STATE OF RHODE ISLAND
COUNTY OF WASHINGTON

TOWN OF NARRAGANSETT
MUNICIPAL COURT

TOWN OF NARRAGANSETT

VS.

CASE NOS

GREEN ACRES	16100046
MANUEL ASTIASARAN	16100047
JOCELYN LECLERC	16100051
ROBIN LECLERC	16100052
JOHN MAZZOCCA	16100053
GERARD MOOR	16100055
JOHN RUSSO	16100058
PAULA TYCIENSKI	16100059
GSR PROPERTIES	16110061
JOAN KRETZMER	16110064
RICHARD KRETZMER	16110065
PALAZZESI RI PROPERTIES LLC	17010001

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR CONSOLIDATED MOTION TO DISMISS

This case is the continuation of a decades-long effort to limit the rights of Narragansett landlords and some of their tenants (specifically URI students) by restricting the number of unrelated persons who may live together. On November 16, 1987, the Town passed an ordinance restricting the number of unrelated persons who could live together to three. In 1992 and 1993, it began attempting to enforce this zoning ordinance in Municipal Court, alleging violation of the provision prohibiting renting to more than three unrelated people in a single family house. This ordinance was declared unconstitutional in *Distefano,et al. v Haxton, et al.* WC92-0589, under the due process and equal protection clauses of the Rhode Island Constitution, Art 1, §2, in a decision rendered by Judge Fortunato in 1994. More than twenty years later, on May 16, 2016, the Town Council passed a similar ordinance, now with the limitation on unrelated persons set at four. The political context of this "new" ordinance was the continuing effort by some residents of

the Town to reduce the number of URI students who reside in Narragansett and to discourage landlords from renting to URI students during the school year (September through May). This ordinance is the culmination of persistent pressure to increase penalties and laws aimed at landlords and URI students, e.g. the Orange Sticker Ordinance, Sec. 46-31 et seq., and the Cost Recovery Ordinance, Sec. 46-50 et seq.

In September and October of 2016, the Town Building Inspector began issuing summonses against these defendants (all landlords) and others to appear before the Narragansett Municipal Court to answer a complaint charging them with violating the following restriction:

> Chapter 731 Zoning §2.2 Households
>
> A person or group of unrelated persons living together. The maximum number shall be four persons.

The ACLU of Rhode Island is representing all of these defendants who believe that this ordinance is unconstitutional on its face and as applied to them, based on their and their tenants' (all URI students) due process and equal protection rights set forth in Article 1, Section 2, of the Rhode Island Constitution. These cases have been consolidated for briefing purposes by agreement of the parties and the Court.

A

On May 16, 2016, the Narragansett Town Council amended the Town's Zoning Ordinance as follows (p.62):

> **Section 1**: Section 2.2, (Definitions) (Households) of Chapter 731 of the Code of Ordinances of the Town of Narragansett, entitled " Zoning" is hereby amended to read as follows:
>
> *Household.* One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" shall be synonymous with the term "dwelling unit" for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the

following:

> (a) A family, which may also include servants and employees living with the family; or
> (b) A person or group of unrelated persons living together. The maximum number shall be four persons.
>
> **Section 2**: This ordinance shall take effect upon its final passage, and all other ordinances or parts of ordinances inconsistent herewith are hereby repealed. (Exhibit A attached herewith)

Item (a) above further delineates "family" as defined on page 60": " A person or persons related by blood, marriage or other legal means."

In 1994, Judge Fortunato found the Town's Zoning Ordinance definition of "family" adopted November 16, 1987, unconstitutional under the due process and equal protection clauses of the Rhode Island Constitution and prohibited the Town from enforcing its ordinance proscribing "the renting of houses or apartments by owners to more than three persons who are not related by blood, marriage or adoption." There the Town was attempting to prosecute landlords for "renting a single-family dwelling to more than three unrelated people." The definition of "family" was:

> One or more persons related by blood, marriage or adoption using the same kitchen facilities and living together in a single dwelling using as a single housekeeping unit; no more than three (3) persons not related by blood, marriage or adoption using the same kitchen facilities and living together in a single swelling unit as a single housekeeping unit. Roomers, boarders or lodgers are considered persons for the purpose of reaching the maximum of three (3) persons.

