NO._____

In the Supreme Court of the United States

CONFERENCE OF PRESIDENTS OF MAJOR ITALIAN AMERICAN ORGANIZATIONS, INC.; PHILADELPHIA CITY COUNCILMEMBER MARK F. SQUILLA; THE 1492 SOCIETY; AND JODY DELLA BARBRA,

Petitioners,

v.

CITY OF PHILADELPHIA AND MAYOR JAMES F. KENNEY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in deviating from the test for standing employed by the Eleventh Circuit in *Gardner v. Mutz*, 857 F. App'x 633, 634 (11th Cir. 2021) and holding that Plaintiffs—individuals and groups with vested interests in celebrating a previously recognized ethnic holiday—lack standing to bring this lawsuit, despite suffering an injury in fact from a purposely discriminatory executive order by a City Mayor, motivated by the modern day "cancel culture," which cancelled the ethnic holiday in favor of another ethnicity's holiday causing redressable harm to Petitioners that flowed directly from the actions of the Mayor and the City.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Conference of Presidents of Major Italian American Organizations, Inc.
- Philadelphia City Council Member Mark F. Squilla
- The 1492 Society
- Jody Della Barbra

Respondents and Defendants-Appellees below

- City of Philadelphia
- James F. Kenney

Respondent and Intervenor-Appellee below

- Grand Lodge of Pennsylvania Sons and Daughters of Italy

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, none of the Petitioners has a parent corporation, nor does any public company own 10% or more of its stock.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Third Circuit

No. 22-1116

Conference of Presidents of Major Italian American Organizations, Inc.; Mark F. Squilla, Philadelphia City Councilmember; The 1492 Society; Jody Della Barba, *Appellants*. and Grand Lodge of Pennsylvania Sons and Daughters of Italy v. City of Philadelphia; Mayor James F. Kenney, *Appellees*.

Date of Final Opinion: January 27, 2023

Date of Rehearing Denial: February 21, 2023

U.S. District Court, Eastern District of Pennsylvania

No. 21-1609

Conference of Presidents of Major Italian American Organizations, Inc., et al., *Plaintiffs*, v. City of Philadelphia and Mayor James F. Kenney, *Defendants*.

Date of Final Opinion: January 12, 2022

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The orders and opinions entered below are:

1. *Conference of Presidents of Major Italian Am. Organizations, Inc. v. City of Philadelphia*, No. CV 21-1609, 2022 WL 118118 (E.D. Pa. Jan. 12, 2022). App.12a.

2. *Conference of Presidents of Major Italian Am. Organizations, Inc. v. City of Philadelphia*, No. 22-1116, 2023 WL 1069704 (3d Cir. 2023) (unreported). App.1a.

JURISDICTION

The date of the judgment to be reviewed is January 27, 2023. App.1a. The date of denial of rehearing is February 21, 2023. App.38a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Art. III, § 2

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;–between a State and Citizens of another State;–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. amend. XIV § 1
Equal Protection Clause

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONCISE STATEMENT OF THE CASE

A. Basis for Jurisdiction in the Court of First Instance

The district court had jurisdiction of the case under 28 U.S.C. § 1331. The district court's federal question jurisdiction was based on an Equal Protection Clause claim under 42 U.S.C. § 1983 and claims for declaratory judgment under 28 U.S.C. § 2202.

B. Relevant Facts

Columbus Day is a national holiday, first formally recognized by a Joint Resolution of Congress, followed by a Presidential Proclamation, and eventually codified in the United States Code at 5 U.S.C. § 6103(a).[1] The purpose of these formal government acts was directly tied to the U.S. Government effort to protect Italian Americans from invidious discrimination that existed in the late 1800s and early 1900s. Indeed, the initial Columbus Day celebrations trace back to 1892 (the 400th Anniversary of Columbus discovering America), which were planned as a direct result of the horrific 1891 lynchings of 11 Italian Americans in the South. *See* App.50a. As alleged in the Complaint, "[i]n an effort to dispel the pervasive discrimination against Italian Americans, Congress took action to further recognize and show appreciation of this Nation's Italians. In 1934, Congress issued a joint resolution

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[1] Listing "Columbus Day, the second Monday in October," as one of eleven "legal public holidays." Section 6103(a) was amended by Congress on June 28, 1968, H.R. 15951, Public Law 90-363, 80 Stat. 515, to specifically include Columbus Day.

requesting that the President issue a proclamation designating October 12 of each year as Columbus Day, H.R.J. Res. 10, 73d Cong (1934). In 1937, President Franklin D. Roosevelt issued a proclamation recognizing Columbus Day." App.51a.

Following the Federal Government's lead, States also began recognizing Columbus Day, including Pennsylvania by way of its own legislative act, first in 1963, codified at 44 P.S. § 32 ("The Governor shall issue, annually, his Proclamation designating and setting apart October 12 as Columbus Day . . . ") and 44 P.S. § 11 (designating "the second Monday in October, known as Columbus Day.") Even Philadelphia—before the Mayor's recent discriminatory cancellation—recognized Columbus Day by "designat[ing] the week encompassing the second Monday in October as 'Italian American Heritage Week . . . In celebration of the festivities commemorating Columbus' historic voyage to the New World." App.91a-94a, Phila. City Council Resolution No. 170872.

