

No.

In the Supreme Court of the United States

VAL FRENCH,

Petitioner,

v.

CITY OF SHAWNEE, KANSAS; DOUG GERBER, IN HIS
OFFICIAL CAPACITY AS CITY MANAGER OF THE CITY OF
SHAWNEE; AND KEVIN MESSICK, IN HIS OFFICIAL
CAPACITY AS CODE ENFORCEMENT OFFICER FOR THE
CITY OF SHAWNEE,

Respondents.

*On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Tenth Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

More than fifty years ago, this Court held that the Village of Belle Terre, New York, could prohibit unrelated adults from living together in a single-family home without offending the Constitution. *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974). Subsequent precedents, such as *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984) and *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), cast significant doubt on *Belle Terre*'s continuing viability, and several state high courts have rejected its reasoning.

Meanwhile, despite housing shortages, municipalities nationwide place restrictions on unrelated households—forcing bedrooms to remain empty and criminalizing the shared-housing arrangements on which many Americans increasingly depend.

The questions presented are:

(1) Whether, contrary to *Belle Terre*, an ordinance that prohibits people from living together in a home solely on the basis of their family relationship status violates the Fourteenth Amendment.

(2) Whether the government's desire to maintain the single-family character of neighborhoods is a constitutionally sufficient basis for an ordinance that prohibits unrelated people from sharing a home throughout a city, including in high-density, multi-family zones.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Val French, an individual, was plaintiff-appellant in all proceedings below.

HomeRoom, Inc., was plaintiff-appellant in all proceedings below. It does not join this petition.

Respondent, City of Shawnee, Kansas, is a municipal corporation of the State of Kansas, and was defendant-appellee below.

Respondent, Doug Gerber, is the City Manager of the City of Shawnee, and was defendant-appellee below.

Respondent, Kevin Messick, is the primary Code Enforcement Officer for the City of Shawnee, and was defendant-appellee below.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Homeroom, Inc. v. City of Shawnee, No. 23-3168, 2026 WL 925733 (10th Cir. Apr. 6, 2026).

Homeroom, Inc. v. City of Shawnee, No. 2:23-cv-02209-HLT-GEB, 691 F.Supp.3d 1316 (D. Kan. Sep. 12, 2023).

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PETITION FOR A WRIT OF CERTIORARI

For more than fifty years, this Court's decision in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), has permitted municipalities to forbid unrelated adults from sharing a home. On a sparse record and with minimal analysis, that case upheld the power of a small, single-zone village to regulate the homelife of residents by discriminating on the basis of kinship status. *Belle Terre* was wrong when decided, and intervening precedent confirms this. In *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618-19 (1984), this Court held that the Constitution protects certain intimate relationships which "have played a critical role in the culture and traditions of the Nation." And in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 448-50 (1985) this Court affirmed that "irrational prejudice" against a disfavored group is not a legitimate basis for a zoning classification, and that the court must be able to articulate some rational basis to uphold a zoning ordinance.

That has left the law in an untenable situation. Several state high courts have refused to follow *Belle Terre*, not because their own constitutions demand greater substantive protection, but because its reasoning is "unpersuasive." *State v. Baker*, 81 N.J. 99, 112 (1979); see *Charter Twp. of Delta v. Dinolfo*, 419 Mich. 253, 273 (1984) (the *Belle Terre* Court "made no attempt to suggest" how the challenged ordinance was justified). Meanwhile, federal courts like the Tenth Circuit below are bound to apply *Belle Terre* and do so robotically, regardless of circumstances of the particular case. App. 21a (citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989)). The law is thus pulled in two opposing directions. The Ninth

Circuit has held that the relationship among those who share a home “easily qualifies” for constitutional protection under *Roberts*, see *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1221 (9th Cir. 2012), while the decision below refused to even consider the constitutional test that *Roberts* set forth. App. 18a, n.10.

The result is an unsettled question of nationwide importance. The nation faces a severe housing shortage measured in millions of units, and the proliferation of kinship-based restrictions cuts off a major recourse for individuals and families confronted with a need to share a home. While the housing market struggles to supply sufficient stock to meet demand, these laws force existing bedrooms to sit empty, and they criminalize the shared-living arrangements on which families, young adults, and senior citizens increasingly rely.

The right to choose the people with whom you live is a fundamental right, grounded in the nation’s history and tradition. *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 543 (1973) (Douglas, J., concurring) (the “right of association, the right to invite the stranger into one’s home is too basic in our constitutional regime to deal with roughshod.”). It therefore deserves heightened protection under the equal protection and due process guarantees of the Constitution. This Court should grant review.

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals is available at *HomeRoom, Inc. v. City of Shawnee*, No. 23-3168, 2026 WL 925733 (10th Cir. Apr. 6, 2026), and is reprinted at Appendix (App.) 1a. The opinion of the district court is reported at 691 F.Supp.3d 1316 (D. Kan. 2023), and is reprinted at App. 24a.

JURISDICTION

The lower courts had jurisdiction over this case under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The Court of Appeals for the Tenth Circuit entered final judgment on April 6, 2026. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides that “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

The City of Shawnee’s Co-Living Ordinance, No. 3419, is reproduced at App. 40a.

STATEMENT OF THE CASE

A. Factual Background

1. Petitioner Val French and her family live in a home that they own in Shawnee, Kansas. App. 3a. Before adoption of the challenged Ordinance, Val lived with her husband, their two adult sons, and the girlfriend of one of the sons. *Ibid.* Then the City of Shawnee made that living arrangement a crime. The only problem with the girlfriend’s presence, from the

City's perspective, is that she was unrelated to the other residents by blood or marriage.

