No. 20-9422

IN THE SUPREME COURT OF THE UNITED STATES

Levi Jones,

Petitioner,

v.

Christopher Smithers

Respondent.
Team 18

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTEENTH CIRCUIT

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Eighteenth Circuit erred in concluding that a sixty-foot no protest buffer zone was not narrowly tailored to the governmental interest in public safety and preventing the spread of Hoof and Beak.

II. Whether the United States Court of Appeals for the Eighteenth Circuit erred in finding that mandated contract tracing through the use of mobile phones and government-issued SIM cards is neutral and generally applicable, despite religious objections to technology.

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STATEMENT OF JURISDICTION

This is an appeal from the order entered by the United States Court of Appeals for the Eighteenth Circuit on November 16, 2020. This Court has jurisdiction under 28 U.S.C. §1254.

STANDARD OF REVIEW

This is an appeal from the United States Court of Appeals for the Eighteenth Circuit. The two issues of freedom of speech and the free exercise of religion are subject to de novo standard of review. Therefore, this Court should apply a de novo standard of review in analyzing the issues presented.

STATEMENT OF THE CASE

Procedural History

Plaintiff-Petitioner, Levi Jones, brought suit against Defendant-Respondent, Christopher Smithers alleging that his First Amendment rights to freedom of speech and free exercise of religion were infringed through the implementation of the Combat Hoof and Beak Disease Act ("the Act").[1] On October 5, 2020, both parties to the suit filed cross motions for summary judgment. The District Court denied the plaintiff-petitioner's motion for summary judgment on the first issue regarding freedom of speech and granted the plaintiff-petitioner's motion for summary judgment for the second issue regarding the free exercise of religion on October 30, 2020.[2]

The United States Court of Appeals for the Eighteenth Circuit reversed the District Court's rulings and remanded with instructions to grant the plaintiff-petitioner's motion for summary

[1] R. at 3
[2] R. at 20.

judgment for issue one regarding freedom of speech and to deny the plaintiff-petitioner's motion for summary judgment for issue two regarding the free exercise of religion. R. at 41. Plaintiff-petitioner appeals the decision handed down by the United States Court of Appeals for the Eighteenth Circuit.[3]

Facts

The novel Hoof and Beak Disease was first identified in December 2019. Since then, 70 million cases and 230 thousand deaths have been confirmed in the United States.[4] On February 1, 2020 President Felicia Underwood created the Hoof and Beak Task Force, and on April 15, 2020 the Act was passed by Congress.[5] This act mandated contact tracing through the use of government-provided and distributed SIM cards for use in mobile phones.[6] The government provides mobile phones to citizens who do not have one already, along with the SIM card, according to the Act. Plaintiff-petitioner, Levi Jones, is a member and leader of the Luddite church.[7] The Luddites are skeptical of all technology.[8] Jones opposed the law and refused to comply with it. In protest, Jones organized demonstrations to be held outside of the SIM card distribution centers. The law was then amended to prohibit protests of more than six people and protests that occur within sixty feet of the distribution center's entrances. Jones was arrested on May 1, 2020 and May 6, 2020 for violating the law's protest guidelines.[9]

[3] R. at 42.
[4] R. at 1.
[5] R. at 1.
[6] R. at 1.
[7] R. at 2.
[8] R. at 4.
[9] R. at 2.

This Court is being asked to reverse the Court of Appeals order for issue one regarding freedom of speech and affirm the order for issue two regarding the free exercise of religion.

SUMMARY OF THE ARGUMENT

The First Amendment's Free Speech Clause allows the federal government to establish and enforce time, place, and manner restrictions on protests. When analyzing these kinds of restrictions on speech, the court must determine whether the restriction is content neutral. Content based laws are those that "target speech based on its communicative content," and these types of laws are "presumptively unconstitutional."[10] In this case, the government did not apply the law selectively based on the content of certain groups' speech, rather, they applied and enforced the restrictions equally amongst the various groups that were gathered at the SIM card and mobile phone distribution centers.

