

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

GRANT YODER,	:	Case No. 3:17-2321
	:	
GRADY WILDMAN,	:	Judge Zouhary
	:	
ALEX KUCZKA,	:	Magistrate Knepp
	:	
ROBERT W. MAURER	:	FIRST AMENDED VERIFIED
	:	COMPLAINT
MAURER RENTALS, LLC	:	
	:	Exhibit A: Relevant City Ordinances, <i>filed as</i>
GREENBRIAR, INC.	:	<i>Doc. 1-1, PageID 15-22</i>
	:	
JOHN H. FROBOSE	:	Exhibit B: Defendants' October 2017
	:	Correspondence Threatening Plaintiffs, <i>filed</i>
	:	<i>as Doc. 1-1, PageID 23-25</i>
MEDICINE LAKE, LLC	:	
	:	
BIGHORN, LLC	:	Exhibit C: Email Correspondence Between
	:	Plaintiffs and Defendants, <i>filed as Doc. 1-1,</i>
	:	<i>PageID 26-32.</i>
HIGH PLAINS, LLC	:	
	:	Exhibit D: Responses to Plaintiffs' Discovery
QUAIL MEADOW, LLC	:	Requests
	:	
HYENA, LLC	:	Exhibit E: List of "Grandfathered"
	:	properties prepared and provided by City of
	:	Bowling Green
KORY A. IOTT	:	
	:	Exhibit F: Affidavit of Robert Maurer
BK RENTALS, LLC	:	
	:	Exhibit G: Evidence of Past Prosecutions
KENNETH A. MAURER	:	
THE MAURER TRUST	:	
M.T. MANAGEMENT, LLC	:	
MTRE ENTERPRISES, LLC	:	
(Additional parties on next page....)	:	
ACTION RENTALS, LLC	:	

MAURICE A. THOMPSON

RANDALL J. ROBERTS

PEARL MAPLE STORAGE, LLC

ANTHONY D. WULFF

DEACON PROPERTIES LLC

KELEN PROPERTIES LLC

CITORI II, LLC

Plaintiffs,

-vs-

CITY OF BOWLING GREEN, OHIO,

and

**JASON WESTGATE, in his official capacity as
Code Enforcement Officer of the City of Bowling
Green, Ohio**

Defendants.

Now come Plaintiffs, GRANT YODER, GRADY WILDMAN, ALEX KUCZKA, ROBERT W. MAURER; KENNETH A. MAURER; MAURER RENTALS, LLC; GREENBRIAR, INC.; MAURER TRUST; MTRE ENTERPRISES, LLC; ACTION RENTALS, LLC; JOHN H. FROBOSE, MEDICINE LAKE, LLC; HIGH PLAINS, LLC; QUAIL MEADOW, LLC; BIGHORN, LLC; HYENA, LLC; RANDALL J. ROBERTS; PEARL MAPLE STORAGE, LLC; KORY A. IOTT; BK RENTALS, LLC; ANTHONY D. WULFF; DEACON PROPERTIES, LLC; KELEN PROPERTIES, LLC; CITORI II, LLC; and MAURICE A. THOMPSON (collectively, the "Plaintiffs"), and for their Complaint against the CITY OF BOWLING GREEN, OHIO and code enforcement officer JASON WESTGATE ("defendants") allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, preliminary and permanent injunction under R.C. 2721, R.C. 2727, and 42 U.S.C. §1983 arising from Defendants' unconstitutional official conduct, policies, practices, regulations, restrictions, threats, intimidation, and/or harassment.

2. Specifically, Defendants maintain that, to limit population density, they may prohibit Plaintiffs from permitting four unrelated individuals to occupy Plaintiffs' Bowling Green homes solely because the identity of these individuals is as such that they are unrelated.

3. Due to Defendants' official and individual conduct, Plaintiffs are threatened with irreparable harm to their rights under the Eighth and Fourteenth Amendment of the United States Constitution and Sections 1, 2, 16 and 19 of Article I of the Ohio Constitution.

4. This harm may only be remedied by a ruling from this Court, and Defendants must be immediately and permanently be enjoined from restricting Plaintiffs' property rights, assembly, association, and occupation of their homes.

PARTIES

Tenant-Plaintiffs

5. Plaintiff Grant Yoder is a resident of Bowling Green, Ohio currently residing at 229 E. Merry Ave. until the expiration of his lease agreement on July 31, 2018.

