Chair and members of the Committee,

My name is Nathaniel Maranwe. I am an attorney in Arlington, Virginia, and would like to warn the Committee that the status quo without this bill may be in violation of the First Amendment right to freedom of association.

Many cities' zoning codes have occupancy limits, placing a maximum on how many unrelated people can live together. They usually do not place limits on blood relations. Not everyone lives in a nuclear family, and this means the local government tells people who they can and cannot live with.

This may be unconstitutional. If so, then HB 2583 would help resolve the problem.

In constitutional law, most state or local laws are judged under *rational basis review*. That is, if there is any reason at all for the law and it is not completely arbitrary, then the law is constitutional. This is an easy test, and occupancy limits pass it.

But if a law affects a protected right, like free speech or due process, then it receives *strict scrutiny*. Strict scrutiny means that there has to be a compelling government interest justifying the law, and there has to be no less restrictive way to achieve that compelling goal without violating the right. This is a hard test, and if it applies then occupancy limits would almost certainly be unconstitutional.

The constitutionality turns on whether freedom of association applies at all. On whether there is a fundamental right to choose who you live with. In *Belle Terre v. Boraas*, 461 U.S. 1 (1974), the Supreme Court said no. But there is some reason to think this is no longer good law.

In 1974, freedom of association meant expressive association: the right to form groups with other people to make a statement or disseminate a viewpoint. *Belle Terre* was correct that occupancy limits do not infringe on that kind of association.

But later cases say there are two types of protected association. *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984); *Rotary Club Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987). The second type of protected association is "intimate association." This is not very clearly defined: it applies to personal relationships of the type everyone has with at most a few other people. A relationship is protected as part of this fundamental right depending on its "size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship." *Duarte,* 481 U.S. at 456.

Choosing who one lives with would very likely qualify. People live with very few other people, they are selective in choosing who, and they exclude others from the household. By contrast, the Supreme Court's example of a relationship that is *not* protected is the Rotary Club— very large and very open.

The Ninth Circuit agrees. In *Fair Housing Council of San Fernando Valley v. Roommate.com*, 666 F.3d 1216 (2012), it held that the government cannot legislate how people choose roommates unless the law can satisfy strict scrutiny. And Ninth Circuit precedent is binding law in Oregon.

Most of what the Ninth Circuit said about roommates applies to housemates as well. There are significant privacy interests, and even safety interests. Household members "note our comings and goings, observe whom we bring back at night, hear what songs we sing in the shower," and "learn intimate details most of us prefer to keep private." They "have access to our physical belongings and to our person."

That court noted that the reverse is also true. We are "fully exposed to a roommate's belongings, activities, habits, proclivities and way of life. This could include matter we find offensive (pornography, religious materials, political propaganda); dangerous (tobacco, drugs, firearms); annoying (jazz, perfume, frequent overnight visitors, furry pets); habits that are incompatible with our lifestyle (early risers, messy cooks, bathroom hogs, clothing borrowers)." If the decision had been written today, the judge might have included pandemic risk tolerance, since your risk of COVID-19 depends largely on who you choose to live with.

All these privacy interests point toward a limited and exclusive relationship. The home “is entitled to special protection as the center of the private lives of our people.” *Minnesota v. Carter*, 525 U.S. 83, 99 (1998), and so there is a fundamental right to choose who you live with.

Several state supreme courts, from Michigan to California, have followed this logic to strike down occupancy limits. They ruled that their state equivalents of the First Amendment give people the right to choose who they live with. In those states, if a group of non-related people forms a "functional family," zoning codes must allow them to form a household. Iowa has passed something similar by statute.

No federal court has directly ruled on this issue. But cities and counties are continuing to tell their residents who they can live with, that some households may be acceptable or not depending on whether the occupants are related by blood. Courts are not the only branch of government responsible for following the Constitution and for safeguarding the rights of the citizens.

The home is the center of the private lives of Americans. HB 2583 would stop this intrusion on people's freedom of association.