No. 20-9422

In the Supreme Court of the United States

LEVI JONES,

Petitioner,

v.

CHRISTOPHER SMITHERS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighteenth Circuit.

BRIEF FOR PETITIONERS

TEAM NO. 17

Counsel for Petitioners

QUESTIONS PRESENTED

1. Whether a sixty-foot no protest buffer zone that substantially burdens speech and fails to meaningfully further the purported government interest is narrowly tailored under the Free Speech Clause of the First Amendment.

2. Whether a law that provides millions of exemptions for secular conduct, but refuses to provide a singular exemption for religious conduct, is neutral and generally applicable under the Free Exercise Clause of the First Amendment.

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JURISDICTION

The judgment of the court of appeals was entered on October 31, 2020. Petitioners filed a timely petition for writ of certiorari, which this Court granted on November 16, 2020. This Court accordingly has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

A. The CHBDA Requires Mr. Jones to Use Technology, Which Violates His Sincerely Held Religious Beliefs.

Levi Jones is a devout Luddite and the congregational leader of the Delmont-based Church of Luddite. Stipulations ¶ 1; Aff. of Levi Jones ¶ 3 [hereinafter Jones Aff.]. The Delmont Luddites have collectively established their "Community Orders," the religious rules that bind their members as a means of preserving family connection, faith, community, and cultural identity. Stipulations ¶ 10. Though the substance of the Community Orders may differ among congregations, all Luddites believe in total obedience to their Community Orders. *Id.* The Delmont Luddite community has adopted a Community Order that demands skepticism of all technology. Jones Aff. ¶ 5. In accordance with this order, individual Luddites may not own or use mobile phones. The Combat Hoof and Beak Disease Act (CHBDA) requires Mr. Jones to disobey the Delmont Luddite Community Order forbidding the use of technology.[1] The CHBDA establishes a mandated contact tracing program through the use of government-provided and distributed SIM cards in mobile phones[2] for the purpose of "protect[ing] Americans, their

[1] President Felicia Underwood established the Hoof and Beak Task Force in February 2020 in response to the global pandemic. Stipulations ¶ 4. The Task Force, which is responsible for coordinating the administration's efforts to prevent, monitor, contatin, and mitigate the spread of Hoof and Beak, named the Federal Communications Commission (FCC) as the lead agency overseeing the contact-tracing program. Stipulations ¶¶ 2, 4.

[2] After receiving the SIM card or mobile phone, "every person's name, address, birth date, social security number, and phone number if not receiving a phone from the facility, will be logged." CHBDA § 42(b)(1)(A)(i).

families, and their communities by letting people know that they may have been exposed to Hoof and Beak disease and should therefore monitor their health for signs and symptoms." [3] Combatting Hoof and Beak Disease Act of 2020, Pub. L. No. 117-001, § 42(a)(1), 127 Stat. 953, 962 (2020) [hereinafter CHBDA]; Stipulations ¶ 8. The contact tracing program established "federal facilities located in each state . . . to distribute SIM cards containing contact tracing software" that will be "installed in mobile phones." CHBDA § 42(b). At those federal facilities, individuals must "wear a mask" and "observe social distancing and maintain a distance of six feet apart from one another, inside and outside the building." *Id.* § 42(b)(2). Millions of individuals are exempt from complying with the CHBDA, including senior citizens over the age of sixty-five and those with certain health exemptions such as late stage cancer, Ischemic heart disease, and Alzheimer's disease. *Id.* § 42(b)(1)(B)(C); Stipulations ¶ 9. The Act does not provide for a religious exemption. CHBDA § 42(b)(1)(D).[4] Anyone who fails to comply with the act, for any reason, will face "up to one year in jail and/or a fine of up to $2,000." *Id.* § 42(c).

B. The CHBDA Amendment Prevents Mr. Jones from Communicating His Opposition to the Contact Tracing Program by Creating a Sixty Foot No Protest Buffer Zone Which Eliminates the Only Form of Expression Available to Delmont Luddites.

In response to the increase in protests occurring at the federal distribution facilities, Congress enacted an amendment to the CHBDA which prohibited protestors "within sixty feet of the facility entrance, including public sidewalks, during operating hours" and limited the number of protestors to "no more than six persons." *Id.* § 42(d)–(d)(2); Stipulations ¶ 8. Though the amendment requires the buffer zone to be "clearly marked and posted," enforcement is "subject to discretion of local facility officials." CHBDA §§ 42(d)(2); 42(e).

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[3] Under the CHBDA, the government "centers shall distribute a mobile phone containing the contact tracing SIM card" to citizens who do not have phones. CHBDA § 42(b)(1)(A).

[4] The Religious Freedom and Restoration Act, 42 U.S.C. § 2000bb *et seq.* (2018), is "inapplicable to this act" for the alleged purpose of the mandate's speedy implementation. CHBDA § 42(f)(8).

On May 1, 2020, Mr. Jones and six other Delmont Luddites arrived at the federal distribution facility to express their religious objection to the mandated use of mobile phones for contact tracing. Jones Aff. ¶ 10. They all wore masks and remained six feet apart in compliance with the CHBDA prior to its amendment. *Id.* Since the only acceptable way for Delmont Luddites to communicate their message is to speak directly to othersin a conversational tone, Mr. Jones periodically entered the buffer zone to speak to individuals who were in line for their SIM cards. Jones Aff. ¶ 7; Aff. of Maura Mathers ¶ 7 [hereinafter Mathers Aff.]. At all times Mr. Jones maintained a six foot distance from anyone he approached. Jones Aff. ¶ 10. Mr. Jones did not have any pamphlets to distribute or signs to display because creating such material would involve violating the Community Order forbidding the use of technology. Jones Aff. ¶ 7. While Mr. Jones and the Delmont Luddites were speaking to individuals in line, members of the Mothers for Mandates[5] (MOMs) stood stationary within the buffer zone expressing their support of the government mandate and asking citizens to comply. Mathers Aff. ¶ 6. Federal Facilities Police arrested Mr. Jones for entering the buffer zone, held him in jail for four days, and forced him to pay a $1,000 fine.[6] Jones Aff. ¶ 10. Though members of the MOMs were also in violation of the CHBDA amendment, not a single member was arrested. Mathers Aff. ¶ 9; Jones Aff. ¶ 12.