6. Plaintiff Grady Wildman is a resident of Bowling Green, Ohio currently residing at 229 E. Merry Ave. until the expiration of his lease agreement on July 31, 2018.

7. Plaintiff Alex Kuczka is a resident of Bowling Green, Ohio currently residing at 229 E. Merry Ave. until the expiration of his lease agreement on July 31, 2018.

8. Plaintiffs Grant Yoder, Grady Wildman, and Alex Kuczka are students and Bowling Green State University, fraternity brothers and tenants currently residing at 229 E. Merry who do not wish to relocate in the middle of the school year.

9. None of the Tenant-Plaintiffs are “directly related by blood or marriage,” and none wish to become directly related by marriage to one another at this time.

Landlord-Plaintiffs

10. The Landlord-Plaintiffs are rental property owners in the City of Bowling Green, either directly or through their status as controlling members in the Limited Liability Companies that own the rental properties specified below.

11. Plaintiffs own a total of **161** rental homes within the City of Bowling Green, Ohio that are impaired by the Dwelling Prohibition challenged in this lawsuit.

12. Plaintiff MAURICE THOMPSON has owned 229 E. Merry since purchasing it for \$137,500 in 2005.

13. Plaintiffs ROBERT MAURER, MAURER RENTALS LLC, Rentals, and/or GREENBRIAR, INC own, within the city limits of Bowling Green, **54** rental properties impaired by the Dwelling Prohibition.¹

14. Plaintiffs Robert Maurer, Maurer Rentals, LLC, and/or Greenbriar, Inc own, within the city limits of Bowling Green, another **23** rental properties that they believe are *not* impaired by the Dwelling Prohibition, but that the City now claims are in fact impaired by the Dwelling Prohibition.²

¹ Mr. Maurer, Maurer Rentals LLC, and/or Greenbriar, Inc. own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 201, 207, 217, and 258 Manville Ave; 236 N. Enterprise St.; 258 Troup St.; 304 N. Prospect St.; 310 and 316 Frazee Ave; 325 E. Reed Ave.; 1021 Klotz Rd.; 1453, 1454, 1459, 1460, 1467, 1468, 1474, 1479, and 1480 Burrwood; 1453, 1454, 1459, 1460, 1467, 1468, 1473, 1474, 1479, and 1480 Brookwood; 1453, 1459, 1467, and 1473 Briarwood; 1443, 1449, 1454, 1457, 1465, 1468, 1471, and 1479, and 1480 Scott Hamilton; and 317, 318, 322, 325, 326, 332, 336, 341, 342, 351, and 409 Brentwood.

² Mr. Maurer, Maurer Rentals LLC, and/or Greenbriar, Inc. own properties they believe to be “grandfathered” but that the City now claims, by virtue of the listing it created pursuant to this litigation, to not be grandfathered, at the following addresses in Bowling Green: 310 E. Court Street; 135, 334, and 415 N. Main Street; 528 S. Main Street; 416 Clough Street; 104-112 Sand Ridge Rd.; 325, 509, and 513 E. Reed Street; 522, 526, and 530 Leroy Ave.; 517 and 502 Ridge Street; 519 Thurstin Ave.; 1021 Klotz Rd.; 1036 and 1502 Napoleon Rd.; 611 and 615 Fourth Street; 207 S. Summit Street.

15. Plaintiffs KENNETH A. MAURER; THE MAURER TRUST; MTRE ENTERPRISES; and ACTION RENTALS, LLC own, within the city limits of Bowling Green, 35 rental properties impaired by the Dwelling Prohibition.³

16. Plaintiffs KORY IOTT and BK RENTALS, LLC own within the city limits of Bowling Green, 11 rental properties impaired by the Dwelling Prohibition.⁴

17. Plaintiffs JOHN H. FROBOSE; MEDICINE LAKE, LLC; Bighorn, LLC; High Plains, LLC; Hyena, LLC; and Quail Meadow, LLC own, within the city limits of Bowling Green, 20 rental properties impaired by the Dwelling Prohibition.⁵

18. Plaintiffs RANDALL J. ROBERTS, CPA and PEARL MAPLE STORAGE, LLC own, within the city limits of Bowling Green, three rental properties impaired by the Dwelling Prohibition.⁶

19. ANTHONY D. WULFF; DEACON PROPERTIES, LLC; KELEN PROPERTIES, LLC; and CITORI II, LLC own, within the city limits of Bowling Green, 15 rental properties impaired by the Dwelling Prohibition.⁷

