Case No. 20-CV-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 RESPONDENT

Team 24
Counsel for Respondent

QUESTION PRESENTED

I. Under the first amendment to the constitution, which allows for a reasonable time, place, and manner restrictions, is the Free Speech Clause violated when the government enacts a fifty-five-foot buffer zone excluding protests in numbers larger than six to prevent the spread of Hoof and Beak disease?

II. Under the Free Exercise Clause of the Constitution, does the CHBDA violate Petitioner's right to Free Exercise when it mandates individuals to carry a mobile phone to monitor the outbreak?

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The United States District Court for the District of Delmont delivered an opinion, granting in part Petitioner's motion for summary judgment and denying in part Petitioner's motion for summary judgement. R. at 20. The District Court also granted in part Respondent's motion for summary judgment and denied in part Respondent's motion for summary judgment. The United States Court of Appeals for the Eighteenth Circuit reversed the District Court's ruling in its entirety. R. at 41.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Eighteenth Circuit entered its final judgment. R. at 41. Petitioner filed a timely petition for writ of certiorari, which this Court granted. R. at 42. This Court will have jurisdiction under 28 U.S.C. § 1254 (2020).

STATUTES AND CONSTITUTIONAL PROVISIONS

Appendix A will include the following provisions: 42 U.S.C. § 2000bb-3(b) (1993) and U.S. Const. amend. I, and the Combat Hoof and Beak Disease Act (2020).

STATEMENT OF THE CASE

The Country is currently experiencing an unprecedented pandemic that has already claimed over 230,000 Americans and infected more than 70 million more. R. at 1. The novel Hoof and Beak disease, primarily spread person to person, predominantly affects children and young to middle-aged adults and has wreaked havoc on the world's economies. Id. In response, President Underwood established a task force in February 2020, of whom Respondent is part, whose purpose is to prevent, monitor, contain, and mitigate the spread of Hoof and Beak. R. at 5. On April 15, 2020, Congress enacted the Combat Hoof and Beak Disease Act (CHBDA). Id. The Act seeks to promote public health and safety by preventing the spread of Hoof and Beak disease by mandating contract tracing by distributing government provided SIM cards used in

mobile phones. R. at 2, 37. To combat the risk of Hoof and Beak disease, Congress makes the Religious Freedom and Restoration Act inapplicable to this Act. R. at 6. For those who do not have mobile phones, under CHBDA, the government will provide phones with the required SIM cards. R. at 6. Under CHBDA, the FCC is the lead agency for this effort.

Petitioner is the leader of the Delmont Church of Luddites. Petitioner and his congregation are opposed to the SIM card and mobile phone mandate as they believe it violates the tenants of their community orders. R. at 24. The Delmont Luddites do own or use mobile phones and, because of this, oppose the CHBDA act. R. at 4-5. The Church of Luddite in the neighboring state of Eastmont allows mobile phones. R. at 5.

In response to growing protests at federal distribution facilities, Congress added an emergency amendment stating "protestors are prohibited within 60 feet of a facility entrance, including public sidewalks, during operating hours . . . Groups of protestors are limited to no more than six persons." R. at 7. On May 1, 2020, Petitioner and six other Luddites protested at the Delmont Federal Facility. Id. During the day, Petitioner and the Luddites remained 75 feet from the entrance except when Petitioner would enter the buffer zone to speak with people in line at the facility. Id. Another group, named the Mothers for Mandates (MOMs), who advocate for the CHBDA mandates, set up a table with educational pamphlets fifty-five feet away from the facility entrance and did not approach persons in line. R. at 8. Neither group was blocking access to the facility entrance. At 4:00 pm, Petitioner and the Luddites were told to disperse as their group had seven people present, violating the mandate. R. at 8. Petitioner refused to comply with the officer's request and was arrested, fined $1,000, and spent four days in jail. Id. He returned on May 6 and was arrested once more, was fined $1,500, and spent five days in jail. Id.

Petitioner sued in Federal District Court, claiming his First Amendment rights to freedom of speech and freedom of expression were violated. R at 2. Both parties filed cross-motions for summary judgment, which produced this current action. R. at 3.

