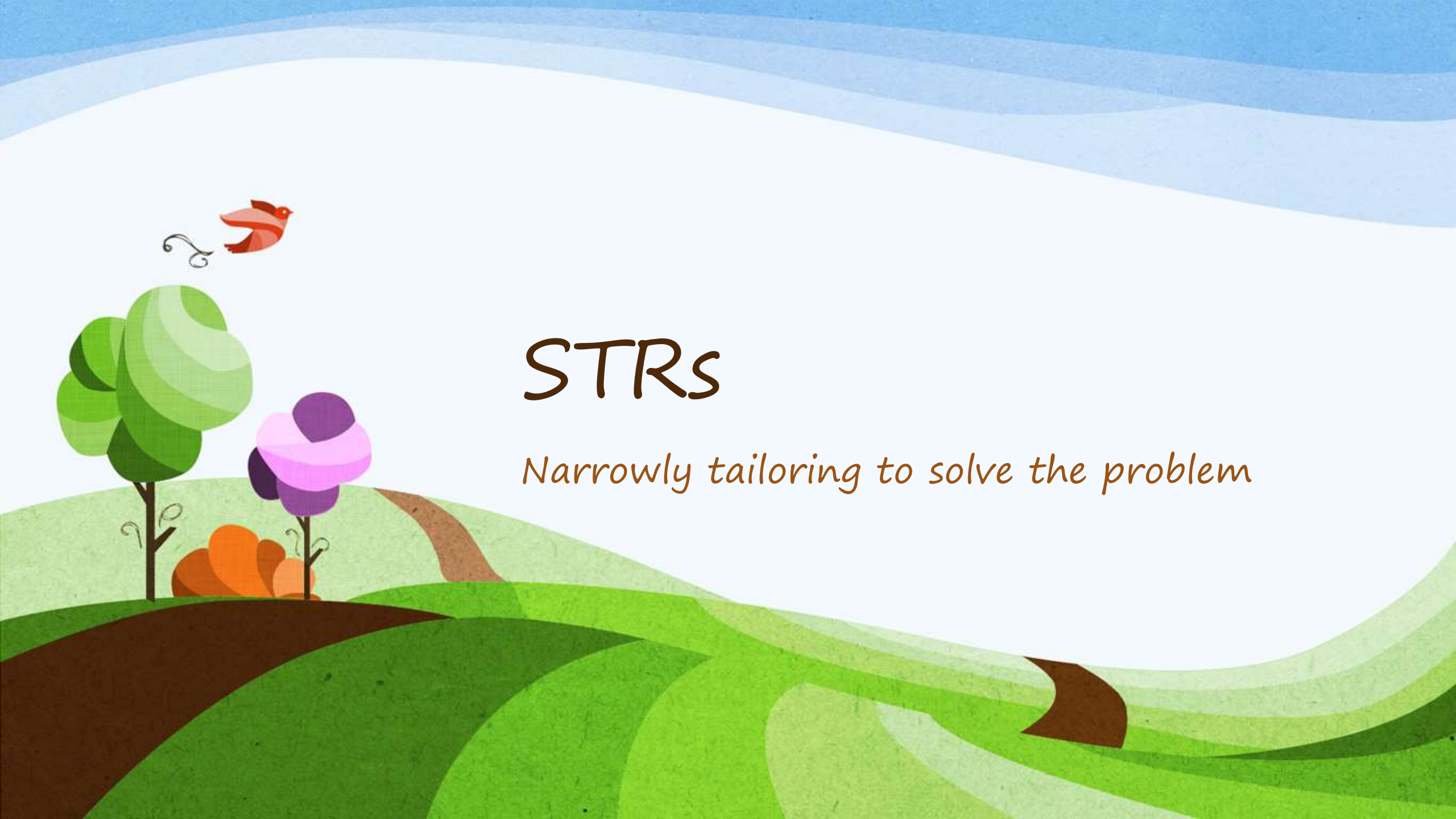




STRs

Narrowly tailoring to solve the problem

DISCLAIMER

IN THE SPIRIT OF TRANSPARENCY:

**AFTER MAKING THE FOLLOWING PRESENTATION,
I WAS INFORMED BY OUR LEGAL COUNSEL THAT
SOME OF THE STATEMENTS/ INTREPRETATIONS
COULD BE CONSTRUED AS A LEGAL OPINION.**

**THE FOLLOWING SHOULD NOT BE UNDERSTOOD
TO BE A LEGAL OPINION OR ANALYSIS.**

DISCLAIMER

**FEEL FREE TO REQUEST AN EXECUTIVE SESSION
IF YOU'D LIKE TO HAVE OUR CITY ATTORNEY
GIVE THEIR OPINION ON THIS TOPIC.**

SUMMARY

- A. What we cannot regulate, enforce, and restrict regarding STRs
- B. “Narrowly tailored” law
- C. Leon Valley specific concerns and issues regarding STRs
- D. PROPOSAL: Group A, Group B, Group C STRs
- E. PROPOSAL: Enforcement Level 1, Level 2, Level 3 regarding STRs

What restrictions are unlawful?

