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STATE OF MICHIGAN

IN THE SUPREME COURT

THE MELVIN R. BERLIN REVOCABLE TRUST, THE RANDY LAMM BERLIN REVOCABLE TRUST, THE JANIS HEHMEYER TRUST, THE CAROLE J. NEWTON REVOCABLE TRUST, THE JEAN I. SMITH REVOCABLE TRUST, and THE STEPHEN L. SMITH REVOCABLE TRUST, Plaintiff/Counter-Defendants/ Appellees, Appellees, v THOMAS C. RUBIN, NINA D. RUSSELL, and 14288 LAKESHORE ROAD, LLC Defendants/Counter-Plaintiffs/ Appellants and Third-Party Plaintiffs/Appellants.	MSC No. 166228 CoA No. 359300 (LC Berrien County Circuit Court) Case No. 19-0034-CH

BRIEF AMICUS CURIAE IN SUPPORT OF DEFENDANT

TRAVELERS UNITED

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TABLE OF CONTENTS

INDEX OF AUTHORITIES ii
STATEMENT ON JURISDICTION v
QUESTION PRESENTED vi
STATEMENT OF INTEREST OF AMICI 1
BACKGROUND 4
ARGUMENT 6
HISTORY 6
INTERPRETING RESTRICTIVE COVENANTS 8
RESTRICTIVE COVENANTS HAVE BEEN USED IN MICHIGAN TO DISCRIMINATE 11
MICHIGAN NEEDS SHORT TERM RENTALS 13
SURGE PRICING ON LAKE MICHIGAN MAKES HOTELS UNAFFORDABLE 13
IN RURAL COMMUNITIES SHORT TERM RENTALS PROVIDE A PLACE TO STAY 16
SHORT TERM RENTALS ALLOW FAMILIES TO STAY TOGETHER 18
THE FUTURE OF MICHIGAN TOURISM DEPENDS ON SHORT TERM RENTALS 19
CONCLUSION 22
CERTIFICATE OF WORD COUNT COMPLIANCE 23

RECEIVED by MSC 1/24/2025 5:12:41 PM

INDEX OF AUTHORITIES

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Bay View Chautauqua Inclusiveness Group v
The Bay View Association of the United Methodist Church, et al,
Case No 1:17-cv-0622 (WD Mich) 11
Bay View Chautauqua Inclusiveness Group v
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RECEIVED by MSC 1/24/2025 5:12:41 PM

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The Bay View Association of the United Methodist Church,
Case No 1:19-cv-551 12
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RECEIVED by MSC 1/24/2025 5:12:41 PM

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RECEIVED by MSC 1/24/2025 5:12:41 PM

STATEMENT ON JURISDICTION

Travelers United does not dispute that this Court has jurisdiction over this appeal.

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QUESTION PRESENTED

WHETHER APPELLANTS' USE OF A PROPERTY FOR THE PURPOSE OF SHORT-TERM RENTALS IS UNAMBIGUOUSLY PROHIBITED BY A RESTRICTIVE COVENANT THAT LIMITS PROPERTY USE TO "SINGLE FAMILY RESIDENCE PURPOSES" ONLY.

Plaintiff/Appellees answer: Yes.

Defendants/Appellants answer: No.

The Circuit Court answered: Yes.

The Court of Appeals answered: Yes.

This Amicus argues: No.

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STATEMENT OF INTEREST OF AMICI

Travelers United respectfully submits this proposed amicus curiae brief in support of the position of Defendant-Appellee. Travelers United writes this Amicus Curiae to show support of travel through short term rentals throughout the State of Michigan. Travelers United is a 501(c)(3) non-profit organization focused on consumer protection in travel. Travelers United has worked throughout the country to ensure consumers have the best travel experience possible in the United States. Through advocating policy, educating lawmakers and litigation, Travelers United has made an impact on American travel.[1]

There are many pressing issues for consumers in travel today but one of the most pressing issues before Americans is the rising cost of accommodation. Travelers United is deeply concerned that the elimination of short-term rentals will drive up the price of hotels which makes travel unaffordable to the average American. The number one issue Americans face when deciding to travel is affordability. An increasing trend noticed by Travelers United is that the advocacy against short term rentals is not just from their hotel competition, it is increasingly from extremely wealthy homeowners who do not believe that anyone not of their same economic level (those who can afford to buy a second house and keep it empty most of the year) should be in the same area as them. As home ownership in this country reaches levels of unaffordability to most, the idea of home ownership of a second home used just for vacation is now unfathomable to everyone other than the wealthy. With the days of an affordable rustic cabin or cute inexpensive lakeside home behind us, the future of travel in the state of Michigan depends on

[1] Pursuant to MCR 7.312(H)(5), no party's counsel authorized this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief and no person other than the amicus curiae and its members contributed money that was intended to fund preparing or submitting the brief.

whether consumers have access to the vacation homes that are currently owned by others. Multiple people sharing one home in a vacation destination is the only way most Americans can afford to travel to many locations now.