SUMMARY OF THE ARGUMENT

The CHBDA amendment is a reasonable time place and manner restriction. For the amendment to be a reasonable restriction, it must leave open ample alternative channels for communication of information and not burden speech any more than necessary. The Act does not burden more speech than is necessary. The amendment does not regulate speech in a way that places a burden on speech that does not serve the government's interest. The mandated buffer zones and in-person protest limits relate expressly to the government interest. The amendment does not burden more speech than is necessary to allow access to a facility or prevent intimidation. It does not restrict sidewalk counseling practices and maintains social distancing and mask requirements. The amendment does not entirely foreclose any means of communication. It does not prohibit the passing out of pamphlets or conversing with people in line as long protestors follow mask and social distancing mandates. The amendment does not prevent a message's communication from a normal conversational distance. It does not unnecessarily burden speech as it only enacts distancing of six while masked under CHBDA mandates.

This Court should reverse the District Court's grant of summary judgment in favor of Petitioner and grant the FCC's motion for summary judgment with respect to the free exercise issue. CBHDA mandates that "[e]ach person living in the United States shall participate in a mandatory program." CHBDA § 42(a). Furthermore, the Act requires all individuals to carry a mobile phone with a SIM card containing contact tracing software. The Act does allow exemptions for the elderly and people suffering from health-related issues. Neither the text nor the evidence surrounding the Act shows a religious motive. Instead, the evidence shows Congress passed the

CHBDA to protect Americans and their families by tracing the disease through mobile phones. This Court should find the Act neutral because the CHBDA's text and the surrounding evidence do not show an anti-religious motive.

Additionally, The District Court erred in finding that the CHBDA is not generally applicable. CHBDA does not treat religious groups differently, that there is a much lower health risk for senior citizens to spread the disease, and enactment of the Act would avoid the possibility of a greater spread. Specifically, the senior citizens are less mobile because of the changes in their physiological structure; therefore, they have a lowered degree of transmitting Hoof and Beak knowing that the disease is primarily spread person-to-person. Furthermore, the CHBDA does not selectively impose a burden on religious groups. The Court should consider that the CHBDA is granting some exemptions to protect public health.

ARGUMENT

I. The United States Court of Appeals for the eighteenth district erred in denying summary judgment to Respondent on the issue of free speech, as the amendment to the Combat Hoof and Beak Disease Act (CHBDA) is a permissible time, place, and manner restriction as it did not burden more speech than is necessary to achieve the government interest.

The Court should review the lower Court's decision de novo and accept all reasonable inferences in the light most favorable to the non-moving party. Gross v. Hale-Halsell Co., 554 F.3d 870, 875 (10th Cir. 2009). When reviewing cross-motions for summary judgement, the Court should determine "whether either of the parties deserves judgment as a matter of law on facts that are not disputed." Wightman v. Springfield Terminal Ry. Co., 100 F.3d 228, 230 (1st Cir. 1996).

The CHBDA amendment is a reasonable time, place, and manner restriction because it is narrowly tailored and leaves open ample alternative channels for communication of the information. For a law to leave open ample alternative channels for communication of

information, it must not burden speech any more than is necessary. McCullen v. Coakley, 573 U.S. 464 (2014). The law does not have to be the least restrictive measure. However, the government cannot regulate the speech in a way that places a burden on speech that does not serve the government interest, burdens more speech than is necessary to allow access to a facility or prevent intimidation, does not entirely foreclose any means of communication, and does not prevent the communication of a message from a normal conversational distance and does not unnecessarily burden speech. Id. at 488; Hill v. Colorado, 530 U.S. 703, 726 (2007); Schenck v. Pro-Choice Network Of W. New York, 519 U.S. 357 (1997); Madsen v. Women's Health Ctr., Inc., 512 U.S. 753 (1994). In this case, both lower courts found CHBDA to be content-neutral and the that Delmont Federal Facility is a public forum. (R. at 12, 22, 37). As content neutrality has been upheld in each lower Court, it will not address it here and instead focus on the question of narrow tailoring. Additionally, neither party disputes promoting public health and safety by preventing the spread of Hoof and Beak is a legitimate government interest.

Applying this rule, the Court must find the CHBDA amendment restriction valid as it leaves open alternative channels for communication. CHBDA does not burden more speech than is necessary, is not even the least restrictive measure, does not regulate speech in a manner outside the government interest while protecting against intimidation or access to the building, does not foreclose any means of communication, and does not prevent communication from a reasonable distance. McCullen, 573 U.S. at 494; Schenck, 519 U.S. at 377; Hill, 530 U.S. at 726; Madsen, 512 U.S. 770.

