STATE OF RHODE ISLAND PROVIDENCE, S.C.		SUPERIOR COURT
FEDERAL HILL CAPITAL, LLC, CHRISTOPHER MUSACCHIO, ALEJANDRO AMAYA, WILLIAM SMITH, AND COREY KOSSIN, Plaintiffs, v. CITY OF PROVIDENCE by and through its Treasurer, James Lombardi, JORGE ELORZA, in his official capacity as Mayor of Providence, and JEFFREY L. LYKINS, in his official capacity as Director of the Providence Department of Inspection and Standards, Defendants.	)	C.A. No. PC-2016-0808

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

The Plaintiffs brought this action in cooperation with the American Civil Liberties Union Foundation of Rhode Island (the "ACLU") to challenge the constitutionality of a Providence ordinance that prohibits more than three college or graduate students from living together in certain single family homes. The ordinance restricts the rights of Rhode Islanders to choose where and with whom they wish to live, discriminates against a class of citizens based on their status as college students, and diminishes the property rights of landlords. The City argues that the ordinance passes constitutional muster because it is rationally related to several valid governmental objectives, all of which involve protecting the neighborhoods' "character." However, the available evidence demonstrates that the opposite is true: There is no rational connection between the challenged

ordinance and the neighborhood concerns that it was purportedly designed to address. Indeed, it simply is not credible that restricting the number of student tenants in one subset of available rental housing (i.e., single-family homes) will make the affected neighborhoods any quieter, safer or cleaner. The ordinance violates the equal protection and due process clauses of the Rhode Island Constitution, and should be invalidated by this Court.

Facts

1. The Student Housing Ordinance

This case presents a constitutional challenge to a September 2015 amendment to the City of Providence Zoning Ordinance (the "Student Housing Ordinance" or simply the "Ordinance"). The Student Housing Ordinance prohibits more than three "College Students" from living together in a non-owner-occupied single-family dwelling in an area zoned R-1 or R-1A. The Student Housing Ordinance defines "College Student" as "[A]n individual enrolled in, or attending academic courses at, any college, university or other post-secondary education institution for academic credit, whether in an undergraduate or graduate capacity." No distinction is made between graduate, undergraduate, full-time and part-time students. All are merely "College Students" for the purposes of the Ordinance.

It is undisputed that the City's stated purpose for enacting the Ordinance was to address resident concerns about student behavior in the Elmhurst and Mount Pleasant neighborhoods of Providence near Providence College. A press release issued by the Providence City Council on or about September 17, 2015, explains the rationale behind the new law according to Councilwoman Jo-Ann Ryan, its sponsor:

> Ryan introduced the legislation in response to concerns from residents in the Elmhurst and Mount Pleasant neighborhoods she represents, who are frustrated that single-family homes were being purchased and rented to numerous college students. Ryan, whose ward borders the Providence College campus, said that, "The change in intended use of single-family homes is undermining the character of our neighborhoods, diminishing the quality of life, and creating health and public safety concerns." She said, "The new zoning ordinance will give the City a critical tool in addressing the negative impacts of student housing in single-family districts."

A copy of the press release, obtained from the City Council's website, is attached to the Complaint in this action as Exhibit B.

2. The Neighborhood

The Plaintiffs in this action are the owner and current tenants of a single-family home located at 15 Oakdale Street in the Elmhurst neighborhood (the "Oakdale House"). The Oakdale House is located in the neighborhood that was primarily targeted by the Student Housing Ordinance because of the relatively large number of homes that are rented to college students. Importantly, however, the neighborhood is not limited to only single family homes. The zoning in this area was only recently changed to R-1A and R-1. Many of the homes in the area near and around the Oakdale House are two-family homes that have been "grandfathered" into an R-1 zone. *Affidavit of Robert A. D'Amico II* ("D'Amico Affidavit"), ¶18. The D'Amico Affidavit is attached here to as Exhibit 1. Of the 103 homes on Oakdale Street and nearby Huxley Avenue, Vincent Street and Tyndall Avenue, 39 are two or three-family homes unaffected by the Student Housing Ordinance. These streets are all zoned R-1. This is important because even if the Student Housing Ordinance is strictly enforced on these streets, nearly forty percent of the houses are multi-family units, most of which are rented to large groups of college students, and which are not impacted by the Ordinance. In the experience of Robert A. D'Amico, II

("Mr. D'Amico"), one of the members of FHC, the vast majority of complaints, parties, problems and Public Nuisance Warnings against student tenants in the Elmhurst neighborhood relate to multi-family homes. *D'Amico Affidavit*, ¶11.

