

IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

Case No. A21A1263

EFFICIENCY LODGE, INC.,

Appellant-Defendant,

v.

ARMETRIUS NEASON; LYNETRICE PRESTON; and ALTONESE
WEAVER,

Appellees-Plaintiffs.

**BRIEF OF AMICUS CURIAE HOUSING JUSTICE LEAGUE, THE
ATLANTA VOLUNTEERS LAWYERS FOUNDATION, THE SOUTHERN
POVERTY LAW CENTER, DANIELLA AIELLO, PH.D., TAYLOR
SHELTON, PH.D., AND BRIAN GOLDSTONE, PH.D. IN SUPPORT OF
PLAINTIFFS-APPELLEES**

Submitted by:

Emily C.R. Early (GA 810206)

TABLE OF CONTENTS

I. STATEMENTS OF INTEREST OF AMICI CURIAE.....1

II. SUMMARY OF ARGUMENT4

III. ARGUMENT6

A. Extended-Stay Residential Hotels Historically Represent a Key Component
of the Continuum of Affordable Housing in the United States and Their
Significance Continues to Dramatcent a Th

3. *Using primary residence as a key factor in whether residents at extended stay motels are tenants is consistent with federal law applicable to Efficiency Lodge and Plaintiffs*.....37

IV. CONCLUSION39

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amazing Grace Bed & Breakfast v. Blackmun</i> , CIV.A.09-0298-WS-N, 2009 WL 4730729 (S.D. Ala. Nov. 30, 2009).....	38
<i>Bailey v. Stonecrest Condo. Ass'n, Inc.</i> , 304 Ga. App. 484, 696 S.E.2d 462 (2010)	37
<i>Baker v. Rushing</i> , 104 N.C. App. 240, 409 S.E.2d 108 (1991)	35, 36
<i>Baxter v. City of Belleville, Ill.</i> , 720 F. Supp. 720 (S.D. Ill. 1989).....	37
<i>Diplomat Rest., Inc. v. Townsend</i> , 118 Ga. App. 694 (1968).....	34
<i>Ellerman v. Atlanta Am. Motor Hotel Corp.</i> , 126 Ga. App. 194 (1972).....	34
<i>Grayden v. Rhodes</i> , 345 F.3d 1225 (11th Cir. 2003)	23
<i>Greene v. Lindsey</i> , 456 US 444 (1982).....	23
<i>HSH Eastgate, LLC v. Sheriff of Osceola Cty.</i> , Fla., 6:13-CV-1902-ORL-31, 2015 WL 3465795 (M.D. Fla. June 1, 2015).....	35
<i>Jeffries v. Ga. Residential Finan. Auth.</i> , 503 F. Supp. 610 (N.D. Ga. 1980).....	24, 25
<i>Lindsey v. Nornet</i> , 405 US 56 (1972).....	23

McNeill v. Estate of Lachmann,
 285 N.J. Super. 212, 666 A.2d 996 (App. Div. 1995)36

