

APPEAL NO. 06-2741

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, *et al.*,
Plaintiffs-Appellees,

v.

PRISON FELLOWSHIP MINISTRIES, INC., AND INNERCHANGE FREEDOM
INITIATIVE, INC., *et al.*,
Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CIVIL CASE NO. 4:03-CV-90074-RP-TJS

**BRIEF OF *AMICI CURIAE* ALLIANCE DEFENSE FUND, NATIONAL
ASSOCIATION OF EVANGELICALS, CENTER FOR NEIGHBORHOOD
ENTERPRISE, TEEN CHALLENGE, TIME TO FLY, CENTER FOR PUBLIC
JUSTICE, EVANGELICALS FOR SOCIAL ACTION & THE COALITION TO
PRESERVE RELIGIOUS FREEDOM IN SUPPORT OF DEFENDANTS-
APPELLANTS, PRISON FELLOWSHIP AND INNERCHANGE FREEDOM
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INTRODUCTION

The lower Court's decision striking down the InnerChange Freedom Initiative ("InnerChange")¹ was based on historical error, thus producing results that simply cannot stand on appeal. Judge Pratt concluded that rehabilitative treatment was "a function traditionally reserved to the state."² Based upon this historical error, the court concluded that a private defendant is responsible for *damages* for the violation of a constitutional provision *that only the government can violate*.

Contrary to the court's opinion, rehabilitative treatment in prisons is not a function traditionally reserved to the state. The exact opposite is true. Not only was the American concept of rehabilitating prisoners developed by a religious organization—the Quakers in 1790—it has been implemented in prisons throughout the years by private organizations. Indeed, rehabilitative treatment in America traces back to Quakers who wanted to provide an alternative to capital punishment. Today, these services are conducted in prisons across the country by religious groups such as Prison Fellowship

¹ InnerChange is an innovative value-based rehabilitative prison program that, by the lower court's own admission, has done enormous objective good.

² Opinion ("Op.") note 3 at 3.

Ministries (“Prison Fellowship”) and InnerChange, among others.³ This blatant historical error, made without any citation to authority and in direct contravention of Supreme Court precedent,⁴ led to the court’s errant holding that InnerChange and Prison Fellowship, mere private government contractors, were nonetheless state actors, liable for violating the Establishment Clause.

The purpose of this amicus brief is to set the historical record straight, and to support Prison Fellowship’s program that not only saved Iowans money, but more importantly, saved Iowans from a litany of horrible crimes that went uncommitted because InnerChange reduces recidivism.

INTERESTS OF *AMICI CURIAE*

ALLIANCE DEFENSE FUND (“ADF”) is a not-for-profit public interest organization that provides strategic planning, training, and funding to attorneys and organizations regarding religious civil liberties. ADF and its allied organizations represent hundreds of thousands of Americans who have a right to religious and patriotic expression. Its allies include hundreds of lawyers and numerous public interest law firms. ADF has advocated for

³ See Marc O. DeGirolami, *The New Religious Prisons and Their Retributivist Commitments*, 59 ARK. L. REV. 1, 14-17 (2006)(discussing efforts of private religious groups to rehabilitate prisoners at Lawtey Correctional Institution and Hillsborough Prison).

⁴ *Richardson v. McKnight*, 521 U.S. 399 (1997).

the rights of Americans under the First Amendment in hundreds of significant cases throughout the United States, having been directly or indirectly involved in at least 500 cases and legal matters, including cases before the Supreme Court such as *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001), *Mitchell v. Helms*, 530 U.S. 793 (2000), *Troxel v. Granville*, 530 U.S. 57 (2000), *Agostini v. Felton*, 521 U.S. 203 (1997), *Dale v. Boy Scouts of America*, 530 U.S. 640 (2000), *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998), *Vacco v. Quill*, 521 U.S. 793 (1997), and *Washington v. Glucksberg*, 521 U.S. 702 (1997). Because this case involves the balancing of various constitutional liberties and directly threatens faith-based charitable initiatives now seeking a firm footing in our legal culture, its resolution is a matter of significant concern to ADF. Setting the historical record straight on the relationship between religious groups and prison rehabilitative treatment programs serves one of ADF's chief goals—the protection of our First Liberty, religious freedom.