3. The Oakdale House

Plaintiff Federal Hill Capital, LLC ("FHC") purchased the Oakdale House in 2013 from the Secretary of Housing and Urban Development. For an unknown period of time prior to FHC's purchase, the Oakdale House was a vacant, bank-owned property. *D'Amico Affidavit*, ¶3. FHC's purchase of the property and utilization of the same as a residential rental property has improved the status of the street and the neighborhood by removing the blight of a vacant bank owned property on a dead end street and bringing it back to life with its student occupants. *D'Amico Affidavit*, ¶4. FHC began renting the Oakdale House to groups of four student tenants in May 2014, and has continued to do so through the present lease to the four student plaintiffs in this action. *D'Amico Affidavit*, ¶6. During the period that the Oakdale House has been occupied by four college students:

- The neighbors of the Oakdale House have been supportive of its use as a student rental;
- The Oakdale House has been well maintained inside and out;
- Neighbors have never complained to FHC about parking, noise, fighting, parties, general behavior or any other issue related to the student tenants of the Oakdale House;
- Mr. D'Amico is unaware of any incident where the Providence Police have been dispatched to the Oakdale House in response to any student tenant behavioral issues;
- The Providence Police have never issued a Public Nuisance Warning, violation or fine, nor has the City of Providence issued any environmental summons to FHC or its tenants.

D'Amico Affidavit, ¶¶5-10.

4. Passage of the Ordinance

As noted in the press release cited above, the City's stated purpose in passing the Student Housing Ordinance was to "give the City a critical tool in addressing the negative impacts of student housing in single-family districts." *Complaint*, Exhibit B. The press release does not, however, tell the full story of the history of the Student Housing Ordinance.[1] In fact, the press release and subsequent statements by the City, including the City's Memorandum, inaccurately suggest that the Ordinance was always targeted specifically to single-family homes, which is simply not the case. Rather, it originated as an ordinance that targeted student tenants occupying all dwelling units in the City of Providence, including single family and multi-family homes. *D'Amico Affidavit*, ¶13.

Prior to the Ordinance Committee meeting upon which the Student Housing Ordinance was voted on and approved for a vote by the full City Council, the prior iteration of the ordinance targeting student tenants in all dwelling units was referred to the City Plan Commission to consider the same in light of the city's comprehensive plan. Mr. D'Amico and many other landlords appeared at this meeting and voiced objection to the same. The members of the City Plan Commission stated that the ordinance seemed discriminatory and did not appear to be a solution to the problem of addressing noise and

[1] The City has attempted to introduce certain correspondence with constituents, along with a journal article about drinking on college campuses (together, Exhibit E to the City's Memorandum) as evidence of the Council's rationale for adopting the Student Housing Ordinance. The Plaintiffs have filed a Motion to Strike this material on the grounds that the City failed to produce it in response to Rule 34 discovery requests, claiming at the time that the documents were privileged. Consequently, the Court should disregard the allegations derived from these tainted materials on Pages 6-7 of the City's Memorandum.

student behavior. The City Plan Commission voted unanimously ***against*** recommending the ordinance for approval by the Ordinance Committee. Rather, the City Plan Commission recommended that the City Council create a task force to include landlords, surrounding property owners, students, police and others to study the issues giving rise to noise and student behavior and to recommend solutions to solve this problem. *D'Amico Affidavit*, ¶15. It was only after this meeting and the many objections from landlords and other property owners that Councilwoman Ryan decided to water the ordinance down to its present form, affecting only students occupying single family homes in an R-1A and R-1 zoning districts. *D'Amico Affidavit*, ¶14.

In short, the Student Housing Ordinance was not a carefully thought out response to problems of noise or overcrowding or parties in single-family homes in residential neighborhoods. It was, instead, a misguided effort to curtail all student housing in the Elmhurst neighborhood that was eventually watered down to apply only to single-family homes. In the course of its evolution, the Ordinance shifted from something that might have been effective but politically unachievable, to something that was palatable to the City Council but entirely unrelated to the goals that its sponsor originally set out to achieve.

Argument

Defendant City of Providence's Memorandum of Law In Support Of Its Motion For Summary Judgment (the "City's Memorandum") includes a helpful and largely accurate survey of the law related to the constitutionality of similar ordinances throughout the United States over the past five decades, and the Plaintiffs commend the City's counsel for the impressive effort. Rather than conduct a similarly comprehensive review of the

law that would be unnecessarily duplicative, Plaintiffs will focus their argument on their two substantive areas of disagreement with the City.

