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Appendix 1a

FILED
United States Court of
Appeals Tenth Circuit
April 6, 2026
Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

HOMEROOM, INC.; VAL
FRENCH,
Plaintiffs - Appellants,
v.
CITY OF SHAWNEE,
KANSAS; DOUGLAS
GERBER; KEVIN
MESSICK,
Defendants – Appellees.

No. 23-3168
(D.C. No. 2:23-CV-
02209-HLT-GEB)
(D. Kan.)

ORDER AND JUDGMENT*

Before **CARSON, ROSSMAN**, and **FEDERICO**,
Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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This appeal arises out of Appellee City of Shawnee's Ordinance No. 3419, which limits the number of unrelated people who can live together in Shawnee, Kansas. Appellants HomeRoom, Inc., a property management company, and Val French, a private citizen, sued the City under 42 U.S.C. § 1983 alleging the Ordinance violates their Fourteenth Amendment rights to intimate association and equal protection. The City moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion.¹ Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I²

In April 2022, the City adopted Ordinance No. 3419. The Ordinance defines “Co-Living Group” as “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.” RI.10, ¶ 26 (internal quotation marks omitted). According to the Ordinance, “related persons” means “(A) Persons

¹ The complaint also named two City employees as individual defendants. The district court dismissed the claims against those defendants as duplicative of the claims against the City. Appellants do not challenge that portion of the district court's decision.

² Because the appeal before us concerns a motion to dismiss, we take these facts from Appellants' complaint. *See, e.g., Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1141 & n.1 (10th Cir. 2023) (relying on facts in the complaint to describe the background when appeal involves challenge to a district court's order granting a motion to dismiss).

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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.” RI.10, ¶ 27 (internal quotation marks omitted). The Ordinance prohibits Co-Living Groups in every residential-use zone in the City. It applies whether the residence is rented or owner-occupied. The City has established a pattern and practice of enforcing the Ordinance. The Ordinance imposes no occupancy limit for related individuals.

When the City adopted the Ordinance, Ms. French lived in a house that she owned along with her husband, their two adult sons, and the girlfriend of one of the sons.³ The girlfriend was not related to anyone in the house by blood, marriage, or adoption. The entire household was “unrelated” under the Ordinance and thus exceeded the dwelling limit, which prohibits four or more unrelated persons from living together. Because of the Ordinance, Ms. French’s son and his girlfriend had to move out of her house, and Ms. French could not rent the spare room to any other tenant.

HomeRoom is a property management startup company. It helps connect property owners to residential renters and facilitates low-cost housing

³ The complaint does not allege Ms. French lives in Shawnee; rather, it simply states she is a “private citizen,” RI.7, ¶ 9, who “lives in a home that she owns,” RI.12, ¶ 36. But because she alleges the Ordinance prevents her from having additional unrelated people living with her, *see, e.g.*, RI.8, ¶ 16, we draw the reasonable inference that she lives in Shawnee. *See Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1144 (10th Cir. 2023) (explaining when reviewing the dismissal of a complaint under Rule 12(b)(6), “we accept the well-pleaded facts alleged as true and view them in the light most favorable to the plaintiff”).

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searches for those looking for co-living situations. HomeRoom manages two residential properties in Shawnee owned by investors. HomeRoom is the “master tenant” for each property. RI.11, ¶ 30. Before the City enacted the Ordinance, HomeRoom would sublet the homes to unrelated roommates. At the February 28, 2022, meeting of the Shawnee City Council, where the Ordinance was formally discussed, the Community Development Director stated, “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.” RI.10–11, ¶ 28 (internal quotation marks omitted). Since the Ordinance was enacted, HomeRoom has been forced to evict its unrelated tenants, and it now sublets the properties only to blood-related families.

HomeRoom and Ms. French challenged the Ordinance in federal district court. On May 9, 2023, they filed a complaint under 42 U.S.C. § 1983 alleging facial violations of substantive due process and equal protection under the Fourteenth Amendment. “The Ordinance invades the intimate associations of Shawnee residents,” Appellants alleged, “by regulating their household composition in a manner bearing no relation to any legitimate police power aim.” RI.13, ¶ 44. They also claimed the Ordinance “creates a facially discriminatory classification” by distinguishing between those who are “related to all members of their household” and those who are “not so related to all members of their household.” RI.14, 52. The complaint also alleged a state claim under the Kansas Zoning Enabling Act. And it sought declaratory and injunctive relief.

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The City moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). HomeRoom’s “claim fails at the outset because HomeRoom is a corporate entity, and has no constitutionally protected right to enter or maintain intimate human relationships in the first place,” the City argued, “[n]or can HomeRoom assert a constitutional claim on behalf of any putative Co-Living Group of its sublessees.” RI.85. Regarding Ms. French, the City asserted “no relationship protected by the Fourteenth Amendment is implicated by [Ms.] French’s claims regarding the Ordinance’s impact on her relationship with either her son’s girlfriend or any other unrelated tenant she ma[y] desire to rent a room to.” RI.87.

Even assuming either plaintiff “could establish that their claim implicated a constitutionally protected relationship,” RI.87, the City argued “the Ordinance does not place a direct and substantial burden on the right to intimate familial association and is subject to rational basis scrutiny,” RI.88. The City principally relied on *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), and argued that case dictated the outcome here. RI.89. Under *Belle Terre*, the City argued “maintaining the single-family character of neighborhoods—the obvious underlying purpose of the Ordinance—is a legitimate public interest that survives rational basis scrutiny.” RI.90. Because the Ordinance survives rational basis scrutiny, the City maintained that the due-process and equal-protection claims failed as a matter of law. The claim for declaratory relief under the Kansas Enabling Act also failed, the City explained, because the City had the authority to enact the Ordinance.

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The district court granted the motion to dismiss in a written order. The district court agreed with the City that HomeRoom is a corporate entity with no constitutionally protected right of intimate association. To the extent HomeRoom is separately asserting the rights of its would-be unrelated tenants, prudential limitations on standing required dismissal of HomeRoom's constitutional claims. The district court then reached the merits of Ms. French's constitutional claims and dismissed them, agreeing with the City that the Ordinance "does not violate substantive due process or the Equal Protection clause based on the authority of *Belle Terre*." RI.126. Given its disposition on the federal claims, the district court declined to exercise supplemental jurisdiction over the remaining state-law claim.

This timely appeal followed.

II

We review *de novo* a district court's decision to dismiss a complaint under Rule 12(b)(6). *StreetMediaGroup, LLC v. Stockinger*, 79 F.4th 1243, 1248 (10th Cir. 2023). "In reviewing an order granting a motion to dismiss, our role is like the district court's: we accept the well-pleaded facts alleged as true and view them in the light most favorable to the plaintiff." *Matney v. Barrick Gold of N. Am.*, 80 F.4th 1136, 1144 (10th Cir. 2023) (internal quotation marks and ellipsis omitted).

