

NOTE

Airbnb to AirDND: The Dormant Commerce Clause as a “Do Not Disturb” Sign Against Regulatory Intrusions on the Short-Term Rental Market

*Sara E. Kim**

ABSTRACT

Banning or significantly restricting short-term rental properties (“STRs”) has become a common strategy in addressing the housing crisis for local lawmakers around the United States. As Airbnb rapidly grew throughout the 2010s, STRs became a global phenomenon. They soon began to monopolize the real estate market, taking homes away from local residents. With the ever-enduring challenge of housing affordability as their backdrop, local municipalities began tightly limiting or completely banning STRs. These regulations, however, significantly curb individuals’ rights to property and travel. Simultaneously, STR regulations have failed to effectively address the housing crisis and deliver on the promises of local lawmakers. To successfully balance the rights to property and travel against the right to housing, this Note argues that certain STR regulations that impose operational restrictions are unconstitutional under the Dormant Commerce Clause and that the remaining regulatory scheme should be accompanied by a government-subsidized home share program. The resulting scheme will allow property owners to more freely utilize their private

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properties as STRs while presenting a revenue-generating alternative, preventing governments from inhibiting travel, and providing a method for direct output of affordable housing.

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INTRODUCTION

The housing crisis is an unsolved, complex problem in metropolitan centers across the United States.¹ In 2024, the estimated number of

¹ See Balakrishnan Rajagopal (Special Rapporteur on the Right to Adequate Housing), *Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context*, ¶ 1, U.N. Doc. A/78/192 (Aug. 15, 2023).

individuals experiencing homelessness in the United States rose 18.1% to 771,480.² Households with worst-case housing needs—defined as renter households earning below the area median income that, without government assistance, spend more than half their income on rent, live in “severely inadequate conditions,” or both—numbered 8.46 million nationwide in 2023.³ These startling figures reveal a formidable housing crisis, and local governments now face one of the worst housing crises to date. Although many institutional factors contribute to the housing crisis,⁴ increasing blame has been placed on short-term rental (“STR”) platforms such as Airbnb, particularly in high-tourism and high-travel cities.⁵ Local governments have thus attempted to contain the growth of STRs to reduce the housing crisis.⁶

STR regulations come in many forms, such as licensing, registration, and tax requirements.⁷ Certain STR regulations target the internal affairs of STRs, imposing operational restrictions that significantly curtail a property owner’s free use of their property. Such operational restrictions regulate the number of people who may occupy an STR, the number of nights an owner may rent out a property as an STR, and the permanent residence of the STR owner and operator.⁸ Although STRs likely merit some amount of regulation due to housing needs, neighborhood preservation, and public safety, this Note argues that operational restrictions on STRs are unconstitutional under the Dormant Commerce Clause and that permissible regulations should coexist with government-funded home share programs to better balance the rights to property, travel, and housing.

To develop this argument, the Note proceeds as follows. Part I explains how STRs, particularly through Airbnb, became a primary form of vacation lodging and productive use of property. Part II presents the rights at stake in STR regulations—housing rights, property rights, and travel rights—and the conflicts between them. Part III discusses the current state of STR regulations in American cities and STR owners’ legal battles against them, with a focus on New York City and San Francisco. Part IV first presents the Dormant Commerce Clause as a legal strategy

² TANYA DE SOUSA & MEGHAN HENRY, U.S. DEP’T OF HOUS. & URB. DEV., THE 2024 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 2–3 (2024).

³ OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URB. DEV., WORST CASE HOUSING NEEDS: 2025 REPORT TO CONGRESS, at vii (2025).

⁴ See Rajagopal, *supra* note 1, ¶ 3.

⁵ See Tatum Joerndt, *The Role of Airbnbs in America’s Housing Crisis*, LINCOLN MEM’L UNIV. L. REV. (Feb. 5, 2024), <https://lmlawreview.scholasticahq.com/post/2332-the-role-of-airbnbs-in-america-s-housing-crisis> [<https://perma.cc/9HEH-VBFT>].

⁶ See *infra* Part III.

⁷ See, e.g., N.Y.C., N.Y., ADMIN. CODE § 26-3102 (2026); L.A., CAL., MUN. CODE § 12.22(A) (32) (2025); S.F., CAL., ADMIN. CODE § 41A.5(g) (2025).

⁸ See sources cited *supra* note 7.

to invalidate operational restrictions on STRs. Part IV then proposes a government-subsidized home sharing program that creates affordable housing while preserving STR units and that provides an alternative method for property owners to utilize their property.

I. AN INTRODUCTION TO STRS AND AIRBNB

Each municipality defines STRs differently, but the primary definition of an STR is a paid, temporary use of either the whole or a portion of a dwelling or residential unit for fewer than thirty days.⁹ Prior to STRs, hotels, motels, and resorts dominated the hospitality and travel industry.¹⁰ Through internet platforms such as Airbnb, STRs revolutionized travel and introduced new forms of vacation lodging that proved to be tremendously popular.¹¹ They are now a natural alternative to hotels, and for some, the primary form of vacation lodging.¹²

Airbnb emerged in the 2010s as a disruptor in the travel industry.¹³ Although other STR platforms exist, Airbnb provides unmatched accessibility to leisure and experiential travel.¹⁴ As of spring 2024, Airbnb had 7.7 million listings at a wide range of price points.¹⁵ Airbnb's massive portfolio boasts one-of-a-kind properties, such as yurts, houseboats, and a replica of the iconic balloon house featured in Pixar's *Up*.¹⁶ These unique properties as well as Airbnb's more ordinary listings, nestled right in the middle of lived-in neighborhoods, stand in sharp contrast to the more conventional commercial hotels.¹⁷ Furthermore, Airbnb hosts can provide personalized knowledge of travel destinations, giving travelers a more authentic and community-centric experience.¹⁸

⁹ See, e.g., N.Y.C., N.Y., ADMIN. CODE § 26-3101 (2026); L.A., CAL., MUN. CODE § 12.22(A) (32)(b)(11) (2025); S.F., CAL., ADMIN. CODE § 41A.4 (2025).

¹⁰ See *Airbnb and the Future of Hostelry in the US*, APPLE MAG. (Feb. 24, 2023), <https://apple-magazine.com/airbnb-and-the-future-of-hostelry-in-us/> [<https://perma.cc/7XS7-MS6H>].

¹¹ See *The Inside Story Behind the Unlikely Rise of Airbnb*, KNOWLEDGE AT WHARTON (Apr. 26, 2017), <https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/the-inside-story-behind-the-unlikely-rise-of-airbnb/> [<https://perma.cc/J9TY-PUJ6>].

¹² See APPLE MAG., *supra* note 10.

¹³ See KNOWLEDGE AT WHARTON, *supra* note 11.

¹⁴ See *The Airbnb Alternatives Worth Considering for Your Property*, GUESTREADY (Sep. 12, 2025), <https://www.guestready.com/blog/airbnb-alternatives/> [<https://perma.cc/KM3C-33GP>]; Nathan Diller, *Airbnb vs. Vrbo: Which Vacation Rental Platform Is Right for You?*, USA TODAY (June 7, 2024, at 09:52 ET), <https://www.usatoday.com/story/travel/2024/06/06/airbnb-vrbo-vacation-rentals/73985412007/> [<https://perma.cc/24XJ-LPWR>].

¹⁵ Diller, *supra* note 14.

¹⁶ See *id.*

¹⁷ See *Airbnb: The Idea That Caught Fire in the Travel Industry*, MARCOMCENTRAL (Mar. 26, 2024), <https://marcom.com/airbnb-the-idea-that-caught-fire-in-the-travel-industry/> [<https://perma.cc/D62X-2ZX9>].

¹⁸ See *id.*

Despite notable success, Airbnb comes from humble beginnings dating back to 2007.¹⁹ Two of the founders of Airbnb, who were once roommates, rented out space in their apartment to afford their rent in the midst of San Francisco's already-brewing housing crisis.²⁰ Many Airbnb hosts use Airbnb for that exact purpose: to avoid being priced out of their homes by rising rents. Ruth Fowler, for example, uses Airbnb to host travelers in the spare bedroom of her L.A. apartment ten days out of the month to pay rent.²¹ Others host not out of sheer necessity but for additional income or as their full-time career. Rowan Hughes, for instance, hosts on Airbnb to make extra spending money from her spare bedroom.²² In contrast, Jamie Inlow manages 129 STR properties as her full-time career.²³ Her STR portfolio generated \$2 million in revenue in 2022 on Airbnb and other platforms, earning her roughly \$150,000 per year.²⁴ Airbnb can therefore satisfy the goals of both the host and the traveler, but not without consequences.

As tourists travel in and out of cities and neighborhoods, staying in STRs, they change both the physical and economic landscapes of their travel destinations.²⁵ Major cities have employed increasingly stringent regulatory schemes in hopes of mitigating the consequences of STRs in their local communities. But these regulations overburden multiple rights.

II. CONFLICTING RIGHTS AT STAKE: THE RIGHT TO HOUSING VS. THE RIGHTS TO PROPERTY AND TRAVEL

STR regulations affect critical rights: the rights to housing, property, and travel. This Part discusses the prevalence of the right to housing in American law and how STRs affect the housing crisis; the constitutional origins of the right to property and the exercise of this right through STRs; and the development of the right to travel and STRs' impact on this right.

¹⁹ See KNOWLEDGE AT WHARTON, *supra* note 11.

