No. 25-1241

In the Supreme Court of the United States

ARRON BENEDETTI, ET AL.,

Petitioners,

v.

MARIN COUNTY, CALIFORNIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California First Appellate District

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; AMERICANS FOR FAIR TREATMENT; RIO GRANDE FOUNDATION; TAXPAYERS PROTECTION ALLIANCE; TEA PARTY EXPRESS; RUSSEL KIRK CENTER FOR CULTURAL RENEWAL; ASSOCIATION OF MATURE AMERICAN CITIZENS; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; FRONTIERS OF FREEDOM; CHARLIE GEROW, FORMER VICE CHAIRMAN, AMERICAN CONSERVATIVE UNION; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS ; JCCWATCH.ORG; TIM JONES, FORMER SPEAKER, MISSOURI HOUSE, FOUNDER, LEADERSHIP FOR AMERICA INSTITUTE; MEN AND WOMEN FOR A REPRESENTATIVE DEMOCRACY IN AMERICA, INC; PAUL STAM, FORMER SPEAKER PRO TEM, NC HOUSE OF REPRESENTATIVES; TRADITION, FAMILY, PROPERTY, INC.; AND HON. WILLIAM WAGNER (RET), DISTINGUISHED PROFESSOR OF LAW EMERITUS IN SUPPORT OF PETITIONERS

J. Marc Wheat
Counsel of Record
Timothy Harper (Admitted in DC)
Advancing American Freedom, Inc.
801 Pennsylvania Avenue, N.W., Suite 930
Washington, D.C. 20004
(202) 780-4848
MWheat@advancingamericanfreedom.com

June 1, 2026 *Counsel for Amici Curiae*

QUESTIONS PRESENTED

1. Whether Marin County may, under its power to promote the public health, safety, morals, or general welfare, compel private landowners to enter and permanently remain in a government-chosen occupation as a condition of a residential development permit?

2. Whether the Due Process Clause of the Fourteenth Amendment—which protects the fundamental right to "engage in any of the common occupations of life," *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)—also encompasses the fundamental right not to be forced into an occupation of the government's choosing?

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES

Cases *Page(s)*

Constitutional Provisions

Statutes and Regulations

Other Authorities

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 files this brief on behalf of its 161,715 members nationwide including 13,358 members in the State of California.

Amici Americans For Fair Treatment; Rio Grande Foundation; Taxpayers Protection Alliance; Tea Party Express; Russel Kirk Center for Cultural Renewal; Association of Mature American Citizens; Shawnna Bolick, Arizona State Senator, District 2; Frontiers of Freedom; Charlie Gerow, Former Vice Chairman, American Conservative Union; International Conference of Evangelical Chaplain Endorsers ; JCCWatch.org; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute;

---

[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/.

Men and Women for a Representative Democracy in America, Inc; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; Tradition, Family, Property, Inc.; 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

This case concerns fundamental rights recognized in the Western tradition for millennia. The first is the right to property, the security of which, according to Alexander Hamilton, is "one of the 'great obj[ects] of Gov[ernment].'" *Kelo v. City of New London*, 545 U.S. 469, 496 (2005) (O'Connor, J., dissenting). The other is the "the right of the individual to . . . engage in any of the common occupations of life." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Marin County, California seeks to pit these rights against one another, demanding that Petitioners choose between using their property in a lawful way and subjecting themselves and their land to a particular occupation. The Court should grant certiorari and ensure that Petitioners are not forced to choose between these two fundamental rights.

Petitioners in this case are brothers Arron and Arthur Benedetti, both plumbers. They inherited from their father, a turkey farmer, 267 acres of agriculturally zoned land in Marin County, California.[4] Pet. at 1. Wishing to build a home on the land for Arthur, an allowed use within the zoning,

[4] Charles R. Kesler, *California Has Become the Far Left Coast*, *Wall Street Journal* (Mar. 6, 2019).

they sought a permit to proceed with development. *Id.* But Marin County refuses to issue the permit unless the brothers agree to enter into a covenant on the land committing to its perpetual agricultural use. *Id.* This leaves the Benedettis with only three options: sell the land, use it for commercial agriculture themselves or lease it to someone else for commercial agricultural use, or hold the land but not use it. In short, Marin County seeks to reduce the Benedettis to serfs on their own land.[5] All three of these choices impermissibly burden Petitioners' fundamental property and liberty rights and thus are unconstitutional.