Appellants urge reversal, reprising their arguments that the Ordinance is facially unconstitutional. Appellants also challenge the district court's conclusion that HomeRoom lacks prudential standing. We discern no error in the

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district court's decision to dismiss the complaint. We begin by discussing standing and then turn to the merits of the appellate arguments.

A

“The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.” *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004) (internal quotation marks omitted). “In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a ‘case or controversy’ between himself and the defendant within the meaning of Art. III.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Article III standing has three elements: 1) an injury in fact, which is “an invasion of a legally protected interest”; 2) a causal connection between the injury and the challenged action of the defendant; and 3) a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

But “even when the plaintiff has alleged injury sufficient to meet the ‘case or controversy’ requirement,” the Supreme Court has explained, “the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Warth*, 422 U.S. at 499. “This rule assumes that the party with the right has the appropriate incentive to challenge (or not challenge) governmental action and to do so with the necessary zeal and appropriate presentation.” *Kowalski*, 543 U.S. at 129. There are some limited exceptions to this rule. “[I]n several

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cases [the Supreme Court] has allowed standing to litigate the rights of third parties when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights." *Id.* at 130 (quotation omitted). "[T]he prudential rules of standing . . . serve to limit the role of the courts in resolving public disputes." *Warth*, 422 U.S. at 500.

When plaintiffs assert standing based on the rights of third parties, the court may "assume [the plaintiffs] have satisfied Article III and address the alternative threshold question whether [the plaintiffs] have standing to raise the rights of others." *Kowalski*, 543 U.S. at 129. Relatedly, if there are multiple plaintiffs, a court "need not decide whether the circumstances of [the] case would justify departure from [the] prudential limitation" on asserting third parties' rights, if there is "at least one individual plaintiff who has demonstrated standing to assert [the] rights as his own." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 263, 264 (1977) (*MHDC*). In that situation, the court can address the merits of the claims based on the individual plaintiff with standing, and "need not consider whether the other . . . plaintiffs have standing to maintain the suit." *Id.* at 264 & n.9.

B

With these guiding principles in mind, we turn to the circumstances in this case. Recall, the district court ruled HomeRoom, a corporate entity, has no constitutionally protected right of intimate association. And as to HomeRoom's claims asserting the rights of its would-be tenants, the district court

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held “prudential limitations on standing” required dismissal.⁴ RI.122.

On appeal, Appellants do not contest the district court’s conclusion that HomeRoom has no constitutionally protected right of intimate association because of its corporate nature. They focus their argument on HomeRoom’s standing to assert the rights of third parties. Appellants contend HomeRoom meets an exception to the prudential concern against permitting a party to assert the rights of others. Op. Br. at 9–10. The City disputes HomeRoom’s contention.

We need not decide, however, if HomeRoom has prudential standing because this case involves multiple plaintiffs, and one of the plaintiffs—Ms. French—undisputedly has standing to assert her claims. *See MHDC*, 429 U.S. at 263, 264. Appellants acknowledge as much, stating, “as in *MHDC*, HomeRoom brings this suit with a co-plaintiff[, Ms. French,] who unquestionably has standing to assert the claims involved.” Reply Br. at 7. When asked about standing at oral argument, Appellants’ counsel reiterated Ms. French had standing, and conceded the court did not need to go further than Ms. French on the question of standing.⁵

⁴ The City did not challenge Ms. French’s standing in district court, and the district court addressed the merits of her constitutional claims, as do we.

⁵ Appellants’ counsel explained: “Out of a duty of advocacy for my client HomeRoom, these kind of issues come up in other jurisdictions, they may try to advance these rights in other circuits and so you know we’d like a decision that confirms they do have standing to bring these sorts of claims. But . . . the case

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Accordingly, we proceed to consider the merits of Ms. French's constitutional claims.⁶

III

In the district court, Ms. French alleged the Ordinance was facially unconstitutional because it violated her substantive due-process right to intimate association and her right to equal protection. Recall, the Ordinance limits to three the number of unrelated people who can live together. The district court rejected Ms. French's constitutional challenges and dismissed her claims, concluding the Ordinance "does not violate substantive due process or the Equal Protection clause based on the authority of *Belle Terre*."⁷ RI.126. We discern no error.

can proceed to the merits without HomeRoom's standing." Recording of Oral Argument, September 26, 2024, at 2:17–2:35.

⁶ We note that Appellants' complaint brought a facial challenge to the constitutionality of the Ordinance, not an as-applied challenge. "A facial challenge considers the [ordinance's] application to all conceivable parties, while an as-applied challenge tests the application of that [ordinance] to the facts of a plaintiff's concrete case." *StreetMediaGroup, LLC*, 79 F.4th at 1248 (internal quotation marks omitted). Appellants' request for relief is a judgment declaring the Ordinance is unconstitutional, and a permanent injunction prohibiting the City from enforcing it. Given these circumstances, as a practical matter, were Ms. French to prevail in this litigation, HomeRoom would receive the benefit of the Ordinance being declared unconstitutional.

⁷ In response to the motion to dismiss, Ms. French stated that "[t]he substantive thrust of [her] claims under Due Process of Law and Equal Protection are closely related," so she presented analysis "pertaining to both claims together." RI.96 & n.2. Consistent with the presentation of Ms. French's claims in her response, the district court analyzed the claims together. *See* RI.123–126. Likewise, Ms. French addressed the claims together in her appellate briefing. *See* Op. Br. at 25–32; Reply Br. at 9–

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Belle Terre is central to the district court’s analysis and our disposition, so we begin by describing that opinion in detail. In *Belle Terre*, 416 U.S. at 2–3, the Supreme Court considered a challenge to a zoning ordinance that restricted land use to single-family dwellings, defined family as one or more persons related by blood, adoption or marriage, and limited the number of unrelated people who could live together to two. The plaintiffs—six unrelated students at a nearby university who were living together—were served with a notice that they violated the ordinance. *Id.* They sued seeking “an injunction and a judgment declaring the ordinance unconstitutional.” *Id.* at 3.

Discussing its prior zoning cases, the Court emphasized a degree of deference is generally owed to governing bodies on zoning legislation. “If the validity of the legislative classification for zoning purposes [is] fairly debatable,” the Supreme Court explained, “the legislative judgment must be allowed to control.” *Id.* at 4 (internal quotation marks omitted); *id.* at 5–6 (explaining it is within the power of the legislature to determine whether the public welfare may be enhanced by zoning regulations).

The Court then turned to the ordinance before it, recognizing the argument “that if two unmarried people can constitute a ‘family,’ there is no reason why three or four may not.” *Id.* at 8. But it explained, “every line drawn by a legislature leaves some out that might well have been included.” *Id.* There, the line drawing was not based on a suspect classification

19. Because she presented her constitutional claims in this way, we will not disaggregate them for her.

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like race, involved no fundamental right guaranteed by the Constitution—such as “the right of association” or “any rights of privacy,” and involved no procedural disparity inflicted on some but not others. *Id.* at 6-7. “A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs.” *Id.* at 9. Such a goal is a permissible one within the police power of the state, the Court held. *Id.*; *see also id.* at 8 (observing “that exercise of discretion . . . is a legislative, not a judicial function”).