Patel v. Holley House Motels,
 483 F. Supp. 374 (S.D. Ala. 1979)38

Schwarz v. City of Treasure Island,
 544 F.3d 1201 (11th Cir. 2008)37

State v. Delvechio,
 301 Ga. App. 560 (2009).....34

Stone v. Clow,
 A13-0984, 2014 WL 902724 (Minn. Ct. App. Mar. 10, 2014)36

Summer v. Hyatt Corp.,
 153 Ga. App. 684 (1980).....34

Traylor v. Hyatt Corp.,
 122 Ga. App. 633 (1970).....34

United States v. Columbus Country Club,
 915 F.2d 877 (3d Cir. 1990)37

United States v. Hughes Mem'l Home,
 396 F. Supp. 544 (W.D. Va. 1975).....38

Walpert v. Bohan,
 126 Ga. 532 (1906)33, 34

Whipper v. Kirk,
 156 Ga. App. 218 (1980).....25

Wilensky v. Agoos,
 74 Ga. App. 815 (1947).....25

Statutes

42 U.S.C. § 3602(f)37

42 U.S.C. § 3604(f)37

O.C.G.A. § 1-3-1 33

O.C.G.A. § 1-3-1(b) 32

O.C.G.A. § 8-3-200 et seq. 32, 37, 38

O.C.G.A. § 43-21-1 33

O.C.G.A. §§ 43-21-1 et seq. 24

O.C.G.A. §§ 44-7-1, et seq. 24

O.C.G.A. §§ 44-7-13, 44-7-14..... 27

O.C.G.A. § 44-7-30 33

O.C.G.A. § 44-7-50 24, 26

O.C.G.A. §§ 44-7-50, 44-7-51 25

O.C.G.A. §44-7-50(a) 24

Other Authorities

Atl. Reg’l Comm’n Reg’l Snapshot: 2020 Regional Housing Affordability (Feb. 17, 2020)..... 18

Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America*, Henry Holt & Co. (2001) 6

CisionPRWeb, “PadSplit Announces 179% Revenue Growth in 2020” (last visited July 22, 2021)..... 29, 30

Efficiency Lodge, Inc. (2001), Annual Report, Form 10k-SB (2002), <https://bit.ly/37FywJb> 8, 15

Eric Eckholm, *As Jobs Vanish, Motel Rooms Become Home*, NY TIMES, March 10, 2009. 6

Eric Seymour & Joshua Akers, “*Our Customer Is America*”: *Housing Insecurity and Eviction in Las Vegas, Nevada’s Postcrisis Rental Markets*, *Housing Policy Debate*, 31(3), 516–539 (2020)..... 9, 11

Harris & Thanawala, *Suit: Atlanta Area Housing Site Illegally Evicted Residents*, Assoc. Press.....27

J.D. Capelouto, *Families Forced Out of Extended Stay Motel in South DeKalb as Activists Sound Alarm*, Atlanta Journal Constitution, Sep. 11, 2020.....20

Kate Santich & Caroline Glenn, *Families living in Central Florida hotels fear homelessness during coronavirus pandemic*, Capital Gazette, Apr. 17, 2020..... 8

Kathleen Allen, et al., *When Extended-Stay Becomes Home*, LiveNorcross (May 2019) at pp. 6-7, <https://bit.ly/3g1Fay3> 19

Leslie A. Brownrigg, *People Who Live in Hotels: An Explanatory Overview*, U.S. Cens. # . ,-\$

Kat & ,son\$en ic > \$oo `

Ron Harris & Sudhin Thanawala, *Suit: Atlanta Area Housing Site
Illegally Evicted Residents*, ASSOC. PRESS, Oct. 7, 2020
<https://abcn.ws/3AGa7Qr>.....22

S.O. Thompson

I. STATEMENTS OF INTEREST OF AMICI CURIAE

HOUSING JUSTICE LEAGUE (“HJL”) is a grassroots, member-led organization that builds power in low- to moderate-income, metro-Atlanta neighborhoods highly impacted by the housing crisis. By mobilizing communities around foreclosure, eviction, tenant rights, and public land rights—with an emphasis on leadership development and fostering a culture of resistance through non-violent direct action—HJL strives to transform Atlanta’s approach to housing. Members of HJL’s Eviction Defense Working Group have worked closely with residents of extended stay residential hotels across metro Atlanta, including the Efficiency Lodge on Flat Shoals Road in Decatur, Georgia—which is at issue in this lawsuit—to take collective action for better housing conditions and more just treatment by management.

ATLANTA VOLUNTEER LAWYERS FOUNDATION (“AVLF”) is a nonprofit legal organization that provides free representation to low-income tenants. AVLF is the largest provider of pro bono legal services in the greater Atlanta area. For over forty years, AVLF has provided high-quality advocacy, legal representation, education, and holistic services at no cost to low-income families with civil legal needs at critical times in their lives. AVLF’s programs include services for tenants involved in landlord-tenant disputes or facing eviction, survivors of intimate partner abuse, employees seeking unpaid wages, and family members

addressing probate matters. AVLF provides legal representation in landlord-tenant matters in Fulton County and Clayton County courts. Through its work, AVLF has developed an intimate familiarity and expertise with the problems facing low-income tenants whose landlords fail to provide safe living conditions, unlawfully withhold security deposits, and pursue illegal evictions outside of the court process.