2. The City adopted its Co-Living Ordinance, No. 3419, in April 2022. App. 2a. The Ordinance forbids more than three unrelated adults from residing together in the same residence throughout the entire City. App. 2a-3a. It purports to be a zoning ordinance, but it regulates neither the use of land nor the intensity of land use. Instead, it regulates land *users*. The Ordinance is not an occupancy limit—it places no cap on the number of people who may occupy a residential dwelling, so long as those people share a government-sanctioned relationship. It does not govern the allowable density of a given area, or lot coverage, or the number of dwelling units that a development may include. The only thing the Ordinance regulates is the relationship of people who share a home.

The Ordinance prohibits so-called “Co-Living Groups” outright in every residential zone in the City, including in zones that allow multi-family use by right. App. 25a. It defines “Co-Living Group” as “a group of four (4) or more unrelated persons age eighteen (18) or older living together in a dwelling unit, provided that if any one (1) of the adult persons is unrelated to another adult person in the group, the entire group shall be classified as unrelated.” *Ibid.* In turn, it defines “related persons” as “(A) Persons related by blood, marriage, adoption, or guardianship; or (B) A person having legal custody of a minor or the designee of a parent or other person having legal custody of a minor.” *Ibid.*

Any “owner, lessee, or tenant” who maintains a building in violation of the ordinance is exposed to

misdemeanor culpability as well as daily fines up to \$500.00. Shawnee Muni. Code §§ 17.98.010(A), .020(A).

B. Legal Proceedings

Ms. French, along with co-plaintiff HomeRoom,¹ filed a complaint in the District of Kansas alleging violations of equal protection and due process under the Fourteenth Amendment and seeking declaratory and injunctive relief under 42 U.S.C. § 1983. App. 4a. The complaint also brought a state law claim under the Kansas Zoning Enabling Act.

The City moved to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that HomeRoom did not have standing to raise its claims, and that in any case the constitutional claims must fail on the merits. App. 24a, 30a. Relying on the exceptionally deferential rational basis holding of *Belle Terre*, the City argued that “maintaining the single-family character of neighborhoods—the obvious underlying purpose of the Ordinance—is a legitimate public interest that survives rational basis scrutiny.” App. 5a. The district court agreed with the City and granted the motion. App. 31a, 37a. The court did not attempt to explain how the Ordinance—which applies throughout the entire City—was geared toward maintaining the single-family character of neighborhoods. It simply observed that *Belle Terre* was binding authority. App. 31a-36a. It rejected Plaintiffs’ argument that *Belle Terre* did not consider the right of intimate association as enunciated in *Roberts*, finding that the argument “elevates form over substance.” App. 34a. The court acknowledged

¹ HomeRoom is a property management startup that connects residential property owners with tenants to facilitate low-transaction-cost rentals. It does not join this Petition.

that “Plaintiffs have a right to argue for a change in the law, but *Belle Terre* remains good law and is binding authority[.]” App. 35a. Having dismissed all federal claims, the court declined to exercise supplemental jurisdiction over the state law claim. App. 37a.

The Tenth Circuit affirmed. Although plaintiffs appealed the district court’s denial on the basis of HomeRoom’s standing, the appellate court declined to reach that issue, proceeding instead to the merits of Ms. French’s constitutional claims. App. 9a-10a. The court distinguished *Cleburne* on the basis that it dealt with a regulation differentiating “between different types of unrelated people[.]” and observed that federal courts “continue to recognize *Belle Terre* as governing authority.” App. 16a. It declined to apply the constitutional test from *Roberts* on the grounds that “there is no federal court that has done so in the context of a zoning ordinance.” App. 18a, n. 10. Like the district court, the Tenth Circuit acknowledged the right to argue for a change in the law, but cited *Rodriguez de Quijas*, 490 U.S. at 484, for the proposition that federal circuit courts may not recognize the abrogation of on-point Supreme Court precedents by implication, and must leave to “this Court the prerogative of overruling its own decisions.” App. 21a. Accordingly, the court of appeals held it was bound by *Belle Terre* and affirmed.

REASONS FOR GRANTING THE PETITION

I. Subsequent Precedent Severely Undermines *Belle Terre*

A. *Belle Terre* found that kinship-based classifications involve no fundamental rights, and the Court adopted a highly deferential stance

This Court first addressed the constitutionality of zoning regulations in the 1926 decision of *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). That case held that a zoning ordinance is generally constitutionally permissible as long as it is not “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” *Id.* at 395. Against equal protection and due process challenges, it upheld an ordinance prohibiting industrial and apartment uses in certain areas, finding it was rationally supported by a desire to combat noise, traffic, and cramped environs. *Belle Terre*, 416 U.S. at 5.

Euclid emphasized that the test is not applied “by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality.” *Id.* at 388. Shortly after, in *Nectow v. Cambridge*, the Court invalidated a zoning ordinance that prohibited most commercial and industrial uses in an area surrounded by such uses. 277 U.S. 183, 186-87 (1928). Echoing *Euclid*’s direction to consider the regulation in context, the *Nectow* Court affirmed that the prohibition would not actually promote the “health, safety, convenience, [or] general welfare” of local residents when “taking into account the natural development” of the city and the “character of the district” in question. *Id.* at 187-88.

With “one minor exception,” the Court did not review the substance of another zoning ordinance until its 1974 decision in *Belle Terre*. *Moore v. City of East Cleveland*, 431 U.S. 494, 514 (1977) (Stevens, J., concurring). At that time, the Village of Belle Terre consisted of “about 220 homes inhabited by 700 people.” *Belle Terre*, 416 U.S. at 2. Its zoning ordinance established a single district coextensive with the Village’s boundaries—less than one square mile in area—which restricted land use exclusively to single-family dwellings. *Id.*; see *Boraas v. Vill. of Belle Terre*, 367 F. Supp. 136, 137-38 (E.D.N.Y. 1972). It defined the term “family” as “one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants.” *Belle Terre*, 416 U.S. at 2.

