No.

# In the Supreme Court of the United States

JOHN F. CARBIN,

*Petitioner*,

*v.*

COMMONWEALTH OF MASSACHUSETTS, BOARD OF STATE EXAMINERS OF PLUMBERS AND GAS FITTERS; TOWN OF SAVOY,

*Respondents*.

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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

A jet engine mechanic brought a civil rights lawsuit after a Massachusetts County denied him a permit to perform plumbing on the home he was building. Arguing *pro se*, Petitioner claimed that the Massachusetts regulation banning homeowners from performing plumbing on their own home—the strictest in the nation—serves no legitimate purpose and instead furthers only illegitimate economic protectionism. Despite his well-pleaded allegations, the district court dismissed his due process claim based on two sentences of analysis. The First Circuit summarily affirmed without briefing or argument. Neither court referenced any of the allegations in his complaint.

The questions presented are:

1. Whether a court may relegate a due process claim to rational basis scrutiny merely because the asserted right is not enumerated in the Constitution or previously recognized as fundamental by the Supreme Court, or whether instead courts must apply the history and tradition test recently affirmed in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).
2. Whether, under the rational basis test, courts must accept a plaintiff's well-pleaded allegations when resolving a motion to dismiss under Fed. R. Civ. P. 12(b)(6).
3. Whether, under the rational basis test, courts may uphold a challenged law without any inquiry into the relationship between the government's means and asserted end.

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is John Carbin.

Respondents are the Commonwealth of Massachusetts, Board of State Examiners of Plumbers and Gas Fitters, and Town of Savoy.

Mr. Carbin is a natural person.

## STATEMENT OF RELATED CASES

The proceedings in federal district and appellate courts identified below are directly related to the above-captioned case in this Court.

*Carbin v. Commonwealth of Massachusetts*, No. 3:23-cv-30092-MGM (D. Mass. May 1, 2024)

*Carbin v. Commonwealth of Massachusetts*, No. 3:23-cv-30092-MGM (D. Mass. October 22, 2024)

*Carbin v. Commonwealth of Massachusetts*, No. 24-1982 (1st Cir. July 22, 2025)

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner John Carbin respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

## OPINIONS BELOW

The district court's order dismissing Petitioner's complaint and the First Circuit's summary affirmance are unpublished but are reproduced in the appendix at 3a and 1a, respectively.

## JURISDICTION

The district court had jurisdiction over this case under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The district court granted the defendants' motion to dismiss on October 22, 2024. John Carbin (Petitioner) filed a timely appeal to the First Circuit. On July 22, 2025, a panel of the First Circuit summarily affirmed without briefing or argument. Justice Jackson then granted Petitioner's application for an extension of time within which to file a petition for a writ of certiorari until December 19, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution reads, in relevant part, "No State shall . . . deprive any person of life, liberty, or property without due process of law."

248 Code Mass. Regs. § 3.05(1)(b)(7)(a) reads, in relevant part, "Permits shall be issued to properly licensed individuals only."

## INTRODUCTION

The First Circuit summarily affirmed a district court order that dismissed Petitioner's lawsuit without even looking at his complaint. Petitioner John Carbin, an airframe and aircraft engine mechanic, brought a civil rights lawsuit on his own behalf after he was barred from performing plumbing on the home he was building for retirement. App. 10a-15a. He argued that the right to repair plumbing in one's own home goes back to the earliest days of this country and continues to be done safely and without incident across most of the nation—indeed, every other state allows homeowners to perform plumbing on their own home subject to permits and inspections. *Ibid.*; *see also* App. 26a-30a. He further argued that the Massachusetts Board of State Examiners of Plumbing and Gas Fitters (Board), which is comprised of practicing members of the profession, had enacted this regulation solely to secure more employment opportunities for licensees. *Ibid.*

The rational basis test meant that Petitioner's case was dead on arrival. Merely because the government defendants generally asserted an interest in "health or safety," the district court ruled that the law was rational. It did not reference the allegations in Petitioner's complaint or the arguments in his briefs. And it did not analyze the fit between a total ban on allowing homeowners to apply for a permit and the State's asserted interest in health and safety. App. 8a. The First Circuit summarily affirmed. App. 1a.

The opinions below exemplify the confusion in courts across the country about how to apply the rational basis test, particularly at the pleading stage, and demonstrate the harm that extreme versions of

that test wreak on civil rights plaintiffs. They also commit three significant errors on contested questions of law that require correction by this Court. First, they concluded that Petitioner had not asserted a fundamental right merely because this Court has not yet deemed that right fundamental and because the right to repair one own's home is not set out in the Constitution. App. 8a. This shows that courts not only disagree about how to apply the rational basis test, but also about how to escape it by jumping to a higher level of judicial scrutiny. And it flatly contradicts this Court's opinions regarding fundamental rights. *See, e.g.*, *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022).

Second, the opinions below dismissed Petitioner's claims without addressing his complaint or his arguments against dismissal. Circuit courts require clarity over whether they must refuse to accept plaintiffs' well-pleaded allegations at the motion to dismiss stage, contrary to the ordinary pleading standard and procedural rules that apply to Rule 12(b)(6). *See, e.g.*, *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 712 n.20 (D.C. Cir. 2007) (noting a "tension between the Rule 12(b)(6) standard and rational basis review"); *Giarratano v. Johnson*, 521 F.3d 298, 303 (4th Cir. 2008) (recognizing a "dilemma created when 'the rational basis standard meets the standard applied to a dismissal under Fed.R.Civ.P. 12(b)(6)'" (citation omitted)).

Last, after the government asserted that the law was aimed at "public health and safety," the courts below failed to evaluate whether the challenged law bore the required relationship to that end. Rational basis

requires not just that the government invoke a legitimate end, but also that the means are rationally related to that end. *See Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923) ("liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect"). Yet courts are split on the required connection and some, like the courts below, do not consider it at all.

Left unaddressed, lower courts will continue to apply rational basis inconsistently and in ways that violate due process itself. This Court should grant the petition for certiorari.