As Russel Kirk explains in his classic *The Roots of American Order*,[6] western thought, the thought that made America, stretches back through English, Roman, Greek, and Hebrew history, as represented by those civilizations' most prominent cities. Through Jerusalem, Athens, Rome, and London, property runs as a consistent value of human liberty deserving government's protection. And "American liberty," including its recognition of the centrality of property to human dignity, is "the longest lasting and most dynamic force for culture, progress, and prosperity in the history of the world."[7]

In the Anglo-American legal tradition, too, property rights are critical. As the Founders, and later the Framers and ratifiers of the reconstruction amendments understood, property rights were an

---

[5] *See generally*, Friedrich A. Hayek, *The Road to Serfdom* (1944) (discussing the danger of economic central planning).
[6] Russel Kirk, *The Roots of American Order* (1st ed. 1977).
[7] Independence Index, *supra* note 3.

essential element of the individual liberty government existed to secure.

Because Marin County's permit requirement undermines this long tradition of respect for property, the Court should grant the petition for certiorari and rule for Petitioners.

ARGUMENT

The inherent and inalienable right to property is not a "second-class right." 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).

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*, 545 U.S. at 518 (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.*

Marin County asks the Court to weaken property rights even further.

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.[8] As such,

---

[8] For example, in Massachusetts, John Carbin, a former Black Hawk crew chief and a federally certified aircraft mechanic,

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

This Court found that because the public easement lacked an "essential nexus" to the alleged government interest, "the building restriction [was]

---

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/.

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 the 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, Marin County seeks to coerce the Benedettis into engaging in commercial agriculture by burdening their property rights. Such a permitting requirement is inconsistent with this Court's land use permitting case law and with millennia of Western thought about the fundamental right to property.

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,"[9] 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 of Western history, which Kirk distills into "four cities: Jerusalem, Athens, Rome, and London."[10]

As John Adams understood, American order and Western civilization largely 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."[11] From the very first chapter of the Pentateuch, the first five books of the Hebrew Bible, the Creator bestows

---

[9] Kirk, *supra* note 6, at 5.
[10] *Id.* at 5.
[11] *Id.* at 17.

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."[12] These rules include an explicit prohibition on theft.[13] 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."[14] Ownership of property is necessary to exchange. Aristotle goes on to describe justice as, in part, when parties distribute their goods 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."[15] This is justice in action. Preventing any from receiving

---

[12] *Id.* at 27.
[13] "You shall not steal." Exodus 20:15 (New American Standard Bible).
[14] Aristotle, *Nicomachean Ethics* 101 (Bartlett and Collins trans., University of Chicago Press, 2011).
[15] *Id.* at 95.

what he is due would be an unfair and unjust restriction.[16]

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.[17] 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.[18] 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,"[19] 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).

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."[20] Through

---

[16] The Benedetti brothers are due the ability to use the land, earned for them by their father, in a lawful way. Anything less would be an injustice and would reduce them to twenty-first century serfs on the land.

[17] Neal Wood, *The Economic Dimension of Cicero's Political Thought: Property and State*, 16 Can. J. of Pol. Sci. 739, 743 (1983).

[18] *Id.*

[19] Hadley Arkes*, A Natural Law Manifesto or an Appeal from the Old Jurisprudence to the New,* 1268 Notre Dame L. Rev. 87, 3 (2012).

[20] Mike Pence, Ed Feulner, *Rediscovering Order in an Age of Populism*, National Affairs (2025) available at

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."[21] 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."[22] 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 their industry fruitful."[23] Further, Burke observed, "whatever each man can separately do without trespassing on others he has a right to do for himself."[24] But Burke clearly distinguished between equal opportunity and equal outcomes: "all men have equal rights, but not to equal things."[25] As with

---

https://www.nationalaffairs.com/publications/detail/rediscovering-order-age-populism.

[21] 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.

[22] *Id.*

[23] Edmund Burke, *Reflections on the Revolution in France* 88 (Regnery Co. 1955) (1790).

