No. 25-774

In the Supreme Court of the United States

ERIC TYRELL JOHNSON,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit

BRIEF OF *AMICUS CURIAE* RESTORE THE FOURTH, INC. IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Restore the Fourth, Inc. is a non-partisan nonprofit dedicated to robust enforcement of the Fourth Amendment's guarantee of privacy in one's person, home, papers, and effects. Restore the Fourth oversees a nationwide series of local chapters whose membership includes lawyers, academics, advocates, and ordinary citizens. Restore the Fourth also files amicus briefs in Fourth Amendment cases. *See, e.g.*, Brief of *Amicus Curiae* Restore the Fourth, Inc. in Support of Neither Party, *Barnes v. Felix,* 605 U.S. 73 (2025) (No. 23-1239); Brief of *Amicus Curiae* Restore the Fourth, Inc. in Support of the Petitioner, *Torres v. Madrid*, 592 U.S. 306 (2021) (No. 19-292).

Restore the Fourth is interested in *Johnson* because the decision below erodes the "firm line" that the Fourth Amendment draws "at the entrance to the house." *Kyllo v. United States,* 533 U.S. 27, 40 (2001). "[P]eople cannot be secure in their homes—whether the home is an apartment, a townhome, or a single-family house—if trained [police] dogs can sniff the immediate surroundings of those dwellings without a search warrant." *State v. Edstrom*, 916 N.W.2d 512, 528 (Minn. 2018) (Lillehaug, J., dissenting). Yet, the decision below denies this security to persons who live in apartments accessed via common hallways. App.11a–17a. This conclusion demeans the privacy that the Framers fought so hard to guarantee.

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[1] This amicus brief is filed with timely notice to all parties. S. Ct. R. 37.2(a). No counsel for a party wrote this amicus brief in whole or in part; nor has any person or any entity, other than Restore the Fourth and its counsel, contributed money intended to fund the preparation or submission of this amicus brief.

SUMMARY OF THE ARGUMENT

"Every man's house is his castle."

In this simple expression resides centuries of accumulated legal wisdom that privacy of the home must be protected against unwarranted intrusions no matter the particular form a given "home" may take. The Fourth Amendment incorporates this wisdom in its guarantee of "the right of the people to be secure in their … houses … against unreasonable searches and seizures." With this text, the Framers enshrined a right whose preservation could be readily assured by reference to both history and common law.

The decision below demolishes this safeguard. Affirming a warrantless canine sniff of the front door to an apartment, the Fourth Circuit concludes that constitutional protection against this kind of search depends on having a private porch (or its equivalent). This holding defies the castle maxim's prescription of legal equality among homes, precluding architecture from obscuring substance. For this reason alone, the Court should grant review here and reverse.

At the same time, the Fourth Circuit's disregard of any source of history or common law tradition in its decision-making points to a much deeper problem requiring the Court's attention. Despite this Court's repeated admonition over the last two decades that history and common law matter in the assessment of Fourth Amendment protections, lower courts have allowed mere judicial intuition to control (and erode) these protections in case after case. This case affords a substantive opportunity to fix this problem.

ARGUMENT

I. The Court should grant review to uphold the central place of history and common law in Fourth Amendment cases.

"[A]fter consulting the lessons of history," the Framers adopted the Fourth Amendment "to place obstacles in the way of a too permeating police surveillance." *United States v. Di Re*, 332 U.S. 581, 595 (1948). The Fourth Amendment subsequently prohibits all "unreasonable searches"—a protection "watchful [of] the constitutional rights of the citizen" against "stealthy encroachments thereon." *Boyd v. United States*, 116 U.S. 616, 634 (1886). And over the last 20 years, the Court has repeatedly affirmed that the vitality of this protection hinges on courts taking "the long view," from "the original meaning of the Fourth Amendment forward." *Kyllo v. United States,* 533 U.S. 27, 40 (2001); *see, e.g., Carpenter v. United States*, 585 U.S. 296, 305 (2018) ("We have kept … attention to Founding-era understandings in mind when applying the Fourth Amendment ….").