## STATEMENT OF THE CASE

### A. Factual Background

Petitioner John Carbin has done more consequential plumbing than most Massachusettsans will do in their lifetimes. He holds a Federal Aviation Administration-issued certificate to work on civil airframes and aircraft engines and has spent his career working on jet engines, beginning when he worked on black hawks straight after enrolling in the United States Army out of high school. Now, he is building a home for retirement in rural Massachusetts. He has the necessary permits to build that home and may legally install all of the electrical systems himself. Given his professional work on military helicopters and commercial airplane engines, he is well equipped to complete basic plumbing. But unlike *every other state*, which allow homeowners to perform plumbing on their own home subject to permits and inspections, Massachusetts prohibits homeowners from securing a

permit, meaning the jet engine mechanic must hire a licensed plumber rather than completing the work himself.

Massachusetts code sets out the minimum requirements for plumbing in the state. *See generally*, 248 Code Mass. Regs. § 10.00. For example, plumbing must be designed to meet certain water conservation requirements, homes must have minimum plumbing fixtures, drainage must include minimum cleanouts, etc. *See* 248 Code Mass. Regs. § 10.02. In addition, state code provides for licensure of plumbers.

In most states, homeowners can perform plumbing work on their own home so long as they secure the necessary permits and submit to inspections. The two main model codes in the United States, for example, the Uniform Plumbing Code and International Plumbing Code, generally allow homeowners to perform plumbing on their own home subject to local regulation. *See, e.g.*, International Ass'n of Plumbing & Mech. Officials, *Uniform Plumbing Code* (2024)[1]; International Code Council, *International Plumbing Code* (2024) [2]. In Massachusetts, however, homeowners are fully banned. 248 Code Mass. Regs. § 3.05(1)(b)(7)(a).

Petitioner asked the Town of Savoy to grant him a permit to install plumbing on his property, but it declined. App. 10a.

### B. Procedural Background

Carbin brought a *pro se* civil rights lawsuit arguing that the ban on installing plumbing in his own home deprived him of his liberty without due process of law

[1] https://epubs.iapmo.org/2024/UPC/

[2] https://codes.iccsafe.org/content/IPC2024P1

under the Fourteenth Amendment because it lacked a rational relationship to any legitimate state interest and was instead illegitimate economic protectionism. He also challenged the requirement that permits be secured by a licensee, meaning that if the homeowner fires a plumber, they must obtain a new permit rather than simply hiring another licensed plumber to continue the permitted work.

The Board moved to dismiss under Rule 12(b)(6) for failure to state a claim and the district court granted that motion. Carbin then filed an amended complaint. *Ibid.*

The Board once again moved to dismiss, stating that "'[t]here can be no question that the Commonwealth has a valid legislative interest in protecting the health and safety of the public by providing for safe plumbing. It is equally beyond question that regulating the installation of plumbing is rationally related to this interest.'" App. 22a (quoting *Meyer v. Town of Nantucket*, 937 N.E. 2d 990, 997 (Mass. App. Ct. 2010)).

In response, Carbin noted that Massachusetts homeowners perform plumbing work on their own homes all the time without incident, that Massachusetts is the only state with such a limitation on homeowners, that Massachusetts had no evidence that licensure was needed to perform even small jobs, that inspection could adequately ensure the safety of plumbing, and that plumbing does not present a serious threat to the public (unlike electrical work, which homeowners *may* complete without a permit). App. 26a-29a. He also noted that enlisted men and women safely repair aircrafts and mechanical equipment (as he had done out of high school) with minimal training.

App. 29a. He further argued that working on one's home was a longstanding fundamental right for hundreds of years, going back to frontiersmen and homesteading. App. 30a.

The district court dismissed, ruling that he had not asserted a fundamental right since the "right to perform plumbing work on [your] own property" was not an enumerated right in the Constitution and had not been previously recognized by the Supreme Court as fundamental. App. 7a. It therefore subjected Carbin's claims to the rational basis test. In just two sentences, it ruled that "the installation of plumbing is rationally related" to the state's interest in "providing for safe plumbing," and his due process challenge was therefore "clearly unsupportable." *Id.* at 8a (quoting *Meyer*, 937 N.E. 2d at 997).

The district court did not evaluate Carbin's allegations or arguments to the contrary, nor did it examine whether the ban actually bore a rational relationship to the law's asserted ends. Instead, it deemed the government's general interest in health and safety enough to dismiss the complaint. *Id.* at 9a.

On appeal, Carbin again argued that the law was enacted by market participants as a means of shutting out competition, likening it to the Massachusetts Bar Association making it illegal to represent oneself in court. App. 34a. He further argued that completing one's own plumbing is not uncommon, unsafe, or harmful. App. 35a-44a. The Board moved for summary affirmance without briefing or argument. In a one-page order, the First Circuit granted the Board's motion. App. 2a.

## REASONS FOR GRANTING THE PETITION

### I. Courts Are Hopelessly Divided Over How To Apply The Rational Basis Test

This case concretely illustrates a decades-old problem: rational basis review no longer operates as a judicial test in many courts. Instead, it has fractured into multiple, inconsistent applications, with some preserving a meaningful inquiry into whether the government's deprivation of liberty rationally relates to a legitimate end and others treating legislation as effectively immune from judicial review. Still others will uphold a law notwithstanding the parties' arguments so long as the court itself can dream up its own health and safety rationale for the government. *Kansas City Taxi Cab Drivers Ass'n v. City of Kansas City*, 742 F.3d 807, 809 (8th Cir. 2013) (Courts are "not bound to consider only the stated purpose of a legislature.").

The decision below reflects one of the most extreme versions of the rational basis test. The district court did not identify the government's end with any particularity, it did not consider Petitioner's well-pleaded allegations or arguments against dismissal, and did not analyze whether the challenged law actually bore a rational relationship to its asserted end. Instead, it dismissed Carbin's complaint based on two conclusory sentences, which stated that "the installation of plumbing is rationally related" to the government's interest in "health or safety," and Carbin's substantive due process challenge was therefore "clearly unsupportable." App. 8a. The First Circuit then summarily affirmed without argument or briefing. App. 2a.

That approach is not merely deferential; it eliminates rational basis review as a form of judicial inquiry altogether. And it cements the First Circuit on

one side of an entrenched conflict over what rational basis review requires.

