No. 18-1445

IN THE

Supreme Court of the United States

THERESA SEEBERGER,

Petitioner,

v.

DAVENPORT CIVIL RIGHTS COMMISSION and MICHELLE SCHREURS,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Iowa

BRIEF OF *AMICI CURIAE* THE HAMILTON LINCOLN LAW INSTITUTE AND CATO INSTITUTE IN SUPPORT OF PETITIONER

ILYA SHAPIRO
TREVOR BURRUS
CATO INSTITUTE
1000 Mass. Ave. NW
Washington, DC 20001
(202) 842-0200
ishapiro@cato.org

THEODORE H. FRANK
Counsel of Record
MELISSA HOLYOAK
ADAM E. SCHULMAN
HAMILTON LINCOLN LAW INSTITUTE
1629 K Street NW
Suite 300
Washington, DC 20006
(703) 203-3848
ted.frank@hlli.org

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QUESTION PRESENTED

Whether, consistent with the First and Fourteenth Amendments, a municipality may stop a landlord from communicating the reason behind a lawful lease termination, in order to protect the tenant from the "stigma" of being knowingly discriminated against.

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INTEREST OF *AMICI CURIAE*[1]

The **Hamilton Lincoln Law Institute** is a non-profit law firm that litigates for free speech, limited government, and separation of powers. Specifically, HLLI seeks to protect individuals, consumers and shareholders from regulatory abuse and rent-seeking at the state and federal levels.

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This case concerns *amici* because the ruling below undermines core tenets of First Amendment jurisprudence. Speech does not lose protection merely because it is offensive, distasteful, or hateful. *See generally Matal v. Tam*, 137 S. Ct. 1744 (2017). Nor can the First Amendment abide the paternalistic governmental aim of preventing a tenant from learning of her landlord's reasons for a lease termination, however painful those reasons might be.

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[1] Rule 37 statement: All parties were timely notified of *amici*'s intent to the filing of this brief, and have consented. No party's counsel authored any part of this brief and no person other than *amici* funded its preparation and submission.

SUMMARY OF ARGUMENT

In one breath, the Davenport Municipal Code tells Theresa Seeberger that, as a lessor of one single-family home, her rental decisions are exempt from the municipality's anti-discrimination law. Davenport Municipal Code § 2.58.310(A)(1). In the very next breath, it prohibits her from even informing her tenant of the rationale for her decision, if it was motivated by discriminatory preference. *Id.* § 2.58.305(C). To justify this facially irrational scheme, the Iowa courts attributed to Davenport a preference in effect for covert discrimination over openly acknowledged discrimination. That preference, however, cannot be squared with the function, objectives and values of the First Amendment. And the decision by the state court ratifying such a preference "strikes at the heart of the First Amendment." *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

One might think it would be settled law that speech may not be proscribed because it communicates ideas that offend, upset, disgust, hurt, demean, insult, stigmatize, or in modern parlance "trigger." *Tam*, 137 S. Ct. at 1751 ("offend"); *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 72 (1983) ("offend[]"); *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) ("upset[]"); *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 798 (2011) ("disgust"); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston, Inc.*, 515 U.S. 557, 574 (1995) ("hurt[]"); *United States v. Alvarez*, 567 U.S. 709, 726 (2012) ("demean[]," "offend," "insult[]"); *Masterpiece Cake Shop v. Colo. Civil Rights Comm'n*, 138

S. Ct. 1719, 1746 (2018) (Thomas J., concurring) ("offen[d]," "hurt[]," stigmat[ize]"). A segment of the legal academy, however, continues to insist that *Beauharnais v. Illinois*, 343 U.S. 250 (1952), permits outlawing hate speech. Alexander Tsesis, *The Categorical Free Speech Doctrine and Contextualization*, 65 EMORY L. J. 495, 511 n. 106 (2015) (reasoning from the fact that *Beauharnais* is still cited in Court opinions); Jeremy Waldron, THE HARM IN HATE SPEECH 62-63 (2012). Similarly, a recent survey found that fewer than 40 percent of college students believe that hate speech is constitutionally protected. John Villasenor, *Views Among College Students Regarding the First Amendment: Results from a New Survey*, BROOKINGS, (Sept. 18, 2017), https://tinyurl.com/yayxt45u. This case provides a sound vehicle for putting the final nail in *Beauharnais*'s coffin.