On May 6, 2020, Mr. Jones and five Delmont Luddites returned to the federal distribution facility to speak to individuals in line about their opposition to the mandate. Jones Aff. ¶ 11. Once again they wore masks and maintained social distance. *Id.* On that same day, at the same facility location, a group of seven masked members of MOMs standing inside the no protest zone, in violation of both the number limitation and the buffer zone requirements, expressed their

[5] MOMs is a recognizable organization with an established brand, internet presence and social media footprint. Mathers Aff. ¶ 5.

[6] Federal Facilities Police asked Mr. Jones and the Delmont Luddites to leave because they were in violation of the protest number limit. Jones Aff. ¶ 10. Mr. Jones did not leave. *Id.*

support of the mandate. *Id.* ¶ 12. After recognizing Mr. Jones, one of the Federal Facilities Police officers said, "Hey, aren't you that anti-tech preacher? You can't be here." *Id.* ¶ 11. Mr. Jones was once again arrested, spent five days in jail, and fined $1,500. *Id.* Yet again, not a single member of the MOMs was arrested. *Id.* ¶ 12; Mathers Aff. ¶ 9.

C. Proceedings Below

The United States District Court for the District of Delmont granted the Respondent's motion for summary judgment regarding the free speech issue, finding that the CHBDA was a valid time, place, and manner restriction. R. at 4. The District Court denied the Respondent's motion for summary judgment regarding the free exercise issue, finding that the CHBDA was not generally applicable and could not survive strict scrutiny. *Id.* The United States Court of Appeals for the Eighteenth Circuit reversed the District Court on both issues. *Id.* at 30. It found that the CHBDA was not a valid time, place, and manner restriction because it was not narrowly tailored to the governmental interest of preventing the spread of Hoof and Beak disease at the federal distribution facilities, and thus unduly burdened the Petitioner's speech. *Id.* With respect to the free exercise issue, the Eighteenth Circuit found that the CHBDA was neutral and generally applicable and therefore entitled to a presumption of validity.[7] *Id.* This Court granted certiorari. *Id.* at 42.

SUMMARY OF ARGUMENT

The government arrested Mr. Jones twice for exercising his constitutional right to speech and threatens him with further imprisonment if he continues to live according to his faith. If the First Amendment does not protect against actions such as this, it is hard to imagine what protection it offers at all.

[7] The Eighteenth Circuit affirmed the District Court's finding that the Religious Freedom Restoration Act is inapplicable to the CHBDA and is not at issue in this case. R. at 40.

In creating a sixty-foot "buffer zone" around federal distribution centers, the government is effectively muzzling Mr. Jones and running roughshod over his First Amendment rights. The buffer zone substantially burdens Mr. Jones's ability to exercise his right to speech by foreclosing person-to-person communication, the only form of speech available to Mr. Jones due to his religious congregation's prohibition of technology and raising one's voice. In this way, the CHBDA operates as a near total bar to Mr. Jones's ability to protest despite the fact that there are no aggravating factors to warrant such an extreme restriction.

Furthermore, the restrictions are not narrowly tailored to the government's interest in preventing the spread of Hoof and Beak disease at federal distribution centers. The government has failed to produce even an iota of evidence to indicate that the buffer zone is any more effective than simply requiring protesters to maintain six feet of distance from others. Moreover, the CHBDA provides federal officers with significant discretion, thus permitting officials to discriminate against Mr. Jones based on the content of his speech rather than ensuring the safety of the public. Because the law wholly fails to further the government's interest, it is not narrowly tailored. Accordingly, the Eighteenth Circuit's holding that the law violates Mr. Jones's right to free speech must be affirmed.

The Eighteenth Circuit, however, made a crucial error of law when it determined that the CHBDA is generally applicable notwithstanding its legion of exemptions. Nearly one in every three Americans qualify for an exemption from the CHBDA based on secular conduct, despite the fact that these exemptions significantly undermine the government's interest in aggressive contact tracing. At the same time, the government determined that Mr. Jones's religiously motivated conduct is not as important or worthy as comparable secular conduct and therefore

undeserving of an exemption. As a result, the government has enacted a law that imposes a disparate impact on religion and therefore is not generally applicable.

The Eighteenth Circuit attempted to avoid this obvious conclusion by noting that the CHBDA does not "only burden[] conduct motivated by religion" and that its secular exemptions are "perfectly logical." R. at 40. Even assuming that the Eighteenth Circuit's observations are correct, this Court's precedents have made clear that the rationality of secular exemptions and the presence of unexempted secular conduct is wholly irrelevant to the determination of whether a law is generally applicable. This Court has never before relied on the rationality of secular exemptions to conclude that a law is generally applicable. As a result, this Court must reverse the Eighteenth Circuit's erroneous findings and grant relief to the Petitioner.

ARGUMENT

I. THE BUFFER ZONE REQUIREMENT IN THE CHBDA AMENDMENT IS NOT NARROWLY TAILORED BECAUSE IT CREATES A SUBSTANTIAL BURDEN ON MR. JONES'S SPEECH WITHOUT ADVANCING THE GOVERNMENT'S INTEREST IN PREVENTING THE SPREAD OF HOOF AND BEAK DISEASE AT FEDERAL FACILITIES.

Mr. Jones challenges the CHBDA amendment because it substantially burdens person-to-person conversations, the only form of communication available to Delmont Luddites. The CHBDA amendment fails to fulfill the government's interest in preventing the spread of Hoof and Beak disease at federal facilities and provides for discretionary selective enforcement of the regulations on individuals who enter the no protest zone. The law is thus not a reasonable time, place, and manner regulation because it is not narrowly tailored to the government's interest. The CHBDA amendment should be struck down as unconstitutional pursuant to the Free Speech Clause of the First Amendment.

A. The Sixty-Foot Buffer Zone at the Entrance of the Federal Distribution Facility Substantially Burdens Person-to-Person Communication, the Only Religiously Acceptable Form of Speech for Delmont Luddites.