The burden does not have to be the least restrictive measure, but the government cannot regulate the speech that places a burden on speech that does not serve the government interest. McCullen, 573 U.S. at 494. In McCullen, a Commonwealth of Massachusetts statute created many

buffer zones around abortion-providing facilities that excluded all persons, save for patients and workers, thirty-five feet from entrances from reproductive healthcare facilities. Id. at 472. The regulations were in response to pro-life protestors blocking the entrances to the building or intimidating the patients when they entered or left. Id. Sidewalk counselors, who peacefully engage with clinic workers and patients, found the buffer zones "considerably hampered" their counseling efforts, evidenced by fewer pamphlets passed out and fewer conversations had. Id. at 475. The Court held that such buffer zones burdened more speech than was necessary to serve the government. Id. at 490. The Court held that the sidewalk counselors are not protestors, but "seek to inform . . . through caring, personal, consensual conversations," and since their activity did not rise to the level of harassment, it was outside the government interests of the statute. Id. at 489 Since the sidewalk counselors were not blocking persons from entering or intimidating them, the buffer zones excluding them placed a burden of speech that did not serve the government interest. Id. at 492.

The law does not entirely foreclose any means of communication. Hill, 530 U.S. at 726. In Hill, a Colorado statute prohibited anyone within the vicinity of an abortion clinic,

to "knowingly approach" within eight feet of another person, without that person's consent, "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person …." Id. at 708. Anti-abortion sidewalk counselors filed suit for violation of their first amendment rights, alleging the eight-foot buffer zone burdened their ability to communicate with abortion clinic patients and employees. Id. The Court held the eight-foot buffer zone was narrowly tailored to the government purpose of protecting the privacy of patients and employees, because even though the eight-foot buffer did make it more difficult

for the counselors to communicate, the buffer zone did not make communication impossible as it "leaves ample room to communicate a message through speech." Id. at 730.

The law cannot prevent a message's communication from a normal conversational distance and does not unnecessarily burden speech. Schenck, 519 U.S. at 377. In Schenck, in response to growing large scale protests that often turned confrontational, a federal district court enjoined protestors from

> (b) demonstrating within fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of such facilities, or within fifteen feet of any person or vehicle seeking access to or leaving such facilities, except that the form of demonstrating known as sidewalk counseling by no more than two persons as specified in paragraph (c) shall be allowed.

Id. at 366. The anti-abortion groups claimed this fifteen-foot buffer zone was an impermissible time, place, and manner restriction. The Court held the fifteen-foot buffer zone burdened more speech than is necessary "to serve the relevant government interests." Id. at 378. The buffer zones "prevented the protestors from communicating a message from a normal conversational distance" by having them stay back 15 feet. Id. at 367. This burdened protestors because, as Justice Rehnquist put it, "[T]his means that protestors who wish to walk alongside an individual . . . would be pushed into the street." Id. at 378. The uncertainty of how to properly obey the injunction, combined with the availability of other options to separate hostile protestors from clinic patients and staff. Id.

The law cannot burden more speech than is necessary to allow access to the facility or prevent intimidation. Madsen, 512 U.S. at 770. In Madsen, in response to the threats of anti-abortion protestors to picket and demonstrate in front of an abortion clinic, a Florida State court issued an injunction which, among other things, prohibited petitioners "At all times on all days, in an area within [300] feet of the Clinic, from physically approaching any person seeking the services of the Clinic unless such person indicates a desire to communicate by approaching or by inquiring

of the [petitioners]....” Id. at 760. The anti-abortion protestors filed suit alleging the injunction overly burdened their right to freedom of speech under the First Amendment. Id. at 757. While several of the buffer zones and noise restrictions were constitutional, the Court held that the 300-foot no approach buffer zone was not. Id. at 774. The Court stated, “Absent evidence that the protesters' speech is independently prescriptible . . . or is so infused with violence as to be indistinguishable from a threat of physical harm” the buffer zone burdened more speech than necessary to allow access to the facility or prevent intimidation. Id.

