STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: February 12, 2018)

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

DECISION

KEOUGH, J. Before the Court are Cross-Motions for Summary Judgment filed pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure (Rule 56) by the City of Providence, by and through its Treasurer James Lombardi, Jorge Elorza, in his official capacity as Mayor of the City of Providence, and Jeffrey L. Lykins, in his official capacity as Director of the Providence Department of Inspection and Standards (collectively Defendants, City) and the Plaintiffs, Federal Hill Capital, LLC, Christopher Musacchio, Alejandro Amaya, William Smith, and Corey Kossin (collectively Plaintiffs). The motions are in response to a Complaint filed by Plaintiffs in which they seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 §§ 9-30-1 *et seq.*, with respect to the constitutionality of an amendment made to Providence Zoning Ordinance 2015-47, No. 455. Specifically, Plaintiffs

seek a declaration that the particular provision violates article I, section 2 of the Rhode Island Constitution.

I

Facts and Travel

On September 18, 2015, the City enacted an amendment to Providence Zoning Ordinance 2015-47, No. 455, which regulates the use of single-family homes in Providence's R-1A and R-1 (residential) zoning districts. This amendment was enacted in response to residents' concerns about the "changing nature of neighborhoods in proximity to the City's colleges and universities, in particular the Elmhurst neighborhood near Providence College."[1] Specifically, the amendment expressly provides that "[i]n the R-1A and R-1 districts, a single-family dwelling, that is non-owner occupied, shall not be occupied by more than three college students," who are defined as "individual[s] enrolled as . . . undergraduate or graduate student[s] at any university or college

[1] Community concerns were brought to the City's attention via letters and written materials submitted to the City Council for its consideration. (City's Mem. at 6, Ex. E.) The complaints included:

- "Loud and rowdy late-night parties that wake children and babies, not to mention adults;
- "Families, including children, witnessing public drunkenness, public urination, and sexual intercourse in cars parked in close proximity to their homes;
- "Increased crime related to drug-use and alcohol abuse . . . and the associated need for an increased police presence;
- "Diminishing home values because of . . . the prevalence of discarded liquor bottles, beer cans, and red cups strewn across yards, as well as overgrown lawns and poorly-maintained exteriors;
- "Increased prevalence of motor vehicles, sometimes as many as eight to ten cars per single-family dwelling unit, resulting in increased traffic, lawns being used as parking areas and/or replaced with concrete to provide for additional parking, and difficulty obtaining street parking;
- "Inability of young or low-income families to find affordable housing because of the rapid purchase of single-family houses in the neighborhood by landlord companies who can recoup their investment by maximizing the number of tenants; and
- "The attraction of students who attend colleges outside of the area to single-family housing in certain neighborhoods because landlord companies have marketed these properties as desirable enclaves for the college experience."

educational institution who commute[s] to a campus." (City's Mem. at 8, Ex. A.) The amendment only applies to single-family dwellings located in just two of Providence's twenty zoning districts. These two districts are the City's lowest density districts in which few non-residential uses are allowed.

On February 23, 2016, Plaintiffs, a real estate investment company and four college students who live in a single-family dwelling in an R-1 district, brought a constitutional challenge to the amendment based on the due process and equal protection clauses of article I, section 2 of the Rhode Island Constitution. Plaintiff Federal Hill Capital, LLC, owns a single-family home at 15 Oakdale Street in Providence that was leased to the four college student Plaintiffs.[2] The Oakdale Street property is located in an R-1 zoning district. The City now moves for summary judgment arguing that the amendment is constitutionally sound. In response, Plaintiffs have cross-motioned for summary judgment.

II

Standard of Review

A declaratory judgment '"is neither an action at law nor a suit in equity but a novel statutory proceeding . . ."' *N. Trust Co. v. Zoning Bd. of Review of Westerly,* 899 A.2d 517, 520 n.6 (R.I. 2006) (quoting *Newport Amusement Co. v. Maher,* 92 R.I. 51, 53, 166 A.2d 216, 217 (1960)). The purpose of the UDJA is "to allow the trial justice to 'facilitate the termination of controversies.'" *Bradford Assocs. v. R.I. Div. of Purchases,* 772 A.2d 485, 489 (R.I. 2001) (citations omitted). Thus, the UDJA grants broad jurisdiction to the Superior Court to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." Section 9-30-1.