- Outright ban on STRs in area where STRs have historically been able to operate, including sunset provisions for current STRs (“unconstitutionally retroactive”, takings claim) *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Requiring property owner have a homestead exemption in order to operate STR *Zaatari v. City of Austin*
- Requirement that property owner live in Leon Valley if they have an STR in Leon Valley *Hignell-Stark v. City of New Orleans, 46 F.4th 317 (5th Cir. 2022) [Commerce Clause, US Constitution]*
 - Lawsuits filed in Austin after this ruling - Austin still denies non-occupying owners the ability to operate STR
- Prevention of the number of people that can assemble/ gather outside of a residence or the time they may assemble *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Any type of occupancy limitation – either inside of residence or outside residence
- City-wide ban on STRs *

Austin

- Previously prohibited more than 6 people from gathering outside between 7:00 AM and 10:00 PM
- Previously prevented any gathering outside between 10:00 PM and 7:00 AM
- Previously only allowed maximum occupancy as 2 guests per bedroom + 2 extra guests per property
- Previously restricted occupancy to no more than six (6) unrelated adults or ten (10) related adults

Austin

“Will Austin Code continue to enforce STR occupancy limits?”

As a result of this ruling, Austin Code can no longer enforce STR occupancy limits (neither internal nor external of a structure)."

Get information or assistance
Give feedback on our website

Visit Austin
City Directory

f t in ig y

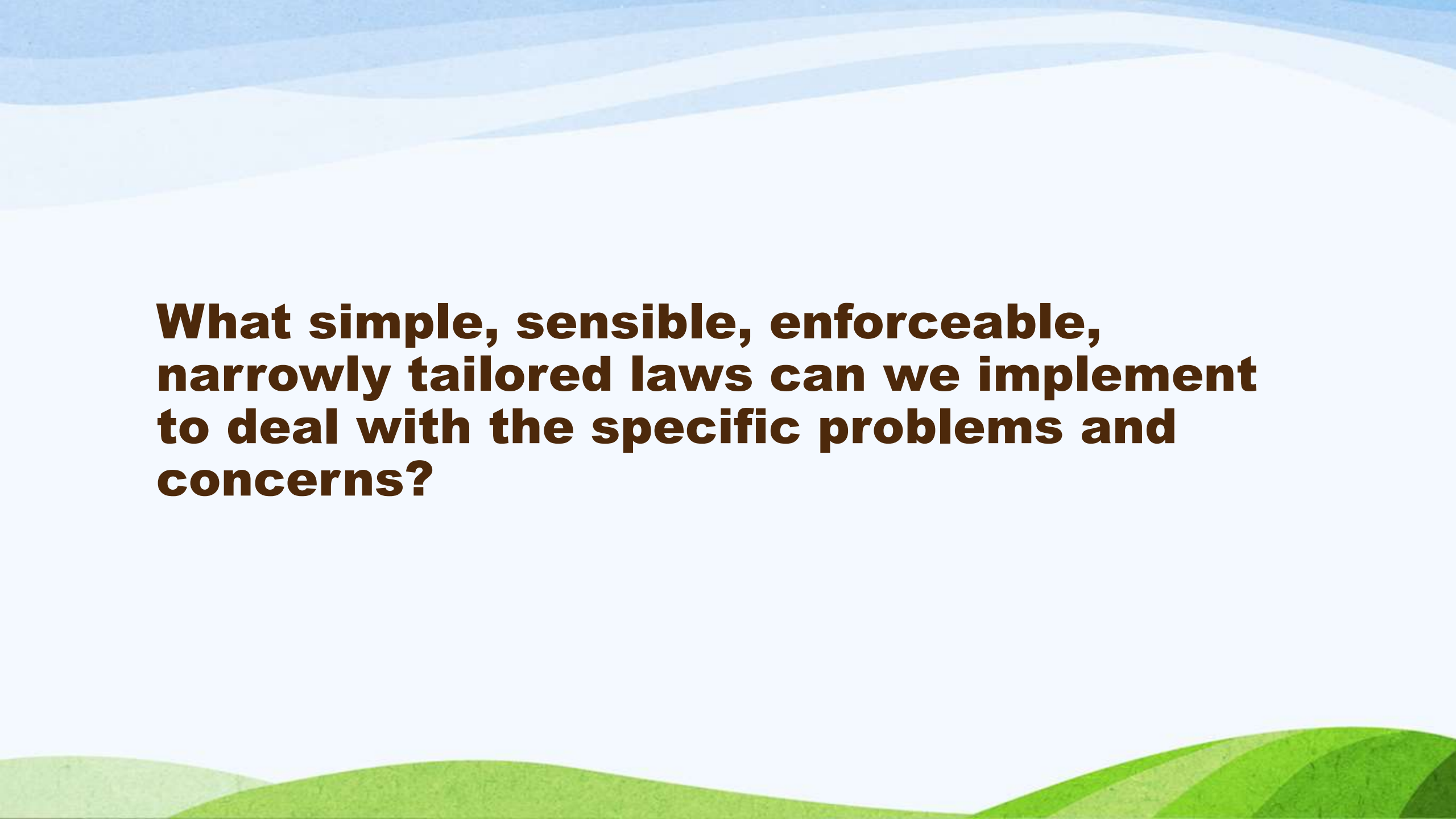
SIX (6)

