

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

HomeRoom, Inc., and Val French,

Plaintiffs,

v.

CITY OF SHAWNEE, KANSAS;
DOUG GERBER, in his official capacity as
City Manager of the City of Shawnee; and
KEVIN MESSICK, in his official capacity
as Code Enforcement Officer for the
City of Shawnee,

Defendants.

CIVIL ACTION

CASE NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case challenges Ordinance No. 3419, popularly termed the “Co-Living Ordinance,” adopted and enforced by the City of Shawnee, Kansas.

2. Unlike a typical zoning ordinance, however, this Ordinance regulates neither the use of land nor the intensity of land use. Instead, it regulates land users.

3. The Ordinance prohibits more than three unrelated adult persons from living together in a single residence anywhere in Shawnee. It defines “related persons” as those related by blood, marriage, adoption, or guardianship. It provides that if any one resident is unrelated to any other, then the entire household is considered unrelated by law.

4. This is not a mere occupancy limit; the Ordinance does not limit the quantity of people who may occupy residential dwellings. In theory, any number of

people can lawfully reside together in the same house—so long as they are related by blood, marriage, adoption, or guardianship.

5. Neither does it regulate use or intensity. It makes no change to the allowable density of dwellings within a given area, or to lot coverage, or to the number of dwelling units that a development may include.

6. Instead, it regulates only people. Whether a home is in violation of the ordinance depends on one factor alone: the identity and relationship of the people who live there.

7. Yet the right to establish a home, including the right to select household members, is a fundamental, cherished, and deeply rooted right of all Americans. So, too, is the right to enjoy and participate in intimate associations without undue government interference and the right to be treated equally under the law.

8. The Ordinance violates each of these rights, and it does so in a discriminatory and arbitrary manner that bears no relation to any legitimate government interest.

9. Plaintiff Val French is a private citizen, paralegal, and mother, who is worried for her household.

10. Plaintiff HomeRoom, Inc., is a property management startup company that is concerned with the effect of the Ordinance on the residential tenants and property investors with whom it does business.

11. Both Ms. French and HomeRoom are injured by the Ordinance, and both are distressed by the violation of rights and curtailment of liberties it represents.

12. The Plaintiffs therefore seek to vindicate those rights and liberties in this lawsuit.

JURISDICTION AND VENUE

13. This action arises under the Fourteenth Amendment to the United States Constitution, as enforceable through 42 U.S.C. § 1983. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1342(a)(3) (redress for deprivation of civil rights), and 1367 (supplemental jurisdiction). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

14. This action also presents a claim under the Kansas Declaratory Judgments Act. Kan. Stat. Ann. § 60-1701, *et seq.* This Court has supplemental jurisdiction to hear that claim under 28 U.S.C. § 1367.

15. Venue is proper in this district under 28 U.S.C. § 1391(b)(1)–(2). Defendant, City of Shawnee, is located within this district, and a substantial part of the events giving rise to this claim have occurred in the District of Kansas.

16. A live controversy exists between the City and Plaintiff HomeRoom because Shawnee’s regulations make it impossible for HomeRoom to operate consistently with its business model in the City’s jurisdiction. A live controversy exists between the City and Plaintiff French because it directly regulates Ms. French, including prohibiting her from inviting additional people to live in her home.

17. Due to the City’s conduct, Plaintiffs are threatened with irreparable harm to their rights under the United States Constitution.

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

PARTIES

19. Plaintiff HomeRoom, Inc., is an innovative property management startup company that helps connect property owners to residential renters, facilitating a low-transaction-cost housing search for people seeking co-living arrangements.

20. Val French is a paralegal, wife, and mother. At the time of the adoption of the Ordinance, she lived with her husband, their two adult sons, and the girlfriend of one of the sons. That living arrangement was purportedly rendered unlawful by Shawnee's Co-Living Ordinance, and two of the residents have since moved out.

21. Defendant City of Shawnee is a municipal corporation of the State of Kansas located in Johnson County.

22. Defendant Doug Gerber is the City Manager of the City of Shawnee. He is sued in his official capacity. Pursuant to Shawnee Municipal Code § 2.08.040, Mr. Gerber is charged with overseeing the enforcement of all city ordinances.

23. Defendant Kevin Messick is the primary Code Enforcement Officer for the City of Shawnee. He is sued in his official capacity. Pursuant to Shawnee Municipal Code § 17.07.010, he is charged with the enforcement of the City's zoning code.