The sixty-foot buffer zone presents Mr. Jones with the ultimate catch-22: he can either exercise his right to free speech in accordance with his religious beliefs and suffer arrest, or he can remain silent and legally compliant. There is no middle ground for Mr. Jones because the sixty-foot buffer makes it nearly impossible to partake in person-to-person communication, which is the only manner of speech available for him and his fellow Delmont Luddites to communicate with other citizens about their religious and moral objections to the government's mandated contract tracing program.

The buffer zone includes not just the area immediately before the entrance to the federal distribution facility, but also, by the amendment's own terms, "public sidewalks." CHBDA §42(d). This Court has long recognized the historical and political significance of public sidewalks as venues for the exchange of ideas, noting that they are "one of the few places where a speaker can be confident that he is not simply preaching to the choir." *McCullen v. Coakley*, 573 U.S. 464, 476 (2014). It is this understanding that has led the Court to extend strong First Amendment protections to speech and expression that occurs in the public forum. *See FCC v. League of Women Voters*, 468 U.S. 364, 377 (1984) (recognizing the role of the public forum as the "uninhibited marketplace of ideas"). It is undisputed that the buffer zone in front of the Delmont Federal Facility is a public forum and thus deserving of heightened First Amendment protection.[8] Stipulations ¶ 5. The government is thus "very limited" in its ability to restrict

[8] Case law distinguishes between traditional public forums and designated public forums as a descriptive matter and in terms of the government's ability to revoke a designation for the latter category. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). However, for purposes of analyzing the permissibility of a speech regulation, the distinction between the two is irrelevant. Given that both parties stipulate that the Delmont Federal Facility is a public forum, that distinction is not addressed further in the brief.

speech. *United States v. Grace*, 461 U.S. 171, 177 (1983); *see also McCullen*, 573 U.S. at 476 (noting that on sidewalks the "listener . . . encounters speech he might otherwise tune out").

Though the government is limited in its ability to restrict speech in a public forum, it may "impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication of the information.'" *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 228, 293 (1984)); *see also Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 648 (1981). Mr. Jones concedes that the original CHBDA and its subsequent amendment are content neutral and were enacted to serve the government interest of preventing the spread of Hoof and Beak disease at federal distribution facilities. CHBDA §42(a)(1). Mr. Jones specifically challenges the amendment on the grounds that it significantly burdens his speech[9] and fails to achieve the government's stated interest.

The narrow tailoring requirement guards against time, place, and manner restrictions that "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S. at 799. The Court must thus determine whether the "greater efficacy of the challenged regulation outweighs the increased burden it places on protected speech." *Id.* at 805 (Marshall, J., dissenting). The CHBDA amendment effectively bars Mr. Jones from communicating his message to fellow citizens within the zone because it nearly eliminates the possibility for person-to-person conversations. As a member of the Delmont Church of

[9] The Petitioner's claim is an as applied challenge to the buffer zone provision in the CHBDA amendment. *See Ayotte v. Planned Parenthood,* 546 U.S. 320, 329 (2006) ("[T]he 'normal rule' is that 'partial, rather than facial, invalidation is the required course,' such that a 'statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact'" (quoting *Brockett v. Spokane Arcades*, 472 U.S. 491, 504 (1985)) (alterations in original)).

Luddite, Mr. Jones can only express his views through these person-to-person discussions. Jones Aff. ¶ 7. Shouting and the use of sound amplification equipment would offend his core religious beliefs. *Id.* Though Mr. Jones is more than willing to observe the original Act's six-feet social distancing requirement for the sake of public health, and did in fact honor it when he spoke to individuals at the facility, sixty feet would make a discussion at a normal conversational tone impossible. *Id.* ¶ 10. Not only does the sixty-foot buffer zone prevent Mr. Jones from expressing his opposition in accordance with his faith, it also bars him from "the most effective, fundamental, and perhaps economical avenue of political discourse": person-to-person communication. *Meyer v. Grant*, 486 U.S. 414, 424 (1988). It eliminates his ability to effectively communicate with anyone inside the barrier, not only because it is against his beliefs to shout, but because "it is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm." *McCullen*, 573 U.S. at 489.

Respondent relies on the District Court's assumption that the "current necessity for social distancing significantly shrinks" the area immediately in front of the facility's entrance and therefore the buffer zone is necessary to "allow individuals to comply with the mandate." R. at 14. The District Court cites *Hill v. Colorado*, 530 U.S. 703, 707 (2000), for support, noting that the sixty-foot buffer zone at issue in the instant case has a "similar ultimate impact" as the floating buffer zone upheld in *Hill*. R. at 14. In reality, they operate very differently. In *Hill*, the Colorado statute made it unlawful for any person within one hundred feet of a health care facility's entrance to "knowingly approach" within *eight feet* of another person, without that person's consent, in order to pass "a leaflet or handbill to, display a sign to, or engage in oral protest, education, or counseling with [that] person." 530 U.S. at 707. The one hundred foot buffer zone in *Hill* acts as a trigger for the eight-foot no approach floating buffer zone. The eight

foot no approach zone in *Hill* is similar to the six feet social distancing requirement in the original CHBDA. Unlike the sixty foot buffer zone at issue in this case, the petitioners in *Hill* were still able to enter the one hundred foot buffer zone to engage in "counseling" so long as they observed the eight-foot no approach zone once they were within that boundary. The burden is not analogous in these cases. The sixty-foot buffer zone at issue is not a trigger; it is a wall and Mr. Jones is religiously opposed to shouting from the other side.

This Court has already recognized the burden a buffer zone places on an individual's ability to exercise their free speech rights. In *McCullen v. Coakley*, this Court struck down a Massachusetts law that created a thirty-five-foot buffer zone around the entrances and exits of abortion clinics finding that it was not sufficiently narrowly tailored to serve the government's interest because it "has pursued those interests by the extreme step of closing a substantial portion of a traditional public forum to all speakers." 573 U.S. at 497. The buffer zone in *McCullen*, at thirty-five feet, is far more modest than the one in the present case at sixty-feet. Additionally, this Court specifically noted that the "buffer zones impose[d] serious burdens on the petitioners' speech" and compromised their "ability to initiate the close, personal conversations that they view as essential to sidewalk counseling." *Id.* at 487. If this Court is willing to recognize a burden on a *preferred* method of communication like "sidewalk counseling," surely it should recognize a burden on the *only* available form of communication for Mr. Jones as a member of the Delmont Church of Luddite.