It appears that the Iowa courts were also distracted by the red herring of whether Seeberger's speech qualifies as "commercial speech" and therefore is more susceptible to state restriction. *See, e.g.,* Pet. App. 34–39. Seeberger argues, with considerable force, that the lower court erred in treating her speech as commercial speech. Pet. 11–13. But even in the realm of purely commercial speech, offensiveness is not a valid basis for suppressing speech. *Tam*, 137 S. Ct. at 1764; *Bolger*, 463 U.S. at 72. The First Amendment will not countenance "regulations that seek to keep people in the dark for what the government perceives to be their own good." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 577 (2011) (quoting *44 Liquormart,*

Inc. v. Rhode Island, 517 U.S. 484, 503 (1996) (opinion of Stevens, J.)). Indeed, the information to which Davenport would paternalistically deny tenants—the prejudicial views affecting how their landlords make leasing decisions—"is of vital interest to [Davenport] residents, since it may bear on one of the most important decisions they have a right to make: where to live and raise their families." *Linmark Assocs., Inc. v. Willingboro*, 431 U.S. 85, 96 (1977).

Thus, just as with the statutory provision at issue in *Tam*, whether reviewed under strict scrutiny or *Central Hudson* intermediate scrutiny, section 2.58.305(C) is unsupported by a rational interest consistent with the First Amendment and must fall.

ARGUMENT

I. Davenport may not paternalistically blinker tenants to prevent them from learning why their landlord terminated their lease.

According to the Iowa Court of Appeals, the Davenport ordinance under which Ms. Seeberger was fined tens of thousands of dollars "serve[s] the substantial interest of preventing discriminatory statements in housing transactions." Pet. App. 39. That is, it seeks to prevent "landlords from subjecting prospective tenants to the stigmas associated with knowingly being discriminated against." *Id.* But a government may not cast a pall of orthodoxy over the free flow of information on its theory that fully competent residents are too fragile to tolerate offensive or derogatory opinions. Legislatures may not, at their whim, or after

"ad hoc balancing of relative social costs and benefits," expand upon those few select categories of proscribable speech "long familiar to the bar." *United States v. Stevens*, 559 U.S. 460, 468–70 (2010). Hateful, insulting, and offensive—but non-defamatory—speech falls outside those categories.

"Speech may not be banned on the ground that it expresses ideas that offend." *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017). Nor "because some group finds it offensive, hurtful, stigmatic, unreasonable, or undignified." *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1746 (2018) (Thomas J., concurring). "These justifications are completely foreign to our free-speech jurisprudence." *Id.* "Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Hustler Magazine, Inc v. Falwell*, 485 U.S. 46, 55 (1988).

Time and again, this Court has so held, protecting callous anti-gay protests near a dead soldier's funeral, *Snyder, supra*; cruel videos depicting the crushing of mice under high-heeled shoe, *Stevens, supra*; the heartless exclusion of gay organizations from a St. Patrick's Day parade, *Hurley, supra*; gory and racist video games, *Brown*, *supra*; tasteless lewd satire, *Hustler Magazine, supra*; disrespectful flag burning, *Texas v. Johnson*, 491 U.S. 397 (1989), parades designed to intimidate Jewish survivors of the Holocaust, *Nat'l Socialist Party v. Skokie*, 432 U.S. 43 (1977), to name but a few examples. Permitting such odious speech, as a rule, serves all the essential high-

minded aims of the First Amendment: recognizing the autonomy of both speaker and listener, enabling democratic self-governance, allowing competition in the marketplace of ideas and placing our trust in citizens and society, not the government, to discern right from wrong. If speech were so bland as to offend no one, a First Amendment would not be necessary.

This principle against offense-based censorship is no less rigid when the speech is commercial. For example, in *Tam*, the Court held that the First Amendment did not allow the Patent and Trademark Office to deny trademark registration to a rock band called "The Slants" merely because it drew its name from a racial epithet used to disparage persons of Asian descent. 137 S. Ct. 1744. Although the parties disputed whether a trademark is subject to regulation as simple commercial speech or also contains expressive elements, the Court declined to resolve that debate "because the disparagement clause cannot withstand even *Central Hudson* scrutiny." *Id.* at 1764. "[N]o matter how the point is phrased . . . an interest in preventing speech expressing ideas that offend . . . strikes at the heart of the First Amendment." *Id.* "[T]he proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'" *Id.* (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)).