[2] The college student Plaintiffs had a lease on the Oakdale Street property until May 2017.

When deciding a motion for summary judgment, the trial justice must always keep in mind that it is a "drastic remedy and should be cautiously applied." *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981). Summary judgment is appropriate when viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the Court determines that there are no issues of material fact in dispute. *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ.*, 93 A.3d 949, 951 (R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *Steinberg*, 427 A.2d at 340.

The party who opposes the motion for summary judgment carries the burden of proving, by competent evidence, the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions. *Accent Store Design, Inc. v. Marathon House, Inc*. 674 A.2d 1223, 1225 (R.I. 1996). In a motion for summary judgment, the moving party bears the initial burden of establishing the absence of a genuine issue of fact. The burden then shifts and the nonmoving party has an affirmative duty to demonstrate a genuine issue of fact. *McGovern v. Bank of Am., N.A.*, 91 A.3d 853, 858 (R.I. 2014).

With regard to issues concerning the interpretation of an ordinance, it is well established that Rhode Island courts employ the same rules of construction as they do when interpreting a statute. *Ruggiero v. City of Providence*, 893 A.2d 235, 237 (R.I. 2006); *Pierce v. Providence Ret. Bd.*, 15 A.3d 957, 963 (R.I. 2011). If an ordinance is unambiguous "it should be enforced as written, with the words of the ordinance being given their plain and ordinary meaning." *State ex. rel. City of Providence v. Auger*, 44 A.3d 1218, 1226 (R.I. 2012). Moreover, when faced with a constitutional challenge to a statute or ordinance, the Court must "begin with a presumption that the enactment is constitutional." *Id.; State v. Russell*, 890 A.2d 453, 458 (R.I. 2006). "This

[C]ourt will attach every reasonable intendment in favor of . . . constitutionality in order to preserve the statute." *Gem Plumbing & Heating Co. v. Rossi*, 867 A.2d 796, 808 (R.I. 2005) (citation omitted). The party contesting the constitutionality of the ordinance bears the '"burden of proving beyond a reasonable doubt that the challenged enactment is unconstitutional."' *Auger*, 44 A.3d at 1226 (quoting *State ex rel. Town of Westerly v. Bradley*, 877 A.2d 601, 605 (R.I. 2005)).

III

Analysis

In support of their competing motions, both parties submit that the sole issue before the Court concerns the constitutionality of the zoning ordinance amendment. The parties maintain that before making this determination, the Court must first establish the appropriate level of review to be applied and then determine whether the amendment is consistent with equal protection and due process requirements. In that the substantive due process and equal protection arguments are inextricably intertwined, only a single analysis is required. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470 (1981) (if statute does not violate equal protection it does not violate due process); *Montalvo-Huertas v. Rivera-Cruz*, 885 F.2d 971, 976 n.7 (1st Cir. 1989) (type and kind of scrutiny applied no different under either substantive due process or equal protection theory).

1

Article I, Section 2

Mirroring the Fourteenth Amendment of the United States Constitution, article I, section 2 of the Rhode Island Constitution provides, in pertinent part, that no person shall be "deprived of life, liberty or property without due process of law, nor shall any person be denied equal

protection of the laws." R.I. Const. art. I, § 2. *See also, R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co.*, 716 A.2d 730, 734 (R.I. 1998) (Rhode Island and federal equal protection clauses provide similar protections). Nevertheless, our Supreme Court has routinely held that "not all legislative classifications are impermissible." *Boucher v. Sayeed*, 459 A.2d 87, 91 (R.I. 1983). Indeed, the legislature is permitted "a wide scope of discretion in enacting laws which affect some groups of citizens differently from others." *Burrillville Racing Ass'n v. State*, 118 R.I. 154, 157, 372 A.2d 979, 981-82 (1977). In so doing, the state may choose to create stronger constitutional protections than those afforded by the United States Constitution; however, it is rare that Rhode Island has departed from federal precedent and established greater protections. *See Moreau v. Flanders*, 15 A.3d 565, 588 (R.I. 2011); *State v. Bjerke*, 697 A.2d 1069, 1073 (R.I. 1997).