²⁰ See *id.*

²¹ See Ruth Fowler, *The Reluctant Airbnb Host: Why I Rent My Spare Bedroom to Pay My Own Rent*, GUARDIAN (Aug. 1, 2017, at 07:00 ET), <https://www.theguardian.com/technology/2017/aug/01/airbnb-host-rent-housing-crisis-los-angeles> [<https://perma.cc/Y2WT-CXA8>].

²² See Harriet Sherwood, *How Airbnb Took Over the World*, GUARDIAN (May 5, 2019, at 04:00 ET), <https://www.theguardian.com/technology/2019/may/05/airbnb-homelessness-renting-housing-accommodation-social-policy-cities-travel-leisure> [<https://perma.cc/9CEB-7H4W>].

²³ Megan Sauer, *32-Year-Old Turned Airbnb Rental into a \$205,000-a-Year Side Hustle—Here's a 'Large Part' of What Made It Successful*, CNBC: MAKE IT (Feb. 26, 2024, at 12:08 ET), <https://www.cnbc.com/2023/06/28/jamie-inlow-how-i-built-airbnb-rental-into-six-figure-side-hustle.html> [<https://perma.cc/BM6R-9XWT>].

²⁴ *Id.*

²⁵ See Allyson E. Gold, *Community Consequences of Airbnb*, 94 WASH. L. REV. 1577, 1588–97 (2019).

A. *The Right to Housing*

The U.S. Constitution does not recognize a right to housing,²⁶ but the right pervades policy, legislation, and funding decisions. In 1948, the United States signed the Universal Declaration of Human Rights,²⁷ which explicitly recognizes housing as a human right.²⁸ Twenty years later, Congress enacted the Fair Housing Act²⁹ as part of the Civil Rights Act of 1968,³⁰ demonstrating the federal government's commitment to housing access. Standing for the proposition that race, national origin, sex, and other identity characteristics provide no grounds for the denial of housing,³¹ the Fair Housing Act declares that “[i]t is the policy of the United States to provide . . . for fair housing throughout the [nation].”³² Governments at all levels—federal, state, and local—consistently reinforce this principle by actively combatting the ongoing housing crisis.³³

The impact of STRs on housing affordability is a product of supply and demand. Property owners, seeking to generate revenue, place their properties on STR platforms such as Airbnb for travelers and temporary renters, removing housing options from local markets.³⁴ Consequently, there are fewer properties available for long-term housing.³⁵

²⁶ See Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 251–52 (2015) (“The human right to housing . . . establishes that every person has a right to adequate housing and to the continuous improvement of living conditions. The right is not a binding international legal obligation in America and the right is not explicit in the U.S. Constitution.” (footnote omitted)).

²⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁸ *Id.* art. 25; see Eric Tars, *Housing as a Human Right*, in NAT’L LOW INCOME HOUS. COAL., 2020 ADVOCATE’S GUIDE 1–15 (2020).

²⁹ 42 U.S.C. §§ 3601–3631.

³⁰ Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended in scattered sections of 18, 25, 28, and 42 U.S.C.).

³¹ See 42 U.S.C. § 3604.

³² *Id.* § 3601.

³³ See, e.g., Press Release, U.S. Dep’t of Hous. & Urb. Dev., Federal Government Announces Significant Efforts to Reduce Homelessness (Dec. 27, 2024), <https://archives.hud.gov/news/2024/pr24-326.cfm> [<https://perma.cc/3RCS-N447>]; Governor Hochul Proposes New Initiatives to Address the Housing Crisis and Make Rent and Mortgages More Affordable, N.Y. ST. HOMES & CMTY. RENEWAL (Jan. 14, 2025), <https://hcr.ny.gov/news/governor-hochul-proposes-new-initiatives-address-housing-crisis-and-make-rent-and-mortgages> [<https://perma.cc/3PLU-4GQ2>]; *Housing Accountability Unit’s Efforts Lead to San Francisco’s Progress in Removing Barriers to Housing Production*, CAL. DEP’T OF HOUS. & CMTY. DEV. (Aug. 2, 2024), <https://www.hcd.ca.gov/about-hcd/newsroom/housing-accountability-units-efforts-lead-to-san-franciscos-progress-removing-barriers-to-housing-production> [<https://perma.cc/8SRJ-RGOY>]; *infra* Section III.A.

³⁴ See Gary Barker, *The Airbnb Effect on Housing and Rent*, FORBES (Dec. 10, 2021, at 09:34 ET), <https://www.forbes.com/sites/garybarker/2020/02/21/the-airbnb-effect-on-housing-and-rent/> [<https://perma.cc/9PCS-78A4>] (“Airbnb is having a detrimental impact on housing stock as it encourages landlords to move their properties out . . . of the long-term rental and for-sale markets and into the short-term rental market.”).

³⁵ See *id.*

Lower supply and higher demand thus leads to increased housing costs.³⁶ In Boston, for example, areas with the greatest ratio of Airbnb listings to total housing units were associated with a rent increase of 3.1%.³⁷ Based on the average rent in Boston, a 3.1% rent increase can mean an increase of up to ninety-three dollars per month.³⁸ In New York City, local residents paid an additional \$616 million in rent in 2016 because of Airbnb.³⁹ In San Francisco, households with incomes ranging from \$50,000 to \$75,000 faced significantly increased rent in 2019 due to the presence of Airbnb listings.⁴⁰ These alarming findings set local governments ablaze in their regulatory initiatives against STRs.⁴¹

B. *The Right to Property*

Another right affected by STR regulations is the right to property, found in the Fifth Amendment of the Constitution: “nor shall private property be taken for public use, without just compensation.”⁴² This portion of the Fifth Amendment, widely known as the Takings Clause,⁴³ was written “to bar [the] Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”⁴⁴ The Fifth Amendment thus protects private property and an owner’s control of their property from governmental interference.

As property law developed, the right to property was described metaphorically as a “bundle of sticks” to denote the aggregation of several interrelated rights.⁴⁵ These include the right to possess, use, and

³⁶ See Kyle Barron, Edward Kung & Davide Proserpio, *Research: When Airbnb Listings in a City Increase, So Do Rent Prices*, HARV. BUS. REV. (Apr. 17, 2019), <https://hbr.org/2019/04/research-when-airbnb-listings-in-a-city-increase-so-do-rent-prices> [<https://perma.cc/B4D9-MTMF>].

³⁷ Keren Horn & Mark Merante, *Is Home Sharing Driving Up Rents? Evidence from Airbnb in Boston*, 38 J. HOUS. ECON. 14, 15 (2017).

³⁸ *Id.*

³⁹ Press Release, N.Y.C. Comptroller, Comptroller Stringer Report: NYC Renters Paid an Additional \$616 Million in 2016 Due to Airbnb (May 3, 2018), <https://comptroller.nyc.gov/newsroom/comptroller-stringer-report-nyc-renters-paid-an-additional-616-million-in-2016-due-to-airbnb/> [<https://perma.cc/Y7E8-92MM>] (“Average monthly rents went up in [certain] neighborhoods by \$398 and \$488 . . . of which \$86 and \$105 per month could be attributed to Airbnb’s exponential growth.”).

⁴⁰ See Dongkeun Hur, Seonjin Lee & Hany Kim, *The Impact of Airbnb on Long-Term Rental Markets in San Francisco: A Geospatial Analysis Using Multiscale Geographically Weighted Regression*, INT’L J. GEO-INFO., Aug. 23, 2024, at 1, 14.

⁴¹ See *infra* Section III.A.

⁴² U.S. CONST. amend. V.

⁴³ See Denise R. Johnson, Lecture, *Reflections on the Bundle of Rights*, 32 VT. L. REV. 247, 257 (2007).

⁴⁴ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

⁴⁵ *Johnson, supra* note 43, at 252–53; *United States v. Craft*, 535 U.S. 274, 278 (2002).

manage property; the right to exclude persons from property; and the right to the income generated from property.⁴⁶

Operating private property as an STR implicates multiple essential sticks in the bundle. When STR owners maintain their properties as STRs, they productively manage and use their properties. When STR owners accept guests' reservations, they exclude all others except for their short-term guests. When STR owners accept their guests' payments, they receive income generated from their property. Therefore, STR maintenance and operations are well within the rights of STR owners.

C. *The Right to Travel*

Although not explicitly articulated in the Constitution, the Supreme Court has long interpreted and recognized the right to travel under key constitutional provisions.⁴⁷ In 1871, the Supreme Court identified the Privileges and Immunities Clause⁴⁸ as a constitutional source of the right to travel in *Ward v. Maryland*,⁴⁹ specifically for the purposes of engaging in business and holding property.⁵⁰ Additionally, in *Kent v. Dulles*,⁵¹ the Supreme Court held that “[t]he right to travel is a part of the ‘liberty’ of which [a] citizen cannot be deprived without due process of law under the Fifth Amendment.”⁵² The Civil Rights Act of 1964⁵³ further solidified the right to travel by prohibiting discrimination in places of public accommodation that are essential for travel, including places of lodging, restaurants, and entertainment venues.⁵⁴ The Civil Rights Act of 1964

⁴⁶ See, e.g., Johnson, *supra* note 43, at 252–53; *Dickman v. Comm’r*, 465 U.S. 330, 336 (1984); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979); see also *Craft*, 535 U.S. at 278–80 (explaining that tenants in common—individuals who jointly own property—have “rights in [their] property, including the right to use the property, to exclude third parties from it, and to receive a portion of any income produced from it”). *Craft* acknowledged that the right to income generated from private property as granted by Michigan law is a valid stick in the bundle of property rights. *Id.*

⁴⁷ See Duane W. Schroeder, Comment, *The Right to Travel: In Search of a Constitutional Source*, 55 NEB. L. REV. 117, 117 (1975).

