No. 25-0748

IN THE SUPREME COURT OF TEXAS

CITY OF DALLAS,
Petitioner,

v.

DALLAS SHORT-TERM RENTAL ALLIANCE, et al.
Respondents.

On Petition for Review
From the Fifth Court of Appeals, Dallas
No. 05-23-01309-CV

BRIEF AMICUS CURIAE OF GOLDWATER INSTITUTE IN SUPPORT OF RESPONDENTS AND IN OPPOSITION TO THE PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Cases

Regulations

Other Authorities

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

The Goldwater Institute ("Goldwater") is a nonpartisan public-policy and research foundation headquartered in Arizona, which is devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, policy briefings, and advocacy. Through its Scharf-Norton Center for Constitutional Litigation, Goldwater files amicus briefs when its, or its clients', objectives are directly implicated. Goldwater has appeared before this Court on several occasions, both representing parties and as an amicus curiae. *See, e.g., Borgelt v. Austin Firefighters Ass'n*, 692 S.W.3d 288 (Tex. 2024); *Elliott v. City of College Station*, 717 S.W.3d 888 (Tex. 2025); *Landry's, Inc. v. Animal Legal Defense Fund*, 631 S.W.3d 40 (Tex. 2021); *Morath v. Texas Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826 (Tex. 2016).

One of Goldwater's main projects is the defense of the rights of property owners who engage in home-sharing (i.e., "short term rentals"). Goldwater has represented home-sharers in courts nationwide, *see, e.g., Mendez v. City of Chicago*, 228 N.E.3d 774 (Ill. App. 2023); *Hobbs v. City of Pacific Grove,* 301 Cal. Rptr.3d 274 (Cal. App. 2022); *City of Miami Beach v. Nichols*, 314 So.3d 313 (Fla. Dist. Ct. 2020); and appeared as amicus curiae in their defense. *See, e.g., Ladd v.*

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[1] This brief is filed in support of the Respondents. No fee was paid to amicus for preparing this brief nor will they be paying any other entity or attorney for doing so.

Real Estate Comm'n, 230 A.3d 1096 (Pa. 2020); *Vacation Rental Owners v. City of Rancho Mirage*, No. E077118, 2023 WL 4445297 (Cal. App. 2023); *Kinzel v. Ebner,* 157 N.E.3d 898 (Ohio App. 2020). Goldwater scholars have also published extensively on the rights of property owners to lease their property on a short-term basis. *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); Timothy & Christina Sandefur, *Cornerstone of Liberty: Property Rights in 21st-Century America* 131-33, 153-54 (2d ed. 2016).

Amicus believes its litigation experience and public-policy expertise will aid this Court in considering the petition.

SUMMARY OF ARGUMENT

The right to own property—which is a fundamental right under Texas law—includes the right to lease it. The right to lease property includes the right to lease it for whatever length of time the owner chooses. The City's ban therefore violates the Plaintiffs' fundamental constitutional rights.

The City defends the ban on the theory that people have no constitutionally protected right to lease their property for "short durations." Petitioner's Brief on the Merits (Pet. Br.) at 49. Yet it purports to respect the "broad" right of property owners to lease out their property. *Id.* at 35. Where is that line drawn? There is no such line—not in law, history, or reason. And the City offers none except its mere say-so. Its theory would empower it to cut up any fundamental constitutional right and eradicate each of its "short" parts while claiming to respect the "broader" right. That's fallacious, unprecedented, and fails the Due Course of Law test at the first step—namely, the requirement that the right at issue be "careful[ly] descr[ibed]." *State v. Loe*, 692 S.W.3d 215, 227-28 (Tex. 2024).

Homesharing is a right "deeply rooted in this state's history and tradition." *City of Sherman v. Henry*, 928 S.W.2d 464, 473 (Tex. 1996). Historically, homesharing has been ubiquitous. It is, of course, subject to regulation—like everything else—to prohibit harms to other people, and the property owners don't dispute that. But the City has plenty of ways of combatting nuisances; excessive noise, littering, and all the other things the City complains about in its brief are already against the law. But instead of enforcing those laws, it has chosen to revoke an entire stick from the property rights bundle of innocent homeowners—something it has no constitutional authority to do.

This case is not about "vesting," but about the erasure of an ancient aspect of property rights—the right to lease. What's more, this Court effectively overturned the vague and obsolete theory of "vesting" in *Robinson v. Crown Cork & Seal Co.,* 335 S.W.3d 126, 139-45 (Tex. 2010). But even if the "vesting" analysis were applicable here, the property owners easily meet that standard, given their extensive, and reasonable, reliance interests.

Finally, homesharing is a residential use—not an industrial or commercial use. For the City to classify it as industrial so as to exile it to areas where it is unprofitable or infeasible, is arbitrary and unreasonable, and therefore unconstitutional.

ARGUMENT

I. The City's *ipse dixit* redefinition of the right to lease commits a fallacy.

A. Rights protected by due course of law analysis must be defined with sufficient generality to connect the right to its animating principles.

The City's "due course of law" argument turns on the question of whether the right to rent out property for "short durations," Pet. Br. at 49—whatever that means—is "deeply rooted in this state's history and tradition." *Henry*, 928 S.W.2d at 473.

