under Federal Rule of Civil Procedure 65(c) and should exercise that discretion here. Bond is inappropriate if "there's no danger that the opposing party will incur any damages from the injunction." *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 607 F.3d 453, 458 (7th Cir. 2010). In addition, federal courts often waive bond in civil-rights cases such as this one and—also as here—when requiring bond "would condition the exercise of plaintiffs' constitutional rights upon their financial status." *Smith v. Bd. of Election Comm'rs*, 591 F. Supp. 70, 72 (N.D. Ill. 1984).

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 2019, a true and correct copy of the foregoing Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and Motion for Preliminary Injunction (along with the accompanying declarations, exhibit, and certificate) was dispatched to a third-party process server for service to the following Defendant:

The City of Granite City, Illinois
c/o Mayor Ed Hagnauer/City Clerk Judy Whitaker
2000 Edison Avenue
Granite City, IL 62040

I further certify that on this 7th day of October, 2019, a true and correct copy of the foregoing Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and Motion for Preliminary Injunction (along with the accompanying declarations, exhibit, and certificate) was sent by First Class U.S. Mail, postage prepaid, to:

The City of Granite City, Illinois
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2000 Edison Avenue
Granite City, IL 62040

Brian Konzen
Granite City City Attorney
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Erin M. Phillips
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UNSELL SCHATTNIK & PHILLIPS PC
3 South 6th Street
Wood River, IL 62095

I further certify that on this 7th day of October, 2019, a true and correct copy of the foregoing Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and Motion for Preliminary Injunction (along with the accompanying declarations, exhibit, and certificate) was sent by e-mail to Brian Konzen (bkonzen@lrklaw.com), Erin Phillips (erin.phillips7@gmail.com) and Bradley Young (bradleyyoung925@gmail.com).

s/Samuel B. Gedge
Samuel B. Gedge