The following amici—the National Association of Evangelicals, Center for Neighborhood Enterprise, Teen Challenge, Time to Fly, Center for Public Justice, Evangelicals for Social Action, and the Coalition to Preserve Religious Freedom—are faith based organizations which also have

significant interest in the outcome of this case. They engage in partnerships with local, state and federal government agencies, or represent those that do. All parties consent to the filing of this brief.

FACTS

Prison Fellowship is a non-profit organization that serves prisoners, ex-prisoners, crime victims, and their families. Op. at 12. InnerChange is a separate non-profit corporation that operates a pre-release prisoner treatment program of the same name. Op. 13. InnerChange operates programs in Iowa and six other states—Texas, Minnesota, Kansas, Tennessee, Arkansas, and Missouri. Op.13. On March 24, 1999, Iowa’s Department of Corrections (DOC), in the face of the growing crisis of Iowa’s overcrowded prisons, entered into a contract with Prison Fellowship ministries and InnerChange providing for the operation of InnerChange’s value-based, pre-release program at Newton Correctional Facility “NCF.” Op. 34-35. DOC agreed to reimburse them both for some of the nonreligious program expenses. InnerChange was implemented at the NCF in Newton, Iowa in 1999. *Id.* IFI continued to operate InnerChange at NCF under subsequent contacts with DOC in 2002 and 2005 reimbursing InnerChange for only “non-sectarian” costs. *Id.*

The “Ultimate goal” of InnerChange “is to see ex-prisoners become contributing members of society, by becoming responsible leaders in their family, church and community.” Op. 22. More specific program goals are to “[r]educ[e] the rate of re-offense and the resulting social costs” and to “[p]rovide a positive influence in prison.” *Id.* These goals are accomplished by instilling the following six core values that the DOC’s own rehabilitation program teaches—integrity, restoration, responsibility, fellowship, affirmation, and productivity. Op. 58. InnerChange’s curriculum teaches these six values from a Christian perspective, Op. 20, n.13, 59-61, but the inmates are not required to participate. Op. 53. In fact, InnerChange does not require inmates to become Christians, but instead only requires that the inmates want to be in the program, and express a desire to change.⁵ *Id.*

ARGUMENT

I. REHABILITATING PRISONERS HAS NOT HISTORICALLY BEEN THE EXCLUSIVE JOB OF THE STATE.

To fully appreciate the wrong-headedness of Judge Pratt’s decision expelling Prison Fellowship and Innerchange from an Iowa prison, it is necessary first to take a backward glance at the history of religious involvement in corrections in the United States. Prison rehabilitative

⁵ Before joining IFI, inmates sign a consent form expressing informed consent to participate in a program that includes Christian religious content.

treatment, contrary to the lower Court’s assumption, is not “a function traditionally reserved to the state.”⁶ See *Richardson v. McKnight*, 521 U.S. 399 (1997); *Holly v. Scott*, 434 F.3d 287 (4th Cir. 2006); see also *Americans United for Sep. of Church and State, et al. v. Prison Fellowship Ministries, et al.*, 432 F.Supp.2d 862, 865 n.3 (S.D. Iowa 2006). The United States Supreme Court squarely rejected this proposition in *Richardson*.

A. Supreme Court Precedent Establishes That Correctional Institutions “Have Never Been Exclusively Public.”

Richardson held that prison guards employed by a private prison management firm under a state contract were not state actors entitled to qualified immunity because “correctional functions have never been exclusively public.” 521 U.S. at 405, 407 (Supreme Court’s “research ... reveal[ed] that in the 19th century (and earlier) sometimes private contractors ... carried on prison management activities”); see also *Holly v. Scott*, 434 F.3d 287, 294 (4th Cir. 2006) quoting *Richardson*, 521 U.S. at 405 (privately run correctional facility under contract with the federal bureau of Prisons not liable under First Amendment cause of action because defendants did not

⁶ By this statement the Court apparently meant (1) that corrections is and has been exclusively a state function; and (2) that state-run corrections have always been secular; that is, non-religious. This brief demonstrates that both assertions are false.

perform public function—“correctional functions have never been exclusively public”).