The Free Exercise Clause states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."[11] If a law infringes on a person's ability to freely practice their religion, then the government must show that the law is neutral and generally applicable. If the law is not found to be neutral or generally applicable, then the law must overcome strict scrutiny standards. To overcome strict scrutiny, the government has to prove that they passed the law to further a compelling governmental interest and that the law is narrowly tailored by using the least restrictive means.[12] Here, the law is neutral and generally applicable because the law was not created to infringe on anyone's right to freely practice their religion. The law does not facially discriminate against anyone based on

[10] Reed v. Town of Gilbert, 576 U.S. 155, (2016).
[11] U.S. CONST., amend. I.
[12] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520.

their religion and is not a religiously motivated law. It is generally applicable because the law is enforced against everyone equally, with the exceptions of two exemptions based on age and medical condition.

Even if the court finds that the Act is not neutral or generally applicable, that does not mean the Act is unconstitutional. If the Act is found to not be neutral or generally applicable, then the court must apply strict scrutiny, asking whether or not there is a compelling government interest in establishing and enacting the Act. Congress' compelling government interest is in controlling the spread and rates of infection of the global pandemic. The government has a compelling interest in maintaining the public's health and safety, and this Act furthers that interest by using minimally intrusive means.

ARGUMENT

A. The United States Court of Appeals for the Eighteenth Circuit erred in concluding that a sixty-foot buffer zone was not narrowly tailored to the governmental interest in public safety and preventing the spread of Hoof and Beak.

The decision made by the United States Court of Appeals for the Eighteenth Circuit regarding a valid time, place, and manner should be reversed. The first main issue is whether the Act is in violation of the Free Speech Clause of the First Amendment by prohibiting protesting within sixty feet of the federal facility's entrance and limiting groups of six persons during operating hours. The Free Speech Clause provides that "Congress shall make no law… abridging the freedom of speech…."[13] Although this guarantee prohibits many governmental restraints dealing with free speech, there are instances in which the government may impose reasonable time, place, and manner restrictions.[14]

The District court correctly upheld the amendment, prohibiting protests within sixty feet of the SIM card distribution center's entrance and limiting protests outside of the zone to six individuals as it is not in violation of the Free Speech Clause of the First Amendment. "[The court] has often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." [15]

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[13] U.S. Const. amend. I.
[14] *See, e.g.*, *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 320 (2002). *See also , e.g.*, *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984).
[15] Id.

The court must first determine if a law is content neutral.[16] Content based laws are those that "target speech based on its communicative content," and these types of laws are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve a compelling state interest." [17] Government regulation of expressive activity is content neutral so long as it is "justified without reference to the content of the regulated speech." [18] "Laws that are content neutral are [subjected] to lesser scrutiny." The principal inquiry in determining content neutrality… is whether the government has adopted a regulation of speech because of disagreement with the message it conveys."[19] The general question the court must look to answer to determine content neutrality is: "whether the government has adopted a regulation of speech because of disagreement with the message it conveys."[20]

The Act is content neutral because it does not regulate speech. Congress only limits the number of people permitted to gather in the area immediately surrounding the federal facility that gives out the SIM cards.[21] The legislation also requires that the protestors be masked and appropriately distanced six feet apart.[22] These requirements are not in place to restrict speech, but they are put in place to keep the community safe by decreasing the chances of contracting and spreading the Hoof and Beak disease. The purpose of the buffer zones in place allows every citizen the ability to safely come and go from the facility to receive their government issued SIM cards. This legislation keeps the citizens safe from the possibility of large groups of protestors

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[16] *See Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015).
[17] *Reed*, 576 U.S. 155.
[18] *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).
[19] *Hill v. Colo.*, 530 U.S. 703, 711 (2000). *Reed*, 576 U.S. 155.
[20] *Hill*, 530 U.S. at 721.
[21] R. at 2.
[22] R. at 6.

and prevents these large groups from being able to spread the disease to the citizens waiting in line to obtain their SIM cards.

