

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREATER LAS VEGAS SHORT TERM
RENTAL ASSOCIATION, a nonprofit
Nevada corporation; and JACQUELINE
FLORES, President and Director,

Appellants/Cross-Respondents,

v.

CLARK COUNTY; CLARK COUNTY
BOARD OF COMMISSIONERS, a
subdivision of the State of Nevada; and
the STATE OF NEVADA,

Respondents/Cross-Appellants.

Docket No. 86264

Electronically Filed
Sep 13 2023 03:45 PM
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR LEAVE TO FILE AMICUS BRIEF
OF GOLDWATER INSTITUTE AND LIBERTY JUSTICE CENTER**

**Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE**
Scott Day Freeman (5310)
500 E. Coronado Rd.
Phoenix, Arizona 85004
(602) 462-5000
Litigation@goldwaterinstitute.org
Counsel for Amicus Curiae Goldwater Institute

MOTION FOR LEAVE TO FILE

Pursuant to Nevada R. App. P. 29, the Goldwater Institute and the Liberty Justice Center respectfully move for leave to file the accompanying amicus brief in support of Appellants Greater Las Vegas Short Term Rental Association, et al. Counsel for Amici informed counsel for both parties of their intention to file this motion; counsel for Appellants indicated that they consented; counsel for Respondents/Cross-Appellants Clark County, et al., refused to consent, necessitating the filing of this motion.

Proposed Amici are familiar with the parties' arguments. They believe the attached brief will aid the Court in its consideration of the issues presented in the case. Specifically, the brief explains why "short-term renting" or home-sharing is a residential use that cannot be viewed as different from other residential uses for purposes of constitutional protections. It also explains why the warrantless search provisions of the Ordinance—including the suspicionless premises-inspection, record-keeping and video-surveillance requirements—are not constitutional forms of "administrative search." Further, it explains why the effort to prohibit uses that are not "incidental" to "dwelling" is unconstitutionally vague and violates the privacy rights protected by the Nevada Constitution. Finally, it explains why the 2,500-foot radius requirement violates the Due Process and Equal Protection requirements of the Nevada Constitution.

IDENTITY AND INTEREST OF AMICI CURIAE

The Goldwater Institute (GI) was established in 1988 as a nonpartisan public policy foundation dedicated to the principles of limited government, economic freedom, private property rights, and individual responsibility through research, public policy briefings, and litigation, which is conducted through its Scharf-Norton Center for Constitutional Litigation. Beginning in 2015, the GI began a project to defend the rights of homeowners to engage in “short term rentals” or “home-sharing.” GI drafted Arizona’s pioneering Home-Sharing Act, which became law in 2016 (A.R.S. § 9-500.39). GI has also published extensive research on the value of home-sharing and the legal right of property owners to engage in short-term rentals. *See, e.g.,* Christina Sandefur, *Turning Homeowners into Outlaws: How Anti-Home-Sharing Regulations Chip Away at the Foundation of an American Dream*, 39 U. Haw. L. Rev. 395 (2017); Timothy & Christina Sandefur, *Cornerstone of Liberty: Property Rights in 21st Century America* 131–33, 153–54 (2016). GI has litigated several cases challenging home-sharing bans, including in California (*Hobbs v. City of Pacific Grove*, 301 Cal. Rptr.3d 274 (App. 2022)), Florida (*Marketwise Investments v. City of Miami Beach*, No. 2018-021933-CA-01 (Fla. 11th Jud. Cir. Ct., pending)), and appeared as amicus curiae in cases involving home-sharing in Ohio, (*Kinzel v. Ebner*, 157 N.E.3d 898 (Ohio App.

2020)), and California (*Vacation Rental Owners v. City of Rancho Mirage*, No. E077118, 2023 WL 4445297 (Cal. App. July 11, 2023)).

The Liberty Justice Center (LJC) is a nonprofit, nonpartisan, public-interest litigation center headquartered in Chicago, that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. LJC pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. Together, GI and LJC are litigating a challenge against Chicago’s restrictions on home-sharing—under an ordinance strikingly similar to this one—in the Illinois Supreme Court. *See Mendez v. Chicago*, No. O3 C 8182 (petition pending).

**THE PROPOSED AMICUS BRIEF WOULD ASSIST THIS COURT
IN ITS CONSIDERATION OF THE APPEAL.**

Amici curiae “perform a valuable role for the judiciary” because as non-parties, they can “assist the court by broadening its perspective on the issues raised by the parties” and “enrich[] the judicial decisionmaking process.” *Connerly v. State Pers. Bd.*, 37 Cal.4th 1169, 1177 (2006) (citation omitted). GI’s and LJC’s experience and expertise regarding home-sharing will enrich the decision-making process in regard to this petition.

As Judge—now Justice—Alito explained in *Neonatology Assoc., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 131 (3d Cir. 2002), participation by amici curiae “promotes sound decision making” by ensuring “strong (but fair)

advocacy on behalf of opposing views.” Judge Alito observed that it was not necessary for an amicus to show that it was impartial, or that the parties to the case are inadequately represented before filing a brief, because “an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court’s friend.” *Id.* at 131–32.

As described above, GI and LJC are among the nation’s foremost experts on the legal, economic, and social issues involved in short-term renting. They are more than qualified to assist this Court in its consideration of this appeal.

No party and no counsel for any party authored any part of the proposed amicus brief, or made any monetary contribution intended to fund its preparation or submission. Nor did any other person or entity make any monetary contribution intended to fund the preparation or submission of the proposed brief. The proposed amicus brief complies with all applicable rules. The motion for leave to file should be granted.

Respectfully submitted this 13th day of September 2023 by:

/s/ Scott Day Freeman
Scott Day Freeman (5310)
**Scharf-Norton Center for Constitutional
Litigation at the
GOLDWATER INSTITUTE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this completed MOTION FOR LEAVE TO FILE AMICUS BRIEF OF GOLDWATER INSTITUTE AND LIBERTY JUSTICE CENTER was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Dated: September 13, 2023

/s/ Scott Day Freeman _____
Scott Day Freeman (5310)
**Scharf-Norton Center for Constitutional
Litigation at the
GOLDWATER INSTITUTE**