THE SOUTHERN POVERTY LAW CENTER (“SPLC”) has provided pro bono civil rights representation to low-income persons in the Southeast since 1971, with particular focus on combating unlawful discrimination and ending poverty. The SPLC provides educational materials, engages in policy reform, and develops litigation to eradicate economic penalties and punishment disproportionately impacting Black and Brown communities, to ensure meaningful access to social safety nets, including housing, and opportunities for economic investment in their communities.

BRIAN GOLDSTONE, Ph.D., is a journalist, cultural anthropologist, and National Fellow at New America. He is currently writing a book entitled *The New American Homeless*, which will be published by Crown/Penguin Random House. The book, based on a 2019 article in *The New Republic* magazine, investigates America’s crisis of housing insecurity and the dramatic rise of the “working homeless.” As part of this research, he spent ten months (January to October 2020) reporting on families residing at the motel owned by Efficiency Lodge, Inc. in

Decatur, Georgia—some of whom had been living at the motel for over two years. He received his Ph.D. from Duke University in 2012 and was subsequently a postdoctoral fellow at Columbia University and a Visiting Scholar at Emory University.

TAYLOR SHELTON, Ph. D., is an Assistant Professor in the Department of Geosciences at Georgia State University. He studies socio-spatial inequality in cities with a focus on how mapping and data visualization can assist in better understanding urban social and environmental phenomena, with a particular interest

II. SUMMARY OF ARGUMENT

The trial court's order and accompanying injunction against Appellant-Defendant Efficiency Lodge, Inc. ("Efficiency Lodge") must be upheld for a number of legal as well as pressing public policy reasons that amici curiae seek to address on behalf of the interests of the thousands of extended-stay and residential hotel residents across the State of Georgia.

First, the Brief demonstrates the significant role that extended-stay residential hotels have historically played and more importantly, that they continue to play in the current and ever-shrinking affordable housing market throughout the metro Atlanta area and the State of Georgia. It is no coincidence that extended-stay residential hotels have created a business model that relies on long-term residents and offers incentives to vulnerable low-income individuals and families left with no other options in an unaffordable housing market. Relying on recent extensive studies and news coverage on the rise of extended-stay residential hotels, as well as first-hand experience of housing

dispossessory law protects. A failure to uphold the lower court's injunction cannot protect those due process rights or prevent the abuses of low-income extended-stay hotel residents that will certainly follow from a reversal of the lower court's order. Rather, it would only allow businesses like Efficiency Lodge to continue to adjust their business model and illegally and immorally exploit the housing instability of economically vulnerable individuals and their families.

Finally, the Brief concludes that upholding the lower court's injunction is necessary to remain consistent with housing laws' and other states' treatment of residents of extended-stay and residential hotels.

For all of these reasons, this Court should uphold the trial court's order and adopt a test to determine tenancy that gives primary consideration to whether the resident lives at the dwelling as his or her sole, permanent residence. Such an outcome would promote stability in Georgia's extremely limited affordable housing market; uphold Plaintiffs-Appellees' ("Plaintiffs") and other extended-stay and residential hotel residents' due process property rights in their extended-stay hotel residences, including their rights against self-help evictions and the emotional and often physical violence that accompanies such evictions, and their right to habitable living conditions; and mir& m # i tM² g habitaME

III. ARGUMENT

A. Extended-Stay Residential Hotels Historically Represent a Key Component of the Continuum of Affordable Housing in the United States and Their Significance Continues to Dramatically Expand.

financial crisis, hotels of various kinds have steadily become havens for the working poor. The economic instability introduced by the COVID-19 pandemic has in turn led to even further considerable housing insecurity for many low-income renters. According to research published by the *New York Times* that looks only at hotels formally classified as extended-stay residences, there are approximately half a million such hotels in the United

see also Eckholm, “As Jobs Vanish, Motel Rooms Become Home; Frazier, *When No Landlord Will Rent to You*, NY TIMES MAGAZINE.