The problem is: "[lower] courts are pretty rusty at applying the traditional approach to the Fourth Amendment." *Carpenter*, 585 U.S. at 398 (Gorsuch, J., dissenting). The Fourth Circuit's opinion in this case exemplifies this reality. Addressing the Fourth Amendment rights of persons living in apartments accessed via common hallways, the opinion concludes the traditional approach poses no bar to warrantless canine sniffs of apartment doors to detect narcotics. App.11a–17a. So what historical evidence from the

founding era or common law lessons does the opinion cite to support this conclusion? *See Virginia v. Moore*, 553 U.S. 164, 168 (2008) ("In determining whether a search or seizure is unreasonable, we begin with history. We look to the statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to preserve.").

Absolutely none. *See* App.11a–17a.

The words "history" and "common law" do not appear even once in the Fourth Circuit's opinion. *Id.* The opinion's application of the traditional approach (or "property-based approach," as the opinion calls it) instead consists solely of judicial intuition. App.11a. The opinion invokes *United States v. Dunn*, 480 U.S. 294 (1987)—a case decided by the Court at a time when judicial intuition monopolized the evaluation of Fourth Amendment rights under the inkblot phrase "reasonable expectations of privacy." *Carpenter*, 585 U.S. at 386 (Gorsuch, J., dissenting). In *Dunn*, the Court named "[four] factors that bear upon **whether an individual reasonably may expect that an area in question should be treated as the home itself**" for Fourth Amendment purposes. 480 U.S. at 300 (bold added). Applying these factors, the opinion below finds that the area "just outside" the front door of Petitioner's apartment "is not properly treated 'as part of the home itself.'" *See* App.11a–17a.

The result is another contribution to an already "unbelievable … [Fourth Amendment] jurisprudence" that "undermin[es] public confidence in the courts." *Carpenter*, 585 U.S. at 394 (Gorsuch, J., dissenting). This jurisprudence proclaims that "a police helicopter

hovering 400 feet above a person's property invades no reasonable expectation of privacy" and "people [who] spot[] a neighbor rummaging through their garbage would think they lack[] reasonable grounds to confront the rummager." *Id.* at 394–95. To these jaw-dropping takes, the Fourth Circuit now adds the conclusion that an apartment-dweller's front door is less secure against warrantless searches than his luggage because only "physical [police] manipulation of soft luggage from the outside invades a reasonable expectation of privacy." *See* App.9a–10a n.5.

It never occurs to the Fourth Circuit to ask: had British agents during the founding era asserted the power to inspect house doors abutting public roads for odors of contraband (e.g., untaxed liquor), would the same American revolutionaries "who proposed" the Fourth Amendment "have approved?" *Boyd*, 116 U.S. at 635. But asking this question—no matter the answer—is "an irreducible constitutional minimum" in search-and-seizure cases. *United States v. Jones*, 565 U.S. 400, 414 (2012) (Sotomayor, J., concurring). Even when the Framers could have barely imagined the conduct at issue (like smartphone inspections), courts remain bound to consider whether the conduct treads upon "the protection for which the Founders fought." *Riley v. California*, 573 U.S. 373, 403 (2014); *see, e.g., Maryland v. King*, 569 U.S. 435, 482 (2013) (Scalia, J. dissenting) (asking in DNA collection case whether the Framers "would have … open[ed] their mouths for royal inspection"). Otherwise, the Fourth Amendment no longer serves its most basic function: to preserve that baseline "degree of privacy against government that existed" when the Framers adopted the Fourth Amendment. *Kyllo*, 533 U.S. at 34.