Unfortunately, Italian Americans in Philadelphia reside in a city with a Mayor, Defendant James Kenney ("Mayor Kenney"), for whom discrimination against Italian Americans appears to be a long-held belief, and one that he now seeks to enforce by executive order. In 2016, in response to a concern over sanctuary cities, Mayor Kenney immediately sprang to using derogatory language about Italian Americans: "If this were Cousin Emilio or Cousin Guido, we wouldn't have this problem because they're white." App.66a.

On June 3, 2020, Mayor Kenney acted under cover of darkness to remove (and impound) the iconic statue of former Mayor Frank L. Rizzo from the steps of the

Municipal Services Building: the excuse given for removing the statue of one of Philadelphia's most prominent Italian Americans was that it was vandalized—despite the fact that other vandalized statues were not torn down suddenly at night by the City. App.60a-62a.

Later in June 2020, Mayor Kenney attempted to remove *yet another* statue important to the Italian American community, the 144-year-old statue of Christopher Columbus in Marconi Plaza, but was prevented by litigation brought swiftly to prevent the likely destruction of the marble sculpture. App.62a. In fact, although Mayor Kenney waived code violations for disorderly conduct with respect to some riots and public disturbances in Philadelphia during the summer of 2020, he labeled Italian Americans protecting the Columbus statue "vigilantes" and ordered them to "stand down[.]" App.62a-64a. In connection with the issue in Marconi Plaza, Mayor Kenney went so far as to remove an Italian American police captain based upon his allegation concerning "vigilantes" in largely Italian American South Philadelphia. App.64a.

Mayor Kenney even used the City's response to the COVID-19 crisis to discriminate against Italian Americans, by fudging the City's vaccination response criteria to lower the priority of a heavily Italian American zip code. App.64a-66a.

1. Councilman Squilla Commissions Research on Christopher Columbus and City Council Legislatively Acts to Recognize Columbus Day

In light of Mayor Kenney's antipathy to the Italian American community, it is relevant that in

2018, Petitioner and Councilman Squilla enlisted Robert F. Petrone, Esq.—a Philadelphia attorney (an Assistant District Attorney) and renowned Christopher Columbus expert—regarding the true historical record of Christopher Columbus. App.52a. Mr. Petrone's credentials made him the ideal person to take on this project, as he was conversant with the relevant primary source materials that were written during and shortly after Christopher Columbus's life, was fluent in Spanish, and he was well-versed at interpreting 15th century Spanish texts. App.52a.

After examining the historical texts in their original language and performing additional research, Mr. Petrone provided Philadelphia City Council with two reports detailing his findings with respect to the life and voyages of Christopher Columbus. App.52a-54a. Mr. Petrone's reports demonstrate that the primary historical sources unanimously bear out that Christopher Columbus was the first recorded civil-rights activist of the Americas, having (1) prohibited the mistreatment and the enslavement of the tribal peoples during his tenure as governor of the West Indies; (2) established the first "underground railroad" of the Americas by traveling around the West Indies on his Second Voyage; and (3) successfully petitioned the King of Spain to promulgate the first civil rights legislation of the Americas decreeing that "all the Indians of Hispaniola were to be left free, not subject to servitude, unmolested and unharmed and allowed to live like free vassals under law just like any other vassal in the Kingdom of Castile." App.53a-54a.

Mr. Petrone's reports supported with scholarship the longstanding support of Philadelphia's City Council for Columbus Day. Each year, Philadelphia City

Council designates the week encompassing the second Monday in October as "Italian American Heritage Week . . . in celebration of the festivities commemorating Columbus' historic voyage to the New World." App.75a. City Council, the legislative body under the Home Rule Charter, further recognizes that "The annual Philadelphia Columbus Day Parade began in South Philadelphia in 1957, and has since become one of the City's premier ethnic celebrations," and that The 1492 Society is the host of the annual Philadelphia Columbus Day Parade. App.75a-76a.

2. Executive Order 2-21

Despite Philadelphia City Council having been provided with Mr. Petrone's detailed reports that conclude there is no support for the charges the City and Mayor now level against Christopher Columbus, Mayor Kenney issued Executive Order 2-21 without submitting this serious decision to City Council. App.54a, 88a-90a. Contrary to Mr. Petrone's findings, and apparently unsupported by any review of the direct historical record, Defendants stated in that Order: "Columbus enslaved indigenous people, and punished individuals who failed to meet his expected service through violence and, in some cases, murder" and thereby decided to cancel Columbus Day by replacing it with Indigenous Peoples Day. *Id.*

The Executive Order continues in this vein, excoriating a figure that City Council venerates every year and passes resolutions in support of celebrating, proceeding to wipe Columbus from the public record:

> [T]he story of Christopher Columbus is deeply complicated. For centuries, he has

> been venerated with stories of his traversing the Atlantic and 'discovering' the 'New World'. The true history of his conduct is, in fact, infamous. Mistakenly believing he had found a new route to India, Columbus enslaved indigenous people, and punished individuals who failed to meet his expected service through violence and, in some cases, murder . . . The City holiday celebrated on the second Monday in October, formerly known as Columbus Day, shall now be designated as Indigenous Peoples' Day.

App.54a, 88a-90a. Mayor Kenney proceeded to double down on his vituperative feelings about Columbus Day through a press release, in a manner consistent with his intent to erase Italian American heritage and celebrations from Philadelphia:

> While changes to City holidays may seem largely symbolic, we recognize that symbols carry power. We hope that for our employees and residents of color, this change is viewed as an acknowledgement of the centuries of institutional racism and marginalization that have been forced upon Black Americans, Indigenous people, and other communities of color. At the same time, we are clear-eyed about the fact that there is still an urgent need for further substantive systemic change in all areas of local government.