In September and October of 2016, the Town of Narragansett, by and through its Building Official, began filing complaints against these defendants and others, alleging violations of Chapter 731 Zoning Section 2.2. households.

> A person or group of persons living together. The maximum number shall be four persons.

The summonses reference the alleged violation of the Household definition and make

other allegations, such as in Case Number 16100047: "This office was denied entry to investigate the alleged violation." In addition, the summonses state the following:

"A $500.00 per day penalty may be imposed from the date of the alleged violation. No copy of the complaint was served on any of these defendants."

All of these defendants have requested representation by the RI American Civil Liberties Union to challenge the constitutionality and enforceability of this ordinance against them, their tenants (all of whom are URI students), and all landlords and tenants of Narragansett. RIACLU has been actively challenging Narragansett's ongoing efforts to limit the rights of Narragansett landlords and URI students since 1992. Here the defendants seek the dismissal of these complaints against them and other similarly situated persons based on due process and equal protection rights of property owners and tenants under the Rhode Island Constitution, Article 1, Section 2.

B

All of these defendants have been selected for prosecution because a neighbor complained to the Building Official. They include twelve individuals, corporations, or LLCs owning nine different properties. Some are Narragansett residents; some are not. In three cases both husband and wife who are owners of a common property have been charged. Of the nine properties, five are five-bedroom homes, two are six-bedroom homes, and two are seven-bedroom homes. These properties provide affordable housing for 51 URI student/residents. All of these landlords had signed leases with their respective URI students for the 2016-2017 school-year on the day of or prior to the passage of the 5/16/16 household definition amendment.

The Town of Narragansett has a long history as a seaside tourist destination dating back to the mid-19th century. Narragansett Comprehensive Plan, Baseline Report, p. 110. It also has a long history as a community profiting from the presence of URI students for school-year housing

and summer tourists for vacation housing. Id. p. 89. "Nearly one quarter of its housing units are rented for seasonal use." Id. p. 91. Indeed, the town's real estate and tourist industries, along with its fishing industry, comprise the three economic bases of the town. Narragansett Comprehensive Plan. Id. p. 110.

Narragansett's population has grown over the years from 993 in 1920 to 15,868 in 2010 according to the US Census figures quoted in the town's Comprehensive Plan Baseline Report. Id. p.4. The Report indicates that 21% of the town's population of person's aged 20-24 is mainly the fact that "55% of its students live off campus, and many choose Narragansett due to the availability of over 2,500 units of rental housing," as URI reports. Id. p.6. It is further estimated that the Town's population increases 114% during the summer to 34,000. Id. p.10. The Baseline Report estimates that there are 3,246 URI students living in town, 2,114 of whom have incomes below the poverty line. (The number of URI students in Narragansett is probably higher.) In any case, the need for affordable housing for these residents is quite evident. Id. p.15. The Baseline Report estimates that 38% of the housing in the South End and residential areas of the town is seasonal housing as part of the 24% of the entire town's housing stock. Id. at pp. 25 and 34.

It is abundantly clear that Narragansett's Comprehensive Plan focuses much attention on housing and the housing issues associated with fast population growth in the 1980s and 1990s, and the fact that nearly 25% of the housing units are rented to URI students during the school year and tourists on a weekly basis during the summer. Id p.89. As of 2010 there were 9,910 housing units, of which 37% were renter-occupied. Id. p.92. Table 40 on page 93 contains the following statistical breakdown of occupancy by families and non-families as defined in the Comprehensive Plan:

Table 40. Housing Occupancy, Family and Non-Family Members, 1990-2010

	1990	2000	2010
Family Housing	3,537	3,846	3,560
Non Family Housing	2,306	3,000	3,144
Non Family Percentage	40%	42%	47%
Residents Living Alone	1,313	1,859	1,917
Non Relatives Living Together	N/A	2,298	2,739

The number of rental properties adversely affected by this ordinance is sizeable. Table 36 shows that nearly one-quarter (22.3%) of Narragansett's housing units have four or more bedrooms, including 6.5% housing units that have five or more bedrooms (644 units). Id. p. 90. In an Affidavit signed under oath by Tom Morrill of Narragansett Property Management he describes the 289 Narragansett rental units that his company manages. See Exhibit B attached herewith. Of these properties, 27% of them (76) have five bedrooms (48) or six bedrooms (28). He estimates that, town-wide, there are approximately 567 houses that have five or more bedrooms. He further states that the average rent paid by URI students is $500.00 per month per student. The economic burden to the affected landlords if this Ordinance is permitted to be enforced is about $3.5 million. (The components of this calculation are set forth in the Affidavit.) Additionally, the rental costs to students could increase dramatically. Ironically, the need for additional rental housing for URI students would also increase. To the extent that URI students shop in Narragansett, a reduction in their number will also result in a loss of revenue to town businesses.