⁴⁸ U.S. CONST. art. IV, § 2, cl. 1 (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”).

⁴⁹ 79 U.S. (12 Wall.) 418 (1871).

⁵⁰ See *id.* at 430 (“[T]he [Privileges and Immunities Clause] plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State . . . [to engage] in lawful commerce, trade, or business without molestation; to acquire personal property; [and] to take and hold real estate”); see also *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869) (“It was undoubtedly the object of the [Privileges and Immunities Clause] . . . [to give citizens] the right of free ingress into other States, and egress from them”); *Saenz v. Roe*, 526 U.S. 489, 501 (1999) (“[T]he right to travel is . . . expressly protected by the text of the Constitution.”).

⁵¹ 357 U.S. 116 (1958).

⁵² *Id.* at 125.

⁵³ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

⁵⁴ See 42 U.S.C. § 2000a.

thus protects the right to travel for all persons regardless of race, ethnicity, and religion.⁵⁵

When Airbnb popularized STRs in the 2010s, it further secured the right to travel by making travel more affordable, flexible, and feasible. STRs are typically inexpensive compared to hotels, allowing people to travel more cost-effectively. In 2018, a hotel room averaged about \$300 per night in New York City, while an Airbnb room averaged about \$187 per night.⁵⁶ Travelers can also save on meal costs by staying at STRs, which typically come with kitchen access and permit renters to cook some of their meals instead of eating out.⁵⁷ Post-COVID-19, Airbnb prices remain affordable compared to hotel rooms in many travel contexts.⁵⁸ By enhancing travel affordability and flexibility, STRs allow more individuals to exercise their right to travel.

STRs thus create cognizable tensions between the right to housing and the rights to property and travel. STRs undoubtedly contribute to the housing crisis but are tremendously beneficial to productive property utilization and affordable travel. In recent years, many local governments have explicitly favored housing rights over property and travel rights through their STR regulations.⁵⁹ The next Part discusses the breadth of those regulations, the regulations' impact—or lack thereof—on the housing crisis, and the legal battles that followed the enactment of the regulations.

III. CURRENT REGULATIONS ON STRS: THEIR PURPORTED GOALS AND SHORTCOMINGS

Among many municipal STR regulations, New York's and San Francisco's regulatory schemes are especially demanding.⁶⁰ Both cities

⁵⁵ See *id.*; *United States v. Guest*, 383 U.S. 745, 749, 758–59 (1966) (referring to the right to travel as a protected civil right and explaining settled caselaw holding that “the federal commerce power authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce”).

⁵⁶ See Niall McCarthy, *Is Airbnb Really Cheaper than a Hotel Room in the World's Major Cities?*, *FORBES* (Jan. 23, 2018, at 08:28 ET), <https://www.forbes.com/sites/niallmccarthy/2018/01/23/is-airbnb-really-cheaper-than-a-hotel-room-in-the-worlds-major-cities-infographic/> [https://perma.cc/H6K9-23GS].

⁵⁷ See *id.*

⁵⁸ See Mike Snider, *Are Airbnbs Cheaper than Hotels? Depends on Your Trip Details, Travel Site Survey Says*, *USA TODAY* (Sep. 21, 2023, at 17:49 ET), <https://www.usatoday.com/story/travel/2023/09/21/cost-hotels-airbnb-vrbo-stays/70919800007/> [https://perma.cc/MC7W-HJVS] (finding that entire STR units are more affordable than hotel rooms if rented out for a travel group of at least five individuals or for longer stays and that STR private rooms within a home are more affordable than hotel rooms if traveling alone).

⁵⁹ See *infra* Part II.

⁶⁰ See Laura Powell, *All Over the Map: The Short-Term Rental Landscape in the United States*, *HOSP. INV.* (Feb. 19, 2024, at 08:00 ET), <https://www.hospitalityinvestor.com/americas/all-over-map-short-term-rental-landscape-united-states> [https://perma.cc/3N22-KSF6] (“In toughening up its

attempted to respond to the housing crisis using STR regulation.⁶¹ This Part examines STR regulations in New York City and San Francisco, their effects on the housing crisis, and STR operators' and platforms' legal responses.

A. *New York City and San Francisco: Near De Facto Bans on STRs*

Although many cities impose strict regulations on STRs,⁶² New York City and San Francisco have been especially active in curbing the presence of STRs in their neighborhoods.⁶³ On September 5, 2023, Local Law 18 (“LL18”), one of the most stringent STR regulatory schemes implemented by an American city, went into effect in New York City.⁶⁴ Among a number of provisions, including run-of-the-mill zoning and safety requirements,⁶⁵ LL18 enacted a near de facto ban on STRs.⁶⁶ For each STR property,⁶⁷ operators must apply for registration with the city.⁶⁸ The complex application requires a nonrefundable \$145 fee, a detailed description of the STR premises, a certification of compliance, and a class verification of the building within which the potential STR unit is located.⁶⁹ Once a unit is finally approved, LL18 imposes its toughest restrictions: The host, who must be a permanent occupant of the STR, must be present during guests' stays, and no more than two guests may occupy the STR during any given stay.⁷⁰

regulations and enforcement efforts, New York is following in the footsteps of other large cities in the United States. . . . San Francisco, the birthplace of Airbnb, was one of the early adopters of STR regulations.”).

⁶¹ See *Requiring Registration for Short-Term Rentals: Hearing on Introduction No. 2309 Before the Comm. on Hous. & Bldgs.*, N.Y.C. Council, 2018–2021 Sess. 6 (N.Y.C. 2021) (statement of Ben Kallos, Member, N.Y.C. Council) [hereinafter *STR Hearing*]; Adam Brinklow, *Cities Are Scrambling to Blunt Airbnb's Impact. San Francisco Actually Got This One Right*, FRISC (Sep. 28, 2023), <https://thefrisc.com/as-cities-scramble-to-rein-in-airbnb-san-francisco-actually-got-this-one-right-541e440ae294/> [<https://perma.cc/XLU4-5VZS>].

⁶² See MIA.-DADE COUNTY, FLA., CODE § 33-28 (2025) (requiring STR operators to reside in their STR properties for at least six months per calendar year); BALT. CITY, MD., CODE art. 15, §§ 48-1(g), 48-7(a)(1) (2026) (requiring STR properties to be the property owners' primary residence); L.A. COUNTY, CAL., CODE § 796.040(D) (2026) (allowing only ninety days of unhosted stays per calendar year, during which the primary resident may be absent from the STR property).

⁶³ See Powell, *supra* note 60.

⁶⁴ See N.Y.C., N.Y., Local Law 2022/018 (Jan. 9, 2022) (codified at N.Y.C., N.Y., ADMIN. CODE §§ 26-3101 to 26-3105 (2026)).

⁶⁵ See N.Y.C., N.Y., ADMIN. CODE § 26-3102(c)(3)–(4) (2026).

⁶⁶ See Dennis Schaal, *Banned in NYC: Airbnb One Year Later*, SKIFT (Sep. 1, 2024), <https://skift.com/2024/09/01/banned-in-nyc-airbnb-1-year-later/> [<https://perma.cc/L5EJ-W3KR>].

⁶⁷ See N.Y.C., N.Y., ADMIN. CODE § 26-3101 (2026).

⁶⁸ See *id.* § 26-3102(a).

⁶⁹ See *id.* § 26-3102(a)–(c); Schaal, *supra* note 66.

⁷⁰ See N.Y.C., N.Y., ADMIN. CODE § 26-3102(c)(1) (2026); *Stay in the Know*, N.Y.C. OFF. OF SPECIAL ENF'T, <https://www.nyc.gov/site/specialenforcement/stay-in-the-know/information-for-hosts.page> [<https://perma.cc/ZZU2-S72Z>] (last visited Dec. 23, 2025).

The permanent residence requirement significantly interferes with property owners' ability to generate revenue from their properties while vacating said properties, a critical function and appeal of STRs⁷¹ and an important stick in the bundle of property rights.⁷² The other key provision — the two-guest limit — is not expressly articulated in LL18 but is the result of multiple New York City housing regulations interpreted in combination with LL18.⁷³ As a consequence, families and groups with more than two individuals no longer have the option to stay in STRs in New York City, often a cost-effective option for such travelers.⁷⁴

Once a property owner finally becomes an STR host in New York City, they must use a booking platform that can verify their registration with the government.⁷⁵ This means that STR platforms such as Airbnb cannot maintain listings or process transactions for STRs not properly registered with the city.⁷⁶ The city's restrictive regulations have forced New Yorkers to turn to Facebook, Craigslist, and Instagram to advertise their homes in hopes of filling rent gaps while they are away.⁷⁷ As a result, Airbnb listings for stays of fewer than thirty days have decreased by over eighty percent since August 2023.⁷⁸ In a city where there were once 22,200 STRs listed, there were only about 3,700 as of April 2024.⁷⁹

San Francisco, like New York City, has a near de facto ban on STRs. In fact, San Francisco had a complete ban on STRs prior to 2015, but the city began permitting a limited number of STRs in February 2015.⁸⁰ San Francisco also requires registration and the presence of primary residents during most short-term rental periods.⁸¹ The primary resident must live in the STR unit for at least 275 nights per year and may be away from the unit while short-term guests are present for a maximum

⁷¹ See Josh Bivens, *The Economic Costs and Benefits of Airbnb*, ECON. POL'Y INST. (Mar. 26, 2019), <https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policymakers-to-let-airbnb-bypass-tax-or-regulatory-obligations/> [https://perma.cc/ER46-KLPP].

