No. 25-1187

In the Supreme Court of the United States

THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC., ET AL.,

Petitioners,

v.

CITY OF NEW YORK, NEW YORK, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the New York Court of Appeals

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; AMERICAN ENCORE; AMERICANS FOR FAIR TREATMENT; FRONTIERS OF FREEDOM; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; MEN AND WOMEN FOR A REPRESENTATIVE DEMOCRACY IN AMERICA, INC.; RIO GRANDE FOUNDATION; RUSSELL KIRK CENTER FOR CULTURAL RENEWAL; WOMEN FOR DEMOCRACY IN AMERICA, INC.; JENNY BETH MARTIN, HONORARY CHAIRMAN, TEA PARTY PATRIOTS ACTION; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; CHARLIE GEROW; TIM JONES, FORMER SPEAKER, MISSOURI HOUSE, FOUNDER, LEADERSHIP FOR AMERICA INSTITUTE; AND HON. WILLIAM WAGNER (RET), DISTINGUISHED PROFESSOR OF LAW EMERITUS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

1. Does the protection the Takings Clause provides to land-use permit applicants encompass monetary demands beyond those imposed in lieu of a dedication of real property?

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF file this brief on behalf of its 7,025 members in the Second Circuit including 5,658 members in the state of New York.

Amici American Encore; Americans For Fair Treatment; Frontiers of Freedom; International Conference of Evangelical Chaplain Endorsers; Men and Women for a Representative Democracy in America, Inc.; Rio Grande Foundation; Russell Kirk Center for Cultural Renewal; Women for Democracy in America, Inc.; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; Shawnna Bolick, Arizona State Senator, District 2; Charlie Gerow; Tim Jones, Former Speaker, Missouri House,

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[1] All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., Conservatives Stalk the House: The Story of the Republican Study Committee, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

Founder, Leadership for America Institute; and Hon. William Wagner (Ret), Distinguished Professor of Law Emeritus believe that the right to property is central to American freedom.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A man's home is his castle. Unless his home is zoned by New York City as "Joint living-work quarters for artists" (JLWQA). Then, he must pay an exorbitant fee, likely over $250,000, to make his home into his castle or even to rent it to someone who has not been licensed by the city as a "certified artist." This case concerns not only a fundamental right recognized in the Western legal tradition for millennia, but the importance of incentivizing Americans to be good stewards of their property.

In this case, Petitioner Coalition for Fairness in SoHo & NoHo challenges New York City's arbitrary zoning regulations that prevent homeowners from being good stewards of their own property. In 1971, New York's state legislature established JLWQA, which "allowed artists to convert manufacturing lofts to JLWQA to legalize their occupancy as long as they met certain health and safety standards."[4]

The city's zoning laws allowed only those who were certified as artists, and their families, by the Department of Cultural Affairs, and their families, to live in JLWQA homes.[5]

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[4] Petition for Certiorari at 6.
[5] *Id.* at 7.

By 2018, the City recognized that its zoning policies "ha[d] become ineffective tools to manage and support" the neighborhood, that "residents…have a limited ability to sell, rent, and grant units," and that the JLWQA restriction was "outdated."[6] Yet, rather than repealing the JWLQA classification, the city imposed a "conversion" process under which the owner must apply for a permit and pay a "non-refundable contribution" to the City-administered "SoHo-NoHo Arts Fund."[7]

The fee is $100 per square foot, which amounts to more than $250,000 for a typical home.[8] While theoretically conversion is voluntary, the scarcity of certified artists, and the paucity of newly certified artists, means the owners will be forced to convert their properties to residential use at some point. If the arts fine were paid for all 1,636 covered units, the city would collect over $450 million.[9]

The owners of these properties thus cannot lease or sell their property until they pay the City's exorbitant art fine. Further, the "conversion fee" is purely administrative. The units are already suitable to live in, provided the government checks the "certified artist" box next to the renter's name.

The right to property was critical to the understanding of liberty of both the Founding generation and the Framers and ratifiers of the Reconstruction Amendments. Yet, in many areas of

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[6] *Id.* at 8.
[7] *Id.* at 9.
[8] *Id.* at 1.
[9] *Id.* at 10.

law, this Court's precedent provides inadequate protection for that right. New York here seeks to limit those protections further in an area where the Court has recognized meaningful constitutional protection to property owners.

The Court should grant the petition for certiorari and decline New York's request to weaken the rights of owners around the country.

