No. 25-965

In the Supreme Court of the United States

DANIEL GRAND,
Petitioner,
v.
CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; AMERICAN ASSOCIATION OF SENIOR CITIZENS; AMERICAN CENTER FOR EDUCATION & KNOWLEDGE; AMERICAN FORTITUDE; AMERICAN VALUES; AMERICANS FOR FAIR TREATMENT; ASSOCIATION OF MATURE AMERICAN CITIZENS; ET AL. IN SUPPORT OF PETITIONER
(Additional Amici Curiae on Inside Cover)

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QUESTION PRESENTED

Whether the First Amendment's established chilling-effect doctrine—under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury—is displaced by *Williamson Cnty.'s* land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF CITED AUTHORITIES iii

STATEMENT OF INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT 2

ARGUMENT 7

I. Religious Practices in the Home were Common in the Early Republic 7

II. The Predominant View of Religious Liberty at the Founding was of Free Exercise, not Mere Toleration. 10

CONCLUSION 17

TABLE OF CITED AUTHORITIES

Page(s)

Cases:

Fulton v. City of Philadelphia, Pennsylvania, 593 U.S. 522 (2021) 4

Grand v. City of University Heights, Ohio, 159 F.4th 507 (6th Cir. 2025)..... 6

Grand v. City of University Heights, Ohio, 2024 WL 4403700 (N.D. Ohio Oct. 1, 2024) 6

Masterpiece Cakeshop v. Colorado Civil Rights Comm'n, 584 U.S. 617 (2018) 6

Statutes & Other Authorities:

Conventicle Act 1664 16 Cha. 2 c. 4..... 11

Conventicles Act 1670 22 Cha. 2 c. 1 11

Toleration Act of 1688 1 Will. and Mar. c. 18..... 11

Sir William Blackstone, 2 *Commentaries on the Laws of England* (Liberty Fund George Sharswood ed. 1893) available at https://oll.libertyfund.org/titles/sharswood-commentaries-on-the-laws-of-england-in-four-books-vol-2 12

Sanford H. Cobb, *The Rise of Religious Liberty in America* (Macmillan 1902)..... 8, 9

Tench Coxe, *A View of the United States of America* (Philadelphia 1794) 7, 16

Edwin J. Feulner, Jr., Conservatives Stalk the House: The Story of the Republican Study Committee (Green Hill Publishers, Inc. 1983)..... 1

Morris Aaron Gutstein, *The Story of the Jews of Newport* (Bloch 1936) 3, 4, 16

Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/ 1

Rhys Isaac, *The Transformation of Virginia* (Univ. of North Carolina Press 1999) 7, 8

Rufus Matthew Jones, *The Quakers in the American Colonies* (Macmillan 1911) 9

James Madison, *A Memorial and Remonstrance Against Religious Assessments* (1785) 15

Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion* 103 Harv. L. Rev. 1409 (1989)..... 13-15

Davd A. J. Richards, *Toleration and the Constitution* 105 (Oxford Univ. Press 1986) 14

S. Scott Rohrer, *Wandering Souls* 174 (Univ. of North Carolina Press 2010) 9, 10

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 filed this brief on behalf of its 19,474 members in the Sixth Circuit including 7,165 members in the state of Ohio.

Amici American Association of Senior Citizens; American Center for Education & Knowledge; American Fortitude; American Values; Americans For Fair Treatment; Association of Mature American Citizens; Coalition for Jewish Values; Concerned Women for America; Delaware Family Policy Council; Family Council in Arkansas; Family Institute of Connecticut Action; First Liberty Institute; Illinois Conservative Union; International Conference of Evangelical Chaplain Endorsers; James Dobson

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[1] Counsel for Respondents received timely notice of the filing of this amicus brief. Petitioner consented to 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/.

Family Institute; JCCWatch.org; Jewish Vote GOP; Kansas Family Voice; Maryland Family Institute; Men and Women for a Representative Democracy in America, Inc.; National Apostolic Christian Leadership Conference; National Religious Broadcasters; New York State Conservative Party; Orthodox Jewish Chamber Of Commerce; Republicans Overseas Israel; Rio Grande Foundation; 60 Plus Association; Sutherland Institute; The Family Foundation of Virginia; The Justice Foundation; The Wagner Center; Vigilance, Inc.; Wisconsin Family Action, Inc.; Women for Democracy in America, Inc.; Cathy Adams, 2nd VP Eagle Forum; Fran Bevan, Phyllis Schlafly's Pennsylvania Eagle Forum; Bob Carlstrom, President, The Carlstrom Group; Donna Rice Hughes; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; Barbara Ledeen; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; Melissa Ortiz, Principal & Founder, Capability Consulting; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; and Paul Teller, President, Teller Strategies believe that religious liberty, including the right to gather and worship in one's own home, is central to American freedom.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

For millennia, Jews have faced persecution throughout the world. Often a scapegoat for the failings of the people they live among, they are understandably wary of experiencing persecution anew.

