

IN THE CIRCUIT COURT OF
DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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JANARD P. HOOKER, CLERK

RACHEL AND P.J. ANDERSON,)

Plaintiffs,)

v.)

THE METROPOLITAN
GOVERNMENT OF
NASHVILLE AND
DAVIDSON COUNTY,)

Defendant.)

Case No. 153212

The Honorable _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

COMPLAINT

I.
Introduction

1. This civil rights lawsuit seeks to vindicate the rights of Rachel and Paul John ("P.J.") Anderson ("the Andersons") to list their home on Airbnb.com free from vague, arbitrary and irrational government regulation. The Andersons want to continue to provide a unique, affordable and safe way for people to enjoy Nashville by staying in the Andersons' home. The Andersons are alleviating the problem of a lack of bed space in the downtown area that has been used to justify millions of taxpayer dollars in recent years to attract hotels. Standing in their way is an arbitrary cap on the number of

permits to operate short-term rental properties (“STRPs”) in their neighborhood that is part of Metropolitan Nashville’s (“Metro”) new law regulating STRPs.

2. The STRP ordinance creates an artificial scarcity and an effective government sponsored monopoly for permit holders who may hold their licenses in perpetuity, indiscriminately bestowing a lucrative benefit on some Nashvillians, but not others. Worse, the STRP ordinance goes out of its way to also implicate the Andersons’ free speech rights with a categorical ban on any form of signage advertising their home, as well as their right to be free of an unreasonable search and seizure with a requirement that they keep records on their guests and surrender them to the police without a warrant or any form of judicial supervision.

3. By crafting a vague and incomprehensible ordinance, and by preventing the Andersons from obtaining a non-owner occupied permit to operate an STRP, Metro violated the Andersons’ right to both due process and equal protection guaranteed under Tennessee and U.S. Constitutions, as well as Tennessee constitutional prohibition of monopolies. Also, the ordinance is an impermissible burden on the Andersons’ commercial, free speech rights, and the separate requirement that they keep and turn over records to the police without a warrant violates the right to freedom from unreasonable searches and seizures under the Tennessee and U.S. Constitutions.

II. Jurisdiction and Venue

4. The Andersons bring this civil action under Metro. Code § 6.28.030 and Tenn. Code Ann. § 29-14-102. This action is also lodged under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, and Article I, Sections 7, 8, 19, 22 and Article XI, Section 8 of the Tennessee Constitution.

5. The Andersons further bring this action under 42 U.S.C. § 1983 to redress the deprivation under color of law of rights secured by the U.S. Constitution. This Court has concurrent jurisdiction over the federal constitutional claims as held in *Martinez v. California*, 444 U.S. 277 (1980).

6. This Court has jurisdiction and venue over the Andersons and their constitutional claims pursuant to Tenn. Code Ann. §§ 16-10-101, *et seq.*, 29-1-101, and 29-14-102(a).

7. This Court has authority to enter a declaratory judgment and to provide permanent injunctive relief pursuant to Tenn. Code Ann. §§ 29-1-101, 29-14-102(a), 29-14-103 and Tenn. R. Civ. P. 65, *et. seq.*

III. The Parties

8. PLAINTIFF RACHEL ANDERSON resides at 1623 5th Ave. N., Nashville, TN 37208 with her family. When they are not home, they list their

residence on Airbnb.com. She is a U.S. citizen and a resident of the State of Tennessee.

9. PLAINTIFF P.J. ANDERSON also resides at 1623 5th Ave. N., Nashville, TN 37208. He is married to Rachel and together they raise two (2) minor children. He is a U.S. citizen and a resident of the State of Tennessee.

10. DEFENDANT METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (“Metro”) is a political subdivision of the State of Tennessee. Metro can be served at Metro Courthouse, Suite 108, P.O. Box 196300, Nashville TN 37219-6300.

IV. Factual Background

A. Airbnb.com

11. The sharing economy has made entrepreneurs out of a whole new generation. Airbnb is a website for people to list, discover, and book homes and apartments in other cities. Homeowners list information about their home on the website, along with pictures, nightly rates, and other pertinent information. Guests can search these homes, then contact the hosts through the website to book a stay in the home for a short period of time. To analogize, Airbnb is a sort of Uber for people’s homes.

