No. 17-464

In The
Supreme Court of the United States

STATE OF CONNECTICUT,
Petitioner,

v.

NINA BACCALA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May the social or employment position of the addressee of alleged fighting words be considered as part of the actual circumstances in which the words were uttered to determine whether they were likely to produce immediate violence and were therefore punishable despite the First Amendment?

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INTRODUCTION

Succinctly summarized in the name of the fighting words doctrine is its essential purpose: the prevention of fighting. As with all content-based exceptions to the First Amendment's freedom-affirming protections, the fighting words doctrine must be narrowly limited to achieve its purpose while allowing freedom of speech the "breathing space" it needs to survive. Consequently, this Court's precedents mandate consideration of the *actual* circumstances of the speech to determine whether imminent violence was likely to ensue when the words were uttered. For example, the Court has disapproved of interpretations of the fighting words doctrine that would reach words spoken "to one locked in a prison cell or on the opposite bank of an impassable torrent" because of the physical impossibility of violence immediately ensuing. *Gooding v. Wilson*, 405 U.S. 518, 526 (1972).

Social or employment situations may render violence just as unlikely as a prison cell or a torrent of water. Absent truly extraordinary words, a police officer is not likely to hit an irate detainee who is expressing his anger purely verbally. A school teacher will probably not react violently to a misbehaving student. Players in a theatrical production or stand-up comedians are unlikely to physically retaliate against boorish hecklers. And most importantly for purposes of this case, the manager of a large grocery store is not likely to attack a disgruntled customer in retaliation for profane name-calling. Therefore, the Supreme Court of the State of Connecticut correctly determined that the *actual* social or employment circumstances in which the alleged fighting words were uttered bear on whether violence was likely or unlikely to ensue. The court did not, however, erect a police

officer or store manager "exception" to the fighting words doctrine. The situation of the addressee of the alleged fighting words was just one factor in the analysis.

A small minority of courts around the country have held that the situation of the addressee of alleged fighting words is irrelevant because only an objective "ordinary citizen" analysis is required. These courts worry that defendants who direct profanity at the disabled or at those otherwise unable to physically retaliate will escape justice. But by articulating that concern, these courts decouple the fighting words doctrine from its goal of violence prevention. Instead, they use the fighting words doctrine as a means to act as "guardians of public morality" and to suppress speech that they find "offensive or disagreeable." This Court's precedents already establish that such goals are irreconcilable with the First Amendment. *Cohen v. California*, 403 U.S. 15, 22-23 (1971); *Texas v. Johnson*, 491 U.S. 397, 414 (1989). There is no need to grant a writ of certiorari to reaffirm that "bedrock principle" of First Amendment law, especially in a case where the decision under review properly sided with the majority viewpoint in favor of freedom of speech.

STATEMENT OF THE CASE

A. First Amendment Framework

A brief overview of this Court's precedents on the First Amendment's fighting words doctrine is appropriate before consideration of the decision below and the question presented for review. The Court's first in-depth treatment of the fighting words doctrine came in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). In that case, Chaplinsky, a Jehovah's Witness, was distributing religious literature on the

streets of Rochester. *Id.* at 569-70. "[A] disturbance occurred" and a traffic officer "started" Chaplinsky toward the police station. *Id.* at 570. They encountered a city marshal on the way, whom Chaplinsky called a "God damned racketeer" and a "damned Fascist," for which words Chaplinsky was convicted. *Id.* at 569-70.

The Court discussed how fighting words, or words which "tend to incite an immediate breach of the peace," are "no essential part of any exposition of ideas." *Id.* at 572. Since New Hampshire had limited the law under which Chaplinsky was convicted to words "likely to cause an average addressee to fight," the Court upheld its constitutionality. *Id.* at 573. It also found that "[a]rgument is unnecessary to demonstrate that the appellations 'damn racketeer' and 'damn Fascist' are epithets likely to provoke the average person to retaliation." *Id.* at 574.

Much has changed in the seventy-five years since *Chaplinksy*. Whatever the word "fascist" may have provoked in a more decorous age at the height of World War II, one would hardly expect a batted eye at the appellation today. Whether it was that discourse became cruder and desensitizing or that violent propensities became less acceptable, words seem considerably less likely to provoke violence today than ever before. Indeed, in the three-quarters of a century since *Chaplinsky*, this Court never again upheld a fighting-words conviction.