The *Richardson* Court referred to the private contractor prison guards at issue as “private person[s] ... perform[ing] a job without government supervision or direction.” *Id.* at 409. If private prison guards, who actually keep daily order and discipline in prisons, are not performing “an exclusively public function,” how can the lower court credibly hold that Prison Fellowship and InnerChange—private faith-based religious groups contracted to rehabilitate, not guard, prisoners—are performing a public function? Moreover, is it plainly improper and inconsistent to hold that private contractors are not sufficiently “public” to be clothed with governmental immunity, but are mystically “public” enough to be held accountable for alleged Establishment Clause violations. The lower court ignored the holding in *Richardson* and based its holding on historical error.

B. History Clearly Shows That Prison Rehabilitative Programs Are Not Exclusively Public.

As long ago as 1790, some Philadelphia notables sought an alternative to capital punishment, then the statutory penalty for many felonies.⁷ Most of

⁷ David J. Rothman, *Perfecting the Prisons, United States, 1789-1865*, in THE OXFORD HISTORY OF PRISONS: THE PRACTICE OF PUNISHMENTS IN WESTERN SOCIETY, at 102 (Norval Morris & David J. Rothman eds.)(Oxford University Press 1998); see also DeGirolami, *supra* at note 3

these reformers were Quakers, and they found their alternative in long-term imprisonment.⁸

The Quakers built the country's first prison—Walnut Street Prison—right behind Independence Hall.⁹ Then they faced another challenge: How would the prisoners spend their years of confinement? Most important, what would be the purpose of “doing time?” The Philadelphians decided they would try to transform the criminal’s character. To do so, they imposed a regimen of solitude, hard work, and religious renewal.¹⁰ Alex de

at 1 (“Alex de Tocqueville observed that it was the religious sensibilities of the Philadelphia Quakers against ‘shedding blood’ that spurred some of the reforms of early colonial penitentiaries”); *see also* Leroy B. Depuy, *The Walnut Street Prison: Pennsylvania’s First Penitentiary*, 18 Penn. History 130, 131 (April 1951)(“Provision was made to safeguard the health of the inmates, educational opportunities for prisoners were provided, and religious services were held regularly”); *and* Norman Johnston, Ph.D., *Prison Reform in Pennsylvania*, 2 (The Pennsylvania Prison Society 2004) @ <http://www.prisonssociety.org/about/history.shtml> (Pennsylvania’s Quaker-inspired code abolished the death penalty for all crimes except murder, using instead forms of punishment designed to rehabilitate the prisoner).

⁸ Rothman, *supra* note 7 at 6 (“As they enacted these reforms, the states immediately confronted the question of what punishment should substitute for execution. If they were not to hang the convicted criminal, what penalty should they impose? The answer was incarceration, to have offenders serve a term, a very long term, in prison.”) *Id.* at 102; *see also* Depuy, note 7 at 8.

⁹ Rothman, *supra*, at notes 7, 8 at 7-8; *see also* DeGirolami, *supra* notes 7, 8 at 7-8; *and* Depuy, *supra* notes 7, 8 at 7-8.

¹⁰ Marc O. DeGirolami, *The New Religious Prisons and Their Retributivist Commitments*, 59 ARK. L. REV. 1, 5-9 (2006)(“reflection on the Bible and repentance for one’s misdeeds were to be carried out in monastic solitude and silence ... rigorous work programs ... complemented the religious

Tocqueville remarked on the reformatory role of religious and moral education at Walnut Street:

Moral and religious instruction forms, in this respect, the whole basis of the system. In all penitentiary systems, those who have not learned to read are instructed in it. These schools are voluntary. Though no convict is obliged to join them, they consider it as a favor to be admitted ... The free choice left to the prisoners to join or not the school, makes those who enter it thus voluntarily, much more zealous and docile Each prisoner has a Bible, given by the state, in his cell, in which he may read the whole time that he is not engaged in labor.”¹¹

They sought to convert the offender—not to a particular church, but to a God-fearing life of decent behavior.¹² While it was easy to see that society would gain, the Quakers were motivated by what they considered their Christian duty to attend to their erring brothers.¹³

instruction and reflection; all of this was meant to foster a healthy blend of spiritual redemption”) *Id.* at 7; *see also* Depuy, *supra* notes 7, 8 at 7-8.