ARGUMENT

In *McDonald v. City of Chicago*, this Court declined the city's request that the Second Amendment "right recognized in *Heller*" be treated "as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause." 561 U.S. 742, 780 (2010). The Court should similarly ensure that lower and state courts do not treat the inherent and inalienable right to property as a "second-class right."

In many ways, this Court's jurisprudence has treated the right to property as a second-class right, or worse. In these areas, "[s]omething has gone seriously wrong with this Court's interpretation of the Constitution." *Kelo v. City of New London*, 545 U.S. 469, 518 (2005) (Thomas, J., dissenting). Under the Court's precedent, "[t]hough citizens are safe from the government in their homes, the homes themselves are not." *Id.*

The city of New York asks the Court to weaken home ownership even further and thus to undermine one area where the Court has successfully enforced the Constitution's respect for property.

When Americans want to exercise their property rights by modifying their real property in some way, they often are required to ask their local government's permission, granted in the form of a permit.[10] As such, the government could exercise substantial control over law-abiding citizens merely by withholding such permits unless and until the property owner concedes to some government demand.

In 1982, James and Marilyn Nollan wanted to replace a 504 square foot bungalow in Ventura County, California with a three-bedroom house. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 827 (1987). However, when they applied for a permit to do so, the California Coastal Commission responded that it would grant the permit only if the Nolans granted an easement to the public to cross the portion of the beach they owned. *Id.* at 828. After a court struck down the permit condition and remanded, the Commission reimposed it because "[i]t found that the new house would increase blockage of the view of the ocean, thus contributing to the development of 'a wall of residential structures' that would prevent the public 'psychologically . . . from realizing a stretch of coastline

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[10] For example, in Massachusetts, John Carbin, a former Black Hawk crew chief and a federally certified aircraft mechanic, recently challenged a local regulation under which permits to perform plumbing work on one's home is denied unless the person doing the work is a licensed plumber. As a result, it is illegal for homeowners who are not licensed to perform even basic plumbing work on their own homes. Brief of Amici Curiae Advancing American Freedom et al., *Carbin v. Massachusetts Board of State Examiners of Plumbers and Gas Fitters*, No. 25-787 (Feb. 5, 2026) available at https://advancingamericanfreedom.com/aaf-fights-for-property-rights-it-should-not-be-illegal-for-homeowners-to-fix-their-own-homes/.

exists nearby that they have every right to visit.'" *Id.* at 828-29.

This Court found that because the restriction on the Nollans' ability to build—forcing them to grant the public an easement—lacked an "essential nexus" to the alleged government interest—preventing the public from realizing that there were public beaches nearby—"the building restriction [was] not a valid regulation of land use but 'an out-and-out plan of extortion." *Id.* at 837 (quoting *J.E.D. Assocs., Inc. v. Atkinson*, 121 N.H. 581, 584 (N.H. 1981)).

In *Dolan v. City of Tigard*, Florence Dolan, a business owner in Tigard, Oregon wanted to expand her building on her property that sat next to a local creek. 512 U.S. 374, 379 (1994). The local government, however, sought to condition a permit to do so, among other things, on dedicating a 15-foot strip of her land "as a pedestrian/bicycle pathway." *Id.* at 380. It sought to impose this condition because it "could offset some of the traffic demand on nearby streets and lessen the increase in traffic congestion," predicted to be caused by Dolan's expansion. *Id.* at 381-82 (internal quotation marks omitted) (alteration in original).

The Court concluded that the city would need to show some evidence that its easement requirement advanced its legitimate interest. *Id.* at 395-96. Because it had done no more than offer a "conclusory statement" in support of that claim, the easement requirement lacked the "rough proportionality" between the government interest and the burden on property rights necessary for such a condition not to violate the Takings Clause. *Id.* at 391, 395-96.

In *Koontz v. St. Johns River Water Management District*, this Court rejected a Florida local government's attempt to avoid *Nollan* and *Dolan* by requiring that the landowner agree either to shrink the amount of his own land he sought to develop or pay the locality for improvement of land the government owned elsewhere. 570 U.S. 595, 601-02 (2013). The Court held, among other things, that "'monetary exactions' must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*." *Id.* at 612.