Why?

- The defendant (municipalities) in the lawsuits failed to show the regulations were NARROWLY TAILORED to ADVANCE A PUBLIC PURPOSE
- Narrowly tailored?
 - Law must be written to specifically accomplish a legitimate, specific, compelling state interest
 - The means chosen to accomplish the government's purpose must be specifically and narrowly framed to accomplish that purpose
 - If not, likely violates 5th and 14th amendment to US Constitution, as well as Article 1, Section 17 of Texas Constitution

Why?

- Regulations violated Texas laws and protections regarding:
 - Equal protection
 - Due course of law
 - Freedom of movement
 - Right to privacy
 - Freedom of assembly
 - Freedom from unreasonable search and seizure



**What simple, sensible, enforceable,
narrowly tailored laws can we implement
to deal with the specific problems and
concerns?**

Specific problems, concerns

- Health and safety of guests, especially when larger number of guests are staying at property
- Welfare related – quality of life for residents that live adjacent to or near the STR property
 - Parking concerns
 - Noise concerns
 - Party concerns

PROPOSAL – Group A

- Voluntary free registration permit for all STRs that advertise or only allow up to 8 guests on their property
 - Voluntary affidavit regarding smoke detectors, carbon monoxide detectors, attestation that there two ways to exit from every sleeping area
 - Voluntarily provide 24-hour contact information to be provided to city in event of emergency
 - Voluntary statement if they live on the premises, off the premises, or a combination thereof

PROPOSAL – Group B

- Implement mandatory registration permit for all STRs that advertise or allow greater than 8 guests on their property
 - Require affidavit regarding smoke detectors, carbon monoxide detectors, statement that there are two ways to exit from every sleeping area
 - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
 - Require property owner identify if they live on the premises, off the premises, or a combination thereof
 - Require 24-hour contact information to be provided to city in event of emergency

PROPOSAL – Group C

- Implement mandatory registration permit and Certificate of Occupancy for all STRs that advertise or allow greater than 12 guests on their property or those that reach “Level 2” of enforcement (discussed later)
 - Fee: Whatever our cost is for building, fire, safety inspections
 - Cert. of Occupancy to verify compliance with building codes, safety codes, fire safety in addition to a plan of action if required (if property owner has reached “Level 2” of enforcement)
 - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
 - Require property owner identify if they live on the premises, off the premises, or a combination thereof
 - Require 24-hour contact information to be provided to city in event of emergency

What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?

- PARTIES, NOISE – Property owner or guest may not use or allow the use of sound equipment, play any instrument, or make any noise that is audible outside of the property line between 9:00 PM and 9:00 AM
- PARTIES – Property owner or guest may not allow consumption of alcohol or any other mind-altering drugs or substances in public view or by minors

What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?

- TRASH – Property owner or guest may not litter or allow littering of any trash, bottles, or belongings in the front yard of the STR property, in any right-of-ways near the property, in street, or on any adjacent properties
- PARKING- Property owner or guest may not park in a manner than limits or blocks ingress or egress to another property, and are limited to parking vehicles on side of street abutting property line in the area directly in front of property

What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?

- ANY OTHERS?