Finally, with respect to the complaints by residents of the Town of Narragansett about unacceptable behavior of URI student renters that are the raison d'être of the amended ordinance: Such complaints and arrests involve a very small proportion of the more than three thousand URI students who reside in Narragansett, and both complaints and arrests relating to student behavior have decreased steadily over the past four years, according to statistics based on records of

student-related complaints and offenses maintained by the Town of Narragansett on a month-to-month and school-year basis. See Exhibit C.

While the amended ordinance is aimed solely at curbing the number of URI students residing in Narragansett during the school year, it may also have the unintended—and potentially costly—effect of limiting the ability of landlords to lease five-, six-, and seven-bedroom homes during the summer, when rates per week rise to roughly equal the monthly rates for URI student renters during the school year. While it is true that not all landlords rent out their properties in the summer (choosing to occupy them as vacation homes for their own families), and others may rent to single vacationing families, still others rent to groups that may consist of several young couples or young families who pool their money for a week or two of shared vacation—and do not qualify as either "families" or "households" within the amended ordinance. Requiring landlords to inquire into the private relationships of prospective summer renters and to refuse to rent to groups that do not meet the "family" requirement is burdensome, could deprive landlords of heretofore dependable income, and is potentially discriminatory. It also could diminish the popularity of Narragansett as a place to vacation in the summer, thereby reducing revenue to the town's businesses.

To equitably enforce this ordinance, the Town of Narragansett must apply its restrictions uniformly to both winter and summer rentals; enforcing it solely in the winter months against URI students is unconstitutionally discriminatory on its face. But tracking and monitoring summer rentals with the same zeal with which Town Officials pursue landlords' rental arrangements with students will result in an additional drain on Town resources, yet another unintended consequence of this amended ordinance.

All told, enforcement of this ordinance will result in substantial loss of income to property owners and will adversely affect the economy by reducing revenue and increasing costs to the

Town.

THE LAW

Article 1, Section 2 reads in pertinent part:

> All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

Judge Fortunato declared that Narragansett's prior "ordinance prohibiting occupancy of otherwise suitable residential units by more than three person not related by blood, marriage or adoption is violative of the mandates of the due process and equal protection clauses of Article 1, Section 2 of the Rhode Island Constitution." See *DiStefano, et al v. Haxton, et al*, WC 92-0589, Decision rendered 12/12/94. This Decision was not appealed and thus stands as the law of this case. The current Town Council decided to revisit this issue by making minor modifications to the pre-existing law by upping the occupancy number of unrelated persons from three to four, placing the prohibition in the definition section of "household" rather than in the section of "family," replacing the term "adoption" with "or other legal means," and including "servants and employees living with the family" as an acceptable part of a family. None of those changes have any legal significance that would undermine the legal reasoning of the *DiStefano* decision. The *DiStefano* analysis concerning substantive due process succinctly states a compelling case that the "liberty" rights of landlords to contract with and to rent to whomever they choose and the "liberty" rights of their tenants to choose with whom they reside require the Town to justify its prohibition against renting to more than four unrelated persons pursuant to either strict scrutiny or rational basis analysis. Judge Fortunato's words still resonate today:

> The fact that the contested provision is the first of its kind enacted in Narragansett - and that its enactment comes more than three centuries

> after Narragansett was first settled – is as clear a support as can be imagined for the existence of a tradition in that town that persons can live with whom they choose without interference by the Town Council.
>
> ***
>
> It is clear that liberty of choice is a fundamental right protected by the due process clause of the Rhode Island Constitution.

In his analysis of the equal protection clause of the Rhode Island Constitution, Judge Fortunato equated the classification of blood relationships with race and ethnic discrimination requiring strict scrutiny of the Narragansett Ordinance. This strict scrutiny test would require Narragansett to justify its ordinance "by a compelling governmental interest and must be necessary to the accomplishment of their legitimate purpose." *DiStefano* at p. 14 citing *Palmore v. Sidoti*, 466 US 429, 432-33 (1984).