⁷² See *United States v. Craft*, 535 U.S. 274, 278–80 (2002).

⁷³ See N.Y.C. OFF. OF SPECIAL ENF'T, *supra* note 70.

⁷⁴ See *id.*; *supra* note 58 and accompanying text.

⁷⁵ See N.Y.C., N.Y., ADMIN. CODE § 26-3201 (2026).

⁷⁶ See *Short-Term Rental Registration*, NYC311, <https://portal.311.nyc.gov/article/?kanumber=KA-03559> [https://perma.cc/S98L-UNGP] (last visited Dec. 23, 2025).

⁷⁷ See Zoe Rosenberg, 'Must Love Dogs and Rude Roommates': *The Scramble to Get Around New York's Airbnb Crackdown*, GUARDIAN (Apr. 25, 2024, at 09:00 ET), <https://www.theguardian.com/us-news/2024/apr/25/new-york-airbnb-short-term-rentals-sublets> [https://perma.cc/ANP3-ES4M].

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See *FAQs on Short-Term Rentals*, S.F. PLAN., <https://sfplanning.org/str/faqs-short-term-rentals> [https://perma.cc/5WGN-G9SE] (last visited Dec. 23, 2025).

⁸¹ See *id.*; S.F., CAL., ADMIN. CODE §§ 41A.4–.5 (2025).

of ninety days per year.⁸² Despite steep restrictions on STRs in New York City and San Francisco, rents continues to rise.⁸³

B. Empty Promises: Effects of STR Regulations on the Housing Crisis

The intended effect of LL18 was to respond to New York City's housing crisis by "bringing as many as 19,000 apartments back on the market."⁸⁴ Despite hopeful anticipation, LL18 has not readily increased housing supply.⁸⁵ Instead of putting units back onto the rental market, many STR operators have turned to the STR black market consisting of social media and lesser known, unregulated platforms.⁸⁶ Although some STR operators have turned their STRs into mid-term rentals,⁸⁷ mid-term rentals are much too short for local residents⁸⁸ and far too long for visitors.⁸⁹

About eighty percent of New York City visitors are leisure travelers, with half being single-day visitors and the other half staying for an average of two days.⁹⁰ The remaining twenty percent of visitors are business travelers, who similarly stay for an average of two days.⁹¹ With hotel rooms in New York City reaching record highs and STR listings way down,⁹² visitors now face exorbitant travel costs while residents continue to grapple with the housing crisis. LL18 assumed that banning

⁸² See S.F. PLAN., *supra* note 80; S.F., CAL., ADMIN. CODE § 41A.5(g)(1)(A) (2025).

⁸³ See Hyunsoo Rim, *Here Are the Cities Where Rents Are Rising and Falling Fast*, FORBES (May 21, 2024, at 10:33 ET), <https://www.forbes.com/sites/hyunsoorim/2024/05/20/here-are-the-cities-where-rents-are-rising-and-falling-fast/> [<https://perma.cc/4N5K-9NH3>]; Brinklow, *supra* note 61.

⁸⁴ *STR Hearing*, *supra* note 61, at 6–7 (“[W]e can house every homeless New Yorker in these soon to be vacant air B&B units. . . . Housing is a human right and, by working to make sure there is more of it available in New York City, we are also making a real difference.”).

⁸⁵ See Schaal, *supra* note 66.

⁸⁶ See Amanda Hoover, *New York's Airbnb Ban Is Descending into Pure Chaos*, WIRED (Oct. 9, 2023, at 07:00 ET), <https://www.wired.com/story/airbnb-ban-new-york-illegal-listings/> [<https://perma.cc/WCS9-AKPN>].

⁸⁷ See Schaal, *supra* note 66.

⁸⁸ See Emily Davis, *This Is How Long NYC Renters Stay Put in Their Apartments*, N.Y. POST (Apr. 7, 2025, at 16:36 ET), <https://nypost.com/2025/04/07/real-estate/heres-how-long-nyc-renters-stay-put-at-home/> [<https://perma.cc/2CME-DSU8>].

⁸⁹ Mid-term rentals consist of leases of one to six months long. See *What Is a Midterm Rental, and Why Should You Consider It?*, JUNE HOMES (Oct. 9, 2025), <https://junehomes.com/blog/2025/10/09/what-is-midterm-rental/> [<https://perma.cc/36EX-YP5C>].

⁹⁰ See OFF. OF THE N.Y. STATE COMPTROLLER, *THE TOURISM INDUSTRY IN NEW YORK CITY 4* (2021), <https://www.osc.ny.gov/files/reports/osdc/pdf/report-2-2022.pdf> [<https://perma.cc/XTL9-VYGB>].

⁹¹ See *id.*

⁹² See Eliza Relman & Dan Latu, *NYC Shuttered 80% of Its Airbnbs in an Attempt to Make Housing More Affordable. All That's Done So Far Is Make Hotels More Expensive*, BUS. INSIDER (June 26, 2024, at 05:50 ET), <https://www.businessinsider.com/airbnb-numbers-shrink-hotel-prices-soar-ban-nyc-2024-6> [<https://perma.cc/H2T8-N7RF>].

STRs would create more long-term, stable housing options, but it has been largely ineffective at increasing the city's housing supply.⁹³

Despite sweeping regulatory efforts in cities like New York City and San Francisco, rent continues to rise.⁹⁴ This is because STRs are not entirely to blame. The housing crisis is a complex problem with many different contributors.⁹⁵ According to one study, STRs most readily increase rent for high-income renters—a very narrow subset of the population—because STRs are generally located in central areas where such renters reside.⁹⁶

The effect of increased rent, however, does not stop at high-income renters. When high-income residents move into more affordable neighborhoods due to increased rent, they in turn raise rent in their new neighborhood.⁹⁷ They may then push out a number of existing residents—often lower income compared to the newcomers—from their neighborhood.⁹⁸ Despite lawmakers' efforts, persistent rent increases and vacancy rates demonstrate that local governments and STR regulations have missed the mark in their purported goal to return housing to the rent-burdened population at the expense of individuals' rights to property and travel.

C. *Legal Battles: STR Owners' and Platforms' Fights Against Local Governments*

In response to STR regulations, STR platforms and operators initiated lawsuits against local municipalities.⁹⁹ In New York City, Airbnb and HomeAway brought challenges under the First and Fourth Amendments and claims under the city's Administrative Procedure Act¹⁰⁰ arguing that the STR regulations constitute impermissibly compelled

⁹³ See *id.*

⁹⁴ See Rim, *supra* note 83 (finding that rent in New York City rose 8.9% from April 2023 to April 2024); *Rental Market Trends in San Francisco, CA*, APARTMENTS.COM, <https://www.apartments.com/rent-market-trends/san-francisco-ca/> [https://perma.cc/2N3S-HUZT] (last visited Jan. 13, 2026) (finding that as of November 2025, rent in San Francisco rose 5.5% within the last year).

⁹⁵ See Sophie Calder-Wang, Chiara Farronato & Andrey Fradkin, *What Does Banning Short-Term Rentals Really Accomplish?*, HARV. BUS. REV. (Feb. 15, 2024), <https://hbr.org/2024/02/what-does-banning-short-term-rentals-really-accomplish> [https://perma.cc/SRX2-KZVG].

⁹⁶ See *id.*

⁹⁷ See *Understanding Gentrification and Displacement*, UPROOTED PROJECT, <https://sites.utexas.edu/gentrificationproject/understanding-gentrification-and-displacement/> [https://perma.cc/F5YK-QCFG] (last visited Dec. 23, 2025).

⁹⁸ See *id.*

⁹⁹ See, e.g., *Airbnb, Inc. v. N.Y.C. Mayor's Off. of Special Enf't*, No. 154865/2023, 2023 N.Y. Misc. LEXIS 4044, at *1–5 (Sup. Ct. Aug. 8, 2023); *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 472–77 (S.D.N.Y. 2019); *Airbnb, Inc. v. City of San Francisco*, 217 F. Supp. 3d 1066, 1069–71 (N.D. Cal. 2016); *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, ¶¶ 1–8.

¹⁰⁰ See N.Y.C., N.Y., CHARTER ch. 45 (2026).

speech, unreasonable searches and seizures of data, and arbitrary and capricious agency actions.¹⁰¹ In San Francisco, Airbnb and HomeAway again brought First Amendment claims, asserting that San Francisco's STR regulations were unlawful content-based regulations of speech.¹⁰² In Chicago, STR operators raised equal protection and substantive due process claims and challenged the city's ban on single-night STRs, the primary residence requirement, and noise and home inspection rules.¹⁰³

Courts, however, largely held that the plaintiffs failed to meet their respective burdens on their constitutional claims.¹⁰⁴ These plaintiffs' failures point toward a different instrument to balance the rights at stake: the Dormant Commerce Clause. This framework may better preserve accessible STRs and flexible private property usage while increasing affordable housing.