With the Portuguese conquest of Brazil in 1654, 5,000 Jews who had been living there as part of a Dutch colony were driven out.[4] Twenty-three of these Jews arrived in New Amsterdam (now New York), but locals, including Governor Peter Stuyvesant made clear that they were not welcome.[5] In 1658, fifteen Jewish families arrived in Newport, Rhode Island under the protection of legislation securing the right of all to "walk as their consciences persuade them," and where there was a "prevailing spirit of liberty."[6] The religious meetings of these first Jews in North America "took place in private dwelling houses."[7]

More than a century later, the Hebrew congregation of Newport famously presented President George Washington with a letter, which read in part: "Deprived as we heretofore have been of the invaluable rights of citizens, we now (with a deep sense of gratitude to the Almighty Dispenser of all Events) behold a government . . . which gives to bigotry no sanction to persecution no assistance; but generously affording to all liberty of conscience."[8]

President Washington, writing in response, agreed that "[a]ll possess alike liberty of conscience and immunities of citizenship" and rejoiced that "[i]t is now no more that *toleration* is spoken of as if it was by the indulgence of one class of people that another

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[4] Morris Aaron Gutstein, *The Story of the Jews of Newport* 25 (Bloch 1936).
[5] *Id.* at 25-26.
[6] *Id.* at 30.
[7] *Id.* at 31.
[8] *Id.* at 210.

enjoyed the exercise of their inherent natural rights."[9] President Washington concluded with the hope that "the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants" and that "there shall be none to make him afraid."[10]

In this case, Petitioner, an Orthodox Jew, sought to host prayer meetings with fellow Jews at his home in University Heights, Ohio. His neighbor complained to the mayor who directed the city's legal officer to issue a cease-and-desist order directing Petitioner not to proceed with these prayer meetings.

The First Amendment prohibits Congress from adopting any law "prohibiting the free exercise" of religion. U.S. Const. amend I. That protection, which has been incorporated against the states through the Fourteenth Amendment, *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 532 (2021), protects Americans' freedom to live out their religious convictions.

This Ohio case raises a question settled long ago: whether Americans are able to gather and worship in their own homes.

The facts are these.

Daniel Grand and his family live in University Heights, Ohio. As an Orthodox Jewish man, Mr. Grand is required to pray three times a day, preferably with a group of at least ten men to constitute a "minyan." Doing so is central to his faith.

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[9] *Id.* at 212-13 (emphasis added).
[10] *Id.* at 213.

Since Orthodox Jews abstain from driving on the Sabbath and High Holidays, and since traveling to his synagogue by foot is difficult, Mr. Grand invited others from his community into his home where he intended to host a prayer meeting. Importantly, Mr. Grand's neighbors were at no risk of suffering from increased traffic in their neighborhood or of being inconvenienced by an influx of parked cars from the meetings. Nevertheless, one neighbor reported Mr. Grand's prayer meetings to the mayor. Shockingly, the city issued a cease-and-desist letter to Mr. Grand.

The letter warned Mr. Grand that, under the city's zoning code "[t]he use or operation of [Mr. Grand's house] as a religious place of assembly and/or operation as a shul or synagogue is not permitted."[11]

When Mr. Grand applied to the City's Planning Commission for a Special Use Permit, the city changed the hearing to a "quasi-judicial" format that "locked the record" and prevented Mr. Grand from amending his application to include additional evidence.[12] Under these circumstances, "any appeal would be limited and likely unsuccessful."[13]

When Mr. Grand withdrew his application, the mayor doubled down on the previous cease-and-desist letter. Addressing Mr. Grand and his community of Orthodox Jews, the Mayor said, "let there be no question, there is no permission granted here to operate a house of assembly or conduct activities

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[11] Petition for Certiorari at 10.
[12] *Id.*
[13] *Id.*

consistent" with those at Mr. Grand's home.[14] The mayor advised citizens to report on one another saying, "If you observe such activities, and I hope you do not, but if you do, you may report them to the city, and the city will enforce its laws, which exist for the benefit of the entire community. And we will seek all appropriate remedies in court."[15]

In September 2022, Mr. Grand filed an initial complaint in the U.S. District Court for the Northern District of Ohio. The district court dismissed his core constitutional claims for lack of ripeness. *Grand v. City of University Heights, Ohio*, 2024 WL 4403700 at *12 (N.D. Ohio Oct. 1, 2024). On appeal, the Sixth Circuit affirmed. *Grand v. City of University Heights, Ohio*, 159 F.4th 507, 517 (6th Cir. 2025).