The Equal Protection Clause of article I, section 2 of the Rhode Island Constitution mandates that '"[n]o otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, [or] its agents * * *," thereby prohibiting any law that treats one class of persons less favorably than others who are similarly situated. *See Kleczek v. R.I. Interscholastic League, Inc.*, 612 A.2d 734 (R.I. 1992). It does not, however, '"demand that a statute necessarily apply equally to all persons. * * * '[Or] require [that] things which are different in fact * * * to be treated in law as though they were the same.'" *Id.* at 737 (quoting *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966)). Indeed, "the Equal Protection Clause is violated 'only if the [legislative] classification rests on grounds wholly irrelevant to the achievement of the State's objective. * * * A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.'" *Mackie v. State*, 936 A.2d 588, 596 (R.I. 2007) (quoting *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961)).

With respect to substantive due process, the government is proscribed from acting in an arbitrary or capricious fashion, even if the procedures through which the action is taken are "constitutionally adequate." *Brunelle v. Town of S. Kingstown*, 700 A.2d 1075, 1084 (R.I. 1997) (quoting *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1407 (9th Cir. 1989)). "To establish a violation of substantive due process, the Plaintiffs must prove that the government's action was 'clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare'" *Id.* (quoting *Sinaloa Lake Owners*, 882 F.2d at 1407). And finally, because article I, section 2 of the Rhode Island Constitution is parallel to the Fourteenth Amendment of the United States Constitution, the Court conducts a "hybrid analysis" when asked to "calibrate the applicable sections of [an] act . . . against the due-process and equal-protection guarantees of both the federal and state constitutions[,]" reflective of "the autonomous character of each constitution's inviolable guarantees." *E. Bay Cmty. Dev. Corp. v. Zoning Bd. of Review of Barrington*, 901 A.2d 1136, 1150 (R.I. 2006) (citing *Providence Teachers Union Local 958, AFL–CIO, AFT v. City Council of Providence*, 888 A.2d 948, 956 (R.I. 2005)

a

Level of Review

To determine whether a particular statute or ordinance is in compliance with the aforementioned constitutional provisions, there first must be an examination with respect to the nature of the classification that the act establishes and the individual rights that may be violated by the act. *Kennedy v. State*, 654 A.2d 708, 712 (R.I. 1995). A statute is examined under strict scrutiny if it "infringes upon fundamental rights or results in the creation of a suspect classification." *Id.* (citing *Boucher*, 459 A.2d at 91). However, "if an act employs a gender-based

classification, the gender-based difference must be substantially related to the achievement of the statutory objective." *Id.* (citing *Craig v. Boren*, 429 U.S. 190, 204 (1976)). Lastly, all other economic and social regulations are generally reviewed under minimal scrutiny, which requires that the statute only be "rationally related to a legitimate state interest." *Id*.

In the present case, the parties dispute whether the amendment should be reviewed under strict or minimal scrutiny. The City contends that the amendment neither infringes on a fundamental constitutional right nor creates a suspect classification and therefore should be reviewed under minimal scrutiny. The City argues that one's status as a "college student" is not a trait that is immutable or unalterable. Moreover, the City insists that college students are not and have not been disenfranchised or removed from the political process and, historically, society has not been prejudiced against them. Finally, the City maintains that the amendment does not infringe upon any fundamental rights recognized and protected under the United States Constitution or the Rhode Island Constitution and avers that Rhode Island rarely extends the list of fundamental rights that require a heightened level of scrutiny.