But even if the Court does not find a fundamental right to contract or to choose with whom to rent or live under the due process clause or an invidious classification concerning blood relationship under the equal protection clause, the Narragansett ordinance offends the rights of these landlords and their tenants because the ordinance is arbitrary, unreasonable and not rationally related to the Town's stated purpose of improving the quality of life in its residential zones.

> There is nothing on this record to suggest – nor does common sense or any legislative facts that can be judicially noticed lead to the conclusion – that Narragansett will be a safer, quieter community with less violations of the public peace if only persons related by blood, marriage or adoption can occupy apartments or houses situated in residential zones. There is nothing on this record to suggest that teenagers living with their parents will play their Metallica or their Beethoven at lower decibel levels in the wee hours of the morning than would four monks (or nuns) – or unrelated widows (or widowers) or four unrelated Navy lieutenants. It is a strange – and unconstitutional – ordinance that would permit the Hatfields and the McCoys to live in a residential zone while barring four scholars from the University of Rhode Island from sharing an apartment on the same street. Id. pp 18-19.

Judge Fortunato cited other State Court decisions invalidating local ordinances under

State Constitutions.

> Manifestly, restricting occupancy of single-family housing based generally on the biological or legal relationship between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance. [citations omitted] *McMinn v. Town of Oyster Bay*, 488 NE 2d 1240 (NY 1985) at 1243.

In *State v. Baker*, 81 N.J. 99 (1979), 405 A.2d 368, (NJ 1979) the home owner (Baker) was charged three different times with violating a Plainfield, New Jersey, zoning ordinance that defined "Family" as:

> One (1) or more persons occupying a dwelling unit. More than four (4) persons not related by blood, marriage, or adoption shall not be considered to constitute a family.

Defendant Baker, his wife and their three daughters, their friend Mrs. Conata and her three children, all resided together; ultimately, Baker was convicted in the Municipal Court and in the County Court of violating the ordinance. He appealed his conviction to the Appellate Division which reversed the convictions and vacated the fines. The State appealed to the State Supreme Court which affirmed the Appellate Division reversal of the convictions.

The New Jersey Supreme Court held that:

> Zoning regulations which attempt to limit residency based upon the number of unrelated individuals present in a single non-profit housekeeping unit cannot pass constitutional muster.

citing the due process clause of the New Jersey Constitution. Id.

In footnote number 10 the Court majority also cites the following:

> Article 1, par 1 of our Constitution ensures the natural and unalienable right of individuals to pursue and obtain safety and happiness. Encompassed within its structures is the requirement of due process upon which today's analysis is based. In addition, we would be remiss if we did not note that the right of privacy is also included within the protection offered by that provision.

In *Delta Charter TWP v Dinolfo*, 419 Mich. 253(1984), 351 N.W. 2d 831, the Michigan Supreme Court found a township ordinance that limited "the occupation of single-family residencies to an individual, or a group of two or more persons related by blood, marriage or adoption, and not more than one unrelated person" to be unconstitutional as applied to a household that included a husband, wife, the couple's several children, and six unrelated single adults. The Court held that the town's zoning ordinance was "in violation of the due process clause of the Michigan Constitution." Id. In explaining its rationale, the Court stated:

> Unrelated persons are artificially limited to as few as two, while related families may expand without limit. Under the instant ordinance twenty male cousins could live together, motorcycles, noise and all, while three unrelated clerics could not. A greater example of over-and under-inclusiveness we cannot imagine. The ordinance indiscriminately regulates where no regulation is needed and fails to regulate where regulation is most needed.

The Court concluded that the ordinance was capricious, arbitrary, and in violation of the Due Process Clause of the Michigan Constitution in that it limits the composition of groups in a manner that is not rationally related to the stated goals of the zoning ordinance."

In *City of Santa Barbara v. Adamson et al*, 27 Cal 3d. 123(1980), 610 p.2d 436, 164 Cal Rptr. 539, the California Supreme Court reviewed the city ordinance that required that in certain residential zones "all occupants of houses must be family members." The City's Zoning Ordinance defined family as follows:

> 1. An individual, or two (2) or more persons related by blood, marriage, or legal adoption living together as a single housekeeping unit in a dwelling unit ....
>
> 2. A group of not to exceed five (5) persons, excluding servants, living together as a single housekeeping unit in a dwelling unit.