[24] *Id.*

[25] *Id.*

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.[26]

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.[27] When conditions allow people to

---

[26] *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.").

[27] 1 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 15 (The Liberty Fund 1981) (1776).

coordinate and take ownership of their tasks, they flourish and create "the universal opulence which extends itself to the lowest ranks of the people."[28] 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[29], the fifth city in Kirk's moral geography. Defending the Constitution in *The Federalist Papers*, "Publius"[30] (James Madison) wrote, "Government is instituted no less for protection of the property, than of the persons of individuals."[31] 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*

---

[28] *Id.* at 22.

[29] 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).

[30] Brief of Advancing American Freedom et al., *The Babylon Bee, LLC v. Bonta*, No. 25-6138 (9th Cir. Mar. 18, 2026) (discussing the importance of pseudonymous and anonymous speech in the Western tradition).

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

government, which *impartially* secures to every man, whatever is his *own*."[32] 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.[33]

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."[34]

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.

---

[32] 1 *The Founders' Constitution* at 598 (The Liberty Fund 1987).
[33] *Id.*
[34] *Id.* at 599.

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[35] and Magna Carta.[36] *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.'"[37] In fact, the word "right" itself originally "referred only to a valid title of ownership, such as the title to real estate."[38]

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 bulwark of the individual against the arbitrary power of the state."[39]

Blackstone said of the right to property:

---

[35] Paul Larkin, *The Original Understanding of "Property" in the Constitution*, 100 Marq. L. Rev. 1, 17 (2016).
[36] *See generally* W. McKechnie, *Magna Carta, A Commentary on the Great Charter of King John*, 321-26 (rev. 2d ed. 1914).
[37] Richard A. Epstein, *Supreme Neglect: How to Revive Constitutional Protection for Private Property* 1 (Oxford Univ. Press 2008).
[38] *Larkin*, *supra* note 35, at 18.
[39] Epstein, *supra* note 37, at 6.

> 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.[40]

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."[41]

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.[42] He argued that property as well as personal rights are an "essential object of the laws" necessary to the promotion of free government. Alexander Hamilton

---

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

[41] *Id.*

[42] 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).

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.[43] 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-Federalists described a society as free when it protected property rights or equalized property distributions.[44]

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.

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

---

[43] "[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).

[44] 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).

"was the ability to acquire and enjoy the use of private property."[45] 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."[46] This formulation became "canonical," being "replicated in four state constitutions."[47]

"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.'"[48] 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."[49] 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, and free choice of their occupations, which not only constitute their property in the general

---

[45] Larkin, *supra* note 35, at 17.
[46] The Virginia Declaration of Rights § 1.
[47] 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).
[48] Larkin, *supra* note 35, at 31 (quoting Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 290 (1996)).
[49] *Id.* at 34 (internal quotation marks omitted).

> sense of the word; but are the means of acquiring property strictly so called."[50]

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.[51] 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."[52]

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."[53]

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

---

[50] *Id.*

[51] 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.

[52] *Id.*

[53] Barnett, *supra* note 47 at 4.

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."[54] 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.'"[55]

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."[56]

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.[57] 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

---

[54] *Id.* at 5-6.

[55] *Id.* at 6.

[56] Randy E. Barnett, *Does the Original Meaning of the Fourteenth Amendment Protect Economic Liberty?* 94 Miss. L. J. 1225, 1226 (2025).

[57] Barnett, *supra* note 47 at 3, 6-7. Associate Justice Washington inherited Mt. Vernon from his uncle, George Washington.

safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole."[58]

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."[59] 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."[60] 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 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);

---

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

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 related situations before: can the government use its regulatory power to condition the use of property to accomplish an otherwise illegal end? The Court has repeatedly answered in the negative and yet states and localities continue to seek to enact their preferred policy through indirect means. 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,

J. Marc Wheat
Counsel of Record
Timothy Harper (Admitted in DC)
Advancing American Freedom, Inc.
801 Pennsylvania Avenue, N.W., Suite 930
Washington, D.C. 20004
(202) 780-4848
mwheat@advancingamericanfreedom.com

Counsel for Amici Curiae