As noted by various scholars, there exists no comprehensive database of residential hotels across the United States—much less, an accounting how many people are living in them or the conditions under which they are living. Eric Seymour & Joshua Akers, “*Our Customer Is America*”: *Housing Insecurity and Eviction in Las Vegas, Nevada’s Postcrisis Rental Markets* (hereinafter “*Our Customer is America*”), HOUSING POLICY DEBATE, 31(3), 516–539 (2020); S.O. Thompson, *Higher Risk of Homelessness for Extended-Stay Hotel Residents*, JOURNAL OF AFFORDABLE HOUS. & CMTY.

- b) Identifying those hotels listed in the 2019 LiveNorcross report “When Extended-Stay Becomes Home” as being predominantly used as permanent housing;
- c) Identifying those hotels listed in Fulton County Tax Assessor records as having the land-use code for “Micro Budget Motel”;
- d) Identifying residential hotels of the same brand name or chain located in the remaining 4 Atlanta metro counties (DeKalb, Cobb, Gwinnett, and Clayton), using the Fulton County Tax Assessor records land-use code for “Micro Budget Motel” as a proxy; and
- e) Identifying those hotels that are explicitly branded as being extended-stay hotels in online business directories for hotel chains.

Using these methods, we identified a total of 45 different hotel brands operating in Georgia, including se #

The results from this dataset reveal the far-reaching impact that the outcome of this appeal will have on housing security for low-income residents who face