The defendants/appellants were twelve adults who were not related by blood, marriage, or adoption who lived together in a 24-room, 10-bedroom, 6-bathroom house owned by Adamson.

The City Ordinance's rule of five was deemed unconstitutional under the California Constitution, as cited by the Court:

> 'All people ... have inalienable rights', ... Among these [inalienable rights,] are enjoying ... life and liberty, ... possession ... property, and pursuing and obtaining ... happiness, and privacy.

In *McMinn v. Town of Oyster Bay*, 66 NY 544 (1985), the New York Court of Appeals reviewed the constitutionality of a town ordinance that defined family as follows:

> (a) any number of person, related by blood, marriage, or legal adoption, living and cooking on the premises together as a single, nonprofit housekeeping unit; or
>
> (b) any two(2) persons not related by blood, marriage, or legal adoption, living and cooking on the premises together as a single, non-profit housekeeping unit, both of whom are sixty-two (62) years of age or over, and residing on the premises.

The McMinns purchased their house in 1973 and rented it to four unrelated young men between the ages of twenty-two and twenty-five. Shortly after the tenants moved in, a criminal complaint was filed against the landlords. They along with their tenants sought declaratory and injunctive relief based on the New York State Constitution's due process and equal protection rights. The High Court held that the family definition violated the due process clause of the state constitution affirming the holding of the Appellate Division by explaining that this ordinance,

> By limiting occupancy of single-family homes to persons related by blood, marriage or adoption or to only two unrelated persons of a certain age, excludes many households who pose no threat to the goal of preserving the character of the traditional single-family neighborhood, such as the households involved in White Plains and Group House, and thus fails the rational relationships test.

The Town of Narragansett has a long history and tradition of providing housing and services to URI students and summer visitors/tourists. The economy of the Town is supported to a large extent by its rental and tourist industry. Since nearly one quarter of the housing stock is

devoted to housing URI students during the school year and tourists during the summer, and has done so for decades, the Town cannot argue that there has been any change of circumstances since 1994 that would warrant its renewed effort to restrict housing to unrelated persons.

The Town has numerous tools to address any anti-social behavior by any of its residents. The Town in Chapter 46 of its Code of Ordinances lists the following miscellaneous offenses in addition to the Unruly Gatherings and Cost Recovery ordinances and state laws:

VIOLATIONS SCHEDULE

Code Section	Violation	Fine
46-3(1)	Conduct endangering another	$200.00
46-3(2)	Conduct endangering property of another	$200.00
46-3(3)	Fighting	$200.00
46-3(4)	Endangering lawful movement	$200.00
46-3(5)	Obstructing vehicular or pedestrian traffic	$100.00
46-3(6)	Disturbing the peace	$500.00
46-3(7)	Urinating or defecating in public	$500.00
46-3(7)	Littering	$100.00
46-3(8)	Disturbing public meetings	$100.00
46-4	Throwing missiles	$200.00
46-5	Failure to disperse	$100.00
46-6	Sleeping in public places	$100.00
46-7	Firearms prohibited	$200.00
46-8	Consumption of alcoholic beverages	$500.00
46-9	Smoking/tobacco products prohibited	$100.00
46-10	Unlawful possession/consumption(host)	$500.00
46-10	Unlawful possession/consumption (minor)	$500.00
46-11	Permit to possess kegs required	$100.00
46-12	Pub crawls	$100.00
46-13	Motorized devices	$100.00
46-34	Public nuisance	$500.00

The Town will undoubtedly maintain that some State Courts have upheld the constitutionality of similar ordinances under their State Constitutions. See *Ames Rental Property Association v. City of Ames*, 736 NW2d 255 Iowa 2007). There the Iowa State Supreme Court majority affirmed a District Court finding that the Ordinance restricting occupancy to no more

than three unrelated persons in certain residential zones did not violate the equal protection clause of the Iowa State Constitution because the Ames' Ordinance is "rationally related to the government's interest in providing quiet neighborhoods." Id. at p.5. The dissent in "Ames" is far more persuasive and in line with State Court decisions in New York, New Jersey, Michigan and California. In pertinent part the dissent states the following:

