

No. 26-172

IN THE
Supreme Court of the United States

VAL FRENCH,

Petitioner,

v.

CITY OF SHAWNEE, KANSAS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed dismissal of petitioner's facial Fourteenth Amendment challenge to a zoning ordinance that permits any number of related persons, or up to three unrelated adults, to share a dwelling unit, where *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), directly upheld a materially more restrictive ordinance and remains binding precedent.

RULE 29.6 STATEMENT

Respondent City of Shawnee, Kansas, is a municipal corporation. Supreme Court Rule 29.6 does not require a corporate disclosure statement from the City.

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INTRODUCTION

The petition asks this Court to revisit a fifty-two-year-old precedent without identifying any conflict among courts that have decided the same federal question. The court of appeals did precisely what this Court instructs lower courts to do: it followed *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), because that decision directly controls a facial challenge to an ordinance limiting the number of unrelated adults who may occupy a dwelling unit. Pet. App. 20a–22a. The routine application of vertical stare decisis does not warrant review.

Petitioner treats the Court’s recognition of the right to form and maintain intimate associations, generally, the invalidation of disability-based zoning discrimination, and constitutional avoidance in an FHA case as establishing the same proposition: that unrelated co-residents have a fundamental right to form a household free from numerical zoning restrictions. They do not. *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), neither involved zoning nor suggested that the right to intimate association includes a fundamental right of unrelated adults to form a household of any size. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), invalidated an ordinance that singled out a group home for persons with intellectual disabilities, while permitting comparable group living arrangements for other unrelated people. And *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012), construed the Fair Housing Act to avoid a constitutional question that it expressly declined to decide. None of these decisions conflict with *Belle Terre* or the decision below.

Nor do the state decisions cited in the petition create a conflict over federal law. Those courts applied their own constitutions, statutes, and standards of review. Petitioner acknowledges as much. Pet. 18. A state court's decision to provide greater protection under state law cannot establish disagreement requiring this Court's intervention.

The requested review would also require the Court to decide more than either question presented suggests. Petitioner pursued a facial challenge seeking to prohibit every application of the ordinance. Yet the complaint contains only generalized allegations about one household and no developed facts establishing where that particular association falls on the spectrum described in *Roberts*. The courts below therefore did not decide the boundaries of petitioner's proposed right, whether any qualifying relationship was directly and substantially burdened, or what restrictions would remain permissible. This case is therefore a poor vehicle for constitutionalizing a broad area of local land-use regulation.

Finally, the petition's policy concerns do not establish constitutional error. The petition identifies several States that have restricted local occupancy rules by statute. Pet. 30. Those enactments demonstrate that the democratic process is addressing the issue and provide no reason to overturn precedent and remove it from that process. The petition should be denied.

STATEMENT OF THE CASE

A. The ordinance and this action.

In 2022, the City of Shawnee, Kansas, adopted Ordinance No. 3419. The ordinance defines a “Co-Living Group” as four or more unrelated persons age eighteen or older living in a dwelling unit. If any adult is unrelated to another adult in the group, the entire group is classified as “unrelated.” Pet. App. 2a–3a, 40a–41a. The ordinance permits any number of related persons, or up to three unrelated adults, to share a dwelling unit. It exempts group homes as separately defined by the City’s code. The limitation applies in each zoning district in which residential use is allowed. Pet. App. 3a, 40a–45a.

Petitioner Val French alleges that when the ordinance was adopted, she owned and occupied a home with her husband, two adult sons, and one son’s girlfriend. Pet. App. 3a. Because her son’s girlfriend was not related to another adult in the household, the ordinance classified the five-adult household as unrelated. French alleges that her son and his girlfriend later moved out and that she could not invite them to return or rent a spare room to another tenant out of fear of violating the ordinance. Pet. App. 3a.

French and HomeRoom, Inc., a property-management company, filed this action under 42 U.S.C. § 1983. The complaint asserted facial substantive-due-process and equal-protection challenges and sought a judgment declaring the ordinance unconstitutional and a permanent injunction prohibiting its enforcement. Pet. App. 4a, 10a n.6, 27a. It also asserted a state-law claim under the Kansas Zoning Enabling Act. Pet. App. 4a, 27a.