IV. STRIKING A BALANCE: SCALING BACK ON STR REGULATIONS THROUGH THE DORMANT COMMERCE CLAUSE AND IMPLEMENTING LOCAL HOME SHARE PROGRAMS

The Commerce Clause, or rather the Dormant Commerce Clause, provides a solution to successfully balancing the rights to property and travel with the right to housing. The Commerce Clause gives Congress the sole power “[t]o regulate Commerce with foreign Nations, and among the several States.”¹⁰⁵ The Dormant Commerce Clause is a negative implication of the Commerce Clause.¹⁰⁶ Because only Congress has the power to regulate interstate commerce, states may not infringe on Congress's Commerce Clause authority and disrupt interstate commerce.¹⁰⁷ A Dormant Commerce Clause infringement occurs when

¹⁰¹ See *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d at 476–77; *Airbnb, Inc. v. N.Y.C. Mayor's Off. of Special Enf't*, 2023 N.Y. Misc. LEXIS 4044, at *9–10, *16–17.

¹⁰² See *Airbnb, Inc. v. City of San Francisco*, 217 F. Supp. 3d at 1076.

¹⁰³ See *Mendez*, 2023 IL App (1st) 211513, ¶¶ 1–7.

¹⁰⁴ See *Airbnb, Inc. v. N.Y.C. Mayor's Off. of Special Enf't*, 2023 N.Y. Misc. LEXIS 4044, at *20–21; *Airbnb, Inc. v. City of San Francisco*, 217 F. Supp. 3d at 1079; *Mendez*, 2023 IL App (1st) 211513, ¶¶ 38–49.

¹⁰⁵ U.S. CONST. art. 1, § 8, cl. 3.

¹⁰⁶ See *Dep't of Revenue v. Davis*, 553 U.S. 328, 337–38 (2008) (“[A]lthough [the Commerce Clause's] terms do not expressly restrain ‘the several States’ in any way, we have sensed a negative implication in the provision since the early days. The modern law of what has come to be called the dormant Commerce Clause is driven by concern about ‘economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.’” (citations omitted) (first quoting U.S. CONST. art. 1, § 8, cl. 3; and then quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273–74 (1988))).

¹⁰⁷ See, e.g., *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 190 (2018) (Gorsuch, J., concurring) (“[D]ormant commerce cases usually prevent States from discriminating between in-state and out-of-state firms.”); *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518 (2019) (“Under our dormant Commerce Clause cases, if a state law discriminates against out-of-state goods or non-resident economic actors, the law can be sustained only on a showing that it is narrowly tailored to

states attempt to discriminate against out-of-state or foreign businesses in favor of their own programs and interests.¹⁰⁸ A discriminatory law against interstate commerce is “*per se* invalid” and will only survive if it “advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.”¹⁰⁹ Even if not *per se* invalid, a law may violate the Dormant Commerce Clause if it otherwise imposes unreasonable and excessive burdens on interstate commerce.¹¹⁰

The Dormant Commerce Clause applies to STR regulations because STRs are part of the interstate travel industry.¹¹¹ Travel typically involves crossing state lines, and travelers can book local STRs from almost anywhere in the world.¹¹² The Dormant Commerce Clause therefore could limit local governments’ ability to regulate STRs.

A. *STR Regulations as a Violation of the Dormant Commerce Clause*

This Section analyzes two federal court cases that directly address whether local STR regulations violate the Dormant Commerce Clause. In *Hignell-Stark v. City of New Orleans*,¹¹³ the Fifth Circuit cited the Dormant Commerce Clause to strike down a New Orleans STR regulation that, by only permitting STRs at a property owner’s primary residence, ensured the property owner’s presence during STR guests’ stays.¹¹⁴ In contrast, in *Rosenblatt v. City of Santa Monica*,¹¹⁵ the Ninth Circuit upheld Santa Monica’s STR regulations—challenged by the plaintiff

‘advanc[e] a legitimate local purpose.’” (alteration in original) (quoting *Davis*, 553 U.S. at 338)); *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 401–02 (1994) (“The scope of the dormant Commerce Clause is a judicial creation. . . . This Court long ago concluded . . . that the [Commerce] Clause not only empowers Congress to regulate interstate commerce, but also imposes limitations on the States in the absence of congressional action. . . . Our decisions therefore hold that the dormant Commerce Clause forbids States and their subdivisions to regulate interstate commerce.”).

¹⁰⁸ See *C & A Carbone*, 511 U.S. at 392. A law discriminates against interstate commerce or out-of-state businesses when it causes “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” *Or. Waste Sys., Inc. v. Dep’t of Env’t Quality*, 511 U.S. 93, 99 (1994).

¹⁰⁹ *Or. Waste*, 511 U.S. at 99, 101 (quoting *New Energy*, 486 U.S. at 278).

¹¹⁰ See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

¹¹¹ See *Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 445 (9th Cir. 2019) (“[V]acation rentals generally implicate interstate commerce . . .”).

¹¹² See *Travel Forecast 2025: Statistics on Plans, Trends, and Budgets Across the U.S.*, IPX1031, <https://www.ipx1031.com/americans-travel-report-2025/> [<https://perma.cc/A3VN-77XZ>] (last visited Dec. 23, 2025) (“86% [of Americans] will travel out of state and 50% will travel internationally.”).

¹¹³ 46 F.4th 317 (5th Cir. 2022).

¹¹⁴ *Id.* at 321, 327–28 (explaining that one purpose of the New Orleans STR regulation was to curb nuisance “by making sure that a responsible adult lived on the property full-time”).

¹¹⁵ 940 F.3d 439 (9th Cir. 2019).

under the Dormant Commerce Clause—requiring a primary resident to be present at the STR property throughout the rental duration.¹¹⁶

I. Hignell-Stark v. New Orleans

New Orleans historically did not allow STRs, but began allowing residents to operate STRs in 2016 as the STR industry expanded.¹¹⁷ STRs proliferated rapidly in New Orleans, causing nuisances, disrupting neighborhood character, and decreasing housing affordability for local residents.¹¹⁸ The city subsequently implemented a primary residence requirement under which the city issued licenses only to those who both owned their STR properties and primarily resided at those properties.¹¹⁹ In *Hignell-Stark*, the plaintiffs were New Orleans property owners who were denied STR licenses under the primary residence requirement.¹²⁰ They subsequently sued the city, arguing that the city's STR regulations discriminated against interstate commerce in violation of the Dormant Commerce Clause.¹²¹

In assessing the plaintiffs' Dormant Commerce Clause argument, the Fifth Circuit explained that a law that facially discriminates against interstate commerce "is virtually *per se* invalid" and "may be upheld 'only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.'"¹²² The court clarified that "[i]f there are 'any available alternative methods for enforcing [the government's] legitimate policy goals,' the law is unconstitutional."¹²³ In the absence of facial discrimination, however, the court would need to analyze the law under the test outlined in *Pike v. Bruce Church, Inc.*¹²⁴ The *Pike* test articulates that "[w]here [a] statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."¹²⁵

At the time of *Hignell-Stark*, New Orleans required that STRs be "located on the same lot of record as the [property] owner's primary

¹¹⁶ *Id.* at 445, 451.

¹¹⁷ *See Hignell-Stark*, 46 F.4th at 321.

¹¹⁸ *Id.*

¹¹⁹ *See id.*; NEW ORLEANS, LA., CODE § 26-617(c)(6)(v) (2022), *invalidated by Hignell-Stark*, 46 F.4th 317.

¹²⁰ *See Hignell-Stark*, 46 F.4th at 322.

¹²¹ *See id.* at 321–22. The plaintiffs also alleged Takings Clause and First Amendment violations, *see id.* at 322, but this Note focuses on the plaintiffs' Dormant Commerce Clause claim.

¹²² *Id.* at 325 (quoting Dep't of Revenue v. Davis, 553 U.S. 328, 338 (2008)).

¹²³ *Id.* (second alteration in original) (emphasis in original) (quoting *Dickerson v. Bailey*, 336 F.3d 388, 402 (5th Cir. 2003)).

¹²⁴ 397 U.S. 137 (1970); *see Hignell-Stark*, 46 F.4th at 325.

¹²⁵ *Pike*, 397 U.S. at 142.

residence.”¹²⁶ This meant that only the property owner could operate an STR on their property, the property owner had to be a resident of New Orleans, and the property owner had to live on the STR property.¹²⁷ Only local residents could enter the New Orleans STR market, and all others who owned property in New Orleans were de facto barred from the market.¹²⁸ The Fifth Circuit accordingly found that the city’s STR regulation facially discriminated against interstate commerce and favored in-state property owners at the expense of out-of-state property owners.¹²⁹ This discrimination was facial even though the primary residence requirement also restricted New Orleans and Louisiana residents.¹³⁰ The fact remained that only local New Orleans residents had the opportunity to enter the STR market.¹³¹ Having established facial discrimination, the Fifth Circuit did not reach the *Pike* test and instead asked “whether the City had reasonable nondiscriminatory alternatives to achieve its policy goals.”¹³²

The court readily cited reasonable alternatives to the primary residence requirement, such as imposing penalties for disorderly guests causing nuisance, revoking noncompliant STR owners’ licenses, and increasing STR taxes.¹³³ The court further stated that if the city was “serious about protecting affordable housing, . . . an obvious alternative to reducing demand” was to “increas[e] supply” by “eliminat[ing] price controls, reduc[ing] housing regulations, and provid[ing] additional incentives for homebuilders to construct more housing.”¹³⁴ Accordingly, the Fifth Circuit held that the primary residence requirement in New Orleans was unconstitutional under the Dormant Commerce Clause.¹³⁵

¹²⁶ NEW ORLEANS, LA., CODE § 26-617(c)(6)(v) (2022), *invalidated by Hignell-Stark*, 46 F.4th 317.