12. As an alternative to traditional hotels, Airbnb is often cheaper and typically offers a more unique experience (i.e., staying in a traditional, residential neighborhood, having more space including a kitchen for cooking, etc.).

13. Airbnb is the picture of a successful start up business. According to its website, Airbnb, in existence since only 2008, is in over 34,000 cities, 190 countries, and has over 35 million total guests.

14. Airbnb is built on information sharing. Both hosts and travellers on Airbnb rate and write reviews of the experience. These are then available for other potential customers to review. The rating system is based on a star system, with a maximum of five (5) stars. Those ratings are broken down into the following categories: accuracy, communication, cleanliness, location, check in, and value.

15. Airbnb verifies personal profiles and listings. It offers an enhanced verification procedure called Verified ID that indicates that Airbnb has verified offline and online identification, profile photographs, email addresses, and phone numbers. Verified ID, or the absence of it, is available for users to inspect and consider.

16. Airbnb also maintains and manages a safe platform to collect and transfer payments.

17. Airbnb has seen tremendous growth, especially in Nashville. Local media outlets report that Nashville is among the fastest growing markets in the country.

18. Airbnb has been beneficial to individual Nashvillians. It has supplemented the incomes of thousands middle class citizens and introduced

the independence and satisfaction that comes from entrepreneurship to many.

19. Airbnb has been beneficial to Nashville as a whole. It has introduced countless tourists to the city. Those tourists then spend money in other sectors of the Nashville economy. Airbnb also increases the number of rooms available for guests in the city, thus alleviating an oft-cited hotel shortage that has been used to justify millions of taxpayer subsidies to increase hotel supply.

20. Metro passed a law governing STRPs and began enforcing it on July 1, 2015. It is codified at Metro. Code § 6.28.030.

B. The Anderson family

21. Rachel graduated college in 2005. She is now 32 years old.

22. P.J. graduated college in 2002. He is now 35 years old.

23. In 2005, Rachel and P.J. both lived in the Chicago area. P.J. was a youth minister in a local church. He also played music on the side. Rachel was just beginning her career in graphic design.

24. They met that year. PJ and his band were performing in a bar in the Wrigleyville neighborhood. Rachel saw him play. They instantly were drawn to each other. They married in 2010.

25. In 2010, shortly after getting married, Rachel became pregnant with their son.

26. Rachel had very serious complications late in her pregnancy. She was hospitalized for three and a half (3 1/2) weeks before she finally gave birth to a son. He had to remain another sixteen (16) days in the neonatal intensive care unit before the Andersons were able to bring him home. He is now a healthy four (4) year old.

27. During the time of her hospitalization, P.J. took time off work to tend to Rachel and their son. Due to his extended work absence, P.J. lost his job as a youth minister.

28. P.J. decided make music his career. Naturally, the Andersons moved to Nashville.

29. In 2012, the Andersons arrived in Nashville. P.J. began to work professionally in the music genre as a Christian singer-songwriter. Rachel continued in the graphic design field.

30. In June 2013, the Andersons had a second child, a little girl. She is now two (2).

31. On or about August 16, 2013, they moved into 1623 5th Ave. N., Nashville, TN. Their home is located in Salemtown, a neighborhood in historic Germantown just north of downtown Nashville.

32. Their home is a modern three (3) bedroom home.

33. Although zoning would permit the Andersons to have a second home on their lot like some of their neighbors, there is only one (1) home on the lot.

34. To grow his music career, P.J. travels often. Rachel and the children travel with him when they can, leaving the house vacant. With it empty and in need of income, on or about November of 2013, the Andersons decided to put the home to good use by listing it on Airbnb.

35. The Andersons had immediate success on Airbnb. They have no difficulty finding people willing to stay in their home. Their home has immense appeal for Airbnb guests for the same reason that the Andersons relocated there: proximity to shopping, restaurants, entertainment and an easy trip to downtown Nashville.

36. Because of the children and their dogs, the Andersons are not able to host on Airbnb except when they travel. In other words, even though they live in the home and Metro legally classifies it as "owner-occupied" (explained in more depth below), the Andersons rarely, if ever, actually occupy the home when guests stay there.