App.54a-55a. Defendants thus recognize that Executive Order 2-21 is not merely symbolic speech in a vacuum—it in fact carries "power"—and they have explicitly chosen which ethnicities should be credited, supported,

and approved by the City government, and which ethnicities should be shamed, disdained, and canceled.

3. Executive Order 2-21 Contravenes History

Only by ignoring history and the City's conduct for the past century can it be said that Columbus Day is not tied to the Italian American community and a holiday expressly established to celebrate the Italian American community. It is widely understood and accepted that the institution of Columbus Day occurred to recognize Italian Americans. App.49a-51a. In fact, Philadelphia's own City Council recognizes Columbus Day as "one of the City's premier ethnic celebrations" and "the active participation of the Delaware Valley's Italian American community" in Columbus Day. App.91a-94a. Resolution No. 170872 specifically provides for widespread recognition of Italian American heritage on and around Columbus Day. *Id*. ("In addition to the annual Columbus Day Parade, festivities include an Italian Festival showcasing the culture and cuisine of the people of Italy. The Italian Festival . . . includes food, dance and music from the many different diverse regions of Italy.").

Columbus Day is a holiday associated with an ethnicity, or national origin, and that association is with Italian Americans. Mayor Kenney recognized the importance of the historic nature of the holiday when he released a public statement following the issuance of Executive Order 2-21 that expressly recognized that renaming the holiday had "power" and was not merely symbolic. App.54a-55a. While it is a noble act to designate a holiday in recognition of this Nation's Indigenous People (similar to the act of designating Columbus Day to recognize Italian Americans), it

is apparent that Executive Order 2-21 was issued to confer a benefit to a specific ethnic group while attacking another by removing their holiday from official recognition. *Id*. It is apparent by Mayor Kenney's own words that Indigenous Peoples' Day was established as a City holiday on the Second Monday of October to "maintain[] racial iniquities," which is a goal that inherently requires one race or ethnic group to receive a benefit. *Id*. However, such benefit in this instance comes at the expense of Italian Americans, a group that the Mayor has a history of discriminating against. *Id.*

C. Relevant Procedural History and Rulings

The Complaint in this matter was filed on April 6, 2021. The Respondents moved to dismiss the Complaint on May 12, 2021; the District Court issued its Order and Opinion on January 12, 2022. Petitioners timely appealed on January 18, 2022; the Court of Appeals for the Third Circuit issued its Opinion on January 27, 2023; and Petitioners' petition for rehearing en banc was denied on February 21, 2023.

SUMMARY OF ARGUMENT

At a time when "cancel culture" threatens the identity and integrity of our nation's body politic, this Court has the opportunity to recognize and redress the dangers of allowing local governments to run rampant over the rights of Americans to be free from invidious discrimination based on their race or ethnicity. Mayor Kenney and the City of Philadelphia should not be permitted to hide behind a too-restrictive interpretation of the injury in fact standard while obliterating the longstanding statutory and historical association of Italian Americans with Christopher Columbus, enshrined in the deeply rooted historical celebration of Columbus Day for over a century.

The lower courts now face the threat of litigation concerning governmental actions that override the rights of civic organizations and the individuals who act for them to celebrate and protect their heritage, legacy, and history itself. The Courts of Appeal for the Third and Eleventh Circuits have now split on what constitutes sufficiently concrete and particular harm

under the injury in fact standard of *Lujan v. Defenders of Wildlife*, diverging over the actions of local governments in altering references to the historical record. 504 U.S. 555, 561 (1992). The result is that citizens across the Country have different rights to combat government "cancel culture" based on invidious ethnic discrimination or first amendment violations depending on the geographic region in which they live. For example, individuals living in states like Florida, George and Alabama (in the 11th Circuit) possess standing to object to moving a Confederate veterans' monument, while parade organizers and legislators in Pennsylvania, New Jersey and Delaware (in the 3rd Circuit) involved in the yearly celebration of Columbus Day lack it. *Compare Gardner v. Mutz*, 857 F. App'x 633, 634 (11th Cir. 2021) (recognizing standing for, *inter alia*, esthetic harm and statements of intent to engage in scholarship and political speech) *with Conference of Presidents of Major Italian Am. Organizations, Inc. v. City of Philadelphia*, No. 22-1116, 2023 WL 1069704, at *2-3 (3d Cir. 2022) (denying standing to Petitioners). Perhaps worse, citizens outside of these geographical regions are left to ponder the uncertainty of their standing to redress Constitutional wrongs in this ever evolving "cancel culture."

Given that this divergence of standing to bring claims based on fundamental Constitutional rights by geographic location is insupportable under the teachings of this Court, the Petition should be granted to review the issue of injury in fact standing presented here to provide certainty and uniformity in this Court's injury in fact standing jurisprudence.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RECOGNIZE INJURY IN FACT STANDING FOR THE PETITIONERS IN THIS MATTER AND CLARIFY THE DOCTRINE FOR DISCRIMINATORY HARMS TO BE CONSISTENT WITH THE RECENT DECISION OF THE ELEVENTH CIRCUIT IN *GARDNER v. MUTZ.*

Petitioners present precisely the right case for this Court to clarify the injury in fact standing doctrine; a doctrine that has, for decades, hobbled the lower courts' ability to weed out improperly-brought federal cases from among the many valid matters before the judiciary of the United States and now presents a direct conflict between the Third and Eleventh Circuits. Petitioners do not seek to intervene in the environmental policy of the United States with respect to foreign lands;[2] they do not seek redress to an attenuated, remote harm;[3] they do not seek purely hypothetical relief.[4] Petitioners have discrete interests arising from their annual parade in honor of Christopher Columbus, their associational support for the parade, their role as the Parade Organizer, and their role as a City Councilperson, whose constituent base resides in an area of the City densely populated with Italian-Americans and parade goers. Executive Order 2-21 directly impacted their interests.