¹¹ DeGirolami, *supra* note 10 at 8 *quoting* Gustave de Baumont & Alex de Tocqueville, *On the Penitentiary System in the United States and Its Application in France*, 37 (Francis Lieber trans., S. Ill. Univ. Press 1964) (1833); *see also* Leroy B. Depuy, *The Walnut Street Prison: Pennsylvania’s First Penitentiary*, 18 *Penn. History* 132-33 (April 1951); and *History of Eastern State Penitentiary*, Philadelphia, 1 *Eastern State Penitentiary: A National Historic Landmark @*

<http://www.easternstate.org/download/pdf/ESP-history6.pdf>

(“Dr. Benjamin Rush spoke on the Society’s goal ... to build a true *penitentiary*, a prison designed to create genuine regret and penitence in the criminal’s heart”).

¹² DeGirolami, *supra* note 3 at 2.

¹³ *Id.*

The Quakers' approach caught on, and it gave the institution they created the generic name still in use today "penitentiary," as in "penitent."¹⁴ More recently, the "pen" has come to be called a "correctional institution."¹⁵ Same basic idea.¹⁶

Although religious groups began to play a diminished role in the field of corrections during the next century, Sunday services in prisons never stopped, and of course chaplains were usually on hand.¹⁷ In time, the

¹⁴ See Webster's New World Dictionary of the American Language, 1082 (College ed., 1966); see also Alison DeLuca, *Benjamin Rush, M.D.: Colonial Philadelphian Physician and Social Reformer*, 6 @ <http://www47.homepage.villanova.edu/charlene.mires/tours/rush.htm>.

¹⁵ Marc O. DeGirolami, *The New Religious Prisons and Their Retributivist Commitments*, 59 ARK. L. REV. 1, 12 (2006).

¹⁶ Similarly, for a long time in America, state authorities sent misbehaving kids to "asylums" or "reform schools" run by church groups. Legend has it that perhaps the most famous product of these institutions was a boy named George, who at age 7 was deposited by exasperated parents with Saint Mary's Industrial School for Boys in Baltimore in 1902 (about half the residents of Saint Mary's were sent there by courts). A Roman Catholic order, the Xaverian Brothers, ran the place, and young George. When he was just 19, George Herman "Babe" Ruth signed to play with the Boston Red Sox, and had a better than average career in major league baseball.

¹⁷ See Edgard Rotman, *The Failure of Reform, United States, 1865-1965*, in THE OXFORD HISTORY OF PRISONS: THE PRACTICE OF PUNISHMENTS IN WESTERN SOCIETY, at 152-53 (Norval Morris & David J. Rothman eds.)(Oxford University Press 1998); see also Marc O. DeGirolami, *The New Religious Prisons and Their Retributivist Commitments*, 59 ARK. L. REV. 1, 9-12 (2006)("As these structural problems multiplied, the reforms instituted by the earlier generation, including the religious reforms, rapidly disappeared. In their 1867 report commissioned by the New York Prison Association on the state of penal methods, Enoch Cobb Wines and Theodore Dwight found that none of the state prisons was seeking or using methods

religious/social purpose of punishment—to promote conscientious remorse, reform character, and prompt socially redeeming inner change—came to be replaced at the turn of the twentieth century with the then fashionable “retributive” theory of punishment.¹⁸ Prisons became unforgiving places where hard men did hard time.¹⁹

In the mid-1960s another sea change swept through the criminal justice system.²⁰ Once again the idea was to make men better, this time via “rehabilitation.”²¹ This “triumph of the therapeutic” largely supposed (however optimistically) that criminal behavior was not chosen, but rather

aimed at the reformation of its inmates as a primary goal ... The so-called ‘Progressive’ era of criminal punishment, spanning approximately the last two decades of the nineteenth century and the first half of the twentieth century, reintroduced a rehabilitative ethos. Now, however, the approach to rehabilitation was that of scientific healing—medical, biological, and behavioral science found favor, motivated by the underlying belief that criminals were sick and needed to be cured”).

¹⁸ Rotman, *supra* note 17 at 10 (“by 1865, the elements of the original penitentiary design, based upon regimentation, isolation, religious conversion, and steady labor was replaced by overcrowding, corruption and cruelty”).

¹⁹ *Id.* at 152-53, 165-66.