B. The decision below.

The district court granted the City's motion to dismiss. It held that HomeRoom, as a corporate entity, had no constitutionally protected right to form or maintain intimate associations and had not satisfied the requirements for asserting the rights of prospective tenants. Pet. App. 30a–31a.

As to French, the court held that *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), controlled. It rejected the contention that *Belle Terre* was inapplicable merely because it predated the explicit reference in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), to a right to intimate association, explaining that *Belle Terre* considered association, privacy, marital status, and alleged animosity toward unmarried co-residents. Pet. App. 34a–36a. The court also distinguished the Ninth Circuit's decision in *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012), because that case construed the FHA and did not decide the constitutionality of an occupancy ordinance. Pet. App. 35a–36a. After dismissing the federal claims, the court declined supplemental jurisdiction over the Kansas claim and dismissed it without prejudice. Pet. App. 37a–38a.

The Tenth Circuit affirmed in an unpublished order and judgment. Pet. App. 1a–23a. Because French indisputably had standing, the panel found it unnecessary to decide HomeRoom's third-party-standing theory. Pet. App. 8a–10a. It then considered French's facial constitutional claims.

The panel addressed each decision on which French relied. It explained that *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), distinguished rather than undermined *Belle Terre* because *Moore* involved

governmental line-drawing within an extended family. Pet. App. 14a–15a. It explained that *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), involved differential treatment among different unrelated groups, and preserved *Belle Terre’s* family-versus-unrelated-person distinction. Pet. App. 15a–17a. It also concluded that *Roberts* did not change the constitutional framework for zoning ordinances and that *Roommate.com* decided a materially different statutory question through constitutional avoidance. Pet. App. 17a–21a.

The panel accordingly held that *Belle Terre* remained dispositive. Quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989), it recognized that lower courts must follow directly controlling precedent even if a party contends that later decisions have undermined its reasoning. Pet. App. 21a. Applying rational basis review, the panel held that the materially similar Shawnee ordinance was constitutional and affirmed. Pet. App. 21a–22a

REASONS FOR DENYING THE PETITION

I. THE PETITION IDENTIFIES NO CONFLICT WARRANTING REVIEW.

A. *Roommate.com* did not decide the constitutional question.

Petitioner’s only claimed federal-court conflict rests on *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012). Pet. 15–17. But there is no conflict. The case involved a website designed to help roommates find one another. On the site, users identified preferences for roommates, such as sex, sexual

orientation, and familial status. 666 F.3d at 1218. The Ninth Circuit decided whether the FHA and California law governed roommate selection. 666 F.3d at 1218. It interpreted “dwelling” to mean an independent housing unit and thereby excluded the internal selection of roommates from the scope of the FHA. *Id.* at 1220–22. Although the Ninth Circuit discussed the right to intimate association, it did so in the context of applying the canon of constitutional avoidance: interpreting “dwelling” to exclude the selection of roommates allowed the court to avoid “ruling on a difficult and unexplored constitutional issue.” *Id.* at 1223.

The court entered judgment on statutory interpretation grounds and did not rule on the constitutional issue. *Ibid.* The Ninth Circuit notably did not cite *Belle Terre*, much less address whether that decision controls a zoning rule limiting the number of unrelated adults in a dwelling. Its discussion of privacy and roommate selection therefore cannot conflict with the lower court’s resolution of a different question under directly controlling precedent here.

The differences are substantive as well. The focus in *Roommate.com* was on the right *not* to associate, *i.e.* whether individuals had a right to conduct discriminatory searches when choosing a roommate without governmental interference. *Id.* at 1223. *Roommate.com* thus touched upon the right *not* to associate, rather than the claimed right to associate at issue here. The City of Shawnee’s ordinance does not select a roommate for anyone or prohibit French from choosing any particular person. It draws a numerical line at four unrelated adults in one dwelling unit. The Ninth Circuit’s concern about compelling a woman to accept a male roommate, or

an observant person to accept a roommate whose practices conflict with his faith, has no counterpart here.