Yet, as Fourth Circuit shows here, the dominant instinct of courts today is to disregard (if not disdain) both history and common law in Fourth Amendment cases. When drivers challenge the blanket use of tire chalking to enforce parking limits as a suspicionless search contrary to founding-era history, the Ninth Circuit derides the claim as "grandiose." *See Verdun v. City of San Diego*, 51 F.4th 1033, 1046 (9th Cir. 2022*); but see id.* at 1055 (Bumatay, J., dissenting) (concluding blanket tire chalking is an "unreasonable search" given extensive "historical evidence" of the Framers' "aversion to suspicionless searches"). When a homeowner challenges a game warden's 15-minute warrantless driveway peek into a closed garage, the Vermont Supreme Court rules the homeowner has no reasonable expectation of privacy, disregarding more protective common law standards. *See State v. Bovat*, 224 A.3d 103, 106–09 (Vt. 2019); *but see id.* at 109, 114–16 (Reiber, C.J., dissenting) (concluding game warden's conduct was "an unconstitutional search" because common law norms preclude "warrantless search[es] within the curtilage [of a home] even in an area that is impliedly held open to the public").

Addressing a certiorari petition in the latter case, three members of the Court exclaimed that the Fourth Amendment's "historic protections … demand more respect." *Bovat v. Vermont,* 141 S. Ct. 22, 24 (2020) (statement of Gorsuch, Sotomayor, & Kagan, JJ.). But the Court still denied review. *See id.* at 22. So too in the tire-chalking case and in other cases disregarding or diminishing the traditional approach to the Fourth Amendment. *See Verdun v. City of San Diego*, 144 S. Ct. 73 (2023) (cert. denial); *see also, e.g., State v. Mumford*, 14 N.W.3d 346, 352–53 (Iowa 2024)

(upholding canine sniff of car interior without review of history or common law), *cert. denied sub nom. Mumford v. Iowa*, 146 S. Ct. 92 (2025).

This reality has not been lost on lower courts—or on the government. "[A]ny privilege of search and seizure without warrant" that the Court leaves standing, the government "will push to the limit." *Brinegar v. United States*, 338 U.S. 160, 182 (1949) (Jackson, J., dissenting). Disregard of history and common law in applying the Fourth Amendment has thus reached the point where the government needs to be reminded that home entry "must … as a rule … be decided by a judicial officer, not by a policeman." *Johnson v. United States*, 333 U.S. 10, 14 (1948); *see Conejo Arias v. Noem*, No. 5:26-cv-415, op. at 2 (W.D. Tex. Jan. 31, 2026) (ECF No. 9) ("Civics lesson to the government: [a]dministrative warrants issued by the executive … to itself do not pass [muster].").

In *Case v. Montana*, No. 24-624, 2026 LX 97314 (U.S. Jan. 14, 2026), Justice Gorsuch observes that "application of the Fourth Amendment ought to be informed by the common law's lessons" and that any "confusion" on this point "cannot last forever." *Id.* at *24 (Gorsuch, J., concurring). "[A] question lingers: Why?" *Id.* at *22. So long as lower courts may rely on this Court's lassitude in enforcing the traditional approach to the Fourth Amendment, lower courts will continue to make search-and-seizure cases about "nothing more than current judicial instincts." *Id.* at *24. To show that Fourth Amendment rights do not "hang on so thin a thread," the Court should review *Johnson*—a case in which the common law's lessons make all the difference, as detailed below. *Id.*

II. The Court should grant review to uphold the common law's egalitarian maxim that "every man's house is his castle."

This Court has long recognized that at the "very core" of the Fourth Amendment's guarantee against "unreasonable searches and seizures" is "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Case*, 2026 LX 97314, at *8. This right carries forward a lesson going back nearly 1,500 years to Justinian I's codification of Roman law (*Corpus Juris Civilis*). *See State v. Goode*, 41 S.E. 3, 5 (N.C. 1902). On the use of legal process (called a "citation") to compel persons to appear "for the purpose of a trial" (*de in jus vocando*), Justinian's codification declared: "[m]ost writers hold that it is not lawful to cite any person from his own house; a man's house, they say, being his most secure shelter and retreat, so … anyone who should cite him out of it must be held to be using violence."[2]

So was born the legal maxim *domus sua cuique est tutissimum refugium*: "every man's house is his castle."[3] *See Goode*, 41 S.E. at 5. In 1604. *Semayne's Case*, 77 Eng. Rep. 194 (K.B.) cemented the concept in English common law. Resolving a dispute over the authority of sheriffs to enter a home and seize goods upon legal process, *Semayne's Case* pronounced the baseline that every person's "house … is to him ... his castle and fortress … for his defense against injury and violence, as for his repose." *Id.* at 195.