Justice Marshall dissented because in his view “the disputed classification [between households of related and unrelated individuals] burdens the students’ fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments.”⁸ *Belle Terre*, 416 U.S. at 13 (Marshall, J. dissenting). According to Justice Marshall, the Court’s decisions “establish[ed] that the First and Fourteenth Amendments protect the freedom to choose one’s associates” and “[c]onstitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members.” *Id.* at 15. “The selection of one’s living companions involves similar choices as to the emotional, social, or economic benefits to be

⁸ Justice Brennan also dissented but for a different reason. In his view, there was no longer an active case or controversy because “[t]he constitutional challenge . . . [was] premised solely on alleged infringement of associational and other constitutional rights of tenants,” but the named tenant appellees no longer lived in the house. *Belle Terre*, 416 U.S. at 10 (Brennan, J. dissenting).

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derived from alternative living arrangements,” he explained. *Id.* And he further observed “[t]he freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy.” *Id.* He therefore concluded “[t]he choice of household companions . . . involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution.” *Id.* at 16.

B

On appeal, Ms. French challenges the district court’s decision to dismiss her constitutional claims under *Belle Terre*. She acknowledges the Supreme Court in *Belle Terre* “considered an ordinance, which like the Ordinance at issue here, restricted the number of unrelated persons who may live together in a single residence.” Op. Br. at 12. But she seeks distance from that case, contending it does not control the outcome here. She argues “subsequent developments in the law have cast serious doubt on the continuing viability of *Belle Terre*,” Op. Br. at 12, and “*Belle Terre* did not consider the right of intimate association,” Op. Br. at 17. Neither argument is availing, as we explain.

1

Ms. French argues “*Belle Terre*’s authority has been greatly diminished by subsequent jurisprudence.” Op. Br. at 13 (boldface omitted). In support, she first relies on state-court decisions. *See* Op. Br. at 13. (citing cases from state courts in New Jersey, California, and Michigan). But these authorities are not helpful to her position. As the City correctly argues, “*Belle Terre* is

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not binding on state courts, which are free to interpret state constitutions and statutes more stringently than the Supreme Court.” Resp. Br. at 28–29.

Ms. French also points to federal case law, suggesting these authorities show a jurisprudential shift away from *Belle Terre*, but those cases are likewise unhelpful. She first cites *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), which involved the constitutionality of an ordinance limiting occupancy of a dwelling unit to members of a single family, but containing a definition of family that recognized “only a few categories of related individuals.” *Id.* at 495–96. Although the City of East Cleveland argued *Belle Terre* required the Court to sustain the ordinance, the Supreme Court rejected that argument. The Court explained, “one overriding factor sets this case apart from *Belle Terre*”—“[t]he ordinance there affected only unrelated individuals.” *Id.* at 498. In contrast, the ordinance in *Moore* “selects certain categories of relatives who may live together and declares that others may not.” *Id.* at 498–99. The Court determined, “[w]hen a City undertakes such intrusive regulation of the family, neither *Belle Terre* nor *Euclid* [*v. Ambler Realty Co.*, 272 U.S. 365 (1926),] governs.” *Id.* at 499.

Ms. French seems to suggest *Moore* diminishes the authority of *Belle Terre* because “the Court highlighted the weakness of the same government rationale it had validated in *Belle Terre*, observing that the ordinance had only a ‘marginal’ and ‘tenuous’ relationship with the expressed goals of maintaining a quiet residential neighborhood.” Op. Br. at 14 (quoting *Moore*, 431 U.S. at 499–500). We are not persuaded. *Moore* involved an ordinance that limited the types of *related* people who could live together by

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narrowly defining family; it does not impact the analysis here, where the Ordinance restricts the number of *unrelated* people who may live together. *Moore* distinguished rather than diminished *Belle Terre*.

Ms. French next cites *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). She argues “[t]he reasoning of *Belle Terre* was further subverted—and, indeed, replaced wholesale—in *Cleburne*.” Op. Br. at 14. Again, we cannot agree.

In *Cleburne*, the Supreme Court considered a challenge to an ordinance that required a special-use permit to develop a group home for “the mentally retarded,” but did not require special-use permits for other types of group homes. 473 U.S. at 447–48. The question in *Cleburne* was “whether it [was] rational to treat the mentally retarded differently.” *Id.* at 449. The Court reasoned that “requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded” because the “record does not clarify how . . . the characteristics of the intended occupants of the [group] home rationally justify denying to those occupants what would be permitted to groups occupying the same site for different purposes.” *Id.* at 450.

Ms. French contends *Cleburne* “stands for the proposition that zoning ordinances which discriminate based on the status or identity of land users call for a more searching review than the one applied in *Belle Terre*.” Op. Br. at 16. The City responds “*Cleburne* is factually inapposite to the situation at hand,” see Resp. Br. at 24, and *Cleburne* did not announce “a more exacting standard of

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rational basis review,” Resp. Br. at 25. We agree with the City.

First, we reject Ms. French’s assertion that *Cleburne* calls for a more “searching form of rational basis review,” Op. Br. at 28. As the City correctly observes, the Supreme Court has never stated that *Cleburne* employed a different type of rational-basis review. *See* Resp. Br. at 25 (citing *Powers v. Harris*, 379 F.3d 1208, 1224 (10th Cir. 2004)). In *Powers*, we explained “no majority of the Court has stated that the rational-basis review found in *Cleburne* . . . differs from the traditional variety.” 379 F.3d at 1223–24.

Next, the City emphasizes the critical factor in *Cleburne*, not present in *Belle Terre* or in this case, was the zoning regulation differentiated between different types of unrelated people. We agree with the City that *Cleburne* is factually inapposite to the situation here because the Ordinance does not treat different types of unrelated people differently.

Finally, the Supreme Court mentioned *Belle Terre* only once in *Cleburne* in a footnote, and it made clear *Belle Terre* remained controlling where zoning regulations distinguish between families and unrelated people. *See* 473 U.S. at 439 n.8. Federal courts post-*Cleburne* continue to recognize *Belle Terre* as governing authority on ordinances that place occupancy limits on the number of unrelated people living together. *See, e.g., Doe v. City of Butler*, 892 F.2d 315, 320–21 (3d Cir. 1989) (citing *Belle Terre*, applying rational-basis review to a due-process challenge to a zoning regulation limiting transitional dwellings to six unrelated people, and upholding the regulation); *Jones v. Wildgen*, 320 F. Supp. 2d 1116, 1131–32 (D. Kan. 2004) (citing *Belle Terre*, applying rational-basis

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review to an equal-protection challenge to a zoning ordinance limiting occupancy of a rental dwelling to three unrelated persons, and upholding the ordinance).