B. State-law decisions do not create a conflict over the Fourteenth Amendment.

The petition next invokes decisions from state courts in California, Michigan, New Jersey, and New York. Pet. 17–22. It concedes, however, that state courts may interpret their constitutions differently without creating “a true conflict.” Pet. 18. That concession resolves the issue. California relied on an express state constitutional guarantee of privacy. *City of Santa Barbara v. Adamson*, 610 P.2d 436, 439–42 (Cal. 1980). The other decisions applied their respective state constitutions, including state-law formulations requiring a “real and substantial relation” between a zoning restriction and its asserted objective. See *State v. Baker*, 405 A.2d 368, 374–76 (N.J. 1979); *Charter Twp. of Delta v. Dinolfo*, 351 N.W.2d 831, 839–42 (Mich. 1984); *McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240, 1242–44 (N.Y. 1985). Whatever their views of *Belle Terre*’s reasoning, those courts were not free to overrule this Court on the meaning of the Fourteenth Amendment.

A disagreement about policy or persuasive reasoning is not a conflict of federal authority. The federal decisions cited in the petition instead demonstrate agreement: courts continue to apply *Belle Terre* to occupancy limits involving unrelated residents. Pet. 23–25. The Third Circuit, for example, held that “[n]othing in Roberts suggests” *Belle Terre* no longer governs a right-of-association claim in the zoning context. See *Doe v. City of Butler*,

892 F.2d 315, 323 (3d Cir. 1989). The absence of conflicting federal holdings strongly counsels against review under Rule 10.

C. The unpublished decision creates no binding precedent.

The judgment below is unpublished and expressly “not binding precedent,” except through ordinary preclusion doctrines. Pet. App. 1a n.*. It may be cited only for persuasive value. The petition therefore does not present an entrenched new circuit rule requiring correction. It presents one panel’s faithful application of a controlling Supreme Court decision to a materially similar ordinance. That is not a basis for certiorari.

II. LATER DECISIONS PRESERVE, RATHER THAN DISPLACE, *BELLE TERRE*.

A. *Moore* factually distinguished *Belle Terre*.

Moore v. City of East Cleveland, 431 U.S. 494 (1977), involved a housing ordinance that limited the occupancy of dwelling units to members of a single family. 431 U.S. at 495. But, unlike many zoning ordinances, the one in *Moore* defined “family” so narrowly that it prohibited Mrs. Moore from living with her adult son and two of her grandsons, who were first cousins. *Id.* at 496–97. The plurality began by factually distinguishing *Belle Terre*: that case involved unrelated persons, whereas East Cleveland had “chosen to regulate the occupancy of its housing by slicing deeply into the family itself.” *Id.* at 498. The Court therefore explained that when

a city undertakes regulation “of the family,” *Belle Terre* does not govern. *Id.* at 499.

Shawnee’s ordinance does not draw lines among grandparents, children, cousins, or other relatives. Any number of related persons may live together. Petitioner’s household crossed the ordinance’s threshold only because five adults were classified as unrelated. *Moore*’s deliberate distinction confirms the continued vitality of *Belle Terre* for precisely that circumstance.

B. *Cleburne* expressly preserved *Belle Terre*’s classification.

City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985), likewise does not conflict with *Belle Terre*. The ordinance there required a special-use permit for a home for persons with intellectual disabilities, while allowing other unrelated groups, such as fraternity houses, hospitals, and nursing homes, to operate without a permit. 473 U.S. at 447–48. The Court found no rational basis for treating that particular unrelated group differently from other unrelated groups presenting the same land-use concerns. *Id.* at 448–50.

Belle Terre is mentioned in *Cleburne* only once, in footnote 8, which makes the distinction explicit. The Court distinguished a Georgia Supreme Court decision upholding, in reliance on *Belle Terre*, an ordinance that limited all households to no more than four unrelated persons. *Id.* at 447 n.8. Unlike the ordinance in *Cleburne*, the Georgia ordinance did not single out persons with intellectual disabilities for different treatment from other unrelated occupants. *Ibid.*

Nor did *Cleburne* announce a freestanding “rational basis with bite” standard for zoning ordinances addressing occupants’ identities. No majority of the Supreme Court has ever explicitly stated that the rational basis review in *Cleburne* was more exacting than traditional rational basis review. Petitioner’s proposed doctrinal category comes from academic commentary and lower-court descriptions of *Cleburne*, not from any holding of this Court. Pet. 12–13.