37. Nevertheless, even in these limited number of days, the Andersons were able to make enough money to materially alter their financial outlook. Among other benefits, they no longer had to worry about how to pay the mortgage, they can save, and they have extra money to spend.

38. Metro Nashville has benefitted as well. Airbnb has attracted countless tourists who can only experience Nashville like the locals do through Airbnb. Airbnb guests also generate state and local sales taxes, as well as the Hotel Occupancy Tax, as of July 1, 2015.

39. Perhaps more importantly, Nashville benefitted by the addition of bed space in the downtown area with no expense to the taxpayer. Metro has been forced to spend millions of taxpayer dollars to attract hotels because of this problem, while Airbnb offers not only a free solution, but a revenue-generating solution to this supply issue.

40. The Andersons have received high ratings on Airbnb. They have been reviewed forty (40) times. They are rated with five (5) stars, the highest possible rating. The comments are overwhelmingly positive.

C. The Andersons' home

41. The Andersons' home is zoned R6, with an urban zoning overlay ("OV-UZO"), under Metro's zoning title.

42. Under Metro's zoning code, R6 is medium density residential. It is classified as single-family or duplex residential. It requires a 6,000 square foot lot. Single and two-family dwellings are permitted. Under Metro's Code, R6 is the most permissive and dense zoning classification under the single-family class.

43. Under Metro's zoning code, OV-UZO was intended to promote reinvestment into older neighborhoods (pre-1950s) by eliminating standards that could add unnecessary expense, while preserving and protecting existing development patterns.

44. Germantown is a neighborhood with a distinctly urban feel. The Nashville skyline towers over Germantown. It is an easy walk to restaurants,

coffee shops, the newly constructed Nashville Sounds baseball stadium, the Nashville Farmer's Market, and fast food establishments. New construction and condominiums line the street.

45. The Andersons' neighborhood is diverse. It has affluent residences. It also has houses with boards in the windows. A Nashville rescue mission and a public housing project (Cheatham Place) are several blocks away. Industrial buildings along the Cumberland River are also nearby.

46. Germantown was attractive to the Andersons precisely because the neighborhood is vibrant and diverse. They appreciate that it is walk-able. They often walk to shops, restaurants, baseball games and the Farmer's Market.

D. Metro. Code § 6.28.030 ("the STRP ordinance").

47. Prior to on or about February 26, 2015, Metro had no regulations that pertained to short-term rentals.

48. On or about February 26, 2015, Ordinance No. BL2014-951 pertaining to short-term rental property ("STRP") was signed into effect. Enforcement of the law began on July 1, 2015. The law can be found at Metro. Code § 6.28.030.

49. The ordinance, broadly speaking, requires operators of an STRP to obtain a permit from the Metro Department of Codes and Building Safety ("Codes"), provide proof of liability insurance coverage, and obey certain fire safety requirements and noise restrictions.

50. The ordinance also places a number of restrictions on the use of the property, as well as a cap on the number of non-owner occupied STRPs in a particular census tract.

51. Hotels, bed and breakfasts, boarding houses, and motels are exempt altogether.

52. The challenged portions of the ordinance are as follows:

- a. Only three percent (3%) of the residences within a particular census tract may obtain a permit for non-owner occupied short-term rentals. Metro. Code § 6.28.030(Q). This means that under some circumstances, a property owner may be forbidden from renting his or her property on a short-term basis even though others in the neighborhood do or, as in the Andersons' case, they had previously been doing.
- b. The STRP ordinance forbids advertising the STRP in any form until issuance of the permit. Metro. Code § 6.28.030(C). Even after the property owner obtains the permit, the ordinance categorically bans any form of signage on the property advertising its availability as an STRP. Metro. Code § 6.28.030(E).

53. The ordinance does not cap the overall number of STRPs in a particular census tract. The cap only applies to the number of non-owner

occupied permits. There are an unlimited amount of permits available to those seeking to rent their home short-term if they live in the residence.

54. Metro possesses no credible evidence that STRPs presented an actual harm, or at least any harm that warranted differential regulatory treatment from other, similar situations.