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[2] *See* 1 DIGEST OF JUSTINIAN 73, 78 (Charles Monroe trans., 1904), https://tinyurl.com/yc7u72z8.

[3] HERBERT BROOM, A SELECTION OF LEGAL MAXIMS 143–45 (1845), https://tinyurl.com/4wu938u5.

The force of this principle then imposed limits on even the King. Before a sheriff could break into a house "either to arrest … or to do other execution of the [King's] process," the sheriff had to "signify the cause of his coming, and to make [a] request to open doors." *Id.; see Wilson v. Arkansas*, 514 U.S. 927, 930–31 (1995) (discussing *Semayne's Case* in holding that the "common-law knock and announce principle" is "a part of the Fourth Amendment reasonableness inquiry"). *Semayne's Case* emphasizes "the reason of all this is because *domus sua cuique est tutissimum refugium*"—every man's house is his castle. 77 Eng. Rep. at 195 (internal punctuation omitted).

Sir William Blackstone's detailed 1768 treatise on English common law reinforced this maxim: "[f]or every man's house is looked upon by the law to be his castle of defense and asylum, wherein he should suffer no violence."[4] Observing the maxim's ancient origins, Blackstone explained "[the] [castle] principle is carried so far in the [Roman] civil law, that for the most part not so much as a common citation or summons, much less an arrest, can be executed upon a man within his own walls."[5] Blackstone also made clear the maxim's *egalitarian* operation, protecting persons and houses of all kinds—not just the rich or mansions. The common law thus regarded "a room or lodging, in any private house" as "the mansion for the time being of the lodger," and viewed a "chamber in a college or an inn of court" the same way.[6]

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[4] 3 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 288 (1768), https://tinyurl.com/356b5yz3.

[5] *Id.*

[6] 4 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 225 (1768), https://tinyurl.com/ycxyxj23.

English courts took the egalitarian force of the castle maxim seriously. Consider *Bruce v. Rawlins* (C.P. 1770).[7] A jury awarded substantial damages to a butcher whose home was invaded by customs-house officers searching for untaxed goods.[8] Rejecting the officers' motion for a reduction of the award, Chief Justice Wilmot (writing in seriatim) denounced the officers' "unlawful entry into a man's house (which is his castle)" and concomitant "invasion" of the "peace and quietness" of the butcher's family.[9] Chief Justice Wilmot underscored "[t]he plaintiff being a butcher" made no difference: "it is the same damage to him as if he was the greatest merchant in London."[10]

The castle maxim's egalitarian operation gained its fullest expression during a public debate in 1763 over a tax on cider that authorized excise officers to enter homes. *Frank v. Maryland*, 359 U.S. 360, 378–79 (1959). Pitt the Elder rebuked the measure on the ground that "[e]very man's house [is] his castle,"[11] to which legend adds the following apocryphal remark: "[t]he poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!" *Id.*

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7 *Reported in:* 3 GEORGE WILSON, REPORTS OF THE CASES ARGUED & ADJUDGED IN THE COURT OF COMMON PLEAS 61–63 (1792), https://tinyurl.com/aebfcsws.

8 *See id.* at 61.

9 *Id.* at 62–63.

10 *Id.*

11 *See* 15 PARLIAMENTARY HISTORY OF ENGLAND 1307 (T.C. Hansard ed., 1813), https://tinyurl.com/yztf8bat.