FACTUAL ALLEGATIONS

24. In April 2022, the City of Shawnee Kansas adopted Ordinance No. 3419 (the Ordinance). A true and correct copy of the Ordinance is attached hereto as Exhibit A.

25. The Ordinance expanded the reach of the City’s zoning regulations by adopting a new term, “Co-Living Group,” and then prohibiting such “Groups” in every zone in which residential use is allowed.

26. The Ordinance defines “Co-Living Group” as follows: “Co-Living Group means a group of four (4) or more unrelated persons age eighteen (18) or older living together in a dwelling unit, provided that if any one (1) of the adult persons is unrelated to another adult person in the group, the entire group shall be classified as unrelated.” Shawnee Code Ord. § 17.04.073.

27. The Ordinance further defines “related persons” as either: “(A) Persons related by blood, marriage, adoption, or guardianship; or (B) A person having legal custody of a minor or the designee of a parent or other person having legal custody of a minor.” Shawnee Code Ord. § 17.04.292.

28. The major impetus behind the adoption of the Ordinance was a desire to regulate away the operation of Plaintiff HomeRoom and similar property management companies. As Community Development Director Doug Allmon explained at the February 28, 2022, meeting of the Shawnee City Council—the first Council meeting at which the ordinance was formally discussed—“. . . that HomeRoom model that’s a new phenomenon, from the new economy I guess, we need

to decide if . . . it's something that you even want to consider in our single-family zones." A video recording of this meeting is available at <https://www.youtube.com/watch?v=0-YMXIIWm9Q>. The referenced comments can be heard at 3:03:02.

29. The City has established a pattern and practice of enforcing the Ordinance. This is revealed in part by a public records request which was filled by the City on December 5, 2022. A copy of the responsive records are attached as Exhibit B. Some pages have been rotated 90 degrees to facilitate easier reading.

Effect of the Ordinance on HomeRoom

30. HomeRoom manages two residential properties in the City. While its investors own the properties, HomeRoom is the master tenant.

31. Before the adoption of the Ordinance, HomeRoom sublet the homes to unrelated roommates.

32. As a result of the Ordinance, HomeRoom was forced to evict the tenants which had been renting the property. Many of these former residents are unable to afford rent in the City without roommates and have since relocated to nearby jurisdictions.

33. Because of the Ordinance, HomeRoom now subleases the homes only to blood-related families.

Effect of the Ordinance on Val French

34. Despite the initial goal of targeting HomeRoom and similar companies, the Ordinance goes further; it prohibits any group of four or more unrelated persons

from living together anywhere in the City, and without regard to whether the dwelling is rented, owner-occupied, or otherwise.

35. Thus, Ms. French’s living situation was purportedly rendered unlawful as a result of the Ordinance.

36. Ms. French lives in a home that she owns. At the time of the adoption of the Ordinance, she shared the home with her husband, their two adult sons (each from a prior marriage), and the girlfriend of one son.

37. Because the girlfriend is not related to anyone else in the household by blood, marriage, or adoption, the entire household was considered “unrelated” under the Ordinance. Thus, per the Ordinance, Ms. French’s home constituted an unrelated household consisting of five members and was therefore not permitted.

38. At that time, each member of Ms. French’s household contributed to the common responsibilities, burdens, and joys of residential domestic life.

39. After the adoption of the Ordinance, one of the sons—along with his girlfriend—moved out of the home.

40. Because of the Ordinance, Ms. French cannot invite her son and his girlfriend to move back into the home. Neither can she rent out the spare room to any other tenant.

FIRST CAUSE OF ACTION

Substantive Due Process (Facial Challenge)

(Violation of the Fourteenth Amendment – Intimate Association and Right to Establish Home) (42 U.S.C. § 1983)

41. Plaintiffs repeat, reallege, and incorporate herein by reference paragraphs 1 through 40 above.

42. The right to establish a household, including the right to select household members, is a fundamental right of association protected by the Constitution through the Fourteenth Amendment, and made further enforceable by 42 U.S.C. § 1983. So, too, is the right to participate in and enjoy intimate associations without undue government interference. Both of these rights are deeply rooted in America's history and tradition and are implicit in the concept of ordered liberty.

43. The City is a "person" within the meaning of 42 U.S.C. § 1983, and it has established a pattern and practice of enforcing the Ordinance.