The Plaintiffs maintain, however, that strict scrutiny is appropriate because the amendment infringes upon an individual's liberty interest by limiting their ability to choose where they can live and diminishes a landlord's property rights. Furthermore, Plaintiffs argue that the amendment discriminates against a class of citizens based on their status as college students. Specifically, Plaintiffs assert that the amendment targets college students and treats them differently from other similarly situated residents. Essentially, Plaintiffs argue that this Court should view the amendment as restricting an entire class of citizens rather than restricting the nature of the property.

Accordingly, this Court must begin its analysis by determining whether the amendment creates a suspect class or infringes upon a fundamental right. With respect to the issue of classification, it is important to note that, thus far, the United States Supreme Court has only recognized race, national ancestry, ethnic origin, gender, and illegitimacy as suspect classes. *Thomasson v. Perry*, 80 F.3d 915, 928 (4th Cir. 1996) (citations omitted). Indeed, the Court has specifically declined to expand suspect classification to age, wealth, sexual orientation, and persons with mental disabilities. *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Moreover, the Rhode Island Supreme Court has rarely expanded constitutional protections beyond those identified by the Supreme Court of the United States. *State v. Benoit*, 417 A.2d 895, 899 (R.I. 1980). Under Rhode Island law, only race, alienage, and national origin have been recognized as suspect classifications entitled to heightened scrutiny, while gender and illegitimacy have been given intermediate scrutiny. *See In re Advisory From the Governor*, 633 A.2d 664, 669 (R.I. 1993).

The majority of jurisdictions that have considered similar classifications have consistently held that college students are not a protected class. *See Bloomsburg Landlords Ass'n v. Town of Bloomsburg*, 912 F. Supp. 790, 804-05 (M.D. Pa. 1995) aff'd 96 F.3d 1431 (3d Cir. 1996) (college students not given heightened scrutiny); *Davis v. Churchill Cty. Sch. Bd. of Trs.*, 616 F. Supp. 1310, 1313 (D. Nev. 1985) (holding students not a suspect classification); *Smith v. Lower Merion Twp.*, Civ. A. No. 90-7501, 1992 WL 112247, *2 (E.D. Pa. May 11, 1992) (holding student classification is not entitled to heightened scrutiny); *Kirsch v. Prince George's Cty.*, 626 A.2d 372, 379 (Md. 1993) (no heightened scrutiny review of ordinance regulating college off-campus housing); *Lantos v. Zoning Hearing Bd. of Haverford Twp.*, 621 A.2d 1208, 1212 (Pa. Commw. Ct. 1993) (students not a protected class); *Rosenberg v. City of Boston*, No.

08-MISC-377101, 2010 WL 2090956, *6 (Mass. Land Ct. May 25, 2010) (undergraduate students not a suspect class). Although these cases are also not controlling upon this Court, they are indeed persuasive. "[C]ollege students have not faced a long history of discrimination, are not an insular minority, and have not been classified according to an immutable trait acquired at birth" such that a classification based on an individual's status as a college student is not "inherently suspect." *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 781 S.E.2d 115, 123 (S.C. 2015). Accordingly, college students are not entitled to suspect classification, and the amendment is not entitled to strict scrutiny on that basis.

With respect to the issue of whether the amendment infringes on a fundamental right, the courts have held that these rights can be found in those explicitly enumerated in the Bill of Rights, as well as other implied constitutional guarantees that are deemed "fundamental to our society of ordered liberty." *In re Advisory Op. to House of Representatives Bill 85-H-7748,* 519 A.2d 578, 581-82 (R.I. 1987). These unenumerated fundamental rights include the right to marry, the right to have children, the right to direct the education and upbringing of one's children, the right to marital privacy, the right to contraception, the right to bodily integrity, and the right to an abortion. *See Washington v. Glucksburg*, 521 U.S. 702, 720 (1997). Rhode Island law has only expanded these federally recognized fundamental rights by including guaranteed "rights of fishery" and "privileges of the shore." *See Riley v. R.I. Dep't of Envtl. Mgmt.,* 941 A.2d 198, 208 (R.I. 2008); *New England Naturist Ass'n Inc. v. Larsen*, 692 F. Supp. 75, 78 (D.R.I. 1988).