¹²⁷ *See Hignell-Stark*, 46 F.4th at 326.

¹²⁸ *See id.*

¹²⁹ *See id.*

¹³⁰ *See id.* at 327 (“[T]he residency requirement discriminates against other Louisianans, not just out-of-staters. Residents of Baton Rouge and Shreveport are just as forbidden from participating in the STR market as are residents of Houston and Jackson. Indeed, the residency requirement even discriminates against *other residents of the City*—specifically, those who live in non-residential zones. But none of that matters. As the Supreme Court has repeatedly held, local ordinances that discriminate against interstate commerce are not valid simply because they also discriminate against intrastate commerce.”).

¹³¹ *See id.* at 326.

¹³² *Id.*; *see also id.* at 321 (stating that the city’s goals were to curb nuisance, preserve neighborhood characteristics and aesthetics, and protect its housing stock).

¹³³ *See id.* at 328.

¹³⁴ *Id.*

¹³⁵ *See id.* at 329.

2. Rosenblatt v. City of Santa Monica

Santa Monica, like New Orleans, historically prohibited STRs but drew an exception for certain STRs in 2015.¹³⁶ Santa Monica now permits STRs “in a dwelling unit that is the primary residence of the host, while the host lives on site, in the dwelling unit, throughout the visitors’ stay.”¹³⁷ Unlike the New Orleans primary residence requirement,¹³⁸ the Santa Monica primary residence requirement does not specify that the on-site primary resident must be the owner of the property.¹³⁹ A tenant or lessee may therefore operate an STR out of their home in Santa Monica so long as the property is the tenant’s primary residence that they live in concurrently with their STR guests’ stays.¹⁴⁰ In *Rosenblatt*, the plaintiff was a Santa Monica resident and homeowner who wanted to operate her home as an STR while she and her husband were off-site.¹⁴¹ When the Santa Monica STR ordinance went into effect, she sued the city, seeking to invalidate the primary residence requirement as a violation of the Dormant Commerce Clause.¹⁴²

The Ninth Circuit approached this case with a high level of deference to the Santa Monica government, despite setting out a two-step test similar to that of the Fifth Circuit in *Hignell-Stark*.¹⁴³ First, if a local law “directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests,” the court has “generally struck down the statute without further inquiry” as a violation of the Dormant Commerce Clause.¹⁴⁴ The court, relying on *Dean Milk Co. v. City of Madison*,¹⁴⁵ explained that local regulations could be held unconstitutional under the Dormant Commerce Clause for their disparate impact on out-of-state entities even if in-state entities are also negatively affected.¹⁴⁶ The Ninth Circuit emphasized that “the Supreme Court has been careful to distinguish

¹³⁶ See *Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 442–43 (9th Cir. 2019).

¹³⁷ SANTA MONICA, CAL., CODE §§ 6.20.010–.021 (2025).

¹³⁸ See NEW ORLEANS, LA., CODE § 26-617(c)(6)(v) (2022), *invalidated by Hignell-Stark*, 46 F.4th 317.

¹³⁹ See *Rosenblatt*, 940 F.3d at 450.

¹⁴⁰ See *id.*

¹⁴¹ *Id.* at 443.

¹⁴² See *id.*

¹⁴³ Compare *id.* at 444, 453 (applying a “two-tiered approach” to Dormant Commerce Clause claims that holds directly discriminatory regulations to a higher standard than indirectly discriminatory regulations), with *Hignell-Stark*, 46 F.4th at 325 (applying an approach to Dormant Commerce Clause claims that holds discriminatory regulations to a higher standard than incidentally burdensome regulations).

¹⁴⁴ *Rosenblatt*, 940 F.3d at 444 (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986)).

¹⁴⁵ 340 U.S. 349 (1951).

¹⁴⁶ See *Rosenblatt*, 940 F.3d at 448.

discrimination through purpose or effect . . . from the nondiscriminatory, incidental effects of a law.”¹⁴⁷ Second, if the law “has only indirect effects on interstate commerce and regulates evenhandedly,” the court applies the *Pike* test.¹⁴⁸ At this step, the court examines whether the state’s interests in regulation are legitimate and whether any burdens imposed on interstate commerce by the state law “clearly exceed[] the local benefits” of the law.¹⁴⁹

Applying the first step of its test, the Ninth Circuit held that the Santa Monica ordinance does not directly regulate interstate commerce because “[t]he ordinance penalizes only conduct in Santa Monica” with the regulated STR properties being physically located in Santa Monica.¹⁵⁰ According to the court, neither the primary residence requirement of the ordinance nor its effect of significantly reducing the number of STRs in Santa Monica discriminates against interstate commerce.¹⁵¹ The court found that the requirement “applies equally” to in-state and out-of-state STR owners, operating tenants, and users.¹⁵² Santa Monica’s de facto ban on STRs affects both out-of-state travelers and travelers from other parts of California, including Santa Monica itself.¹⁵³ Likewise, the court found that the primary residence requirement applies to both in-state and out-of-state property owners and does not completely bar Santa Monica property owners who live outside Santa Monica and California from entering the STR market.¹⁵⁴ The court explained that such property owners could operate STRs in Santa Monica through a long-term tenant living on the property as their primary residence.¹⁵⁵

The Ninth Circuit then proceeded to the second step of its test and applied the *Pike* test.¹⁵⁶ Here, the court emphasized that, in order to meet the standard established by *Pike*, the plaintiff needed to allege a “significant burden” on interstate commerce that “clearly outweighs” the local benefits of the ordinance.¹⁵⁷ Without weighing the alleged

¹⁴⁷ *Id.* at 448–49. *But see* S.C. State Highway Dep’t v. Barnwell Bros., 303 U.S. 177, 184 n.2, 196 (1938) (explaining that the concern in Dormant Commerce Clause analysis is the state’s “purpose or effect” to burden out-of-state entities or benefit in-state entities because, in either case, out-of-state entities do not have access to the political process to prevent these burdens (emphasis added)).

¹⁴⁸ *Rosenblatt*, 940 F.3d at 444 (quoting *Brown-Forman*, 476 U.S. at 579); *see also* *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970) (defining the test).

¹⁴⁹ *Rosenblatt*, 940 F.3d at 444 (quoting *Brown-Forman*, 476 U.S. at 579).

¹⁵⁰ *Id.* at 445–46.

¹⁵¹ *See id.* at 450–51.

¹⁵² *Id.* at 451.

¹⁵³ *See id.* at 449.

¹⁵⁴ *See id.* at 451.

¹⁵⁵ *See id.*

¹⁵⁶ *See id.* at 451–53.

¹⁵⁷ *Id.* at 452 (quoting *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136, 1141 (9th Cir. 2015)).

burdens against the local benefits of the ordinance, the court held that the plaintiff failed to show how the Santa Monica STR ordinance significantly burdens interstate commerce, given that land use is an inherently local, not national, area of regulation.¹⁵⁸ To successfully allege significant burdens, the plaintiff needed specific and reliable facts supporting discrimination on interstate commerce, which, according to the court, the plaintiff did not convey.¹⁵⁹ The Ninth Circuit therefore concluded that the plaintiff failed to plausibly allege the Santa Monica STR ordinance imposes discriminatory effects on interstate commerce and that even if there are any such effects, they are incidental and insignificant.¹⁶⁰

In arriving at its conclusion, the Ninth Circuit misapplied its own test. At the first step, the court failed to recognize the facial discrimination of the ordinance, completely omitted the disparate impact analysis, and only partially and selectively relied on *Dean Milk*. At the second step of the test, the court ventured on a confounding burden-shifting journey and assigned the responsibility of analyzing the *Pike* test to the plaintiff.

As the first step of its test, the court articulated that it would strike down a regulation as a per se violation of the Dormant Commerce Clause if it “discriminates against interstate commerce.”¹⁶¹ Although the court concluded that Santa Monica’s STR ordinance “does not discriminate against interstate commerce,”¹⁶² the ordinance’s residence requirement directly bars nonresident Santa Monica property owners without long-term tenants from the Santa Monica STR market.¹⁶³ The court refused to recognize this rather obvious effect of the primary residence requirement as facial discrimination and instead dismissed any discriminatory effects of the ordinance with phrases like “applies evenhandedly.”¹⁶⁴

Furthermore, the court completely overlooked the disparate impact analysis and failed to assess whether the ordinance’s effect is to “favor in-state economic interests over out-of-state interests.”¹⁶⁵ The Santa Monica legislature intentionally designed the ordinance to protect local interests over out-of-state interests.¹⁶⁶ The court itself acknowledged and the city of Santa Monica admitted that the core purpose of the ordinance was to preserve the city’s housing stock and

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *Id.* at 445, 453.

¹⁶¹ *Id.* at 445.

¹⁶² *Id.* at 448.

¹⁶³ *See* SANTA MONICA, CAL., CODE § 6.20.010 (2025).

¹⁶⁴ *See Rosenblatt*, 940 F.3d at 446.

¹⁶⁵ *Id.* at 445 (quoting *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 614 (9th Cir. 2018)).