First, the Plaintiffs do not dispute that there is a split among jurisdictions that have considered similar ordinances, and that a majority have found them to be constitutional. Rather, the Plaintiffs submit that Rhode Island should stand with states that have interpreted their state constitutions to protect the right of citizens to live where and with whom they choose (*see, e.g., City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980); *McMinn v. Town of Oyster Bay, 488 N.E.2d 1240* (N.Y. 1985); *Kirsch v. Prince George's County*, 626 A.2d 372 (Md. 1993)), and not with states that have taken a more restrictive view of their citizens' rights (*see, e.g., McMaster v. Columbia Bd. Of Zoning Appeals*, 719 S.E.2d 660 (S.C. 2011); *City of Baton Rouge/Parish of East Baton Rouge v. Myers*, 145 So.3d 320 (La. 2014)). Although most courts have used the rational basis test when analyzing "unrelated party" zoning laws, there is ample justification to apply a heightened standard of review, especially where the challenged law affects fundamental liberty interests and diminishes the rights of an entire class of citizens based solely on their educational status.

Second, even under a rational basis standard that largely gives the City the benefit of the doubt in enacting zoning legislation, the Student Housing Ordinance cannot pass constitutional muster. As will be discussed below, the City Council could not reasonably believe that the Ordinance will be effective in addressing the concerns that purportedly led to its enactment. There is no reason to believe that in a neighborhood with a mix of single family homes and multi-family homes, enacting legislation that targets only the single family homes will have any appreciable impact on noise, parking, public drinking,

or other problems that might sometimes be associated with student housing. The Ordinance also discriminates against Rhode Islanders solely on the basis of their decision to pursue higher education, in clear violation of the equal protection clause of the Rhode Island Constitution.

1. The Rhode Island Constitution Provides Broader Protections Than the United States Constitution.

The City's argument in favor of constitutionality is based largely on the United States Supreme Court decision in *Village of Belle Terre v. Borass*, 416 U.S. 1 (1974), in which the Court held that a suburb could enact an ordinance restricting land use to single-family dwellings, with "family" defined as any number of related persons but not more than two unrelated people. *Id.* at 2. As the City notes, most of the subsequent state court decisions permitting such "unrelated persons" ordinances have explicitly adopted the reasoning in *Belle Terre*. *See City's Memorandum* at 22-23. *Belle Terre*, however, is distinguishable because the challenged ordinance did not target college students as a group, which raises an especially troubling equal protection issue. Nor is *Belle Terre* binding precedent in this case, which was brought solely under the Article 1, Section 2 of the Rhode Island Constitution.

The Rhode Island Supreme Court has been very clear that "the equal-protection guarantees secured by the Fourteenth Amendment, however, in no way limit those protections Rhode Island citizens possess by nature of article 1, section 2 [of the Rhode Island Constitution]." *Providence Teachers' Union Local 958, AFL-CIO v. The City Council of the City of Providence*, 888 A.2d 948, 956 (R.I. 2005). As the Supreme Court noted, "[t]he drafters' rationale for including a parallel yet independent equal-protection clause was presumably to protect the citizens of this state should the federal judiciary

adopt a more narrow interpretation of the Fourteenth Amendment." *Id. See also East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1150 (R.I. 2006) (recognizing "the autonomous character of each constitution's inviolable guarantees" of equal protection and due process). It is within this Court's discretion to interpret our state constitution more broadly than the U.S. Constitution has been interpreted in similar cases elsewhere.

The only other Rhode Island court to consider the constitutionality of a law similar to the Student Housing Ordinance was the Superior Court in *DiStefano v. Haxton*, 1994 WL 931006, WC-1992-0589 (Super. Ct. Dec. 12, 1994) (Fortunato, J.). In *DiStefano*, Judge Fortunato held that a Narragansett ordinance prohibiting more than three unrelated people from sharing a residential unit violated the equal protection and due process guarantees of the Rhode Island Constitution. Judge Fortunato correctly anticipated the later-issued decisions of the Supreme Court in *Providence Teachers' Union* and *East Bay Community Development Corp.*, *supra*, writing that even if the analysis of a law under the US and Rhode Island Constitutions is similar, "there is no need to conclude that the results will be identical," and that the Rhode Island Constitution affords "a greater protection than that which might be provided by the Fourteenth Amendment in the federal charter." *DiStefano* at 5.