In order to ensure that all Michiganders have access to a few days where they can stay in a cabin in the woods while hunting or spend a week with their family on the shore of Lake Michigan, Travelers United strongly believes that Michiganders of all income levels should have the option of staying in vacation homes throughout the state. If accessing a vacation home in Michigan is limited to those who can afford to purchase and maintain a second home, very few people in the future will ever have the opportunity to enjoy the natural beauty of the state. Short-term rentals are essential in Michigan's tourism economy. Much of Michigan is rural and without hotels, short-term rentals provide accommodation where there otherwise is none. Short-term rentals take away the ability of hotels to price-gouge consumers which makes travel more affordable for everyone. Through short-term rentals, families can stay together in one house. One house with four bedrooms allows a multi-generation family to stay together and cook together in one kitchen.

Enjoying a vacation home together as a family whether a family owns the home or not should clearly be interpreted as a residential use of a home. If "residential use" is interpreted to mean only those who can afford to outright buy a home can use a home, there will be grave consequences for who can enjoy all that pure Michigan has to offer. The price of many vacation lake homes are already multiple millions of dollars. Many who own these homes visit once or twice a year, if they visit at all, leaving the economy of these towns suffering. Fewer people visiting means fewer people dining in restaurants, taking dune buggy tours and eating ice cream

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by the lake. The tourism economy will suffer. The enjoyment of Michigan's vacation homes should not be limited to the very few who can afford a second home.

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BACKGROUND

Michigan is a state with a robust cabin and lake culture. The tradition of families gathering by the lake to roast marshmallows together is threatened by the issue before the Court today. Travelers United writes this amicus brief to show support for all Michiganders and people who travel to Michigan for them to enjoy all that the state has to offer. Michigan's wonders should be accessible to people of all income levels.

Swift Estates, which is 10 large lots with nine homes over 22 acres near New Buffalo, Michigan, is the specific community at issue before this Court. The ten lots share a private beach on Lake Michigan. Communities of houses with a shared beach for all neighbors are extremely common throughout the state of Michigan. Swift Estates, a Lake Michigan adjacent community, has a Declaration of Covenants and Restrictions that was recorded on June 15, 1977. The Declaration states "no lot shall be used for other than single family residence purposes." It also states "Single family residence' means "any dwelling structure on a lot indeed for the shelter and housing of a single family."

Travelers United believes a family and friends staying together in a house in any lake front community is a residential use of the property. Whether the stay is for three nights, three weeks, or the whole summer, in the modern world people use homes on a lake for a short period of time with their family and friends. The alternative, and the likely fate of many of the many multi-million dollar homes in the area, is that the home has almost no residential use. They sit empty waiting for the extremely wealthy family from beyond to swoop in once or twice a year for a short stay. Some of the houses may never be used, likely sitting there and being treated by the owners just as some sort of asset. The owner may never even get to the house. In turn, restaurants, tourist activities and businesses nearby suffer.

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Prices of lakefront homes have gone up astronomically in Michigan over the last few years. The average home on Lake Michigan now costs $865,921.[2] Most people in Michigan would never be able to afford to own these homes nor would they be able to buy an empty plot of land for four million dollars.[3] When these homes are purchased by the ultra-wealthy not just as a first home to live in but as a second or third vacation home, the house likely will sit empty most of the year hurting the tourism economy of the community.

This issue of who gets to access Michigan's lake homes that is not just of legal importance but it is of deep personal importance to so many Michiganders and tourists to the state who want to enjoy all that Michigan has to offer. The question before the Court today is one that will impact tourism of Michigan for generations. Should Michigan's lake front communities be accessible to average Michiganders? Or should access to homes on Lake Michigan be excluded to only the ultra-ultra-wealthy?

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[2] Lake Michigan. Brook Walsh Real Estate. Last accessed January 9, 2025. https://www.brookwalsh.com/lake-michigan-realestate.php

[3] An empty 4.37 acre lot at 14494 Lakeshore Road, right by Swift Estates, sold on January 16, 2024 for $4,088,000. Source: Zillow. https://www.zillow.com/homedetails/14494-Lakeshore-Rd-Lakeside-MI-49116/73882047_zpid/ (Last viewed January 22, 2025).

