STATE OF MICHIGAN

IN THE SUPREME COURT

THE MELVIN R. BERLIN REVOCABLE TRUST; THE RANDY LAMM BERLIN REVOCABLE TRUST; THE JANIS HEHMEYER TRUST; THE CAROLE J. NEWTON REVOCABLE TRUST; THE JEAN I. SMITH REVOCABLE TRUST; and THE STEPHEN L. SMITH REVOCABLE TRUST,	MSC No. 166228 CoA No. 359300 Berrien County Circuit Court Case No. 19-0034-CH

Plaintiffs/Counter-Defendants/Appellees,

v.

THOMAS C. RUBIN; NINA D. RUSSELL; and 14288 LAKESHORE ROAD, LLC,

Defendants/Counter-Plaintiffs/Appellants and Third-Party Plaintiffs/Appellants.

BRIEF AMICUS CURIAE OF GOLDWATER INSTITUTE IN SUPPORT OF APPELLANTS AND REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The Goldwater Institute ("GI") was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research, policy briefings and advocacy. Through its Scharf–Norton Center for Constitutional Litigation, GI litigates cases and files amicus briefs when its or its clients' objectives are directly implicated.

Among GI's principal goals is defending the vital constitutional principle of private property rights, and particularly protecting responsible homeowners' right to rent their homes. GI has litigated or appeared as amicus curiae in cases across the country defending this increasingly important aspect of property rights, *see, e,g., Mendez v. City of Chicago,* 228 N.E.3d 774 (Ill. App. 2023); *Hobbs v. Pacific Grove,* 301 Cal. Rptr.3d 274 (Cal. App. 2022); *Kinzel v. Eber,* 157 N.E.3d 898 (Ohio App. 2020); *McDonald v. Town of Jerome*, No. P1300-CV-201500853 (Yavapai Cnty. Super. Ct. June 13, 2016); *Sedona Grand, LLC v. City of Sedona*, 270 P.3d 864 (Ariz. App. 2012). GI drafted the nation's first comprehensive short-term rental law, enacted by the Arizona legislature to protect people's rights to share their homes, while allowing government to enforce reasonable rules against

[1] No counsel for a party authored this brief in whole or part, nor did any person or entity, other than amicus or its counsel, financially contribute to preparing or submitting this brief.

nuisances. *See* S.B. 1350 (Ariz. 2016); A.R.S. §§ 9-500.39, 11-269.17. GI scholars have also published important research on the legal protections for short-term rentals. *See, e.g.*, Christina Sandefur, *Turning Homeowners into Outlaws: How Anti-Home-Sharing Regulations Chip Away at the Foundation of an American Dream*, 39 U. Haw. L. Rev. 395 (2017).

GI believes its legal and policy experience with short-term rentals and other property rights issues nationwide will benefit this Court in considering the issue on appeal: **whether offering one's single-family home as a short-term rental serves a "single family residence purpose[]."**

INTRODUCTION

The growing use of the internet to offer and secure short-term lodging may lead one to believe that the practice is a modern invention. But the reality is that short-term rentals are a centuries-old American tradition. For generations, people have let visitors stay in their homes, rather than in hotels, sometimes in exchange for money or for doing chores. New immigrants frequently stayed in the homes of more established immigrants. *See, e.g.*, Brian McCook, *The Borders of Integration: Polish Migrants in Germany and the United States, 1870–1924* at 31 (2011); Diana C. Vecchio, *Merchants, Midwives, And Laboring Women: Italian Migrants in Urban America* 68 (2006). During the days of segregation, traveling businessmen or musicians would often spend nights in the homes of local residents

because they were excluded from hotels. *See, e.g.*, Thomas J. Hennessey, *From Jazz to Swing: African American Musicians and Their Music, 1890–1935* at 132 (1994); Carlotta Walls Nanier, *A Mighty Long Way: My Journey to Justice at Little Rock Central High School* at 148-50 (2009).