The Court revisited the fighting words doctrine after the cultural changes of the 1960's in *Gooding v. Wilson*, 405 U.S. 518 (1972), a case that the State of Connecticut's petition does not cite. In *Gooding*, the Court found a Georgia statute unconstitutionally overbroad because it was not limited to words bearing a

"likelihood that the person addressed would make an immediate violent response." *Id.* at 528. The Court stressed how the fighting words doctrine is aimed at preventing violence, not offense or unpleasantness. *Id.* at 527.

Two years later, the Court reaffirmed *Gooding* by invalidating a statute criminalizing offensive words uttered to on-duty police officers in *Lewis v. City of New Orleans*, 415 U.S. 130, 131-32 (1974). The Louisiana Supreme Court had refused to limit its statute in accordance with *Gooding*'s mandate. *Id.* Justice Powell wrote a separate concurrence to discuss how "words may or may not be 'fighting words' depending upon the circumstances of their utterance." *Id.* at 135. As an example of such a circumstance, Justice Powell reasoned that "a properly trained police officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words." *Id.* Justice Powell's concurrence was subsequently cited by a majority of the Court in *City of Houston v. Hill*, 482 U.S. 451, 462 (1987).

In *Cohen v. California*, 403 U.S. 15, 20 (1971), the Court defined fighting words as "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." The use of the term "ordinary citizen"[1] as opposed to "person addressed" (i.e., the wording in *Gooding*) was not at issue in *Cohen* because the Court's holding was directed to the fact that Cohen's words were not directed to *anyone* in particular. *Cohen*, 403 U.S. at 20; *see also Hess v. Indiana*, 414 U.S. 105, 108-09

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[1] Cohen's "ordinary citizen" term was also quoted in *dicta* in *Virginia v. Black*, 538 U.S. 343, 359 (2003).

(1973) (fighting words must be directed to a person or group of persons); *Texas v. Johnson*, 491 U.S. 397, 409 (1989) (same).

Additionally, in *Cohen*, the Court emphasized that a state may not "forbid particular words" that are inherently offensive. *Cohen*, 403 U.S. at 26. This notion was further discussed in *Johnson*, which explained that the government may not "assume that every expression of a provocative idea will incite a riot" but rather must prove a likelihood of imminent violence by "careful consideration of the ***actual circumstances*** surrounding such expression." *Johnson*, 491 U.S. at 409 (emphasis added); *see also Terminiello v. City of Chicago*, 337 U.S. 1, 3-4 (1949) (alleged fighting words are "protected against censorship or punishment, unless [they are] shown likely to produce a clear and present danger of a serious and substantive evil that rises far above public inconvenience, annoyance, or unrest").

Finally, in *R.A.V. v. City of Saint Paul*, 505 U.S. 377, 384-85 (1992), the Court observed that "[i]t is not true that 'fighting words' have at most '*de minimus*' expressive content... or that their content is *in all respects* worthless and undeserving of constitutional protection... sometimes they are quite expressive indeed."

B. Factual Background

Tara Freeman was an experienced assistant manager and was placed in charge of the daily operations of a 65,000 square foot Stop & Shop supermarket in Vernon, Connecticut. Pet. App. A-6. During the evening of September 30, 2013, Nina Baccala called the store to announce that she needed to come to the store to

pick-up a Western Union money transfer. *Id.* Freeman answered Baccala's call and told her that the store's customer service desk had already closed, rendering her unable to process the money transfer. *Id.* Freeman testified that Baccala became belligerent upon hearing this information and started calling Freeman "swear word[s]" over the telephone. *Id.* Despite Freeman's statements, Baccala believed that she would be able to have the money transfer processed at the store as long as she arrived before 10 p.m. *Id.*

Baccala arrived at the store a few minutes later, proceeded to the customer service desk, and started filling out a money transfer form. Pet. App. A6-A7. Freeman approached Baccala and noticed that she was a forty year old woman who walked with the help of a cane. Pet. App. A-7. Freeman recognized Baccala's voice as belonging to the person who had just called. *Id.* When Freeman again informed Baccala that the customer service desk was closed, Baccala asked to speak with a manager. *Id.* Freeman told Baccala that she was the manager and pointed to her name tag and a photograph on the wall to confirm her status. *Id.* Baccala then allegedly called Freeman a "fat ugly bitch" and a "cunt" and said "fuck you, you're not the manager." *Id.* Freeman remained professional. *Id.* She simply responded, "[h]ave a good night," which prompted Baccala to leave the store. *Id.*