Likewise, more than 30 years ago in *Bolger v. Youngs Drug Prods. Corp.*, the Court concluded that the Postal Service could not stop a company from

mailing unsolicited advertisements for contraceptives to members of the public through the mail. 463 U.S. 60 (1983). Although the Court agreed that even informational pamphlets were properly considered "commercial speech," it refused to endorse the government's interest in "shield[ing] recipients of mail from materials that they are likely to find offensive." *Id.* at 463 U.S. 60, 68, 71 (1983). "[T]he fact that protected speech may be offensive to some does not justify its suppression." *Id.* On this score, the Court "specifically declined to recognize a distinction between commercial and noncommercial speech that would render this interest a sufficient justification for a prohibition of commercial speech." *Id.* at 71–72.

How did the Iowa courts get it so wrong? If the decision below were an isolated instance, it might well be appropriate simply to summarily reverse on the basis of *Tam* and other relevant precedent. But *amici* are concerned that the opinion below is indicative of the rising tide of public belief that the First Amendment does not protect hate speech. For example, a recent survey found that fewer than 40 percent of college students believe that hate speech is protected by the First Amendment. John Villasenor, *Views Among College Students Regarding the First Amendment: Results from a New Survey*, BROOKINGS, (Sept. 18, 2017), https://tinyurl.com/yayxt45u. Another poll found that more than a third of the voting public believes that hate speech should not be protected by the Constitution. *Hill.TV poll: Majority Says Constitution Should Protect Hate Speech*, THE HILL (Aug. 13, 2018),

https://tinyurl.com/y4tyl9zn. And yet another Gallup and Knight Foundation poll found that two-thirds of students do not believe the Constitution should protect hate speech. Nico Perrino, *Gallup/Knight Survey Sheds Light on Changing Student Attitudes about Free Speech*, FIRE: NEWSDESK, (Mar. 12, 2018), https://tinyurl.com/y5n6apnd. "[N]early one-third of students support physical violence as an acceptable response to 'hate speech.'" Alex Morey, FIRE: NEWSDESK, (Nov. 6, 2018), https://tinyurl.com/y3lbzl9m. UCLA law professor Eugene Volokh, a First Amendment expert, echoes these findings, noting, "I keep hearing about a supposed 'hate speech' exception to the First Amendment." Eugene Volokh, *No, There's No "Hate Speech" Exception to the First Amendment*, VOLOKH CONSPIRACY, *Wash. Post* (May 7, 2015), https://tinyurl.com/p4v85rl.

Over the last decade this public tide has manifest itself in the various forms. In addition to overzealous enforcement actions like that employed against Ms. Seeberger, many states have passed cyberbullying legislation that criminalizes hateful speech online. David L. Hudson, Jr., *Is Cyberbullying Free Speech*, ABA JOURNAL (Nov. 1, 2016), https://tinyurl.com/y4fe6lpk (observing that 23 states had passed anti-cyberbullying laws as of late 2016); *see also People v. Marquan*, 19 N.E.3d 480, 486 (N.Y. 2014) (striking down as overbroad law that covered "communications aimed at adults, and fictious or corporate entities"); *cf. also Elonis v. United States*, 135

S. Ct. 2001 (2015) (interpreting interstate threat statute in the context of offensive Facebook posts).

This Court is not completely blameless for the state of affairs. Nearly 70 years ago, it committed a grievous error. Over the dissent of Justices Black, Douglas, Jackson, and Reed, it permitted Illinois to criminalize speech that "portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots." *Beauharnais v. Illinois*, 343 U.S. 250, 251 (1952). As both Justices Douglas and Black described in separate dissents, it ratified a philosophy "at war" with both "the kind of free government envisioned by those who forced adoption of the Bill of Rights" and "with the First Amendment" by "a constitutional interpretation which puts free speech under the legislative thumb." *Id.* at 274 (Black, J., dissenting); *id.* at 287 (Douglas, J., dissenting). "The motives behind the state law may have been to do good. But the same can be said about most law making opinions punishable as crimes." *Id.* at 274 (Black, J., dissenting). "History indicates that urges to do good have led to the burning of books and even to the burning of 'witches.'" *Id.*

Justice Douglas elaborated:

> Intemperate speech is a distinctive characteristic of man. Hotheads blow off and release destructive energy in the process. They shout and rave, exaggerating weaknesses,

> magnifying error, viewing with alarm. So it has been from the beginning; and so it will be throughout time. The Framers of the Constitution knew human nature as well as we do. They too had lived in dangerous days; they too knew the suffocating influence of orthodoxy and standardized thought against the abuses of liberty. They chose liberty. That should be our choice today no matter how distasteful to us the pamphlet of Beauharnais might be.