Ultimately, with respect to the substantive due process analysis, Judge Fortunato concluded that:

> [P]laintiffs in the instant matter have a liberty interest which permits the landlord plaintiffs to allow occupancy of their single units by more than three unrelated individuals and the tenant plaintiffs have a concomitant liberty interest to come together in groups larger than three to rent and occupy such units. . . . It is clear that liberty of choice in such matters is a <u>fundamental right</u> protected by the due process clause of the Rhode Island Constitution.

DiStefano at 7-8 (emphasis added). The Court also concluded that it could apply a "strict scrutiny" standard to the equal protection analysis, i.e., whether Narragansett could treat unrelated cohabitants differently from those related by blood.

The California Supreme Court reached a conclusion similar to Judge Fortunato's in *City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980), holding that the City could not infringe on its residents' fundamental right to privacy without a compelling governmental interest (i.e., "strict scrutiny"). Consequently, the court struck down an ordinance prohibiting more than five unrelated parties from living together in a single family home. *Id.*, 610 P.2d at 440-442. Just as the California Constitution expressly protects the right to privacy, such a right can also be implicit in a state constitution, and Judge Fortunato found just such a right to exist in Rhode Island's Constitution. *DiStefano* at 7 (finding that "liberty of choice" for both tenants and landlords is a fundamental right).

At least one commentator has argued that the rational basis test provides inadequate constitutional protection in zoning cases, and the burden of justifying the need for "single-family" housing ordinances should be shifted to the government. *See* Katia Brener, *Belle Terre and Single-Family Hole Ordinances: Judicial Perceptions of Local Government and the Presumption of Validity*, 74 N.Y.U. Law Review 447 (1999). A copy of Ms. Brener's article is attached hereto as Exhibit 2. Based on a through analysis of *Belle Terre* and subsequent state court cases, Ms. Brener argues that:

> "[S]tate courts examining single-family home ordinances can and should apply heightened scrutiny, or 'second-order' rational basis review, which requires the government to establish that the classification is substantially related to important and legitimate objectives, so that valid and sufficiently weighty policies actually justify the ordinance."

Id. at 482. In short, there is solid precedent for this Court to apply a higher standard of review to the Student Housing Ordinance than the "rational basis" analysis. State and local governments must offer compelling justification before restricting one group of citizens' constitutional rights to due process and equal protection.

2. The City of Providence Should Not Be Permitted to Discriminate Against Residents Based On Their Educational Status.

The Student Housing Ordinance is different from the ordinances considered in *Belle Terre*, *DiStefano*, and most of the other cases cited in the City's Memorandum because it treats an entire class of citizens differently based on their status as "college students." This raises a difficult issue for the City, one not touched upon in cases concerning "unrelated parties" ordinances: Does the Rhode Island Constitution permit the City to discriminate against residents based on their educational status? The City attempts to downplay this question by referring to the Student Housing Ordinance as the "Single-Family Dwelling Amendment," but whatever its name, the unequivocal goal and impact of the Ordinance is to create a separate set of laws that applies only to individuals "enrolled in, or attending academic courses at, any college, university or other post-secondary education institution for academic credit, whether in an undergraduate or graduate capacity."[2]

One of the few courts to consider a zoning ordinance specifically targeted at college students held that "[t]o differentiate between permissible residential classes by creating

[2] The Student Housing Ordinance broadly defines college students to apply to graduate students and part-time students. Using the City's definition, 18-year-old college freshmen are viewed identically to a 25-year-old medical student at Brown and a 70-year-old senior citizen taking part-time courses at CCRI. The impact of this inclusiveness is discussed further in the Plaintiffs' rational basis analysis, *infra.*

more strenuous zoning requirements for some and less for others based solely on the occupation which the tenant pursues away from that residence is the sort of arbitrary classification forbidden under our constitutions." *Kirsch v. Prince George's County*, 626 A.2d 372, 380 (Md. 1993). Consequently, the Maryland Court of Appeals invalidated an ordinance that prohibited "mini-dormitories," which were defined as one-, two-, or three-family dwellings occupied by three to five unrelated individuals, "all or part of whom. . . are registered full-time or part-time students at an institution of higher learning." *Id.* at 373. The court distinguished its case from the facts of *Belle Terre* on these grounds, noting that the Maryland ordinance "does not differentiate based on the nature of the use of the property, such as a fraternity house or a lodging house, but rather on the occupation of the persons who would dwell therein." *Id.* at 381. This distinction between the facts of *Belle Terre* and the facts of the *Kirsch* case proved constitutionally fatal to the challenged Prince George's County ordinance.