This line of cases recognizes the critical principle that government cannot use permitting leverage to accomplish by induced "consent" an outcome that it could not accomplish directly. In this case, New York seeks to fund an arts program by burdening the property rights of residential property owners in two neighborhoods. The Court should find that it cannot so impose on a certain group, "public burdens which, in all fairness and justice, should be borne by the public as a whole." *Sheetz v. County of El Dorado*, 601 U.S. 267, 273-74 (2024) (internal quotation marks omitted) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

I. The Right to Property Extends Down to the Foundation of Western Civilization.

Property rights have been essential to America's order, its "systematic and harmonious arrangement,"[11] and in the development of Western civilization. In his classic *The Roots of American Order*, Russel Kirk surveys "the legacy of order received from" key periods

[11] Russel Kirk, *The Roots of American Order* 5 (1st ed. 1977).

of Western history, which Kirk distills into "four cities: Jerusalem, Athens, Rome, and London."[12]

As John Adams understood, American order and Western civilization at large derive their "essential principle[s] of morality" from Jerusalem: "If I were an atheist, and believed in blind eternal fate, I should still believe that fate had ordained the Jews to be the most essential instrument for civilizing the nations."[13] From the very first chapter of the Pentateuch, the first five books of the Hebrew Bible, the Creator bestows authority and dominion on man. From his first days, it has been man's role to steward creation well.

The Ten Commandments were intended as "liberating rules that enable a people to diminish the tyranny of sin."[14] These rules include an explicit prohibition on theft.[15] The concepts of property, ownership, and stewardship were fundamental to the Hebraic law.

In Athens, the next city on Kirk's tour of Western thought, Aristotle considered stewardship and private property essential to justice, the virtue he spent years of his life trying to define. To Aristotle, people "will be equals and partners in a community" when "people still have their own things."[16] Ownership of property is necessary to exchange. Aristotle goes on to describe justice as, in part, when parties distribute their goods

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[12] *Id.* at 5.
[13] *Id.* at 17.
[14] *Id.* at 27.
[15] "You shall not steal." Exodus 20:15 (New American Standard Bible).
[16] Aristotle, *Nicomachean Ethics* 101 (Bartlett and Collins trans., University of Chicago Press, 2011).

in such a proportion that both parties receive their due. Thus, ownership incentivizes good stewardship because bad stewards derive less benefit from their property. Aristotle writes that social strife arises when goods are distributed according to some measure other than merit because "all agree that what is just in distributions ought to accord with a certain merit."[17] This is justice in action. Preventing any from receiving what he is due would be an unfair and unjust restriction.

The great Roman statesman Cicero built upon Aristotle's ideas. As an influential senator, Cicero routinely and vigorously opposed agrarian laws that would redistribute property.[18] Further, in his *Topics,* Cicero held that of the two parts of natural law, the first part was the right of each to his own possessions.[19] Justice James Wilson would later paraphrase and expand upon Cicero's definition of a republic, writing, while "at the beginning of… American law, with no precedents accumulated under the Constitution,"[20] that a state is "a complete body of free persons united together for their common benefit, *to enjoy peaceably what is their own*, and to do justice to others." *Chisholm v. Georgia*, 2 U.S. 419, 455 (1793) (opinion of Wilson, J.) (emphasis added).

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[17] *Id.* at 95.
[18] Neal Wood, *The Economic Dimension of Cicero's Political Thought: Property and State*, 16 Can. J. of Pol. Sci. 739, 743 (1983).
[19] *Id.*
[20] Hadley Arkes*, A Natural Law Manifesto or an Appeal from the Old Jurisprudence to the New,* 1268 Notre Dame L. Rev. 87, 3 (2012).

Finally, "London represents the culmination of these earlier traditions, refining and institutionalizing them into the English common law and constitutional government that directly shaped America's own legal and political order."[21] Through London came John Locke, the Enlightenment thinker who argued that property rights are a product of natural law. In Locke's famous *Second Treatise on Government*, Locke wrote, "every man has a property in his own person: this no body has any right to but himself."[22] Locke's conception of property thus echoes and builds upon Aristotle's reasoning that justice depends on giving to each his due. Specifically, Locke says "the labour of [a man's] body, and the work of [a man's] hands, we may say, are properly his."[23] The farmer has a claim on his crops in part because he has given his time and care to the soil. For the flourishing of society and to bring man into accord with the natural law, man must have the ability to steward private property.

While reflecting on the French Revolution in 1790, Edmund Burke wrote that people "have a right to the fruits of their industry; and to the means of making

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[21] Mike Pence, Ed Feulner, *Rediscovering Order in an Age of Populism*, National Affairs (2025) available at https://www.nationalaffairs.com/publications/detail/rediscovering-order-age-populism.