ARGUMENT

Short term rentals increase consumer choice and decrease consumer costs. Housing prices have greatly increased in Michigan over the last fifty years. Though it may have seemed like every Michigan family had a home in a big city and a small home on the lake a half a century ago, today's reality is that many cannot even afford one home. Renting a home for a few days on the lake is often the only way a family can now experience Michigan's beloved lake culture. Neighborhoods throughout Michigan have an unfortunate history of using covenants to keep certain people out of their community. Today it seems that the people who are looking to be excluded are those who rent. Short term rentals have incredible value to a community, bringing in business to areas where houses nearby would otherwise be empty. Michigan businesses and Michigan consumers need short term rentals.

HISTORY

Millions of people moved to Michigan after hearing Henry Ford's promise that factory workers would earn five dollars a day. By the 1950s, one salary at an auto factory meant enough money for a home in Detroit, Flint or Grand Rapids and enough money for a small cottage on a lake. Today it is very difficult for Michiganders, even on two salaries, to afford a cottage on the lake or a hunting cabin – something that was extremely common for so many Michiganders just one generation ago. Since personally owning a cabin is now financially out of reach for most Michiganders, the only option the people of Michigan have to enjoy the lakes, rivers and woods of Michigan is now to rent a home for a few days a year.

For example, 14156 Swift Lane, a home in Swift Estates, was assessed at $377,900 in

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2001. Today the home is assessed at $2,120,500.[4] The economic situation in 1977 is very different than the situation in 2025. Without allowing others to share the enjoyment of the home, and allowing the person with the mortgage for a lake front home to get some relief in payment from that family that comes to enjoy the home, in one more generation Michigan's lake front homes will truly only be accessible to multi-millionaires.

Michigan's economy is no longer based just on building cars and making furniture. Tourism is an increasing industry in the state. Michigan's breathtaking waters and expansive forests attracts millions of tourists who enjoy boating, fishing and hunting and Michigan's cities have so much to offer. In 2023, Michigan welcomed 128.3 million tourists which is 12 times the state's population. These tourists spent 29.3 billion dollars in Michigan.[5] The hospitality and tourism industry in Michigan now employs almost 10 percent of the state's workforce.[6]

Michigan should be encouraging Michiganders – as well as tourists from out of state – to be able to come to the state to enjoy the extensive natural beauty that Michigan has to offer. The Court of Appeals' interpretation would exclude future guests from the ability to experience the beauty of Lake Michigan, and if applied elsewhere, Michigan's lakes, rivers and woods be limited to only those who can afford to own a second house without ever renting it out.

Travelers United is deeply concerned about the limiting options this would have for tourists in Michigan. Millions of Michiganders would no longer be able to access the natural

[4] Zillow. Last accessed January 9, 2025. https://www.zillow.com/homedetails/14156-Swift-Ln-Lakeside-MI-49116/120519289_zpid/

[5] Bissell, John. Michigan welcomed a record-breaking number of visitors last year. See how they spent $29B. MLive. October 15, 2024. https://www.mlive.com/life/2024/10/michigan-welcomed-a-record-breaking-number-of-visitors-last-year-see-how-they-spent-29b.html

[6] Michigan Hospitality and Tourism: Industry Cluster Workforce Analysis. State of Michigan – Department of Technology, Management and Budget. https://milmi.org/_docs/publications/Cluster_reports_2023/Michigan-Hospitality-and-Tourism-Industry-Cluster-Workforce-Analysis-Report.pdf

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wonder that Michigan has to offer. Travelers United believes that covenants should be read to allow home sharing so that people of all incomes can enjoy Michigan's natural treasures. This would ensure that travel within Michigan is not limited to an exclusive few.

INTERPRETING RESTRICTIVE COVENANTS

Today the option of owning a second home on the lake is inaccessible to most. Very few people can buy a multi-million dollar vacation home that they use a few times a year. An-ever-increasing norm however is that these homes can be accessed through home sharing. With the concept of home sharing, a family can purchase a property, like 14288 Lakeshore Road in Swift Estates, and enjoy the property with family and friends a few times a year. Then, when they are not there, they can share the home with other families who use the property just as the family that owns the house uses it. The consumer internet today allows homes like these to be listed online so that families who will never be able to buy a big lakefront house can access one for a week. Under this home sharing situation, the original family gets help in paying the million dollar plus mortgage and the home is consistently occupied bringing tourism dollars to Michigan's businesses, restaurants and lake front communities.

There has been a question of the use of a home in these short term rental situations. A short-term rental of a lake house *is* a residential use of a house. A family renting a short-term rental house on Lake Michigan is enjoying the house just as a family who owns a house on Lake Michigan would. The canons of construction require clarity to exclude property uses. If they did not, neighbors could read vague language to create non-sensical restrictions. Why make restrictions on those who rent vs own when they are using the property in the exact same way? Much case law throughout the country affirms that short term rentals *are* a residential use.