The only difference today is that the practice has become more efficient: the internet has enabled homeowners and travelers to connect better than ever before, and online short-term rental platforms now help millions of homeowners rent rooms or houses to travelers. Short-term rentals help homeowners pay their mortgages and other bills and give entrepreneurs an incentive to buy dilapidated houses and restore them. Most importantly, the practice is an important way for property owners to exercise their basic right to choose whether to let someone stay in their home—a right the United States Supreme Court has called "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979).

In Michigan, where tourism comprises a significant portion of the state's economy, short-term rentals help support travelers' growing demand, which has exceeded pre-pandemic levels. In 2023, 128.3 million tourists visited the Great Lakes State, spending $29.3 billion and creating $53.2 billion in economic impact. Lindsay Moore, *Michigan Welcomed a Record-Breaking Number of Visitors Last*

Year. See How They Spent $29B, MLIVE (Oct. 15, 2024).[2] These tourism dollars support local bars and restaurants, stores, and recreation sites, all of which have seen significant growth in revenue in recent years. In 2022, one in eighteen jobs in Michigan was supported by tourism. *"Travel Michigan" Reports Tourism Continuing to Improve Across the State*, MoodyOnTheMarket.com (Sept. 15, 2023).[3]

But smaller cities whose residents and local businesses rely on tourism lack the hotel supply of the state's bigger cities, and therefore struggle to accommodate visitors. Short-term rentals have helped fill that gap—and in the case of some popular coastal destinations, have done so for over a century. Genevieve O'Gara, *South Haven, Home to Short-Term Rentals for 100 Years, Has Residents Who Want Them Gone*, Michigan Capitol Confidential (June 18, 2022).[4] Indeed, most of Michigan's short-term rentals are located in rural, waterfront areas, Ron French, *Despite National Slump, Michigan Vacation Rentals are Going Gangbusters*, Bridge Michigan (Jul. 17, 2023),[5] in residential neighborhoods that lack a large

[2] https://www.mlive.com/life/2024/10/michigan-welcomed-a-record-breaking-number-of-visitors-last-year-see-how-they-spent-29b.html.
[3] https://www.moodyonthemarket.com/travel-michigan-reports-tourism-continuing-to-improve-across-the-state/.
[4] https://www.michigancapitolconfidential.com/news/south-haven-home-to-short-term-rentals-for-100-years-has-residents-who-want-them-gone.
[5] https://www.bridgemi.com/business-watch/despite-national-slump-michigan-vacation-rentals-are-going-gangbusters.

supply of commercial hotels.

Such is the type of locale where the properties in this case are located. Lakeside, where Swift Estate is located, is a small beachfront community on Lake Michigan, which the state's official tourism website calls "a popular vacation destination … since the early 1920s." In fact, that website advertises several available short-term rentals within a couple of miles of the homes in this lawsuit. *Lakeside,* PureMichigan.org.[6] For example, "aqua elite Bold Stump Cottage," which is also located in a private association neighborhood, is approximately .7 miles from Swift Estates. Thus, it is unsurprising that, as the lower court acknowledged, Laura and Scott Malkin and Thomas Rubi and Nina Russell (the Homeowner-Defendants) relied on the ability to rent their homes—a practice that was not uncommon in the Swift Estates community—when they made the decision to purchase their properties. *Melvin R Berlin Revocable Tr. v. Rubin,* No. 359300, 2023 WL 4671407, at *2 (Mich. App. July 20, 2023).

After all, the Declaration of Covenants and Restrictions ("Declaration") for Swift Estates does not mention short-term rentals at all: it simply limits the use of

[6] https://www.michigan.org/city/lakeside. (https://www.michigan.org/property/aqua-elite-bold-stump-cottage), aqua Lake Perch, located approximately 1.8 miles from Swift estates (https://www.michigan.org/property/aqua-lake-perch), and Lakeside Grove Cottage, located approximately 1.4 miles from Swift Estates (https://www.michigan.org/property/lakeside-grove-cottage).

lots in the community to "single family residence purposes." Art. 4, § 1. Plaintiffs argue that Homeowner-Defendants should not be permitted to rent their homes to guests, because doing so would not serve a residential purpose. But that contention not only misapprehends what constitutes a residential purpose, it is also inconsistent with the way locals have used their undeniably "residential" properties for decades.