2

Ms. French next contends the district court erred in relying on *Belle Terre* because that case did not consider the right of intimate association. She asserts “[t]he most important development undermining *Belle Terre*, for the purposes of this case, is the explicit recognition of the right of intimate association first announced in *Roberts* [v. *U.S. Jaycees*, 468 U.S. 609 (1984)].” Op. Br. at 17. According to Ms. French, *Roberts* “establishes that certain associations are so intimate as to receive ‘fundamental’ constitutional protection.” Op. Br. at 19. She therefore asserts “zoning ordinances which burden the right of intimate association are subject to the strict scrutiny reserved for fundamental rights.”⁹ Op. Br. at 19. She also reprises her argument—which the district court rejected—that *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012), *overruled in part on other grounds by FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), is instructive because it recognized the

⁹ Ms. French includes a citation to *Petrella v. Brownback*, 787 F.3d 1242, 1261 (10th Cir. 2015). See Op. Br. at 19. But *Petrella* did not involve a challenge to a zoning ordinance; the citation to *Petrella* appears to be for the general proposition that “[w]hen a plaintiff demonstrates that a challenged law burdens a fundamental right, courts apply strict scrutiny in assessing the validity of the law.” 787 F.3d at 1261.

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constitutional significance of the roommate relationship. We disagree.

a

Roberts did not alter the legal framework for analyzing zoning ordinances as established in *Belle Terre*. In *Roberts*, the Court was considering “a conflict between a State’s efforts to eliminate gender-based discrimination against its citizens and the constitutional freedom of association asserted by members of a private organization.” 468 U.S. at 612. The Court outlined factors that might be relevant when “[d]etermining the limits of state authority over an individual’s freedom to enter into a particular association.” *Id.* at 620. These factors help assess where a “relationship’s objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments” and include “size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent.” *Id.* The Court ultimately declined to extend constitutional protection to the U.S. Jaycees—a non-profit educational company that wanted to exclude women from membership, reasoning that large and unselective groups are not the sort of private intimate associations warranting protection. *See id.* at 620–21. *Roberts*, therefore, does not inform our constitutional analysis of the Ordinance here.¹⁰

¹⁰ Although Ms. French wants us to apply the factors outlined in *Roberts*, *see* Op. Br. at 22–23, there is no federal court that has done so in the context of a zoning ordinance. We also note the Supreme Court issued *Cleburne* after *Roberts*. The Court therefore had the opportunity in *Cleburne* to say *Belle Terre* no longer controls or to apply *Roberts* to a zoning ordinance case

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Ms. French insists *Roberts* “vindicated” Justice Marshall’s dissent in *Belle Terre*. Op. Br. at 18. But *Roberts* did not mention *Belle Terre*. Justice Marshall’s dissenting view was the ordinance in *Belle Terre* “unnecessarily burden[ed]” the petitioners’ constitutional rights of “freedom of association and . . . right to privacy,” 416 U.S. at 15 (Marshall, J. dissenting). Although *Roberts* explicitly recognized the right of intimate association for the first time, it relied on preexisting Supreme Court precedent to do so.¹¹ Notably, the Third Circuit, when considering the right of association in the context of a zoning ordinance after *Roberts*, explained “[n]othing in *Roberts* suggests that the Court’s prior opinion in *Belle Terre*, which explicitly rejected a right of association claim in a zoning context, see 416 U.S. at 7, . . . is no longer governing authority.” *Doe*, 892 F.2d at 323.

involving the rights of unrelated people to live together, but it did not do so.

¹¹ Ms. French has not meaningfully explained why parsing between expressive and intimate association is necessary when these rights are analyzed the same doctrinally. As we have previously discussed:

We believe that freedom of expressive association provides the most appropriate analogy for freedom of intimate association. As the Court noted in [*Roberts v. U.S.*] *Jaycees*, ‘[t]he intrinsic and instrumental features of constitutionally protected association may, of course, coincide.’ 104 S. Ct. at 3249. These common features and values may best be safeguarded by similar doctrinal analysis. Despite different constitutional roots, both interests protect interpersonal relationships from unwarranted intrusion by the state.

Trujillo v. Bd. of Cnty. Comm’rs, 768 F.2d 1186, 1189–90 (10th Cir. 1985).

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b

Ms. French also asserts the Ninth Circuit’s decision in *Roommate.com*, is “instructive,” Op. Br. at 23, and argues the Ninth Circuit recognized in that case “the right to freely associate with household living companions,” “is an obvious candidate for a fundamental associational right,” Reply Br. at 10. But the City responds “*Roommate.com* does not discuss, much less recognize, that the right to intimate association encompasses a right to reside with any number of unrelated adults.” Resp. Br. at 19. And the City further asserts, “as the district court recognized, the issues in *Roommate.com* differ materially from the ones in this case.” Resp. Br. at 19. We again agree with the City.

Roommate.com speaks to the heightened importance of relationships between unrelated individuals in the roommate context,¹² but it is not useful to the constitutional inquiry before us. There, the Ninth Circuit considered whether “[Roommate.com’s] questions requiring disclosure of sex, sexual orientation and familial status, and its sorting, steering and matching of users based on those characteristics, violate the Fair Housing Act (FHA).” 666 F.3d at 1218. Relying on the doctrine of constitutional avoidance, the Ninth Circuit declined to read the FHA as applying to shared living units

¹² The Ninth Circuit observed: “Aside from immediate family or a romantic partner, it’s hard to imagine a relationship more intimate than that between roommates, who share living rooms, dining rooms, kitchens, bathrooms, even bedrooms. Because of a roommate’s unfettered access to the home, choosing a roommate implicates significant privacy and safety considerations.” 666 F.3d at 1221.

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because doing so would “raise[] substantial constitutional concerns” and “would be a serious invasion of privacy, autonomy and security.” *Id.* at 1221–22. The court of appeals instead “adopt[ed] the narrower construction that exclude[d] roommate selection from the reach of the FHA.” *Id.* at 1222. Notably, *Roommate.com* never discussed *Belle Terre*.

The district court appropriately rejected Ms. French’s reliance on *Roommate.com*, explaining “the issue in *Roommate.com* (whether the FHA should be read to interfere with relationships inside a home) was different than the issue here and in *Belle Terre* (whether municipalities can limit unrelated people living in a residence under zoning authority).” RI.126. Ms. French fails to explain why the district court’s reasoning is wrong.

In sum, *Belle Terre* remains dispositive precedent on the issue in this appeal: the constitutionality of a zoning ordinance that places occupancy limits on unrelated people living together. Ms. French has presented no contrary persuasive argument. As the district court acknowledged, Ms. French certainly has “a right to argue for a change in the law, but *Belle Terre* remains good law and is binding authority” on the district court and this court. RI.125; *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (instructive that “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

IV

Finally, Ms. French argues “[e]ven if the Ordinance were not subject to strict scrutiny as a violation of the fundamental right of intimate association, it would still fail under the searching form of rational basis review outlined in *Cleburne*.” Op. Br. at 28. But as discussed, *Cleburne* did not disturb the traditional rational-basis standard.