55. The selection of a cap of three percent (3%) was arbitrary.

56. Metro possesses no credible evidence that the three percent (3%) cap advances any legitimate government interest.

57. Metro possesses no credible evidence that it advances any legitimate government interest to treat a person who had an owner occupied permit differently once they try to obtain a non-owner occupied permit.

58. Additionally, the ordinance places a number of requirements on the operator of an STRP. It also contains enforcement mechanisms. This lawsuit challenges none of these requirements:

- a. Permit holders must have a responsible party within twenty-five (25) miles of the property who will respond to any maintenance or safety concerns. Metro. Code § 6.28.030(D)(1).
- b. Permit holders must have fire, hazard and liability insurance of not less than one million dollars (\$1,000,000). Metro. Code § 6.28.030(D)(12).
- c. The property must meet state and local building and safety codes. Indeed, the property must exceed those requirements

because it requires underwriter approved smoke alarms be installed throughout the house. Metro. Code § 6.28.030(G). As part of the application process, the property is physically inspected for compliance.

- d. Permit holders must abide by existing noise and waste restrictions. Metro. Code § 6.28.030(F). Three (3) or more complaints within a calendar year will trigger an investigation by the codes administration and can result in the permit being revoked. Metro. Code § 6.28.030(R)(2).
- e. Permit holder must answer calls twenty-four (24) hours a day, seven (7) days a week for the duration of the rental period. Metro. Code § 6.28.030(M).
- f. The penalty for operating without a permit is a fifty dollar (\$50) fine and a one (1) year waiting period to become eligible for a permit. Metro. Code § 6.28.030(R)(6).
- g. The permit holder must collect sales tax and hotel taxes of six percent (6%) of the consideration charged, plus \$2.50 per night of the stay. Metro. Code §§ 5.12.020, 5.12.120, 6.28.30(O).

59. The stated purpose of the law was four (4) fold: 1) to provide a flexible housing and safe housing stock for tourists; 2) to assist homeowners in difficult economic times; 3) to generate hotel occupancy taxes to be used to

promote tourism; and, 4) to balance the needs of long-term residents and short-term rentals. Metro. Ordinance No. BL2014-951.

60. Subsequent to the passage of the STRP ordinance, Metro decided to use the tax proceeds from STRPs to serve priorities unrelated to promoting tourism when it passed Ordinance No. BL2015-1056, designating the Hotel Occupancy Tax proceeds from STRPs to the Barnes Fund for Affordable Housing that offers taxpayer incentives to real estate developers to build affordable housing.

61. In the zoning title and elsewhere, Metro Code has restrictions on signage, noise, garbage, nuisances, and parking. None of these are challenged.

62. Upon information and belief, Metro also takes the position that STRPs are subject to the tax on tangible personal property used by businesses and found at Tenn. Code Ann. § 67-5-901, *et seq.* If so, operators of an STRP would be required to list all of the tangible personal property found in the home and submit it to Metro on an annual basis to be taxed.

E. Metro. Code § 5.12.020 (“the Hotel Occupancy Tax”)

63. The Hotel Occupancy Tax, Metro. Code § 5.12.020, assesses a privilege tax of six percent (6%) of the consideration charged. Additionally, it assesses a charge of \$2.50 per night. It must be collected by the “operator.”

64. This ordinance employs the following definitions:

- a. Hotel - “any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes ... and includes ... any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.” Metro. Code § 5.12.010.
- b. Occupancy - “the use or possession or the right to the use or possession, of any room, lodgings or accommodations in a hotel for a period of less than thirty days.”
- c. Operator - “person operating the hotel whether as owner, lessee or otherwise.”
- d. Transient - “person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty days.” *Id.*

E. Metro. Code § 6.28.010 (“the Hotel Records ordinance”).

65. Also impacting anyone housing transients is a records law found at Metro. Code § 6.28.010. It requires that every person operating a hotel or “engaged in the business of lodging transients” keep a book of information on all of their guests, including, name, address, dates of arrival and dates of departure. Metro. Code § 6.28.010(A).