Even if *Cleburne* could be interpreted as sanctioning a more exacting standard of rational basis review, the case suggests this standard would only apply where a law discriminates against a historically unpopular group that is not a “suspect class.” See *Cleburne*, 473 U.S. at 446–447. Individuals seeking to live with three or more unrelated adults, unlike the plaintiffs in *Cleburne*, do not constitute a historically unpopular or targeted group. *Cleburne* therefore did not require this ordinance to be reviewed under a more exacting standard of rational basis review.

C. *Roberts* did not constitutionalize every close personal relationship.

Roberts v. U.S. Jaycees, 468 U.S. 609 (1984), explained that certain highly personal relationships receive constitutional protection because of their role in individual liberty and the creation and sustenance of family. 468 U.S. at 617–20. But it did not hold that every small, selective, or private association is fundamental. *Id.* at 620 (“[T]he Constitution undoubtedly imposes constraints on the State’s power to control the selection of one’s spouse that would not apply to regulations affecting the choice of

one's fellow employees.”). Instead, *Roberts* identified marriage, childbirth, raising and educating children, and living with relatives as relationships entitled to constitutional protection. *Id.* at 619–20. By contrast, “an association lacking these qualities—such as a large business enterprise—seems remote from the concerns giving rise to this constitutional protection.” *Id.* at 620. Determining where a relationship lies requires a careful, fact-specific assessment of size, purpose, policies, selectivity, congeniality, and other characteristics. *Id.* at 620.

Roberts neither involved zoning nor mentioned *Belle Terre*. It did not hold that sharing a residence automatically transforms any relationship into a fundamental one. Indeed, the Court later applied *Roberts* and again declined to recognize intimate-association protection for an organization whose objective characteristics did not qualify. *See Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545–47 (1987). The panel below therefore correctly declined to treat *Roberts* as overruling *Belle Terre*.

The court of appeals correctly reasoned that *Roberts* supplied different terminology, rather than a materially different constitutional rule. Pet. App. 17a–19a. *Belle Terre* considered claims of association and privacy and rejected the contention that the ordinance impermissibly regulated unmarried co-residents. 416 U.S. at 7–9. *Roberts* drew on preexisting privacy and family decisions rather than discovering a right unknown to constitutional law in 1974. 468 U.S. at 618–19. The fact that *Roberts* and later decisions describe the right by reference to “intimate association” does not diminish the precedential force of *Belle Terre*, which rejected the same substantive constitutional claim.

III. THE PETITION OFFERS NO SOUND BASIS TO OVERRULE *BELLE TERRE*.

Because no later decision displaced *Belle Terre*, petitioner necessarily asks this Court to overrule or sharply confine it. The first Question Presented is candid: it asks whether, “contrary to *Belle Terre*,” the Fourteenth Amendment invalidates the classification. Pet. i. Yet the petition does not apply this Court’s stare decisis framework in any disciplined way.

The petition does not show that *Belle Terre*’s rule is unworkable. The rule has proved straightforward: classifications between related and unrelated households are subject to rational-basis review, while regulations intruding within the family may require heightened review under *Moore*. Nor does petitioner identify legal or factual developments that have made the rule impossible to administer.

The petition asserts that kinship-based occupancy provisions are now widespread, citing a survey finding them in forty-six of fifty-six jurisdictions examined. Pet. 28. But that prevalence reflects decades of legislative reliance on *Belle Terre*. Municipalities have structured zoning codes, enforcement systems, and housing policy around the constitutional rule this Court announced. Widespread reliance on *Belle Terre* weighs in favor of retaining the decision, not overruling it.