Enforcement – Level 1 of 3

- Warning mailed via certified mail to registered property owner and any other known parties that manage or control property
- Informs of laws, specific nature of violations and recommendations for preventing them in the future, also contains requirements for registration for certain types of properties

Enforcement – Level 2 of 3

- Warning mailed via certified mail must have already been provided to property owner or agent
- Citation either provided to owner or agent, or mailed via certified mail outlining the specific violation
- \$500 fine
- Requirement to register as Type C STR as well as submission of a plan of action that is approved by staff (development?) to obtain certificate of occupancy

Enforcement – Level 3 of 3

- Warning must have been provided and property owner/ agent must have already been cited under “Level 2 Enforcement”
- Citation and cease and desist provided to owner or agent via certified mail and given in-person, if possible - outlining the specific violation
- \$500 fine
- Revocation of Certificate of Occupancy, may be eligible to re-apply as Type C STR no sooner than in 365 days
- Requirement to submit and have approved (development director?) a detailed plan of action prior to issuance of Type C STR certificate of occupancy outlining the past violations and how they will be mitigated in the future

We don't want to be New Braunfels...

- FEDERAL case
- December 13, 2022 - Texas Public Policy Foundation has taken over the lawsuit, enjoining Plaintiffs that have filed suit against New Braunfels as they appeal
- December 16, 2022 - The Pacific Legal Foundation, Manhattan Institute, and Reason Foundation filed an amicus brief arguing in favor of the homeowners suing the city of New Braunfels
- December 20, 2022 - CATO Institute files amicus brief arguing in favor of the homeowners suing the City of New Braunfels
- December 20, 2022 Institute for Justice (IJ) filed an amicus brief arguing in favor of the homeowners in New Braunfels who have sued the City of New Braunfels regarding the STR ordinance

We don't want to be New Braunfels...

No. 22-50908

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO
MARFIL; NAOMI MARFIL; KOREY A. RHOLACK; DANIEL OLVEDA;
DOUGLAS WAYNE MATHES,

Plaintiffs-Appellants,

v.

CITY OF NEW BRAUNFELS, TEXAS,

Defendant-Appellee

On Appeal from the United States District Court
for the Western District of Texas, Waco Division

APPELLANTS' BRIEF

ROBERT HENNEKE
rhenneke@texaspolicy.com
CHANCE WELDON
cweldon@texaspolicy.com
CHRISTIAN TOWNSEND
ctownsend@texaspolicy.com
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

CASE No. 22-50908

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO
NAOMI MARFIL; KOREY A. RHOLACK; DANIEL OLVEDA;
DOUGLAS WAYNE MATHES,

Plaintiffs-Appellants,

v.

CITY OF NEW BRAUNFELS, TEXAS,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Texas, Waco Division

BRIEF OF THE CATO INSTITUTE AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

Clerk M. Neely III
Jay R. Schweikart
Counsel of Record
CATO INSTITUTE
100 Mass. Ave., N.W.
Washington, DC 20001
(202) 216-1461
jschweikart@cato.org

2022

No. 22-50908

In the United States Court of Appeals for the Fifth Circuit

RAFAEL MARFIL, VERGE PRODUCTIONS,
ENRICO MARFIL, NAOMI MARFIL, KOREY A. R.
DANIEL OLVEDA, AND DOUGLAS WAYNE M.

Plaintiffs-

v.

CITY OF NEW BRAUNFELS, TEXAS,

Defendant-

On Appeal from the United States District Co
for the Western District of Texas, Waco Divisi
No. 6:20-cv-002484-ADA-JCM
Alan D. Albright, Judge Presiding

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF PLAINTIFFS-APPELLANTS

Arif Panju
INSTITUTE FOR JUSTICE
816 Congress Avenue, Ste 900
Austin, Texas 78701
(512) 480-5939
apanju@ij.org

Elizabeth Seng
INSTITUTE FOR JUSTICE
901 N. Globe R.
Arlington, Virg
(703) 682-9329
hsenn@ij.org

Counsel for Amicus Curiae

No. 22-50908

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, LLC, ENRICO MARFIL,
NAOMI MARFIL, KOREY A. RHOLACK, DANIEL OLVEDA, and
DOUGLAS WAYNE MATHES

Plaintiffs - Appellants,

v.

CITY OF NEW BRAUNFELS, TEXAS,
Defendant - Appellant.

Appeal from the United States District Court
for the Western District of Texas, Waco Division
No. 6:20-CV-248 (Hon. Alan D. Albright)

AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, MANHATTAN INSTITUTE, AND REASON FOUNDATION IN SUPPORT OF APPELLANTS AND REVERSAL

ILYA SHAPIRO
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan-institute.org
MANUEL KLAUSNER
Legal Advisor & Trustee,
REASON FOUNDATION
5538 Red Oak Drive
Los Angeles, CA 90068

SAM SPIEGELMAN
Counsel of Record
BRIAN T. HODGES
PACIFIC LEGAL FOUNDATION
255 S. King Street, Suite 800
Seattle, WA 98104
(916) 419-7111
SSpiegelman@pacificlegal.org
BHodges@pacificlegal.org

Attorneys for Amici Curiae