66. This ordinance then mandates that the proprietor provide this information to the police upon a written request. Notably, there is no warrant

requirement or judicial review of any kind before the demand for records must be met.

F. Impact of the law on the Andersons

67. The Andersons obtained an owner-occupied permit for their home after the passage of the STRP law. They have continued to safely and satisfactorily host guests on Airbnb when they travel as they did long before Metro passed the ordinance.

68. They have never received any complaints about the use of their home as a STRP.

69. Rachel continues to work as a graphic designer out of the home. She is a high performer. Her company has discussed promoting her. A promotion would mean a relocation back to Chicago, at least for a few years.

70. P.J. continues to work professionally as a Christian singer-songwriter. He tours often. When not on the road, he is a stay-at-home dad.

71. On August 17, 2015, Rachel emailed a Metro zoning examiner, asking if she could temporarily place a sign no larger than 18x12 inches in her yard that advertised that the home was available for rent on Airbnb, along with a website link to the listing. She specified that the sign would be up only for three days during Germantown's annual Oktoberfest event (October 9-11).

72. She also asked in the same email if she would be permitted to place a small, 4x4 inch Airbnb sticker in the front door window to notify

upcoming guests that they had arrived at the right home. The sticker would only be placed in the window on the date of the guest's arrival.

73. Even though the Andersons possessed a lawful owner-occupied permit, Metro denied Rachel's request because all signage advertising a short-term rental is categorically prohibited.

74. At the time they obtained their existing, owner-occupied permit, the Andersons had no plans to move from their home.

75. The Andersons wish to continue owning their home even if they have to move to Chicago so that they can maintain their Nashville roots and have a place to stay when they return to the city.

76. In the Andersons' census tract, there are 942 units that could be used as a STR. This means that there should be twenty-eight (28) permits available for non-owner occupied usage due to the three percent (3%) cap.

77. The Andersons decided to get a non-owner occupied permit in case they have to move to Chicago, which would allow them to keep their home. On August 19, 2015, the Andersons simply tried to convert their owner-occupied to a non-owner occupied permit. But the three percent (3%) cap had been reached in the Andersons' census tract. They were denied a permit on that date.

78. On August 19, 2015, Metro had actually issued thirty (30) permits in the Andersons' neighborhood, that is, two (2) more than the alleged cap allowed.

79. Metro advised that it would have issued the Andersons the permit that would have authorized them to continue to rent on Airbnb but for the cap.

80. Apart from the hard cap on the number of non-owner occupied permits, the Andersons are ready, willing, and able to meet all of Metro's requirements to safely accommodate guests as indeed they have done from the beginning.

81. The Andersons want to keep their home but cannot afford two (2) mortgages. The income they make from Airbnb would permit them to keep their home and move.

82. Because they cannot obtain a permit, the Andersons are in a bind. If they want to continue to list the home on Airbnb, they must remain owner occupied, meaning they can never move.

83. And even if they sold the house, the Andersons may be unable to receive full value because a future purchaser cannot expect to obtain a non-owner occupied permit either.

84. The Anderson family's choices are deeply affected by their inability to transfer their permit. If the Andersons cannot move, then Rachel cannot accept a promotion. It would also mean that their family can never graduate from their first home into their second.

G. Harm to Nashville residents

85. As one of the most desirable cities in the country to visit and enjoy the amenities, especially those present in neighborhoods like Salemtown, Nashville needs safe, reliable and affordable options for visitors.

86. Many tourists seek out the unique experience of visiting Nashville and staying in a neighborhood that can only be offered through a short-term rental. Others may be unable to pay the growing rates for a hotel room downtown.

87. Metro's limitation on the number of non-owner occupied permits arbitrarily and unnecessarily deprives the public of affordable places to stay when visiting the city.

88. Short-term rentals offer a tax-dollar free solution to the lack of bed space downtown.

89. The cap perpetuates this problem, making it more likely that tax dollars will be needed to attract hotels to the downtown area.

90. The cap runs counter to the stated goals that justified the passage of the law.

91. Furthermore, by subsequently passing another law designating the tax proceeds to provide tax incentives to real estate developers, Metro also undermined the stated goal of using that revenue to promote tourism.