In the context of ordinances that restrict the right of unrelated individuals to cohabitate, the United States Supreme Court has examined the issue and determined that no fundamental right is impacted. In *Village of Belle Terre v Boraas,* 416 U.S. 1 (1974), a civil rights action was

brought challenging the constitutionality of a New York village zoning ordinance which restricted the occupancy of single-family homes. Specifically, the ordinance restricted occupancy (with a few enumerated exceptions) to traditional families, which were defined as "one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants." *Id.* at 2. The ordinance affected a landlord who rented his property to six unrelated college students. These parties ultimately filed suit, challenging the constitutionality of the ordinance. *Id.* at 7.

In determining whether strict scrutiny or a rational basis review should be applied, the *Belle Terre* court concluded that the ordinance did not involve a fundamental right and was not violative of constitutional mandates. Specifically, the court held:

> "The present ordinance is challenged on several grounds: that it interferes with a person's right to travel; that it interferes with the right to migrate to and settle within a State; that it bars people who are uncongenial to the present residents; that it expresses the social preferences of the residents for groups that will be congenial to them; that social homogeneity is not a legitimate interest of government; that the restriction of those whom the neighbors do not like trenches on the newcomers' rights of privacy; that it is of no rightful concern to villagers whether the residents are married or unmarried; that the ordinance is antithetical to the Nation's experience, ideology, and self-perception as an open, egalitarian, and integrated society.
>
> "We find none of these reasons in the record before us. It is not aimed at transients. It involves no procedural disparity inflicted on some but not on others such as was presented by *Griffin v. Illinois*. . . . It involves no 'fundamental' right guaranteed by the Constitution, such as voting, the right of association, the right of access to the courts, or any rights of privacy. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' and bears 'a rational relationship to a (permissible) state objective.'
>
> "It is said, however, that if two unmarried people can constitute a 'family,' there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function." *Id*. at 7-8 (citations omitted).

See also Schwartz v. Philadelphia Zoning Bd. of Adjustment, 126 A.3d 1032, 1039-40 (Pa. Commw. Ct. 2015) (no fundamental right for unrelated persons to live together and zoning ordinance restricting the number of unrelated persons who may cohabitate should be reviewed under rational basis); *Rosenberg*, No. 08-MISC-377101, 2010 WL 2090956, *6 (undergraduate students are not a suspect class and no fundamental rights were violated); *City of Baton Rouge/Parish of E. Baton Rouge v. Myers*, 145 So. 3d 320, 332 (La. 2014) (ordinance restricting the ability for unrelated persons to live together does not involve a fundamental right).[3] Accordingly, this Court finds that no fundamental right is implicated necessitating a strict scrutiny analysis.

In so doing, the Court is mindful that more than twenty years ago, this very Court had the opportunity to review a similar ordinance and found it to be violative of the United States and Rhode Island Constitutions. In *Distefano v. Haxton*, 1994 WL 931006, * 1 (R.I. Super. Dec. 12, 1994), several landlords and tenants brought an action seeking relief from a Narragansett town ordinance that proscribed renting of houses or apartments by owners to more than three persons who were not related by blood, marriage or adoption. *Id* at *1-2. It was the town's position that the provisions had been enacted in response to numerous complaints about loud parties, littering, abusive language, speeding vehicles, garbage and parking in the area, presumably from homes where three or more unrelated persons were residing.[4] *Id.* at *3. In filing their complaint,

[3] *But see, City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980), in which the California Supreme Court held that an ordinance that prohibited more than five unrelated persons from living together in a single-family home was unconstitutional. However, the *Adamson* court relied on the express right to privacy which is included in the California Constitution. *Id.* at 440. Neither the Rhode Island nor federal Constitutions recognize this express right.

[4] The agreed upon facts, which were derived from various exhibits submitted to the Court, did not support this justification and/or conclusion. On the contrary, numerous City officials testified that limiting the number of individuals who could reside in one residence would not impact the issues the ordinance intended to address.

plaintiffs sought a declaration that the ordinance denied them their rights secured by the United States and Rhode Island Constitutions.