After Freeman subsequently called the police, Baccala was arrested and charged with breach of the peace in the second degree under Connecticut General Statutes § 53a-181(a)(5). Under the relevant part of this statute, any person who "in a public place, uses abusive ... language" having an "intent to cause inconvenience,

annoyance or alarm, or recklessly creating a risk thereof" is guilty of a class B misdemeanor. Following a jury trial, Baccala was convicted on this charge and sentenced to twenty-five days' incarceration. Pet. App. A-8. Baccala appealed her conviction to the Connecticut Appellate Court. *Id.* The Connecticut Supreme Court transferred her appeal to itself without a prior adjudication from the Connecticut Appellate Court under applicable rules of Connecticut appellate procedure. *Id.*

On appeal, Baccala argued that the speech for which she was prosecuted was protected by the First Amendment to the United States Constitution and by the free-speech provisions of the Connecticut Constitution. Pet. App. A-8. Baccala also argued that the trial court had not properly instructed the jury on the clearly established elements of the fighting words gloss placed on Connecticut General Statutes § 53a-181(a)(5). Pet. App. A-94.

C. The Connecticut Supreme Court's Opinion

The Connecticut Supreme Court found that Baccala's words were not likely to lead to an immediate violent response by Freeman and therefore reversed Baccala's conviction under the First Amendment. Pet. App. A-12. It emphasized that "there are no per se fighting words." Pet. App. A-10. Rather, whether words are "fighting words" depends inextricably "upon the circumstances of their utterance." Pet. App. A-11. "Because the fighting words exception [to free speech] is concerned only with preventing the likelihood of actual violence, an approach ignoring the circumstances of the addressee is antithetical and simply unworkable." Pet. App. A-24. Thus, "[a] proper contextual analysis requires consideration of the actual circumstances as

perceived by a reasonable speaker and addressee to determine whether there was a likelihood of violent retaliation." Pet. App. A-13. A "host of factors" are therefore properly considered. *Id.*

First, the "manner and circumstances in which the words were spoken bears on whether they were likely to incite a violent reaction." *Id.* For example, even otherwise obscene and threatening words might not be deemed fighting words if said with a "disarming smile." *Id.*

Second, the reasonably apparent attributes of the speaker and addressee are "a part of the objective situation in which the speech was made." Pet. App. A-15. An addressee is less likely to respond with immediate violence if the speaker of profane words is "a child, a frail elderly person, or a seriously disabled person." Pet. App. A-16. Additionally, the objective characteristics of the addressee, such as "age, gender, and race" would bear heavily on whether the words were likely to produce violence. Pet. App. A-16-17. For example, a gender-based profanity is likely to produce different reactions depending on the gender of the addressee. Pet. App. A-24. Similarly, a racial epithet addressed to a person of a race not meant to be attacked by the word is more likely to produce confusion than violence.

Third, and most importantly for this case, the fighting words analysis should "distinguish[] between the average citizen and those addressees who are in a position that carries with it an expectation of exercising a greater degree of restraint." Pet. App. A-17. Often this can mean police officers. Pet. App. A-18. But it can also mean people in situations dictating social or employment-related restraint.

College professors teaching a controversial subject, the parent of an angst-ridden teenager, and a grocery store manager are much more likely to exhibit restraint in the face of a profane tirade than if the addressee was a stranger on the street. On the other hand, the analysis can also consider the status of addressees in more volatile situations – a soccer fan whose team just lost or an inmate in the prison yard.