The buffer zone burdens all potential protestors by restricting person-to-person communication, but it does not necessarily burden all manners of speech such as distributing pamphlets to individuals as they enter the buffer zone or using sound amplification devices to reach listeners who may be out of conversational distance. *See Ward*, 491 U.S. at 798 (noting

that content-neutral regulation "need not be the least restrictive or least intrusive means of" serving the government's interests). These alternatives, however, are not available to Mr. Jones, who rejects the use of technology necessary to make informational materials or to amplify his voice. Aff. Jones ¶¶ 5, 7. The Delmont Luddites, and Mr. Jones specifically, are not similarly burdened by the buffer zone as other protest groups like the MOMs who have a public relations department, promotional materials, an updated website and social media accounts. Aff. Mathers ¶¶ 5-6. The Delmont Luddites are limited by religion to person-to-person communication and then limited by the buffer zone to silence once an individual has crossed the zone's threshold. Aff. Jones ¶ 7. Such a burden is not tolerated by the First Amendment.

B. The Sixty-Foot Buffer Zone Does Not Advance the Government's Interest in Preventing the Spread of Hoof and Beak Disease at Federal Facilities.

1. The Government has Failed to Provide Any Evidence that the Sixty-Foot Buffer Zone is Any More Effective at Preventing the Spread of Hoof and Beak at federal facilities than the Six-Feet Social Distancing Requirement.

Though this Court has recognized certain reasonable and permissible time, place, and manner restrictions, it is clear that the government "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward*, 491 U.S. at 799; *see also Frisby v. Schultz,* 487 U.S. 474, 485 (1988) ("A complete ban can be narrowly tailored but only if *each* activity within the proscription's scope is an appropriately targeted evil." (emphasis added)). The connection between the regulation and the government interest it seeks to fulfill is a means of evaluating whether or not the regulation is too broad and will likely burden more speech than necessary to achieve its purported goal. *Ward*, 491 U.S. at 799. In practice, the narrow tailoring requirement serves not just as a "guard against an impermissible desire to censor" but a check on the suppression of speech for "mere

convenience." *McCullen,* 573 U.S. at 486. In recognition of the reality that "silencing . . . speech is sometimes the path of least resistance," the narrow tailoring requirement demands a "close fit between ends and means." *Id.* It prevents the slippery slope of censorship for the sake of "efficiency." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 795 (1988).

Since the CHBDA amendment did not specify a particular government interest, it is reasonable to assume that the amendment works to further the overall goal of the CHBDA and prevent the spread of Hoof and Beak disease at distribution centers. CHBDA §42(a)(1). Safety measures to meet this legitimate government goal were in place prior to the enactment of this amendment, including the requirement that "all persons" at the federal distribution facilities "wear a mask" and "observe social distancing and maintain a distance of six feet apart from one another, inside and outside the building."[10] *Id.* §42(b)(2). The blanket prohibition of protestors within sixty feet of the facility's entrance is a convenient means to ensure compliance of the Act's initial social distancing requirements—not a safety measure in and of itself. The buffer zone does not take into account whether there is a long line that extends outside the buffer zone such that Mr. Jones could approach those outside the buffer zone for a person-to-person discussion, or whether there is no line such that Mr. Jones could not express his opposition in accordance with both the law and his religious beliefs.

Respondents attempt to draw parallels between the CHBDA buffer zone requirement and this Court's abortion clinic precedents, but those precendents show a clear connection between the buffer zone and the government interest. In *Frisby v. Schultz*, this Court upheld an ordinance that banned picketing in front of residential homes as a reasonable "place" restriction because of the "unique nature of the home." 487 U.S. at 484. No such special consideration of the home is at

[10] Mr. Jones never violated the original act's safety conditions and does not challenge their validity in achieving the legitimate government interest of combatting Hoof and Beak at distribution centers. His challenge is limited to the CHBDA amendment.

play in this case since Mr. Jones is protesting not only at a public federal facility, but at the very location where the actions he opposes are occurring. Respondents also cite to this Court's precedents in *Madsen v. Women's Health Center*, 512 U.S. 753 (1994), and *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). In both *Madsen* and *Schenck*, the Court upheld a thirty-six-foot buffer zone and a fifteen-foot buffer zone, respectively, in order to ensure that patients and employees could enter and leave the clinics freely in direct response to protestors preventing them from doing so. *Schenck*, 519 U.S. at 361; *Madsen*, 512 U.S. at 757.

As a preliminary matter, Mr. Jones's case differs from those precedents by the sheer size of the buffer zones. The sixty-foot buffer zone in front the Delmont Federal Facility is nearly twice as big as the zone upheld in *Madsen* and four times as large as the zone upheld in *Schenck*. More notably, Mr. Jones has not exhibited any of the behaviors committed by the petitioners in those prior cases which ultimately persuaded the Court to conclude that the buffer zones were necessary to fulfill the legitimate government interest. *Schenck*, 519 U.S. at 363; *Madsen*, 512 U.S. at 761. The buffer zone in *Madsen* was created as a response to protestors who deliberately blocked the entrance to the abortion clinic and agitated—at times even physically assaulted—patients entering the clinic. 512 U.S. at 758–61. Similarly, in *Schenck* the Court upheld the fixed buffer zone after protestors formed "numerous large-scale blockades" in parking lot driveways and the clinic doorways, while smaller groups of protestors "attempted to stop or disrupt clinic operations." 519 U.S. at 362–63. Mr. Jones and his fellow Delmont Luddites have not attempted to form a blockade or prevent employees or individuals from entering or exiting the federal distribution facility. They have not attempted to disrupt the distribution of the SIM cards. They have not assaulted any individuals entering the facility. In fact, they have maintained

the social distancing requirements in order to respect others' and their own health. Jones Aff. ¶¶ 11–12. The Court in both *Madsen* and *Schenck* cited the "aggressive techniques, with varying levels of belligerence" as the reason for concluding that the buffer zone was the "only way to ensure access" to the clinics. *Schenck,* 519 U.S. at 363, 380; *see also Madsen*, 512 U.S. at 758, 769 (noting that the protests "took their toll on the clinic's patients" and therefore "[t]he state court [had] few other options to protect access" to the clinic). The government cites no such techniques or behavior to justify the buffer zone and thus fails to meet its burden. *See McCullen*, 573 U.S. at 495 ("To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier.").