44. The Ordinance invades the intimate associations of Shawnee residents by regulating their household composition in a manner bearing no relation to any legitimate police power aim.

45. The Constitution requires laws infringing on fundamental rights to be narrowly tailored to serve a compelling government interest.

46. The Ordinance fails not only that test, but even the ordinary rational basis test, which prohibits laws that are arbitrary and irrational or otherwise not supported by legitimate governmental purpose.

47. The ordinance fails both tests because it is not supported by a legitimate government interest.

SECOND CAUSE OF ACTION

Equal Protection (Facial Challenge)

(Violation of the Fourteenth Amendment) (42 U.S.C. § 1983)

48. Plaintiffs repeat, reallege, and incorporate herein by reference paragraphs 1 through 47 above.

49. The Fourteenth Amendment prohibits government from denying any person the equal protection of the law, and this prohibition is made further enforceable by 42 U.S.C. § 1983.

50. French wants to use, and was using, her residential home to house her family in a safe and reasonable way that does not meaningfully differ from how other property owners in her neighborhood use their private property.

51. Homeroom also wants to use its private property to provide housing in a safe and reasonable way that does not meaningfully differ from how other property owners in the community neighborhood use their private property.

52. The Co-Living Ordinance, however, creates a facially discriminatory classification—i.e., the “Co-Living Group”—to distinguish between those who are related to all members of their household by blood, marriage, adoption, or guardianship, and those who are not so related to all members of their household.

53. Based on that discriminatory distinction, the Co-Living Ordinance bans “Co-Living Groups” like French’s family and HomeRoom’s tenants from living in the

same home. The ordinance does not impose any occupancy limits on similarly situated, but related, persons.

54. The City’s “Co-Living Group” classification is arbitrary and bears no relation to any legitimate police power aim.

THIRD CAUSE OF ACTION

(Declaratory Relief under K.S.A. 60-1701 *et seq.*—Noncompliance with Kansas Zoning Enabling Act, K.S.A. 12-741 *et seq.*)

55. Plaintiffs repeat, reallege, and incorporate herein by reference paragraphs 1 through 54 above.

56. Chapter 12, Article 7, of the Kansas Statutes, beginning with Section 12-741 (the Enabling Legislation), authorizes municipal governments to adopt zoning regulations.

57. The Enabling Legislation provides that a city’s governing body “may divide the territory subject to its jurisdiction into districts of such number, shape, area and of such different classes, according to the use of land and buildings and the intensity of such use, as may be deemed suited to carry out the purposes of this act.” K.S.A. § 12-753(a).

58. It further provides a non-exhaustive list of the aspects of land use which may be regulated: height and size; lot coverage; size of yards and other open spaces; density of population; location, use, and appearance of buildings for residential, commercial, industrial, and other purposes; conservation of natural resources; and the use of land located in floodplains or other special areas.

59. Notably, none of the examples in the list concern regulation of the kinds of people who may occupy the land. Rather, they are all directed at the use of land and the intensity of that use.

60. The Ordinance, by contrast, does not regulate use or intensity—it regulates people.

61. For example, the Ordinance does not limit the number of people who can live in a home. It only limits the number of unrelated people who live in a home.

62. By regulating the users of land, and not just its use, the Ordinance goes beyond the authorization provided in the Enabling Legislation.

63. The ordinance is therefore ultra vires, and its enforcement in any capacity violates the due process of law.

64. Any person whose rights, status, or other legal relations are affected by a municipal ordinance may bring an action for declaratory relief under K.S.A. § 60-1704.

65. This Court is further authorized to provide declaratory relief pursuant to 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

a. An entry of judgment declaring that the Co-Living Ordinance facially violates the Fourteenth Amendment and 42 U.S.C. § 1983 by violating the right to establish a household and the right of intimate association.

b. An entry of judgment declaring that the Co-Living Ordinance facially violates the Fourteenth Amendment and 42 U.S.C. § 1983 by violating the right to equal protection under the law.

c. An entry of judgment declaring that the Co-Living Ordinance is an ultra vires legislative act.

d. A preliminary and permanent injunction prohibiting the City from enforcing the Ordinance in any manner.

e. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

f. All further legal and equitable relief as the Court may deem just and proper.

DATED: May 9, 2023.

Respectfully submitted,

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*** *Pro Hac Vice***
Applications Pending

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