McCullen is different from the CHBDA amendment. 573 U.S. 464. The statute in McCullen sets up an exclusion zone of 35 feet, preventing anyone, save for clinic employees, patients, and those walking by, from standing in front of an entrance to an abortion facility. Id. at 464. This restriction means anyone, be it a peaceful sidewalk counselor or protestors trying to block the doors, would violate this Act. The CHBDA amendment is not an exclusion zone in the way the zone in McCullen is, as the amendment states, "Protestors are prohibited within sixty feet of the facility entrance . . . during operating hours." R. at 7. The amendment does not exclude everyone from entering the buffer zone, only protestors, unlike the McCullen statute, which excludes anyone. The CHBDA amendment allows the practice of sidewalk counselors. The record indicates the Petitioner and Luddites on both May 1st and May 6th spoke with people in the line while masked and obeying social distancing without being told to leave or being arrested. R. at 8-9. If this was like the case in McCullen, anyone entering the buffer zone, which was not there to acquire a phone or SIM card, would have been arrested or told to leave under penalty. The government's interests in the CHBDA amendment are in line with the restrictions enacted. In McCullen, the state tried to prevent clashes between abortion opponents and advocates. 573 U.S. 464 at 470. The Court held that exclusion zones' policy did not match the government's interest

because excluding all speech excluded peaceful sidewalk counselors who were not confrontational with abortion opponents. Id. at 489. The legitimate interest in the CHBDA act is the promotion of public health and safety by preventing the spread of Hoof and Beak disease. R. at 37. The buffer zone applies to protestors, not individuals behaving as sidewalk counselors because large gatherings present a risk of person-to-person transmission to the public, especially those following the CHBDA law mandate. Since the facts and policy motivations of the CHBDA amendment are dissimilar to McCullen, the Court should find the CHBDA amendment constitutional.

Hill's statute is similar to the CHBDA amendment, as it does not foreclose a specific communication. 530 U.S. at 708. In Hill, "no speaker is silenced" and "no message is prohibited" as long as they do not voice their opinions in a place restricted to their groups. Id. at 734. The CHBDA amendment does not limit any message, as both courts have agreed the Act is content-neutral; it only limits the gatherings' size and where they can gather to prevent the spread of a deadly disease that has already taken the lives of 200,000 Americans. The Luddites were still able to behave as sidewalk counselors would, and the MOMS were able to distribute their literature as long as they were wearing masks and socially distancing. R. at 8. Our position is exact; the reason Petitioner violated the Act was not for incursions into the buffer zone. He was arrested on May 1st because he violated the limit on persons allowed to assemble. R. at 7. This arrest is consistent with the purposes of the CHBDA. Since these cases are similar, the Court should apply Hill's rule and find the CHBDA amendment constitutional.

The statute in Schenck burdens more speech than is necessary, unlike the CHBDA amendment. 519 U.S. 357. In Schenck, the floating buffer zones made conversations with people leaving the facility difficult because fifteen feet is a challenging distance to maneuver around depending on where the person leaving is located. Id. at 378. This restriction is not like the one in

the CHBDA act. The CHBDA act mandates persons who come to federal facilities must wear a mask and maintain social distancing of six feet both inside and outside the facility. R. at 6. Six feet is much closer than 15 feet and is more conducive to a polite conversation even while masked. It is also within the distance for someone to reach out and pass someone literature if they so choose. The Statute in Schenck also limits the number of sidewalk counselors where CHBDA does not. 519 U.S. at 366. Limiting counselors seems arbitrary in the overall scheme of the law. In contrast, even the limit of 6 protestors, never mind counselors, are based on scientific guidelines enacted to slow the spread of Hoof and Beak disease. Because the CHBDA amendment does not prevent a conversation from an average distance from occurring and its in-person protest limit is not arbitrary like the case of Schenck, the Court should not apply the latter's precedent in this case.