2. The CHBDA Amendment Specifically Allows Discretionary Enforcement, Permitting Officials to Selectively Enforce Regulations Based on the Content of the Speaker's Message.

The CHBDA amendment specifically states that enforcement is "subject to discretion of local facility officials." CHBDA §42(e). Though the government "may enact regulations in the interest of the public safety, health, welfare or convenience," those regulations cannot "abridge the individual liberties secured by the Constitution." *Schneider v. New Jersey*, 308 U.S. 147, 160 (1939). A statute may provide for limited discretion so long as it also provides "standards for the determination" and use of that discretion. *Cox v. Louisiana*, 379 U.S. 536, 556 (1965). "[B]road discretion in a public official allows him . . . to act as censor." *Id*. at 466.

The Federal Facilities Police in this case used their discretion to selectively enforce the requirements in the CHBDA amendment. Jones Aff. ¶¶ 8–12. Mr. Jones was arrested even though he was in full compliance with the mandate, while members of the MOMs, who were in violation of both the number of protestors limit and the buffer zone requirement, were not

arrested.[11] *Id.* ¶ 11; Mathers Aff. ¶ 9. Prior to Mr. Jones's arrest, one of the Federal Facilities Police officers said, "Hey aren't you that anti-tech preacher? You can't be here." Jones Aff. ¶ 11. Such selective and discriminatory enforcement is exactly the kind of problematic use of discretion that turns a content neutral law into a content-based form of censorship. In order for the statute to be narrowly tailored, it must limit such discretion with clear enforcement standards. *Cox,* 379 U.S. at 556. The CHBDA amendment fails to do so, and thus cannot stand.

II. THE CHBDA IS NOT GENERALLY APPLICABLE BECAUSE IT REFUSES TO PROVIDE AN EXEMPTION FOR RELIGIOUSLY MOTIVATED CONDUCT WHILE EXEMPTING A MULTITUDE OF SECULAR CONDUCT THAT CAUSES IDENTICAL HARM TO THE GOVERNMENT'S PURPORTED INTEREST.

There is no question that the CHBDA, which requires Mr. Jones to either defy his faith or face criminal penalties[12], substantially burdens Mr. Jones's exercise of religion and therefore implicates the Free Exercise Clause of the First Amendment.[13] *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2021, 2022 (2017) ("[T]he Free Exercise Clause protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)). The

[11] Mr. Jones did in fact have a prior interaction with the Federal Facilities Police in which he arrived at the facility with six other Delmont Luddites in violation of the six person protestor limit of the CHBDA amendment. He was arrested and issued a $1,000 fine. Jones Aff. ¶ 10. In contrast, the MOMs, who were within fifty-five feet of the facility entrance in violation of the buffer zone requirement, were not arrested. Jones Aff. ¶ 12; Mathers Aff. ¶ 9.

[12] Section 42(c) of the CHBDA states that failure to comply with the Act "will result in punishment of up to one year in jail and/or a fine of up to $2,000." Therefore, without an exemption, Mr. Jones could face criminal penalties for his refusal to comply.

[13] Mr. Jones acknowledges that not all Luddite congregations prohibit cell phones. Aff. Jones, ¶ 5. However, the sectarian differences between Mr. Jones and other Luddites have no bearing on the fact that the CHBDA burdens Mr. Jones's exercise of religion because "the guarantee of the Free Exercise Clause is not limited to beliefs which are shared by all of the members of a religious sect." Holt v. Hobbs, 574 U.S. 353, 362 (2015) (internal quotations omitted); *see also* Emp't Div. v. Smith*,* 494 U.S. 872, 875 (1990) (acknowledging that the criminalization of a religiously required action substantially burdens the free exercise of religion).

CHDBA is not generally applicable because it provides an exemption to nearly one in three Americans for secular conduct, yet refuses to provide an exemption for religiously motivated conduct. *See Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542–43 (1993) [hereinafter *Lukumi*]. As a result, Mr. Jones's challenge must be evaluated under strict scrutiny. *Id.* at 531–32. Contrary to the Eighteenth Circuit's reasoning, this Court's precedents firmly establish that neither the rationality of the secular exemptions nor the presence of unexempted secular conduct can save a law riddled with exemptions, such as the CHBDA, from strict scrutiny. *See id.* at 537; *Sherbert v. Verner*, 374 U.S. 398, 401 (1963), *abrogated on other grounds by Emp't Div. v. Smith,* 494 U.S. 872 (1990). As a result, this Court must reverse the Eighteenth Circuit's finding that the CHBDA is generally applicable and grant relief to Mr. Jones.[14]

A. The CHBDA Is Not Generally Applicable Because It Refuses to Grant an Exemption for Religiously Motivated Conduct While Granting Secular Exemptions to Millions of Americans Who Pose Identical Risks to the Government's Interest.[15]

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[14] Mr. Jones is challenging the CHBDA as applied to him. As a result, Mr. Jones does not seek to invalidate the entire law, but simply seeks a narrow exemption to the portion of the CHBDA that requires him to carry a cell phone. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 322 (2010).

[15] Mr. Jones concedes that the law is neutral because there is no evidence in the record that the law was enacted with religious animus. *See Lukumi*, 508 U.S. at 534 (holding that a law is not neutral if it refers directly to a religious practice or is otherwise targeted towards religion). This does not, however, mean that the law is generally applicable. "Anti-religious motive is *sufficient* to trigger strict scrutiny, but it is not *necessary*." Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*, 95 Neb. L. Rev. 1, 8 (2016) (emphasis in original); *see also Lukumi*, 508 U.S. at 540 (invalidating a law that was not generally applicable, even though only two justices found religious animus to be present); *Wisconsin v. Yoder*, 406 U.S. 205, 236 (1972) (invalidating a law that interfered with the free exercise of religion, notwithstanding the absence of anti-religious motive); *Sherbert*, 374 at 410 (same); *In re Jenison*, 375 U.S. 14, 14 (1963) (per curium) (same); *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006) (same); *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 367 (3d Cir. 1999) (same); *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1172 (4th Cir. 1985) (same); *Quaring v. Peterson*, 728 F.2d 1121, 1128 (8th Cir. 1984) (same).