The *Belle Terre* plaintiffs were six tenants, who each occupied a room in a six-bedroom house, and their landlord. *Boraas v. Vill. of Belle Terre*, 476 F.2d 806, 809 (2d Cir. 1973). The tenants “function[ed] as a single housekeeping unit,” contributing jointly to rent, cooking and dining together, and sharing household chores. *Ibid.* They were concededly responsible tenants who had caused no public disturbance. Students all, they sought an alternative to “traditional dormitory living” but could not afford apartments. *Ibid.* They found their “cooperative housing arrangement” to be “pleasant, convenient, promotive of scholarly exchange, and within their pocketbooks.” *Ibid.* Under the ordinance, however, they were “illegal residents.” *Ibid.*

The plaintiffs challenged the ordinance as a violation of equal protection, the right of association under the First and Fourteenth Amendments, the right of privacy, and the right of travel. *Belle Terre*, 367 F. Supp. at 139. The district court observed that, although the ordinance

“might well be all but impossible to justify” on traditional zoning objectives,² it was “at the very center of the mainstream of actual zoning goals . . . , coming no doubt under the inclusive health and general welfare objectives.” *Id.* at 146. In particular, the court held that the ordinance was justified by the public interest in the protection and maintenance of “families made up essentially of parents and their children.” *Id.* It therefore denied the plaintiffs’ motion for a preliminary injunction.

The Second Circuit reversed. Doing what it believed “courts are historically suited to do,” it applied the Equal Protection Clause by asking “whether the legislative classification is *in fact* substantially related to the object of the statute.” *Belle Terre*, 476 F.2d at 814-15. It rejected the grounds relied on by the district court, holding that the police power did not permit a locality to “compel all others who would take up residence in the community to conform to its prevailing ideas of lifestyle[.]” *Id.* at 815. Such social preferences, it held, “have no relevance to public health, safety or welfare.” *Ibid.*

This Court reversed, finding that the Ordinance did not infringe any fundamental rights. *Belle Terre*, 416 U.S. at 7-10. Rather, it was the kind of “economic and social legislation” which is to be upheld so long as it is “reasonable, not arbitrary, and bears a rational relationship to a (permissible) state objective.” *Id.* at 8 (citation modified). Adopting a highly deferential

² These included “safety, adequate light and air, preservation of the land from overintensive use, avoiding crowding of the population, reduction of traffic congestion and facilitation of adequate transportation, water, sewerage, school, park and other public services.” *Id.* at 146.

posture, the Court upheld the ordinance as rational because the “regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.” *Id.* at 9.

In dissent, Justice Marshall argued that the ordinance infringed on the “fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments.” *Id.* at 13 (Marshall, J., dissenting). Although the majority had cited a right-of-association case involving the freedom of expression, *id.* at 7 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)), Justice Marshall observed that the right is not limited to “modes of association that are political in the usual sense, but also” applies “to those that pertain to the social and economic benefit of the members.” *Id.* at 15 (Marshall, J., dissenting). The “selection of one’s living companions,” he urged, involves important “choices as to the emotional, social, or economic benefits to be derived from alternative living arrangements.” *Ibid.* Rejecting the justifications adopted by the majority, Justice Marshall found them “both overinclusive and underinclusive,” and observed that “the asserted goals could be as effectively achieved by means of an ordinance that did not discriminate on the basis of constitutionally protected choices of lifestyle.” *Id.* at 18.

The *Belle Terre* majority did not explain how the kinship status of residents affected those goals. Nor did it relate them to the particular characteristics of the village. Yet federal courts have universally read *Belle Terre* as establishing a *per se* rule that restricting the co-residence of unrelated persons is constitutional.

Even accepting the decision's scant analysis, it cannot be squared with subsequent jurisprudence from this Court. Federal courts, however, have found no leeway to apply newer precedents nor to ask whether *Belle Terre* might come out differently on different facts.

B. *Belle Terre*'s kinship-based classification is irreconcilable with subsequent precedent

This Court issued two decisions in the decade following *Belle Terre* that undermine its reasoning. First, the Court decided *Moore*, 431 U.S. at 498, holding that while a zoning ordinance could impose "limits on the types of groups that could occupy a single dwelling," it could not distinguish between different types of blood relations. Thus, an ordinance that recognizes only narrow categories of related individuals as a "family" violates the Constitution. *Id.* at 499-500. Although *Moore* explicitly distinguished *Belle Terre* as concerning only unrelated persons, *id.* at 498, the Court nevertheless eroded that case's logical foundations. In examining "the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation," the *Moore* Court identified several of the same legitimate government interests that were at stake in *Belle Terre*, such as traffic, overcrowding, and youth values. *Compare Moore*, 431 U.S. at 499-500 *with Belle Terre*, 416 U.S. at 9. But it found that the ordinance had only a "tenuous" relationship to those goals and "serve[d] them marginally, at best." *Moore*, 431 U.S. at 500. For example, the ordinance did not address traffic concerns as it would permit a nuclear family of six drivers while prohibiting an adult brother and sister who used public transit. *Ibid.* Yet the *Belle Terre* ordinance suffers from

an identical flaw. *Belle Terre*, 416 U.S. at 18-19 (Marshall, J., dissenting).

This Court's decision in *Cleburne* dealt an even stronger blow. That case considered an ordinance requiring a special use permit to create a group home for mentally disabled persons while permitting other types of group homes by right. *Cleburne*, 473 U.S. at 447-48. Although the Fifth Circuit had applied a heightened standard of review based on its determination that mental disability was a "quasi-suspect classification," this Court disagreed and announced that rational basis review was the appropriate standard. *Id.* at 446.