The mayor's apparent hostility to the religious gathering of Orthodox Jews "violated the [city's] duty under the First Amendment." *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 638 (2018). More fundamentally, the city's order that Mr. Grand cease and desist from hosting religious gatherings in his home conflicts with the history of religious liberty in the United States, including America's long tradition of home worship.

In the Early Republic, Americans routinely engaged in religious practices, even including marriages, funerals, and baptisms, within their homes. These meetings often preceded, sometimes by decades, the establishment of a building specifically for religious gathering.

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[14] *Id.* at 11.
[15] *Id.*

In fact, before the full flowering of American religious liberty, home worship was often the Hobson's choice all minority religious groups were offered. This "mere toleration," which was "exploded by our general constitution,"[16] of religious minorities was a stepping-stone to full religious liberty. That right cannot now be denied to religious minorities.

The Court should grant the petition for certiorari and rule for petitioners.

ARGUMENT

I. Religious Practices in the Home were Common in the Early Republic

In the colonies and the early Republic, Americans viewed their homes as natural spaces for religious exercise, including for religious gathering.

Anglicans in colonial Virginia preferred to perform sacred religious rites in their homes rather than in their often distant churches. The Rev. Hugh Jones "noted also, significantly, that Virginians insisted on having certain rituals performed in their homes rather than in churches, as English usage would have required."[17] Further, "Sacred significance attached to these rites [marriage, funerals, and baptisms], being no longer confined within the church, was transferred to the home and was there associated with the gathering of neighbors to share in the event. Christian forms were not set aside. The ceremonies of the

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[16] Tench Coxe, *A View of the United States of America* 103-04 (Philadelphia 1794).

[17] Rhys Isaac, *The Transformation of Virginia* 69 (Univ. of North Carolina Press 1999).

Church were carried out as far as possible in the prescribed manner."[18]

In New Amsterdam in 1653, Lutherans petitioned Governor Peter Stuyvesant and the Council of New Netherland of the Dutch West India Company, "for liberty of worship and permission to send for a Lutheran minister."[19] The council rejected this request.[20] Undeterred, "the Lutherans persisted in their desire, and held religious services in their houses without a minster."[21] In response, Governor Stuyvesant imprisoned some of the Lutherans and issued an edict prohibiting further Lutheran worship.[22] Softening somewhat, the council reprimanded the governor for imprisoning the Lutherans and directed him to "permit them their free Worship in their houses," though they maintained their denial of the Lutherans' request for a minister.[23]

Governor Stuyvesant also persecuted New Amsterdam's Jews for which he was chastised by the company "who ordered that the Jews should have in the colony the same liberties as the possessed in Holland, except that of having a synagogue, and 'may exercise in all quietness their religion within their houses.'"[24]

Henry Townsend was twice arrested under Governor Stuyvesant's rule for hosting prayer

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[18] *Id.*
[19] Sanford H. Cobb, *The Rise of Religious Liberty in America* 313 (Macmillan 1902).
[20] *Id.* at 313-14.
[21] *Id.* at 314
[22] *Id.*
[23] *Id.*
[24] *Id.* at 316-17.

meetings at his house;[25] the second time was after he had become a Quaker in the wake of persecution of that group by the colonial government.[26]

Christians of all kinds "had 'house churches'" "wherever they went," an "interesting repetition of the custom which prevailed in the early apostolic Church."[27] In the colonies, early church "meetings of every sort were held in dwelling-houses."[28] This was true of Quakers, whose "gatherings were invariably held in the large living room of some prosperous colonist."[29] Quaker meetings frequently started in private homes. In Nantucket in the early eighteenth century, for example, "the meeting was . . . started in the home of Mary Starbuck, where the neighbors of the island met, week by week, 'to wait on the lord.'"[30]

For decades, home worship was the norm for Baptists in Middletown and Shrewsbury, New Jersey. One "congregation had gone thirty years without a meetinghouse, convening instead at members' homes."[31] Not until "one month before the Revolutionary War began at Lexington and Concord," did a newly ordained minister "convene[] a conference at his house to discuss building a meetinghouse."[32]