Id. at 286–87 (Douglas, J., dissenting). But the Court did not so choose. Nor has it ever acknowledged that it erred in *Beauharnais*.

Although most commentators and courts believe *Beauharnais* has been supplanted by modern First Amendment jurisprudence,[2] there exists a vocal minority who insist it is a "commonly accepted mistake that *Beauharnais* is no longer good law." Alexander Tsesis, *The Categorical Free Speech Doctrine and Contextualization*, 65 EMORY L. J. 495, 511 n.106 (2015); *accord* Jeremy Waldron, THE HARM IN HATE SPEECH 62–63 (2012) (critiquing the "carelessness" of those who believe *Beauharnais* was implicitly overturned). Tsesis relies on the fact that this Court's opinions continue to "cite to *Beauharnais* for its

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[2] *See, e.g., Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1200 (9th Cir. 1989); *Am. Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323, 331 n.3 (7th Cir. 1985); *Draego v. City of Charlottesville*, No. 16-cv-00057, 2016 WL 6834025, 2016 U.S. Dist. LEXIS 159910, at *21-*24 & n.8 (W.D. Va. Nov. 18, 2016) (citing additional cases and authorities).

precedential value." Alexander Tsesis, *Inflammatory Speech: Offense Versus Incitement*, 97 MINN. L. REV. 1145, 1182 (2013). Moreover, around the time that modern First Amendment doctrine was beginning to burgeon, two members of the Court issued a dissent from denial of cert. to point out that *Beauharnais* "has not been overruled or formally limited in any way." *Id.* at 1184 (quoting *Smith v. Collin*, 439 U.S. 916, 919 (1978) (Blackmun and White, JJ., dissenting)).

Amici urge the Court to grant certiorari and, with the full voice of the Court, repudiate its regressive and ill-considered decision in *Beauharnais*.

II. The First Amendment violation here is especially egregious because the underlying lease termination was lawful.

Combating discrimination in the real estate market is indisputably a substantial government interest. But the Iowa Court of Appeals correctly eschewed reliance on that interest here, because "the ordinance does not effectually prohibit discrete discrimination in all housing transactions." Pet. App. 38. As applied to individuals like Ms. Seeberger, who own less than four single-family homes, the ordinance permits unbridled discrimination for whatsoever reason they wish, as long as they do not make a statement announcing that discriminatory preference. Davenport Municipal Code § 2.58.310(A)(1).

By way of rough analogy to step one of the *Central Hudson* test, Ms. Seeberger's speech concerned a

lawful activity.[3] Pet. App. 37–38 ("assuming without deciding" this). Therefore, the ordinance does not serve to inhibit solicitations or speech in furtherance of illegal behavior. Nor does it protect against fraud, duress or other market failure, the classic aims of commercial speech regulation. Rather, it is of that kind that "seek to keep people in the dark for what the government perceives to be their own good." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 577 (2011) (quoting *44 Liquormart*, 517 U.S. at 503). And "[t]he First Amendment directs us to be especially skeptical of [such] regulations." *Id.*

Section 2.58.305(C) seeks to insulate tenants from the "stigmas associated with knowingly being discriminated against." Pet. App. 39. As Ms. Seeberger discovered, Davenport will glean such a stigma when a landlord provides an explanation to a tenant in a private conversation after the tenant has affirmatively requested such information. Pet. App. 4, 48, 79. Of course, not all or even most of the speech restricted by section 2.58.305(C) will be desired by the listener. "Many are those who must endure speech they do not like, but that is a necessary cost of freedom." *Sorrell*, 564 U.S. at 575.

Justice Thomas has explained at length why any purported governmental interest in hampering non-misleading commercial speech about lawful goods or

[3] The analogy is rough because unlike a typical commercial speech case, Ms. Seeberger wasn't proposing a commercial transaction at all. Instead, she was offering an honest explanation for action she intended to, and had every right to, take unilaterally.

services should be deemed "per se illegitimate." *44 Liquormart*, 517 U.S. at 518 (Thomas, J., concurring in part and in the judgment). Such laws "usually rest solely on the offensive assumption that the public will respond 'irrationally' to the truth." *Id.* at 503 (Opinion of Stevens, J.); *accord Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976) (repudiating "highly paternalistic approach" of government prohibitions on free flow of information). Although slightly different in substance, Davenport's assumption here is equally offensive. It is, namely, that the psyches of its residents are too fragile to cope with the reality of prejudicial views. *Cf. A Few Good* Men (Columbia 1992) ("You can't handle the truth!").