One of the questions before this Court, therefore, is whether the City of Providence should be permitted to legislate college students – including part-time and graduate students – into a kind of second-class citizen without all of the rights afforded to other residents of the City. Rhode Island's public policy should favor education; we should be encouraging our young people to pursue higher education, just as we should be encouraging mid-career adults to return to school part-time to expand their career opportunities. We should be smoothing the path to the pursuit of education, not erecting obstacles that will limit the housing choices available to a resident simply because she is enrolled in a course at CCRI or is a full-time undergraduate at Providence College. Instead, the City would permit four unrelated and unemployed eighteen year olds to live

together in a single-family home, but should they decide to enroll in a college course, their cohabitation would immediately become illegal.

This is an appropriate instance to invoke the equal protection guarantee of Article 1, Section 2, and prohibit the City from discriminating against college students unless it can show a compelling government interest in doing so.[3] In any case, whether the Ordinance is analyzed using strict scrutiny or a rational basis test, it cannot survive this constitutional challenge.

3. The Student Housing Ordinance Fails Both a Rational Basis Test And Strict Scrutiny.

Ultimately, the Student Housing Ordinance is an unconstitutional infringement on the due process and equal protection rights of landlords and students even if only minimal scrutiny is applied. Subjecting the Ordinance to strict scrutiny, which requires a compelling governmental objective, only makes the analysis that much easier. Simply put, it is not credible that the Ordinance will have any impact on the problems it was purportedly enacted to address, or that the problems themselves actually exist.

The City alleges that the purpose of the Ordinance was to aid the City in preserving the residential, family character of the Elmhurst and Mount Pleasant neighborhoods near Providence College and Rhode Island College. Nevertheless, the City has not provided

[3] The City argues that college students do not meet the traditional requirements of a "protected class" entitled to the highest level of protection under the Constitution in part because "[s]tatus as a college student is not a trait that is immutable or unalterable." *City Memorandum*, p. 19. In essence, the City is arguing that if a college student wants to enjoy full citizenship status in Providence, including the right to live in a single-family home with three housemates of her choosing, all she has to do is drop out of college. The absurdity of this argument is apparent on its face.

any admissible evidence[4] that single family homes housing more than three college students have been a significant source of complaints about noise, parking, public drinking or other similar issues. For example, even though the Ordinance is written to apply only to streets zoned R-1 and R-1A (i.e., residential single-family homes), these neighborhoods in Elmhurst include many multi-family homes that were grandfathered into the single-family zones during a recent change in zoning. *D'Amico Affidavit*, ¶18. The area within approximately 750 feet of the Oakdale House includes 39 multi-family homes and 64 single-family homes. *D'Amico Affidavit*, ¶19. Many of the multi-family homes are rented to large groups of college students, and are unaffected by the Student Housing Ordinance.

The City certainly has other tools in its arsenal to "preserve the residential character" of Elmhurst and Mount Pleasant. There are existing laws that, if strictly enforced, would curtail problems of late-night parties and rowdy behavior: noise ordinances, drug and alcohol laws, and disorderly conduct laws to name just a few. Residents (whether students or non-students) can be cited for environmental violations if their premises are not well maintained or littered with rubbish. The City could employ all of these remedies based on actual conduct, rather than educational status, without treating one group of residents differently from another based solely on their educational status.

[4] As noted above, the Plaintiffs have moved to strike the constituent correspondence submitted as Exhibit E to the City's Memorandum, on the grounds that such correspondence was requested during discovery but withheld by the City on the basis of privilege. Nevertheless, even if the Court considers the correspondence, it is not credible evidence that single-family homes with more than three student residents contribute in any appreciable way to noise or other problems in these neighborhoods.

As the City correctly notes, there is a split among jurisdictions that have considered "unrelated parties" zoning ordinances (and, in rare cases, ordinances targeted at college students) using a rational basis analysis. The essence of the split is really between courts that show extreme deference to local lawmakers, and those that are more reluctant to allow the government to zone neighborhoods based on the residents' characteristics rather than their conduct. *See* Brener, *Belle Terre and Single-Family Hole Ordinances*, 74 N.Y.U. Law Review at 463 (Exhibit 2 hereto). State courts in Rhode Island, Michigan, New York, and New Jersey have all invalidated "unrelated party" zoning ordinances using a rational basis test and, as discussed above, the Maryland Court of Appeals relied on a rational basis analysis to strike down a zoning law targeted at college students in *Kirsch v. Prince George's County*, 626 A.2d 372 (Md. 1993).