Of course, the right to lease property has always been considered one of the "sticks" in the "bundle" of property rights. *See Ridgefield Permian, LLC v. Diamondback E & P LLC*, 626 S.W.3d 357, 363 (Tex. App.—El Paso 2021); *Zaatari v. City of Austin*, 615 S.W.3d 172, 190-91 (Tex. App.—Austin 2019); *Calcasieu Lumber Co. v. Harris*, 77 Tex. 18, 22 (1890).

So the City adds the qualifier "short durations" in order to claim that there's a distinction here. But what is a "short duration"? Evidently it's whatever the City says it is. But the City "may not put so potent a Hobbesian stick into the Lockean bundle." *Palazzolo v. Rhode Island*, 533 U.S. 606, 627 (2001). The right to private property is a "fundamental" right under the Texas Constitution, *Severance v. Patterson*, 370 S.W.3d 705, 709 (Tex. 2012), and no principle of common law or constitutional law has ever drawn any line between "short" and "long" leases. *See* Donald J. Kochan, *The Sharing Stick in the Property Rights Bundle: The Case of Short-Term Rentals & HOAs*, 86 U. Cin. L. Rev. 893, 901-05 (2018) (explaining why the right to share a home is part of property rights). The City is simply attempting a semantic trick: characterizing the right at issue as narrowly as possible in order to reach the conclusion that no such right exists.

By defining the right at issue as narrowly as possible, the City seeks to claim fidelity to the Constitution while in reality eviscerating the legal protection of the right. But Texas courts have long recognized the danger of this style of argument. "Such thin constructions of rights myopically disregard the broader guarantees within which they sit." *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs*., 309 A.3d 808, 950 (Pa. 2024) (Wecht, J., concurring).

Accordingly, courts require that due course of law analysis begin with a "'careful description'" of the right. *Loe*, 692 S.W.3d at 227-28 (citation omitted). Although the phrase "careful description" has never been precisely defined, it's at least clear that a "careful description" is one that defines the right with "'sufficient specificity to ground the right in a concrete application and *sufficient generality to* *connect the right to its animating principles*.'" *Doe v. City of Lafayette*, 377 F.3d 757, 769 (7th Cir. 2004) (emphasis added, citation omitted). To accomplish that, courts must avoid excessive abstraction, but also avoid the kind of *ipse dixit* narrowness the City is attempting here, which will "tip[] the scales against recognizing the right." *Hutchins v. Dist. of Columbia*, 188 F.3d 531, 554 (D.C. Cir. 1999) (Rodgers, J., concurring).

To appreciate the fallacy the City invites this Court to commit, imagine a case in which the defendant claims that his constitutional right to free speech was violated because the police arrested him for publicly speaking in support of a candidate running for mayor of his hometown—to which the government responds that this cannot be the case, because although it recognizes the right to free speech, nothing in the Constitution specifically refers to *mayoral* campaigns. Or imagine a case in which a government employee sues her employer, claiming it discriminated against her in her workplace—to which the government replies that the case must be dismissed because she has no legal right to that particular job. Or a case where a plaintiff claims his right to bear arms was violated last Tuesday by the confiscation of his gun, to which the government replies that while it respects the right to bear arms, there's no right to bear arms *on Tuesdays.* Such arguments would obviously be absurd—simply using loaded definitions of terms to prejudge the analysis.

The City's assertion that this case doesn't involve "the broad right to lease generally," but only the right to lease "on a *short-term* basis," City's Br. on the Merits ("Pet. Br.") at 24-25, 46, is just an effort to define the right narrowly and "tip[] the scales," *Hutchins*, 188 F.3d at 554 (Rodgers, J., concurring)— employing an *ipse dixit* definition of the right carefully designed to eliminate the right before even applying the due course of law analysis.[2]

That's not a "careful description" because it fails to "'connect the right to its animating principles.'" *Doe*, 377 F.3d at 769 (citation omitted). The animating principles of private property rights include autonomy, independence, security, legal predictability[3]—and, as discussed in Section III below, "the age-old principle of *sic utere tuo ut alienum non laedas*." *Scott v. West*, 594 S.W.3d 397, 401 (Tex. App.—Ft. Worth 2019). The City disregards these principles and implicitly assumes that it can legislate away any particular instance of the right to private

[2] The City rationalizes its excessively narrow definition of the right to property by claiming that doing so is necessary to "preserving the policymaking authority of legislative bodies and the separation of powers," Pet. Br. at 44, but that ignores the fact that "'[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.'" *Zaatari*, 615 S.W.3d at 198 (quoting *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943)).

[3] Property exists, among other things, to protect personal autonomy, enable people to generate wealth, and to ensure the stable and predictable rule of law. *See generally* Sandefur & Sandefur, *supra* at 5-49.

property, while somehow leaving that right intact, via an *ipse dixit* distinction between "long-" and "short-term."