Yet the Court applied the rational basis test in a way that the *Belle Terre* ordinance could not have survived. Unlike *Belle Terre*, in which the Court "made no attempt to suggest" how the restrictions at issue were related to police power ends, *Charter Twp. of Delta*, 419 Mich. at 273, the *Cleburne* Court considered each proffered government rationale in turn. *Cleburne*, 473 U.S. at 449. It observed that if the "potential residents of [the subject property] were not mentally retarded, but the home was the same in all other respects, its use would be permitted under the city's zoning ordinance." *Id.* Because the record did not clarify how "the characteristics of the intended occupants of the [property] rationally justify denying to those occupants what would be permitted" to other groups of residents, the ordinance lacked a rational basis. *Id.* at 450; *see also Romer v. Evans*, 517 U.S. 620, 632-33 (1996) (on rational basis review, "we insist on knowing the relation between the classification adopted and the object to be attained" in order to "ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law.").

Cleburne’s analytical approach cannot be reconciled with the conclusory holding of *Belle Terre*. In *Belle Terre*, as in the present case, if the residents were related by blood but the use of the home was otherwise identical, their co-residence would be permitted. *Cf. Cleburne*, 473 U.S. at 449. But nothing in the *Belle Terre* Court’s analysis—and nothing in the record of the present case—clarifies how the residents’ kinship status justifies different treatment.

C. *Belle Terre* did not consider the right of intimate association

The most important development undermining *Belle Terre* is the explicit recognition of the right of intimate association first announced in *Roberts*. Echoing Justice Marshall’s dissent in *Belle Terre*, the *Roberts* Court explained that the “freedom of association” consists of two distinct categories. *Roberts*, 468 U.S. at 617-18. One is the freedom of *expressive* association, protecting the “right to associate for the purpose of engaging in those activities protected by the First Amendment.” *Ibid.* The other is the freedom of *intimate* association, protecting the right to “enter into and maintain certain intimate human relationships” which are so “central to our constitutional scheme” as to receive “protection as a fundamental element of personal liberty.” *Ibid.*

These relationships consist of “personal bonds” which “have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs.” *Id.* at 618-19. Their constitutional protection “safeguards the ability independently to define one’s own identity that is central to any concept of liberty.” *Id.* at 619; *cf. Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022) (Due Process Clause guarantees rights that are “deeply rooted in this

Nation’s history and tradition” and “implicit in the concept of ordered liberty.”) (cleaned up).

The limits of governmental authority to regulate a given association depends on where that relationship falls “on a spectrum from the most intimate to the most attenuated of personal attachments.” *Roberts*, 468 U.S. at 620. Although family relationships sit at the most protected extreme of the spectrum, protection is not restricted to the family. *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987). Courts must look to factors such as “size, purpose, policies, selectivity, [and] congeniality” to determine the level of constitutional protection afforded a given association. *Roberts*, 468 U.S. at 620. *See also Duarte*, 481 U.S. at 546 (protected associations are determined by “factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.”).

The *Belle Terre* majority’s consideration of the right of association did not have the benefit of *Roberts*’ articulation of that right. *Belle Terre* referenced a “right of association,” but it was thinking of the right to *expressive* association, as evidenced by its citation of *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), a paradigmatic case in that doctrine. *Belle Terre*, 416 U.S. at 7; *see also* Rigel C. Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 Fla. L. Rev. 1401, 1422-23 (2015). *Belle Terre* further stated that the challenged ordinance “places no ban on other forms of association, for a ‘family’ may, so far as the ordinance is concerned, entertain whomever it likes.” 416 U.S. at 9. But that cursory remark does not square with *Roberts*, which analyzed the right of a given association *as such*, not whether members of the association could otherwise consort with one another. *See Roberts*, 468 U.S. at 620

(analyzing the level of constitutional protection applied to various “relationships” and “associations.”). Otherwise, *Roberts* could have been decided on the grounds that individual members of the U.S. Jaycees were free to meet for coffee.

The *Belle Terre* court did not recognize the imperiled right for what it was, and therefore did not apply any of the diagnostic factors—such as size, purpose, selectivity, or exclusion—outlined in *Roberts*. Nor did it attempt to engage in the “careful assessment” of the degree of intimacy involved in the relationship of those who share a home together. See *Roberts*, 468 U.S. at 620.

Justice Marshall’s dissent presciently anticipated the mode of analysis explicated in *Roberts*. Although he lacked the benefit of *Roberts*’ guidance, he understood that the ordinance in *Belle Terre* infringed on this fundamental right, and therefore urged that it must be subject to strict scrutiny. 416 U.S. at 18 (Marshall, J., dissenting). When *Roberts* was decided a decade later, Justice Marshall’s view was vindicated.

D. The constitutional right of intimate association includes the right to choose household living companions

The *Roberts* Court presented two paradigmatic examples of the sort of relationships occupying either extreme on the “spectrum” of most to least protected associations. *Roberts*, 468 U.S. at 620. At the one end, relationships most deserving of protection are those that “attend the creation and sustenance of a family.” *Id.* at 619. These relationships “involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively

personal aspects of one's life." *Id.* at 619-20. They are characterized by attributes like "relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship." *Id.* at 620. At the opposite extreme, relationships like large business enterprises are least deserving of protection, because they lack all of those qualities. *Id.*

It is difficult to conceive of any relationship more closely adjacent to the family relationship on this spectrum than that between individuals who choose to share their home. *See Fair Hous. Council of San Fernando Valley v. Roommate.com*, 666 F.3d 1216, 1220-21 (9th Cir. 2012) ("Aside from immediate family or a romantic partner, it's hard to imagine a relationship more intimate than that between roommates[.]"). Because the home is "the center of our private lives," the choice to share it "implicates significant privacy and safety considerations." *Id.* at 1221. Thus, the Ninth Circuit found that the relationship among household living companions "easily qualifies" for protection under *Roberts*.³ *Ibid.*; *see also McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 502 n.1 (2011) (noting that "the freedom to select one's cohabitants could, under some circumstances, implicate the freedom of association[.]" but not reaching the issue).