> I find the ordinance regulates where no regulation is needed and fails to regulate where regulation is needed. The ordinance is both overinclusive and underinclusive. Further, the degree to which this over- and under-inclusiveness is present is extreme because it is irrational to suppose the type of relationship persons residing in a home have to each other has any rational bearing on the character or behavior of those persons. See Charter Twp. of Delta v. Dinolfo, 419 Mich. 253, 351 N.W.2d 831, 841-42 (1984) (holding with regard to a similar housing provision "[a] greater example of over- and under-inclusiveness we cannot imagine"). This irrationality and the extreme over- and under-inclusiveness of the ordinance is easily illustrated by examining family and societal dynamics in the twenty-first century.
>
> Families today, especially ones with teenagers, are just as likely as a group of unrelated persons to have numerous vehicles parked outside their home. In fact, in a college community like Ames, students, the unrelated persons most targeted by the ordinance, are more likely to rely on alternative means of transportation--public transportation, foot, or bicycle--than a vehicle. "Manifestly, restricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance." McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 498 N.Y.S.2d 128, 488 N.E.2d 1240, 1243 (1985) (citing Moore v. City of East Cleveland, 431 U.S. 494, 499-500, 97 S.Ct. 1932, 1935-36, 52 L.Ed.2d 531, 537-38 (1977); City of Santa Barbara v. Adamson, 27 Cal.3d 123, 164 Cal.Rptr. 539, 610 P.2d 436, 441 (1980); State v. Baker, 81 N.J. 99, 405 A.2d 368, 373 (1979)).
>
> Further, it is irrational to relate a peaceful neighborhood with a neighborhood populated solely by families, or three or less unrelated persons. As another court has articulated under a similar ordinance, "twenty male cousins could live together, motorcycles, noise, and all, while three unrelated clerics could not." Charter Twp. of Delta, 351 N.W.2d at 841. Or, that an ordinance of this type would prohibit a group of four unrelated " 'widows, widowers, older spinsters or bachelors or even of judges' from residing in a single unit within the

municipality." Baker, 405 A.2d at 371 (quoting Kirsch Holding Co. v. Borough of Manasquan, 59 N.J. 241, 281 A.2d 513, 517 (1971)).

This ordinance also has no rational relationship to population control. A family of any size can reside in a home in Ames, whereas only three unrelated persons can live together. The majority does not cite to any evidence that supports its conclusion that population "density will be lessened by the ordinance." Instead, it seems to this dissenter that it is irrational and contradictory to find the ordinance, which allows one group to house an unlimited number of related persons, would in any way reduce the overall population density.

Further, it is irrational to suppose this ordinance promotes a quiet and peaceful neighborhood. This ordinance does not distinguish between a raucous family that plays loud music at their home, has large parties at their home, and houses more vehicles than persons living in their home, and a house of four single, quiet, homebodies whose only knowledge of wild parties and loud music comes from watching television. As another court summarizes, housing ordinances of this sort create an irrational discrepancy in treatment because a tenant-occupied house whose "residents happen to be the quiet, neat type who use bicycles as their means of transportation" are subject to the ordinance; "whereas the owner-occupied house is not subject to the ordinance, even though its residents happen to be of a loud, litter-prone, car-collecting sort." Coll. Area Renters & Landlord Ass'n v. City of San Diego, 50 Cal.Rptr.2d 515, 521 (Ct.App.1996).

In today's modern society families are more mobile, especially in a college community, where professors, visiting professors, graduate students, and administrators are frequently moving to new universities to continue or further their studies and careers. These university families come in and out of Ames, yet under this ordinance their transitory nature is not a factor. See City of Des Plaines v. Trottner, 34 Ill.2d 432, 216 N.E.2d 116, 119 (1966). The majority dismisses this fact and finds students or other unrelated persons are the only transitory or mobile residents in a university town.

Instead of promoting families, this ordinance disadvantages those most likely to live with roommates--the poor and the elderly. See Holy Name Hosp. v. Montroy, 153 N.J.Super. 181, 379 A.2d 299, 302 (1977). The ordinance distinguishes between acceptable and prohibited uses of property by reference to the type of relationship a person has with those they live with, not by the conduct of those that live in the residence.