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Wihbey v Zoning Board of Appeals, Connecticut Supreme Court 20839, issued July 29, 2024, ___ A3d ___ (Conn 2024) holds that the plaintiff's use of the property for short-term rentals are permitted under the 1994 zoning regulations. The Supreme Court of Connecticut held that the language of the 1994 zoning regulations that viewed the property as a single-family dwelling was ambiguous found that the use of a short-term rental of a single-family dwelling constituted a permissible use under the regulations. The court determined that the regulations did not differentiate between long-term and short-term rentals and thus short-term rentals were permitted. In *Pandharipande v FSD Corporation*, 679 SW3d 610 (Tenn 2023), a property owner, Pratik Pandharipande, purchased a home on lake in Tennessee. The property was subject to covenants that required the home to be used for "residential and no other purposes." The Court determined "the original covenants requiring residential use of the property do not bar his short term rentals." In *Lake Serene Prop Owners Ass'n Inc v Esplin*, 334 So 3d 1139 (Miss 2022), addressed the question whether short-term rentals through services such as Airbnb constitute "residential purposes." The Court ruled that "Esplin's use of his property for short-term rentals did not violate Lake Serene's covenants because it constituted a residential use. Further, the court was also correct in finding that the covenants, when viewed as a whole, do not specify that short-term rentals are prohibited." Extensive recent case law affirms that a short-term rental is a residential use of a property. *Elk Point Country Club Homeowners' Ass'n, Inc v KJ Brown, LLC*, 515 P3d 837 (Nev 2022); *JBrice Holdings, LLC v Wilcrest Walk Townhomes Ass'n, Inc*, 644 SW3d 179 (Tex 2022); *Wilson v Maynard*, 961 NW2d 596 (SD 2021); *Craig Tracts Homeowners' Ass'n, Inc v Brown Drake, LLC*, 477 P3d 283 (Mont 2020); *Forshee v Neuschwander*, 914 NW2d 643 (Wisc 2018); *Tarr v Timberwood Park Owners Ass'n, Inc*, 556 SW3d 274 (Tex 2018); *Vera Lee Angel Revocable Tr v Jim O'Bryant & Kay O'Bryant Joint*

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The fact that people who cannot afford to buy a multi-million dollar house are using and enjoying a multi-million dollar house has clearly offended some in Swift Estates. Renters vs. homeowners have long engaged in heated disputes generally based on class. One issue that is not considered by plaintiffs is how they even define what a short term rental is. Is it a rental for one day? A week? A month? Today many people are likely to look for a one or two month rental on short-term rental websites like Airbnb or VRBO. Airbnb reported a 20 percent increase in longer term stay bookings.[7] Interns in a city, temporary summer workers and grandparents helping with their nearby grandchild now commonly turn to Airbnb, VRBO or other short-term rental platforms to easily find a place to live for a month or two. The idea that this accommodation would not be considered residential use is nonsensical. Michigan courts have agreed. "A resident, residence means any place of abode or dwelling place, however temporary." *Mapp v Progressive Ins Co*, 346 Mich App 575; 13 NW3d 643 (2023), app den 513 Mich 998; 1 NW3d 259 (2024) citing *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013). "Grange indicates that a person may have one domicile but more than one residence" and clarifies that "domicile, pursuant to case law, does mean something different than residence. With domicile, there is an intent to remain requirement." Clearly with residence, however, there is not meaning that when someone is in a short term rental for a few days they are using the

[7] Hosts Playing Critical Role in Providing Longer Term Local Stays. Airbnb. April 1, 2020. https://news.airbnb.com/longertermlocalstays/

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house in a residential manner in accordance with the Swift Estates covenant. *Grange* argues that a person may have one domicile but more than one residence. Case law throughout the country and Michigan is clear. A short-term rental is a residential use of a property.

RESTRICTIVE COVENANTS HAVE BEEN USED IN MICHIGAN TO DISCRIMINATE

Travelers United is concerned about the long, unfortunate history that Michigan has of using racist, restrictive covenants to exclude certain people from residential communities in popular tourist areas. *Craig v Bossenbery*, 134 Mich App 543, 553; 351 NW2d 596, 601 (1984) (finding single family covenant void for public policy); *Charter Twp of Delta v Dinolfo*, 419 Mich 253, 271; 351 NW2d 831, 840 (1984) (finding single family covenant unconstitutional for lack of any rational basis); *City of Livonia v Dep't of Soc Servs*, 423 Mich 466, 529; 378 NW2d 402, 431 (1985) (endeavoring to use a residential use restriction to bar a home for developmentally disabled adults); *Phillips v Naff*, 332 Mich 389, 396; 52 NW2d 158, 161 (1952) (finding judicial enforcement of racial covenant violated Fourteenth Amendment).