Madsen's injunction is not similar to the amendment of the CHBDA act. 512 U.S. 753. Madsen's 300-foot buffer zone was decided in response to protests occurring outside abortion clinics that resulted in physical confrontations. Id. at 366. This restriction is not similar to the CHBDA amendment, whose enactment was spurred on by growing protests increasing the risk of Hoof and Beak transmission, clearly within the bounds of the legitimate government interest. R. at 6. Conversely, Madsen struck down the 300-foot buffer zone because it excluded sidewalk counselors, who seek to calmly engage in conversation instead of provoking physical confrontation or shouting. 512 U.S. at 774. Excluding peaceful counselors was not what the Madsen injunction was trying to prevent, but instead was trying to prevent violent confrontations that had previously occurred. Id. at 757. The CHBDA amendment's restrictions are directly related to the Act's goal of promoting public health and safety by preventing the spread of Hoof and Beak disease. R. at 37. The facts in Madsen are not similar to the current controversy and should not apply to this case. 512 U.S. at 774.

Petitioners may claim the CHBDA amendment applies not only to protestors outside of the buffer zone, but also to any protestors inside the zone. The statute in McCullen excludes "any person" from standing or entering the buffer zone, and the court held the language burdened the Petitioner's speech. 573 U.S. at 487. CHBDA does not have this flaw. The argument falls short because the CHBDA amendment limits "all protestors are prohibited" to prevent the spread of Hoof and Beak. R. at 7, 37. However, McCullen compares the behaviors of protestors and sidewalk counselors in relation to the statute's purpose, which was to "address clashes between abortion protestors and advocates of abortion rights." 573 U.S. at 470, 472. When Petitioner ventured into the buffer zone to engaging in one-on-one conversation to calmly explain his opposition, while respecting the mask and social distancing guideline, he is more like the sidewalk counselor in McCullen for the purposes of CHBDA. Id. at 473. It is when Petitioner returns to the gathering of Luddites that he resembles a protestor under the intentions of the act, which is why an attack from this angle would fail.

The CHBDA amendment aligns directly with the government interest of the CHBDA act, that being the promoting public health and safety by preventing the spread of Hoof and Beak disease. R. at 37. To pass intermediate scrutiny, the Act must be narrowly tailored and leaves open ample alternative channels to communicate the information. The Act passes that scrutiny as the amendment's restrictions are for the specific purpose of minimizing the risk of person-to-person transmission of Hoof and Beak disease. The buffer zone excludes only groups of protestors, not individual counselors, as evidenced by Petitioner and the Luddites' ability to go into the buffer zone and act in a manner akin to sidewalk counselors. R. at 25. When the Luddite group gathered in seven people, they violated the amendment's mandate. R. at 26. Because the CHBDA act does

not burden more speech than is necessary to achieve the government purpose, the Court should hold this a valid time, place, and manner restriction.

II. The United States Court of Appeals for the eighteenth circuit did not err in denying summary judgment to Mr. Smithers on the free exercise issue because CHBDA is a neutral law of general applicability.

The Court should review the lower Court's decision de novo and accept all reasonable inferences in the light most favorable to the non-moving party. Gross v. Hale-Halsell Co., 554 F.3d 870, 875 (10th Cir. 2009). When reviewing cross-motions for summary judgement, the Court should determine "whether either of the parties deserves judgment as a matter of law on facts that are not disputed." Wightman v. Springfield Terminal Ry. Co., 100 F.3d 228, 230 (1st Cir. 1996).

Under 42 U.S. Code § 2000bb-3(b), Congress can render the Religious Freedom Restoration Act (RFRA) inapplicable. R. at 6. Here, CHDBA § 42(f)(8) asserts RFRA is inapplicable to this Act. R. at 6. It is clear and undisputed that RFRA does not apply in this case.

The Free Exercise Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" U.S. Const. amend. I. This protection allows an individual "the right to believe and profess whatever religious doctrine one desires." Emp't Div., Dept. of Human Res. of Oregon. v. Smith, 494 U.S. 872, 876 (1990). This Court has held the freedom of belief is absolute. Braunfeld v. Brown, 366 U.S. 599, 603 (1961).

However, the freedom to act in accordance with one's religious beliefs "is not totally free from legislative restrictions." Id. At 603. If individuals were allowed this freedom, it would invariably permit "every citizen to become a law unto himself." 6. Furthermore, our government could not function if required to satisfy every citizen's religious needs and desires. Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 452 (1988). This Court has held an

individual has a duty to "comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" Smith, 494 U.S. at 879 (1990) (quoting United States v. Lee, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)).