20. Each limited liability company Plaintiff is controlled by the corresponding named Plaintiff.

³ Kenneth Maurer, Maurer Trust, MTRE Enterprises, LLC, and Action Rentals, LLC, own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 117, 119, 216, 216 ½, 217, 218, 218 ½, 219, 220, and 221 Manville Ave; 141, 149, 215, 236, 417, and 835 N. Enterprise St.; 141 and 149 S. Enterprise; 216, 220, 236, and 258 Troup St.; 123 N. Prospect St.; 310 Frazee Ave; 120 E. Poe; 140 and 207 S. Summit St.; 308 E. Reed Ave.; 318 N. Main; 320 and 502 Ridge Street; 606 Clough; 131 E. Leroy; 517 Pike Street; and 530 and 530 ½ E. Merry.

⁴ Mr. Iott and BK Rentals, LLC own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 109 Crim Street, 209 S. Summit; 212 Troup Street; 234 Manville Ave; 214 and 215 E. Merry; 220 Baldwin Ave.; 311 N. Church Street; 433 N. Main Street; 318 Leroy Ave.; 521 S. College.

⁵ Mr. Frobose and the LLCs own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 902 and 926 Third Street; 233, 235, and 239 South College; 126 and 208 Troup Street; 239, 241, and 249 Manville Ave.; 318 and 421 N. Enterprise Street; 2 and 5 Orchard Street, 747 Clough Street; 835 Fifth Street, 826 A and B Second Street; 264 S. Summit Street; and 444 N. Prospect Street.

⁶ Mr. Roberts and Pearl Maple Storage, LLC own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 128 S. College Dr.; 129 Manville Ave.; and 136 Troup Ave.

⁷ Mr. Wulff and the LLCs own properties impaired by the Dwelling Prohibition at the following addresses in Bowling Green: 812 and 832 Third; 452 Buttonwood Ave.; 225 Manville; 219 N. Enterprise; 952 N. Prospect; 202 E. Merry; 131 N. Church; 112 and 118 Clay St.; 308 Leroy; 331 S. Maple; 837 Vale; 928 N. Main; and 1048 Klotz.

21. Each LLC Plaintiff is a domestic limited liability company duly organized and existing under the laws of the State of Ohio, with its principal place of business in Ohio.

22. Each “Landlord-Plaintiff” owns at least one home that (a) contains greater than three bedrooms; and (b) is subject to the City’s regulations limiting habitation to no more than three unrelated individuals (hereinafter “an impaired home.”)

23. Each “Landlord-Plaintiff” desires to lease at least one impaired home to four or more unrelated individuals who are on the same lease.

24. Defendant CITY OF BOWLING GREEN is a municipal corporation in Wood County organized under the Constitution and laws of the State of Ohio.

25. The City is a state actor and is a municipal corporation unprotected by immunity for the purposes of this action.

26. Defendant JASON WESTGATE is, and has been at all times relevant to the facts at issue in this case, a “Code Enforcement Officer” for the City of Perrysburg.

27. The actions of Defendant Westgate described herein were taken pursuant to official conduct on behalf of the City of Bowling Green, and were exercised under color of law.

28. At all times relevant to the allegations in this Complaint, each and all of the Defendants’ acts alleged herein are attributed to Mr. Westgate acting under the color, authority, and pretense of regulations, customs, usages, and policies of the City.

29. Mr. Westgate threatens to undertake specific action so as to deprive and/or violate the constitutional rights of the Plaintiffs in his individual capacity, as part of his official duties and responsibilities as an employee or agent of the City, and in his official capacity of adopting and implementing a policy, practice or custom of the City.

30. All actions by the Defendants described herein were undertaken under color of state law and threaten to cause the deprivation of Plaintiffs' rights protected by the United States Constitution and Ohio Constitution.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure preliminary and permanent injunctive relief and damages; and under 42 U.S.C. § 1988, to award attorneys fees.

32. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 3.8, as (i) the Defendants are situated within this judicial district and division; and (ii) all of the claims asserted by Plaintiff arose within this judicial district and division.

FACTUAL ALLEGATIONS

Plaintiffs' Homes

33. Each Landlord-Plaintiff owns at least one or more homes that is impaired by the City's Dwelling Prohibition, but contains (a) more than three bedrooms; and (b) parking space for more than three cars.