³ To be clear, the *Roommate.com* case addressed whether the federal Fair Housing Act (FHA) prohibited certain kinds of discrimination in the selection of household members. 666 F.3d at 1218. Given its concern that the relationship among roommates "easily qualified" as constitutionally protected association under *Roberts*, it interpreted the FHA not to prohibit such discrimination under the doctrine of constitutional avoidance. *Id.* at 1221-22. The court's analysis makes plain the conflict between *Belle Terre* and *Roberts*.

The constitutional case for safeguarding such a relationship is especially strong given that it is grounded in the home, which holds paramount importance in the American history, tradition, and concept of liberty. *See City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (“A special respect for individual liberty in the home has long been part of our culture and our law.”); *Payton v. New York*, 445 U.S. 573, 601 (1980) (“[O]verriding respect for the sanctity of the home . . . has been embedded in our traditions since the origins of the Republic.”); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (constitutional rights take on an “added dimension” in the “privacy of a person’s own home”); *see also Minnesota v. Carter*, 525 U.S. 89, 99 (1998) (the home is “entitled to special protection as the center of the private lives of our people.”) (Kennedy, J., concurring).

We are thus left in conflict. The Ninth Circuit has identified the relationship of unrelated co-residents as deserving fundamental constitutional protection under this Court’s holding in *Roberts*. Yet the Tenth Circuit below refused to even consider the *Roberts* factors on the grounds that “there is no federal court that has done so in the context of a zoning ordinance.” App. 18a, n.10. That glaring conflict calls out for this Court’s review.

II. Several State Courts Examining *Belle Terre* on the Merits Have Found No Rational Basis to Support It

Before *Belle Terre*, a number of state courts had rejected occupancy caps based on kinship status. *Moore*, 431 U.S. at 516-17 (Stevens, J., concurring) (observing that “attempts to limit occupancy to related persons have not been successful[.]” and collecting cases). After *Belle Terre*, at least four states have explicitly declined

to follow it. See *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544 (1985); *Charter Twp. of Delta*, 419 Mich. at 273; *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123 (1980); *State v. Baker*, 81 N.J. 99 (1979).

Of course, state courts may interpret their own state constitutions differently from the Constitution of the United States without creating a true conflict. But several of the state courts that have departed from *Belle Terre* have not done so based on broader state protections.⁴ Rather, they simply found *Belle Terre*'s reasoning unpersuasive. See, e.g., *Baker*, 81 N.J. at 111-12 (observing that *Belle Terre* has been "widely criticized by the commentators" and finding its reasoning "unpersuasive."). Indeed, Michigan's high court lamented that *Belle Terre* had no real reasoning at all. *Charter Twp. of Delta*, 419 Mich. at 273 (declining to follow *Belle Terre* because "the Supreme Court made no attempt to suggest how a line drawn between the related and unrelated advances" admittedly legitimate legislative ends).

Baker concerned an ordinance that prohibited more than four unrelated people from living together in a single-family zone, ostensibly for the purpose of preserving the "family character" of such neighborhoods. 81 N.J. at 103-04. The Appellate Division found that the ordinance "so narrowly delimits persons who may occupy a single family dwelling as to prohibit numerous potential occupants who pose no threat to the style of family living sought to be preserved." *Id.* at 105 (citation modified). The Supreme

⁴ California represents the exception here. It departed from *Belle Terre* under Article I, Section 1, of the California Constitution, which provides an explicit protection for the right of privacy that has no federal counterpart.

Court of New Jersey affirmed. *Ibid.* Although the court conceded that the desires to preserve family-style neighborhood character and to limit overcrowding and congestion were legitimate, the chosen means could not withstand the state’s “real and substantial relation” test. *Id.* at 105-06, 109-10; *see Euclid*, 272 U.S. at 395 (zoning ordinances are unconstitutional where they “are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”).

But the court’s analysis demonstrates that it would have reached the same result even under a weaker⁵ rational basis standard. *See Baker*, 81 N.J. at 107 (“Thus the ordinance distinguishes between acceptable and prohibited uses on grounds which may, in many cases, have no rational relationship to the problem sought to be ameliorated.”). For instance, it noted that the basic rationale of zoning ordinances based on biological or legal relationships “necessarily reflect generalized assumptions about the stability and social desirability of households comprised of unrelated individuals . . . which in many cases do not reflect the real world.” *Ibid.* But as this Court later affirmed in *Cleburne*, the government may not rely on “irrational prejudice” in zoning regulations. *Cleburne*, 473 U.S. at 450; *see Moreno*, 413 U.S. at 535 (rejecting “wholly unsubstantiated assumptions concerning the difference between ‘related’ and ‘unrelated’ households[,]” such as the notion “that such households are ‘relatively

⁵ Although the federal rational basis test similarly requires a real and substantial relationship for zoning ordinances, *see Euclid*, 272 U.S. at 395, New Jersey’s test also requires that the regulation “not exceed the public need or substantially affect” inoffensive uses. *Baker*, 81 N.J. at 105.

unstable[.]”). The *Baker* court explicitly declined to follow *Belle Terre*, not only because it was deciding a matter of state constitutional law, but because *Belle Terre*’s reasoning was “unpersuasive,” and because the New Jersey precedents on which *Baker* relied “remained logically sound regardless of *Belle Terre*.” 81 N.J. at 112-13 (citation modified).

In *Dinolfo*, the Michigan high court invalidated a similar ordinance as “unreasonable and arbitrary[.]” *Dinolfo*, 419 Mich. at 257, 276 n.7; *id.* at 265 (explaining that the challenged ordinance was “in all significant respects identical” to the one upheld in *Belle Terre*). The court employed the “standard generally used to evaluate the normal use of the police power[.]” asking whether the classification bore “a reasonable relation to the object of the legislation.” *Id.* at 269-270 (citation modified). Like the *Baker* court, it agreed that the legislative objectives of preserving family values and controlling population and density were “not only rational but laudable goals.” *Id.* at 270-71. But discriminating on the basis of family relationship status was not “reasonably related to the achievement of those goals.” *Id.* at 271.