The petition’s changed-circumstances argument concerns policy, not constitutional doctrine. Housing supply, household preferences, and rental costs vary across time and place. Legislatures can adjust occupancy rules as those facts change. Indeed, the petition identifies six States that recently preempted or limited local restrictions by statute. Pet. 30. Those

enactments demonstrate that the issue remains amenable to democratic revision and local variation.

The Court has also continued to cite *Belle Terre* after *Roberts* and *Cleburne*. In *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732–33 (1995), the Court quoted *Belle Terre*’s recognition that reserving land for family residences can preserve neighborhood character. That continued reliance is inconsistent with petitioner’s claim that *Belle Terre* has become a doctrinal relic.

IV. THIS FACIAL CHALLENGE IS A POOR VEHICLE FOR DEFINING A NEW FUNDAMENTAL RIGHT.

A. The sparse pleading does not permit the *Roberts* inquiry petitioner requests.

Petitioner asks the Court to establish that unrelated co-residents possess a fundamental right of intimate association. But *Roberts* requires a “careful assessment” of a relationship’s objective characteristics. 468 U.S. at 620. The complaint alleges only that French formerly lived with her husband, two adult sons, and one adult son’s girlfriend, and that household members shared the “responsibilities, burdens, and joys” of domestic life. Pet. App. 25a–26a. It does not allege the association’s duration, degree of selectivity, commitments, mutual dependence, shared purposes, or other facts needed to locate it on *Roberts*’ “spectrum from the most intimate to the most attenuated of personal attachments.” 468 U.S. at 620.

The complaint also combines materially different associations. French invokes her prior relationship

with her son’s girlfriend and a prospective landlord-tenant relationship involving her spare room. Pet. App. 3a. HomeRoom’s former model involved subletting homes to groups of unrelated renters. Pet. App. 4a. Those relationships cannot be declared constitutionally identical simply because they occur under one roof. Without factual development, the Court could not define which nonfamilial households qualify, when they qualify, or what characteristics distinguish a constitutionally intimate household from a rooming house or commercial rental arrangement.

B. The facial posture magnifies the problem.

Petitioner did not bring an as-applied challenge limited to her former household. Pet. App. 10a n.6. Instead, she alleged that the ordinance is facially invalid and requested an injunction against enforcement in any circumstance. Pet. App. 10a n.6. That choice “comes at a cost.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). Facial challenges risk “premature interpretation of statutes on the basis of factually barebones records” and require courts to consider the law’s full range of applications. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450–51 (2008) (quoting *Sabri v. U.S.*, 541 U.S. 600, 609 (2004)).

Even if some unusually close group of unrelated co-residents could establish a protected intimate association, that would not show that the ordinance is invalid when applied to four strangers assembled through separate commercial room rentals, transient occupants, or other arrangements lacking the qualities *Roberts* identified. The petition’s

sympathetic account of French’s former household cannot carry its requested facial remedy.

C. The petition combines multiple antecedent questions not decided below.

Recognizing a protected association would begin, not end, the inquiry. The parties disputed below whether the ordinance directly and substantially interferes with that association, and whether strict scrutiny would follow. The lower courts did not reach those questions because *Belle Terre* controlled. They likewise did not define the asserted “right to establish a home” as an independent substantive due process right, determine its historical boundaries, or decide whether the due process and equal protection theories require different analyses. This Court would therefore confront those issues without a reasoned lower-court decision resolving them.

Petitioner argues the City cannot invoke residential character as a justification for the ordinance in multifamily zones like the Residential High Rise district, which is designed for buildings of three stories or more. Pet. i, 25–26. But neither lower court separately decided a zone-specific constitutional claim; both addressed the ordinance as a whole under *Belle Terre*. And petitioner’s premise conflates two distinct land-use concepts. A multifamily district permits multiple dwelling units in a building or development. Shawnee’s rule regulates the number of unrelated adults within each “dwelling unit.” Pet. App. 41a. Allowing multiple units does not require the City to permit unlimited unrelated-adult occupancy within every unit.

The scope of the proposed constitutional right, the applicable level of scrutiny, the substantial burden

requirement, the facial standard, and the zone-specific theory thus arrive bundled together. The Court should not use this undeveloped record to formulate a constitutional rule broader than necessary. *See Washington State Grange*, 552 U.S. at 450.