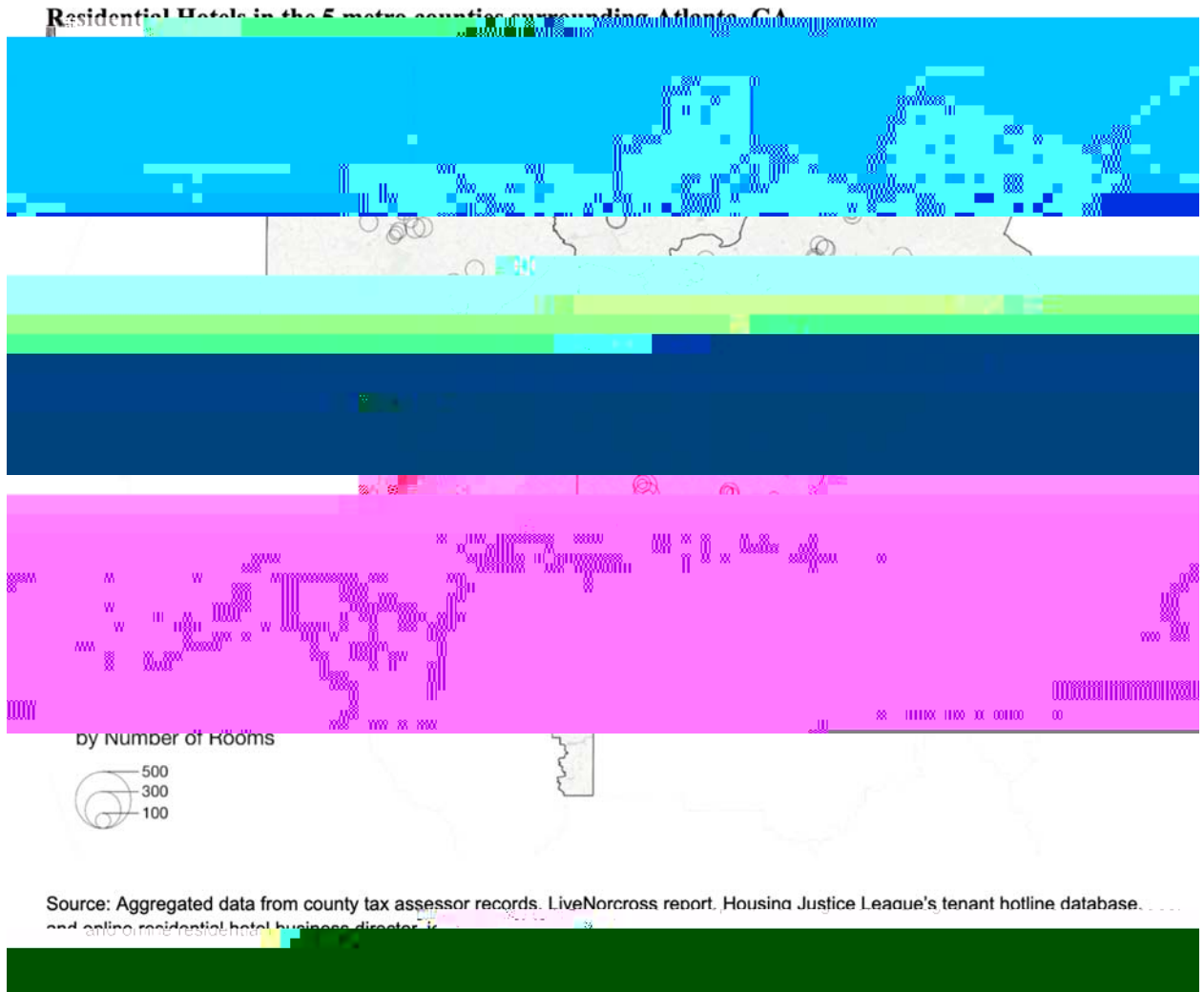


FIG 1. RESIDENTIAL HOTEL MAP - 5 METRO COUNTIES IN GEORGIA

FIG. 2. N.

Given these methods, our full dataset provides a liberal estimate of how many rooms *could be* used as residences when the hotels are at a maximum capacity.² However, carrying out conservative calculations, based on the 72% occupancy rate reported by Extended Stay America as a proxy, *Frazier, UIGDPD*~~WKEPHvGp~Ry~R@~~*Frazier*

tenants. For them, Efficiency Lodge is home, and because home comes with the same risks of violence from illegal evictions and the horrible conditions that many low-income tenants experience, this Court should ensure that those residents have the same protections enjoyed by all tenants.

1. Extended-Stay Residential Hotels Compete for, Incentivize, and Profit from Long-Term Residency.

Efficiency Lodge argues that treating residents as tenants because they live at the motel as their primary residence creates an unworkable rule. It goes on to argue that when a resident ceases being a guest and becomes a tenant, that is the unilateral experience of the resident, not a mutual understanding with the hotel. This argument obscures the reality that Efficiency Lodge, and other establishments like it, targets low-income individuals and families as long-term residents as an essential part of its business model. *See* Efficiency Lodge, Inc., Annual Report, Form 10k-SB,.

Extended-stay residential hotels use a combination of incentives^{bu} to eq

Census Bureau, Statistical Research Division (May 31, 2006), pp. 24-26. Moreover, extended-stay residential hotels take advantage of economic market forces that push low-income families to their businesses, acknowledging that they cater “primarily to people who can’t get into formal housing.” *Frazier, When No Landlord Will Rent to You*, N.Y. TIMES MAGAZINE.³ Once extended-stay hotels secure the tenancy, they benefit from the longevity of residents’ stays, with residents staying months and even years. Efficiency Lodge and its ilk want the advantages of an extended tenancy, without the duties proscribed to landlords and the protections afforded to tenants under Georgia law.

Extended-stay hotels exploit the housing instability experienced by low-income individuals.

Income Housing Coalitions reports that Georgia has a shortage of over 190,000 affordable homes. Nat'l Low Income Hous. Coal,

the past ten years, as rental costs have increased quicker than household income among renters. *Id.* In 2018, the number of cost-burdened households in the Atlanta metropolitan region was 523,670 households, with over 51.5% of those households having incomes of less than \$50,000. *Id.*

Other circumstances that push low income families to extended stay hotels include poor credit scores that result in the families and individuals paying more in upfront fees to secure housing, including increased and/or nonrefundable security deposits, and less-than-stellar rental histories or past evictions leading to denial of rental applications. The mere filing of an eviction against a tenant has a detrimental and long-lasting impact on tenants' abilities to secure future housing. Families with evictions on their records struggle to find adequate housing and can become shut out from the traditional rental housing market. Low-income families' use of extended stay hotels as long-term housing has been appropriately described as "a way of life that chose them" with few available alternatives. Frazier,

