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**In the Supreme Court of the United States**

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CITY OF PENSACOLA, FLORIDA, ET AL.

*Petitioners,*

*v.*

AMANDA KONDRAT'YEV, ET AL.

*Respondents.*

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**REPLY IN SUPPORT OF PETITIONERS' MOTION TO EXPEDITE  
CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI  
AND TO EXPEDITE CONSIDERATION OF THIS MOTION**

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Petitioners have requested expedited consideration of their certiorari petition so that this Court can consider the petition alongside the petitions in *American Legion v. American Humanist Association* (No. 17-1717) and *Maryland-National Capital Park & Planning Commission v. American Humanist Association* (No. 18-18) (together, *American Legion*). As we have explained, although this case warrants certiorari in its own right, it is also an ideal companion case to *American Legion*, because (1) it raises the important question of standing that this Court found certworthy but was unable to reach in *Salazar v. Buono*, 559 U.S. 700 (2010); (2) it fully develops the arguments over the application of *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), which the lower court in *American Legion* did not consider; and (3) it offers a more representative set of facts. Mot. to Expedite 2-4.

Respondents don't dispute any of these points. Instead, they oppose the motion on four grounds. First, they say there is no "emergent" need to consider the petition on an expedited basis. Opp. to Mot. to Expedite 4-5. But this Court often finds it valuable to consider two related petitions together. That is why (to take one of Respondents' own examples, *id.* at 7) this Court expedited consideration of the petition in *International Refugee Assistance Project v. Trump*, No. 17-1194, to "align the schedule" with *Hawaii v. Trump*, No. 17-965. Mot. to Expedite, *International Refugee Assistance Project*, No. 17-1194; see also Mot. to Expedite 3-4 (collecting examples where the Court granted certiorari before judgment to consider related cases together).

Second, Respondents argue that there is no reason to consider this petition together with *American Legion* because "Establishment Clause cases are highly fact-

specific.” Opp. to Mot. to Expedite 6. But to the extent Establishment Clause cases are fact-specific, that is all the *more* reason for this Court to ensure that the case(s) it takes arise on a representative set of facts. That is also why the Court has often granted certiorari on multiple Establishment Clause cases together. See Mot. to Expedite 4 (collecting cases).

Third, Respondents contend that the petition is “premature,” because Petitioners also intend to file a petition for rehearing en banc. Opp. to Mot. to Expedite 7. But as we explained in the petition, Pet. 35 n.4, the mere possibility of future en banc proceedings (or even a grant of rehearing en banc) does not limit this Court’s power to grant certiorari. That power “extends to every case pending in the circuit courts of appeal, and may be exercised at any time during such pendency.” *Forsyth v. City of Hammond*, 166 U.S. 506, 514 (1897); see also 28 U.S.C. § 1254(1). Thus, it is not uncommon for parties to seek certiorari, or for this Court to grant it, while an en banc petition is pending. See, e.g., *Brewer v. Quarterman*, 549 U.S. 974 (2006) (granting certiorari while en banc petition was pending); *United States v. Sokolow*, 486 U.S. 1042 (1988) (same). For example, after this Court granted certiorari in *Arizona v. Washington*, 430 U.S. 965 (1977), the Solicitor General filed a successful certiorari petition in a case presenting a similar issue, *United States v. Grasso*, 438 U.S. 901 (1978), even while a petition for en banc rehearing was pending, see 568 F.2d 899, 900-01 & n.1 (2d Cir. 1977) (Timbers, J., dissenting from denial of rehearing en banc).

Nor is there any risk of duplicative proceedings. If this Court grants certiorari in

this case or *American Legion*, the Eleventh Circuit can simply stay any en banc proceedings until this Court issues its decision, as the Eleventh Circuit has done before. Cf. *Community State Bank v. Strong*, 565 F.3d 1305, 1306 (11th Cir. 2009) (en banc) (holding en banc case for over nineteen months because, after rehearing was granted, the Supreme Court granted certiorari “to decide essentially the same question”).

Finally, Respondents oppose expedition due to “scheduling conflicts.” Opp. to Mot. to Expedite 5. But they cite no deadlines imposed by any other court, and counsel for Respondents are also counsel in *American Legion* and are very familiar with the questions presented. Thus, they have not demonstrated any prejudice. Alternatively, Respondents suggest that the Court can delay its consideration of the petitions in *American Legion* and “simply wait until after certiorari briefing in the present case for joint consideration [with *American Legion*] at the merits stage.” Opp. to Mot. to Expedite 6-7. If the Court wishes to adopt that course, Petitioners don’t object. The Court could also combine these approaches by granting Petitioners’ motion in part and delaying its consideration of *American Legion* by only a few weeks.

Either way, considering this petition alongside the petitions in *American Legion* will ensure that the Court has the best possible vehicle(s) for considering the exceptionally important questions presented. Respondents have cast no doubt on that conclusion. Accordingly, Petitioners’ motion should be granted, either in full or in part.

SEPTEMBER 24, 2018

Respectfully submitted.

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