ARGUMENT

I. Short-term rentals *are* a residential use.

The Court of Appeals erred in holding that offering one's single-family home as a short-term rental is not a "single family residence purpose[]." On the contrary, renting out a home has always been recognized as a residential use—and the amount of time involved makes no difference to that categorization. Offering one's home as a *long*-term rental does not transform a house's use from residential to commercial, even though the occupants pay money to the owner to stay there, and even though the owner is obviously renting out the home for purposes of financial gain. Offering one's home as a *short*-term rental is no different.

The Court of Appeals concluded that a "residential purpose is the one place where a person lives as their permanent home." *Melvin R Berlin Revocable Tr.*, 2023 WL 4671407 at *4. But "permanence" is neither a necessary nor a sufficient criterion for categorization as a "residential" use. A person who lives in a home for an

indefinite period, but without deciding to make it a permanent living place—such as the defendant in *Dobson v. Maki*, 184 Mich. App. 244, 253 (1990)—is still domiciled there, and that is a "residential" use. So, too, is residence by a person who holds a "periodic tenancy," and thus remains in a home for an indefinite month-to-month period, or who holds over with the owner's acquiescence with no fixed termination date. *Ellison v. Romero*, 365 So.3d 1, 8 (La. App. 2020). And a person who owns more than one home is certainly engaged in "residential use" with all of them, including those that are vacant while she resides in another.

The court below erred in equating "residential use" with "domicile." The two concepts—although sometimes overlapping—are quite distinct. *See, e.g.*, *Heniser v. Frankenmuth Mut. Ins.*, 449 Mich. 155, 162–63 (1995) (distinguishing between reside and domicile). "Domicile" simply means a person's "home" *for the purposes of common law*. Domicile is, indeed, fixed and permanent, and as a matter of law, a person can have only one domicile. But *residential use* is a concept of land-use regulation and refers to the purposes to which a piece of land is put. As this Court has said, "a person may have only one domicile, but more than one residence." *Grange Ins. Co. of Mich. v. Lawrence*, 494 Mich. 475, 494 (2013).

In short, *domicile* appertains to the *person*—and specifically her intentions to deem a place "home"—whereas *residential use* appertains to the *property*, and specifically, to the kind of use to which it is being put. That is why this Court held

in *Bloomfield Ests. Improvement Ass'n v. City of Birmingham*, 479 Mich. 206 (2007), that the use of a park as a dog park was not "residential" in character: "The term 'residential,'" it said, "means 'pertaining to residence or to residences.' 'Residence' means 'the place, esp[ecially] the house, in which a person lives or resides; dwelling place; home.' The term 'residential' in the deed restriction thus refers to homes where people reside." *Id.* at 215 (citations omitted).

Consequently, a person's intention of remaining in a place for a period of time, whether long or short, is entirely irrelevant to the determination of whether property is being put to a "residential purpose." Instead, "residential purpose" or "residential use" is determined by how the land is being employed—whether it is being used as a dog park, a factory, a car-wash, a police station—or in accordance with "the usual, ordinary and incidental use of property as a place of abode." *Wood v. Blancke*, 304 Mich. 283, 288 (1943). The latter is a residential use, regardless of the *duration* that the occupants have in mind.

In reaching the contrary conclusion, the court below cited *O'Connor v. Resort Custom Builders, Inc.*, 459 Mich. 335 (1999), but *O'Connor* was not a case about rentals or who happened to be occupying a home at any given time. Rather, it was a case about ownership, specifically, whether time-shares (or "interval ownership") were permitted by neighborhood restrictions. Indeed, this Court explicitly noted that

"short-term rentals … [are] different in character" than "interval ownership." *Id.* at 346.