A. CHBDA is a valid neutral law based on its facial text and the surrounding evidence.

When determining whether a law is neutral, the Court will begin with the text of the statute. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 546 (1993). However, this Court has determined that "facial neutrality is not determinative" and will look to other available evidence. Id. The Court should look to surrounding evidence such as "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decision making body." Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 138 U.S. 1719, 1731 (2018) (quoting Church of Lukumi Babalu Aye. v. City of Hialeah, 508 U.S. 520, 540 (1993)).

A law will be neutral if there is no evidence demonstrating a religious motive. Lukumi, 508 U.S. at 543. In Lukumi, this Court looked to whether there was evidence the ordinances were enacted to target a religious group, specifically the Santeria religion. Id. at 540. The city of Hialeah enacted ordinances that criminally prohibited any person or organization from engaging in animal sacrifices. Id. at 528. In response to the ordinances, the Church of Lukumi Babalu filed an action alleging a Free Exercise Clause violation. Id. Beginning with the text, the Court found the ordinances contained terms with religious origins, such as "ritual" and "sacrifice." Id. The Court found these terms also to have a secular meaning; however, selecting these terms still had weight when determining if the ordinances were neutral. Id. In continuing their analysis, the

Court looked to direct and circumstantial evidence surrounding the ordinances. Id. The record and taped experts of the council meetings revealed much animosity towards the Santeria religion. Id. at 541. Council members made statements on how the Santeria religion was against everything this country stands for and the Bible itself. Id. City Officials also called the Santeria religion a sin, containing demonic characteristics. Id. The Court held the ordinances were not neutral. Id. The Court reasoned the ordinances' selected terms, and the surrounding evidence showed a religious motive. Id.

The CHBDA is distinguishable from the ordinances passed in Lukumi. Unlike the ordinances' text in Lukumi, containing terms of religious origins, the CHBDA has no such religious terms. R. at 6. Both CHBDA and the ordinances in Lukumi have the same purpose of protecting citizens' health; however, their motives are distinguishable. R. at 6. In Lukumi, the ordinances' legislative history and records were laden with anti-Santeria remarks, revealing their ulterior motive. Here, no officials made any statements containing anti-Luddite remarks, nor was there anything in the legislative history to suggest an anti-Luddite motive. R. at 6. The CHBDA was enacted for the sole purpose of stopping the Hoof and Beak outbreak. R. at 6. This Court should uphold the CHBDA to be a neutral law because it is not religiously motivated.

B. CHBDA is generally applicable because no facts suggest that the order is treating individuals from different religious groups; differently, exemptions are granted only if the group has a much lower health risk of spreading the disease, and the Act is an attempt to avoid the possibility of greater spread of the disease.

The law is generally applicable if it does not restrict certain activities, fails to prohibit activities that "endanger the same interests to a similar or greater degree," First Baptist Church v. Kelly, 455 F. Supp. 3d 1078, 1089 (D. Kan. 2020) (The State issued an executive order in response to the COVID-19 virus, where some religious gathering for more than ten congregants is prohibited, while individuals conducting or performing a religious service may exceed ten

people.), "substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect," underinclusivity can be determined by comparing the prohibited religious conduct with other analogous secular conduct, Cross Culture Christian Ctr. v. Newsom, 445 F. Supp. 3d 758, 770 (E.D. Cal. 2020) (In order to combat the spread of coronavirus, the State issued a stay at home order for all businesses and governmental agencies, prohibiting all non-essential gatherings.), and if the government does not "selective[ly] . . . imposes burdens only on conduct motivated by religious belief," Lighthouse Fellowship Church v. Northam, 458 F. Supp. 3d 418, 428 (E.D. Va. 2020) (The State suspended all public and private in-person gatherings of more than ten individuals in response to the coronavirus but permitted businesses that offered professional services to remain open.).

The Court considers whether the health risk posed through different methods of killing animals when determining whether the State ordinance is underinclusive. In Lukumi, a religious faith required animals' sacrifice for rituals, but the State law prohibited such acts and enacted ordinances that conflict with the State law. 508 U.S. at 524, 526. The Court noted a similar health risk is posed by improper disposal of animal carcasses whether the purpose of killing was for religious or non-religious reasons. Id. at 545-5. Therefore, an ordinance that fails to prohibit conducts that poses a similar or greater degree of harm to the religious exercise would be held underinclusive and not generally applicable. Id. at 544.