The *Dinolfo* court departed from *Belle Terre* not because its state constitution provided substantively different protections, but simply because it could not agree with *Belle Terre*’s analysis. *Id.* at 272-273. Indeed, it critiqued *Belle Terre* for providing no analysis at all. *Id.* at 273. And it implied that this Court had abdicated its judicial responsibility to evaluate the reasonableness of legislation. *Id.* at 273 (agreeing with *Belle Terre* that “line drawing” is a legislative function, but observing “the well-understood rule of law that the task of deciding whether the line itself is reasonably related to the object of the line drawing is a judicial

function.”). The *Dinolfo* court found no evidence that “unrelated persons, as such, have any less a need for the advantages of residential living or that they have as a group behavior patterns that are more opprobrious than the population at large.” *Id.* at 276. Lacking any such justification, the ordinance was “arbitrary and capricious.” *Id.*

To the same effect is *McMinn*, 66 N.Y.2d 544. Once again, the court found the stated government objectives legitimate. *Id.* at 550. But it held that a restriction based on the kinship status of residents “[m]anifestly . . . bears no reasonable relationship” to those goals. *Id.* at 549. Further, zoning ordinances are not properly concerned with the identity and status of persons in the first place. *Id.* at 550 (“Zoning is ‘intended to control types of housing and living and not the genetic or intimate internal family relations of human beings[.]’”) (quoting *City of White Plains v. Ferraioli*, 34 N.Y.2d 300, 305 (1974)); see *Moore*, 431 U.S. at 519 (Stevens, J., concurring in the judgment) (“The state decisions have upheld zoning ordinances which regulate the identity, as opposed to the number, of persons who may compose a household only to the extent that the ordinance requires such households to remain nontransient, single-housekeeping units.”); *Women’s Kan. City St. Andrew Soc. v. Kansas City*, 58 F.2d 593, 603-04 (8th Cir. 1932) (invalidating a zoning restriction that “goes to the extent of determining who shall occupy for residence purposes a residence that meets in every respect the requirements of” the relevant zone); 5 Rathkopf, *The Law of Zoning and Planning* § 81:7 (4th ed. 2023) (Zoning is properly concerned with the “regulation of ‘land use’ and not regulation of the ‘identity or status’ of owners or persons who occupy the land.”).

Considering a different but related issue, the high court of Maryland took pains to distinguish *Belle Terre* by attributing to it a use-based rationale that it did not employ. *Kirsch v. Prince George's Cnty.*, 331 Md. 89, 107 (1993). That case considered an ordinance placing special caps on the rental of residential property by students pursuing higher education. *Id.* at 91. The court noted that it “generally” relies on this Court’s opinions in applying equal protection and due process under the state constitution, *id.* at 97, and applied rational basis scrutiny. *Id.* at 104. But it found that differentiating between residential tenant classes on the basis of the tenants’ occupations is an “arbitrary classification forbidden” under both the federal and state constitutions. *Id.* at 106.

The court distinguished *Belle Terre* by reading the ordinance there as one “based on the nature of the use of the property, such as a fraternity house or a lodging house,” and not concerned with “the occupation of the persons who would dwell therein.” *Id.* at 107. Yet the mechanism on which the *Belle Terre* ordinance operated—the family relationship of residents—was no less a regulation of the status of persons than the one *Kirsch* condemned. Contrary to *Kirsch*, neither the ordinance nor the Court in *Belle Terre* defined terms like “lodging house” or “fraternity house” based on distinguishable uses made of the property. The only operative classification was kinship. Thus, the *Kirsch* court avoided *Belle Terre* by attributing to it a use-based rationale that it did not actually employ.

In short, several state courts have recognized that *Belle Terre* is unsupportable on its own terms, even leaving aside the erosion effected by subsequent jurisprudence from this Court.

III. Federal and State Courts Applying *Belle Terre* Do So Mechanically Because This Court Has Not Yet Formally Overruled It

Although it acknowledged Petitioners' right to argue for a "change in the law," the court below concluded that it was bound by *Belle Terre*. App. 21a (citing *Rodriguez de Quijas*, 490 U.S. at 484 for the proposition that courts of appeals must follow Supreme Court decisions directly on point, even where the decision "appears to rest on reasons rejected in some other line of decisions."). Other federal courts, too, reflexively yield to *Belle Terre* without considering that case's unusual circumstances and without engaging the analytical principles from *Cleburne* or *Roberts*.

In his concurrence in the judgment in *Moore*, Justice Stevens attempted to limit *Belle Terre*'s reach as a case "primarily concerned with the prevention of transiency⁶ in a small, quiet suburban community." *Moore*, 431 U.S. at 519, n.15 (Stevens, J., concurring) (citing *Ferraioli*, 34 N.Y.2d at 304-05). But if that is true, few other courts have gotten the message. Several cases apply *Belle Terre* to residential groups that are not transient, or in communities that are nothing like the 700-person village at issue in that case. See *Adams Hous., LLC v. City of Salisbury*, 147 F.Supp.3d 390, 394 n.4 (D. Md.

⁶ Although *Belle Terre* concluded that the challenged ordinance was "not aimed at transients," 416 U.S. at 7, this statement related to the right of interstate travel as evidenced by its citation to *Shapiro v. Thompson*, 394 U.S. 618 (1969). See *Shapiro*, 394 U.S. at 627, 634 (striking one-year in-state residency requirement for welfare benefits as violating the right of interstate travel). By contrast, Justice Stevens's use of "transiency" refers to temporary or transitional—as opposed to "stable"—living situations. *Moore*, 431 U.S. at 516 (Stevens, J., concurring in the judgment).