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[2] *Lujan*, 504 U.S. 555, 561

[3] *United States v. SCRAP,* 412 U.S. 669 (1973).

[4] *Whitmore v. Arkansas*, 495 U.S. 149, 156–57 (1990).

Petitioners present concrete, particularized harms that should be recognized as within the Constitutional standing boundaries set by Article III, and the facts and circumstances presented here allow this Court to enunciate a clear doctrine on what suffices for an injury in fact. An essential component of those facts and circumstances in this case are that the United States faces a phenomenon commonly described as "cancel culture."[5] Although it has many facets—such as the abbreviation of political and business careers due to harassment allegations,[6] which is not a matter before the Court on this petition—the most pernicious part of cancel culture is the erasure of historical celebrations and figures and the prevention of participation in the public sphere by erasing and rewriting laws so as to place a barrier in front of one

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[5] "Cancel culture" is an issue percolating up through the lower courts and academic discourse. *See, e.g.*, *Wisconsin Fam. Action v. Fed. Election Comm'n*, No. 21-C-1373, 2022 WL 844436, at *8 (E.D. Wis. Mar. 22, 2022) ("Cancel culture is the phenomenon of aggressively targeting individuals or groups, whose views aggressors deem unacceptable, in an effort to destroy them personally and/or professionally. Cancel culture, a prominent force in today's world, is inconsistent with the philosophy of open, political debate; it undermines and stifles First Amendment privileges."); *Rio Grande Found. v. Oliver*, No. 19-cv-01174J, 2020 WL 6063442, at *4 (D.N.M. Oct. 14, 2020) ("Plaintiffs contend that the campaign disclosure laws invade their rights to anonymity and privacy, chilling their speech because of the "cancel" or "call-out" culture."); Eugene Scalia, *John Adams, Legal Representation, and the "Cancel Culture"*, 44 HARV. J.L. & PUB. POL'Y 333, 337–38 (2021) ("Tomorrow, why can't someone schooled in today's cancel culture use the same logic to attack the firm for defending that company's environmental depredations?").

[6] Alan Fram, *Combative Franken quits, points to GOP tolerance of Trump*, ASSOC. PRESS NAT'L NEWS, Dec. 8, 2017.

ethnic group while simultaneously extending a ramp for another.

Executive Order 2-21 provides the perfect vessel in which to recognize the discriminatory effect of cancel culture when a governmental unit acts in conformity with it. Petitioners do not challenge the creation of a holiday for Juneteenth in the City of Philadelphia in Executive Order 2-21; that works no harm on Petitioners and recognizes an important event in American history. Petitioners challenge the attack on their rights to celebrate their heritage on Christopher Columbus Day in Philadelphia, which Executive Order 2-21 accomplishes by demonizing the person of Christopher Columbus, replacing Christopher Columbus Day with Indigenous Peoples' Day.

While Executive Order 2-21 acts as a collective punishment on Italian Americans in Philadelphia, consistent with prior acts of Mayor Kenney, Petitioners are not alleging generalized grievances[7] or ideological harm.[8] Instead, the harm wrought by Executive Order 2-21 goes directly to Petitioners' legal interests related to the Columbus Day parade in Philadelphia and Mr. Squilla's interests as a City Councilperson.

The Court of Appeal for the Eleventh Circuit has recognized standing analogous to that of Petitioners

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[7] *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 636 (Scalia, J., concurring) ("[G]eneralized grievances affecting the public at large have their remedy in the political process.").

[8] *See Am. Legion v. Am. Humanist Ass'n*, 139 S.Ct. 2067, 2103 (2019) (Gorsuch, J., concurring) ("[R]ecourse for disagreement and offense does not lie in federal litigation.").

in cases involving the removal of statues.[9] Despite this, Petitioners were denied standing by the Third Circuit Court of Appeals because that Court refused to consider the ethnically-motivated disestablishment of a holiday on which Petitioners hold a parade (or seek to recognize via their power as a City Councilperson) injurious.[10]

A. The City of Philadelphia and Mayor Kenney Engaged in Invidious Discrimination Against Italian Americans, Directly Harming Petitioners.

As set forth *supra*, Mayor Kenney and the City of Philadelphia have engaged in systematic discrimination against Italian Americans, to wit: imputing racism to Italian Americans via Mayor Kenney's "Cousin Emilio or Cousin Guido" comment about sanctuary cities; the removal, under the cover of darkness, of the statue of Italian American former Mayor Frank L. Rizzo from the steps of the Municipal Services Building; the attempt to remove the 144-year-old statue of Christopher Columbus in Marconi Plaza; Mayor Kenney's vilification of the Christopher Columbus statute's supporters; and fudging the City's vaccination response criteria to lower the priority of a heavily Italian American zip code for COVID-19 vaccination. App.60a-66a.