²⁰ *Id.* at 169-174; *see also* Marc O. DeGirolami, *The New Religious Prisons and Their Retributivist Commitments*, 59 ARK. L. REV. 1, 12-13 (2006); and CURRIE ELLIOT, CRIME AND PUNISHMENT IN AMERICA, WHY THE SOLUTIONS TO AMERICA’S MOST STUBBORN SOCIAL CRISIS HAVE NOT WORKED—AND WHAT WILL, at 163-165 (Henry Holt & Co., 1998).

²¹ *Supra*, note 11.

was caused by personal maladjustment and oppressive social conditions.²² Prisoners could be improved by counseling, vocational training, and a better environment. Divorcing rehabilitation from “penitence” i.e. acknowledging personal guilt and resolving to atone and reform,²³ didn’t work very well, and that particular era of good feeling soon passed.

The tide had turned again by 1985.²⁴ The primary aim of punishment became simply to keep criminals off the streets.²⁵ First-time offenders may receive leniency. But two strikes and you are out of circulation for a long time. Three whiffs and you are probably doing life. This plan has the seeming advantage of success. Crime rates are way down.²⁶

²² Edgard Rotman, *The Failure of Reform, United States, 1865-1965*, in THE OXFORD HISTORY OF PRISONS: THE PRACTICE OF PUNISHMENTS IN WESTERN SOCIETY, at 169-74 (Norval Morris & David J. Rothman eds.),(Oxford University Press 1998).

²³ Indeed, this environmental theory of causation came to be widely ridiculed in many areas, including Broadway plays. In *West Side Story*, recall, one of the performers delivers the line “I gets it! I’m depraved onna account that I’m DEPRIVED!” When even Broadway snubs a feel-good theory of human behavior, it has to be bad.

²⁴ Norval Morris, *The Contemporary Prison, 1965-Present*, in THE OXFORD HISTORY OF PRISONS: THE PRACTICE OF PUNISHMENTS IN WESTERN SOCIETY, at 212-14, 216-18 (Norval Morris & David J. Rothman eds.),(Oxford University Press 1998).

²⁵ *Id.* at 216-18.

²⁶ Whether this is attributable to the efficacy of retribution, or the shrinking relative demographic of young adult males (the long-time leaders in most violent and property crime), is uncertain.

But the prisons are full. Courts and corrections authorities understand that it would be better for all concerned if prisoners actually did mend their ways. Even warehousing has its limits, and eventually prohibitive costs. Everyone wins when a prisoner discovers that he would rather, after all, be good, or at least free. He is happy. The people who might otherwise be his victims are happy, and society is spared the burden of further warehousing him. So, while the emphasis may have changed, the goal of the 1790s penitentiaries still remains, i.e. to return an improved man to the population, when he has served his term of confinement.

To forestall recidivism, then is still the goal of prisons—a secular purpose if ever there was one. But how to do it? Reforming character is no longer part of the “corrections” skill set. Prison authorities are most keenly interested in security—no one escapes, no one injures a guard, there are no gang wars. Meanwhile, the dramatic secularization of our constitutional law makes it impossible for the contemporary state to do what the Quakers did—deliberately foster religious renewal. Even on the subjects of morals and character, those who run prisons have to tread carefully lest they be seen as trying to impose religious morality.

So anyone who would combat recidivism faces a puzzle: How to instill in a prisoner the personal qualities that constitute decent character and

will be indispensable to a law-abiding life outside—self-respect, responsibility, integrity, respect for others, pride in accomplishment, gratitude—without pushing religion? If prisons are going to attempt moral reform, they will have to do it indirectly, in creative partnership with private groups. That is because the groups that are in the character-forming and transforming business tend to be religious. Reforming prisoners, then, offers a terrific opportunity for “faith-based” social services—like the Prison Fellowship and InnerChange—provided through cooperation between institutions of civil society and government, for the common good.

In no other arena is this cooperation more fitting. When it comes to “rehab” programs for inmates, for the drug-addicted, for the alcoholic—when it comes to any service that engages the will, individual choice, the character of the recipient—government is necessarily ham-handed. Changing minds and hearts is not the strong suit of the bureaucrat. Instead, it is private charities, especially religious ones that have the skills, the motivation, and the experience. And they perform—none more successfully than Prison Fellowship.