This is the predictable result of the Court's internally inconsistent descriptions of rational basis review, which have produced confusion, fractured outcomes in similar cases, and caused procedural breakdowns across the lower courts. This case squarely presents the opportunity for this Court to resolve those conflicts and restore rational basis review to a relaxed, but meaningful judicial inquiry.

### A. This Court's precedents are inconsistent

Members of this Court have long acknowledged that its rational basis decisions cannot be reconciled into a single, coherent framework. In *United States Railroad Retirement Board v. Fritz*, the Court observed that even "[t]he most arrogant legal scholar would not claim that all of these [rational basis] cases applied a uniform or consistent test." 449 U.S. 166, 176 n.10 (1980); *see also Cent. State Univ. v. Am. Ass'n of Univ. Professors*, 526 U.S. 124, 132 (1999) ("Cases applying the rational basis test have described that standard in various ways.") (Stevens, J., dissenting). Since the Court first created modern rational basis review in *United States v. Carolene Products*, 304 U.S. 144, 152 n.4 (1938), the doctrine has repeatedly swung between a relaxed but meaningful inquiry into whether the government's means rationally relate to some legitimate end and near-total deference to the government.

At the outset, the Court grounded rational basis review in facts and evidence. In *Carolene Products*, the Court explained that legislation may be invalidated "by proof of facts tending to show" that the law "is without support in reason," including proof that the

factual assumptions underlying the statute "ha[d] ceased to exist." *Id.* at 153–54. It further emphasized that whether a law is rational "depends on the relevant circumstances of each case." *Id.* at 154. Where the existence of a rational basis "depends upon facts beyond the sphere of judicial notice," those facts "may properly be made the subject of judicial inquiry." *Id.* at 153. Thus, even at the dawn of modern rational basis review, this Court made clear that deference did not eliminate the role of evidence—or the judiciary's duty to engage with it.

Later, the Court adopted markedly different language in *Williamson v. Lee Optical of Oklahoma, Inc.*, a decision that became the gold standard for toothless rational basis review. 348 U.S. 483, 487-88 (1955) (holding that the government could "exact a needless, wasteful requirement" based on what "the legislature might have concluded," and that "'[f]or protection against abuses by legislatures, the people must resort to the polls, not to the courts'" (citation omitted)).

But just two years later, in *Schware v. Board of Bar Examiners*, this Court held that New Mexico violated due process by denying a person bar admission where the evidentiary record did not "rationally justif[y]" a finding of moral unfitness. 353 U.S. 232, 246-47 (1957). The plaintiff had introduced substantial evidence of good character and decades without legal trouble. *Id.* at 235-45. The Court accordingly refused to accept the state's justifications at face value and held that, in light of the record, no rational connection existed between the government's asserted concerns and the challenged deprivation. *Id.* at 246.

In *City of Cleburne v. Cleburne Living Center*, this Court indicated that rational basis review requires a

genuine judicial inquiry, not blind acceptance of any conceivable justification. 473 U.S. 432 (1985). The city had denied a special-use permit for a group home for mentally disabled adults based on speculative concerns about student harassment, flood risks, and residents' legal responsibility. *Id.* at 435, 449. The Court rejected those conceivable explanations and concluded that the decision rested on "irrational prejudice against the mentally retarded." *Id.* at 450. As Justice Marshall observed, the test applied in *Cleburne* was "most assuredly not the rational basis test of *Williamson v. Lee Optical* . . . ." *Id.* at 458 (Marshall, J., concurring in part and dissenting in part).

The Court has applied similar reasoning in other rational basis cases where the challenged means bore only a weak, distorted, or underinclusive relationship to the state's asserted ends. In *Zobel v. Williams*, for example, the Court applied rational basis review to invalidate an oil-dividend distribution scheme, even though the law marginally advanced the state's legitimate interest of attracting and retaining new residents. 457 U.S. 55, 57 (1982). The Court concluded that the scheme's heavy favoritism toward longtime residents rendered the connection between the classification and the asserted interest too attenuated to satisfy even deferential review. *Id.* at 62. *See also Quinn v. Millsap*, 491 U.S. 95, 108 (1989) (land-ownership requirement for local office was irrational though land ownership could make one more invested in the community or knowledgeable about land use issues); *Williams v. Vermont*, 472 U.S. 14, 24-25 (1985) (statute imposed a disproportionate burden compared to the state's asserted interest and was therefore irrational); *Mayer v. City of Chicago*, 404 U.S. 189, 196-97

(1971) (statute's under-inclusivity rendered it irrational even though it served the interest of reducing court costs). This reasoning contrasts starkly with the decision below, which contained no analysis at all of the relationship between the challenged regulation and the interests it purportedly serves.

In *FCC v. Beach Communications, Inc.*, this Court articulated an especially permissive version of rational basis review in dicta, stating that a law must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification," and that challengers must "'negative every conceivable basis which might support it.'" 508 U.S. 307, 313-15 (1993) (citation omitted). Taken literally, this would allow the government to evade due process review entirely. It would, for example, allow the government to order people of the minority political party to stay indoors on Election Day for imaginary safety reasons. *See* Clark Neily, *Litigation Without Adjudication: Why the Modern Rational Basis Test Is Unconstitutional*, 14 Geo. J.L. & Pub. Pol'y 537, 554 (2016) (arguing it is "not categorically impossible" nor "epistemologically infeasible" for courts to determine the government's true ends, as it does all the time in other areas of law). Yet, subsequent decisions confirm that—even after *Beach Communications*—the rational basis test remains a real inquiry into unconstitutional irrationality. *Romer v. Evans*, 517 U.S. 620, 635 (1996) (holding that the challenged law could not "be explained by reference to [the state's asserted justifications]"); *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (reaffirming that even under deferential review, irrational and arbitrary classifications remain unconstitutional). Given these conflicting demands,

the lower courts have struggled to discern what rational basis review requires in practice.