In Rhode Island, even though Judge Fortunato found that the right to choose your living situation (or in the case of landlords, to choose your tenants) were "liberty interests" that required heightened scrutiny of the challenged ordinance, he ultimately decided the case using a rational basis analysis. *DiStefano* at 7 (Holding that "Narragansett has no rational reason, let alone a compelling one, to curtail such living arrangements . . . .").[5] Similarly, the Court of Appeals of New York held that "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

[5] In reaching this conclusion, Judge Fortunato relied in part on statements by law enforcement officials in Narragansett that "neither the number of occupants in a dwelling place nor marital status nor consanguinity affects disorderly conduct." *DiStefano* at 7. While those statements are not evidence in the instant case, Plaintiffs suggest that this Court can and should take judicial notice of them.

noise and disturbance." *McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240, 1243 (N.Y. 1985). *See also State v. Baker*, 405 A.2d 368, 375 (N.J. 1979) (declaring that an "unrelated parties" zoning ordinance did not pass a rational basis test under the New Jersey Constitution because it was insufficiently related to the city's goals of preventing congestion and overcrowding); *Charter Township of Delta v. Dinolfo*, 351 N.W.2d 831, 844 (Mich. 1984) (holding an "unrelated parties" ordinance violated Michigan Constitution's guarantee of due process because it was not rationally related to health and safety concerns).

Although Plaintiffs contend that the Court should apply strict scrutiny to the Student Housing Ordinance (or at least the "heightened scrutiny" proposed in the N.Y.U. Law Review article cited above), the fact is that the Ordinance under review in the instant case cannot survive a rational basis analysis, and indeed bears even less of a relationship to the City's stated goals than the ordinances invalidated in the cases discussed above, for at least two reasons. First, the Student Housing ordinance defines "college student" to include both graduate students and part time students. The City would like to paint a picture of off-campus college life similar to the movie *Animal House*, but in addition to full-time students, the Ordinance prohibits four divinity students from renting a single-family home together, or four unrelated adults who are taking part time college courses. There is absolutely no evidence that tenants in Providence are more likely to cause a disturbance merely because they are enrolled at an institution of higher learning.

Second, The City would lead the Court to believe that neighborhoods zoned R-1 and R-1A (those affected by the Ordinance) are purely "family" neighborhoods filled with single-family homes. This is simply untrue. In the area of Elmhurst immediately

surrounding the Oakdale House, only 64 of 103 homes are actually zoned as single-family properties. *D'Amico Affidavit*, ¶18-19. The rest are two- and three-family homes, which are the source of the vast majority of complaints, parties, problems and Public Nuisance warnings in the neighborhood. *D'Amico Affidavit*, ¶11. In other words, restricting the ability of more than three college students to live in single family homes will not in any way change or improve the "character" of the neighborhood. The parties will continue unless and until the City effectively employs the other legal mechanisms at its disposal (such as noise, alcohol and public nuisance ordinances).

The City argues that an ordinance should not fail the rational basis test merely because it is under-inclusive or over-inclusive. This may be true, but the Court should not hesitate to strike down an ordinance that is both discriminatory and obviously ineffective. The rational basis test may give deference to the legislative body, but it cannot be construed so leniently as to render it effectively meaningless.

Conclusion

The Student Housing Ordinance violates the due process and equal protection guarantees of the Rhode Island Constitution. It relegates anyone enrolled in college or graduate school to the status of second-class citizen within the City of Providence, without the rights guaranteed to all other residents of the City. It also diminishes the rights of property owners to rent their homes to the tenants of their choice. Worst of all, there is no reasonable connection between the Ordinance and the City's stated goal of preserving the "family" character of the neighborhoods around Providence College and Rhode Island College. In light of the other, non-discriminatory remedies available to the City and its residents to combat the problems that may sometimes arise near college

campuses, the Court should not permit the City to adopt a measure that is both discriminatory and likely ineffective. The Court should invalidate the Student Housing Ordinance as unconstitutional.

FEDERAL HILL CAPITAL, LLC, CHRISTOPHER MUSACCHIO, ALEJANDRO AMAYA, WILLIAM SMITH, AND COREY COSSIN,

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CERTIFICATION

I hereby certify on this 10th day of March 2017, I electronically filed and served the above document on all parties through the Electronic Filing Service.

/s/ Jeffrey L. Levy