The Court recognized that "a few courts remain reluctant to take into account the circumstances of the addressee ... in considering whether he or she is more or less likely to respond with immediate violence." Pet. App. A-22. However, it found the analyses of those courts unpersuasive for two reasons. First, the purpose of the objective fighting word test is not to hypothesize a non-existent androgynous addressee, but rather to prevent the test from relying on the subjective idiosyncrasies of the specific addressees. *Id.* Otherwise, a speaker could be punished just because the words happened to be uttered to an ultraviolent and hypersensitive person. The notion that such a speaker would assume the risk in speaking to such a person would unduly chill the freedom of speech. Second, the approach of these courts is unworkable. Pet. App. A-24. A hypothetical "reasonable person" has no age, race, gender, or job. But all of these characteristics are critical to an understanding of whether the words uttered are likely to lead to real-world violence, which is the touchstone of the First Amendment analysis.

Applying these standards to the case, the Connecticut Supreme Court found insufficient evidence to convict Baccala for uttering fighting words. Under

Connecticut procedure, in First Amendment cases, the appellate court must "undertake an independent examination of the record as a whole to ensure that the judgment does not constitute a forbidden intrusion on the field of free expression." Pet. App. A-28. "[A]s the store manager on duty, Freeman was charged with handling customer service matters. The defendant's angry words were an obvious expression of frustration at not being able to obtain services to which she thought she was entitled." Pet. App. A-29. Store managers, however, are routinely confronted with angry customers and are expected to defuse the situation rather than physically attacking the store's customer. Pet. App. A-29-30. Additionally, "Freeman would be expected to model appropriate, responsive behavior, aimed at deescalating the situation, for her subordinates, at least one of whom was observing the exchange." Pet. App. A-30. Further, as the store's manager, Freeman was in control of the premises. *Id.* Instead of responding with violence, Freeman had the power to order Baccala to leave the store and to enforce that power under the trespassing laws. *Id.* Finally, Freeman's actual, calm reaction to Baccala also bore on the lack of a likelihood of violence. Pet. App. A-31.

"Therefore, on the basis of [the Court's] independent review of the record, [it could not] conclude that an average store manager in Freeman's position would have responded to the defendant's remarks with imminent violence." Pet. App. A-31. It reversed the judgment of conviction and remanded the case with directions to render a judgment of acquittal. Pet. App. A-35.

Three Justices of the Connecticut Supreme Court dissented on the issue adjudicated by the majority. They did not "dispute that the factual circumstances surrounding the speech at issue are relevant" to the fighting words doctrine. Pet. App. A-42. For example, the dissenters would agree that the race of the addressee is relevant to the fighting words analysis. Pet. App. A-44. The dissenters would even consider whether the addressee is a police officer, and hinted that they might consider whether the addressee is a teacher. Pet. App. A-46 & n.7. However, the line was drawn at considering addressee's status as a store manager. Pet. App. A-48. The dissenters felt that considering the fact that the addressee was on duty as a grocery store manager was too "granular" a "dissection" of the circumstances of the situation for purposes of the fighting words analysis. Pet. App. A-43.

The State of Connecticut subsequently filed its petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

Baccala opposes the State of Connecticut's petition for a writ of certiorari for the following reasons.

A. The Connecticut Supreme Court Did Not Create a "Fighting Words Exception" for Grocery Store Managers

This Court should not grant a writ of certiorari because the question presented by the State of Connecticut for review misunderstands the decision below. According to the State of Connecticut, the question presented is whether the Connecticut Supreme Court properly recognized "a 'store manager' exception to the [fighting words] doctrine." Pet. i. This notion of a "police exception" or a "store

manager exception" is repeated throughout the petition. Pet. 3, 10, 11, 12, 14, 17, 18, 20, 21.

However, the Connecticut Supreme Court did not erect a store manager "exception," or recognize a police officer "exception," to the fighting words doctrine. Rather, the court held that the position of the addressee of the alleged fighting words is among the "host of factors" relevant to the determination of whether imminent violence is likely to ensue based on the speaker's words. Pet. App. A-13. This reasoning was consonant with how the issue was conceptualized by Justice Powell's concurrence in *Lewis v. City of New Orleans*, 415 U.S. 130, 135 (1974) (whether addressee is a police officer is part of "the circumstances of [the words'] utterance"). Although this Court's precedents often speak of the "ordinary citizen" or the "average addressee," these terms do not preclude consideration of the objectively recognizable *position* of the addressee, just like the addressee's gender, age, or race. Of course, there should be no consideration of whether the particular addressee is especially and subjectively violent or passive. But a court should consider whether the ordinary citizen *in the addressee's specific position* would be provoked to violence upon hearing the defendant's words.