Thus it claims that it doesn't dispute "the broad right to lease" (whatever that is), only the right to lease for periods of less than 30 days. But of course, it's illogical to say that an owner's right to lease for 30 days is constitutionally guaranteed, but *not* her right to lease for any *portion* of those 30 days. By that theory, the City can fritter away every part of the right to lease, while claiming that it's still leaving that right intact. It could eliminate the right to lease for six months by saying that an owner remains free to lease in year-long increments—or eliminate the right to lease for a year, because the owner can still lease in decade-long increments. That makes no sense.

To support its position, the City cites *Modern Builders, LLC v. City of Fort Worth*, No. 02-25-00275-CV, 2026 WL 1501055 (Tex. App.—Ft. Worth May 28, 2026), but that case commits the same fallacy. There, the court said that the right to lease property for less than 30 days cannot be part of the constitutionally protected right to private property because "in their current iteration [such rentals] are possible only because of the internet, driving both a qualitative and quantitative leap from boarding-houses of yore." *Id*. at *7 n.20. But technological innovations do not nullify constitutional rights. One might just as easily say that the freedom of speech doesn't extend to social media or e-mail, because the creators of the First

Amendment or Article I, Section 8, were unfamiliar with those technologies. Obviously it's true that modern communications technology has "driven both a quantitative and qualitative leap" in how Texans express themselves—but their constitutional right to freedom of expression still encompasses such technologies. *In re Lee*, 687 S.W.3d 69, 73 (Tex. App.—Dallas 2024). Similarly, one might say that the right to keep and bear arms doesn't include modern weapons, which represent a "qualitative and quantitative leap" beyond the muskets and flintlocks of yore. But the protections of the Second Amendment and Article I, Section 23, plainly apply to modern weaponry. *Cf. United States v. Rahimi*, 602 U.S. 680, 691-92 (2024).

The risk of an excessively narrow definition of constitutional rights is not hypothetical. Consider *Mutual Film Corp. v. Indus. Comm'n of Ohio*, 236 U.S. 230 (1915), which held that motion pictures were simply not speech protected by the First Amendment. It reached that conclusion precisely because it defined the scope of speech rights too narrowly—as referring only to "the press of the country, or … organs of public opinion," and therefore as excluding "mere representations of events, of ideas and sentiments published and known." *Id*. at 244. In other words, the *Mutual Film* Court did not "carefully define" the right. Instead, it did precisely what the City is asking this Court to do: it interpreted the scope of the constitutional right in the narrowest, most fact-specific way possible, in order to "preserv[e] the policymaking authority of legislative bodies," Pet. Br. at 44—and thereby excluded motion pictures from First Amendment protection for almost 40 years. (The Court later admitted that there could be "no doubt" that motion pictures are constitutionally protected speech. *United States v. Paramount Pictures*, 334 U.S. 131, 166 (1948)).

By contrast, in the social media and firearms examples, courts have defined the right "carefully"—that is, with a recognition of the history and philosophy behind those rights (the free exchange of ideas, and self-defense), as applied in a modern context. This Court should do likewise. The right to private property includes the right to lease that property, and the City can point to no principle in constitutional or common law that distinguishes the right to lease for "short" periods from the right to lease for "long" periods—or that defines these words in a constitutionally administrable way.

B. The right to lease property for less than one-month periods are part of the right to lease.

The City purports to distinguish what it calls "the broad right to lease"—which it concedes is constitutionally protected—from "short term" or "short duration[]" leases, which it says are not. Pet. Br. at 35, 40, 49. Yet nowhere in its brief does it define these terms, or provide any *principled* distinction to explain why the right to lease one's land enjoys *no constitutional protection whatever* if the lease is 29 days and twenty-three hours, but at 30 days, is suddenly transformed into a constitutional right—indeed, a *fundamental* right.

It cannot be that the City can simply draw that line however it wants. If so, the concept of constitutional right (let alone fundamental right) would be meaningless; the City could define the "shortness" of a "term" as it pleases—thereby erasing all protection from whatever it says (by pure *ipse dixit*) falls on the wrong side of that line. In other words, the City could slice up any "broad" right into as many slices as it chooses, and then outlaw each slice, since no particular slice is "broad" enough to enjoy constitutional protection.

Not only would that be fallacious—because it would fail to "carefully" define the right, as discussed above—but it's just *not true* to say that the right to lease for less than a month lacks the kind of historical roots that entitle it to fundamental constitutional status. On the contrary, the right to rent property for periods shorter than one month is certainly "deeply rooted in this state's history and tradition." *Henry*, 928 S.W.2d at 473; *see further* Kochan, *supra.*

At the ancient common law, leases were typically at will or at sufferance, not for a term of months. *See* John Forrester Hicks, *The Contractual Nature of Real Property Leases,* 24 Baylor L. Rev. 443, 447 (1972). Only in the thirteenth century did the lease for a term of years become common. 2 Frederick Pollock & Frederic Maitland, *The History of English Law* 111 (2d ed. 1968). By the American

Revolutionary era, it was well settled that a tenant could rent a piece of land for any period of time specified by contract, whether it be for years, months, weeks, or days. *See* 2 W. Blackstone, *Commentaries* *140 (lease, although called "term of years" may be "but for half a year, or a quarter, *or any less time"* (emphasis added)); William Woodfall, *Law of Landlord and Tenant: Including Leases, Assignments, Tenants in Fee* 185 (1802) (recognizing leases "taken for a week"); Walter Henry Burton, *An Elementary Compendium of the Law of Real Property* 277 (2d ed.1830).[4]