Following the reasoning in *Belle Terre*, the Ordinance does not involve a fundamental right nor does it categorize people based on a suspect classification. See *Belle Terre*, 416 U.S. at 6, 7–8. We therefore apply rational-basis review, like the Supreme Court did in *Belle Terre*. See *id.* at 8. As the district court aptly summarized, the ordinance in *Belle Terre* “involved no fundamental rights guaranteed by the Constitution,” so the Supreme Court “applied rational basis scrutiny,” found “that limiting the number of unrelated people to two was a proper exercise of legislative discretion,” and “deemed the ordinance constitutional.” RI.123. So too here. Appellants have presented no availing argument that the Ordinance here, which is almost identical to the one the Supreme Court upheld in *Belle Terre*, does not survive rational-basis review. See *Seegmiller v. LaVerkin City*, 528 F.3d 762, 772 (10th Cir. 2008) (“Our rational basis review is highly deferential toward the government’s actions.”); see also *Copelin-Brown v. N.M. State Pers. Off.*, 399 F.3d 1248, 1255 (10th Cir. 2005) (explaining a court will uphold a policy under rational-basis review “if there is any reasonably conceivable state of facts that could provide a rational basis for the classification” (internal quotation marks omitted)).

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V

We affirm the district court's judgment.¹³

Entered for the Court

Veronica S. Rossman

Circuit Judge

¹³ Because we affirm the dismissal of Ms. French's federal claims, we also affirm the district court's decision to decline to exercise supplemental jurisdiction over her state-law claim. *See Nielander v. Bd. of Cnty. Comm'rs*, 582 F.3d 1155, 1172 (10th Cir. 2009) ("Under 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction if . . . the district court has dismissed all claims over which it has original jurisdiction . . .").

Filed September 12, 2023

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

**HOMEROOM, INC.,
et al.,**

Plaintiffs,

v.

**SHAWNEE, KANSAS,
CITY OF, et al.,**

Defendants.

**Case No. 2:23-cv-
02209-HLT-GEB**

MEMORANDUM AND ORDER

This case involves a local ordinance that limits the number of unrelated people who can live together in Shawnee, Kansas. Plaintiffs are a private citizen and a property management company. Their principal contention is that the ordinance violates their constitutional rights to intimate association and equal protection. Defendants move to dismiss. Doc. 12. They contend the Supreme Court resolved this issue in 1974. The Court agrees that the Supreme Court resolved similar due process and equal protection challenges in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), and that the Supreme Court's holding is binding on this Court. The differences identified by Plaintiffs do not meaningfully distinguish *Belle Terre* and instead elevate form over substance. The Court thus grants the motion and dismisses the constitutional challenges. The Court also declines

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supplemental jurisdiction over the remaining state-law claim and dismisses it without prejudice.

I. BACKGROUND¹

Defendant City of Shawnee adopted Ordinance No. 3419 in April 2022. Doc. 1 at ¶ 24. The ordinance defines “Co-Living Group” as “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.” *Id.* ¶ 26.² “Related persons” means “(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.” *Id.* ¶ 27. The ordinance prohibits Co-Living Groups in every residential-use zone in the City. *Id.* ¶ 25. It does not limit occupancy of related individuals. *See id.* ¶ 4. It applies regardless of whether the residence is rented or owner-occupied. *Id.* ¶ 34. The City has established a pattern and practice of enforcing the ordinance. *Id.* ¶ 29.

Plaintiff Val French is a private citizen. *Id.* ¶ 9. When the City adopted the ordinance, French lived in a house she owned with her husband, their two adult sons, and the girlfriend of one of the sons. *Id.* ¶ 36. Each member of the household contributed to the household’s “responsibilities, burdens, and joys of

¹ The following facts are taken from the well-pleaded allegations in the complaint. Doc. 1.

² The ordinance is attached to the complaint as an exhibit, Doc. 1-1, and Defendants agree it is properly considered in deciding the motion to dismiss, Doc. 13 at 2 n.1.

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residential domestic life.” *Id.* ¶ 38. This arrangement was rendered unlawful under the ordinance because the girlfriend was not related to anyone in the household by blood, marriage, or adoption. *Id.* ¶ 37. Thus, two of the residents of French’s house—her son and his girlfriend—have moved out. *Id.* ¶ 39. French cannot invite them to move back or rent out the spare room to another tenant because of the ordinance. *Id.* ¶ 40.

Plaintiff HomeRoom, Inc. is a property management startup company. *Id.* ¶ 10. It helps connect property owners to residential renters and facilitates low-cost housing searches for those looking for co-living situations. *Id.* ¶ 19. The ordinance was in part directed at HomeRoom’s business model. *Id.* ¶ 28. HomeRoom manages two residential properties in Shawnee that are owned by investors. *Id.* ¶ 30. HomeRoom is the “master tenant” for each property. *Id.* HomeRoom used to sublet the homes to unrelated roommates. *Id.* ¶ 31. But HomeRoom was forced to evict those tenants after the City enacted the ordinance, and it now sublets the properties to blood-related families. *Id.* ¶¶ 32-33.

Both French and HomeRoom claim to be injured by the ordinance. *Id.* ¶ 11. French contends the ordinance prohibits her from inviting others to live in her home. *Id.* ¶ 16. HomeRoom contends the ordinance makes it impossible to operate its business in the City. *Id.* French and HomeRoom have sued the City, City Manager Doug Gerber, and the City’s primary Code Enforcement Officer Kevin Messick. *Id.* ¶¶ 21-23. Gerber and Messick are sued in their official capacities. *Id.* ¶¶ 22-23.

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French and HomeRoom assert three claims. First, they bring a 42 U.S.C. § 1983 claim and argue the ordinance violates substantive due process on its face under the Fourteenth Amendment’s right to intimate association and the right to establish a home. *Id.* ¶¶ 41-47. Second, they bring a § 1983 claim facially challenging the ordinance under the Equal Protection clause of the Fourteenth Amendment. *Id.* ¶¶ 48-54. Third, they seek declaratory relief under K.S.A. § 60-1701 for noncompliance with the Kansas Zoning Enabling Act. *Id.* ¶¶ 55-65.

II. STANDARD

A complaint survives a Rule 12(b)(6) motion to dismiss by containing “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation and citation omitted). A claim is plausible if it is accompanied by sufficient factual content to allow a court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The plausibility standard requires “more than a sheer possibility that a defendant has acted unlawfully,” but it “is not akin to a ‘probability requirement.’” *Id.* “Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* (internal quotation and citation omitted). Courts undertaking this analysis accept as true all well-pleaded allegations in the complaint but need not accept legal conclusions. *Id.* Likewise, conclusory statements are not entitled to the presumption of truth. *Id.* at 678-79. Dismissal under Rule 12(b)(6) is also appropriate “where an issue of law precludes

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recovery.” *Jones v. Addictive Behav. Change Health Grp., LLC*, 364 F. Supp. 3d 1257, 1265 (D. Kan. 2019).