LiveNorcross, pp. 6-7.⁴

Decatur, residents reported problems like mold, flies, roaches, trash, floods, and

system. That sanctity finds its expression, among other places, in the fourth amendment, and it is no less entitled to recognition e

ensure service of the summons on the tenant, and the tenant has the opportunity to respond by filing an answer with defenses and counterclaims. O.C.G.A. §§ 44-7-50, 44-7-51.

A failure to protect these rights and remedies of residents would illegally and immorally exploit the vulnerability of low-income families who reside at extended-stay residential hotels like Efficiency Lodge's as a last resort, leaving them with no security in their homes. To illustrate, extended-stay hotels like Efficiency Lodge could disregard requirements to fix flooding, electrical, molding or other conditions issues in tenants' individual units on their property that is the landlord's duty to address to ensure a habitable residence. *See supra.*

Accordingly, contrary to Efficiency Lodge's argument, whether any particular person is a resident and therefore subject to removal under the landlord-tenant statute cannot be determined solely by the alleged contract that Efficiency

residential motels reported insufficient plumbing causing leaks, lack of hot water, severe mold, and roach infestations. *Supra* pp. 21-22.

Extended-stay and residential hotel residents should be afforded the opportunity to request repairs in their rental units, and to pursue affirmative claims against the owners when they fail to uphold the duty to repair. Without the enforcement of these affirmative rights, extended-stay and residential hotel residents are left to live in rental properties with uninhabitable physical conditions.

3. The protection of the due process property interests of residences like Plaintiffs in their extended stay properties protects residents in other unconventional residential arrangements.

Protecting the due process rights of residents in extended-stay and residential hotels prevents future and emerging business models from preying on vulnerable families. Absent such protections, business models like Efficiency Lodge that reap all the financial benefits of a traditional landlord-tenant relationship while avoiding its costs, encourages new business to enter the increasingly unaffordable housing market to find ways to profit while depriving families of due process under state dispossessory law. A recent case in point is PadSplit, which books and processes payments at weekly rental rates—known as “dues”—for rooms rented by low-income individuals—known as “members”—in co-living spaces in subdivided homes owned by private owners. *See* Rebecca Burns, “Like Airbnb, but for Flophouses,” *NEW REPUBLIC*, June 23, 2021, <https://bit.ly/3rIVgqR>. PadSplit’s

model, as well as the deprivation it may work on vulnerable families, is nearly identical to Efficiency Lodge's model.

Similar to Plaintiff-Appellees whose *sole, permanent* residence is their unit at Efficiency Lodge, PadSplit rooms are the *sole* residence of its renters, as well as the personal possessions they bring with them. Like Plaintiffs who pay Efficiency Lodge to rent a room/suite, PadSplit renters pay an agreed-upon amount to reside at

relationship between Padsplit and the residents of its properties or permit such companies to disregard landlord-tenant law protections.⁵ Like tenants in an apartment unit, residents in Padsplit's rooms—like residents at Efficiency Lodge's extended-stay residential motels—have a due process interest in their rental room, where they assume a lengthy stay in exchange for repeated and regular payments, with the owner's or manager's knowledge and consent; which offers them continued semi-permanent stability of shelter; and which third parties (i.e., job, family, etc.) treat as their residence. *See* CisionPRWeb, "PadSplit Announces 179% Revenue Growth in 2020" (last visited July 22, 2021), <https://bit.ly/2UF2dY7>; *supra* Section III.A. & III.C. The realities of this rental arrangement cannot be ignored, and the property interests of these renters—whether in shared co-living rental arrangements, extended stay hotels, or traditional apartment units or rental homes—must therefore

and do not afford their residents proper pre-eviction notice and opportunity, they will effectively be permitted to illegally (and immorally) exploit the housing instability of economically vulnerable individuals and their families—all under the guise of fulfilling a pressing social need for affordable housing. *See* Burns, “Like Airbnb, but for Flophouses,” *New Republic*, <https://bit.ly/3rIVgqR> (noting renters’ complaints against PadSplit for moving them to other properties or evicting them without notice or process, damaging their personal property, or failing to address other unruly, harassing renters and maintenance issues on property); Section III.B. But in the end, these models, when unregulated by landlord-tenant laws, only disrupt the landlord-tenant legal framework by not following it. This cannot be permitted.