1. The Presumption of Validity in Employment Division v. Smith *Only Applies to Rules That Are Neutral and Generally Applicable.*

The Free Exercise Clause "does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability." *Smith*, 494 U.S. at 879. Thus, neutral and generally applicable laws are presumed valid, even where they burden the exercise of religion. *Id.* at 886 n.3. However, laws that are neither neutral nor generally applicable must satisfy strict scrutiny, which requires the regulation to be "narrowly tailored to advance [a compelling government interest]." *Lukumi*, 508 U.S. at 531–32.

A law is not generally applicable if it refuses to exempt religious conduct, but grants exemptions to analogous secular conduct. *Id.* at 542–43 ("The free exercise clause protect[s] religious observers against unequal treatment . . . and inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation." (internal quotations omitted)).[16] Secular conduct is "analogous" to religious conduct if it "endangers [the government's] interests in a similar or greater degree" as religiously motivated conduct. *Id.* at 543. "As a rule of thumb, the more exceptions to the prohibition, the less likely it will count as a generally applicable, non-discriminatory law." *Maryville Baptist Church v. Beshear*, 957 F.3d 610, 614 (6th Cir. 2020) (per curium).

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[16] *See also Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020) (stating that a law is not generally applicable where there are "exceptions for comparable secular activities"); *Parents for Privacy v. Barr,* 949 F.3d 1210, 1235 (9th Cir. 2020) ("A law is not generally applicable if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect." (internal quotations omitted)) *Cent. Rabbinical Cong. v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d 183, 197 (2d Cir. 2014) (noting that a law is not generally applicable if it "regulates religious conduct while failing to regulate secular conduct"); *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 209 (3d Cir. 2002) ("A law fails the general applicability requirement if it burdens a category of religiously motivated conduct but exempts or does not reach a substantial category of conduct that is not religiously motivated.").

2. The CHBDA Is Not Generally Applicable Because it Exempts Older Adults and Those with Certain Medical Conditions, but Refuses to Exempt Those with Religious Objections.

The CHBDA is not generally applicable because it grants exemptions to secular conduct that poses a greater threat to the government's interests than Mr. Jones's religiously motivated conduct. The government's clear interest in enacting the CHBDA is to launch an aggressive contact tracing program. *See* CHBDA § 42(a)(1) (noting that the purpose of the CHBDA is to "protect Americans . . . by letting people know that they may have been exposed to Hoof and Beak disease"); *see also* Stipulations ¶ 8 (noting that the purpose of the CHBDA is to "establish[] a contact tracing mandate"). In order for a contact tracing program be effective, the government must be able to establish and maintain contact with a substantial portion of the population to ensure there are no "holes" in the "web of transmission." *See* Dennis Thompson, *What Is 'Contact Tracing' and How Does It Work?*, WebMD (May 4, 2020), https://www.webmd.com/lung/news/20200504/what-is-contact-tracing-and-how-does-it-work#1. In this way, the government can ensure that all who may have been exposed to Hoof and Beak are notified so that they can take appropriate measures and thus halt the spread of the disease. *See id.* However, the government has exempted from participation in the contact tracing program adults over the age of sixty-five, *see* CHBDA § 42(b)(1)(B), and those with certain health issues, including Alzheimer's disease, Ischemic heart disease, and late-stage cancer, *see id.* § 42(b)(1)(C); *see also* Stipulations ¶ 9. As a result, the government has exempted approximately one-hundred million Americans—nearly one-third of the population—while refusing to exempt a small group of religious adherents.[17]

[17] *See Quick Facts*, U.S. Census Bureau (2020), https://www.census.gov/quickfacts/fact/table/US/PST045219 (noting that the current population of the United States is approximately 328 million people). There are approximately fifty million people over the age of sixty-five in the United States. Deidre McPhillips, *Aging in America*, U.S. News & World Rep. (Sept. 30, 2019), https://www.usnews.com/news/best-states/articles/2019-09-30/aging-in-america-

Collectively, these millions of exemptions substantially undermine the government's interest in aggressive contact tracing, much more so than Mr. Jones's religiously motivated conduct. Although it is true that "Hoof and Beak primarily affects children and young-to middle-aged adults," there is no evidence in the record that older adults are incapable of contracting the disease or passing it to others. R. at 1. Those with medical conditions—many of whom would fall into the primary risk group—are capable of contracting and transmitting Hoof and Beak disease. The government therefore has just as strong of an interest in contact tracing these individuals as anyone else. Thus, it is indisputable that exempting these individuals significantly undermines the government's interest in an aggressive contact tracing program. Because the government provides exemptions for secular conduct that pose substantially the same threat to the government's interest as Mr. Jones's religious conduct, the law is not generally applicable. *See Lukumi*, 508 U.S. at 543 (finding a law not generally applicable because it failed to provide an exemption for religiously motivated conduct, yet granted exemptions to "nonreligious conduct" that "endanger[ed] [state] interests in a similar or greater degree").