Across the pond, the Framers of the American Revolution opposed freewheeling Crown searches of homes through similar egalitarian language. In a 1761 case seeking termination of the colonial writs of assistance that permitted these searches, James Otis confronted the argument of the Crown's advocate that "the necessity of having public taxes effectually and speedily collected is of infinitely greater moment to the whole, than the liberty of any individual."[12] The Crown's advocate went so far as to argue the writs served an objective "more important than the imprisonment of thieves" or "murderers."[13]

Otis responded that "one of the most essential branches of English liberty is the freedom of one's house."[14] Because "[a] man's house is his castle," the writs were a "monster of oppression" as they placed "the liberty of **every man** in the hands of every petty officer."[15] Otis illustrated the egalitarian force of this contention by describing the actions of "Mr. Ware"—a Crown officer possessing the writ. When a justice of the peace called Ware "before him, by a constable, to answer for … profane swearing," Ware responded by commanding the justice to permit Ware "to search [the justice's] house for uncustomed goods."[16] Ware proceeded "to search [the justice's] house from the garret to the cellar" and next subjected the ordinary constable involved to the "same" inquisition.[17]

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12 John Adams's 'Abstract of the Argument' (ca. Apr. 1761), FOUNDERS ONLINE, https://tinyurl.com/5n7ycu9k.

13 *Id.*

14 *Id.*

15 *Id.* (bold added).

16 *Id.*

17 *Id.*

Otis's condemnation of writs of assistance "was 'the first act of opposition to the arbitrary claims of Great Britain' and helped [to] spark the Revolution itself." *Carpenter*, 585 U.S. at 303–04. And after the Revolution, the Framers made "[t]he [legal] maxim that 'every man's house is his castle' … a part of … constitutional law" through the Fourth Amendment's guarantee of "[t]he right of the people to be secure in their persons, **houses**, papers, and effects, against unreasonable searches and seizures."[18] U.S. CONST. amend. IV (bold added). Indeed, as Justice Story explained in 1833, the Fourth Amendment generally represented the Framers' "affirmance" of the "great constitutional doctrine of the common law."[19]

American courts readily assimilated and built on the egalitarian operation of the castle maxim. For instance, in *Oystead v. Shed*, 13 Mass. 520 (1816), the Massachusetts Supreme Court determined the "inviolability of dwelling-houses" was not limited to the homeowner and his immediate family, but also included "domestic servants," "permanent boarders," and all others who "made the house their home." *Id.* at 523. The "purpose" of the castle maxim, after all, was to preserve "repose and tranquility" within the home—values that would be "as much disturbed by a forcible entry to arrest a boarder or a servant, who had acquired, by contract, express or implied, a right to enter the house at all times, and to remain in it as long as they pleased." *Id.* The castle maxim then had to be understood to include the latter parties. *Id.*

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[18] T. COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS, 367–68 (1878), https://tinyurl.com/29nj2xeh.

[19] 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 748 (1878), https://tinyurl.com/2m7t9nrr.

Such fidelity to the castle maxim led American courts in the 1800s and early 1900s to reject any dilution of the maxim's egalitarian operation, going beyond search-and-seizure cases. In an 1866 case where a liquor shop owner struck an abusive, knife-wielding patron and the patron sued, the Georgia Supreme Court affirmed a verdict for the shop owner based on a jury instruction that the owner's shop was "his castle." *Pierce v. Hicks*, 34 Ga. 259, 261 (1866). The court explained that while individuals of "refined cultivation" might struggle to view a "shop redolent with the perfume of corn whisky" the same way as "the proud keep of Windsor," the law required one to "strip this shop of its accessories" and "contemplate it not in the concrete." *Id.* Anything less would compromise Pitt the Elder's "splendid declamation" of the rights of the "poorest man … in his cottage." *Id.*

The same understanding may be seen in the North Carolina Supreme Court's 1902 reversal of a woman's conviction for striking a debt collector. *See Goode*, 41 S.E. at 5–6. The woman "was in her own house" when the debt collector entered, engaged in "violent conduct," and refused "to behave or to leave." *Id.* Citing the castle maxim and Pitt the Elder's declamation, the court declared that the woman "by means of the wooden wand" that she "touched to the back" of the debt collector's head "communicated electrically to his brain the same conception more effectually than if she had read [the maxim] to him." *Id.* The debt collector's pursuit of property that "may not have been fully paid for" made no difference. *Id.* The debt collector "had no right to enter th[e] home and misbehave, or refuse to leave when ordered out," much less "to carry off any property." *Id.*