Staying in someone's home in exchange for money or labor was "a familiar practice" in eighteenth- and nineteenth-century America. Wendy Gamber, *The Boardinghouse in Nineteenth Century America* 2 (2007). "In cities and many towns, people of all classes were at least as likely to live in boardinghouses as in homes." *Id.* at 3. In fact, cities more often sought to regulate the right to rent for *long* periods—as, for example, in Massachusetts in 1736, which required property owners who "entertain[ed] … boarders or tenants in the house where [the owner] dwells, or in any other house of his whatsoever … for more than the space of twenty days" to submit certain paperwork to city officials. *Charters and General Laws of the Colony and Province of Massachusetts Bay* 508 (1814).

[4] Confusingly, at common law, even tenancies for a week or a day were called "a term of years" leases. *Id.*

Homesharing is thus an old American tradition. "Students have often stayed in private houses while attending colleges far from home. New immigrants frequently stayed in the homes of more established immigrants. 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." Sandefur, *Turning Homeowners into Outlaws, supra* at 396.

It's no exaggeration to say that the United States was essentially *created* in short-term rentals. Thomas Jefferson wrote the Declaration of Independence in the home of Philadelphia bricklayer Jacob Graaf, the second floor of which Jefferson leased on a weekly basis. Nathan Schachter, *Thomas Jefferson: A Biography* 118 (1957). And Gouverneur Morris composed the phrase "We, the people…" in the home of Mary Dally, where he rented a room in the summer of 1787. *See Miss Dalley's Boarding House Officially Recognized as Constitution House*, Statutes and Stories (June 5, 2025).[5]

Homesharing is also a longstanding Texas tradition. William Barret Travis often stayed at a boarding house for weeks at a time. 1 Joe Tom Davis, *Legendary Texians* 9 (1982). So did Charles Goodnight. Robert J. Gossett, *My Five Sons: A Texas Family Endures the Civil War* 139-45 (2013). Sam Houston lived in a

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[5] https://www.statutesandstories.com/blog_html/miss-dalleys-boarding-house-officially-recognized-as-the-constitution-house/.

boarding house when he found the Texas presidential house uninhabitable. James L. Haley, *Sam Houston* 231 (2015). Many authors of the 1876 Texas Constitution stayed in private homes while working on the Constitution. *See, e.g., Journal of the Constitutional Convention of the State of Texas* 810 (1875).

The law of the time drew no distinction between renting for 30 days and renting for less than that. Just a year before the Texas Revolution, England's Court of Kings Bench enforced a week-to-week tenancy, *Huffell v. Armitstead,* 173 Eng. Rep. 25, 26 (1835); *see also Campbell v. Scott,* 8 Law J. Rep. (o.s.) 110 (C.P. 1830) (weekly tenancy); *Towne v. Campbell,* 136 Eng. Rep. 369, 372 (K.B. 1847) (weekly tenancy). Weekly tenancy remained common at the time the Texas Constitution was written—as demonstrated by newspaper ads of the time, *see, e.g.,* Tri-Weekly Alamo Express, Feb. 25, 1861 at 1 (advertising "the Moodie House" rental per week or per day); Galveston Daily News, Sept. 20, 1865 at 4 (advertising "private boarding and lodging" by the week); Austin-American Statesman, June 17, 1875 at 3 (advertising rooms "to rent by the day, week or month"); Dallas Daily Herald, May 20, 1877 at 2 (advertising "well furnished rooms" in "Granger House" on weekly basis); *see also Henderson v. State*, 1 Tex. App. 432 (1876) (involving per-week rental); *Ullman v. State*, 1 Tex. App. 220 (1876) (boarder in a private home). It was also remarked upon in common legal texts. *See, e.g.,* Edward Lance Tarbuck, *Handbook of House Property* 118 (1875). Just three years after the Constitution was adopted, a treatise was published on the subject of boarding and lodging which explained that one of the distinguishing characteristics of a boarding-house, as opposed to a hotel, is that in the former "the guest is entertained on an implied contract *from day to day*." R. Vashon Rodgers, *The Law of Hotel Life* 167 (1879) (emphasis added)

What this shows is that the right to lease property—which the City purports to respect—has always included the right to lease property for less than one-month periods. The City offers no legal authority to the contrary. Neither did the cases on which the City relies. For example, in *Marfil v. City of New Braunfels,* No. 6:20-CV-00248-ADA-JCM, 2021 WL 8082644, at *4 (W.D. Tex. July 29, 2021), the federal district court—which of course cannot speak for Texas law—made no attempt at a principled distinction between "short" and "long" term rentals, but just made the conclusory assertion that short-term leases are "a relatively novel issue"—which as we've seen, is not true—and the bewildering claim that "the right to lease" is "[not] fundamental in Texas," *id.*, even though Texas law has always recognized property rights as fundamental, *Severance,* 370 S.W.3d at 709, *Ex parte Brown*, 38 Tex. Crim. 295, 302 (1897), and the right to lease is part of this right. *See, e.g., Harris*, 77 Tex. at 22.