III. ANALYSIS

The principal issue in the motion is whether Plaintiffs state a constitutional claim. But the motion also raises some ancillary issues that the Court must address. Defendants make three specific arguments. First, Defendants contend that the claims against Gerber and Messick are duplicative of the claims against the City. Doc. 13 at 1. Second, Defendants contend the complaint fails to state a constitutional violation. *Id.* Third, Defendants argue the complaint fails to state a claim of non-compliance with Kansas zoning laws. *Id.* The Court agrees on the first two points and declines to reach the third.

A. Official Capacity Claims Against Gerber and Messick

Defendants first argue that the official capacity claims against Gerber and Messick are duplicative of the claims against the City. *Id.* at 4-5. Plaintiffs agree to dismiss the claims against Gerber and Messick if the City agrees that any ruling in the case is binding on the officials. Doc. 18 at 1 n.1 (“Plaintiffs name Mr. Gerber and Mr. Messick to ensure that relevant City officials are bound by any eventual ruling and therefore accountable to ensure that the Ordinance is not enforced against Court order.”). Defendants do not address this issue in the reply.

The Court finds that the official capacity claims against Gerber and Messick should be dismissed. “[T]he Supreme Court has held that a suit against a municipal official in his official capacity is

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tantamount to a suit against the municipal entity itself.” *Smith v. City of Lawrence, Kan.*, 2020 WL 3452992, at *5 n.8 (D. Kan. 2020). Courts “routinely” dismiss such claims as duplicative or redundant to the claims against the entity defendant. *Id.*; *see also Jones v. Wildgen*, 320 F. Supp. 2d 1116, 1124 (D. Kan. 2004) (“In suits in which a government entity is a party, the Court has previously dismissed official capacity claims against individuals.”). The Court also notes that the claims in this case do not distinguish among Defendants. The claims in the complaint refer only to “the City.” Doc. 1 at ¶¶ 41-65. Gerber and Messick are only mentioned in the complaint for their job titles and not in relation to any conduct towards Plaintiffs. *See id.* ¶¶ 22-23. It is therefore unclear what constitutional violations Plaintiffs could attribute separately to Gerber or Messick. Accordingly, the Court finds the claims against Gerber and Messick are redundant to the claims asserted against the City and dismisses those claims.

B. Constitutional Claims

Plaintiffs assert two 42 U.S.C. § 1983 claims under the Fourteenth Amendment. Both claims present facial challenges. Both claims are based on Plaintiffs’ contention that the ordinance infringes on their fundamental rights to intimate association and to establish a home in violation of substantive due process and equal protection. *See* Doc. 18 at 2.³ These claims are based on the ordinance’s limitation on the

³ Although Plaintiffs initially contend that the “right to establish a home” is a separate fundamental right from the right to intimate association, their analysis largely focuses on the latter.

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number of unrelated people who may reside together in a dwelling.

1. HomeRoom

The Court first addresses these claims asserted by HomeRoom. Defendants move to dismiss the constitutional claims asserted by HomeRoom because it is a corporate entity with no constitutionally protected right of intimate association and because HomeRoom does not have standing to assert constitutional claims on behalf of its sublessees. Doc. 13 at 5. As to the first point, the Court agrees with Defendants. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 620 (1984) (“[A]n association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection.”); *Moore v. Tolbert*, 490 F. App’x 200, 204 (11th Cir. 2012) (“Corporations do not have ‘friends’ or ‘family members’ in any coherent sense. It is unclear, then, how corporations can have intimate associations at all.”); *Fiore v. City of Detroit*, 2019 WL 3943055, at *5 (E.D. Mich. 2019) (“Business relationships do not support intimate association claims.”).

As to the second point, HomeRoom argues that it is asserting the rights of third parties, i.e., the rights of its would-be unrelated tenants. *See* Doc. 18 at 11-12. But even to the extent HomeRoom could establish Article III standing as to itself, prudential limitations on standing still require the Court to dismiss its constitutional claims based on the rights of others. “[A] party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (internal quotation

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and citation omitted). A party may be excepted from this rule if it shows that it has a close relationship with the person who holds the right and there is some hindrance on that person's ability to protect her own interest. *Id.* at 129-30. Here, however, HomeRoom only purports to assert the rights of its would-be sublessees. HomeRoom does not identify any authority that would establish this as a close enough relationship to forgo prudential standing limitations.⁴ Nor does it give any reason why those individuals are unable to assert their own rights, as French is doing. Certainly, HomeRoom may be able to assert some claim in this situation, but HomeRoom has not shown that it may assert the constitutional claims asserted in this case on behalf of others. Accordingly, the Court dismisses HomeRoom's constitutional claims.

2. French

The Court next considers the constitutional claims asserted by French. As already noted, "[t]he Supreme Court has held that it is not arbitrary or unreasonable

⁴ HomeRoom relies on *Craig v. Boren*, 429 U.S. 190 (1976), but its analysis is not persuasive. In *Craig* a vendor challenged a law that regulated the sale of beer to men under age 21. *Id.* at 192. The Supreme Court found the vendor had standing because the law was aimed at those who sell—not use—beer and she could assert “those concomitant rights of third parties” also affected. *Id.* at 194-95. Here, however, the ordinance is directed at unrelated housemates, not the “master tenant” of the same. While the ordinance may undoubtedly affect HomeRoom's business, something more must be shown before it can assert the right of intimate association of its would-be tenants. See *Kowalski*, 543 U.S. at 130 (noting that outside the limited situations like *Craig*, courts apply the “‘close relationship’ and ‘hindrance’ criteria”).

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to limit to two the number of unrelated persons who can live together.” *Jones*, 320 F. Supp. 2d at 1131. In *Belle Terre*, the Supreme Court considered an ordinance that restricted land use to single-family dwellings, with family meaning “one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants.” 416 U.S. at 2. The ordinance limited the number of unrelated people living together to two. *Id.* The Supreme Court detailed various cases addressing zoning ordinances and noted a degree of deference is generally owed to governing bodies on zoning decisions. *Id.* at 2-6. Although ordinances based on suspect classifications like race would “immediately be suspect,” the ordinance in question “involve[d] no procedural disparity inflicted on some but not on others” and involved no fundamental rights guaranteed by the Constitution. *Id.* at 6-8. The Supreme Court thus found that the ordinance should be upheld if it was reasonable, was not arbitrary, and bore a rational relationship to a permissible state objective. *Id.* at 8. In other words, the Supreme Court applied rational basis scrutiny. It then concluded that “[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs,” and that limiting the number of unrelated people to two was a proper exercise of legislative discretion. *Id.* at 8-9. The Supreme Court deemed the ordinance constitutional.