This Court's precedents consistently require consideration of all the *actual* circumstances of speech in determining whether *actual* violence is imminent before finding the speech unprotected. "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea

simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

> Thus, we have not permitted the government to assume that every expression of a provocative idea will incite a riot, by have instead required ***careful consideration of the actual circumstances*** surrounding such expression, asking whether the expression is directed to inciting or producing imminent lawless action and is likely to produce such action.

Id. at 409 (emphasis added). The fact that the addressee of alleged fighting words is a police officer or a grocery store clerk are part of the actual circumstances of the speech that directly and deeply bear on whether imminent lawless action is likely.

The fighting words doctrine is a narrowly tailored exception that administers the strong medicine of curbing speech only to achieve the end of preventing violence. That end is not served if, under the actual circumstances of the case, violence was not likely, even though violence might have been likely in the hypothetical scenario where the words were addressed to a fictional reasonable person removed from the actual situation. First Amendment exceptions to protected speech must be "narrowly limited." *Gooding v. Wilson*, 405 U.S. 518, 521-22 (1972). "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Id.* at 522; *see also Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (even "insulting" and "outrageous" speech must be tolerated to provide this "breathing space"); *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949) (speech is "protected against censorship or punishment, unless it is shown likely to produce a clear and present danger of a serious and substantive evil that rises far above public inconvenience, annoyance, or unrest"). Adherence to a fighting words

standard removed from the reality of the situation of the case does not comport with this aspect of the Court's precedents. Thus, consideration of Freeman's status as a grocery store manager is far from an "exception" to the fighting words doctrine; instead, it lies at the very essence of what distinguishes fighting words from protected speech. The core question is whether *actual*, *real-world* violence was likely, a question that was properly analyzed and answered by the Connecticut Supreme Court in this case.

B. The Split of Authority on the Question Presented Is Not Deep

The State of Connecticut relies on a split of authority among the states and federal courts to support its petition for a writ of certiorari. Pet. 12. Three state courts of last resort and a federal district court have held that the "ordinary citizen" language in this Court's fighting words precedents preclude consideration of the status of the addressee, such as his or her status as a police officer. For example, Montana's Supreme Court "fail[ed] to see the logic in concluding that words (such as 'f****** pig') may or may not be deemed 'fighting words' depending upon the intended recipient." *State v. Robinson*, 82 P.3d 27, 31 (Mont. 2003). The Court relied on the "fellow citizen" standard to disregard the addressee's status as a police officer. The Court reasoned:

> Were we to adopt this "who is likely to respond belligerently" rationale, any troglodyte could wander the streets calling young children and old men "f****** pigs" because, due to their age or infirmity, they, like the well-trained policeman, will not be able to respond in a violent fashion.

Id. Similarly, the Supreme Court of the State of Rhode Island has held that "it is the rule in this jurisdiction that abusive words, *even when addressed to a police*

officer, do not lose their character as fighting words, if, under the objective test that we apply, they would cause an average person to fight." *State v. Matthews*, 111 A.3d 390, 401 n.12 (R.I. 2015) (quotations omitted); *see also Duncan v. United States*, 219 A.2d 110, 112 (D.C. 1966) ("That [the alleged fighting words] were addressed to or about a police officer does not alter the situation.");[2] *McCormick v. Lawrence*, 325 F. Supp. 2d 1191, 1197, 1201 (D. Kan. 2004) *aff'd* 130 Fed. Appx. 987 (10th Cir. 2005).

But even the State of Connecticut appears to acknowledge in its petition that the position of these courts represents the clear minority view. Pet. 12. Federal Courts of Appeals precedents have universally held that the status of an addressee as a police officer is properly considered in evaluating a fighting words claim.[3] The clear majority of state courts also hold that the actual circumstances of an addressee must be considered.[4] The few decisions to the contrary cited by the State

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[2] One notable aspect of *Duncan* is that it was decided in 1966, prior to *Gooding v. Wilson*, 405 U.S. 518 (1972). One of the reasons given by the *Duncan* court for analyzing fighting words the same whether they are addressed to police officers or others was that the police officer might retaliate "once off duty." *Duncan*, 219 A.2d at 112. This reasoning is inconsistent with *Gooding*, 405 U.S. at 525-26, where the *imminence* of the likely violent response was emphasized as a requirement of the fighting words doctrine.