As for *City of Univ. Park v. Benners*, 485 S.W.2d 773 (Tex. 1972), *City of Dickinson v. Crystal Cruise Invs., LLC*, No. 01-24-00684-CV 2026 WL 530391, at

*5-6 (Tex. App—Houston Feb. 26, 2026), and *Modern Builders,* 2026 WL 1501055, at *6-7, those cases didn't even address whether there is a constitutional cut-off at 30 days. Instead, they concerned the question of *vesting*, which is a different matter, discussed in Section III below.

The bottom line is clear: there's no constitutional, historical, or logical basis for the City's assertion that the right to lease for more than 30 days is a fundamental right, whereas the right to lease for 29 days or less is non-existent. Legal history as well as logic points in the opposite direction. The right to lease for less than 30 days is "deeply rooted in this state's history and tradition." *Henry*, 928 S.W.2d at 473.

II. The City's "vested rights" argument fails because the right to lease is a longstanding element of a fundamental constitutional right and this case is not about "mere expectancies."

Having brushed aside the fundamental right to lease one's property, the City resorts to mischaracterizing the right at stake, asserting that the plaintiffs here are claiming only a right to an "expectancy in the continued absence of regulation." Pet. Br. at 48. But that's not the right they are asserting. They're asserting the right to lease their property—an ancient strand in the fundamental property bundle. *City of Grapevine v. Muns*, 651 S.W.3d 317, 347 (Tex. App.—Ft. Worth 2021); *see also Zaatari*, 615 S.W.3d at 191 ("the issue here is not about property owners' right to use their property in a certain way—it is about owners of type-2 short-term rentals retaining their well-settled right to lease their property.”). In short, this case isn't about “vesting,” as the City claims, but a simple question of whether the fee-simple ownership of a house includes the right to lease it for whatever period the owners choose, subject to the *sic utere* principle, discussed in Section III below.

A. The question of “vesting” is out of place here.

The City's effort to transform this into a case about vesting is confusing, because the whole notion of “vesting” is obscure and unhelpful—as this Court acknowledged in *Robinson,* 335 S.W.3d at 139-45. True, *Robinson* involved retroactivity in tort rather than a property-rights restriction, but this Court's qualms about the concept of “vested” rights applies here with equal force: “What constitutes an impairment of vested rights is too much in the eye of the beholder,” it said, because it's unclear what considerations count in determining vesting, or how they're weighed. *Id.* at 143. Consequently, “[t]he dispute over whether to call something a vested right appears driven not so much by what the words mean as by the consequence of applying the label—that its impairment is prohibited.” *Id.*

The same is true here: the focus should not be on “vesting,” however that's determined, but on the clearer, more principled, and more consistent standard of “settled expectation[s],” *cf. Zaatari*, 615 S.W.3d at 190—which requires courts to consider the “objectives” of the constitutional right at issue, as well as “the nature and strength of the public interest served by the [challenged law] as evidenced by the Legislature's factual findings; the nature of the prior right impaired by the [challenged law]; and the extent of the impairment." *Robinson*, 335 S.W.3d at 145.

That test plainly weighs in favor of the plaintiffs here. They invested hundreds of thousands of dollars, perhaps millions, in their properties in reliance on traditional protections for private property rights, and were not only allowed to operate for years, but the City even created helpful ways for them to register their properties for leasing. *See City of Dallas v. Dallas Short-Term Rental All.*, No. 05-23-01309-CV, 2025 WL 2022063, at *2 (Tex. App.—Dallas July 18, 2025); Pet. Br. App. Tab 2 at 3, 6. The City makes no effort to dispute these reliance interests, but waves them off by claiming that the property owners cannot have a "vested" right because they were "operat[ing] in a regulatory vacuum." Pet. Br. at 47. But this is simply not true. They were operating subject to the City's existing Ordinances, including those against excessive noise, traffic congestion, and other nuisances. And they *do* have the right to expect their fundamental constitutional right to private property not to be cut off by the City by an across-the-board *ipse dixit* pronouncement.

B. Even if *Benners*-style vesting analysis were proper, the plaintiffs should prevail.

The City says the property owners here were "operat[ing] in a regulatory vacuum," *id.*, which is just another way of saying that the City used to respect their private property rights—and their mere "expectancy" that this would continue is not constitutionally protected.[6] In support of this argument, the City relies on *Benners* and its progeny. But *Benners* did not say that. Instead, *Benners* concerned vesting, which—assuming it's still valid after *Robinson*—is a different question entirely. *Hogan v. S. Methodist Univ.*, 688 S.W.3d 852, 860 (Tex. 2024).