That made sense, because *O'Connor* found time-sharing was not a residential use *not* because of short durations involved in time-sharing, but because of the *character of the use.* Occupants, the court said, "don't have any rights … . They don't have the right to come whenever they want to, for example, or to leave belongings there." *Id*. Their ownership rights were not qualitatively residential because they were not employing the land as a "place of abode." *Wood*, 304 Mich. at 288. But home-sharers *do* use land as a place of abode. A person who rents a home for six months because she has been assigned a temporary job in a distant locale is using the land as a place of abode—and thus for residential purposes—even if it is not her legal domicile. She *can* leave her belongings there, and come and go as she wants, during those six months. The same is true if she rents the property for six weeks, or six days. Temporary abode is still abode.

The decision below also improperly relied on *Terrien v. Zwit*, 467 Mich. 56 (2002), for the proposition that short-term rentals constitute a commercial use. But *Terrien* was about whether operating a daycare business out of a residential home was a prohibited commercial use.[7] In concluding that the daycare was nonresidential

[7] And unlike the restrictions in *Terrien*, the Declaration at issue in this case does not prohibit "commercial uses" in the community—it simply limits properties to single family residences.

and commercial in nature, this Court relied on the fact that the neighborhood restrictions explicitly prohibited "storing of any equipment," and the daycare provided a "service to the public." *Terrien*, 467 Mich. at 65. In other words, operating a business out of one's home, as occurred in *Terrien*, is qualitatively different and distinguishable from merely accepting money in exchange for allowing occupants to live and behave in the same manner as single-family owners.

In determining whether a property's use is residential, the question should not be whether an owner's presence in that home is "intermittent," *Melvin R Berlin Revocable Tr.*, 2023 WL 4671407 at 7, but whether that owner is using the home for a residential *purpose*. And offering one's home for use as a residence—regardless of duration—is a residential purpose. Rented homes are a common feature of residential neighborhoods. Occupants may live in them for only months or weeks instead of decades, but that hardly makes them anything other than residences. Homeowners often let people stay in their homes in exchange for non-monetary compensation—washing dishes, preparing meals, or providing nanny services—and that does not mean the owner is using the home in a non-residential way.

If a homeowner has the right to decide whether to allow someone to stay in her home for free, or in exchange for non-monetary compensation, then the homeowner must also have a right to receive payment in exchange. The exchange of money does not alter the character of the residential use, because "the market does

not transform what were permissible acts into impermissible acts." Jason Brennan & Peter M. Jaworski, *Markets Without Limits: Moral Virtues and Commercial Interests* 10 (2016). The same rule applies to time limits. If a person rents a home for a year or two years, or for ten years, or for just a few days, that does not make it any less a residence or change the residential character of the neighborhood.

When determining whether a shared housing arrangement is consistent with local residential or family zoning, state courts across the country have considered *how a home is being used* rather than duration or the exchange of money between the parties involved. For example, the Wisconsin Supreme Court held that a group of women missionaries living together was a "family" for zoning purposes, where the statute did not require consanguinity, but defined family as "one or more individuals living, sleeping, cooking or eating on premises as a single housekeeping unit." *Missionaries of Our Lady of La Salette v. Vill. Of Whitefish Bay*, 66 N.W.2d 627, 629 (Wisc. 1954). Similarly, the Pennsylvania Supreme Court found that a group of elderly residents who lived together, shared kitchen facilities, and paid dues to participate qualified as a single-family residence. *In re Miller*, 515 A.2d 904, 909 (Pa. 1986). The court held that in determining whether a rental is consistent with the local zoning scheme, "the focus … should be directed to the *quality* of the relationship during the period of residency *rather than its duration*." *Id.* at 908–09 (emphasis added). It also rejected the idea that a contract

to pay dues substantively altered the living arrangement into a commercial transaction. *Id.* at 907. Finally, the Kentucky Court of Appeals held that a group residence of nurses functioned as a single housekeeping unit, even though they had separate rooms, because they shared a kitchen and other common facilities. *Robertson v. W. Baptist Hosp*., 267 S.W.2d 395, 397 (Ky. App. 1954). For purposes of "residential" versus "commercial" classification, what mattered was not the financial relationships, or sleeping arrangements, or length of occupancy, but whether the occupants used the land like a single-family unit—like a place of abode.