The CHBDA is dissimilar to the State's order in Kelly, such that the Act is not restricting some activities while permitting others that would endanger the same interests. Unlike the State order in Kelly, there was no explanation of why some religious gathering was prohibited, while others were permitted, 455 F. Supp. 3d at 1089, no facts suggest that the CHBDA treats individuals from different religious groups differently. See also Falwell v. Miller, 203 F. Supp.

2d 624, 631 (W.D. Va. 2002) (The provision is deemed not generally applicable when members of a Church or religious group were denied benefits because of their religious status). But see Agudath Isr. of Am. v. Cuomo, 979 F.3d 177, 181 (2d Cir. 2020) (An order extended to both secular and religious conduct is known as generally applicable). For instance, although individuals from the Delmont Church of Luddites did not own or use mobile phones, the Church of Luddite in the neighboring State of Eastmont does allow mobile phones. R. at 4-5. Therefore, not using mobile phones is a single identified case for the Church of Luddite, while the CHBDA is mandated to "[e]ach person living in the United States." R. at 5. The CHBDA mandate does not favor one group over another because it would be just as dangerous for Hoof and Beak's spread no matter which religious group that contagious individual is from. Hence, the Court should find that CHBDA is generally applicable to all.

The Petitioner is likely to argue that the State grants exemptions of CHBDA for non-religious reasons such as for senior citizens over the age of sixty-five and health exemption on a case-by-case basis, but fails to consider religious means; therefore, the law is underinclusive. R. at 6. Specifically, the Petitioner will point out that if the same individual applied for an exemption to the CHBDA based as an individual over the age of sixty-five would be granted but would be denied if applied for an exemption based on religious means. The dissimilar granting of exemptions solely based on one's age and not religious background shows that CHBDA targets one's religious status. Furthermore, the Petitioner will argue that it is like the Church in Lukumi, where the failure to prohibit nonreligious conduct would endanger the interest of protecting society to a similar degree because the result from transmission of the Hoof and Beak Disease from a senior citizen would be the same as an individual from Delmont Church of Luddite. 508 U.S. at 544. In both cases, granting exemptions to non-religious conduct but not for religious

reasons would not decrease others' health risks. Therefore, the Petitioner will argue that CHBDA is not generally applicable.

There is a significant flaw in the Petitioner's argument, such that it fails to recognize a senior citizen's potential health risk or people applying for health exemptions versus a normal Church member. The case is factually distinct from the law in Lukumi, where there is a similar health risk posed by improper disposal of animal carcasses whether the method is through a religious means of killing or not. In our case, knowing that the disease is primarily spread person-to-person, R. at 1, senior citizens and people with underlying health conditions will have a much lower health risk for spreading the disease because they are physically less mobile due to the physiological changes of their body. For instance, many of these individuals chose to stay in a closed community such as home-care or long-term care facilities; therefore, the risk of them contacting another person with Hoof and Beak will be much lower. In contrast, no fact suggested that the Church of Luddites is more like a closed community where individuals are physically less mobile. Even though individuals might not use technology to communicate with others, there are ample methods such as meeting someone in-person. It is worth noting that the State only grants health exemptions on a case-by-case basis, which means that the State will evaluate one's potential health risk to society before granting the exemption. Moreover, for public policy reasons, the State may distinguish a certain class of activity to maintain community needs and protect public health. Legacy Church, Inc. v. Kunkel, 455 F. Supp. 3d 1100, 1151-52 (D.N.M. 2020). Therefore, certain exemptions are granted because those individuals' conduct will pose a much lesser degree of a health risk than a person applies through a religious means. Hence, the CHBDA is not underinclusive, and it is generally applicable.

The CHBDA is like the government order in Northam, which does not selectively impose a burden on conduct motivated by religious belief. Like the government order in Northam, exceptions are "for specific reasons [to] avoid harms equal to or greater than the spread of [the] pandemic," 458 F. Supp. 3d at 432, exemptions granted for senior citizens is to avoid the harm of a potentially greater spread of the Hoof and Beak. Many senior citizens might not be familiar with using mobile phones. Hence, to avoid the possibility of spreading the disease to senior citizens by having another person teach them how to use the mobile phone, the exemption is granted to protect senior citizens' health and safety. As such, the Court should find that CHBDA did not selectively impose a burden on conducts motivated by religious belief, and the Act is generally applicable.