V. THE DECISION BELOW IS CORRECT.

A. *Belle Terre* directly controls.

Belle Terre upheld an ordinance restricting a dwelling to related persons, or no more than two unrelated persons. 416 U.S. at 2. The plaintiffs asserted equal protection, association, travel, and privacy. *Id.* at 7. The Court held that no fundamental right or suspect classification was implicated and sustained the ordinance as reasonable social and economic legislation rationally related to permissible land-use objectives. *Id.* at 7–9.

Shawnee’s ordinance is more permissive than the one in *Belle Terre*; it allows up to three unrelated adults. Like the ordinance in *Belle Terre*, it uses relatedness as part of the definition of a permissible household, and seeks to address the effects associated with larger unrelated groups, including increased occupancy, vehicle traffic, parking, and noise. *Id.* at 9. The panel correctly held that the two ordinances are materially indistinguishable for federal constitutional purposes. Pet. App. 21a–22a.

Petitioner argues that the City of Shawnee is larger than the Village of Belle Terre, and contains several residential zones. Pet. 23–26. But *Belle Terre*’s constitutional holding did not depend on a population ceiling or on municipal boundaries matching one zoning district. Rather, it recognized

legislative discretion to draw reasonable lines in land-use regulation. 416 U.S. at 8–9. No decision of this Court limits that rule to municipalities of a particular size.

B. The ordinance independently survives rational basis review.

The ordinance at issue here neither employs a suspect classification nor burdens any fundamental right recognized by this Court. Rational basis review therefore applies. Under that deferential standard, a classification must be sustained if any reasonably conceivable set of facts supplies a rational basis. *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). The government need not produce evidence to substantiate the legislature’s reasoning, particularly on a motion testing the legal sufficiency of a facial complaint. *Heller v. Doe*, 509 U.S. 312, 320 (1993).

The line drawn here is rational. Larger, unrelated households may reasonably be associated with separate rental arrangements, greater turnover, more vehicles, additional parking demands, and activity resembling rooming or boarding uses. Related households, by contrast, may reasonably be treated as more likely to function as a continuing family unit. The fit need not be perfect. Some related and unrelated households will share similar characteristics, but *Belle Terre* specifically held that drawing such distinctions remains a legislative function. 416 U.S. at 8.

Petitioner’s over- and underinclusiveness examples therefore do not establish irrationality. Rational basis review does not require the City to regulate every source of noise, traffic, or crowding

identically. Nor does it require an evidentiary showing that each unrelated household creates more impacts than every related household. The relevant question is whether the classification is reasonably related to permissible objectives, not whether a court would draw a more precise line.

C. The petition does not establish a deeply rooted fundamental right of the breadth asserted.

Petitioner alternatively describes a fundamental right to “choose living companions.” Pet. 26–28. But the Court’s substantive due process analysis requires a careful description of the asserted right and a demonstration that it is deeply rooted in the Nation’s history and tradition and implicit in ordered liberty. *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 231 (2022). Petitioner never clearly defines the asserted right. At different points, she characterizes it as the right to choose a particular roommate, to form a household of four or more unrelated adults, to live with her son’s girlfriend, or to rent a spare room to a tenant. That uncertainty makes this case a poor vehicle for recognizing a new fundamental right.

The historical sources cited in the petition suggest that some American households included nonrelatives. Pet. 26–28. They do not, however, show a historical understanding that the government lacks authority to regulate the number or composition of unrelated occupants, much less that such regulation violates a fundamental constitutional right. Historical evidence that unrelated people have long lived together does not

establish a fundamental constitutional right to do so free from generally applicable zoning laws.

Nor does the special status of the home answer the question. The cases petitioner cites concerning searches, possession of expressive material, or private consensual conduct protect specific constitutional interests within the home. They do not establish that every activity occurring in a residence is fundamental, or exempt from zoning, building, fire, health, and occupancy rules. *Belle Terre* itself involved a home and nonetheless upheld the ordinance.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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