Similarly, here, in limiting the use of Swift Estate properties to "single family residence purposes," the Declaration emphasizes the characteristic of the structure and living arrangement, *not* whether the occupants of the home are the owners, or the duration of occupation. *See, e.g.*, Art II, § 1(e) (defining "single family residence" as a "dwelling structure on a lot intended for the shelter and housing of a single family"); Art II, § 1(f) (defining "single family" as a number of related or unrelated persons "maintaining a common household in a residence"); Art 4, § 1 (limiting lot use to a "single family residence *structure*").The court of appeals even acknowledged that the "Declaration was designed to ensure uniformity in buildings and design," not to regulate how long a single family occupied a home. 2023 WL 4671407 at *6.

Yet for the first time in the community's nearly 50 years of existence, the Association (and decision below) tries to read into the Declaration a restriction on short-term rentals that simply is not there. Other courts have rejected such attempts. For example, the Vermont Supreme Court rejected a town's effort to characterize a home offered as a short-term rental as non-residential in *In re Toor*, 59 A.3d 722 (Vt. 2012). In that case, a town zoning administrator claimed homeowners "had changed the use of their property either to a bed and breakfast, a rooming and boarding house, or a hotel or motel without a permit" and "demanded that [the homeowners] discontinue renting the house and apply for a permit for either a bed and breakfast or a rooming and boarding house." *Id*. at 724 ¶ 4. The Court rejected this argument, focusing on *how the land was used* rather than on the duration of tenancy or the exchange of money.

First, it said, the property had "cooking, sleeping and sanitary facilities" that "[met] the definition of a single family house." *Id.* at 726 ¶ 11. Likewise, here, the Declaration provides for residential purposes by specifying that dwellings be "intended for the shelter and housing of … one or more persons each related to the other by blood, marriage, or adoption, or a group of not more than three persons … maintaining a common household in residence." Art. II, § 1(e)-(f).

Second, the Vermont court found that "the uses that [the homeowners] put the property to when they are occupying it, *or even when they are not present*, are

essentially the same as the uses to which the tenants put the property." *In re Toor*, 59 A.3d at 726 ¶ 12 (emphasis added). Again, this properly focused on how the *land* was used, not on the particular actions or intentions of the contracting parties—and, again, the Vermont court's findings are echoed by the situation in this case, where the Homeowner-Defendants also put the property to qualitatively residential uses.

Finally, the Vermont court found that—once more like the Declaration in this case—the state's laws were silent with regard to the length of rentals, and therefore the zoning administrator could not restrict short-term rentals as long as there was "occupancy by a family living as a household unit." *Id*. at 728 ¶ 19. Ruling in favor of the homeowners, the Court noted that it was "particularly affected by the requirement of narrow construction and the need for landowners to be able to ascertain the line between proper use of their property and illegal use." *Id*. at 269 ¶ 21. This principle rings especially true in a tourist community like Lakeside, where the abundance of short-term rentals and conventionality of transient visitors would certainly lead any ordinary person to believe that offering one's home to renters is acceptable.

The Utah Court of Appeals reached a similar conclusion in *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah App. 1998), determining that renting homes for short periods of time *was* permissible in a city whose zoning ordinance

limited land use in residential zones to single-family dwellings. There, like here, the code defined single-family dwellings as those "designed for occupancy by one family," but did not specify the duration for which families could occupy such dwellings. *Id*. at 208. The court found that it was "irrelevant what type of estate, if any estate at all, the occupying family has in the dwelling, i.e., whether the family holds a fee simple estate, a leasehold estate, a license, or no legal interest in the dwelling"—and that it was "equally irrelevant whether the occupying family stays for one year or ten days." *Id.* at 211. The "only relevant inquiry," the court said, was *how the land was being used*: "whether the dwelling is being used for occupancy by a single family" or not. *Id*. And because the property was being used as a household, and not for industrial or commercial or some other kind of use, the short-term rentals of days or weeks did not violate the zoning ordinance.[8]