2015), *vacated on other grounds*, 672 Fed. App'x 220 (2016) (explicitly rejecting an attempt to distinguish *Belle Terre* on the grounds of the size of the relevant jurisdiction); *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 145 So.3d 320, 335-36 (La. 2014) (applying *Belle Terre* to the City of Baton Rouge, Louisiana, whose population in 2014 was greater than 225,000,⁷ and not concerning itself with whether the residents in question could be considered transient); *Jones v. Wildgen*, 320 F.Supp.2d 1116, 1131 (D. Kan. 2004) (applying *Belle Terre* to the City of Lawrence, Kansas, whose population in 2004 was more than 80,000⁸); *McMaster*, 395 S.C. at 507 (applying *Belle Terre* to the City of Columbia, South Carolina, whose population in 2011 was approximately 130,000⁹); *State v. Champoux*, 5 Neb. App. 68, 70, 76 (Ct. App. Neb. 1996) (applying *Belle Terre* in Lincoln, Nebraska, whose population in 2000 was 225,442,¹⁰ and not mentioning any indication whether the residents in question could be considered transient); *City of Ladue v. Horn*, 720 S.W.2d 745, 747, 749-50 (Mo. Ct. App. 1986) (applying *Belle Terre* to an owner-occupied home consisting of an

⁷ U.S. Census Bureau, QuickFacts: Baton Rouge city, Louisiana (<https://tinyurl.com/3cpj3r3h>).

⁸ See U.S. Census Bureau, 2000 Decennial Census, DP1: Profile of General Demographic Characteristics, Lawrence city, Kansas (<https://tinyurl.com/2xhv6946>) (total population of 80,083); U.S. Census Bureau, 2010 Decennial Census, P1: Total Population, Lawrence city, Kansas (<https://tinyurl.com/3k8x2ka6>) (total population of 87,643).

⁹ U.S. Census Bureau, 2011 American Community Survey, DP05: ACS Demographic and Housing Estimates (<https://tinyurl.com/y2fzjy6z>).

¹⁰ U.S. Census Bureau, 2000 Decennial Census, DP1: Profile of General Demographic Characteristics (<https://tinyurl.com/4bu53vs4>).

unmarried couple and their children from prior relationships); *Rademan v. City and Cnty. of Denv.*, 186 Colo. 250, 253-55 (1974) (applying *Belle Terre* to a “communal family” consisting of two married couples and two unrelated individuals in the City of Denver, Colorado, which at a population of over half a million was the 25th largest city in the U.S. in 1970).¹¹

These courts have ignored or forgotten this Court’s instruction that zoning regulations must be evaluated in the context of the locality to which they apply. *Euclid*, 272 U.S. at 388 (due process determination cannot be made by “abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality.”); *Nectow*, 277 U.S. at 187-88 (finding that zoning ordinance lacked rational basis when “taking into account the natural development [of the community] and the character of the district.”). Indeed, outside of Justice Stevens’ concurrence and the *Ferraioli* case on which it relies, Petitioners are aware of only one other instance in which a federal court has suggested that *Belle Terre* might be distinguished on the grounds suggested by Justice Stevens. See *Doe v. City of Butler*, 892 F.2d 315, 321-22 (1989) (remanding for consideration whether an occupancy limit for transient uses and unrelated residents justified by density concerns was rational in high-density zones).

Here, the City argued below that “the obvious underlying purpose of the Ordinance” is “maintaining the single-family character of neighborhoods.” App. 5a.

¹¹ Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*, U.S. Census Bureau, Population Div., Working Paper No. POP-WP27 (June 1998), <https://tinyurl.com/4cbetspp>.

But the Co-Living Ordinance applies in *every residential zone throughout the City*—even those designated for multi-family use like the Residential High Rise district, which is designed to “provide high density residential living in buildings of three (3) stories or more.” App. 45a; *Shawnee Muni. Code* § 17.30.005. See *Romer*, 517 U.S. at 632 (Holding invalid a law whose “sheer breadth is so discontinuous with the reasons offered for it that [it] seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.”). The courts below applied *Belle Terre* to uphold an ordinance prohibiting Val French from inviting her adult son’s girlfriend to live with the family in a home that they own. App. 3a. Like so many other courts, the Tenth Circuit applied *Belle Terre* by rote without considering the circumstances of the case or performing any independent analysis. And courts will continue to do so unless and until this Court reviews the issue.

IV. The Right to Choose Living Companions Is Deeply Rooted in History and Tradition and Is Central to Ordered Liberty

The Due Process Clause provides substantive protection for fundamental rights regardless of whether they are named directly within the Constitution. *Dobbs*, 597 U.S. at 237. To determine whether an unenumerated right is protected as fundamental, courts must ask “whether the right is ‘deeply rooted in [our] history and tradition’ and whether it is essential to our Nation’s ‘scheme of ordered liberty.’” *Id.* at 237-38. The rights to choose how to constitute one’s own household, and to choose the persons with whom one shares a home, are such rights. See Akhil Reed Amar, *America’s Lived Constitution*, 120 Yale L.J. 1734, 1773 (2011) (The

Constitution “invites judges . . . to attend to” the primacy of the home “in pondering which unenumerated rights are properly claimed by the people.”); *see also generally* D. Benjamin Barros, *Home as a Legal Concept*, 46 Santa Clara L. Rev. 255, 263-276 (2006) (tracing evolution of the home’s special status in Anglo-American law).

The “banding together” of people into a common household to better meet the burdens of life is “an expression of the right of freedom of association that is very deep in our traditions.” *Moreno*, 413 U.S. at 541 (Douglas, J., concurring). In the colonial census, the terms “household” and “family” were used interchangeably to denote “an independent economic unit, the members of which lived in one dwelling or in proximity.” Robert V. Wells, *Household Size and Composition in the British Colonies in America, 1675–1775*, 4 J. of Interdisc. Hist. 543, 546 (1974) (noting that “such a definition clearly differs from our modern conceptions of the term[] family (which implies kinship)[.]”).