34. Plaintiffs own homes subject to the City's Dwelling Prohibition that contain up to 6 bedrooms and up to 2,600 square feet with ample parking for greater than three individuals.

35. 229 E. Merry, built approximately ten years after the founding of Bowling Green State University on or about 1920, is a 1,600 square-foot home with four bedrooms, two full bathrooms, a front and back yard, a garage, and three additional parking spots.

36. At the time Mr. Thompson purchased the 229 E. Merry property he was told by the previous owners that the property had consistently been a rental property, was “grandfathered in” and therefore exempt from the City’s Dwelling Prohibition, and was further exempt from the Dwelling Prohibition because it contained two separate dwelling.

37. After an online search, Mr. Thompson found that the City provided no resources confirming or denying this, such as a list of “grandfathered” properties. Accordingly, Mr. Thompson relied upon the sellers’ representations.

The City of Bowling Green’s Identity-Based Dwelling Prohibition

38. In Bowling Green, no person can lease his or her home, regardless of size, to more than three individuals unless the City deems the individuals to be “family,” in which case there is *no limit* on the number of individual that can occupy the home.

39. This prohibition is articulated in Sections 150.03, 150.19, and 150.20 of the City’s zoning code. *See Exhibit A Doc. 1-1, PageID 15-22.*

40. Section 150.19 and Section 150.20 limits the use of most residential houses within the City to “single-family dwellings,” which are in turn defined as “a building designed for occupancy by one (1) family for living purposes and including not more than two (2) lodgers or boarders.” Section 150.03.

41. Amongst these terms, only “family” is defined: the City defines a “family” as “an individual or married couple and natural or adopted children thereof, or foster children placed by a duly constituted state or county agency, occupying a dwelling for purposes of habitation, and including other persons related directly to the individual or married couple by blood or marriage.” Sect. 150.03.

42. Violation of the Dwelling Prohibition results in criminal prosecution and astronomical economic penalties that exceed the fair market value of most City of Bowling Green homes.

43. Section 150.140(A) provides that “it shall be unlawful to . . . use any building or land in violation of any regulation . . . of this chapter. . .” Meanwhile, Section 150.999(A) insists that “any person . . . violating any regulation in . . . this chapter. . . shall be fined nor [sic] more than *five hundred dollars* for each offense. Each and every day during which such illegal . . . use continues, may be deemed a separate offense.” And Section 150.999(B) declares that such a use can be deemed a second degree misdemeanor.

The City of Bowling Green’s Enforcement of its Dwelling Prohibition against Plaintiffs

44. On October 28, 2017 Plaintiff Thompson, Yoder, Wildman, and Kuczca received the October 25 letter of City of Bowling Green Code Enforcement Officer Jason Westgate. *See Exhibit B, filed as Doc. 1-1, PageID 23-25*

45. In the letter, Mr. Westgate indicates “currently four (4) people occupy this dwelling; therefore the dwelling unit is in violation. A violation of Chapter 150 of the Zoning Code of the City of Bowling Green is a minor misdemeanor and is punishable by a fine of \$500.00. Each day is a separate violation.”

46. The City further threatens criminal charges, indicating “If the violation is corrected by November 3, 2017 and you have allowed a walk-through inspection of the single-family dwelling, the matter will be considered resolved. If not, charges will be filed at the Municipal Court.”

47. Mr. Thompson immediately followed up with Mr. Westgate, who indicated the following: “one family plus two unrelated persons can occupy a single family unit,” “this property was never allowed to be used as anything other than a single family dwelling,” “this property at 229 E. Merry was never grandfathered in for anything,” and that the deadline for compliance and proposed

finances would be enforced. *See Exhibit C, October 31, 2017 Email of Jason Westgate, filed as Doc. 1-1, PageID 26-32.*

48. In response to Mr. Thompson's request for records demonstrating which properties are exempt due to "grandfathering," predicated upon the use of property prior to the 1975 Dwelling Prohibition, Mr. Westgate provided a 1997 Memorandum drafted by then-code enforcement officer Robert Shetzer disallowing the then-owner rental of the fourth bedroom for a fourth tenant.

49. The letter also indicates that "cousins were not considered family as defined in the City Code."

50. In a later email, Mr. Westgate reiterated "Your property combined can only be used as a single family dwelling – Maximum of 3 unrelated persons can occupy entire structure." *See Exhibit C, November 3 Email of Jason Westgate, filed as Doc. 1-1, PageID 26-32.*

51. Due to Defendants' threats, Plaintiffs-Tenants may be uprooted and forced to relocate in the middle of an academic school year.