"Vesting" involves situations in which rights can come into existence even without any basis in law, if the person has taken actions which demonstrate an equitable entitlement to something—an entitlement that has grown so deep the government cannot simply vanquish it at will. Reliance can give a right the "'definitive, rather than merely potential existence'" that entitles it to legal protection." *City of LaMarque v. Braskey*, 216 S.W.3d 861, 864 (Tex. App.—Houston 2007) (citation omitted). Vesting is therefore usually important in cases where someone asserts a right that is *not* recognized by common law or statute, but

[6] The City's slogan that "an expectancy in the continued absence of regulation [is] not a vested property right" is a good example of why *Robinson* was right to reject the vague and obsolete theory of "vesting." Pet. Br. at 48. It's hard to imagine what *any* individual right means *other than* an "expectancy in the continued absence of regulation." The freedom of speech consists entirely in the speaker's expectancy that the state will not punish her for what she says. The freedom of religion consists in the parishioner's expectancy that she will enjoy the "continued absence of regulation" of her religious beliefs. And the right to private property simply *means* the right to use that property, without having that right cut off except through due process of law and/or just compensation. "'[F]or what is the land but the profits thereof[?]'" *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1017 (1992) (quoting 1 E. Coke, *Institutes* *45). Whatever else the City's slogan means, it cannot support the conclusion that the City can eliminate strands from the property rights bundle *ad libitum*.

which she claims to have anyway, due to actions on her part—i.e., she's engaged in an activity to such a degree that for the government to intrude would disrupt her settled expectations in a fundamentally unfair way.

Thus, in *Rosenthal v. City of Dallas*, 211 S.W.2d 279 (Tex. Civ. App.—Dallas 1948), the property owner was operating a business even though the city had erroneously issued him a permit. The owner had relied on the permit, incurring substantial financial liabilities, and the question was therefore whether the city could bar him from operating based on the paperwork error, or whether his reliance was so substantial that he had acquired a right in continued operation. The court said he had acquired such a right.

Benners was concerned with *that* sort of issue. There, the property owner's business had been contrary to zoning laws for more than 30 years—operating as a junkyard in the 1970s in an area that zoned residential in 1940. Yet the city had let him continue operating anyway, as a way of compensating him (through "amortization") for eventually extinguishing that commercial use. *See* 485 S.W.2d at 775, 777. The Court said this was proper. The owner was operating illegally, but he still had a vested (i.e., equitable) interest in operating, because he had relied on the city's actions for a long time, at great cost to himself. Therefore, the city could only extinguish his use by compensating him—which, this Court said, the amortization process accomplished. *See id.* at 779 ("he [was] afforded an opportunity to recover his investment ... [and was] given sufficient time in which to terminate the commercial uses and to recoup any loss in property value.”).

Thus when *Benners* said an owner “[did] not acquire a constitutionally protected vested right in property uses once commenced,” what it meant was that where a person is operating *in a manner he is not otherwise entitled to do*, he can legally acquire a protectable interest in continuing, notwithstanding the letter of the law, due to his justifiable reliance. *See id.* at 778. *See also Goat Hill Tavern v. City of Costa Mesa*, 8 Cal. Rptr.2d 385, 388-91 (App. 1992) (even where business had to renew its permit every year, city could not refuse to issue a new permit because owner had operated to such an extent as to acquire vested rights).

Benners certainly did *not* mean that a city is at liberty to wipe out ancient strands in an owner’s bundle of property rights merely by say-so, without compensation. Nor did it say, as the City claims, that “[p]roperty owners lack a vested interest in any specific use of their properties indefinitely.” Pet. Br. at 45. If anything, Texas law says the opposite: the longer the reliance—the longer a specific use has gone on—the *more* likely that there *is* a vested (and compensable) interest, because that use gives the right a “‘definitive, rather than merely potential existence.’” *Braskey*, 216 S.W.3d at 864 (citation omitted).

Village of Tiki Island v. Ronquille, 463 S.W.3d 562 (Tex. App.—Houston 2015), made that clear. That case, which addressed how *Benners* relates to the extinguishment of the right to lease, was brought by property owners who invested in property due to their justifiable reliance on the right to lease that property short term. *See id.* at 565. The city then eradicated that right—whereupon the owners sued. The city said they had no vested right to lease short-term, and cited *Benners*. But the court said that *Benners does* recognize a "vested—i.e., complete, noncontingent—right when a new law restricts an existing commercial use of a property," as long as the owner can show reliance. *Id.* at 587. That was the correct result, and the rationale the Court should apply today.

It is undisputed here that the property owners invested significant resources and effort into purchasing, improving, and maintaining their houses for the purposes of homesharing and that they have engaged in homesharing for years with the City's active partnership. Their rights are complete, noncontingent, existing uses of property.

In sum, the vesting issue isn't applicable in this case, because their fee-simple ownership *already* "vested" the owners (so to speak) with the right to share their homes—and because as this Court noted in *Robinson,* the whole theory of "vesting" is too vague and arbitrary to be maintained.[7] But even if "vesting" were applicable here, the Plaintiffs' rights are vested.

[7] *See further* Gregory Overstreet & Diana M. Kirchheim, *The Quest for the Best Test to Vest: Washington's Vested Rights Doctrine Beats the Rest,* 23 Seattle U. L. Rev. 1043, 1062–63 (2000) (noting that "vesting" theory "is a jumbled mess of

III. Under the *sic utere* principle, the City has plenty of ways to address concerns about home-sharing.

Given how much of the City's brief is devoted to complaints about "excessive noise, overcrowding, trash, lack of parking, street congestion, and crime," Pet. Br. at 27, a casual reader might think the City is unable to address those concerns without taking away a strand of the plaintiffs' fundamental constitutional rights. But, in fact, the City is entirely capable of cracking down on these things without violating the Plaintiffs' property rights.