### B. Lower courts are deeply divided about almost every aspect of the test

The lower courts are understandably confused and apply markedly different versions of the test. Under one of the most permissive formulations, courts have strained to invent justifications that will allow them to uphold facially irrational regulations. Under another, courts have thrown out ordinary procedural rules that govern Rule 12 motions to deny the plaintiffs the opportunity to seek evidence even after plausibly pleading that a law is not related to its purported end or only furthers an illegitimate end. Circuit splits have emerged over core features of the doctrine, producing directly conflicting outcomes regarding materially indistinguishable laws.

**First,** Courts are divided over whether they can consider evidence of irrationality or must take the government at its word. This Court has made clear that rational basis review creates a rebuttable presumption of constitutionality—not "a conclusive presumption, or a rule of law which makes legislative action invulnerable to constitutional assault." *Borden's Farm Prods. Co. v. Baldwin*, 293 U.S. 194, 209 (1934). Consistent with that understanding, the Court has ruled for plaintiffs on the merits under rational basis review. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 446-47 (1972); *Romer*, 517 U.S. at 632-33; *City of Cleburne*, 473 U.S. at 439-41; *Zobel*, 457 U.S. 55; *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528 (1973); *Village of Willowbrook*, 528 U.S. at 565; *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878 (1985). Yet, because this Court has wavered in its formulation of the test over

the years, the courts of appeal are now deeply divided on whether judges can consider a plaintiff's well-pleaded allegations, or even record evidence, that rebuts the government's bare assertions that the challenged law is rationally related to a legitimate end.

On one side of that divide, several circuits treat rationality as an evidentiary question. In *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002), the Sixth Circuit invalidated Tennessee's restriction limiting casket sales to licensed funeral directors after considering evidence that the required training—embalming, handling remains, and funeral services—was entirely irrelevant to casket retail. *Id.* at 225. Although the state asserted a public-health justification, the court found that justification was refuted by the evidence. *Id.* at 224-25 (holding that the State's justification "come[s] close to striking us with 'the force of a five-week-old, unrefrigerated dead fish.'" (citations omitted)).

Likewise, in *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013), the Fifth Circuit struck down Louisiana's casket-sales restrictions after reviewing evidence demonstrating that none of the required training was relevant to casket sales. *Id.* at 218. The court also rejected Louisiana's consumer-protection justification as "betrayed by the undisputed facts," noting that no licensure requirements applied to casket retailers and that consumer-protection law already prohibited deceptive practices. *Id.* at 223-25. The Ninth Circuit followed the same evidentiary approach in *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008), where it invalidated California's pest-control licensing scheme after examining record evidence showing that

exempted pest controllers were more likely to encounter dangerous pesticides than those required to be licensed. *Id.* at 991.

By contrast, the Eighth Circuit has adopted the opposite rule. It held that when a plaintiff alleges that a statute lacks a rational connection to a legitimate governmental interest, the government may obtain dismissal under Rule 12(b)(6) without the benefit of discovery by simply asserting that the challenged law generally relates to any such interest. That approach shifts rational basis review from the merits stage to the pleading stage, transforming the presumption of constitutionality into near-total immunity from challenge. *See Carter v. Arkansas*, 392 F.3d 965, 968 (8th Cir. 2004) (declaring that a judge "may conduct a rational basis review on a motion to dismiss" and that it is "'not necessary to wait for further factual development'" (citations omitted)).

The Fourth Circuit follows a similar rule. In *Colon Health Centers of America, LLC v. Hazel,* 733 F.3d 535 (4th Cir. 2013), the court permitted discovery on a Dormant Commerce Clause challenge to a Virginia statute, yet refused to allow any factual development on parallel due process and equal protection challenges based solely on the Commonwealth's unsupported justifications. *Id.* at 547-48. The Second Circuit has taken the same approach. In *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281 (2d Cir. 2015), the court upheld Connecticut's restriction on non-dentists shining LED lights into customers' mouths despite record evidence that dentists were not trained in LED use and that consumers were freely permitted to use the same lights themselves. *Id.* at 283-85. The

court brushed aside that evidence in favor of the speculative possibility that dentists might be "better equipped" to respond to hypothetical risks. *Id.* at 285.

The Seventh Circuit, meanwhile, has gone both ways. In *Keenon v. Conlisk*, 507 F.2d 1259 (7th Cir. 1974), it reversed dismissal of a rational basis claim, holding that "the district judge could not properly have determined that the practices complained of were reasonable from the record before him," and that "[b]ald assertions that the [government's actions] are reasonable cannot be considered." *Id.* at 1261. Yet in *Hager v. City of W. Peoria*, 84 F.3d 865, 874 (7th Cir. 1996), the same court affirmed dismissal of a rational basis challenge before any fact-finding based solely on the government's assertion that its conduct was rationally related to a legitimate interest.

**Second,** even when courts agree that rational basis review applies, they sharply disagree on a threshold question: what kinds of governmental interests are "legitimate" in the first place. For example, in the Fifth, Sixth, and Ninth Circuits, economic protectionism for its own sake is not a constitutionally legitimate interest capable of sustaining a law. *See St. Joseph Abbey*, 712 F.3d at 222 ("neither precedent nor broader principles suggest that mere economic protection of a particular industry is a legitimate governmental purpose"); *Craigmiles*, 312 F.3d at 224 ("[p]rotecting a discrete interest group from economic competition is not a legitimate governmental purpose"); *Merrifield*, 547 F.3d at 991 n.15 ("[m]ere economic protectionism for the sake of economic protectionism is irrational with respect to determining if a classification survives rational basis review").

By contrast, the Second and Tenth Circuits have taken the opposite view, holding that the government can deprive people of liberty or treat similarly situated parties differently solely to benefit a discrete interest group. *See Sensational Smiles*, 793 F.3d at 286 ("We . . . conclude that economic favoritism is rational for purposes of our review of state action under the Fourteenth Amendment."); *Powers v. Harris*, 379 F.3d 1208, 1221 (10th Cir. 2004) ("[A]bsent a violation of a specific constitutional provision or other federal law, intrastate economic protectionism constitutes a legitimate state interest.").