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[9] *Gardner v. Mutz*, 857 F. App'x 633, 634 (11th Cir. 2021) (unreported).

[10] *Conference of Presidents of Major Italian Am. Organizations, Inc. v. City of Philadelphia*, No. 22-1116, 2023 WL 1069704, at *2-3 (3d Cir. 2022).

The capstone on this campaign of discrimination was Executive Order 2-21, which replaced Columbus Day with Indigenous Peoples' Day, and is the act for which Petitioners sued and for which they allege sufficient harm for Article III injury in fact standing. App.54a-55a, 88a-90.

1. The 1492 Society and COPOMIAO

The 1492 Society and COPOMIAO possess standing in this matter because Respondents engaged in discriminatory acts which resulted in unequal treatment of their interests and the interests of their members. Specifically, Executive Order 2-21 repeals Columbus Day, a holiday that recognizes and shows appreciation for this Nation's Italian Americans, and replaces it with Indigenous Peoples' Day, a different holiday that recognizes and shows appreciation for this Nation's Indigenous People. App.41a, 51a, 73a, 74a. This act discriminates against Italian Americans, and organizations advocating for Italian American celebrations such as the Columbus Day parade, by exalting another ethnic group in their place. App.41a, 68a.

The 1492 Society is a Philadelphia-based nonprofit that is "the host of the annual Philadelphia Columbus Day Parade." App.76a. The 1492 Society's "purpose is to promote Italian culture and traditions by sponsoring the annual Philadelphia Columbus Day Parade and Festival . . . [by] organiz[ing] Philadelphia's annual Columbus celebration and Columbus Day parade which celebrates Italian American heritage." App.48a. When Respondents illegally repealed Columbus Day by mayoral fiat, The 1492 Society was directly harmed given that the City in which it operates no longer recognizes the holiday through which it

"promote[s] Italian culture and traditions[,]" including the parade and festival. *Id.* The 1492 Society's interest in this matter is more than that of general members of the public; The 1492 Society benefits each year when City Council designates it as the host of the annual Philadelphia Columbus Day Parade. App.76a. The 1492 Society's entire purpose is dedicated to recognizing Italian American heritage through Philadelphia's Columbus Day, and it has been previous recognized by the City as the host of the parade, something the City no longer recognizes as part of a City holiday. App.48a, 75a-76a. ("The Resolution also recognizes The 1492 Society as the host of the annual Philadelphia Columbus Day Parade.").

COPOMIAO is a coalition organization that consists of the individual members of forty-six (46) smaller organizations and their respective Presidents. App.43a-47a. ("consists of member Presidents of forty-six (46) different organizations and their individual members"). Given the sheer size of COPOMIAO, it is no surprise that more than one thousand (1,000) of its individual members are Italian Americans that reside in the City of Philadelphia. *Id.* Each of these individuals have standing to institute the instant lawsuit in their own capacity but have elected for COPOMIAO to represent their collective interests, which provides associational standing under *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333 (1977). COPOMIAO has standing to represent its Italian American members as to each Count pled in the Complaint. Counts I, II, and III each directly address the Defendants' discriminatory conduct that has resulted in the unequal treatment of COPOMIAO's individual Italian American members by treating Italian

Americans differently (and comparatively worse) than descendants of indigenous peoples. App.67a-84a.

The issuance of Executive Order 2-21 provides standing for The 1492 Society and COPOMIAO to institute claims for violation of the equal protection clause (and related declaratory judgment claims) because their activities, as host of the Columbus Day parade and an organization representing Italian Americans, have been impaired by the actions of the Defendants through the withdrawal of official recognition and support (App.91a-94a); and its members have been treated unequally under the law by having a holiday that recognizes their heritage and ancestry stripped as a City holiday and replaced with a holiday dedicated to a different ethnic group. App.41a, 68a, 73a.

2. Jody Della Barbra

Jody Della Barbra has standing to bring her claims in this matter. She, as a private individual in respect to all counts in the Complaint, demonstrates that she "has sustained or is immediately in danger of sustaining a direct injury as the result of that action . . . " *Ex parte Lévitt,* 302 U.S. 633, 634 (1937). Ms. Della Barbra is an Italian American resident of Philadelphia who has been discriminated against by Mayor Kenney's Executive Order 2-21. App.48a. She is also the Parade Organizer and Secretary of The 1492 Society, and as such has a personal interest in Executive Order 2-21's cancellation of the holiday upon which the annual parade she runs depends. *Id.* The act of taking a holiday prescribed to one ethnic group (which Ms. Della Barbra devotes time and energy towards and serves in an official capacity) and

exalting another in its place is discriminatory and in violation of the Equal Protection Clause. App.41a, 55a, 68a, 73a.

3. Councilmember Mark Squilla

Councilmember Mark Squilla has standing in his official and/or personal capacity. As a member of City Council, not only has Mark Squilla taken an oath to support the Constitution of the United States, the Commonwealth of Pennsylvania, and the Philadelphia Home Rule Charter,[11] but he has been deprived of his right and role to have the business and affairs of the City of Philadelphia submitted to City Council by the Mayor;[12] and as an Italian American, he has suffered from the invidious classification present in Executive Order 2-21.