The Petitioner will likely argue that the Court should apply strict scrutiny because the claim involves free speech and free exercise, making it a hybrid claim. This hybrid claim theory comes from Smith, where this Court observed previous free exercise claims triggered strict scrutiny when they involved another constitutional violation. 494 U.S. at 882. This has been viewed as dicta rather than legal precedent. Knight v. Connecticut Dep't of Pub. Health, F.3d 156, 167 (2nd Cir. 2001). The requirements of law being neutral and of general applicability would be swallowed if this Court were to adopt this hybrid argument. Lukumi, 508 U.S. at 567. (Souter, J. concurring). There is no legal reason to treat a free exercise claim differently just because another constitutional right is involved. The Second and Sixth Circuit agreed, holding they do "not see how a state regulation would violate the [F]ree Exercise Clause if it implicates other constitutional rights but would not violate the Free Exercise Clause if it did not implicate other constitutional rights." Leebaert v. Harrington, 332 F.3d 134, 143 (2nd Cir. 2003) (quoting Kissinger v. Bd. of Trs. of the Ohio State Univ., Coll. of Veterinary Med., 5 F.3d 177, 180 (6th

Cir. 1991). Essentially then, the standard of review would depend on the number of rights rather than the right itself. Id. The standard of review should not change just because another right is added to the claim. Instead, a free exercise claim should only require the law to be neutral and of general applicability. "We are a cosmopolitan nation made up of people of almost every conceivable religious preference." Smith, 494 U.S. at 888 (quoting Braunfeld v. Brown, 366 U.S. at 606). This Court recognized our government could not function if it had to satisfy every person's religious preference. Id. Most of our criminal laws would be unconstitutional if the standard of the review were to change. Id. Thus, the Court should not adopt Petitioner's argument.

The Court should find CHBDA to be a valid neutral of general applicability and dismiss Petitioner's argument for the Court to adopt a different standard of review.

CONCLUSION

For the foregoing reasons, Respondent requests this Court to uphold the District Court's grant of summary judgment for the free speech issue and reverse the denial with respect to the free exercise issue.

/s/ Team 24
Counsel for Respondent
January 31, 2021

CERTIFICATE OF SERVICE

We hereby certify that the work product contained in all copies of the team's brief is in fact the work product of the team members. We further certify the team has complied fully with their school's governing honor code. We acknowledge that acknowledgment that the team has complied with all Rules of the Competition.

/s/ Team 24
Counsel for Respondent
January 31, 2021

APPENDIX A: STATUTORY AND CONSTITUTIONAL PROVISIONS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

Under 42, U.S. Code § 2000bb-3:

(b) Rule of Construction—Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

Combat Hoof and Beak Disease Act

CHBDA § 42(a). Each person living in the United States shall participate in a mandatory contact tracing program.

CHBDA § 42(a)(1). The purpose of the contact tracing program is to protect Americans, their 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 of Hoof and Beak.

CHBDA § 42(b) In establishing the contact tracing program federal facilities located in each state will be used to distribute SIM cards containing contact tracing software.

CHBDA § 42(b)(1) The SIM cards shall be installed in mobile phones.

CHBDA § 42(b)(1)(A). If citizens do not have a mobile phone the centers shall distribute a mobile phone containing the contact tracing SIM card.

CHBDA § 42(b)(1)(B). Senior citizens over sixty-five years of age are exempt from this law.

CHBDA § 42(b)(1)(C) Health exemptions may be granted by the officials at each local federal facility on a case-by-case basis.

CHBDA § 42(b)(1)(D) No other type of exemption is permitted.

CHBDA § 42(b)(1)(E) Appeal authority is delegated to the FCC and must be filed within sixty days of receiving a denial.

CHBDA § 42(f)(8) In an effort to allow for quick and effective implementation of the mandate, states pursuant to 42 U.S. Code § 2000bb–3, the Religious Freedom and Restoration Act is inapplicable to this act.

CHBDA § 42(b)(1)(A)(i). Upon receiving a 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)(2). At the federal facilities, at a minimum, the following must be observed and enforced: (1) all persons must wear a mask; and (2) all persons shall observe social distancing and maintain a distance of six feet apart from one another, inside and outside of the building.

CHBDA § 42(c). 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.