There are also unresolved and deepening conflicts over other asserted interests such as whether administrative convenience or cost savings alone can qualify as a legitimate interest under rational basis review. For example, in *Newell-Davis v. Phillips*, No. 22-30166, 2023 WL 1880000, at *4 (5th Cir. Feb. 10, 2023), the Fifth Circuit upheld Louisiana's exclusion of would-be respite-care providers solely on the ground that doing so reduced the state's regulatory workload. The court reasoned that limiting the number of licensees allowed the state to focus its oversight resources on fewer providers and that this administrative convenience alone satisfied rational-basis review. *Ibid.* That conclusion sits uneasily alongside this Court's repeated statements that administrative efficiency and fiscal savings, standing alone, do not justify burdens on constitutional interests. *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202, 227 (1982). At the same time, other decisions such as *Armour v. City of Indianapolis*, 566 U.S. 673, 681-83 (2012), have accepted some fiscal and administrative considerations as sufficient under rational basis review. The result is yet

another unresolved fault line in rational basis doctrine, leaving lower courts without clear guidance as to how the test applies.

Still others, like the court below, don't even require the government to articulate a specific health or safety concern. Rather than identifying the concrete interests Massachusetts's restrictions actually serve to prevent, the First Circuit treated the generic invocation of "health and safety" as sufficient to dismiss the case without examining whether the statute meaningfully advances those interests. That approach conflicts with decisions like *St. Joseph Abbey* and aligns with the most extreme readings of the rational basis inquiry, underscoring the need for this Court to reaffirm that rational basis review requires courts to engage with a statute's actual operation—not merely accept the state's characterization at face value.

**Third,** the circuits are divided over what it means for a law to be "rational." In practice, courts disagree sharply about how close the connection between a statute and its asserted objectives must be. For example, the Fifth Circuit has rejected health and safety justifications where the "purported rationale for the challenged law elides the realities" of how the regulatory scheme operates in the real world. *St. Joseph Abbey*, 712 F.3d at 226.

But the Eighth Circuit has upheld onerous occupational requirements even where the record showed that roughly ninety percent of the burdens imposed on the plaintiff did nothing to advance the state's stated interest. *Niang v. Carroll*, 879 F.3d 870, 874 (8th Cir. 2018). Similarly, the Seventh Circuit has upheld a ban on grocery stores selling cold beer on the theory that it might channel underage purchasers to liquor

stores—even though the evidence showed that liquor stores had a worse record of compliance with alcohol laws. To the Seventh Circuit, that evidentiary showing "d[idn't] suffice under rational basis review." *Ind. Petroleum Marketers & Convenience Store Ass'n v. Cook,* 808 F.3d 318, 325 (7th Cir. 2015).

This doctrinal instability has produced irreconcilable outcomes in cases involving nearly identical regulations. The casket sales cases illustrate the point: materially indistinguishable licensing schemes were struck down in the Fifth and Sixth Circuits but upheld in the Tenth. *Compare Craigmiles*, 312 F.3d 220, *and St. Joseph Abbey*, 712 F.3d 215, *with Powers*, 379 F.3d at 1221. On virtually the same facts, one set of plaintiffs prevailed because courts required a real connection between means and ends; the other lost because the court treated the rational basis test as dispositive. *Ibid.* ("[*Lee Optical*] so closely mirror[ed] the facts of th[at] case that . . . merely a citation to [*Lee Optical*] would have sufficed . . . .") That kind of split is not the product of factual differences, but of conflicting understandings of what rational basis review requires.

**Last,** the confusion surrounding rational basis review extends beyond substance and into procedure, where ordinary rules that govern every other category of federal litigation are forced to give way. Under Federal Rule of Civil Procedure 8, a plaintiff need only provide "'a short and plain statement of the claim showing that the pleader is entitled to relief,'" and a complaint must contain only "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). That standard sits uneasily with *Beach Communications*' directive that a

plaintiff must "negative every conceivable basis" that might support the challenged law. 508 U.S. at 314-15.

In some cases, courts attempt to apply rational basis review consistent with ordinary pleading rules. *See, e.g., Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 591 (9th Cir. 2008) (denying a motion to dismiss a rational basis claim after reading the complaint's allegations in the light most favorable to the plaintiff); *Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1183 (10th Cir. 2009) (same). In other cases, however, courts dismiss at the pleading stage while openly acknowledging the conflict between rational basis review and Rule 12(b)(6). *See Abigail All.*, 495 F.3d at 712 n.20 (noting a "tension between the Rule 12(b)(6) standard and rational basis review"); *Giarratano*, 521 F.3d at 303 (4th Cir. 2008) (recognizing a "dilemma created when 'the rational basis standard meets the standard applied to a dismissal under Fed.R.Civ.P. 12(b)(6)'" (citation omitted)).

District courts have likewise acknowledged their own uncertainty when navigating this terrain. *See Immaculate Heart Cent. Sch. v. N.Y. State Pub. High Sch. Athletic Ass'n*, 797 F. Supp. 2d 204, 211 (N.D.N.Y. 2011) (describing a "unique challenge" in applying rational basis review at the pleading stage); *Baumgardner v. Cnty. of Cook*, 108 F. Supp. 2d 1041, 1055 (N.D. Ill. 2000) (lamenting the resulting "confusing situation"). The result is a procedural regime in which the same constitutional claim may proceed to discovery in one circuit but be extinguished at the courthouse door in another. *Compare In re City of Detroit*, 841 F.3d 684, 701 (6th Cir. 2016) (citation omitted) ("In [Plaintiffs'] view, requiring an equal protection claimant to 'incorporate into their pleadings lengthy lists of rebut-

table rationales for challenged legislation' is 'an impossible' task at odds with *Twombly*'s holding that a complaint need only include enough facts to 'raise a right to relief above the speculative level.' . . . Plaintiffs are mistaken." (citations omitted)), *with Andrews v. City of Mentor*, 11 F.4th 462, 478 (6th Cir. 2021) (opposite view).

That procedural breakdown is precisely what occurred here. Petitioner pleaded that the challenged regulations are not necessary to protect public safety and instead were passed by self-interested members of the trade to channel business to licensees. Yet the First Circuit summarily affirmed the district court's decision ruling that the government's bare assertion that the law furthered general health and safety interests was enough to secure dismissal.