In sum, to uphold due process property protections of nontransient residents’ rental property interests, the law must consider the changing landscape of rental housing arrangements in a nation where the affordable housing market in metropolitan cities like Atlanta continues to shrink, and apply dispossessory legal process when a resident treats a property as their sole residence. Efficiency Lodge’s position on appeal and before the trial court fails to afford such protection, and the trial court’s order must therefore be upheld.

D. *Consistent with other housing laws and with the approach of other states, this Court should consider Plaintiffs tenants because they live at Efficiency Lodge as their primary, permanent residence.*

At the heart of Efficiency Lodge’s argument is that residents who inhabit its hotel as their primary residence should be considered guests rather than tenants, without examining what defines a guest and whether that definition should apply to the reality experienced by its residents. This argument is nonsensical based on Georgia’s own treatment of the terms “guests” and “tenants” and other states’ and federal law’s treatment of extended-stay or residential hotel residents.

First, Georgia law requires that this Court give the terms in a statute their ordinary meaning, O.C.G.A. § 1-3-1(b), and that the laws be construed in harmony with other laws that are related. As argued below, the ordinary meaning of guest infers transience and would exclude people who make the motel their primary residence. *Second*, this interpretation is consistent with other states’ laws that consider residency in determining whether to apply protections under landlord-tenant law. *Finally*, protections under the Fair Housing Act would treat Plaintiffs as tenants residing at Efficiency Lodge, not as guests of an innkeeper. Upholding the trial court’s decision therefore harmonizes these different areas of law.

1. A guest under Georgia law is a transient lodger.

A guest under Georgia law is one who pays a fee to the innkeeper for the purpose of entertainment at that inn. O.C.G.A. § 43-21-1. There is no further

circumstances. The trial court's approach was therefore consistent with this case law and looked at the facts to determine whether Plaintiffs were transient guests or residents of the hotel.

2. *Other states employ totality-of-the-circumstances tests to determine whether a resident of an extended stay is a tenant or a guest.*

In addition, the trial court's finding that Plaintiffs, as residents in an extended-stay residential hotel, are tenants under Georgia law aligns with other states' tests to determine an individual's tenant status in extended-stay hotels, like Efficiency Lodge's.

States employ tests that weigh factors that define when someone receives protections from eviction owed to a tenant rather than the summary procedures reserved for short-term guests at a motel. *See Baker v. Rushing*, 104 N.C. App. 240, 247, 409 S.E.2d 108, 112 (1991) ("Whether the Plaintiffs here were residential tenants must be determined by looking at all of the circumstances, and the fact that a building is identified as a "hotel" and those who reside in it as "guests" is not determinative"); *id.*, *e.g.* (upholding denial of summary judgment where plaintiffs used premises as primary residence, among other factors); *see also HSH Eastgate, LLC v. Sheriff of Osceola Cty.*, Fla., 6:13-CV-1902-ORL-31, 2015 WL 3465795, at *4 (M.D. Fla. June 1, 2015) (finding that although statutory scheme does not define with certainty line between transient and non-transient, "the most important

indicator of this intent is whether the dwelling unit is the guest's sole residence”); *Stone v. Clow*, A13-0984, 2014 WL 902724, at *3 (Minn. Ct. App. Mar. 10, 2014) (“The length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere are all material, but not necessarily controlling, factors to be considered in determining the question”); *McNeill v. Estate of Lachmann*, 285 N.J. Super. 212, 217, 666 A.2d 996, 999 (App. Div. 1995) (explaining that most important factors in determining whether one was domiciled at a hotel, or was a transient guest were “the length of the actual residence coupled with the clear manifested intention of the plaintiff and his family to remain as residents at the hotel for an indefinite period”).