52. The City admits that Jason Westgate properly enforced the law against Plaintiff Maurice Thompson. *See Exhibit D, Responses 2 and 3; see also Doc. 10, PageID 67, Defendants' Answer, admitting allegations contained in Paragraphs 14-17 of Plaintiffs' Verified Complaint.*

53. The City of Bowling Green has prosecuted numerous individuals for violation of the Dwelling Prohibition, including John Newlove, and since 2008, Bradley Waltz, Douglas Cheetwood, John Frobose, and Anthony Wulff. *See Exhibit G, Bowling Green Municipal Court Case Numbers 07 CRB 3042, 3043, and 3181, respectively; See also Bowling Green v. Newlove, 65 Ohio App. 3d 293 (1989).*

54. The City of Bowling Green has refused amend or otherwise limit the enforcement of the Dwelling Prohibition.

55. The City of Bowling Green has never issued a permanent variance or otherwise issued any order or enacted any law, rule, or regulation waiving enforcement of the Dwelling Prohibition against any individual home or homeowner.

COUNT I
DECLARATORY JUDGMENT AND INJUNCTION
(28 U.S.C. § 2201, *et seq.*)

56. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

57. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the Ohio and United States Constitution. A judicial declaration is necessary and appropriate at this time.

58. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to occupy private property and have private property occupied despite the City's arbitrary identity-based limitations on such occupation without being subjected to threats, fines, litigation, prosecution or other harassment or intimidation by the City or its agents.

59. In order to prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, pursuant to FED. R. CIV. P. 57, declaring unconstitutional the Defendants' policies and practices.

60. Furthermore, pursuant to 28 U.S.C. § 2202 and FED. R. CIV. P. 65, it is appropriate and hereby requested that this Court issue preliminary and permanent injunctions prohibiting the Defendants from enforcing their restrictions on Plaintiffs' Equal Protection, Due Process, Private Property, and other rights to the extent they are unconstitutional, in order to prevent the ongoing violation of Plaintiffs' constitutional rights.

61. Specifically, this Court should preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or

participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' occupation of their private property despite their disfavored identity.

COUNT II
VIOLATION OF RIGHT TO DUE PROCESS UNDER THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

62. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

63. Zoning resolutions are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore, such resolutions are ordinarily construed in favor of the property owner.

64. Restrictions on the use of real property by ordinance, resolution or statute must be strictly construed, and the scope of the restrictions cannot be extended to include limitations not clearly prescribed.

65. To avoid unconstitutionality, the City's Dwelling Prohibition must be construed in favor of Plaintiffs so as to permit their use of a four bedroom home by four unrelated individuals.

66. If the City's Dwelling Prohibition cannot be construed in favor of Plaintiffs, then it must be found to be unconstitutionally vague.

67. The void-for-vagueness doctrine not only ensures that laws provide "fair warning" of proscribed conduct, but it also protects citizens against the impermissible delegation of basic policy matters "for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."

68. Without "clear standards guiding the discretion of public officials" with enforcement authority, there is a risk that those officials will "administer the policy based on impermissible factors."

69. The City's Code identifies houses subject to the Dwelling Prohibition through reference to whether they are "designed for occupancy by one (1) family for living purposes." Section 150.03.

70. The City's Code fails to define or otherwise explain the criteria for determining whether a home is designed for occupancy by a family, as that term is defined by the City.

71. Whether a home is so "designed" is an impermissibly vague consideration vesting impermissible discretion in enforcement agents, particularly given the severe criminal and economic penalties imposed upon those whose homes are so "designed."

72. In addition, Bowling Green homes may be exempt based upon their use prior to or on January 6, 1975; however the City maintains no adequate records, criteria, or law identifying the use of regulated houses on or before January 6, 1975.

73. Each of the aforementioned criteria is impermissibly vague and arbitrary, particularly in light of the potential penalties associated with noncompliance with the Dwelling Prohibition.

74. The City lacks clear criteria for determining which properties are subject to the Dwelling Prohibition and which are exempt. See Exhibit D, Response to Interrogatories Numbered 3-9.

75. The City maintained no accurate list of "grandfathered" properties prior to this litigation.

76. The list of "grandfathered" homes created by the City for this litigation is inaccurate.

See Exhibit E.