Under ordinary Rule 12(b)(6) principles, Petitioner's allegations were required to be accepted as true and tested through factual development. Instead, the courts below treated rational basis review as a license to disregard the pleadings entirely and dismiss at the threshold. This case thus squarely presents the procedural incompatibility between hyper-deferential rational basis review and the Federal Rules of Civil Procedure—and the resulting denial of any meaningful opportunity to be heard.

## II. This Case Presents Issues Of Nationwide Importance

The rational basis test is one of the most commonly used standards that courts employ. It affects all sorts of important, even if not "fundamental," unenumerated rights, from the right to earn a living, to the right to equality in adoption proceedings, to the right to

save your life, to, as in the case below, the right to repair one's own home. It has also crept into other areas of constitutional law, like takings clause cases and dormant commerce clause analysis. Yet it's also one of the most widely criticized legal doctrines. *See, e.g.*, Richard A. Epstein, *Judicial Engagement with the Affordable Care Act: Why Rational Basis Analysis Falls Short*, 19 Geo. Mason L. Rev. 931, 931 (2012) ("the rational basis test inverts the proper assumption behind our whole system of limited government"); Randy E. Barnett, *Scrutiny Land*, 106 Mich. L. Rev. 1479, 1496 (2008) (arguing that the rational basis test violates the Ninth Amendment); Bernard Siegan, *Economic Liberties and the Constitution* (1980) (arguing that rational basis review leaves economic liberty unprotected); Clark Neily, *No Such Thing: Litigating Under the Rational Basis Test*, 1 N.Y.U. J.L. & Liberty 898, 914 (2005); Timothy Sandefur, *Rational Basis and the 12(b)(6) Motion: An Unnecessary "Perplexity"*, 25 Geo. Mason U. Civ. Rts. L.J. 43 (2014). Judges, too, have expressed criticisms, even while faithfully applying it. *See, e.g.*, *Hettinga v. United States*, 677 F.3d 471, 482–83 (D.C. Cir. 2012) (Brown, J., concurring) (equating the "practical effect of rational basis review" with giving the legislature "free rein to subjugate the common good and individual liberty to the electoral calculus of politicians, the whim of majorities, or the self-interest of factions"); *Tiwari v. Friedlander*, 26 F.4th 355, 368 (6th Cir. 2022) (Sutton, J., concurring) ("many thoughtful commentators, scholars, and judges have shown that the current deferential approach to economic regulations may amount to an overcorrection in response to the *Lochner* era at the expense of otherwise constitutionally secured rights"); *Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 112 (Tex.

2015) (Willett, J., concurring) ("many burdens ac[e] the rational-basis test while flunking the straight-face test").

Perhaps the most consequential criticism is that the test suffers from serious constitutional concerns. *See, e.g.*, Andrew Ward, *The Rational Basis Test Violates Due Process*, 8 N.Y.U. J.L. & Liberty 714, 721 (2014); Neily, *Litigation Without Adjudication*, *supra*, at 546. It turns judges into lawyers for the government, creates an insurmountable obstacle at the pleading stage, and requires judges to abdicate their Article III duty to exercise reasoned judgment, meaning it violates of the separation of powers. This Court should grant certiorari to restore the rational basis test to its proper role: a relaxed, but meaningful limit on arbitrary deprivations of rights.

### A. The rational basis test violates core tenets of due process

The rational basis test turns judges into lawyers for the government. Ordinarily, parties forfeit arguments they do not make in court. *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). Under the rational basis test, however, judges are free to dream up their own justifications for a challenged law even if never put forward by the government, even if affirmatively disproven by the evidence, and even if explicitly disclaimed by the attorneys in the case. *See, e.g.*, *Meadows v. Odom,* 360 F. Supp. 2d 811, 822-25 (M.D. La. 2005) ("[W]e are not bound by the parties' arguments as to what legitimate state interests the statute seeks to further. In fact, 'this Court is obligated to seek out other conceivable reasons for validating [a state statute.]'" (quoting *Starlight Sugar, Inc. v. Soto*, 253 F.3d 137, 146 (1st Cir.2001)); *Gill v. Office of Pers.*

*Mgmt.*, 699 F. Supp. 2d 374, 387-88 (D. Mass. 2010) ("the fact that the government has distanced itself" from certain rationales for a challenged law "does not render them utterly irrelevant"). This privilege does not run both ways; judges may not come up with arguments never argued by the plaintiff; they act as second chair only for the government. This establishes a systematic judicial thumb on the scale in favor of government litigants.

Just this term, this Court ruled that the Fourth Circuit violated the rule of party presentation when it reversed a conviction based on an argument never made by the defendant. *Clark v. Sweeney*, 607 U.S. ___, No. 25-52, 2025 WL 3260170 (Nov. 24, 2025). That's because under our adversarial system, the parties "'frame the issues for decision,'" while the court serves as "'neutral arbiter of matters the parties present.'" *Sineneng-Smith*, 590 U.S. at 375 (citation omitted) . Put another way, courts "call balls and strikes"; they don't get play as batters. *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 599 (2020). Yet the rational basis test requires judges to take a swing in each case and to rule against the plaintiff so long as they can conceive of a rationale for the challenged law.

The idea that judges can affirmatively advocate on behalf of one party not only flips the adversarial system on its head, it also deprives civil rights plaintiffs of a neutral arbiter—a core principle of due process.[3] *See Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (affirming "the right to have an impartial judge"). Impartiality

[3] Similarly, the ABA's Model Code of Judicial Conduct, requires disqualification when "the judge's impartiality might reasonably be questioned" including when the "judge has a personal bias or prejudice concerning a party."

requires that judges hear the arguments before them and make a reasoned judgment rooted in fact. The rational basis test forces courts to make up their own arguments and make judgments rooted in unsupported assertions. This state of affairs runs head long into the supposed justification for the rational basis test in the first place: keeping courts from substituting their own beliefs for the judgment of the legislature.[4] *Beach Commc'ns*, 508 U.S. at 313.