The attempts by Michigan lake cottage communities at exclusion extends to the very recent history. Just five years ago, Bay View Association, a vacation community on Lake Michigan attempted to forbid Jews from being able to buy homes in the community. *Bay View Chautauqua Inclusiveness Group v The Bay View Association of the United Methodist Church, et al*, Case No 1:17-cv-0622 (WD Mich) and *Bay View Chautauqua Inclusiveness Group v The Bay View Association of the United Methodist Church, et al*, Case No 1:19-cv-00291 (WD Mich). In 2017 the community was urged to change the policy but the Bay View Association sued in federal court hoping to uphold their Christian-only community. In July 2019, the court approved a consent decree with federal oversight to ensure an end to religion-based housing discrimination in the community. *Bay View Chautauqua Inclusiveness Group v The Bay View Association of the*

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United Methodist Church, et al, Case No 1:17-CV-0622, *Bay View Chautauqua Inclusiveness Group v The Bay View Association of the United Methodist Church, et al,* Case No 1:19-CV-00291, *United States of America v The Bay View Association of the United Methodist Church,* Case No 1:19-cv-551, Consent Decree (WD Mich July 18, 2019). The American Civil Liberties Union (ACLU) wrote an amicus brief in the case that highlights Michigan's long history of using restrictive covenants to keep certain people out of a community. Brief for the American Civil Liberties Union as Amicus Curiae, *Bay View Chautauqua Inclusiveness Group v The Bay View Association of The United Methodist Church et al* Case No 1:17-CV-0622.

Interestingly they note that this was not just being done in urban and suburban areas, but also in resort communities. "As in other areas of the country, restrictive covenants in deeds and bills of sale were popular in Michigan and were upheld by at least twice by the Michigan Supreme Court. See *Parmalee v Morris*, 218 Mich 625; 188 NW 330 (Mich 1922) (holding that deed's restrictive covenant barring blacks from occupying lots for sale was not contrary to public policy and was enforceable); *Sipes v McGhee*, 316 Mich 614; 25 NW2d 638 (1947) (affirming Parmalee rule), rev'd, *Shelley v Kraemer*, 334 US 1 (1948) … In practice, Bay View's requirement that prospective homebuyers join the Bay View Association, which accepts only Christians as members, is nothing more than a backdoor restrictive covenant – one that excludes all religious minorities and non-theists from homeownership in the community… Though not nearly as common as racial discrimination, as illustrated by this case, religious discrimination in housing has not been relegated to a bygone era."

The covenant at issue today does not explicitly exclude any specific community but the interpretation appellee's urge does just that. Before us today, there is an issue of those who rent vs. those who are wealthy enough to own a cabin by the lake. There is a long history in Michigan

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of discrimination in covenants. The law presumes freedom of use in the face of ambiguity. In order to ensure that there is not discrimination, land covenants should say exactly what they mean when it comes to exclusion.

MICHIGAN NEEDS SHORT TERM RENTALS

Tourism is a vital part of the economy of Michigan. There are simply not enough hotel rooms in many Michigan lake towns to take the summer surge of tourists. In the fall, there are not enough hotels to take in hunters. When it snows, Michigan's ski communities surge their pricing to match demand. When there are not enough hotels in an area, the hotels that do exist can prey on consumers with surge pricing. Yet in many parts of rural Michigan, hotels simply do not exist. A Marriott Hotel is not exactly located in peak hunting areas of Michigan. For these two reasons above – the surging cost of hotels in peak times and the lack of hotels in rural areas – short term rentals provide the only relief for a tourist in these areas. For many families, they would not be able to travel or would feel very uncomfortable traveling in a setting where they were split up, such as in a hotel. A short term rental provides the opportunity for a group to stay together. In many cases, this group would not travel if it was not for the ability to stay together as a family unit in a short term rental. Short-term rentals are essential to combat hotel surge pricing, to provide tourists a place to stay in rural communities and for families who want to stay together in one unit.

SURGE PRICING ON LAKE MICHIGAN MAKES HOTELS UNAFFORDABLE

Surge pricing at Michigan's hotels contributes to the unaffordability of tourism in the state. A solution to this problem is to allow and encourage short term rentals. There are three months of perfect summer weather on Michigan's coasts. These three months have twelve weekends. Anyone in Michigan who has ever tried to book a hotel in a lake front town will

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quickly tell you that the pricing on the weekends is astronomical. Whether the town is small, like around Swift Estates, or large such as in Traverse City, there simply are not currently enough hotel rooms for the surging interest on Fridays and Saturdays in Michigan summers.