77. The City contradicts itself on whether the definitions of "related" and "family" include "cousins." Compare Doc. 1-1, PageID 32 ("cousins...not considered family as defined in the City Code") with Exhibit D, Responses to Interrogatories 10, 11, and 12 ("cousins qualify as family").

78. The City lacks knowledge as to which properties are exempt and not exempt from the Dwelling Prohibition due to "grandfathering." Compare ***Exhibit E: List of "Grandfathered" properties prepared and provided by City of Bowling Green*** with ***Exhibit F: Affidavit of Robert Maurer.***

COUNT III
**VIOLATION OF RIGHT TO BE FREE FROM ARBITRARY AND UNEQUAL TREATMENT WITH
RESPECT TO PRIVATE PROPERTY RIGHTS UNDER SECTIONS 1, 2, 16, AND 19 OF
ARTICLE I OF THE OHIO CONSTITUTION**

79. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

80. The Ohio Constitution may be interpreted without adherence or deference to federal court decision regarding the United States Constitution, which provides a floor, not a ceiling, for individual rights enjoyed by state citizens.”⁸

81. Article I, Section 2 of the Ohio Constitution provides that “[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit * * *.”

82. In *State v. Mole*, the Ohio Supreme Court indicated that the Ohio Constitution’s equal protection guarantees can be applied to provide greater protection than their federal counterparts. *State v. Mole*, 2016-Ohio-5124, ¶¶ 14, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 42 (1993).

83. Section 1, Article 1 of the Ohio Constitution provides the following: “All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”

84. Section 19, Article I states “Private property shall ever be held inviolate, but subservient to the public welfare.”

85. “Ohio has always considered the right of property to be a *fundamental right*. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces.”⁹

⁸ *PruneYard Shopping Ctr. v. Robbins* (1980), 447 U.S. 74; *State v. Brown* (1992), 63 Ohio St.3d 349.
⁹ *Norwood v. Horney* (2006), 110 Ohio St.3d 353, at 361-62 (internal citations omitted).

86. In Ohio, these “venerable rights associated with property” are not confined to the mere ownership of property. Rather, the Ohio Supreme Court recently acknowledged that “[t]he rights related to property, i.e., to *acquire, use, enjoy*, and dispose of property, are among the most revered in our law and traditions.”¹⁰

87. The Dwelling Prohibition impedes Plaintiffs’ right to use property in an arbitrary and unequal fashion: while those related by blood and many others are welcome to occupy a home of any size with greater than four residents, Plaintiffs, based solely upon their identity, are denied this land use.

88. While the United States Supreme Court has indicated that regulations such as the City’s Dwelling Prohibition may not violate the federal constitution, the Ohio Constitution is more protective of private property rights than its federal counterpart, the Ohio Supreme Court insists upon more exacting Equal Protection analysis, and Ohio precedents demand that Ohio join the growing list of state courts invalidating regulations that claim to address *density* but instead target the *identity* of the inhabitants.

89. The Identity-Based Dwelling Prohibition is not narrowly tailored and is impermissibly arbitrary: through the limit the City claims to be attempting to effectuate the governmental interest in limiting population density, it does so *by targeting the nature of the relationship between those living together in any particular home*.

90. The City’s Discovery Responses demonstrate that the application of the Dwelling Prohibition is arbitrary. *See Exhibit D, Responses to Interrogatories Numbered 13-18 and 24-28.*

COUNT IV
VIOLATION OF RIGHT TO BE FREE FROM EXCESSIVE FINES UNDER THE EIGHTH
AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

91. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

¹⁰ *Id.*

92. The Excessive Fines Clause thus “limits the government's power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’”¹¹

93. Where a civil fine levied by the government is designed to be *at least partially* punitive, it is subject to the excessive fine clause.¹²

94. While this Amendment usually applies to criminal fines, it also reaches those civil fines designed at least in part to punish.¹³

95. If a civil fine is subject to the Excessive Fines Clause, courts must examine the proportionality between the fine and the gravity of the associated offense in order to determine whether it is constitutionally excessive.¹⁴

96. “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.”¹⁵ A punitive forfeiture violates the Excessive Fines Clause “if it is grossly disproportional to the gravity of a defendant's offense.”¹⁶

97. “Excessive” means surpassing the usual, the proper, or a normal measure of proportion.¹⁷

¹¹ *Austin v. United States*, 509 U.S. 602, 609-610 (1993) (emphasis deleted).