What's more, even when judges rely solely on the arguments presented to them, the test requires judges to rule in favor of the government so long as it asserts a general interest in health or safety. *Beach Commc'ns*, 508 U.S. at 315 (government's assertions are not subject to "courtroom factfinding" and need not be supported in evidence). As the decision below demonstrates, judges need not explain *how* the challenged law relates to the purported end, or consider

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[4] As Professor Jeffrey Jackson has pointed out, the idea that judges must uphold a law so long as they can conjure a reason for it is also not supported by precedent:

> The Court in *FCC v. Beach Communications* offered this contention as a quote from the 1973 case *Lenhausen v. Lakeshore Auto Parts Co.*, which in turn quoted the 1940 case *Madden v. Kentucky*. For this dubious statement, the Court in *Madden* cited *Lindsley v. Natural Carbonic Gas Co*, but *Lindsley* says no such thing. Instead, *Lindsley* is a classical rational basis case, with the classical burden of proof. It allows for the assumption of any reasonably conceived statement of facts that supports the enactment; an assumption that is subject to rebuttal with evidence that it does not rest upon such a basis.

Jeffrey D. Jackson, *Classical Rational Basis and the Right to Be Free of Arbitrary Legislation*, 14 Geo. J.L. & Pub. Pol'y 493, 509 (2016).

whether evidence demonstrates a problem never existed and the law could not rationally further it. It's enough that a problem might possibly exist and the government states that its law is the solution. This makes the test insurmountable. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 306 (1976) ("*Morey* was the only case in the last half century to invalidate a wholly economic regulation solely on equal protection grounds, and we are now satisfied that the decision was erroneous.").

Even this Court speaks about the rational basis test in such terms. *See, e.g.*, Tr. of Oral Arg., *Chiles v. Salazar*, No. 24-539, 2025 WL 2856141, at *84 (U.S. Oct. 7, 2025) (Justice Alito referring to rational basis review as "anything goes."); Tr. of Oral Arg., *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122, 2025 WL 218776, at *109 (U.S. Jan. 15, 2025) (Justice Jackson asking "but wouldn't rational basis allow you to do anything?"); *United States v. Skrmetti*, 605 U.S. 495, 585-86 (2025) (rational basis review "demands hardly more than a cursory glance at the state's reasons for legislating") (Sotomayor, J., dissenting); *Trump v. Hawai'i*, 585 U.S. 667, 705 (2018) ("the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny"). There is no other way to describe the rational basis test than as a judicial rubber stamp.

The result of the rational basis test is that courts uphold palpably irrational laws that defy basic common sense. In *Meadows*, 360 F. Supp. 2d at 822-25, a court upheld Louisiana's floristry licensing requirement, which required people from working as a florist unless they passed a floral arrangement making test graded by the licensed florists—i.e., their would-be competitors. The exam had a passage rate less than half that of the state bar exam. *Id.* at 822-23. Despite

that the plaintiffs introduced uncontroverted evidence that unlicensed florists routinely prepare floral arrangements without incident and that "'people handle millions of unlicensed floral arrangements around the world every year without being harmed,'" *id.* at 824, the court accepted the state's unsupported belief that the scheme protected consumers from such speculative dangers as poking their fingers on floristry wire. There was no evidence that anyone anywhere had ever been injured by a floral arrangement. Nonetheless, the government's mere speculation was enough to keep people out of work. The plaintiff later died in poverty. *When Rational Basis Review Bit*, 138 Harv. L. Rev. 1843, 1844 (2025).

The Third Circuit said it was rational to ban serving food—but not beverages—at funeral homes because one could imagine that the embalming process might contaminate food (but apparently not drinks). *Heffner v. Murphy*, 745 F.3d 56, 85-86 (3d Cir. 2014). The Fourth Circuit has upheld a scheme that keeps individuals on a sex-offender registry longer for propositioning children than for sexually assaulting them, after the court hypothesized that such a rule could somehow benefit children who are themselves sex offenders. *Doe v. Settle*, 24 F.4th 932, 943-45 & n.10 (4th Cir. 2022). The Fifth Circuit upheld a licensing regime that excluded a social worker from even applying for permission to offer caregivers respite from the rigors of child-rearing special needs kids, despite extensive evidence showing the exclusion made access, quality, and prices worse in Louisiana (and the government's own evidence showing a shortage of respite care). In other words, it allowed Louisiana to deprive a woman of her constitutional rights solely to ease the

state's regulatory burden in overseeing the industry. *Newell-Davis*, 2023 WL 1880000, at *4.

The Eighth Circuit has deemed it rational to require African-style hair braiders to complete nearly 1,500 hours of irrelevant training even when record evidence proved the relevant skills could be taught via a 4-6 hour video and the law was more squarely aimed at illegitimate economic protectionism. *Niang*, 879 F.3d at 874. The Tenth Circuit has held it rational to require online casket sellers to practice embalming corpses. *Powers*, 379 F.3d at 1225. And in *Abigail Alliance*, the D.C. Circuit held that terminally ill patients could be barred from accessing potentially life-saving experimental drugs even where the patients' life expectancy was shorter than the testing period for the drug. 495 F.3d at 712–13 (D.C. Cir. 2007).

Below, Petitioner's case was dismissed on a motion to dismiss despite well-pleaded allegations demonstrating that the law was not rationally connected to its purported end and was instead a product of illegitimate economic protectionism. A standard that both puts the judges on the side of the government and makes it impossible for a plaintiff to make it past a motion to dismiss, let alone to prevail on the merits, tolerates arbitrary laws. It provides plaintiffs process, but because that process lacks any substance, it fails to protect liberty at all.

In sum, the very test used to adjudicate whether laws are arbitrary and violative of due process itself violates due process. *See, e.g.*, Timothy Sandefur, *In Defense of Substantive Due Process, or the Promise of Lawful Rule*, 35 Harv. J.L. & Pub. Pol'y 283, 287 (2012) (tracing the Due Process of Law Clause to Magna Carta's requirement that to qualify as "law," a

deprivation of liberty not be arbitrary). It seats judges at the government's counsel's table and permits arbitrary laws without meaningful judicial review. This Court should grant certiorari to clarify that judges need not make or accept arguments never put forward by the parties, nor turn a blind eye to plaintiffs' plausible allegations at the motion to dismiss stage, both of which deprive civil rights plaintiffs of neutral arbiters.