In sum: the "far-reaching" legal maxim that "every man's house is his castle" has "a history and a literature all its own" that is "still as expressive and pregnant of … individual rights" as when the maxim first emanated from the laws of ancient Rome. *People v. Glennon*, 74 N.Y.S. 794, 798 (N.Y. Sup. Ct. 1902). The maxim is "as vital now" as when Pitt the Elder championed "[t]he poorest man … in his cottage." *Id.* And in our nation, the maxim honors the Framers' "burst[ing] asunder [of] the bonds of despotic power." *Id.* The maxim is a stalwart reminder that if "we are all open to have our houses invaded, ransacked and searched by policemen on nothing except what they … choose to call their suspicions," then "[we are] no longer living under a free government." *Id.*

Against this common-law backdrop, the Fourth Circuit's affirmation of a warrantless canine sniff of the front door to Petitioner's apartment—his castle—merits this Court's review. In *Florida v. Jardines*, 569 U.S. 1 (2013), the Court ruled that introducing "a trained police dog to explore the area around the home in hopes of discovering incriminating evidence" falls under the Fourth Amendment. *Id.* at 9, 11–12. The Fourth Circuit concludes this rule does not apply to Petitioner because of where officers were standing when their trained police dog sniffed and alerted on the "seam" of Petitioner's apartment door. App.13a. While the officers in *Jardines* stood on the "front porch"—an area they had no right to be without the homeowner's permission—the officers in Petitioner's case stood in "the area of the common hallway just outside Johnson's door." App.11a. The Fourth Circuit reasons Petitioner's inability to exclude officers from this area takes *Jardines* off the table. App.16a.

Not so. The facts of *United States v. Jones*, 565 U.S. 400 (2012) furnish a helpful analogy. "[A]gents installed a GPS tracking device on the undercarriage of [Antoine Jones's] Jeep while it was parked in a public parking lot." *Id.* at 403. The Court held the Fourth Amendment applied as the police "physically occupied private property"—the Jeep's under-body—"for the purpose of obtaining information." *Id.* at 404. That the police were standing in a *public* parking lot when they took this action was irrelevant. *See id.* at 410–11. Even if Jones could not exclude officers from the lot, this fact afforded no license for the officers' actions. "By attaching the device to the Jeep, officers encroached on a protected area." *Id.* Similarly, here, by having a trained police dog examine Petitioner's apartment door—an indisputable part of Petitioner's home from which he could exclude anyone—officers encroached on a protected area. *See* App.13a.

The Fourth Circuit's validation of the canine sniff in this case then reduces to the proposition that Fourth Amendment protection of the home belongs only "to those persons with the financial means to afford residences with [front porches]" of some kind. *Collins*, 584 U.S. at 601. The panel admits as much in stating "[w]e go no further in deciding th[is] case" because "[m]ulti-dwelling units come in all kinds of configurations." App.16a. But down this road lies the "apportion[ment] [of] Fourth Amendment protections on grounds that correlate with income, race, and ethnicity." *United States v. Whitaker*, 820 F.3d 849, 854–55 (7th Cir. 2016). Gone is the castle maxim and its egalitarian protection of "the most frail cottage" against government as if the cottage were "the most majestic mansion." *Collins*, 584 U.S. at 601.

CONCLUSION

"The Fourth Amendment is supposed to protect the people at least as much now as it did when [it was] adopted …." *United States v. Carloss*, 818 F.3d 988, 1011 (10th Cir. 2016) (Gorsuch, J., dissenting). Such protection is illusory, however, so long as lower courts feel free to "disregard … the historic materials underlying the Amendment"—even those common law lessons that have stood the test of time like the egalitarian maxim "every man's house is his castle." *United States v. Rabinowitz*, 339 U.S. 56, 69 (1950) (Frankfurter, J., dissenting). To help roll back this tide, the Court should grant review in this case. The Fourth Amendment protects apartment-dwellers like Petitioner no less than persons able to afford homes with front porches. The Court should say so.

Respectfully submitted,

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