In finding the challenged provision to be unconstitutional, the Court observed that "one's choice of living location and apartment mates or housemates clearly is an option that has been exercised without governmental interference by countless people since the settling of this country." *Id*. at *7. The court deemed this "liberty of choice" to be a fundamental right protected by the due process clause of the Rhode Island Constitution and requiring a heightened level of scrutiny. *Id.* at *7-8. With respect to the equal protection argument, the trial justice observed that:

> "Just as Narragansett could not lawfully pass an ordinance designed to set aside a particular residential zone for the members of one ethnic group - even if substantial numbers of that group thought the concept a benign or salubrious one - the town cannot, in effect, set aside its residential zones for use only by people who have the good fortune to be related by blood. Accordingly, this Court concludes that it is permitted to use strict scrutiny regarding the consanguinity classification; and upon doing so, it is clear that that classification is invalid and in derogation of the equal protection clause of Article 1, Section 2 of the Rhode Island Constitution." *Id*. at * 9.

Finally, the trial justice concluded that even if a less stringent "rational basis" review was applied, the ordinance would still fail to withstand a constitutional challenge, as the problems occurring in the town were not tied to the number of unrelated persons living in a single-family dwelling. *Id.* at *12-13. The Court relied on letters from top law enforcement officials claiming that the zoning ordinance would have no effect on curtailing population density, noises, disturbances, and traffic problems. *Id.* at *14.

In so doing, the trial justice acknowledged the contrary holding in *Belle Terre* but distinguished it by finding that *Belle Terre* plaintiffs had failed to provide a factual record to the Supreme Court regarding their claims, unlike the Town of Narragansett, who were "burdened"

by the declaration of its chief executive officer that "there is no relationship between public safety and occupancy of residential units by unrelated persons." *Id*. at *13. Moreover, relying on the case of *McGowan v. Maryland*, 366 U.S. 420 (1961) and its direction to trial courts to consider "local tradition and custom" when conducting an equal protection analysis, the *Distefano* court suggested that the national trend was to invalidate such restrictions and further "wondered even within six years after the decision in *Belle Terre* [] whether the opinion 'still does declare federal law . . .'" *Distefano*, 1994 WL 931006, at *14 (citing *City of Santa Barbara*, 610 P.2d at 440 n.3).

Despite these projections and/or admonitions, it has been approximately forty-four years since the *Belle Terre* decision was issued and it remains good law. Indeed, as was previously indicated, the majority of jurisdictions seem to have ignored the clarion call to impose a heightened level of scrutiny to similar provisions and instead have employed a rational basis review. Moreover, given our Supreme Court's reluctance to expand the list of federally recognized fundamental rights, this Court is likewise hesitant to recognize the "right of choice in housing" as a fundamental right. This Court is not satisfied that there is a compelling reason to depart from the abundant precedent previously outlined and declines Plaintiffs' invitation to apply the *Distefano* holding here. Therefore, in that the ordinance does not infringe upon a fundamental right nor does it involve a suspect classification, this Court will apply a minimal scrutiny analysis to the instant amendment.

2

Minimal Scrutiny

Having determined that a minimal scrutiny analysis is applicable, the Court must next determine whether the amendment is rationally related to a legitimate governmental interest.

The City contends that the zoning amendment is rationally related to several legitimate zoning objectives, including preserving the residential character of the neighborhood, fostering zones where family and youth values can thrive, encouraging stability, availability, and affordability of single-family homes, decreasing congestion of motor vehicles, and protecting the aesthetically-pleasing character of certain areas within the City. The City argues that it is well settled that protecting the residential character of a neighborhood and limiting population density to help with noise and traffic are legitimate governmental concerns. The City further asserts that it is common knowledge that groups of college students have transient lifestyles that differ significantly from traditional families living in single-family homes and points this Court to various letters submitted to local representatives from community members who supported the ordinance. *See* City's Ex. E. The letters express various concerns including the depleting reputation that the neighborhood is family friendly, stable, and quiet. The City maintains that while it is mindful that the amendment may not remedy all concerns raised by community members and may impact individuals who did not contribute to the problem, it is a step in the right direction to curtail the concerns of the community.