Belle Terre has long been cited as binding authority on this issue in federal court. *Jones*, 320 F. Supp. 2d at 1131-35; *Doe v. City of Butler, Pa.*, 892 F.2d 315, 319-23 (3d Cir. 1989) (explaining the Supreme Court’s

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different treatment of ordinances targeting related versus unrelated residents and noting that the latter is evaluated under rational basis scrutiny); *Fed. Hill Cap., LLC v. City of Providence*, 227 A.3d 980, 991 (R.I. 2020) (“In light of the fact that Federal Hill Capital has failed to provide any convincing authority for the notion that a right to live anywhere with anyone exists, coupled with the fact that *Village of Belle Terre* rejects such a notion, and that the general idea flies in the face of the purpose of zoning as a concept in and of itself . . . we are not persuaded that there exists any fundamental right under the facts of this case.”);⁵ *Citizens For Fair Hous. v. City of E. Lansing*, 2001 WL 682491, at *2 (Mich. Ct. App. 2001) (“The right to live with one’s family is constitutionally protected . . . but the right to live with any number of individuals who are not one’s ‘family’ is not.” (citing *Belle Terre*)); see also Rigel C. Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 Fla. L. Rev. 1401, 1414 (2015) (noting that the issue currently “is settled as a matter of federal law”); Katia Brener, *Belle Terre and Single-Family Home Ordinances: Judicial Perceptions of Local Government and the Presumption of Validity*, 74 N.Y.U. L. Rev. 447, 453-54 (1999) (“Because the ordinance in *Belle Terre* restricted merely the number of unrelated persons who could live together, the *Belle Terre* decision remains good law and is controlling in federal cases.”).

⁵ *Federal Hill Capital* considered an ordinance limiting the number of college students who could live together under the Rhode Island state constitution, but it noted that the rights under the state and federal constitutions were coterminous. *Fed. Hill. Cap.*, 227 A.3d at 988.

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Plaintiffs argue that *Belle Terre* “does not have binding effect over this suit” because it did not consider the right of intimate association. Doc. 18 at 7. Plaintiffs are correct that the Supreme Court in *Belle Terre* did not specifically name the substantive due process right of intimate association.⁶ But this argument elevates form over substance. In *Belle Terre*, the Supreme Court considered the plaintiffs’ arguments that the ordinance improperly considered whether residents of houses were married or unmarried and that the ordinance “reeks with an animosity to unmarried couples who live together.” *Belle Terre*, 416 U.S. at 7-8. The Supreme Court concluded that the “ordinance places no ban on other forms of association, for a ‘family’ may, so far as the ordinance is concerned, entertain whomever it likes.” *Id.* at 9. The Supreme Court’s analysis touches on the

⁶ *Belle Terre* considered the ordinance in the context of various constitutional rights and considerations, including that it interfered with the right to travel, the right to express social preferences, the right of privacy, and the right of association. *Belle Terre*, 416 U.S. at 7-8. But it did not explicitly distinguish between the right of association protected by the First Amendment versus the Fourteenth Amendment. See *Trujillo v. Bd. of Cnty. Comm’rs of Santa Fe Cnty.*, 768 F.2d 1186, 1188 (10th Cir. 1985) (explaining the distinction between “freedom of expressive association in the First Amendment” and “freedom of intimate association as ‘an intrinsic element of personal liberty’” (quoting *Roberts*, 468 U.S. at 620))). *Belle Terre* also considered the ordinance under the Equal Protection clause. *Belle Terre*, 416 U.S. at 1. Both parties in this case generally equate the analysis under the Equal Protection clause with the analysis under substantive due process. Doc. 13 at 10-11; Doc. 18 at 2 n.2. Given that, it would be difficult to extract *Belle Terre* from the analysis here simply because it did not expressly address the right to intimate association.

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same substantive due process issues raised here. And although Plaintiffs argue that “subsequent jurisprudence has greatly undermined [*Belle Terre*’s] force,” Doc. 18 at 6, none of the cases cited directly address the issue at hand. *See Fed. Hill. Cap.*, 227 A.3d at 989-91 (noting that *Belle Terre* had largely settled this issue and finding no grounds to deviate from it). Plaintiffs have a right to argue for a change in the law, but *Belle Terre* remains good law and is binding authority this Court must follow. *See United States v. Doby*, 2019 WL 5825064, at *1 (D. Kan. 2019) (explaining that this Court is required to followed binding authority from the Tenth Circuit and the Supreme Court). Plaintiffs also rely heavily on *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*. 666 F.3d 1216 (9th Cir. 2012). The issue there was whether the Fair Housing Act (“FHA”) restricted the ability to select roommates using a questionnaire that inquired about sex, sexual orientation, and familial status. *Id.* at 1218-20. The Ninth Circuit declined to read the FHA to extend to shared living units—and thus prevent individuals from screening potential roommates for certain characteristics—because doing so would “raise[] substantial constitutional concerns” and would potentially be a “serious invasion of privacy, autonomy and security.” *Id.* at 1221-22. The court instead adopted a “narrower construction that excludes roommate selection from the reach of the FHA” to avoid a constitutional conflict with the FHA. *Id.* at 1222. The Ninth Circuit did note the important personal interests in selecting roommates. But the issue in *Roommate.com* (whether the FHA should be read to interfere with relationships inside a home) was different than the issue here and in *Belle Terre*

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(whether municipalities can limit unrelated people living in a residence under zoning authority). The Ninth Circuit did not discuss *Belle Terre*, and, as noted above, *Belle Terre* is binding on this Court.

In sum, the Court finds that the ordinance does not violate substantive due process or the Equal Protection clause based on the authority of *Belle Terre*. The Court grants the motion to dismiss French’s constitutional claims.⁷

C. State Claims

Lastly, Plaintiffs seek declaratory relief for noncompliance with the Kansas Zoning Enabling Act. They contend the ordinance exceeds the authority granted to municipal governments regarding the adoption of zoning regulations. Doc. 1 at ¶¶ 55-65. The stated basis for jurisdiction over this claim is supplemental jurisdiction under 28 U.S.C. § 1367. *Id.* ¶ 14. That statute states that “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction” 28 U.S.C. § 1367(a). But a court may also decline supplemental jurisdiction if the issue is a novel question of state law or if the court has dismissed all claims over which it has original jurisdiction. *Id.* § 1367(c); *see also Nielander v. Bd. of Cnty. Comm’rs of Cnty. of Republic, Kan.*, 582 F.3d 1155, 1172 (10th

⁷ Even if HomeRoom had standing to assert the constitutional rights at issue, dismissal of those claims would be proper for the same reasons discussed above. Likewise, even if Gerber and Messick were properly named, the claims against them would still be dismissed.

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Cir. 2009). Courts have discretion to decide whether to exercise supplemental jurisdiction after considering such factors as “comity, convenience, economy, and fairness.” *Birdwell v. Glanz*, 790 F. App’x 962, 963-64 (10th Cir. 2020). “When the federal claims disappear early in the litigation, a federal court should generally decline to exercise supplemental jurisdiction.” *Id.* at 964.

Here, the Court has dismissed the federal constitutional claims against Defendants. The litigation is in the very early stages. Indeed, the magistrate judge has not yet convened the initial planning and scheduling conference. *See* Doc. 21 (deferring scheduling until after resolution of motion to dismiss). The remaining claim is a matter of state law regarding interpretation of the Kansas Zoning Enabling Act, which is an issue uniquely situated for resolution by a state court. Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiffs’ state-law claim and dismisses that claim without prejudice for lack of subject-matter jurisdiction.