Making matters worse, the information that Davenport would deprive its residents of "is of vital interest . . . since it may bear on one of the most important decisions they have a right to make: where to live and raise their families." *Linmark Assocs., Inc. v. Willingboro*, 431 U.S. 85, 96 (1977). "It is a matter of public interest that [private economic] decisions, in the aggregate, be intelligent and well informed." *Va. Bd. of Pharmacy*, 425 U.S. at 765. Tenants need to know which landlords harbor repugnant views so that they may avoid them.

Beyond allowing tenants to make informed decisions themselves, unless they are permitted information about the operations of the rental system, they cannot as citizens form "intelligent opinions as to how that system out to be regulated or altered." *Id.* at 765. "[P]eople will perceive their own best interests if only

they are well enough informed, and…the best means to that end is to pen the channels of communication rather than to close them." *Id.* at 770; *accord United States v. Caronia*, 703 F.3d 149, 166 (2d Cir. 2012) (rejecting "paternalistic[] interfere[nce] with the ability of physicians and patients to receive potentially relevant treatment information" and discussing how "such barriers to information about off-label use could inhibit, to the public's detriment, informed and intelligent treatment decisions.")

The undisputed lawfulness of the landlord's action here distinguishes it from other cases rejecting as-applied First Amendment challenges to the identical provision of the Fair Housing Act—42 U.S.C. § 3604(c). *See Campbell v. Robb*, 162 Fed. Appx. 460, 469–70 (6th Cir. 2006); *Ragin v. New York Times Co.*, 923 F.2d 995, 1002–03 (2d Cir. 1991); *see also Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 388–89 (1973) (same analysis under Title VII). When the underlying action is unlawful, speech proposing a transaction or explaining such an intent could arguably be curtailed as incidental to a state's "compelling interest in eradicating discrimination." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984); *see also* Pet. 9–10 (distinguishing advertisements from explanations). "Where the government does not target conduct on the basis of its expressive content, acts are not shielded from regulation merely because they express a discriminatory idea or philosophy." *R.A.V. v. St. Paul*, 505 U.S 377, 390 (1992); *see also Rumsfeld v. FAIR*, 547 U.S. 47, 62

(2006) (hypothesizing example of employment discrimination law requiring employer to take down a sign reading "White Applicants Only").

In contrast, as Judge Easterbrook explained, "any rule that forbids truthful advertising of a transaction that would be substantively lawful encounters serious problems under the [F]irst [A]mendment." *Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 668 (7th Cir. 2008); *see also* Brooke Wright, *Comment: Fair Housing and Roommates: Contesting a Presumption of Constitutionality,* 2009 B.Y.U.L. Rev. 1341 (spelling out the unconstitutionality of § 3604(c) of the Fair Housing Act as applied to an individual posting an advertisement for a roommate). For example, in *Pittsburgh Press*, the Pennsylvania Commonwealth Court concluded that an order enjoining the newspaper from making *any* reference to sex in its employment classified ads was "too broad." *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 287 A.2d 161, 172 (1972), *aff'd* 413 U.S. 376 (1973). It failed to account for the fact "the Ordinance itself sets forth a number of exemptions whereby it would be legally permissible to discriminate." *Id.*

Here too. For landlords like Ms. Seeberger, discriminatory conduct is lawful. What applies of the ordinance targets her speech *qua* speech, not speech *qua* discrimination. Speech revealing a discriminatory preference is not equivalent to discriminatory conduct. "When 'conduct' becomes a synonym for 'speech' (or 'speech' for 'conduct'), the command of the

First Amendment becomes incoherent; depending on whether the paradigm of conduct or speech holds sway, government can regulate either almost everything or almost nothing." Elena Kagan, *Regulation of Hate Speech and Pornography After R.A.V.*, 60 U. CHI. L. REV. 873, 884 (1993) (advocating for renewed focus on regulating discriminatory conduct). If, *ex post* in litigation, courts allow the government to redefine its interest as protecting against discriminatory statements (rather than protecting against discrimination), then of course any prohibition on speech will be narrowly tailored. *See* Pet. 18 (accurately labeling such question-begging "meaningless"). For reasons described in this section and the previous one, an interest in protecting against discriminatory opinions is anathema to the First Amendment.