Respondent frames the government's interest in enacting the CHBDA as preventing deaths from Hoof and Beak disease. Under this framing, Respondent argues that the exemptions supplement, rather than undermine, the government's interest based on an assumption that Hoof

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in-5-charts. Additionally, there are approximately twenty-seven million people with cancer, *see Summary Health Statistics, National Health Interview Survey*, Ctrs. for Disease Control & Prevention (2018), https://ftp.cdc.gov/pub/Health_Statistics/NCHS/NHIS/SHS/2018_SHS_Table_A-3.pdf, over eighteen million people with Ischemic heart disease, *see Heart Disease Facts*, Ctrs. for Disease Control & Prevention (Sept. 8, 2020), https://www.cdc.gov/heartdisease/statistics_maps.htm, and over five million people with Alzheimer's disease, *see Alzheimer's Disease Statistics*, Alzheimer's News Today, https://alzheimersnewstoday.com/alzheimers-disease-statistics/ (last accessed Jan. 19, 2020). The total number of those eligible for an exemption is likely even higher than presented here, as the aforementioned statistics only reflect the categories of medical exemptions that the FCC has typically allowed, and does not include the additional exemptions the FCC has the discretion to allow.

and Beak may be particularly deadly for older adults and those with comorbidities. However, this is a dishonest and misleading phrasing of the government's interest. The CHBDA itself states that the purpose of the law is to "let[] people know that they may have been exposed to Hoof and Beak disease"—not to prevent death. CHBDA § 42(a)(1). To further this purpose, the government delegated management of the program to the FCC, a "governmental agency that regulates communications by telephone and SIM cards." *See* Stipulations ¶ 2. If the purpose of the law were to prevent death, management authority would have been delegated to an agency with health expertise, rather than an agency with expertise in technology. The true purpose of the CHBDA is made further evident by the provisions it contains, as well as those that it does not. Every provision in the CHBDA is aimed at ensuring timely and effective contact tracing. *See, e.g.,* CHBDA § 42(b) ("[F]ederal facilities located in each state will be used to distribute SIM cards containing contact tracing software."); *id.* (b)(1)(A) ("[T]he centers shall distribute a mobile phone containing the contact tracing SIM card."); *id.* (b)(1)(A)(i) ("[E]very person's name, address, birth date, social security number, and phone number if not receiving a phone from the facility, will be logged."). However, the CHBDA does not contain a single provision aimed at preventing death.[18] Had preventing death been the goal of the CHBDA, Congress could have passed a law requiring hospitals to maintain a steady level of supplies necessary to treat Hoof and Beak, supplying Americans with protective gear, or requiring protective measures on all federal property rather than just the distribution centers. The fact that the law focuses exclusively on contact tracing and entirely omits measures generally aimed at preventing deaths

[18] The only provision of the CHBDA that could arguably be aimed at preventing death is § 42(b)(2), which requires those visiting federal distribution centers to wear a mask and social distance. However, when viewed in context, it is clear that even this portion of the law is aimed at creating a safe environment at the federal distribution centers so that the contact tracing program can run effectively. If citizens were contracting Hoof and Beak in line prior to signing up for the contact tracing program or too afraid of transmission to go to the distribution centers, the contact tracing program would be ineffective.

is indicative of the law's true purpose. Thus, it is clear that the current exemptions undermine the purpose of the law to a much higher degree than Mr. Jones's requested exemption.

B. The Eighteenth Circuit Erred in Holding That a Law That Grants Secular Exemptions is Still Generally Applicable if the Exemptions Are "Logical" or the Mandate Does Not "Only" Burden Religiously Motivated Conduct.

In concluding that the CHBDA is generally applicable, the Eighteenth Circuit made two crucial errors of law, both of which are directly contradicted by this Court's precedent. First, the Eighteenth Circuit stated that the government can choose to regulate religious conduct while exempting analogous secular conduct so long as the exemptions are "logical". R. at 40. This is a clear error of law because this Court has continuously prohibited the government from valuing secular conduct over religious conduct, no matter how "logical" the reasons for doing so. *See Lukumi*, 508 U.S. at 537. Second, the Eighteenth Circuit stated that the CHBDA was generally applicable because it did not "*only* burden[] conduct motivated by religion," R. at 40 (emphasis added), despite the fact that this Court has frequently invalidated laws that burden secular conduct in addition to religious conduct. *See, e.g., Sherbert*, 374 U.S. at 401. These clear errors of law cannot stand.

1. This Court's Precedents Firmly Establish That the "Logic" of Secular Exemptions is Wholly Irrelevant to the Determination of Whether the Law Is Generally Applicable.

The Eighteenth Circuit made a clear error of law by considering the "logic" or rationality of the secular exemptions in its determination that the CHBDA is generally applicable. Providing exemptions to analogous secular conduct but not religious conduct, regardless of the reasonableness of the exemptions, "indicates that [the government] has made a value judgment that secular motivations for [engaging in a prohibited activity] are important enough . . . but that religious motivations are not." *City of Newark*, 170 F.3d at 336 (Alito, J.). This is precisely the

sort of value judgment that the First Amendment prohibits. *See Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2613 (2020) (Kavanaugh, J., dissenting from denial of application for injunctive relief) ("Unless the State provides a sufficient justification otherwise, it must place religious organizations in the favored or exempt category."); *see also* Laycock & Collis, *supra*, at 22–23 ("The constitutional right to free exercise of religion is a right to be treated like the most favored analogous secular conduct. It is not enough to treat a constitutional right like the least favored, most heavily regulated secular conduct."). Indeed, one of the primary reasons that this Court struck down the ordinance prohibiting animal sacrifice in *Church of the Lukumi Babalu Aye v. City of Hialeah* was because the government had impermissibly "devalue[d] religious reasons for killing by judging them to be of lesser import than nonreligious reasons." 508 U.S. at 537. It was not the illogic of the exemptions that prompted this Court to conclude that the ordinance in *Lukumi* was not generally applicable, but rather the mere presence of the exemptions and the value judgment that they inevitably reflected. *See id.* Accordingly, this Court rejected the government's arguments that the exemptions were permissible because they were "important," "obviously justified," and "[made] sense." *Id.* at 544 (noting that such "*ipse dixits* do not explain why religion alone must bear the burden of the ordinances, when many of these secular killings fall within the city's interest in preventing the cruel treatment of animals").

The irrelevance of the rationality of secular exemptions is further emphasized in *Employment Division v. Smith*, where this Court stated that a government that institutes a system of individualized exemptions "may not refuse to extend that system to cases of religious hardship" unless strict scrutiny is satisfied. 494 U.S. at 884. Systems of individualized exemptions are considered to be not generally applicable, and therefore subject to strict scrutiny, regardless of whether the system is logical or illogical. *See id.* Similarly, in *Sherbert v. Verner*,

this Court applied strict scrutiny to a law that provided unemployment benefits to those who failed to accept available work for "good cause," but refused to provide unemployment benefits to a woman who failed to accept available work due to her religious beliefs.[19] 374 U.S. at 403. It was wholly irrelevant to this Court that the "good cause" exemption was perfectly logical. *See id.* Just as the reasonableness of the secular exemptions did not save the laws at issue in *Sherbert* or *Smith* from strict scrutiny, the alleged logic of the CHBDA's exemptions cannot save it from strict scrutiny.

