

No. 17-7220

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IN THE  
SUPREME COURT OF THE UNITED STATES

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PETER CARL BORMUTH,  
*Petitioner,*

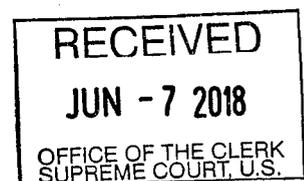
*v.*

COUNTY OF JACKSON, MICHIGAN  
*Respondent.*

————— ◆ —————  
ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

————— ◆ —————  
SUPPLEMENTAL BRIEF OF PETITIONER

————— ◆ —————  
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## SUPPLEMENTAL BRIEF OF PETITIONER

Petitioner Peter Carl Bormuth respectfully files this supplemental brief under Supreme Court Rule 15.8 to bring to the Court's attention developments since the filing of the Petition that further demonstrate why certiorari should be granted.

The petitioner argued in District Court that the plain language of the 1797 Treaty of Tripoli, Article 11 ("As the Government of the United States of America is not in any sense founded on the Christian religion;") prohibited government officials from representing our government as Christian, as the Jackson County Commissioners have deliberately chosen to do. After this Court's decision in *Town of Greece*, the petitioner also argued that the language of Article 11 was significant under the historical tradition test adopted by this Court. Both the district court and the Sixth Circuit Court of Appeals dismissed the language of Article 11 as "a mere formality."

Two recent cases decided by this Court suggest that this was clear error. While neither case deals directly with the Establishment Clause or legislative prayer, both cases contain significant statements regarding Congressional language.

On April 2, 2018 this Court released its opinion in *Encino Motorcars, LLC v. Navarro*, 584 U. S. \_\_\_\_ (2018). Writing for the Court, Justice Thomas stated:

Even for those Members of this Court who consider legislative history, silence in the legislative history, "no matter how 'clanging,'" cannot defeat the better reading of the text and statutory context. *Sedima, S. P. R. L. v. Imrex Co.*, 473 U. S. 479, 495, n. 13 (1985). If the text is clear, it needs no repetition in the legislative history; and if the text is ambiguous, silence in the legislative history cannot lend any clarity. See *Avco Corp. v. Department of Justice*, 884 F. 2d 621, 625 (CA DC 1989). *Even if Congress did not foresee all of the applications of*

*the statute, that is no reason not to give the statutory text a fair reading.* See *Union Bank v. Wolas*, 502 U. S. 151, 158 (1991). (bold emphasis added).

A fair reading of the language of Article 11 would conclude that “the Government of the United States of America is in no sense founded on the Christian religion” and that no government official can represent our government as Christian, as is the current practice in Jackson County.

This Court also released an opinion on May 14, 2018 in *Murphy v. National Collegiate Athletic Assn.*, 584 U. S. \_\_\_\_ (2018), Justice Thomas in his concurring opinion wrote:

More fundamentally, even if courts could discern Congress’ hypothetical intentions, intentions do not count unless they are enshrined in a text that makes it through the constitutional processes of bicameralism and presentment. See *Wyeth v. Levine*, 555 U. S. 555, 586–588 (2009) (THOMAS, J., concurring in judgment). Because we have “a Government of laws, not of men,” we are governed by “legislated text,” not “legislators’ intentions”—and especially not legislators’ hypothetical intentions. *Zuni Public School Dist. No. 89 v. Department of Education*, 550 U. S. 81, 119 (2007) (Scalia, J., dissenting).

The Treaty of Tripoli was passed by the Senate and signed into law by President John Adams. As such, it is a “legislated text” which must be read “textually”. The lower courts in this case read a hypothetical legislative intention into the text by dismissing Article 11 as “a mere formality”. The language itself makes a clear direct statement that our government is not based on the Christian religion and any attempt by a government official to represent our government as Christian contradicts the text and the historical understanding of our founders.

Finally, regarding the Members of Congress amici brief (*Lund v. Rowan County*) citing prayers given in Congress by Representative McKinney in 1892 and Representative Everett in 1894 and 1895, the petitioner wants to make this Court aware that like every other example before 1900 cited by the defendants, these congressmen were both Christian ministers.<sup>1</sup> The defendants scrape to find these aberrations in the record, but they are of no weight compared to the example of the thousands of ordinary Congressmen [and State Legislators] before 1900 who followed the historical understanding and practice of our Founding Fathers and never gave an opening invocation.

### CONCLUSION

John Adams, our second President who signed the Treaty of Tripoli into law, wrote to Thomas Jefferson: "Do you think that a Protestant Popedom is annihilated in America? Do you recollect, or have you ever attended to the ecclesiastical Strifes in Maryland, Pennsylvania, New York, and every part of New England? What a mercy

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<sup>1</sup> See 23 Cong. Rec. 5571 (1892) (Rep. McKinney); 27 Cong. Rec. 1584 (1895) (Rep. Everett); 27 Cong. Rec. 1629 (1895) (Rep. Everett); 26 Cong. Rec. 5878 (1894) (Rep. Everett).

Luther Franklin McKinney graduated from St. Lawrence University, Canton, New York, June 30, 1870, and moved to Bridgton, Maine in 1871, where he was ordained a pastor of the Universalist Church. He moved to Newfields, New Hampshire in 1873, and subsequently, in 1875, to Manchester, pursuing his ministerial duties in both places.

William Everett graduated from Harvard University in 1859, from Trinity College, Cambridge in 1863 and from Harvard University's law department in 1865. He was admitted to the bar in 1866 and was licensed to preach in 1872 by the Suffolk Association of Unitarian Ministers.

it is that these people cannot whip and crop and pillory and roast, as yet in the United States! If they could they would."<sup>2</sup>

Certiorari should be granted.

Respectfully submitted,



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Dated: June 4, 2018

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<sup>2</sup> Letter to Thomas Jefferson, May 18, 1817.