### B. The rational basis test blurs the separation of powers

Relatedly, the rational basis test improperly blurs the separation of powers. The Constitution separates government into three branches: the legislature, which passes the laws; the executive, who enforces them; and the judiciary, whose duty it is to exercise reasoned judgment to interpret the law and apply law to facts. The Constitution is also supreme to state law.

By forcing judges to accept the legislature's bare assertions of rationality in place of their own reasoned judgment, the rational basis test forces judges to abdicate their Article III duty. *See, e.g.*, Joseph Diedrich, *Separation, Supremacy, and the Unconstitutional Rational Basis Test*, 66 Vill. L. Rev. 249 (2021). The decision below is one such example. In another equally stark example, a court granted summary judgment to the Defendants in a single paragraph that did not articulate any of its own reasoning, and instead incorporated by reference the government's brief. *Schultz v. Wash. Dep't of Health*, No. 23-2-4262-34

(Wash. Sup. Ct. Aug. 21, 2025) (ruling for the government "for each and every one of the reasons articulated in [the state's] briefing").[5]

By allowing judges to abandon their duty to consider evidence and to exercise their own judgments on matters of law, opinions like these allow judges to delegate their power to the government actor litigating before them. And because the effect is to bless even palpably arbitrary exercises of power, the test subverts federal constitutional rights to state legislative whim. As one scholar has written, judicial proceedings under the rational basis test are no more consistent with the Article III judicial power than would be "trial by combat" or deciding cases by "tossing a coin." Neily, *Litigation Without Adjudication*, *supra* at 552. It leaves nonfundamental unenumerated rights at the mercy of ipse dixit.

This perverts the Constitution's design. The judiciary is often regarded as the "least dangerous branch," since it has no power to make laws that take away our liberty and may only secure liberty from the other branches. The Federalist No. 78 (Alexander Hamilton). But as the Founders recognized, "liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments," because "there is no liberty if the power of judging be not separated from the legislative and executive powers." *Id.*

The rational basis test thus presents many of the same constitutional problems lurking underneath

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[5] Notably, the court didn't even correctly identify the subject of the lawsuit, suggesting instead the government could regulate "horse teeth flossing" however it wished. Horse floating is not horse flossing. *Ibid.*

*Chevron* deference. Like *Chevron* deference, the rational basis test "prevents the Judiciary from serving as a constitutional check" on the legislature "[b]y tying a judge's hands" in favor of the government. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 414 (2024) (Thomas, J., concurring). As this Court recognized in *Loper Bright*, the courts have a mandate under Article III to independently say what the law is. *Id.* at 385 (majority opinion). But by requiring judges to ignore their independent judgment in favor of the government's unsupported assertions that a law protects health or safety, the rational basis test "curbs the judicial power afforded to courts" under Article III, while "simultaneously expand[ing]" the legislative power "beyond constitutional limits." *See id.* at 414 (Thomas, J., concurring) (discussing separation-of-powers concerns with *Chevron* deference); *see also* Brief of the Cato Inst. & Liberty Justice Ctr. as Amici Curiae in Support of Petitioners, *Loper Bright Enters. v. Raimondo*, No. 22-451, 2022 WL 17669655, at *3-4 (Dec. 9, 2022) (highlighting constitutional problems with *Chevron* deference).

### C. Tiers of scrutiny are applied unequally and encourage gamesmanship

Tiers of scrutiny have no basis in the text of the Constitution. *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 639 (2016) ("The Constitution does not prescribe tiers of scrutiny.") (Thomas, J., dissenting). In fact, they would appear to violate the Ninth Amendment's admonition that the enumeration of certain rights in the Constitution was not meant to "deny or disparage" the existence of other rights. And yet, because the level of scrutiny has become outcome-determinative, attorneys spend an outsized amount of

time arguing about which tier they fit into rather than the substance of the legal claim. *See, e.g.*, *TikTok Inc. v. Garland*, 604 U.S. 56, 83 (2025) (Gorsuch, J., concurring) (while tiers of scrutiny "can help focus [the Court's] analysis, I worry that litigation over them can sometimes take on a life of its own and do more to obscure than to clarify the ultimate constitutional questions").

The result is both gamesmanship and arbitrariness. Attorneys try to push round peg unenumerated rights into fundamental rights holes. *See, e.g.*, Tr. of Oral Arg. *Chiles v. Salazar*, 24-539 (U.S. Oct. 7, 2025) (asking whether conversion therapy is speech or conduct). And judges apply "rational basis plus," expanding the scope of "fundamental rights" in order to provide an escape valve. *Hellerstedt*, 579 U.S. at 641 (the tiers of scrutiny are "an unworkable morass of special exceptions and arbitrary applications") (Thomas, J., dissenting); Robert C. Farrell, *Equal Protection Rational Basis Cases in the Supreme Court Since* Romer v. Evans, 14 Geo. J.L. & Pub. Pol'y 441, 442 (2016). The farther apart the tiers of scrutiny are, the more of an incentive parties have to focus on which tier applies rather than on whether the challenged law passes constitutional scrutiny.

In sum, the test vexes courts, implicates constitutional concerns, occupies an outsized amount of attorney time, while stifling a broad array of unenumerated rights—from the right to earn a living, to the right against the government handing your home over to a private party for economic development, to the right to repair your own home—even though, as several justices have recognized, there's no constitutional basis for sorting constitutional rights into different levels of scrutiny to begin with.

To resolve this, this Court does not have to do much. It need only restore the test to the standard as it was originally conceived: a rebuttable presumption of constitutionality that considers the legitimacy of the government's asserted ends, and whether the law rationally relates to this end, or whether instead the evidence demonstrates (or, at the 12(b)(6) stage, plaintiffs' well-pleaded allegations plausibly allege) that the law is *not* rationally related to a legitimate end. In short, rather than asking whether there's any conceivable rationale for a law, courts should determine whether the government's stated rationale is plausible. And they must explain how the law fits that end rather than assuming it's so merely because the government said so.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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