In 1742, George Hahn, a Moravian from Herrnhut, arrived in Broadbay, Maine. Though he was not a

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[25] *Id.* at 317-19.
[26] *Id.* at 318-19.
[27] Rufus Matthew Jones, *The Quakers in the American Colonies* 137 (Macmillan 1911).
[28] *Id.*
[29] *Id.*
[30] *Id.* at 125.
[31] S. Scott Rohrer, *Wandering Souls* 174 (Univ. of North Carolina Press 2010).
[32] *Id.*

missionary, "he became one because of the barren religious scene he encountered."[33] So, "[h]e held prayer meetings and love feasts and preached in the parlor of his home. As a result of Hahn's efforts, 'the desire of the people to come under the care of the Moravian Church grew daily stronger.'"[34]

In Wachovia, North Carolina in the late eighteenth Century, Moravian pastwors and church leaders expected parents to take an involved role in inculcating religious values in their children. As such, "[t]he home thus had to function as a small church, where devotions and prayers were to be as important a part of the family's day as chores in the morning and meals together in the afternoon and evening."[35]

In the colonial and founding eras, the home was thus a place of both private and corporate worship. It was also a place of worship for those who were denied the right to gather publicly like the Jews and Lutherans in New Amsterdam. As will be shown below, moreover, free home worship, at least for some, was an early if incomplete fruit of the growing respect for religious liberty in the Anglo-American tradition.

II. The Predominant View of Religious Liberty at the Founding was of Free Exercise, not Mere Toleration.

In the decades leading up to American independence, an appreciation for religious liberty was growing.

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[33] *Id.* at 128.
[34] *Id.*
[35] *Id.* at 117.

Under the leadership of the Church of England by the Tudors, outward displays of religious disagreement were banned. However, England, unlike absolutist France, which had outlawed Protestantism *in toto* in 1685 by revoking the Edict of Nantes, had a long history of individual liberty which was in tension with the Anglican Church's supremacy in public life. It was impossible for the Anglican English state to replicate the policies of Catholic France.

As a result, England passed Conventicle Acts in 1664 and 1670 that banned the public exercise of Catholic and Protestant nonconformist congregations but allowed exceptions for the private worship by the family in the household. The law criminalized the religious gathering of "five persons or more . . . over and besides those of the same Household," or if not in a private residence, five or more attendees.[36]

In 1688, following the Glorious Revolution, an Act for Toleration was passed by Parliament. This Act allowed (non-Catholic) Trinitarians to have public worship houses if the doors remained unlocked, if they registered the congregations with the State, and if they accepted the supremacy of the Church of England in civil-political life.[37]

By this time a minimum and maximum toleration was established in England. The minimum toleration was small private worship in one's own home.

Blackstone, writing in his 1769 Commentaries on the Laws of England, made clear that full "toleration"—which was only available to protestant dissenters, not Catholics

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[36] Conventicle Act 1664 16 Cha. 2 c. 4. Conventicles Act 1670 22 Cha. 2 c. 1.

[37] Toleration Act of 1688 1 Will. and Mar. c. 18.

or those who "den[ied] the Trinity"—required accepting the supremacy of Church of England.[38] Those who would not were subject to the same penalties as Catholics and unitarians or atheists.[39] This toleration was so limited, according to Blackstone because toleration should not be taken to "such extremes, as may endanger the national church: there is always a difference to be made between toleration and establishment."[40]

Those who could not "conform" to the established order would only be possessed liberty only in "matter[s] of private conscience, to the scruples of which," according to Blackstone, the country's "laws ha[d] shown a very just and Christian indulgence."[41] Mere private conscience in the home would not be molested, but anything approaching an "establishment" would be persecuted. Household conscience could be tolerated at the minimum because it was no different than one uttering a falsehood in a private home, which "is not however taken notice of by our law, unless it carries with it some public inconvenience, as spreading false news."[42]

Among prominent thinkers of the time, John Locke's views on the relationship between church and state had the "most direct" "influence on the

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[38] Sir William Blackstone, 2 *Commentaries on the Laws of England* 53 (Liberty Fund George Sharswood ed. 1893) available at https://oll.libertyfund.org/titles/sharswood-commentaries-on-the-laws-of-england-in-four-books-vol-2.
[39] *Id.*
[40] *Id.* at 51-52.
[41] *Id.* at 51.
[42] *Id.* at 42.