Chapter 30 of the Dallas City Ordinances already makes it illegal to make loud or disturbing noises. Section 51A-4.209 of the Dallas City Code imposes quite thorough restrictions on overcrowding. Chapter 7A of the City Code imposed extensive restrictions on trash and litter. Just last year, Dallas adopted extensive new parking regulations, including provisions in Chapters 51, 51A, and 51P, that provide for sufficient parking. Chapters 28 and 43 of the Dallas City Code already provide thorough regulations against street congestion. And as for "crime," that's already illegal.

So all the concerns the City lists in its brief are already addressed by existing laws which are not challenged here. But instead of enforcing those laws, the City

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contradictory cases that come to a wide range of unprincipled, subjective outcomes. Not surprisingly, it has been criticized by every scholar addressing the topic. They describe the majority rule as being 'unenlightened' and 'muddled,' having 'little predictive value,' and so on." (citations omitted)).

has chosen to eliminate, across the board, a significant portion of the property rights of innocent parties. Not only is that illegitimate, it's also unnecessary.

The right to private property has always been understood to incorporate the *sic utere* principle, which inherently limits how property owners may use their property. *See Hardy v. Calhoun*, 383 S.W.2d 652, 654 (Tex. Civ. App.—Texarkana 1964). Those limits form the "'background principles of the State's law of property,'" and "'inhere in the title itself.'" *Severance*, 370 S.W.3d at 727 (quoting *Lucas*, 505 U.S. at 1004). *Sic utere* already makes nuisances illegal, and fully entitles the City to track down and punish offenders.

That's important because the City mischaracterizes the plaintiffs as seeking an "absence of regulation," and "operat[ing] in a regulatory vacuum." Merit Br. at 47, 48. But that's not true. Plaintiffs don't dispute that the City may regulate their properties to serve the *sic utere* principle—by enforcing laws against "excessive noise, overcrowding, trash, lack of parking, street congestion, and crime." Pet. Br. at 27. But when the City goes beyond that, and erases a crucial strand from the bundle, it "goes too far." *Bigelow Arizona TX-344, Ltd. P'ship v. Town of Addison*, No. 05-23-00642-CV, 2025 WL 1018715, at *3 (Tex. App.—Dallas Apr. 4, 2025) (citation omitted).

Obviously the City is correct that "[l]ocal governments must be able to address the deleterious effects of new or novel land uses," but they can do that already. Pet. Br. at 45.[8] What they cannot do is revoke a constitutionally protected—indeed, fundamental—right across the board, on the theory that doing so will make it easier to prevent a few potential harms.

Second, research shows no connection between short-term rentals and the sort of problems the City refers to. In 2021 and again in 2022, the City commissioned research on whether homesharing was responsible for disturbances in residential neighborhoods—and both reports found no such connection. These reports were prepared by the City's Office of Data Analytics and Business Intelligence. The first, presented to the City on May 3, 2021,[9] concluded that "Short-Term Rental [STR] properties, at the aggregate level, *do not have a negative impact on the surrounding neighborhoods*. The data shows that there are a few problematic properties; these are outliers. STR properties are *almost indiscernible in the data from non-STR residential properties*." Office of Data Analytics and Business Intelligence, *Short-Term Rental Data Analysis: An Analysis of the Impact of Short-Term Rental Properties in the City of Dallas* 13 (May 3, 2021) (emphasis added). Evidently dissatisfied with that answer, the City requested a second study a year later.[10] It reached the same conclusion, in identical

[8] Homesharing, of course, is not a "new or novel" land use. *See* Section I.B above.
[9] https://dallascityhall.com/government/citymanager/Documents/FY%2020-21%20Memos/STR%20Data%20Analysis%2005032021.pdf.
[10] https://dallascityhall.com/government/citymanager/Documents/FY%2022-23%20Memos/Short%20Term%20Rental%20Impact%20Analysis%20Update.pdf.

words. *See* Office of Data Analytics and Business Intelligence, *Short-Term Rental Data Analysis: An Analysis of the Impact of Short-Term Rental Properties in the City of Dallas* 13 (Nov. 10, 2022). Still dissatisfied with this answer, the City sought a third report, in 2023, which analyzed the number of 911 and 311 calls from STRs. *See* Office of Data Analytics and Business Intelligence, *An Analysis of the Impact of Short-Term Rentals on Public-Safety and Nuisance Calls* (June 5, 2023).[11] That report found that 80 percent of STRs generated no such calls at all, and that while STRs were more likely to generate such calls than other properties, this difference is less than one call on average per property out of a total of over 1 million such calls—far below the level of statistical significance. *Id.* at 1.

Thus the trial court was well within reason to conclude that the City's ban lacks a rational connection to public healthy and safety concerns.