Ames claims it is promoting a sense of community with this ordinance. But whose community is Ames promoting? Is Ames only interested in promoting traditional families or those who can afford to live in a home

> without roommates--the wealthy and the upper-middle class? It is irrational for a city to attempt to promote a sense of community by intruding into its citizens' homes and differentiating, classifying, and eventually barring its citizens from the community solely based on the type of relationship a person has to the other persons residing in their home.
>
> Although the majority may classify these examples of overinclusive and underinclusive applications of the ordinance as extreme, they do so in the context of social norms as they existed thirty-three years ago when the Supreme Court decided Belle Terre. In that era the typical household consisted of a mother, a father, and children, with one breadwinner and one vehicle. In today's society this is no longer the case. Today it is not unusual to see a group of unrelated single persons living together and sharing expenses. The simple fact is that in today's modern society the overinclusive and underinclusive examples identified in this dissent and by other courts that have found similar ordinances unconstitutional are closer to the norms than to the extremes.
>
> If Ames wants to regulate population it can do so by reference to floor space and facilities. Noise and conduct can be controlled with nuisance and criminal laws. Traffic and parking can be controlled by limiting the number of vehicles to all households or with off-street parking regulations. See Coll. Area Renters & Landlord Ass'n, 50 Cal.Rptr.2d at 521.
>
> In sum, I find the ordinance does not reasonably and rationally further Ames's stated legislative goal and is therefore unconstitutional under Iowa law.

All of these defendant landlords signed leases with their current URI student tenants prior to the enactment of the amended ordinance on the evening of 5/16/16. Most of these landlords have rented to URI students for ten or more years and rely on that income. Each had the expectation that their five- or six- bedroom house would provide affordable housing for their tenants and income for their families. They conformed to the law when they purchased their properties and should not be subject to enforcement of this amended ordinance even if it is ultimately held to be constitutional. Is not the right to possession of property a "sacred" right? The *Galilee Mission, Inc. v. Zoning Board of Review of the Town of Narragansett*, 12/21/16 slip Decision in WC2015-0480 citing *Campbell v. Tiverton Zoning Bd.*, 15 A.3d 1015,1023 (RI 2011).

Narragansett's Zoning Ordinance has fifteen stated purposes, each of which is given "equal priority and numbered for reference purposes only." Zoning Ordinance p. 55. The pertinent purposes are:

> (1) Promoting the public health, safety, and general welfare.
>
> (8) Promoting a balance of housing choices, for all income groups, to ensure the health, safety and welfare of all citizens and the rights to affordable, accessible, safe, and sanitary housing.
>
> (9) Providing opportunities for the establishment of low and moderate income housing.

Narragansett's focus on regulating landlords who rent their properties for a living and on their tenants who choose to "live down the line" from URI presents a direct challenge to the entitlements set forth in the State Constitution: happiness, laws for the good of all, fair distribution of burdens to all citizens, life, liberty, enjoyment of property, due process, and equal protection under the law – all must be protected. Landlords have constitutional rights to contract with and choose to whom to rent. They should be able to do what they have always done—provide affordable rental housing to the one-quarter of the town population that has for decades enjoyed living in Narragansett whether during the school year or during the summer season. These are the constitutional rights and obligations consonant with the history and traditions of the Town of Narragansett, that Judge Fortunato so eloquently confirmed in 1994, and they are equally relevant today in the case before the Court.

SUMMARY

Narragansett's amended ordinance prohibiting the rental of houses or apartments in a residential zone to more than four unrelated persons, whether students, tourists, nuns, the poor and/or elderly, violates the rights of landlords and their tenants to substantive due process and equal protection of the law pursuant to Article 1, Section 2 of the Rhode Island Constitution.

Strict scrutiny under the due process clause should be applied because of the fundamental rights to contract and choose to whom a property owner wishes to rent, and under the equal protection clause because of the invidious use of blood relationships to determine who can live together. Even if strict scrutiny is not applied, there is no reasonable or rational basis to prohibit landlords who own five-; six-; seven-; or eight-bedroom homes from renting to more than four URI students, consonant with the history and traditions of Narragansett. The 5/16/16 amended ordinance on its face and as applied to these defendants and their tenants is unconstitutional and therefore, unenforceable under both the due process and equal protection clauses of the Rhode Island Constitution.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that, on the 21st day of February, 2017, I forwarded a copy of the foregoing document to Dawson Hodgson, Esq., and to John Kenyon, Esq.