C. Private Faith-Based Organizations Like Prison Fellowship And InnerChange Provide The Value-Based Rehabilitative Programs Which Actually Do Help Reform Prisoners And Have Been Proven To Reduce Recidivism.

InnerChange’s faith-based rehabilitative prison programs are proven to reduce recidivism.²⁷ In fact, recent studies evaluating the success of Prison Fellowship as the flagship model of faith-based rehabilitative prison programs found that “[c]ompleting the IFI program is significantly linked to lower rates of arrest and incarceration during the two-year study period following release from prison.”²⁸ These lower rates of arrest and recidivism are dramatic—only 17.3% of InnerChange graduates were rearrested vs. 62.7% of non-InnerChange graduates, and only 8% of InnerChange graduates were reincarcerated vs. 47.1% of non-InnerChange graduates.²⁹

Moreover, According to Warden Terry Mapes at Newton, anyone could see the results—the transformation of the prisoners enrolled in Innerchange. “It’s the pro-social behavior. It is the thing that we hope [in] corrections will make a difference.” *Prison Fellowship Ministries*, 432 F.

²⁷ Bryan R. Johnson, *The InnerChange Freedom Initiative: A Preliminary Evaluation of a Faith-Based Program*, at 18-21 (Center for Research on Religion and Urban Civil Society 2003); *see also* Bryan R. Johnson, *Religious Programs and Recidivism Among Former Inmates In Prison Fellowship Program: A Long Term Follow Up Study*, at 136-146 (Baylor University 2004)(demonstrating significant lower levels of rearrest in IFI graduates two to three years after release compared with non-IFI graduates).

²⁸ *Supra*, note 27.

²⁹ *Supra*, note 27.

Supp. at 914. For a relatively modest sum of money, the warden said, he got “a substance abuse program, ... a victim impact program, ... a computer education program,” and a lot more. *Id.* It sounds like a partnership that was good for the prison, the inmates, and the community at large.

Judge Pratt appeared to understand this—in his own words he stated that InnerChange is “a faith-based program designed to transform prisoners into good citizens, to reduce the recidivism rate of current inmates, and to prepare inmates for their return to society by providing educational, ethical, and religious instruction.” *Prison Fellowship Ministries*, 432 F. Supp. at 875. Those 18th-century Quakers would have understood.

But despite Judge Pratt’s moment of clarity, he proceeded to throw a huge roadblock in InnerChange’s way by declaring its work to be an unconstitutional violation of the First Amendment’s prohibition of laws respecting the establishment of religion. *Prison Fellowship Ministries*, 432 F. Supp. at 920-25. What’s more, the court found “no evidence” that promoting religion was the program’s main concern. *Id.* at 875-77, 913. On the contrary, it concluded that state officials’ “primary purpose” in awarding the contract was “to reduce recidivism among Iowa inmates.” *Id.* at 917. So besides ignoring history, the lower Court is demonstrating open hostility to

faith-based organizations partnering with state government, even though they have proven to be successful.

CONCLUSION

Charles Colson, his group, and faith based groups throughout our nation have done this country and many thousands of imprisoned souls a great but largely unheralded service these 30 years. They do not do it for governmental praise, but it still smarts when a federal judge kicks them for their effort. And this is precisely what Judge Pratt did. He charged the state of Iowa and InnerChange with the “intentional choice” to “inculcate prisoners as a treatment for recidivist behavior.” And for that offense, he said, not only must InnerChange cease to receive public payment, but it must repay all the money expended at the Newton facility—despite the fact that Prison Fellowship won its contract in a bidding process and fully delivered the services it had agreed to provide. In effect, then, InnerChange and Prison Fellowship are being fined \$1.7 million for the “crime” of being paid by a state that supposedly violated the Constitution, on a basis that exists only in the ahistorical mind of Judge Pratt. The Quakers of Philadelphia are turning over in their graves, and, should this travesty remain un-remedied, they will surely be joined by our Founding Fathers!

Respectfully Submitted

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I hereby certify that pursuant to Fed R. App. P. 32(a)(7)(C), the foregoing *Amici Curiae* brief is proportionally spaced, has a typeface of 14 points or more, and contains 4990 words, as calculated by Microsoft Word, the word processor used in its preparation.

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