Since a very basic hotel room can go for $400 or even $500 dollars on the weekend in these communities, that eliminates most Michigan families who are on a budget. When short term rentals are allowed to operate in an area, hotels can no longer engage in such intense surge pricing. The overall price for accommodation in the area goes down. The New York Times quoted the chief executive of the Hotel Association of New York City as saying "Airbnb (a short-term rental platform) has brought hotel pricing down in many places during holidays, conventions and other big events when room rates should be at their highest and the industry generates a significant portion of its profits."[8] Indeed when hotels are able to engage in surge pricing, they can go wild in setting astronomical rates. A report from UBS stated that "on those nights when a market has occupancies above 95%, they (hotels) can set rates at 50% or higher than normal. That luxury might be fading in cities with strong presence by Airbnb and other sharing economy sites."[9] Kayak CEO Steve Hafner was quoted in Bloomberg as saying "in peak periods of demand … the hotels that used to be able to gouge you by taking the price way up because of limited supply don't have that same ability anymore because of the additional inventory that Airbnb has brought online."[10] Online short-term rental platforms like Airbnb and

[8] Benner, Katie. Inside the Hotel Industry's Plan to Combat Airbnb. The New York Times. April 16, 2017. https://www.nytimes.com/2017/04/16/technology/inside-the-hotel-industrys-plan-to-combat-airbnb.html

[9] Griswold, Alison. Airbnb is Making It Harder for Hotels to Price Gouge Customers. Quartz. August 16, 2016. https://qz.com/758395/airbnb-is-making-it-harder-for-hotels-to-price-gouge-customers

[10] Kayak CEO Hafner: Airbnb Combats Hotel Price Gouging. Bloomberg Markets. July 19, 2016. https://www.bloomberg.com/news/videos/2016-07-19/kayak-ceo-hafner-airbnb-combats-hotel-price-gouging

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VRBO provide consumers the option of an affordable house on Lake Michigan where a family can stay together for a few days in one house when a hotel stay would likely cost two or three times as much. A family that would have never been able to travel to the lake for a weekend is now able to because of short term rentals.

The surging hotel prices in Michigan have risen to the point where most Michigan tourists are unable to stay at Michigan's lakefront hotels in the summer. Though plenty of statistics have already been included in this brief, a personal story can also exemplify this problem. The author of this amici, Travelers United Counsel, experienced this first hand on a recent trip bicycling up Lake Michigan's coast. Starting the trip on the Michigan/Indiana border, hotels on a weekend in August in New Buffalo that were directly on or near the water were advertising themselves for $800 a night. New Buffalo, Michigan is very close to Swift Estates. Counsel for a non-profit cannot afford an $800 a night room but there were other options like a hotel outside of town and next to I-94 that in January 2024 is advertised at $75 a night but on a summer on the weekend in August it was $250. Here one could go further, just outside of town, to reach a somewhat affordable hotel. In other Michigan locations, there is no option to go just outside of town for an affordable hotel. Just up the coast on the trip is the town of Pentwater. On a beautiful weekend summer night, there were no hotels available for any price. If a short term rental had not been available, it would not have been possible to stay in Pentwater. There were no hotels available for any price anywhere within a 30 minute drive of Pentwater. These examples of extreme surge pricing and total hotel unavailability are issues that people traveling through Michigan face regularly. The number one issue in people's decision to travel is whether or not they can afford it. Leaving no hotels available for tourists who may not have reserved in advance can put people in dangerous situations. The State of Michigan should do more to open

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up more doors for tourists so that everyone has a safe, comfortable place to sleep while traveling. Having more doors available for Michigan tourists means opening up Michigan's houses to short term rentals.

Having an affordable place to stay is a crucial part of deciding to travel for most Americans and Michigan can make that possible by ensuring that tourists to Michigan can access short term rentals. Short term rentals reduce the price impact of hotel surge pricing and they provide an alternative to the hotel monopoly in Michigan's small vacation towns. Hotels in Michigan certainly do not just take part in surge pricing along the shores of Lake Michigan. The same problem exists in Michigan's big cities. When the Lions are in a playoff game or Beyoncé is in town, surge pricing impacts Detroit. Detroit, even after years of great economic development, still faces challenges in hosting major events because they do not have enough hotel rooms. Short-term rentals allow more people to come to town and allow for Detroit to host 775,000 fans for the three-day 2024 NFL draft.[11] This would not have been possible without short-term rentals. Alleviating surge pricing and opening up more possibilities of places to stay is essential for thriving tourism in Michigan. Short-term rentals being available allows tourists in Pentwater to find a somewhat affordable place to stay on a perfect Saturday night in July and it allows them a place to stay when there is a Taylor Swift concert in Detroit.