[3] *See, e.g.*, *Posr v. Court Officer Shield No. 207*, 180 F.3d 409, 415 (2d Cir. 1999); *Johnson v. Campbell*, 332 F.3d 199, 213 (3d Cir. 2003); *Spiller v. City of Texas City, Police Dep't*, 130 F.3d 162, 165 (5th Cir. 1997); *Greene v. Barber*, 310 F.3d 889, 896 (6th Cir. 2002); *Buffkins v. City of Omaha*, 922 F.2d 465, 472 (8th Cir. 1990); *United States v. Poocha*, 259 F.3d 1077, 1081 (9th Cir. 2001).

[4] *State v. Tracy*, 130 A.3d 196, 209 n.19 (Vt. 2015); *In re Nickolas S.*, 245 P.3d 446, 452 (Ariz. 2011); *Svedberg v. Stamness*, 525 N.W.2d 678, 684 (N.D. 1994); *State v. Fratzke*, 446 N.W.2d 781, 785 (Iowa 1989); *Seattle v. Camby*, 701 P.2d 499, 501-02 (Wash. 1985); *State v. John W.*, 418 A.2d 1097, 1104 (Me. 1980); *Conkle v. State*, 677 So.2d 1211, 1217 (Ala. Crim. App. 1995); *Harbin v. State*, 358 So.2d 856, 857 (Fla. App. 1978); Note, "The Demise of the *Chaplinsky* Fighting Words Doctrine: An Argument for Its Interment," 106 Harv. L. Rev. 1129, 1136 (1993)

of Connecticut fundamentally misunderstand the fighting words doctrine under this Court's existing precedents. As discussed previously, the fighting words doctrine is a prophylactic measure aimed at preventing violence. It is not a means of "remov[ing] ... offensive word[s] from the public vocabulary," as these courts seem to believe. *Cohen*, 403 U.S. at 22-23.

So, yes, it is true that "troglodytes" can wander the streets directing profane words at people with no chance of reacting violently, without running afoul of the fighting words doctrine. *See Johnson*, 491 U.S. at 414 (punishment of expression because society finds it "offensive or disagreeable" trammels the "bedrock principle underlying the First Amendment"). But that is not to say that governments are entirely without means of addressing such situations. If the person threatens the disabled person, he may be prosecuted consistent with the true threats doctrine. If the name-calling is consistent enough to be prosecuted as harassment, then harassment statutes are a content-neutral means of prosecution. Finally, if not in a public venue, the offender could be prosecuted for trespass. Obviously, the possible hypotheticals are as diverse as life itself, but, often, "troglodyte" conduct can be deterred without punishing the moral content of the words used, which is forbidden by the First Amendment. But the fighting-words doctrine simply has no role to play in a situation where violence was unlikely to ensue under the actual circumstances of the encounter. The minority of outlier-courts have warped the doctrine's purpose to regulate unpleasant words in contravention of the First Amendment.

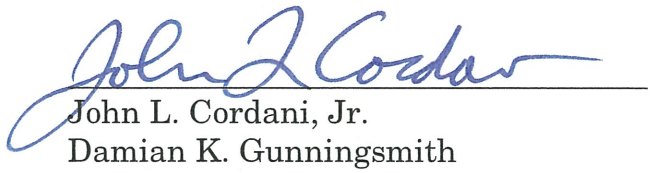
The fighting words doctrine is a narrowly-tailored exception to the First Amendment with a singular purpose – the prevention of "fighting." A minority of courts may have departed from this Court's precedents by "acting as guardians of public morality" out of concern for the elderly being called profane names. *Cohen*, 403 U.S. at 22-23. But this Court's precedents have already clearly and unequivocally condemned such reasoning, such as by recognizing that any person may be called a profane name from across an "impassible torrent" under the fighting words doctrine. *Gooding*, 405 U.S. at 526. There is no necessity to grant a writ of certiorari to fix a few, outlier court opinions.

CONCLUSION

For all of the above reasons, Baccala respectfully requests that the Court deny the State of Connecticut's petition for a writ of certiorari.

Respectfully submitted,
NINA BACCALA

Dated: October 23, 2017



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