Like the City of Sandy's zoning code, the Declaration in this case does not limit the duration families can occupy a dwelling. It simply requires that uses be residential in character—which means, for purposes typically associated with abiding, as opposed to industrial or commercial use. The drafters could have included a provision restricting the duration of rentals, but did not do so. The

[8] The court found that it was bound to "construe existing zoning ordinances strictly." *Id*. at 212. Michigan courts apply the same strict construction against CC&Rs, "and all doubts are resolved in favor of the free use of property." *Sylvan Glens Homeowners Ass'n v. McFadden*, 103 Mich. App. 118, 121 (1981).

question therefore is simply whether the property is being employed for purposes of dwelling. Renting property for people to employ as a dwelling—even temporarily, even for short periods—is still residential use.

II. Short-term rentals were common and well-advertised when the Declaration was created.

Although the Declaration does not explicitly prohibit short-term rentals, the court of appeals nevertheless concluded that by limiting the use of Swift Estate lots to "single family residence purposes," the drafters intended to exclude homeowners from renting their homes to visitors. To support this contention, it asserted that "at the time the Declaration was created, the Swift Estate lots were not advertised on internet-related rental sites." 2023 WL 4671407, at *6. But this was inapposite, and even misleading.

The Swift Estate Declaration was recorded in 1977, *id.*, nearly two decades before the first online platform for booking short-term rentals was launched in 1995. *Get to Know Vrbo*.[9] Swift Estate lots were not advertised to the public via the internet when the Declaration was created because the internet was not accessible to the public at that time.

But the practice of renting single-family homes for short durations *was* both common and well-advertised to out-of-towners in the 1970s. Vacation rentals were

[9] https://www.vrbo.com/about/.

frequently listed in newspapers as early as the 1950s, decades before the Swift Estate Declaration was recorded. Nicole Adams, *Why Do People Choose Vacation Rentals?*, EastWest Hospitality (Jan. 9, 2024).[10] Indeed, **short-term rental listings for homes in Lakeside, Michigan, were pervasive in out-of-state newspapers in the 1960s**. *See, e.g.*, *Want Ad Section*, Chicago Daily Tribune, Apr. 28, 1962, at 2 (listing a 2-story, 3-bedroom home in North Lakeside, Michigan, as a short-term rental during the month of July); *Want Ad Section*, Chicago Daily Tribune, Aug. 19, 1962, at 8 (listing a 2-bedroom cottage in Lakeside, Michigan, available for rent by the day, weekend, and week in August and September). Thus, the drafters of the Declaration would have been quite familiar with the practice of offering of single-family homes to out-of-town vacationers. Had they intended to prohibit rentals, they easily could have included such a prohibition in their detailed provisions. But they chose not to do so.

III. Nuisance concerns do not justify—and are not resolved by—reading a short-term rental ban into the Declaration.

To further support its holding, the court below assumed that the Declaration's drafters would not have welcomed the noise, traffic, and trespassing problems sometimes associated with visitors, and therefore that they must have intended to

[10] https://rentalsunited.com/blog/history-of-vacation-rentals-infographic/; https://eastwest.com/insights/vacation-rentals/why-do-people-choose-vacation-rentals/.

prohibit short-term rentals. 2023 WL 4671407 at *6 n.4. But those problems can result from *any* occupant or guest in the community. Moreover, given Lakeside's long history as a vacation destination, the community and local government would surely know how to curb unruly behavior: with the ordinary kinds of rules that limit noise, regulate parking, and proscribe other nuisances, that are found throughout communities in Michigan. Such rules suffice to address concerns about noise, traffic, etc., and therefore such concerns cannot justify reading a ban on short-term rentals into the Declaration that is not present. And reading such a ban into the Declaration violates the rule that covenants "must be enforced as written," with all "doubts … resolved in favor of the free use of property." *Johnson Fam. Ltd. P'ship v. White Pine Wireless, LLC*, 281 Mich. App. 364, 389 (2008) (citations omitted).