The same held true in the early days of independence, as Americans in the former colonies and in the frontiers sought suitable living arrangements to respond to changing economic and social conditions. *See, e.g.*, Laurel Thatcher Ulrich, *A Midwife’s Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* 19 (1990) (describing how the Ballard family in Hallowell, Maine lived in the house of John Jones, a local mill owner, along with hired hands); James E. Davis, *Frontier America, 1800-1840: A Comparative Demographic Analysis of the Settlement Process* 22 (1977) (noting that frontier households included relatives, friends, and employees). It continued to hold through industrialization; one study of Kentucky coal miners in 1910 found that between 5% and 16% of

households contained unrelated persons. Thomas A. Arcury, *Household Composition and Early Industrial Transformation: Eastern Kentucky 1880 to 1910*, 2 J. Appalachian Stud. Ass'n 47, 59 (1990).

From the earliest days of American society, “complexity and diversity” of family arrangements were necessary to meet the challenges of arriving in a new world. Wells, *supra*, at 570. The “emphasis would have had to have been on flexibility[,]” because a “rigid social order based on assumptions of shared family experiences simply could not have survived in the New World.” *Ibid.* That remains so today.

V. The Proliferation of Kinship-Based Occupancy Classifications Amid a National Housing Shortage Makes Reconsideration Urgent

This case presents a question of national importance that grows more pressing by the year. What was a recent trend in zoning law when this Court last considered the issue has now become a ubiquitous standard. *See generally* Kate Redburn, Note, *Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn*, 128 Yale L.J. 2412 (2019) (describing the gradual trend of formal family definitions in zoning law in the 1960s and the acceleration of that trend in the immediate aftermath of *Belle Terre*); Howard Husock, *Household Size Limitations and Housing Costs* (Am. Enter. Inst. Oct. 24, 2022), <https://tinyurl.com/ydzhxttv> (Finding that forty-six of the fifty-six major cities and suburbs surveyed limit occupancy based on family relationship status).

When *Belle Terre* was decided, the nation was experiencing a major boom in residential construction. *See* Barbara L. Miles and Thomas R. Robinson, U.S. Dep’t of Commerce, Bureau of Econ. Analysis,

Residential Construction Boom, 1970-73, Surv. Current Bus. (1973) (<https://tinyurl.com/mrycraan>). Today these laws operate against a backdrop of a severe national housing shortage of millions of units. Katie Jones & Lida R. Weinstock, Cong. Rsch. Serv., IN21628, *Estimates of a “Housing Shortage”* (Dec. 15, 2025). As a result of the shortage, housing prices rose by 60% between 2019 and 2025 and continue to rise at a rate of 3.9% year over year. Joint Ctr. for Hous. Studies of Harv. Univ., *The State of the Nation’s Housing* 1 (2025). Many individuals and families respond to this economic squeeze by sharing residential space with unrelated people. Orphe Divounguy, *The National Housing Deficit Grew by 159,000 Homes in 2023, Reaching 4.7 Million*, Zillow Rsch. (July 9, 2025) <https://tinyurl.com/bdhy4u4y>; see Richard Fry, *The Number of People in the Average U.S. Household Is Going Up for the First Time in Over 160 Years*, Pew Rsch. Ctr. (Oct. 1, 2019), <https://tinyurl.com/3kcdjbbb>; see *Moreno*, 413 U.S. at 543-45 (Douglas, J., concurring) (The “[b]anding together” of people with “the aim better to combat the crises of poverty” is a constitutionally protected associational interest). But laws like Shawnee’s Co-Living Ordinance unduly restrict this relief valve, leaving millions of Americans in a double-bind.

It is dire enough that the nation faces a shortage of housing units. Kinship-based occupancy limits only make matters worse by forcing bedrooms to go empty in the limited housing stock that does exist. A family of four living in a five-bedroom house may have two bedrooms open—husband and wife share a master bedroom, and two children each occupy their own. Renting out the additional bedrooms could allow the family to pay their mortgage or meet other financial

needs while providing affordable living space for tenants. Senior citizens whose children have moved away may want to share living space with others for social or economic reasons. *See* Joanne Binette & Kerri Vasold, AARP Rsch., *2018 Home and Community Preferences: A National Survey of Adults Age 18-Plus* (Aug. 2018), <https://tinyurl.com/3z8mtwb8> (finding that 16% of adults over the age of fifty share their homes with someone, that 48% would consider sharing their homes for the sake of companionship, and that 60% would consider doing so if they needed help with everyday activities like chores and transportation). But the Co-Living Ordinance and similar laws criminalize that behavior.

The problem is sufficiently widespread that a number of state legislatures have directly addressed it by preempting local ordinances unduly limiting occupancy based on relationship status.¹² But this legislation is of no help to those in non-participating states, and this Court cannot rely on legislative patchwork to resolve a significant constitutional question.

The *Belle Terre* Court considered the issue as it applied in a 220-home, single-zone village in the midst of a boom in residential construction, and it did so on a scant record and with minimal analysis. Both the landscape and this Court's prevailing mode of adjudicating constitutional questions has changed, and this Court should grant review.

¹² *See* N.H. Rev. Stat. Ann. § 674:16(VIII) (enacted 2025); Colo. Rev. Stat. § 29-20-111 (enacted 2024); Vt. Stat. Ann. Tit. 24, 4412(14) (enacted 2024); Or. Rev. Stat. § 90.112 (enacted 2021); Wash. Rev. Code § 35A.21.314 (enacted 2021); Iowa Code § 414.1(b) (enacted 2018).

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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