As *Baker* explains, Efficiency Lodge’s label for itself is not sufficient to determine the nature of its relationship with Plaintiffs. Efficiency Lodge’s argument asks this Court to ignore the reality of its business model and the experience of residents in its hotel. Such an approach contradicts other states’ framework. Efficiency Lodge actively seeks long-term residents, does not provide services that one would expect at a hotel that caters to transient visitors, and maintains the physical condition of its property in the same fashion as other landlords who house low-income tenants. *Supra* Section III.A-B. More importantly, the residents at Efficiency Lodge have no other home and use Efficiency Lodge as their primary, permanent residence.

3. *Using primary residence as a key factor in whether residents at extended stay motels are tenants is consistent with federal law applicable to Efficiency Lodge and Plaintiffs.*

The trial court's approach harmonized the law of innkeepers and that of landlords by looking at the factual circumstances to determine when a person inhabiting an extended stay motel becomes a tenant. However, in deciding that non-transient residents of hotels are tenants, it also aligned Efficiency Lodge's duties with those of landlords and owners under the Fair Housing Act.

The Fair Housing Act⁶ prohibits discrimination in the sale or rental of a dwelling. *See generally* 42 U.S.C. § 3604(f). Dwelling is further defined as any building or structure that is “designed or intended for occupancy as, a residence by one or more families.” 42 U.S.C. § 3602(f). The FHA does not further define residence, so courts have used its ordinary meaning to determine whether a particular arrangement is a dwelling under the FHA. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214 (11th Cir. 2008) (finding drug rehabilitation facility was dwelling); *United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990) (same for country club's summer homes because members often stayed up to five months); *Baxter v. City of Belleville, Ill.*, 720 F. Supp. 720 (S.D. Ill. 1989) (same

⁶ The Georgia Fair Housing Act, O.C.G.A. §§ 8-3-200 *et seq.*, is nearly identical and federal cases governing the fair housing are “persuasive precedent” in interpreting Georgia's law. *Bailey v. Stonecrest Condo. Ass'n, Inc.*, 304 Ga. App. 484, 487, 696 S.E.2d 462, 466 (2010).

for shelter for people who had contracted HIV); *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975) (same for private children's home because children were residents). Additionally, at least two courts have found that transient accommodations were not dwellings. *See Amazing Grace Bed & Breakfast v. Blackmun*, CIV.A.09-0298-WS-N, 2009 WL 4730729 (S.D. Ala. Nov. 30, 2009) (finding proposed bed and breakfast was "archetype of a 'transient visit'" because it would provide lodging for maximum of three days and therefore was not dwelling); *see Patel v. Holley House Motels*, 483 F. Supp. 374, 381 (S.D. Ala. 1979) (finding motel was not a dwelling when it "provides lodging to 'transient guests'").

Because Efficiency Lodge provides housing to people as their primary residence, it is likely subject to the Fair Housing Act, which looks to whether the structure is used or intended to be used as a person's residence. By finding that residents of Efficiency Lodge are tenants, the trial court's decision properly aligns tenants' expectations to be free from discrimination under the FHA with Georgia's landlord-tenant law.

In sum, this Court should uphold the trial court's decision and adopt a test whose primary factor is whether the unit is the person's primary, permanent residence. Such a test is consistent with the approach in other cases in Georgia interpreting the statute, would mirror decisions in other states that afford tenant

CERTIFICATE OF COMPLIANCE

In compliance with Georgia Court of Appeals Rule 24(f)(1) and (3), this submission does not exceed the word count limit imposed by Loca

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2021, I filed the foregoing

Respectfully submitted,

/s/ Emily C.R. Early

Emily C.R. Early (GA 810206)

The Southern Poverty Law Center

P.O. Box 1287

Decatur, Georgia 30031-1287

Office: (404) 521-6700

Cell: (334) 207-3952

emily.early@splcenter.org

Counsel for Amici-Curiae