Permitting the Eighteenth Circuit's reasoning to stand would allow the government to eviscerate the Free Exercise clause and *Smith* by effectively ignoring the question of whether the law is generally applicable so long as the government can demonstrate that the secular exemptions are supported by some semblance of rationality. As a result, *Lukumi*'s holding that laws which are not generally applicable must withstand strict scrutiny would be dead letter law. 508 U.S. at 531–32. This decision cannot be allowed to stand, both as a matter of precedent and a matter of principle.

2. A Law Is Not Generally Applicable Where it Provides Exemptions to Some Secular, But Not Religious, Activities, Even If It Refuses Exemptions to Other Secular Activities.

The Eighteenth Circuit made yet another error of law when it stated that the CHBDA is permissible because it does not "*only* burden[] conduct motivated by religion." R. at 40 (emphasis added). This Court has made clear that the question is not "whether one or a few secular analogs *are* regulated," but rather "whether a *single* secular analog is *not* regulated." *Sisolak*, 140 S. Ct. at 2613 (Kavanaugh, J., dissenting from denial of application for injunctive

[19] *Smith* subsequently overturned the rule in *Sherbert* that all laws that burden religion must withstand strict scrutiny. *Smith*, 494 U.S. at 879. However, this Court expressly affirmed the application of strict scrutiny in *Sherbert*. *Id*. at 884. Despite the later abrogation of the rule applied in *Sherbert*, this Court's precedent confirms that the application of strict scrutiny was appropriate in *Sherbert*, notwithstanding the reasonableness of the "good cause" exemption.

relief) (emphasis added). Where the government has made the impermissible value judgment that analogous secular conduct is deserving of an exemption, but religious conduct is not, it cannot save itself from strict scrutiny by simply leaving *some* secular activity unexempted. *See id.*

This Court made this position clear in *Sherbert*, where it applied strict scrutiny despite the fact that the law did not "*only* burden[] conduct motivated by religion." R. at 40 (emphasis added). In *Sherbert*, this Court acknowledged that those with non-religious, personal reasons for limiting their employability were similarly burdened by the unemployment benefits scheme. *See* 374 U.S. at 401 n.4 (noting that "unavailability for work for some personal reasons not having to do with matters of conscience or religion has been held to be a basis of disqualification for [unemployment] benefits"). In concluding that strict scrutiny was the appropriate standard, this Court was not concerned with the fact that "a few secular analogs [were] regulated," but rather that some "secular analog[s] [were] not regulated". *Sisolak*, 140 S. Ct. at 2613 (Kavanaugh, J., dissenting from denial of application for injunctive relief). So too in this case, strict scrutiny is appropriate because a broad swath of analogous secular conduct is exempted, even though not *all* secular conduct is exempted.

This Court again confirmed the irrelevance of unexempted secular conduct in *Thomas v. Review Board of Indiana*. 450 U.S. 707, 718 (1981).[20] There, much like in *Sherbert*, this Court applied strict scrutiny to evaluate an unemployment benefits scheme that provided benefits for those who quit their job for "good cause," but not for those who quit their job for religious reasons. *Id.* at 711. It was irrelevant to this Court that those with non-religious, personal reasons for quitting were also burdened by the unemployment scheme. *Id.* at 712–13 (noting that, to

[20] Similar to *Sherbert*, *see supra* note 19, *Smith* ultimately overturned the rule applied in *Thomas* that burdens on religion must always be justified by strict scrutiny. *Smith*, 494 U.S. at 879. However, this Court nonetheless affirmed the application of strict scrutiny in *Thomas*. *Id.* at 884. Therefore, this Court's precedent confirms that the application of strict scrutiny was appropriate in *Thomas*, notwithstanding the presence of unexempted secular conduct.

qualify for state unemployment benefits, "voluntary termination must be job-related and objective in character"). Based on this line of precedent, it is no wonder that several lower courts have applied strict scrutiny to laws that provide only a singular exemption for secular conduct, thus leaving a host of other secular conduct burdened.[21] If this Court were to allow the Eighteenth Circuit's reasoning to stand, the government would receive a free pass to discriminate against religion so long as it chose at least one disfavored secular activity to similarly burden. Because this result is contrary to this Court's precedent, the Eighteenth Circuit's holding that the CHBDA is generally applicable must be overturned.

CONCLUSION

The judgment of the court of appeals should be affirmed in part and reversed in part, and the case should be remanded for further proceedings in order to issue injunctive relief for the Plaintiff.

Respectfully Submitted,

TEAM NO. 17

Counsel for Petitioners

[21] *See, e.g., Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004) (holding that a zoning ordinance that prohibited all non-retail businesses was not generally applicable because it provided a singular exemption for lodges and clubs, but refused to provide an exemption for religious assemblies); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1298 (10th Cir. 2004) (holding that state university violated the Free Exercise Clause where it refused to provide a policy exemption for a Mormon acting student who refused to say lines that were prohibited by her faith, but provided a policy exemption for a student who missed class); *City of Newark*, 170 F.3d at 364 (holding that a policy prohibiting police officers from wearing beards was not generally applicable because there was a singular exemption for officers with medical conditions, but not for officers whose religion requires them to grow a beard).

IN THE SUPREME COURT OF THE UNITED STATES

LEVI JONES,
Petitioner,
v.

CHRISTOPHER SMITHERS,
Respondent.

CERTIFICATE OF COMPLIANCE

We, team No. 17, counsel for Petitioner, hereby certify that the work product contained in all copies of the team's brief is in fact the work product of its members. Furthermore, we certify that the team has complied fully with our school's governing honor code and all the Rules of the Competition.

Team No. 17

TEAM NO. 17
Counsel for Petitioners