Americans and the first amendment."[43] However, "[t]he ways in which American advocates of religious freedom departed from Locke . . . are as significant as the ways in which they followed him."[44] Locke argued for toleration of religious diversity, except for Catholics and atheists, as a means of reducing societal strife.[45] However, that toleration was potentially of limited value because Locke suggested that there was no recourse for an aggrieved religious minority in law.[46] "[T]he *government's perception* of public needs defines the boundaries of freedom of conscience."[47]

This paternalistic and government centric view, that the government has the correct theology but will magnanimously condescend to tolerate private religious error, was the English establishment view.

But the "United States, [with its] several millions of dissenters and a century of pluralism ahead of Locke's England, had advanced beyond mere toleration of religion."[48] As Michael McConnell explains, "the advent of judicial review" and the adoption of a written Constitution allowed personal conscience to supersede and build upon Locke's theory of legislative supremacy.[49]

The "internal American dynamic," "under the stimulus of the remarkable religious diversity of the

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[43] Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion* 103 Harv. L. Rev. 1409, 1432 (1989).
[44] *Id.*
[45] *Id.*
[46] *Id.* at 1434 n.134.
[47] *Id.* at 1434 (emphasis in original).
[48] *Id.* at 1444.
[49] *Id.* at 1445.

colonies . . . gave Lockean ideas a radical turn."[50] For Locke, religious toleration entailed, "on the basis of certain stipulated conditions of allegiance," the removal of "state coercion from religious worship, coercion either to attend religious worship services of one religion or not to attend services of another," at least for protestant Christians.[51]

But Americans rejected this narrow conception. As Jefferson wrote of Locke's exclusion of Catholics and atheists from religious toleration, "where he stopped short, we may go on."[52] For Jefferson, "rights of conscience are inalienable rights reserved from the Lockean social contract."[53]

Americans came to understand that every individual had a fundamental, inalienable right to worship God and obey the convictions of their conscience. This was not mere toleration Thus:

> When George Mason proposed the term "toleration" for the religious liberty clause of the Virginia Bill of Rights, Madison objected on the ground that the word "toleration" implies an act of legislative grace, which in Locke's understanding it was. Madison proposed, and the Virginia assembly adopted, the broader phrase: "the full and free exercise of [religion]."[54]

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[50] Davd A. J. Richards, *Toleration and the Constitution* 105 (Oxford Univ. Press 1986).
[51] *Id.* at 105, 111.
[52] *Id.* at 112.
[53] *Id.*
[54] McConnell, *supra* note 43, at 1443.

As Americans came to understand, an individual's responsibility to God preceded his responsibility to government.[55] Thus, James Madison could write in his *Memorial and Remonstrance*:

> It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.[56]

Between the Revolution and the adoption of the Constitution, there was "a wave of constitution-writing in the new states."[57] Every state constitution, with the exception of Connecticut's, "had a constitutional provision protecting religious freedom by 1789, although two states confined their protections to Christians and five other states confined their protections to theists."[58] Each of these state constitutions, which "provide the most direct evidence of the original understanding" of the First Amendment's Free Exercise Clause,[59] "defined the scope of the free exercise right in terms of the conscience of the individual believer,"[60] not merely by what might be allowed by a majoritarian government.

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[55] *See id.* at 1446.
[56] James Madison, *A Memorial and Remonstrance Against Religious Assessments* (1785).
[57] McConnell, *supra* note 43 at 1455.
[58] *Id.* at 1455.
[59] *Id.* at 1456.
[60] *Id.* at 1458-59.

Thus, President Washington could write to the Hebrew Congregation of Newport, "[i]t is now no more that *toleration* is spoken of as if it was by the indulgence of one class of people that another enjoyed the exercise of their *inherent natural rights*."[61] As Tench Coxe would later write, "[m]ere toleration is a doctrine exploded by our general constitution."[62]

No more did religious minorities have to worship quietly at home relying on the good grace of those in power. Their fundamental right to live out their faith had been recognized by the First Amendment. As President Washington wished for the Hebrew congregation of Newport so the Constitution guarantees that, in the exercise of their religious convictions, every American "shall sit in safety under his own Vine and Figtree, and there shall be none to make him afraid."[63] Washington's concluding ecumenical words echo through the centuries: "May the father of all mercies scatter light and not darkness in our paths, and make us all in his own due time and way everlastingly happy."[64]

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[61] Gutstein, *supra* note 4, at 213.
[62] Coxe, *supra* note 16.
[63] Gutstein, *supra* note 4, at 213.
[64] *Id.*

CONCLUSION

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

Respectfully submitted,

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