¹⁶⁶ *See id.* at 443.

character at the expense of excluding out-of-state travelers.¹⁶⁷ This purpose demonstrates the city's deliberate discrimination in enacting the ordinance. Such facial discrimination coexisted with certain incidental effects, including reduced accessibility to Santa Monica and discouragement of STR hosts' activities outside Santa Monica,¹⁶⁸ but the existence of incidental effects does not dissolve direct interstate discrimination.¹⁶⁹ The court should have recognized the ordinance's facial discrimination, fully analyzed the first step of its test, and struck down the ordinance.

Yet another defect remains in the Ninth Circuit's analysis of the first step. Here, the court called on *Dean Milk* to support the proposition that a local regulation with disparate impact on out-of-state entities may be unconstitutional under the Dormant Commerce Clause even if it discriminates against in-state entities in other parts of the state.¹⁷⁰ Although the Ninth Circuit rightly invoked *Dean Milk*, the court failed to apply the crux of *Dean Milk*'s holding that a state may not discriminate against interstate commerce in favor of in-state interests "if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available."¹⁷¹ The proper application of *Dean Milk* at this step would have required the court to examine whether there were reasonable alternatives available for achieving the state's interests and whether the ordinance created out-of-state discrimination "in practical effect."¹⁷² As *Hignell-Stark* demonstrated, there are ample alternatives to achieving state interests in housing and community preservation, such as imposing penalties and taxes.¹⁷³ And, as previously established, the primary residence requirement denies nonresident

¹⁶⁷ See *id.* ("In enacting this ordinance, the Santa Monica City Council sought to preserve the city's 'available housing stock and the character and charm which result, in part, from cultural, ethnic, and economic diversity of its resident population,' and 'its unique sense of community which derives, in large part, from residents' active participation in civic affairs, including local government, cultural events, and educational endeavors.' The city council stressed that 'vacation rentals . . . are detrimental to the community's welfare and are prohibited by local law, because occupants of such vacation rentals, when not hosted, do not have any connections to the Santa Monica community and to the residential neighborhoods in which they are visiting' and 'the presence of such visitors within the City's residential neighborhoods can sometimes disrupt the quietude and residential character of the neighborhoods.'" (alteration in original) (citation omitted) (quoting SANTA MONICA, CAL., ORDINANCE 2484 pmb. (May 12, 2015))).

¹⁶⁸ Due to STR hosts having to be present at their STRs during their guests' stays, STR hosts in Santa Monica cannot maintain other homes or travel outside Santa Monica, let alone outside California, as freely as they may have without the primary residence requirement.

¹⁶⁹ See *id.* at 451.

¹⁷⁰ See *id.* at 448.

¹⁷¹ *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951).

¹⁷² *Id.*

¹⁷³ See *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 328 (5th Cir. 2022); *supra* Section IV.A.1.

Santa Monica property owners from operating STRs in Santa Monica, causing direct and practical discrimination.¹⁷⁴

In finding instead that the Santa Monica ordinance regulates evenhandedly and causes only incidental discrimination, the Ninth Circuit reached the second step of its test: the *Pike* test step.¹⁷⁵ Even assuming that the court's conclusion was correct, the court's analysis of the *Pike* test was questionable. Under the *Pike* test, courts must examine whether a state's interests in regulation are legitimate and whether any burdens on interstate commerce imposed by the regulation outweigh local benefits of the law.¹⁷⁶ Instead of balancing the state's interests as protected by the ordinance against the burdens on interstate commerce, the Ninth Circuit focused on the plaintiff's failure to allege "significant" burdens to a high degree of specificity.¹⁷⁷ The court concluded that the complaint was insufficient in supporting the plaintiff's argument that the ordinance discriminated against and burdened interstate commerce.¹⁷⁸ According to the court, because the plaintiff did not draw certain factual and legal conclusions in her complaint, her alleged burdens on interstate commerce were insignificant.¹⁷⁹ The court effectively required the plaintiff to analyze the *Pike* test herself, an unreasonably high pleading standard that assigned parts of the court's role to the plaintiff.

At this step of its test, the Ninth Circuit dismissed the plaintiff's claims by emphasizing that land use is an inherently local area of regulation and, therefore, the ordinance does not implicate a "national" concern that requires a "uniform system of regulation."¹⁸⁰ In doing so, the court swiftly dismissed travel as mere recreation¹⁸¹ rather than a recognized right and overlooked how the travel industry is of national concern,¹⁸² despite having earlier acknowledged that travel and STRs do implicate interstate commerce.¹⁸³ The Ninth Circuit's validation of Santa Monica's STR ordinance thus lacks foundation.

B. *Extending Hignell-Stark to Operational Restrictions on STRs*

As the Ninth Circuit conceded in *Rosenblatt*, travel and STRs implicate interstate commerce.¹⁸⁴ In order to better balance the rights

¹⁷⁴ See *supra* note 163 and accompanying text.

¹⁷⁵ See *Rosenblatt*, 940 F.3d at 452.

¹⁷⁶ See *id.* at 444.

¹⁷⁷ See *id.* at 452.

¹⁷⁸ See *id.* at 453.

¹⁷⁹ See *id.* at 452–53.

¹⁸⁰ See *id.* at 452.

¹⁸¹ See *id.*

¹⁸² See *supra* Section II.C.

¹⁸³ See *Rosenblatt*, 940 F.3d at 445.

¹⁸⁴ See *id.*

to property and travel against the right to housing, certain STR regulations should be held unconstitutional under the Dormant Commerce Clause using the *Hignell-Stark* rationale. Because the housing crisis is a multifaceted problem, it equally requires a multifaceted solution.¹⁸⁵ Excessively regulating one industry—the STR industry—has shown to be ineffective.¹⁸⁶

Some STR regulations, such as tax, registration, and licensing requirements,¹⁸⁷ are valid means of preserving community character, minimizing nuisance, and ensuring public safety.¹⁸⁸ However, operational restrictions on STRs, such as primary residence requirements, limits on the number of days a property can be used as an STR, and limits on the number of guests permitted to occupy an STR,¹⁸⁹ are unduly burdensome and discriminatory against interstate commerce.¹⁹⁰

Of the operational restrictions on STRs, residence requirements are the most likely to be struck down at the first step of the Dormant Commerce Clause analysis as facially discriminatory.¹⁹¹ Primary residence requirements—depending on their exact language—deny nonresident property owners the opportunity to enter a given city’s STR market, directly discriminating against certain out-of-state property owners for the sake of local interests and residents.¹⁹² Provisions regulating the number of days STRs may host guests and the number of guests permitted to occupy STRs, however, are less likely to be found facially discriminatory, as they apply equally to in-state and out-of-state entities.¹⁹³ Courts should evaluate these provisions under the second step of the Dormant Commerce Clause analysis, putting them under the microscope of the *Pike* test. Under the *Pike* test, all operational restrictions on STRs—including residence requirements if courts find them not to be facially discriminatory—can be found unconstitutional as impermissible discrimination against interstate commerce or an undue burden.

The *Pike* test provides that “[w]here [a] statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”¹⁹⁴ Primary residence requirements have the effect of barring individuals from entering affected STR markets, which

¹⁸⁵ See *supra* Section III.B.

¹⁸⁶ See *supra* Section III.B.

¹⁸⁷ See, e.g., sources cited *supra* note 7.

¹⁸⁸ See *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 328–29 (5th Cir. 2022).

¹⁸⁹ See, e.g., sources cited *supra* notes 7, 62.

¹⁹⁰ See *Hignell-Stark*, 46 F.4th at 328–29.

¹⁹¹ See *supra* notes 126–34, 143–44 and accompanying text.

¹⁹² See *supra* Section IV.A.

¹⁹³ See *supra* Section IV.A.

¹⁹⁴ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

excessively burdens interstate commerce for the same reason that such regulations constitute facial discrimination¹⁹⁵: The STR market presents meaningful economic activity that allows for the productive use of property and creates valuable travel accommodations,¹⁹⁶ and denying an entire subsection of homeowners—i.e., nonresident homeowners—the opportunity to engage in this market is unduly restrictive and burdensome. Additionally, primary residence requirements burden the interstate activities of primary resident hosts who must stay within the STR property throughout their guests' stays. For instance, cities like Los Angeles and San Francisco only allow ninety days of unhosted stays, during which primary resident hosts may vacate their properties while STR guests occupy their homes.¹⁹⁷ This leaves over nine months per calendar year when primary residents must be physically present on their properties to operate STRs, significantly restricting hosts' mobility and ability to generate income from short-term hosting.

Regulations limiting the number of guests permitted to occupy an STR during any given stay can likewise restrict travel for many.¹⁹⁸ Those traveling in groups or families on a budget may be unable to afford travel to certain destinations if they are unwilling or unable to pay for multiple hotel rooms.¹⁹⁹ Such travel restrictions, taken in the aggregate,²⁰⁰ implicate interstate commerce,²⁰¹ produce discriminatory effects, and place excessive burdens on interstate travel.

At the *Pike* test stage, *Dean Milk* applies because STR regulations evenhandedly affect in-state and out-of-state entities.²⁰² Under *Dean Milk*, even if the law at issue detrimentally affects both in-state and out-of-state entities, that law is nevertheless unconstitutional under the Dormant Commerce Clause if there are discriminatory effects against out-of-state entities and less discriminatory means for achieving the state's interest.²⁰³ Although operational restrictions on STRs apply evenhandedly, they produce discriminatory burdens on interstate commerce in "practical effect."²⁰⁴ Any positive effect on housing

¹⁹⁵ See *supra* notes 191–92 and accompanying text.