[22] John Locke, *The Two Treatises of Civil Government* 107 (Liberty Fund, Hollis ed. 2011) (1689) available on https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/222/Locke_0057_EBk_v6.0.pdf.

[23] *Id.*

their industry fruitful."[24] Further, Burke observed, "whatever each man can separately do without trespassing on others he has a right to do for himself."[25] But Burke clearly distinguished between equal opportunity and equal outcomes: "all men have equal rights, but not to equal things."[26] As with Aristotle, Burke understood that some will not steward their property well and thus will enjoy fewer benefits. The problem lies when government interferes with the people's ability to control their own property.

As America's founders were declaring independence, Adam Smith published his seminal work *An Inquiry into the Nature and Causes of the Wealth of Nations* in 1776. Smith's work permeated America's founding in Philadelphia not long after being printed. Adam Smith's explanation of markets in *The Wealth of Nations* shaped the way America's Framers viewed property and government's role, or the limits of its role, in regulating property.[27]

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[24] Edmund Burke, *Reflections on the Revolution in France* 88 (Regnery Co. 1955) (1790).
[25] *Id.*
[26] *Id.*
[27] *See, e.g.,* Samuel Fleischacker, *Adam Smith's Reception Among the American Founders* 59 William and Mary Quarterly 897, 906 (2002) ("In addition, in his National Gazette essays of the 1790s, Madison's themes, which dealt with demography, fashion and vanity, and the nature of property, reflected Smith's influence and something of his style. The essay on property echoed Smith in criticizing government measures that favored one type of industry over another and in emphasizing the property in labor over the property in the goods one might earn by laboring.").

Smith's "division of labor" is a practical application of the notion of stewardship that was articulated by Aristotle and his intellectual descendants. According to Smith, though any given person could only make twenty pins himself in one day, he can contribute to the making of over forty-eight thousand pins in one day when the pin-making process is divided and given to several people.[28] When conditions allow people to coordinate and take ownership of their tasks, they flourish and create "the universal opulence which extends itself to the lowest ranks of the people."[29] Smith, of course, could not have imagined the "opulence" of American life today, 250 years later, the product of such freedom of property and labor.

Considering themselves heirs of the same tradition as Edmund Burke, the American Framers enshrined in the Constitution the millennia-old view of property, in Philadelphia[30], the fifth city in Kirk's moral geography. Defending the Constitution in *The Federalist Papers*, "Publius"[31] (James Madison) wrote,

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[28] 1 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 15 (The Liberty Fund 1981) (1776).

[29] *Id.* at 22.

[30] Philadelphia, the city associated with the culmination of Western thought for establishing justice, was the inspiration for an enduring community. "[Frank] Meyer allied with libertarian Milton Friedman and traditionalist Stanley Parry, to propose . . . creating an organization that would go beyond pragmatic politics to promote a deeper philosophical understanding, which came to fruition in the creation of the Philadelphia Society in 1964." Donald J. Devine, *Ronald Reagan's Enduring Principles: How They Can Promote Political Success Today* 146 (The Fund for American Studies 2023).

[31] Brief of Advancing American Freedom et al., *The Babylon Bee,*

"Government is instituted no less for protection of the property, than of the persons of individuals."[32] Further, writing in the *National Gazette* in 1792, James Madison said, "Government is instituted to protect property of every sort . . . that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*."[33] Madison, too, affirmed that in order to be just, the government must provide the people with the freedom to steward their property well:

> That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called.[34]

A government that "*indirectly* violates [individuals'] property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares . . . is not a pattern for the United States."[35]

LLC v. Bonta, No. 25-6138 (9th Cir. Mar. 18, 2026) (discussing the importance of pseudonymous and anonymous speech in the Western tradition).

[32] The Federalist No. 54, at 285 (James Madison) (George Carey & James McClellan eds., The Liberty Fund 2001).

[33] 1 *The Founders' Constitution* at 598 (The Liberty Fund 1987).

[34] *Id.*

[35] *Id.* at 599.

Nor did the Framers of the Constitution or those who ratified it, and later those who framed and ratified the Fourteenth Amendment, intend to create such a government.

II. The Right to Property is Essential to American Liberty.

The codification of the private right to property extends back centuries in the Anglo-American tradition, not least to the Coronation Charter of Henry I[36] and Magna Carta. [37] *See Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023).