IN RURAL COMMUNITIES SHORT TERM RENTALS PROVIDE A PLACE TO STAY

Rural Michigan is 95% of the state geographically and it holds 20% of the state's

[11] Woodyard, Eric. Detroit breaks NFL draft attendance record with over 775K fans. ESPN. April 27, 2024. https://www.espn.com/nfl/story/_/id/40038344/detroit-shatters-nfl-draft-attendance-record-700k-fans

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population.[12] Much of Michigan is rural. In many rural towns across the state there simply is no hotel. These rural areas are filled with beautiful lakes, deep forests and incredible rivers. These locations, away from the bustle of a big city, is often where people from a big city want to visit. The income of tourists can be vital to the small towns of the state. Cabins or lake homes in these areas are often the only option of tourist accommodations. Traditionally people have rented a cabin in the woods and that tradition continues today just with the ease of being able to find one of these rural cabins on a short-term rental platform.

Again, a personal anecdote illustrates this problem firsthand. When Travelers United's counsel visited her cousin in Newaygo, Michigan on her bike trip through Michigan, she stayed at a short term cabin rental she found on Airbnb. She stayed there because Newaygo, like many small towns in Michigan, does not have a traditional hotel. Newaygo is a popular fishing town on the Muskegon River filled with big game salmon, steelhead, rainbow and brown trout. People from throughout the Midwest come to fish here and when they do, they stay in cabins along the river, on the nearby lakes and in the woods. People stay in Newaygo for a beautiful rural Michigan vacation. In such a small town, however, that means that if they want to stay overnight they have to rent a cabin. There is no hotel. Staying in a short-term rental is often the only option for accommodation in an area.

Short term rentals direct tourists away from crowded city destinations with a concentrated supply of hotels and have dispersed the benefits of tourism to local families and businesses in more remote destinations. When tourists are in more places, the businesses in those areas thrive. Counsel for Travelers United would have never been able to visit her cousin in Newaygo and

[12] Michigan Department of Agriculture and Rural Development's Office of Rural Development: 2023 Strategy. https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/ord/Rnd-1-ORD-Overview.pdf.

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float down the Muskegon River if it was not for the plethora of short term cabin rentals in the area. Short-term rentals are crucial for so many Michiganders who want to visit relatives, hunt, snowmobile, fish or enjoy nature in rural areas that do not have a hotel. These short-term rentals allow Michigan's more remote communities to welcome tourists and they have a significant positive economic impact on their towns.

SHORT TERM RENTALS ALLOW FAMILIES TO STAY TOGETHER

Travelers United also implores the Court to consider that renting a home is the only way many people can travel. An important consideration is the joy that families have by staying in a short term rental together. Families who want to stay together often do not have the ability to rent three connected hotel rooms. Two grandparents, their two kids and those kids two spouses and four grandchildren can easily stay together in a rented Michigan lakefront house and go outside to roast marshmallows by the lake. This is not possible at a hotel. A short term rental home allows a family to stay together, hang out in the living room, cook dinners together and enjoy a beautiful home in Michigan. Many families traveling with small children specifically look for short term rental homes that provide a crib, high chair, changing table, toys, sippy cups and plates for babies and kids. Many short term rental homes provide these amenities. Few, if any, Michigan hotels have all of these amenities available. Traveling with small children, and all of the gear they require, can be very difficult. Knowing short term rentals exist where most of the gear small children require is provided is a huge relief to parents. A high chair at a cabin or a lake house is a true luxury for a family traveling together. A new mother traveling with her baby may be uncomfortable staying in joined hotel rooms with other family members. The baby may cry through the night disturbing others and she likely wants to be able to have somewhere she can feed the baby away from others. In a short term rental, a new mother never needs to worry

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about her baby waking up complete strangers in a hotel. If her family rents a house, she can likely easily find a short term rental with a crib and maybe even a whole room for the baby where she can nurse the child back to sleep. This is simply not an option at a hotel. A home gives privacy to a family and allows people who may be uncomfortable traveling otherwise and opportunity to get out and have a few days of scenic views. This is a luxury that usually only a short-term rental can provide.

Many in Michigan themselves cannot afford a hunting cabin or a lake cottage, even to host as a short term rental, but part of Michigan culture for the last 100 years has been to escape the city to stay with your family on the lake for a family vacation. Michigan is simply not Michigan without the ability of families to rent a house on the lake where they can stay together, cook together, make smores together and jump in the lake together. These families staying in lake houses allow them to take part in the economy by shopping at local stores such as visiting a local ice cream shop in the summer or in the winter going to one local outfitter to rent snowmobiles. Families and friends staying together in lake houses or in cabins across Michigan have long been a part of the Michigan tourism economy.

THE FUTURE OF MICHIGAN TOURISM DEPENDS ON SHORT TERM RENTALS

The fact is that in 2025 many tourists do not want to stay in a hotel. Thanks to multiple platforms on the internet consumers have a variety of short term rental options they can easily choose from. Whether to stay as a whole family unit together in a home, or to rent a cabin far, far away from a Hilton when they hunt in the woods, forcing consumers to stay only in hotels is no longer a realistic option in 2025. In fact, when bans on short term rentals have gone into effect, there are unquestionable bad implications for consumers. Just over one year ago, New York City essentially banned short term rentals. The average hotel room in Manhattan is now almost $500.