IV. CONCLUSION

THE COURT THEREFORE ORDERS that Defendants’ Motion to Dismiss (Doc. 12) is GRANTED. The Court dismisses the constitutional claims and dismisses without prejudice the state-law claim.

IT IS SO ORDERED.

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Dated: September 12, 2023

/s/ Holly L. Teeter
HOLLY L. TEETER
UNITED STATES
DISTRICT JUDGE

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Filed September 12, 2023

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

**HOMEROOM, INC.
and VAL FRENCH,
Plaintiffs,**

v.

**CITY OF SHAWNEE,
KANSAS, DOUGLAS
GERBER, and
KEVIN MESSICK,
Defendants.**

**Case No. 2:23-cv-
02209-HLT-GEB**

JUDGMENT IN A CIVIL CASE

- ☐ July Verdict. This action came before the Court for a jury trial. The issues have been tried and the jury has rendered its verdict.
- ☒ Decision by the Court. This action came before the Court. The issues have been considered and a decision has been rendered.

Pursuant to the Memorandum and Order (Doc. 23), Defendants' motion to dismiss is granted. The Court dismisses the constitutional claims and dismisses without prejudice the state-law claim. This case is closed.

IT IS SO ORDERED.

SKYLER O'HARA
CLERK OF THE
COURT

Dated: September 12, 2023

/s/ M. Deaton
By Deputy Clerk

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**CITY OF SHAWNEE
ORDINANCE NO. 3419**

AN ORDINANCE AMENDING TITLE 17 OF THE SHAWNEE MUNICIPAL CODE TO AMEND PROVISIONS OF CHAPTER 17.04, (DEFINITIONS), CHAPTERS 17.10 THROUGH 17.20 AND 17.23 THROUGH 17.30 (USE REGULATIONS) AND CHAPTER 17.51, (TABLE OF GENERAL USE REGULATIONS), TO DEFINE AND PROHIBIT CO-LIVING GROUPS AND ROOMING HOUSES WITHIN THE SPECIFIED DISTRICTS.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS:

PARAGRAPH 1. Title 17, Chapter 17.04, of the Shawnee Municipal Code is hereby amended to amend Section 17.04.120 Family, and to include the following new or amended definitions for Related Persons, Co-Living Group, and Single Housekeeping Unit. The City Clerk is directed and authorized to renumber the corresponding section numbers attributed to definitions in Chapter 17.04, following placement of the following new definitions into Chapter 17.04 and placing all the new sections and currently existing sections in alphabetical order:

17.04._ Family.

Family means:

- A. A group of one (1) or more related persons living together; or
- B. A group of not more than three (3) unrelated persons age eighteen (18) or older living together as

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a single housekeeping unit, together with any minors related to at least one of those persons, provided that if any one of the adults is unrelated to another adult in the group, the entire group shall be classified as unrelated

17.04._ Related Persons.

Related persons means:

- 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.

17.04._ Co-Living Group.

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 of the adult persons is unrelated to another adult person in the group, the entire group shall be classified as unrelated. This section does not apply to a Group Home as defined by Chapter 17.04.

17.04._ Single Housekeeping Unit.

Single housekeeping unit means a group of non-transient persons that occupies a dwelling with common kitchen facilities and shares household activities or responsibilities.

Upon the effective date of this Ordinance, the previously existing definition Section 17.04.120 Family, as amended herein by this Ordinance, is hereby repealed in accordance with K.S.A. 12-3004.

PARAGRAPH 2. Title 17, Chapter 17.10, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Agricultural (AG) Zoning District. Section 17.10.030

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is hereby amended to read as follows:

17.10.030. Additional Use Regulations.

In the AG district, additional use regulations shall be as follows:

* * *

L. Co-Living Groups and Rooming Houses are prohibited in the AG District.

* * *

PARAGRAPH 3. Title 17, Chapter 17.11, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Country Estates (CE) Zoning District. Section 17.11.030 is hereby amended to read as follows:

17.11.030. Additional Use Regulations.

In the Country Estates district, additional use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the CE District.

* * *

PARAGRAPH 4. Title 17, Chapter 17.12, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Residential Estates (RE) Zoning District. Section 17.12.040 is hereby amended to read as follows:

17.12.040. Additional Use Regulations.

In the RE district, additional use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the RE District.

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* * *

PARAGRAPH 5. Title 17, Chapter 17.16, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Residential Suburban (RS) Zoning District. Section 17.16.040 is hereby amended to read as follows:

17.16.040. Additional Use Regulations.

In the RS district, additional use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the RS District.

PARAGRAPH 6. Title 17, Chapter 17.20, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Single Family Residential (R-1) Zoning District. Section 17.20.040 is hereby amended to read as follows:

17.20.040. Additional Use Regulations.

In the R-1 district, additional use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the R-1 District.

* * *

PARAGRAPH 7. Title 17, Chapter 17.23, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Planned Single Family (PSF) Zoning District. Section 17.23.040 is hereby amended to read as follows:

17.23.040. Additional Use Regulations.

In the Planned Single-Family district, additional

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use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the PSF District.

* * *

PARAGRAPH 8. Title 17, Chapter 17.24, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Duplex (DU) Zoning District. Section 17.24.030 is hereby amended to read as follows:

17.24.030. Additional Use Regulations.

In the DU district, additional use regulations shall be as follows:

* * *

H. Co-Living Groups and Rooming Houses are prohibited in the DU District.

* * *

PARAGRAPH 9. Title 17, Chapter 17.26, of the Shawnee Municipal Code is hereby amended to prohibit Co-Living Groups and Rooming Houses in the Residential Garden Apartment (RGA) Zoning District. Section 17.26.030 is hereby amended to read as follows:

17.26.030. Additional Use Regulations.

In the RGA district, the additional use regulations shall be as follows:

* * *

J. Co-Living Groups and Rooming Houses are prohibited in the RGA District.

* * *

PARAGRAPH 10. Title 17, Chapter 17.30, of the Shawnee Municipal Code is hereby amended to

Appendix 45a

prohibit Co-Living Groups and Rooming Houses in the Residential High Rise (RHR) Zoning District. Section 17.30.030 is hereby amended to read as follows:

17.30.030. Additional Use Regulations. In the RHR district, the additional use regulations shall be as follows:

* * *

I. Co-Living Groups and Rooming Houses are prohibited in the RHR District.

* * *

PASSED by the Governing Body this 25th day of April, 2022.

APPROVED AND SIGNED by the Mayor this 25th day of April, 2022.

CITY OF SHAWNEE, KANSAS

By: s/Michelle Distier
Michelle Distier, Mayor

SEAL:
CITY OF SHAWNEE
JOHNSON COUNTY, KS

ATTEST:

By: s/Stephanie Zaldivar
Stephanie Zaldivar, City Clerk

APPROVED AS TO FORM:

By: s/Ellis Rainey
Ellis Rainey, City Attorney