Councilmember Squilla has standing to bring all counts of the Complaint for essentially the same reasons as Jody Della Barbra, as an Italian American and Philadelphia resident in the same capacity. Councilmember Squilla has been subject to discrimination by Respondents on the basis of ethnicity when Mayor Kenney repealed Columbus Day and replaced it with a new holiday, designated to a different ethnic group. App.41a, 55a. ("Mayor Kenney and the City are thus explicitly choosing which ethnicities should be

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[11] *See* Phila. Home Rule Charter § 8-300 ("All persons elected, appointed or employed under the provisions of this charter, . . . shall, before entering upon the duties of their offices or employments, take an oath of office to support the Constitutions of the United States and of the Commonwealth of Pennsylvania and this charter.").

[12] 53 P.S. § 12127(a).

credited, supported, and approved by the City government, and which ethnicities should be shamed, disdained and canceled."). Discrimination is not an injury of "general interest common to all members of the public," but rather a concrete and particularized injury that directly impacts Philadelphia Italian American Mark Squilla. *Ex parte Lévitt,* 302 U.S. 633 at 634.

Additionally, Councilman Squilla's legislative role as a City Councilman was impaired, impeded, and negated by Executive Order 2-21. Executive Order 2-21 runs directly afoul of Councilman Squilla's role as a City Councilman. Under Pennsylvania law, "[i]t shall be the duty of the mayor: . . . To recommend, by message in writing to the council, *all such measures connected with the affairs of the city* and the protection and improvement of its government and finances as he shall deem expedient." 53 P.S. § 12127(a) (emphasis added). The renaming of a city holiday specially recognized by City Council was unquestionably an issue that should have been submitted to City Council under this statute. Similarly, Philadelphia's Home Rule Charter adopts the principle of separation of powers, which has been violated by the Mayor running roughshod over the act of the City Council in enacting Resolution No. 170872 and vitiating an act of City Council by executive fiat. Phila. Home Rule Charter § 1-101 ("legislative power of the City . . . shall be exclusively vested in . . . Council[.]").

These are injuries in fact for which Councilmember Squilla has standing because his role as a City Councilman has been eviscerated. It is clear that City Council maintains jurisdiction over City holidays

given their annual resolutions that recognize Philadelphia's Columbus Day as a tribute to Italian Americans. *See* App.75a-76a. ("Each year, Philadelphia City Council designate[s] the week encompassing the second Monday in October as 'Italian American Heritage Week . . . in celebration of the festivities commemorating Columbus' historic voyage to the New World. . . . The annual Philadelphia Columbus Day Parade began in South Philadelphia in 1957, and has since become one of the City's premier ethnic celebrations."). By doing this, the City Council (and Councilman Squilla) were acting properly in carrying out the mandate of the General Assembly that "the people of the Commonwealth, the public schools and other education institutions and historical organizations" observe Columbus Day annually. 44 P.S. § 32; App.83a. When the Defendants entered Executive Order 2-21, which repeals Columbus Day as a City holiday, such Order directly violated 44 P.S. § 32, (as well as 44 P.S. § 11), and did so without submitting the matter to the City Council. Executive Order 2-21 attempts to illegally supersede state law and repeal Columbus Day as a holiday for the citizens of Philadelphia, all of which directly harms Councilmember Squilla who is charged with upholding and supporting these very doctrines. *See* Phila. Home Rule Charter § 8-300.

B. The Injury in Fact Jurisprudence of This Court Supports Standing for Petitioners.

The standing doctrine controls, whether on a jurisdictional or a prudential basis, what cases may be brought in federal courts, and the burden to show standing falls on the plaintiff. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). What this Court

has called the "irreducible constitutional minimum of standing" consists of an "injury in fact[,]" a "causal connection between the injury and the conduct complained of[,]" and a likelihood of redressability. *Id.* at 561-62. To demonstrate an injury in fact, a plaintiff must have "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical[.]" *Id.* at 561 (internal quotations omitted).

1. This Court's Relevant Post-*Lujan* Jurisprudence.

In *Lujan*, organizations seeking the protection of wildlife sued to compel a new regulation under the Endangered Species Act requiring consultation under Section 7(a)(2) of the Endangered Species Act to cover actions taken in foreign nations, as opposed to only in the United States and on the high seas. *Id.* at 558-59. While reaffirming the concept that even observation of an animal species, "even for purely esthetic purposes," constitutes a protectable legal interest for injury in fact standing, this Court went on to require that the individuals suing "be among the injured." Because there was no imminent injury to the plaintiffs shown by past foreign travel to observe animals, the Court denied standing. *Id.* at 562-64. This Court also rejected the plaintiffs' use of a "nexus" approach, as such would allow comparatively non-interested parties, such as zoo guests or scholars operating a great distance from activities in question, to sue over violations of the Endangered Species Act. *Id.* at 565-67.

After *Lujan* created the rough boundaries of the modern injury in fact standard, this Court addressed

injury in fact in the context of an equal protection claim. The very next year, in *Northeast Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Fla.*, this Court examined the injury in fact doctrine where a Jacksonville ordinance set aside a percentage of city contracts for Minority Business Enterprises, and a group of nearby construction firms and individuals challenged the ordinance, alleging that they "would have" bid on Jacksonville's set aside contracts if not for the ordinance, as they could not qualify as Minority Business Enterprises. 508 U.S. 656, 658-59 (1993). Reversing the Court of Appeals, this Court announced what constitutes injury in the equal protection clause context, holding that the erection of a governmental "barrier" making it "more difficult for members of one group to obtain a benefit than it is for members of another group" created the injury, "the denial of equal treatment" contravening the equal protection clause. *Id.* at 666. This Court has continued to apply a plaintiff's future intent to standing in equal protection cases. *See, e.g., Gratz v. Bollinger*, 539 U.S. 244, 261 (2003) ("It is well established that intent may be relevant to standing in an equal protection challenge[,]" and collecting cases). Only where a plaintiff's equivocal statements of intent failed to comport with past action has this Court found, in a highly fact-specific case, that intent would not be sufficient. *Carney v. Adams*, 208 L.Ed.2d 305, 141 S.Ct. 493, 499-501 (2020) (distinguishing *City of Jacksonville* as plaintiff had not sought judgeship when eligible as a Democrat and filed suit challenging party-affiliation rules eight days after registering as an independent).