¹² *Austin v. United States*, 509 U.S. 602 (1993) (“In considering [whether the excessive fine clause applies], we are mindful of the fact that sanctions frequently serve more than one purpose. We need not exclude the possibility that a forfeiture serves remedial purposes to conclude that it is subject to the limitations of the Excessive Fines Clause.”).

¹³ See *Austin*, 509 U.S. at 610, 113 S.Ct. 2801; *Korangy v. U.S. F.D.A.*, 498 F.3d 272, 277 (4th Cir.2007); *Thomas v. Commissioner*, 62 F.3d 97, 99 (4th Cir.1995).

¹⁴ See *Bajakajian*, 524 U.S. at 333-34.

¹⁵ *U.S. v. Bajakajian*, 524 U.S. 321, 118 S.Ct. 2028.

¹⁶ *Id.*

¹⁷ *Id.*, citing See 1 N. Webster, *American Dictionary of the English Language* (1828) (defining excessive as “beyond the common measure or proportion”); S. Johnson, *A Dictionary of the English Language* 680 (4th ed. 1773) (“[b]eyond the common proportion”).

98. Even a small fine can be punitive. In *Wenhoff*, the court held that a \$16 per month late payment penalty was “clearly meant to punish,” subjecting it to the Excessive Fines Clause.¹⁸

99. Federal courts have applied the Excessive Fines Clause to state and local impositions.

100. Defendants’ policy of imposing \$500 per day and/or \$182,500 per annual lease fines on those who occupy or permit occupancy of four bedroom houses by four individuals of the wrong identity is inherently excessive, bearing no relationship to the gravity of the offense.

101. In the absence of this Court’s relief, Plaintiffs are prohibited from leasing property to others and residing at property solely on the basis of tenants’ identities rather than their impact on population density, and Plaintiffs will be forced to uproot and immediately relocate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and that this Court:

- (1) Declare that City of Bowling Green Codified Ordinance Section 150.03, insofar as it defines “single family dwelling” predicated upon the design of a home, whether it is “grandfathered in,” and who resides within the home is unconstitutional on its face, unconstitutional as applied by Defendants, and unconstitutional as applied to Plaintiffs, insofar as it denies occupation of a home to greater than three unrelated individuals on the basis of their identity and relationships rather than on the basis of their impact on population density.
- (2) Declare that City of Bowling Green Codified Ordinance Section 150.03, insofar as it defines “single family dwelling” predicated upon the design of a home, must be construed in favor of the use of a four or more bedroom home for the housing of four or more unrelated individuals.
- (3) Issue a preliminary and permanent injunction prohibiting Defendants from enforcing Section 150.03, in conjunction with Sections 150.19 and 150.20 so as to prohibit the otherwise-legally-compliant occupation of private residential homes on the basis of the identity of the habitants.

¹⁸ *Wenhoff*, 591 F.Supp. at 809.

- (4) Declare that City of Bowling Green Codified Ordinance Section 150.999, when combined with Sections 150.03 and 150.140 works to impose excessive fines upon those who violate the City's Dwelling Prohibition, insofar as the Section empowers the City to impose fines up of to \$500 per day or \$182,500 per annual lease, alongside criminal penalties.
- (5) Issue a preliminary and permanent injunction prohibiting Defendants from enforcing Section 150.03, in conjunction with Sections 150.19, 150.20, 150.140, and/or 150.999 to retaliate against Plaintiffs through criminal prosecution, issuance of fines for violation of the City's Dwelling Prohibition or otherwise.
- (6) If necessary to resolve the case, certify novel issues of state constitutional law articulated in Count III of this Complaint to the Ohio Supreme Court for clarification.
- (7) Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs, damages, and expenses incurred in bringing this action, including their reasonable attorneys' fees; *and*
- (8) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ Maurice A. Thompson
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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, John H. Frobose, declare the following:

1. I have reviewed the Complaint in this case.
2. I have personal knowledge of the matters alleged in the Complaint related to properties in which I have an ownership interest.
3. The allegations contained herein are true and accurate.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of February, 2018

/s/ John H. Frobose
Plaintiff

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Robert W. Maurer, declare the following:

5. I have reviewed the Complaint in this case.
6. I have personal knowledge of the matters alleged in the Complaint related to properties in which I have an ownership interest.
7. The allegations contained herein are true and accurate.
8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of February, 2018

/s/ Robert W. Maurer
Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon all counsel of record via the Court's electronic filing system on the date of filing.

/s/ Maurice A. Thompson