92. The cap also arbitrarily deprives young families like the Andersons of the economic opportunity and freedom to operate on Airbnb.

V. Claims

A. Claim One-The STRP law does not apply to the Andersons because they qualify for the exemption.

93. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

94. The STRP ordinance applies to any residence housing transients used for rent to transients for under thirty (30) days.

95. The ordinance exempts hotels, bed and breakfasts and boardinghouses.

96. Legally, as those terms are defined, the Andersons' home may also qualify as either a hotel, bed and breakfast, or boardinghouse, or all three.

97. In sum, the Andersons both fall under the ordinance and are exempted out of the ordinance.

B. Claim Two-Violation of Article I, Section 8 of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution (Vagueness).

98. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

99. The Due Process clauses in the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Tennessee Constitution contain a right to be free from laws that are so vague that no ordinary person exercising ordinary common sense could sufficiently understand and comply.

100. Assuming, *arguendo*, that Claim One fails, then the ordinance is unconstitutionally vague. For the reasons explained in Claim One, no ordinary person could know if the law covers their activity or if they are exempt.

101. Amidst this backdrop, enforcement is sure to be arbitrary.

C. Claim Three-Violation of Article I, Section 19 of the Tennessee Constitution and the First Amendment of the U.S. Constitution (Commercial Speech).

102. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

103. The right to engage in free speech is guaranteed by Article I, Section 19 of the Tennessee Constitution and the First Amendment of the U.S. Constitution.

104. Protections of speech extend to the commercial setting.

105. The STRP ordinance categorically bans signs of any kind, even signs that otherwise meet Metro's signage regulations. This is overbroad, and an impermissible burden on the Andersons' right to free expression. Furthermore, the ban on short-term rental signs constitutes viewpoint discrimination with no legitimate basis.

106. Furthermore, there is no legitimate reason for banning signs that would otherwise be permitted under Metro's signage scheme but for the fact that they advertise short-term rentals.

107. The STRP ordinance also prohibits advertising the property until obtaining a permit. This too is overbroad, and an impermissible burden on the Andersons' free speech rights. The advertising ban is viewpoint discrimination that is not related to a legitimate governmental interest.

D. Claim Four-Violation of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution (Equal Protection).

108. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

109. As citizens of Tennessee and the U.S., the Andersons have a fundamental right to equal protection under the law. Tennessee's constitutional guarantees of equal protection are found in two different clauses of the state constitution. The first is found in Article I, Section 8. The second is found in Article XI, Section 8. The U.S. Constitution guarantees equal protection under the Fourteenth Amendment.

110. Because the STRP ordinance implicates fundamental, enumerated constitutional rights, namely free speech and the right to be free from a warrantless search, this Court must apply strict scrutiny.

111. Under any standard, however, the cap violates equal protection.

112. The three percent (3%) cap treats similarly situated persons differently and violates state and federal guarantees of equal protection under the law.

113. There is no legitimate basis for the classification.

114. Nor does the cap further any legitimate governmental interest.

115. The protectionist, arbitrary and irrational cap on the number of non-owner occupied permits protects those existing permit holders who were fortunate enough to need and obtain a non-owner occupied permit at the time they were issued by denying the Andersons the opportunity to also operate on Airbnb when their life circumstances changed.

116. Existing permit holders now possess this valuable permit for so long as they care to as the law allows for them to renew it without limit.

117. Hotels and other businesses engaged in providing room occupancy to transients are also protected. They do not face an arbitrary cap on their numbers.

118. Protectionism is not a legitimate reason to prohibit the Andersons from operating on Airbnb.

E. Claim Five-Violation of Article I, Section 8 of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution (Substantive Due Process).

119. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

120. As citizens of Tennessee and the U.S., the Andersons have a fundamental right to substantive due process. The Tennessee constitutional guarantee is found in Article I, Section 8. Referred to as the “Law of the Land” Clause, Tennessee’s provision derives directly from the ancient Magna

Carta. The U.S. Constitution guarantees substantive due process under the Fourteenth Amendment.

121. Because the STRP ordinance implicates fundamental, enumerated constitutional rights, namely free speech and the right to be free from a warrantless search, this Court must apply strict scrutiny.