In response, Plaintiffs argue that in a neighborhood with a mix of single-family and multi-family homes, the amendment will not have an impact on noise, parking, public drinking, and other problems associated with student housing. The Plaintiffs contend that the amendment does not affect the majority of homes rented to large groups of college students because they are multi-family homes that were grandfathered into the single-family zones. In addition, the Plaintiffs aver that the amendment affects college students who are part-time or graduate students and that there is no evidence that these students are more likely to cause a disturbance. Moreover, Plaintiffs argue that the City has other tools to preserve the residential character of the

Elmhurst and Mount Pleasant neighborhoods and that the City should employ other remedies instead of treating a group of residents differently from another based solely on their educational status. Finally, Plaintiffs maintain that the amendment diminishes the rights of property owners to rent their homes to tenants of their choice.

As previously stated, under the highly deferential minimal scrutiny analysis or "rational basis" review, a statute or ordinance need only be "rationally related to a legitimate state interest." *Kennedy*, 654 A.2d at 712; *see also Mackie*, 936 A.2d at 596 ("if [the court] can conceive of any reasonable basis to justify the classification, [the court] will uphold the statute as constitutional"). Under a rational basis review, a court need not "delve into the Legislature's motives for passing legislation." *Power v. City of Providence*, 582 A.2d 895, 903 (R.I. 1990). Even if a legislature has an improper motive when it passed the legislation, the legislation will pass rational basis review if the court finds any legitimate objective. *Id.* Moreover, "it is wholly irrelevant whether this [c]ourt can rationally conclude that the legislation would resolve a legitimate problem. Rather, the proper inquiry is whether the Generally Assembly rationally could conclude that the legislation would resolve a legitimate problem." *Mackie*, 936 A.2d at 596. "[A] statute or regulation is not lacking in a rational basis simply because it addresses a broader problem in small or incremental stages . . . [the court is] cognizant that when enacting statutes with such far-reaching goals, the General Assembly must start somewhere." *Id.* at 598. Lastly, the party "attacking the rationality of [a] legislative classification [has] the burden to negate *every* conceivable basis which might support it." *Id.* at 597. "[U]nder the rational basis test, we do not require the ordinance to be narrowly tailored. 'If the classification has some 'reasonable basis,' it does not offend the constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Ames*

Rental Prop. Ass'n v. City of Ames, 736 N.W.2d 255, 260 (Iowa 2007) (quoting *United States R.R. Ret. Bd. v. Fritz,* 449 U.S. 166, 175 (1980)). For legislation to be constitutionally infirm under the rational basis test, "the classification must involve '*extreme* degrees of overinclusion and underinclusion in relation to any particular goal.'" *Ames*, 736 N.W.2d at 260 (internal quotation omitted).

Turning to the facts of this case, it is clear that there is a sincere concern from long-term residents within the neighborhoods surrounding Providence College. *See* City's Ex. E. These concerns include an influx of college students that result in loud noises, late night partying, disturbances resulting in increased police presence, littering, public indecency, and traffic control issues. In response to the reported concerns, the City enacted the amendment which made it unlawful for four or more college students to live in a single-family dwelling that is not owner occupied. The purpose of enacting the amendment was to protect the residential character of the neighborhood and to limit population density, congestion, noise, and traffic, which are indeed valid governmental concerns. *See Belle Terre,* 416 U.S. at 9; *Ames,* 736 N.W.2d at 260. Moreover, the purpose of Rhode Island's Zoning Enabling Act is to "protect the public health, safety, and general welfare" of the community by "[p]roviding for a range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected future needs." G.L. 1956 §§ 45-24-29(a)(3) and 45-24-30(a)(2). As such, it is clear that the City had a valid governmental interest and was attempting to address these concerns consistent with their legislative authority.