¹⁹⁶ See *supra* Sections I.A, II.B–C.

¹⁹⁷ See L.A. COUNTY, CAL., CODE § 796.040(D)(6) (2026); S.F. PLAN., *supra* note 80.

¹⁹⁸ See N.Y.C. OFF. OF SPECIAL ENF'T, *supra* note 70.

¹⁹⁹ See Relman & Latu, *supra* note 92; Snider, *supra* note 58.

²⁰⁰ See *Wickard v. Filburn*, 317 U.S. 111, 127–29 (1942) (holding that the collective effect of minimally commercial activities is sufficient to implicate the Commerce Clause).

²⁰¹ See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 248, 261 (1964) (finding that the Commerce Clause empowers Congress to regulate establishments such as lodging businesses and restaurants because such establishments "affect commerce" when they serve interstate travelers).

²⁰² See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

²⁰³ *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951).

²⁰⁴ *Id.*; see *Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 326 (5th Cir. 2022).

affordability, which many STR regulations intended,²⁰⁵ has generally been minimal.²⁰⁶ The regulations' aggregate impact on interstate commerce and on individuals' rights to property and travel, however, has been sizable.²⁰⁷ Moreover, as the Fifth Circuit in *Hignell-Stark* suggested and as this Note explores below,²⁰⁸ there are reasonable, less discriminatory alternatives that local municipalities can utilize to address the housing crisis.

Operational restrictions on STRs should accordingly be held unconstitutional under the Dormant Commerce Clause. This analysis will likely take place as fact-based inquiries across many municipalities rather than a single brightline rule, requiring more legal resources. For the sake of balancing critical rights and incentivizing local governments to better address the housing crisis, spending more judicial resources may be a fair cost.

C. *Beyond the Courtroom: A Local Home Share Program*

If operational restrictions on STRs are struck down under the Dormant Commerce Clause, many local STR regulatory schemes will lose the very provisions lawmakers hoped would sound the death knell for STRs.²⁰⁹ With these provisions gone, remaining STR regulatory schemes should be accompanied by programs that directly increase affordable housing. One such program is a home share program that matches property owners with long-term tenants at affordable rates, coordinated and regulated by local governments.²¹⁰

In addition to the proposed home share program, cities should cap the number of STRs in a given neighborhood on the basis of tourism density and median income.²¹¹ Property owners who are excluded by the cap can then be placed on a waitlist. If the property owner will be on the waitlist for at least nine months, they can be given the option to partake in the proposed home share program.²¹² As an added incentive,

²⁰⁵ See, e.g., *STR Hearing*, *supra* note 61, at 6–7; *Hignell-Stark*, 46 F.4th at 321; *Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 443 (9th Cir. 2019).

²⁰⁶ See *supra* Section III.B.

²⁰⁷ See *supra* Sections II.B–C, III.A.

²⁰⁸ See *Hignell-Stark*, 46 F.4th at 328; *infra* Section IV.C.

²⁰⁹ See *supra* Sections III.A, IV.A.

²¹⁰ The proposed local home share program qualifies as a reasonable alternative under *Dean Milk*. See *supra* notes 203–04 and accompanying text.

²¹¹ See *Calder-Wang et al.*, *supra* note 95 (finding that STRs' primary impacts on rent in New York City were in centrally located, high-income areas where tourists frequent).

²¹² Those who are excluded by the cap can be tracked using the license and registration requirements already extant in STR regulatory schemes. See, e.g., sources cited *supra* note 7. Property owners given the option to participate in the proposed home share program should be on the waitlist for at least nine months, as local residents typically seek leases longer than six months. See *supra* note 89 and accompanying text. *But see* L.A., CAL., MUN. CODE § 12.03 (2025) (defining

participating property owners, having gone through the application and approval process for the home share program, may be preapproved for STR operation when eventually taken off the waitlist. At that time, property owners may choose between continuing with the home share program or operating an STR, and those who are not on the STR waitlist would be welcome to participate as well.

The proposed home share program would utilize a government-regulated, user-friendly website similar to Airbnb's.²¹³ Website listings would include the monthly rent, location, amenities, and images of the home. Additionally, hosts and applicants would be able to create customized profiles.²¹⁴ Hosts can include lifestyle preferences and list their units available for at least six months, for which applicants may apply. If approved by the government as a match after completing the application process and background check, the government would provide the host with approved candidates that the host may then interview and select from as their new tenant. The program would be funded by STR taxes and fees²¹⁵ and set an affordable limit on rent relative to the locality, unit size, and building type. The government would pay the host the difference between the tenant-paid rent and what a similar STR in the neighborhood generates per month. This program would thus put homes purposed for STRs directly back onto the real estate market for long-term leases.

The proposed program is modeled after home share programs that nonprofit organizations and local governments operate to assist the elderly.²¹⁶ The success of such programs demonstrates the feasibility of similar programs.²¹⁷ The elderly home share programs typically begin with initial online contact through platforms like Google Forms or email, through which a potential tenant or host may express interest.²¹⁸

home-sharing as “[a]n accessory use of a Host’s Primary Residence for a maximum of 120 days in a calendar year for the purpose of providing Short Term Rental”). The additional three months would be used as processing and administrative time by the government.

²¹³ See MARCOMCENTRAL, *supra* note 17.

²¹⁴ The host and applicant profiles would contribute to the accessibility of the program. The profiles would require general information like gender, age range, and profession. Uploading more personal information or images would be optional.

²¹⁵ See, e.g., sources cited *supra* note 7.

²¹⁶ See *Montgomery County Home Sharing*, HOUS. INITIATIVE P'SHIP, <https://hiphomes.org/counseling-and-education/home-sharing/> [<https://perma.cc/B7EJ-Q7U3>] (last visited Dec. 23, 2025); *Home Sharing*, OFF. OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., <https://www.huduser.gov/portal/casestudies/study-09282016-1.html> [<https://perma.cc/VSS9-2LCE>] (last visited Dec. 23, 2025).

²¹⁷ See *Home Sharing Program Testimonials*, N.Y. FOUND. FOR SENIOR CITIZENS, <https://www.nyfsc.org/wp-content/uploads/2023/01/Home-Sharing-Program-Testimonials-Final-2023.pdf> [<https://perma.cc/B7CP-CR6D>] (last visited Dec. 23, 2025).

²¹⁸ See *Home Sharing*, N.Y. FOUND. FOR SENIOR CITIZENS, <https://www.nyfsc.org/home-sharing/> [<https://perma.cc/39PL-Z2LA>] (last visited Dec. 23, 2025); *Home Sharing Program: A Unique*

After completing required background and credit checks, the program staff review and interview the applicants to create a match.²¹⁹ The program then presents a housing agreement, which operates as a lease, to approved hosts and tenants.²²⁰ These programs have been particularly effective for the elderly because they are often empty nesters who benefit from physical and technological assistance around their homes.²²¹ Hosts are additionally able to generate income while tenants live in furnished homes at affordable rates.²²²

The greatest difference between the elderly home share programs and the proposed program is that the primary resident would not be required to reside in the home for purposes of productive and flexible property ownership. Unlike current STR regulations,²²³ the proposed program would be free of Dormant Commerce Clause concerns because the program would be open to all property owners regardless of residence. Moreover, in establishing per-neighborhood caps on STRs, local governments should consider the burden such caps may impose on interstate commerce. This regulatory and administrative scheme effectively balances the critical rights at stake—the rights to housing, property, and travel—by increasing affordable housing stock, presenting property owners with an alternative method of productive property use, and preserving travel accessibility and flexibility for group and low-income travelers.

CONCLUSION

Charged with mitigating a continuing housing crisis and preserving local neighborhoods, lawmakers are right to regulate STRs. Lawmakers, however, have pushed strict regulatory schemes against STRs in the hopes of increasing local housing supply and decreasing rent at the expense of STR property owners and travelers.²²⁴ As demonstrated by major cities with housing affordability challenges, such as New York City and San Francisco, recent STR regulations have been largely ineffective in mitigating the housing crisis.²²⁵ To better balance the interests and rights of property owners and travelers against residents' rights to affordable housing, courts should strike down operational restrictions

and Affordable Housing Option, N.Y. FOUND. FOR SENIOR CITIZENS, https://www.nyfsc.org/wp-content/uploads/2015/06/HOME-SHARING-BROCHURE-AS-OF-10_22_14.pdf [https://perma.cc/CV27-53S3] (last visited Dec. 23, 2025).

²¹⁹ See sources cited *supra* note 218.

²²⁰ See sources cited *supra* note 218.

²²¹ See sources cited *supra* note 218; HOUS. INITIATIVE P'SHIP, *supra* note 216.

²²² See sources cited *supra* note 218.

²²³ See *supra* Section IV.B.

²²⁴ See *supra* Section III.A.

²²⁵ See *supra* Section III.B.

on STR properties under the Dormant Commerce Clause. Local governments should then supplement the remaining regulatory scheme by limiting the number of STRs in certain areas on the basis of tourism density and median income and by creating home share programs available on an accessible website and modeled after existing home share programs for the elderly. The resulting regulatory scheme would preserve STR units for travelers, allow property owners to generate revenue from their properties, and create more affordable housing.