122. Under any standard, the cap violates the right to substantive due process.

123. The cap denies the Andersons the right to operate on Airbnb free from arbitrary and unreasonable regulation and does not further a legitimate governmental interest.

124. Protectionism is not a legitimate basis for prohibiting the Andersons.

125. The cap denies the Andersons the opportunity to operate on Airbnb, a right they previously enjoyed that harmed no one.

F. Claim Six-Violation of Article I, Section 22 of the Tennessee Constitution (Anti-monopoly).

126. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

127. As citizens of Tennessee, the Andersons have a right to be protected from monopolies. This right is protected by Article I, Section 22 of the Tennessee Constitution.

128. The cap creates a monopoly. A permit holder may renew his or her permit for an indefinite period of time. Those who own homes in “in

demand” neighborhoods like the Andersons may never be permitted to enter the marketplace. The permit is now an exclusive right, granted to a few, of something that was before a common right.

129. Monopolies are contrary to the genius of a free state.

130. The cap has no legitimate relation to any valid public purpose.

G. Claim Seven-Violation of Article I, Section 2 of the Tennessee Constitution and the Fourth Amendment of the U.S. Constitution (Unreasonable search).

131. The Andersons hereby repeat all of the preceding allegations and incorporate them here by reference as though fully set forth herein.

132. As citizens of Tennessee and the U.S., the Andersons have a right to be free from unreasonable searches and seizures. This right is protected by Article I, Section 7 of the Tennessee Constitution and the Fourth Amendment of the U.S. Constitution.

133. The requirement in Metro. Code § 6.28.010 that every person operating a hotel or “engaged in the business of lodging transients” keep a book of information on all of their guests, including, name, address, dates of arrival and dates of departure and then surrender this information to the police upon a written request is unconstitutional.

134. This requirement legally constitutes an administrative search.

135. The Andersons are not operating an intrinsically dangerous business.

136. The law lacks any opportunity for pre-compliance review before a neutral decision maker.

137. The police must obtain some judicial authorization or this amounts to an unreasonable search.

138. Moreover, operators of an STRP are not, unlike operators of a traditional hotel business, involved in a closely regulated industry. They may not be compelled to keep records under either the U.S. or Tennessee Constitution.

139. Even if they were a closely regulated industry, the additional protections provided under the Tennessee Constitution prohibit a requirement that operators of an STRP keep records on their guests.

140. Even though no police officer has asked the Andersons for records, the requirement that they must one day be forced to comply violates the Andersons' right to be free from unreasonable searches and seizures.

VI.
Relief Sought

WHEREFORE, PLAINTIFFs requests that this Court:

A. Enter a declaratory judgment that either the STRP ordinance does not apply to the Andersons or anyone else. Or, in the alternative, that the question regarding who is covered is unconstitutionally vague in violation of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Tennessee Constitution.

B. Enter a declaratory judgment that Metro has violated the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, and Article I, Sections 7, 8, 19, 22 and Article XI, Section 8 of the Tennessee Constitution.

C. Enter an order permanently enjoining Metro from enforcing the three percent (3%) cap.

D. Enter an order permanently enjoining Metro from enforcing the signage ban and prohibition on advertisement.

E. Enter an order permanently enjoining Metro from requiring operators of an STRP to keep records on their guests.

F. Enter an order permanently enjoining Metro from requiring anyone engaged in the business of lodging guests to keep and surrender records to the police.

G. Award costs, expenses and reasonable attorneys' fees according to 42 U.S.C. § 1988, Tenn. Code Ann. § 29-14-111 and any other applicable laws.

H. Award any other relief as is appropriate under the circumstances.

Dated: August 26, 2015.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Braden H. Boucek', is written over a horizontal line.

BRADEN H. BOUCEK

B.P.R. No. 021399

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served upon the following, by the following means:

Counsel	Counsel for	Via
Saul Solomon Director of Law Metro Courthouse Ste 108 P.O. Box 196300 Nashville, TN 37219-6300 615.862.6341 saul.solomon@nashville.gov	Metro Nashville	<input checked="" type="checkbox"/> United States mail, postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fed Ex <input type="checkbox"/> CM/ECF

On this date, August 26, 2015


BRADEN H. BOUCEK

FILED
2015 AUG 26 AM 8:30
RICHARD R. ROOKER
CLERK
D.C.