Recent cases of this Court focusing on the injury in fact requirement have stressed the concreteness of the injury and the requirement that the plaintiff be subject to harm, but in contexts divorced from the harm created by Executive Order 2-21. Providing a counterexample to *Lujan*, this Court found standing for an organization whose members stated that they would have used a waterway but for the pollution of the defendant in *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 182–83 (2000). In *Spokeo, Inc. v. Robins*, a class action Fair Credit Reporting Act case, this Court emphasized the requirement of "concreteness" for an injury in fact where the Court of Appeals had not determined whether the procedural defect in credit reporting information (inaccuracies as to whether the plaintiff was "married, has children, is in his 50's, has a job, is relatively affluent, and holds a graduate degree") was tied to a "material risk of harm." 578 U.S. 330, 336, 342 (2016). *Spokeo* emphasized that for harm to be concrete, it was important to examine whether the harm had a "close relationship" with "traditionally" recognized harm. *Id.* at 341.

This Court took another look at "concreteness" for injury in fact standing in *TransUnion LLC v. Ramirez*, another Fair Credit Reporting Act class action. 210 L.Ed.2d 568, 141 S.Ct. 2190, 2204 (2021). In *Ramirez*, a credit reporting agency offered a service that indicated whether a person was on OFAC's list of specially designated persons—"potentially terrorists, drug traffickers, or serious criminals"—and this Court held that individuals who had been falsely identified as on this list to third parties possessed standing under the concreteness element of injury in fact

standing. Class members who had not had misleading information about their presence on the OFAC list disseminated, however, did not possess injury in fact standing, under the logic of "if a tree falls in a forest, does it make a noise?" *Id.* at 2209–10. *Ramirez* was consistent with *Thole v. U.S. Bank N.A*, another class action case in which defined benefit plan participants lacked injury in fact standing because they had not suffered any harm due to alleged plan mismanagement, as their payments had not been interrupted or reduced. 207 L.Ed.2d 85, 140 S.Ct. 1615, 1619 (2020).

2. The Underlying Circuit Split Which This Court Should Address.

By ruling that Petitioners lack injury in fact standing, the Court of Appeals for the Third Circuit has developed a doctrine in deviation from the Court of Appeals for the Eleventh Circuit, and this Court should grant this Petition to address the Circuit conflict.

In two opinions, the Eleventh Circuit addressed injury in fact standing for individuals and organizations opposed to the relocation of a Confederate monument. *Gardner v. Mutz*, 962 F.3d 1329, 1333 (11th Cir. 2020) ("*Gardner I*"); *Gardner v. Mutz*, 857 F. App'x 633, 634 (11th Cir. 2021), *cert. denied*, 211 L.Ed.2d 478, 142 S.Ct. 762 (2022) (unreported) ("*Gardner II*"). In *Gardner I*, the Eleventh Circuit addressed First Amendment and due process clause claims concerning a cenotaph dedicated to Confederate war dead that was moved during the pendency of the appeal. *Gardner I*, 962 F.3d at 1334. The plaintiffs claimed that the local government violated their free speech rights "by deciding to remove the [c]enotaph which communicated

minority political speech in a public forum" and impairing their interests in southern history, expressing southern perspectives, vindicating the Confederate cause, and preserving veterans' memorials, which the Court of Appeals found to be insufficiently concrete or particular for injury in fact standing, as they were mere observers disagreeing with a government act. *Id.* at 1341-43.

The plaintiffs amended their complaint, and the case again went to the Court of Appeals for the Eleventh Circuit. The amendment included the following facts alleging an injury in fact:

- Multiple organizational plaintiffs include members who visit the monument to pay their respects to those it memorializes. The members intend to continue to gather, and their political speech is rendered less effective by the removal of the monument.
- Multiple organizational plaintiffs include members who regularly gather at the monument to engage and educate the public.
- One plaintiff's ancestors collected donations for and erected the monument. She also honors the war dead at the monument and wishes to continue to do so.
- One plaintiff gathered at the monument when it was at the old park, and spoke there.
- Multiple plaintiffs publish literature about the monument.

Gardner II, 857 F. App'x at 634. Under these facts, *Gardner II* held that the plaintiffs met the requirements of Article III, injury in fact standing. *Id.* at 635.

Under the *Gardner I* and *Gardner II* analysis, Petitioners would meet the requirements of standing. They are participants in the celebration of Columbus Day—The 1492 Society conducts the Columbus Day parade in Philadelphia, Ms. Della Barbra is the Parade Organizer, COPOMIAO is an organization promoting Italian American interests, and Mr. Squilla has legislative interests in the cancellation of Columbus Day by Mayoral fiat. Under this Court's jurisprudence combined with the Eleventh Circuit's in *Gardner II*, Petitioners unquestionably possess injury in fact standing, because *City of Jacksonville* holds that equal protection clause injury in fact standing exists where a governmental barrier harms one group rather than another to obtain a benefit (such as recognition of a public holiday and governmental support of the organization celebrating the holiday), and Petitioners here hold the parade and support it in City Council. 508 U.S. at 658-59.