"Traditional legal thinkers in both the Roman law and common law tradition constantly insisted on this key proposition: 'property is the guardian of every other right.'"[38] In fact, the word "right" itself originally "referred only to a valid title of ownership, such as the title to real estate."[39]

The centrality of property to ordered liberty was understood by "the key writers who set the intellectual framework of our Constitution—John Locke, David Hume, William Blackstone, Adam Smith, and James Madison" all of whom "treated private property as a

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[36] Paul Larkin, *The Original Understanding of "Property" in the Constitution*, 100 Marq. L. Rev. 1, 17 (2016).
[37] *See generally* W. McKechnie, *Magna Carta, A Commentary on the Great Charter of King John*, 321-26 (rev. 2d ed. 1914).
[38] Richard A. Epstein, *Supreme Neglect: How to Revive Constitutional Protection for Private Property* 1 (Oxford Univ. Press 2008).
[39] *Larkin*, *supra* note 36 at 18.

bulwark of the individual against the arbitrary power of the state."[40]

Blackstone said of the right to property:

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.[41]

For, "John Locke, whose work greatly influenced early Americans . . . men created civil society to protect 'property' along with the closely related concepts of life and liberty."[42]

The Founders clearly thought the right to property was essential to the garden of ordered liberty they were cultivating. According to Hamilton, "the security of Property" was "one of the 'great obj[ects] of Gov[ernment].'" *Kelo*, 545 U.S. at 496 (O'Connor, J., dissenting).

James Madison described property broadly to include even one's opinions and beliefs.[43] He argued

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[40] Epstein, *supra* note 38 at 6.

[41] Richard A. Epstein, *Takings* 22 (Harvard University Press 1985).

[42] *Id.*

[43] The Anti-Federalists, too, though early opponents of the Constitution, had a high regard for one's opinions and liberty of the press: "It is the opinion of some great writers… that if the liberty of the press… could be rendered sacred…that despotism would fly before it." Herbert J. Storing, *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution* 64 (Chicago Univ. Press 1981).

that property as well as personal rights are an "essential object of the laws" necessary to the promotion of free government. Alexander Hamilton stated that the preservation of private property was essential to liberty and republican government. Thomas Jefferson depicted property as a "natural right" of mankind and linked ownership to public virtue and republican government.[44] John Adams described a proper balance of property in society as important to maintaining republican government and connected property ownership to moral worth. Thomas Paine held that the state was instituted to protect the natural right of property, and Daniel Webster would later link property to virtue, freedom, and power. Numerous Anti-Federalist described a society as free when it protected property rights or equalized property distributions.[45]

The right to property was not just another right. It was central to their understanding of liberty and to the role government plays in securing it.

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[44] "[I]f a nation expects to be ignorant & free, in a state of civilisation, it expects what never was & never will be. the functionaries of every government have propensities to command at will the liberty & property of their constituents. there is no safe deposit for these but with the people themselves; nor can they be safe with them without information. where the press is free and every man able to read, all is safe." Letter from Thomas Jefferson to Charles Yancey, in George H. Nash and Timothy G. Nash, *Books and the Founding Fathers: And Their Influence on America Today* 69 (Northwood Univ. Press 2026).

[45] David Schultz, *Political Theory and Legal History: Conflicting Depictions of Property in the American Political Founding*, 37 Am. J. Legal Hist. 464, 475-77 (1993).

America's Founders fought the Revolution "to *preserve* the rule of law and the freedoms enjoyed by the Framers' generation as Englishmen," one of which "was the ability to acquire and enjoy the use of private property."[46] George Mason, in the Virginia Declaration of Rights, wrote that "all men are born equally free and independent, and have certain inherent natural rights . . . among which are, the enjoyment of life and liberty, with the means of acquiring and possessing property."[47] This formulation became "canonical," being "replicated in four state constitutions."[48]

"Most Colonists owned property," and early Americans "saw 'life, liberty, and property' as 'the fundamental trinity of inalienable rights,' rights that 'individuals could never renounce.'"[49] Accordingly, James Madison argued that a government is not just if "the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of [persons] for the service of the rest."[50] Madison, further:

> [C]riticized a government that used "arbitrary restrictions, exemptions, and monopolies" to "deny to part of its citizens that free use of their faculties,

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[46] *Id.*

[47] The Virginia Declaration of Rights § 1.

[48] Randy E. Barnett, *Three Keys to the Original Meaning of the Privileges or Immunities Clause* 43 Harv. J. of Law and Pub. Pol'y 1, 3 (2020).

[49] Larkin, *supra* note 36 at 31 (quoting Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 290 (1996)).

[50] *Id.* at 34 (internal quotation marks omitted).