STATE OF TENNESSEE
DAVIDSON COUNTY
20TH JUDICIAL DISTRICT

☒ First
☐ Alias
☐ Pluries

RACHEL AND P.J. ANDERSON,

CIVIL ACTION
DOCKET NO.

15C3212

Plaintiff

Vs.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY

Defendant

Method of Service:

☐ Davidson County Sheriff
☐ Out of County Sheriff
☐ Secretary of State
☒ Certified Mail
☐ Personal Service
☐ Commissioner of Insurance

D1 w/c

To the above named Defendant:

You are summoned to appear and defend a civil action filed against you in the Circuit Court, 1 Public Square, Room 302, P.O. Box 196303, Nashville, TN 37219-6303, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED:

8/26/15

RICHARD R. ROOKER

Circuit Court Clerk
Davidson County, Tennessee

By:

[Signature]
Deputy Clerk

ATTORNEY FOR PLAINTIFF

or

PLAINTIFF'S ADDRESS

Metro Legal Dept., Metro Courthouse, Ste 108, P.O. Box 196300

Nashville, TN 37219-6300

Address

Attn: Saul Solomon, Director of Law

PO Box 198646

Nashville, TN 37219

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RICHARD R. ROOKER

Circuit Court Clerk

Received this summons for service this _____ day of _____, 20____.

SHERIFF



To request an ADA accommodation, please contact Dart Gore at (615) 880-3309.

RETURN ON PERSONAL SERVICE OF SUMMONS

I hereby certify and return that on the _____ day of _____, 20_____, I:

 served this summons and complaint/petition on _____
_____ in the following manner:

 failed to serve this summons within 90 days after its issuance because _____

Sheriff/Process Server

RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify and return, that on the _____ day of _____, 20_____, I sent, postage prepaid by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in Docket No. _____ to the defendant, _____. On the _____ day of _____, 20_____, I received the return receipt for said registered or certified mail, which had been signed by _____ on the _____ day of _____, 20_____. Said return receipt is attached to this original summons and both documents are being sent herewith to the Circuit Court Clerk for filing.

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS

_____ DAY OF _____, 20_____.

PLAINTIFF, PLAINTIFF'S ATTORNEY OR OTHER PERSON
AUTHORIZED BY STATUTE TO SERVE PROCESS

NOTARY PUBLIC or _____ DEPUTY CLERK

MY COMMISSION EXPIRES: _____

NOTICE

TO THE DEFENDANT(S):

Tennessee law provides a ten thousand dollar (\$10,000.00) debtor's equity interest personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

ATTACH
RETURN
RECEIPT
HERE
(IF APPLICABLE)

STATE OF TENNESSEE
COUNTY OF DAVIDSON

I, Richard R. Rooker, Clerk of the Circuit Court in the State and County aforesaid, do hereby certify this to be a true and correct copy of the original summons issued in this case.

RICHARD R. ROOKER, CLERK

(To be completed only if
copy certification required.)

By: _____ D.C.

**STATE OF TENNESSEE
DAVIDSON COUNTY
20TH JUDICIAL DISTRICT**

☒ First
☐ Alias
☐ Pluries

RACHEL AND P.J. ANDERSON,

CIVIL ACTION
DOCKET NO. 15C3212

Plaintiff

Vs.

THE METROPOLITAN GOVERNMENT

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☒ Certified Mail
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ISSUED: 8/26/15

RICHARD R. ROOKER

Circuit Court Clerk
Davidson County, Tennessee

By: [Signature]

Deputy Clerk

ATTORNEY FOR PLAINTIFF

or

PLAINTIFF'S ADDRESS

Metro Legal Dept., Metro Courthouse, Ste 408, P.O. Box 196300

Nashville, TN 37219-6300

Address

Attn: Saul Solomon, Director of Law

PO Box 198646
Nashville, TN
37219

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RICHARD R. ROOKER

Circuit Court Clerk

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SHERIFF



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RICHARD R. ROOKER, CLERK

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