The more difficult question for this Court is whether the amendment is rationally related to the intended governmental purpose. The City posits that it is common-knowledge that college students have transient lifestyles, as many college students do not live in one apartment or

location for more than a year at a time; thus, it is reasonable to conclude that college students will not reside in an area with the goal of contributing to the well-being and longevity of the local community. Therefore, Defendants assert that it was rational for the City to conclude that the amendment was necessary. The Plaintiffs contend that the amendment does not affect the majority of homes rented to large groups of college students because they are multi-family homes that were grandfathered into the single-family zones. In addition, the Plaintiffs aver that the amendment affects college students who are part-time or graduate students and that there is no evidence that these students are more likely to cause a disturbance.

While there is certainly no doubt that residents in and around the areas surrounding Providence College have experienced a change to their neighborhoods and communities, the Court is skeptical that this amendment will serve its intended purpose and quell the ever-increasing disturbances. As Plaintiffs correctly assert, the ordinance does not address the significant number of multi-family "party houses" located in the same zones, which presumably are the biggest contributors to the ongoing issues. Moreover, the City has failed to articulate the evidence upon which it relies to support the conclusion that limiting the number of college students who can live together in a single-family home will correct the existing problems faced by the families living in the designated areas. *See, e.g., Smith.,* Civ. A. No. 90-7501, 1992 WL 112247 (board adopted ordinance after fact-finding hearings and investigations of complaints determined that large concentration of student tenants change character of neighborhoods and cause problems). Indeed, one would have to assume that four divinity students at the college who are busy pursuing their studies would be far more stable and less likely to contribute to any disturbances than four twentysomethings who have decided to forgo enrollment in any one of the City's universities and instead play in a band, practicing at all hours of the day and night. Under

this amendment, the former would be prohibited from cohabitating in the designated zones while the latter would not. This seems nonsensical.

That said, given the highly deferential standard of review, the City is under no obligation to present *conclusive* evidence that the amendment would fix *all* problems for which it was enacted. As the court in *Ames* observed:

> "[Plaintiff] may be correct that this ordinance will do little to further the City's goals. Nevertheless, it is the City's prerogative to fashion remedies to problems affecting its residents. If the ordinance proves to be ineffective, then the elected city council may change course and amend or repeal it. The court's power to declare a statute or ordinance unconstitutional is tempered by the court's respect for the legislative process. Under the rational basis test, we must generally defer to the city council's legislative judgment. The Supreme Court has said:
>
> > "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.'" 736 N.W.2d at 263 (citing *Vance v. Bradley*, 440 U.S. 93, 97, 99 171, 176 (1979)).

See also, United States v. Carolene Prods. Co., 304 U.S. 144, 153-54 (1938) (if a legislative determination is "at least debatable" the court should uphold it). Accordingly, despite the Court's strong reservations concerning the effectiveness of an ordinance that restricts the number of college students who can reside in single-family homes as opposed to all others, or its ability to address the serious issues confronting communities in and around the Elmhurst neighborhood, it is "at least debatable," and the Court must find that it comports with constitutional requirements. *See Dinan v. Bd. of Zoning Appeals of Town of Stratford*, 595 A.2d 864, 870 (Conn. 1991) (group of college students less likely to become involved in the neighborhood and community in comparison to typical family because short-term living arrangements).

IV

Conclusion

For the above-mentioned reasons, this Court declares the amendment to Providence Zoning Ordinance 2015-47, No. 455, which regulates the use of single-family homes in Providence's R-1A and R-1 (residential) zoning districts, does not offend the equal protection or due process provisions of article I, section 2 of the Rhode Island Constitution and is therefore valid and constitutional. Accordingly, the City's Motion for Summary Judgment is hereby granted and the Plaintiffs' Cross-Motion for Summary Judgment is hereby denied.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Federal Hill Capital, LLC, et al. v. City of Providence, et al.**
CASE NO:	**PC 2016-0808**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**February 12, 2018**
JUSTICE/MAGISTRATE:	**Keough, J.**
ATTORNEYS:	
For Plaintiff:	**Jeffrey L. Levy, Esq.**
For Defendant:	**Megan K. DiSanto, Esq.**