> and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called."[51]

The right to property was brought to bear against slavery in the antebellum period. Abolitionist Senator Charles Sumner, for example, argued that slavery was "a local municipal institution which derives its support exclusively from local municipal laws" and that slaves were "persons," not property.[52] Thus, the alleged property right of the slaveholder was distinct from "that property which is admitted to be such by the universal law of nature, written by God's own finger on the heart of man."[53]

The right to property was also a core tenet of Reconstruction era efforts to protect the rights of freed former slaves. The Civil Rights Act of 1866 was passed by Congress as an exercise of its enforcement power under the Thirteenth Amendment and sought to ensure that all citizens enjoyed equal rights under state law, among other things, "to inherit, purchase, lease, sell, hold, and convey real and personal property."[54]

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[51] *Id.*

[52] Senator Charles Sumner, *The Landmark of freedom. Speech of Hon. Charles Sumner, against the repeal of the Missouri prohibition of slavery north of 36° 30#. In the Senate, February 21, 1854* available at https://tile.loc.gov/storage-services/service/rbc/rbaapc/28500/28500.pdf.

[53] *Id.*

[54] Barnett, *supra* note 48 at 4.

Concerned both that the Act would be repealed once southern Democrats returned to office and that it might be scrutinized in court on constitutional grounds, "many in Congress supported a parallel effort to adopt a constitutional amendment to make the freedmen United States citizens and to protect the fundamental rights of all United States citizens from being abridged by state governments."[55] Which rights? "At least the rights listed in the Civil Rights Act, including the rights 'to make and enforce contracts, . . . to inherit, purchase, lease, sell, hold, and convey real and personal property.'"[56]

For those drafting and adopting the Reconstruction Amendments, the ability of freed slaves to exercise their liberty, including the right to own property, was essential. These Republicans believed that "every person own[s] him or herself," and has "the inherent right to enter into contacts by which they c[an] acquire property in return."[57]

When Senator Jacob Howard defended the Fourteenth Amendment on the Senate floor, he sought to explicate the scope of "privileges and immunities" by, in part, quoting from Justice Bushrod Washington's opinion in *Corfield v. Coryell*, 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1823) (No. 3,230), itself a restatement of Mason's canonical enumeration.[58]

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[55] *Id.* at 5-6.
[56] *Id.* at 6.
[57] Randy E. Barnett, *Does the Original Meaning of the Fourteenth Amendment Protect Economic Liberty?* 94 Miss. L. J. 1225, 1226 (2025).
[58] Barnett, *supra* note 48 at 3, 6-7. Associate Justice Washington inherited Mt. Vernon from his uncle, George Washington.

Senator Howard said that "the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole."[59]

Responding to a hypothetical objection Senator Howard, distinguished between these rights, including the right to property, and suffrage. He notes that "[t]he right of suffrage is not, in law, one of the privileges and immunities thus secured by the Constitution," because "[i]t is merely a creature of law."[60] That is distinct from the privileges and immunities of citizenship which, rather than arising from "local positive law," are "fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a despotism."[61] In short, without adequate protection for the "fundamental right" "to acquire and possess property," the people are slaves.

This Court has repeatedly recognized the centrality of one's hearth and home, a source of comfort and safety for one's family, to American liberty. In the context of the Fourth Amendment, the Court recognizes "the constitutional interest at stake: the sanctity of a person's living space." *Lange v. California*, 594 U.S. 295, 303 (2021). Constitutionally, the "home is the first among equals," and the Fourth Amendment's "very core" is "the right of a man to

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[59] CONG. GLOBE, 39th Cong., 1st Sess. 2765 (1866) (statement of Sen. Howard).
[60] *Id.* at 2766.
[61] *Id.*

retreat to his own home and there be free from unreasonable government intrusion." *Id.* (internal quotation marks omitted) (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013); *Collins v. Virginia*, 584 U.S. 586, 592 (2018)). It is a "'centuries-old principle' that the 'home is entitled to special protection.'" *Id.* (quoting *Georgia v. Randolph*, 547 U.S. 103, 109, 115 (2006)).

The right to property extends back to the dawn of Western civilization and was understood by the founding generation to be central to liberty. This case presents the Court with a question of critical importance that it has answered in similar situations before: can the government use its regulatory power to extort property from certain property owners? The Court has repeatedly answered in the negative and yet states and localities continue to seek ways by which to enrich the government at the expense of a few. The Court should grant the petition for certiorari and affirm the Constitution's protection for every American's right to property.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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