The Court of Appeals for the Third Circuit, however, ignored *City of Jacksonville* and deviated from *Gardner II* in holding that the discriminatory act of Respondents in removing the City's support for the celebration of Columbus Day (and interfering in Mr. Squilla's legislative rights) required more to be shown, such an injury that would be akin to a Fourth Amendment violation. App.5a-7a. This daisy-chaining of constitutional rights is neither required nor supported in this Court's jurisprudence: an equal protection clause violation is of constitutional import without additional infractions of the Constitution. Additionally, the Third Circuit erased the protected class which Petitioners claimed to be part of in holding that "we

cannot say that they have suffered 'invidious discrimination' when the city selectively celebrates particular ethnicities with designated holidays." App.8a.

Although the Complaint alleged at considerable length that the Mayor of Philadelphia has taken numerous steps specifically intended to injure Italian Americans, the last of which was the cancelling of the Italian American holiday celebrating Christopher Columbus, the Panel determined that the Petitioners here—Plaintiffs below—failed to establish injury in fact standing because they "failed to show that redesignating an ethnic holiday is an 'invasion of a legally protected interest.'" App.6a.

The Court of Appeals for the Third Circuit, therefore, missed a crucial and determinative point that should have controlled the standing analysis in this matter. All levels of government—federal, state, and local—have already created a "legally protected interest" by recognizing Columbus Day as an Italian American holiday through official legislative and executive acts.[13] What the Opinion below suggests is that a local government official can cancel any ethnic holiday previously legislated by the United States Congress or State Legislature—such as Martin Luther King Day (another federal and state holiday that is directly associated with a racial group)[14]—and replace

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[13] *See* H.R.J. Res. 10, 73d Cong. (1934), Joint Appendix ("J.A.") at 51-52, Ex. E to Complaint; 5 U.S.C. § 6103(a); 44 P.S. Section 32; 44 P.S. Section 11; App.91a-94a. Philadelphia City Council Resolution No. 170872, Ex. X to Complaint.

[14] It took 32 years after Rev. King's death and many lobbying efforts before Congress finally passed a Bill recognizing MLK Day. A summary of the efforts to have MLK Day recognized can be found here: https://constitutioncenter.org/blog/how-martin-

it with some other racial or ethnic group's holiday—such as Scandinavian Day. *See* App.7a. Under the Panel's reasoning, no African American citizen impacted by such a repugnant government edict canceling Martin Luther King Day would have injury-in-fact standing to bring an Equal Protection claim even where, as here, the government action was motivated by racial or ethnic animus. That makes no sense at all, especially as numerous African American individuals organize events on Martin Luther King Day, and their organizational and personal interests would be plainly injured by removal of governmental recognition.

The Panel's reasoning is flawed under the guidance of this Court's precedent and *Gardner II*, and therefore deserves review.

II. A WRIT OF CERTIORARI IS JUSTIFIED UNDER RULE 10(A) AND RULE 10(C).

This Court faces, and will continue to face, the attempts of certain elements of society to "cancel" history and the celebrations of various ethnicities embraced in American culture, and a mechanism in the courts must exist to prevent wanton demolition and destruction of the public sphere. It is apparent that, under the post-*Lujan* jurisprudence of this Court, individuals such as Petitioners have sufficient standing to sue for an equal protection clause violation. The Court of Appeals' Opinion deserves the grant of certiorari because it presents an issue of "exceptional

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luther-king-jr-s-birthday-became-a-holiday-3 Finally, on November 2, 1983, Congress passed a bill, recognizing the "Birthday of Martin Luther King, Jr., the third Monday in January," as a legal public holiday. 5 U.S.C. § 6103(a).

importance;" it would shroud local government officials with unchecked authority to conduct their local government not only based on ethnic classifications, but motivated by animosity against an ethnic group, without fear of judicial review or constitutional restraints.

The federal, state, and local legislative history is clear—the historical purpose of Columbus Day was to stem the tide of horrific acts of discrimination against Italian immigrants in this country. That noble legislative purpose should be treated no differently than Congress enacting similar remedial legislation designed to eradicate housing discrimination, *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972), or legislation regulating public utilities, *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 6 (1968), both instances where legislatively created rights provided "protected rights," the violation of which gave rise to injury in fact standing to parties who otherwise would not have had standing to bring claims.

The Third Circuit Court of Appeal's failure to recognize that the federal, state, and local governments have already created the "protected rights" which it identified as missing for purposes of injury in fact standing represents grounds for this Court to grant this Petition. By joint Congressional resolution, Presidential proclamation, state and federal statue, all levels of government in this Country have addressed and *resolved* the "political question" of recognizing an Italian American holiday in Columbus Day, rendering this dispute not one of inchoate harm redressable by political action, but a legal right which Respondents interfered with. That constitutes the "protected right,"

the violation of which provided Petitioners with standing to pursue equal protection claims for the City and Mayor violating the right by taking it away and giving it to another ethnicity.

It is, therefore, respectfully requested that this Court take up consideration of this matter under S. Ct. R. 10(a) and 10(c).

CONCLUSION

For the reasons heretofore given, the writ of certiorari should be granted.

Respectfully submitted,

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