Additionally, many short-term rental platforms *themselves* provide resources above and beyond those available by municipal ordinance to help neighbors deal with disruptive rental guests. For example, Airbnb maintains an online hotline that allows neighbors—anonymously if they prefer—to file complaints about noisy guests, parking violations, and more. *See Airbnb Neighbors—Contact Us*, AIRBNB.[11]

In fact, attempting to implement an across-the-board ban on short-term rentals, instead of enforcing existing anti-nuisance laws or specific regulations of

[11] https://www.airbnb.com/neighbors.

traffic, etc., is likely to make things worse by fostering "underground" rentals and creating an atmosphere of snooping and suspicion. That was one reason why police in Nashville, Tennessee, announced that they did not want to enforce that city's anti-short-term rental restrictions. "Police officers," they declared, "have plenty on their plates answering calls for service and proactively working to deter criminal activity." Eric Boehm, *Nashville Cops Don't Want to Enforce Airbnb Regulations Because They'd Rather Focus on Stopping Actual Crime,* Reason.com (Sep. 27, 2016).[12]

CONCLUSION

Short-term rentals have long been prevalent in Michigan's lakeside communities. The drafters of the Swift Estate Declaration would have been familiar with them and could have prohibited them had they wished. But they chose not to. Because offering one's single-family home as a short-term rental serves a "single family residence purpose[]" and is thus consistent with the community's Declaration, the Court should reverse the decision below.

DATED: JANUARY 10, 2024

[12] http://reason.com/blog/2016/09/27/nashville-cops-wont-enforce-airbnb-regul. A Tennessee state court later held the Nashville ordinance invalid. Joyce Hanson, *Nashville Airbnb Ordinance is Unconstitutional, Judge Says,* Law360.com (Oct. 26, 2016), https://www.law360.com/articles/855286/nashville-airbnb-ordinance-is-unconstitutional-judge-says.

RESPECTFULLY SUBMITTED,

/s/ *Michael Brownfield*
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WORD COUNT CERTIFICATE

MICHAEL BROWNFIELD being first duly sworn, certifies and states the following:

1. He is an attorney with the Goldwater Institute;
2. The brief prepared by his office complies with the print type requirements;
3. Goldwater Institute relies on the word count of its word processing system used to prepare the brief, using Times New Roman size 14 font; and
4. The word processing system counts the number of words in the brief as 4,409.

/s/ *Michael Brownfield*
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STATE OF MICHIGAN

IN THE SUPREME COURT

THE MELVIN R. BERLIN REVOCABLE TRUST; THE RANDY LAMM BERLIN REVOCABLE TRUST; THE JANIS HEHMEYER TRUST; THE CAROLE J. NEWTON REVOCABLE TRUST; THE JEAN I. SMITH REVOCABLE TRUST; and THE STEPHEN L. SMITH REVOCABLE TRUST, Plaintiffs/Counter-Defendants/Appellees, v THOMAS C. RUBIN; NINA D. RUSSELL; and 14288 LAKESHORE ROAD, LLC, Defendants/Counter-Plaintiffs/Appellants and Third-Party Plaintiffs/Appellants.	Supreme Court No. 166228 Court of Appeals No.: 359300 Berrien County Case No. 19-0034-CH

_____/

PROOF OF SERVICE/STATEMENT REGARDING E-SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

MICHAEL BROWNFIELD, being duly sworn, deposes and says that he is an employee of the organization The Goldwater Institute, and that on January 10, 2025, he caused to be served a copy of the Motion for Leave to File Brief *Amicus Curiae* of The Goldwater Institute, and this Proof of Service/Statement Regarding E-Service as follows:

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