Wollschlaeger v. Governor of Florida showcases how to draw the proper distinction between speech and discrimination. 848 F.3d 1293 (11th Cir. 2017). There, the *en banc* Eleventh Circuit addressed a First Amendment challenge to a comprehensive Florida law aimed at limiting doctors' rights to communicate about firearms with their patients. Various provisions forbade doctors from inquiring whether patients kept firearms in the home, from keeping a record in a patient's file concerning firearm ownership, from unnecessarily harassing a patient about firearm ownership during the exam, and from discriminating against a patient based on firearm ownership. *Id.* at 1302–03. The Eleventh Circuit rejected the state's paternalistic interest in protecting "vulnerable" patients: "where

adults are concerned the Supreme Court has never used a vulnerable listener/captive audience rationale to uphold speaker-focused and content-based restrictions on speech." *Id.* at 1315. Therefore, the three challenged provisions targeting speech and communication could not be sustained. But the anti-discrimination provision stood on firmer footing. It could be construed to "apply to non-expressive conduct" relating to the nuts and bolts of medical practice "such as failing to return messages, charging more for the same services, declining reasonable appointment times, not providing test results on a timely basis, or delaying treatment because a patient (or a parent of a patient) owns firearms." *Id.* at 1317.

Here, with regard to small landlords, Davenport has abandoned its interest in rooting out housing discrimination. There is nothing unreasonable about carving out these more intimate arrangements from an anti-discrimination ordinance. But it is irrational for the city to permit discrimination itself and then attempt to squelch statements revealing that discrimination.

The First Amendment grants landlords like Ms. Seeberger the autonomy to present their offensive opinions. Reciprocally, it grants tenants like Ms. Schreurs the autonomy to inquire into those offensive opinions and, assuming a willing speaker, receive an answer. By outlawing speech deemed too offensive, Davenport has violated both parties' rights—Ms. Seeberger's right to express herself and Ms. Schreurs' right to be informed of those views. C. Edwin Baker,

Harm, Liberty, and Free Speech, 70 S. CAL. L. REV. 979, 992 (1997) ("Respect for personhood, for agency, or for autonomy, requires that each person must be permitted to be herself and to present herself"); Aditi Bagchi, *Deliberative Autonomy and the Legitimate State Purpose Under the First Amendment*, 68 ALB. L. REV. 815, 816 (2005) ("the government must allow speakers to express disdainful and even indirectly dangerous views because to disallow speech out of fear that the speech will be persuasive violates the deliberative autonomy of those whom censorship aims to protect. . . . the government may not act in a manner that denies our capacity to reason and deliberate."); Charles Fried, *Exchange; Speech in the Welfare State: The New First Amendment Jurisprudence: A Threat to Liberty*, 59 U. CHI. L. REV. 225, 233 (1992) ("Our ability to deliberate, to reach conclusions about our good, and to act on those conclusions is the foundation of our status as free and rational persons.").

"Knowledge of the existence, views, and, importantly, the identity of those with racist attitudes increases the capacity of those potentially subject to racist harms to protect themselves and to make meaningful rhetorical, strategic, political and legal responses." C. Edwin Baker, *Hate Speech* 16 (2008), *available at* https://tinyurl.com/y2kpms26. In its effort to protect its residents from the stigma of painful knowledge, the city of Davenport itself has demeaned the personhood of those very residents. It has determined that they are not capable of enduring unpleasant words, nor are they even allowed to receive an

honest answer to a very basic question: Why are you terminating my lease?

The Iowa courts permitted Davenport's interest to drift from preventing discrimination to preventing offensive statements. At a minimum, the city possesses no valid interest in proscribing speech related to a termination it otherwise deems lawful.

CONCLUSION

The Court should grant the petition to clarify the free speech protections afforded truthful communications—and the illegitimacy of paternalistic attempts to impede the free flow of information.

Respectfully submitted,

ILYA SHAPIRO
TREVOR BURRUS
CATO INSTITUTE
1000 Mass. Ave. NW
Washington, DC 20001
(202) 842-0200
ishapiro@cato.org

THEODORE H. FRANK
Counsel of Record
MELISSA HOLYOAK
ADAM E. SCHULMAN
HAMILTON LINCOLN
LAW INSTITUTE
1629 K Street NW
Suite 300
Washington, DC 20006
(703) 203-3848
ted.frank@hlli.org

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