Finally, the City says it's crucial for the court to "circumscribe substantive rights" in order to "preserv[e] [the City's] policymaking authority." Pet. Br. at 35, 44. But that's not true. For one thing, Texas courts have always construed the law in defense of property owners. Whether it be in cases involving (like this one) laws in derogation of common law property rights, *see Town of Annetta South v. Seadrift Development, L.P.*, 446 S.W.3d 823, 830 (Tex. App.—Ft. Worth 2014), or

[11] https://www.scribd.com/document/651614718/An-Analysis-of-the-Impact-of-STR-on-Public-Safety-and-Nuisance-Calls-June5-2023.

cases involving the use of eminent domain, *see Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 198 (Tex. 2012), or in other types of cases, "[t]his Court has repeatedly, recently, and unanimously recognized that strong judicial protection for individual property rights is essential to 'freedom itself.'" *Harris Cnty. Flood Control Dist. v. Kerr*, 499 S.W.3d 793, 804 (Tex. 2016) (citation omitted).

Moreover, it isn't the courts' role to "circumscribe" rights, or to maximize the government's legislative power through deference. Doing so would surely be a form of "judicial activism." *See Robinson*, 335 S.W.3d at 163 (Willett, J., concurring). Instead, the courts' role is to enforce constitutional rights, just like other legal principles, without putting a policy-driven thumb on the scales in favor of the government.

IV. Home-sharing is a residential use.

The City claims that its elimination of the plaintiffs' leasing right is no big deal because homesharers can "still operate … in … commercial districts." Pet. Br. at 35. But homesharing is not a commercial use. It's a residential use.

Residential use means "the use of property for living purposes." *MacDonald v. Painter*, 441 S.W.2d 179, 182 (Tex. 1969). The residential character of a use does not hinge on whether the residence is being provided to the inhabitant through a lease, or whether that lease is for ten years, or one year, or six months, or two weeks. *Tarr v. Timberwood Park Owners Ass'n*, 556 S.W.3d 274, 290-92 (Tex. 2018). The mere existence of a commercial transaction, whether for the dwelling itself or in any other way, does not transform a residence into something other than a residence. *See Briggs v. Hendricks*, 197 S.W.2d 511, 513 (Tex. Civ. App.—Galveston 1946) (practice of medicine in a home doesn't mean home is not a residential use). Leases for short periods are therefore residential uses, even if done for money. *Garrett v. Sympson,* 523 S.W.3d 862, 867-68 (Tex. App.—Ft. Worth 2017). As one court has put it, "[u]se of the word 'residence' does not imply some minimum length of occupancy. It is possible to reside somewhere for a night, a week, or a lifetime." *Keen v. City of Manhattan Beach*, 292 Cal. Rptr.3d 366, 370 (App. 2022) (citations omitted).

It's bizarre and anomalous to relegate residential uses to a commercial district on the grounds that the residents use the homes for "short" periods (whatever that might mean). As one New York court noted in 1938, it is far more "natural that boarding houses should be allowed in [a residential] neighborhood. Long before the advent of zoning the taking in of boarders by private families was customary in restricted residential portions of [cities], and the practice was held to be harmonious with a private restriction against the use of any dwelling by more than two families." *People v. Gold*, 6 N.Y.S.2d 264, 267 (N.Y. Sp. Sess. 1938).

The whole theory of zoning is that local governments may "relegate industrial establishments to localities separated from residential sections," *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 389-90 (1926), in order to prevent "[the] right thing [from being] in the wrong place, like a pig in the parlor instead of the barnyard." *Id*. at 388. But a zoning law that relegates residential uses to industrial sections inverts that whole idea—it forces pigs *into* the parlor (or parlors into the pigsty)—which is arbitrary and unreasonable.

In that respect, this case resembles *City of Austin v. Nelson*, 45 S.W.2d 692 (Tex. Civ. App.—Austin 1931), in which city officials refused a permit to operate a gas station, declaring it to be a nuisance, even though there was no factual basis for that conclusion, and even though it had authorized the opening of gas stations nearby. The court observed that the zoning power must be exercised "in a manner appropriate to the accomplishment of, the purposes for which it exists," and that means that "if there has been an invasion of property rights under the guise of this power, without justifying occasion, or in an unreasonable, arbitrary, and oppressive way," the courts must disallow it. *Id.* at 695 (citation omitted). While cities obviously may regulate to prevent and penalize nuisances, "under the Constitution arbitrary power cannot be conferred upon a city council to declare a filling station a nuisance, unless it is so in fact." *Id*. at 696.

To arbitrarily define a residential use as an industrial use, solely in order to exile homesharers to those neighborhoods that are least desirable for such a use is plainly intended, not to regulate for the public safety, but to penalize certain property uses arbitrarily and unreasonably. *See also Ground Water Conservation Dist. No. 2 v. Hawley*, 304 S.W.2d 764, 767 (Tex. Civ. App.—Amarillo 1957) ("To justify treating one person's property different from another person's classification must rest upon some reasonable and just difference related to the act or thing with respect to which the classification is made and can never be made arbitrarily and without any such basis."). The City's actions violate that rule, and the court below was right to put a stop to it.

CONCLUSION

The District Court's decision should be *affirmed*.

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word-count limitations in Tex. R. App. P. 9.4(i)(2)(D) because it contains 7442 words, excluding the parts exempted by Tex. R. App. P. 9.4(i)(1).

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served via electronic service to all counsel of record listed below on this 17th day of September, 2026.

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