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"New York City Hotel Rates Soar to Record Heights as Holiday Travel Nears," a *New York Times* headline from November 24, 2024 states.[13] The first sentence in the article is "Hotels charged an average of $417 per night in September, the highest monthly rate ever for the city. "I don't understand how normal people can go there," one tourist said." A hotel developer is quoted in the article was attributed to saying that the new limits were "very good" for his business but that he worried about the longer term consequences as limiting inventory of where consumers can stay could drive hotel rates so high that tourists in five years could decide not to visit.

This is exactly what is happening right now at Michigan's tourist lake towns. Hotel rooms are $500 or more dollars a night on Friday and Saturday nights on the weekend. If a family has the option, they will rent a home so that they can all stay together in one room instead of renting two rooms costing $1,000 a night. If a family does not have the option of staying a home for a more reasonable price, they likely will decide just not to visit. Some tourist areas have recognized this. The California Coastal Commission recognized that short term rentals provide a vital tool to promote "public access and visitor-serving opportunities to coastal communities." Commission staff noted that restrictions on short term residential restrictions "would result in reduced lodging options for the people who need the economies of scale that [STRs] can offer to groups and families on the coast" and they explained that short term rentals are a "valuable visitor-serving accommodation (that can often be lower-cost) within the City's coastal zone."[14]

[13] Haag, Matthew. The New York Times. November 24, 2024. https://www.nytimes.com/2024/11/24/nyregion/new-york-city-hotels.html

[14] California Coastal Commission: Summary of LCP Amendment Request. September 30, 2021. https://documents.coastal.ca.gov/reports/2021/10/W14b/W14b-10-2021-report.pdf

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As technology advances and items once affordable become inaccessible to purchase, many industries within the last decade have changed from one of outright purchase to one of renting. Consumers can now have access to products without having to own the product. This is referred to as access-based consumption. People now have subscriptions to rent clothes. Many major cities, including Detroit, have a shareable bikeshare system so people can enjoy biking without having to purchase a bike. Anyone can now rent a car from a neighbor through numerous different apps. Consumers can rent tools at Home Depot. These new technological advancements allow people to participate in the joys of a product – a fancy dress, a power saw or a bicycle – that they can use on a temporary basis which makes it affordable to them, sustainable as it is used by others and brings joy to people who might not have been able to experience this product if they had to buy it outright. A business school article talking about the new trends of the sharing economy in 2011 noted short term rentals implications for sustainability and consumer flexibility in renting out rooms and homes. "Airbnb (www.airbnb.com) enables individuals to rent out spare rooms or even houses that they are not currently using. Such programs provide consumers with flexibility because they can choose the specific version of a product they need at a given point in time while distributing the upfront purchase and maintenance costs across many consumers rather than a single individual or family."[15] Airbnb and VRBO, the two biggest short-term rental platforms, continue to provide opportunity and flexibility to consumers today. For more than a decade now, consumers have been given the option of easily booking a home or a hotel when they travel. For tourism in Michigan to thrive, both options should continue to be available.

[15] Luchs, Michael G., Rebecca Walker Naylor and Randall L. Rose (2011), *"Toward a Sustainable Marketplace: Expanding Options and Benefits for Consumers,"* Journal of Research for Consumers – William & Mary, 19: 1-12.

CONCLUSION

The Michigan love of lake life should not be limited in 2025 to the very few who can purchase a second home on the lake. Renters of a house for a few days and those of wealth who can buy a home outright are both using the home in a residential way. The enjoyment of Michigan's beautiful nature should not be limited by socio-economic status. Michigan is a state that takes pride in its culture of being able to visit a cabin in the woods to hunt and being able to cook with ones family in a lake house over the summer. Michigan would not be Michigan without people being able to rent homes all along the Great Lakes and the thousands of inland lakes and rivers throughout the state. The economic reality is that that if this court interprets Swift Estates covenants to mean that only those wealthy enough to buy Michigan's vacation homes by the lake can enjoy them, Michigan's tourism economy will have dire consequences. Much of the state is rural and the people visiting have no option to stay in a hotel. It's a short-term rental or nothing. To ensure that all in Michigan and those who travel to Michigan are able to enjoy the wonder of the state, short term rentals should be accessible to all Michiganders.

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT COMPLIANCE

This Amicus Curiae Brief from Travelers United complies with the word count limitation of MCR 7.212(G) because:

X This Amicus Curiae Brief contains 6,799 words.

Respectfully Submitted,

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