Protestors from the MOMs group were not arrested because they were not interfering with citizens trying to obtain their SIM cards.[23] Unlike the Luddites who were moving in and out of the buffer zone and approaching citizens without keeping the proper social distancing requirements, the MOMs were following all guidelines and were not interfering with citizens who were there only to obtain a SIM card.[24] Thus, the arrest of the Luddites was justifiable not because of their speech content but because they were breaking the law by moving inside the buffer zones and approaching those people in line.

The next question that the government must examine in order to determine the constitutionality of the Act is whether the Act is narrowly tailored to serve a significant government interest. The government has a legitimate interest in protecting the public and promoting public health and safety by preventing the spread of the Hoof and Beak disease. The intent of the Act is not aimed towards infringing an individual's First Amendment right to free speech or even to single out a specific group of people, rather, the intent is to "protect Americans, their families, and their communities by: letting people know they may have been exposed to Hoof and Beak and should monitor their health for signs and symptoms of Hoof and Beak disease."[25]

In order to determine if this statute is "narrowly tailored" the court must look to whether the regulations "burden speech more than necessary."[26] "To meet the requirement of narrow

[23] R. at 9.
[24] R. at 9.
[25] CHBDA §42(a)(1).
[26] *Hill*, 530 U.S. at 729.

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."[27] In *Hill v. Colorado*, the Supreme Court upheld a "floating buffer zone" of 100 feet around the healthcare facility which prohibited persons to "knowingly approach" within eight feet of another person, without that person's consent to hand out pamphlets."[28] The Act is similar to the buffer zone and approach guideline set out in *Hill* because the Act requires a fixed buffer zone of sixty feet and requires that all individuals wear a mask and remain at least six feet apart from any other individual. While it is true these two regulations are different because the Act is a fixed buffer zone and the one in *Hill* was a floating buffer zone, both have the same effect on protestors and citizens in the area. Though the underlying reasons for these mandates differ, it is still true that the main reasons surrounding these two mandates is to protect the public health and safety. The reasoning in *Hill* was to ensure physical health and safety of persons voluntarily there seeking abortions, and the Act's main reason is to protect the physical health and safety of citizens who are required to go and receive a SIM card. The Act was established and specifically amended to ensure the safest possible environment for individuals required to go and receive a SIM card or cellphone. This was originally intended by requiring "all persons must wear a mask," and specifically intended when Congress amendment the Act to require that "protestors are prohibited within sixty feet of the facility entrance, including public sidewalks, during operating hours" and "limited to no more than six persons."[29] This legislation is consistent with being narrowly tailored to the Government's substantial interest in protecting the public health and safety of Americans from the spread of the Hoof and Beak disease.

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[27] *McCullen v. Coakley*, 573 U.S. 464, 495 (2014).
[28] *Hill*, 530 U.S. 703.
[29] R. at 6.

Lastly, the government must show that the regulation leaves open "ample alternatives" for speech. "The First Amendment protects the right of every citizen to reach the minds of willing listeners and to do so there must be opportunity to win their attention."[30] The Free Speech Clause of the First Amendment permits the federal government to prohibit protestors within sixty feet of the federal facility entrance and limit groups of protestors to six persons during operating hours. In the case before the court today, it is obvious that even while following the guidelines set forth under the Act, the protesters are still able to reach their targeted audience. The sixty-foot buffer zone, the requirement to wear a mask, and the limit on the number of individuals allowed to protest in a group do not prevent the protesters from being able to share their message with the individuals who are just there to receive the SIM cards, but it just requires them to abide by the Act in a manner that is the proper distance that is safe and prevents the spread of the Hoof and Beak disease.

B. The United States Court of Appeals for the Eighteenth Circuit correctly ruled that mandated contract tracing through the use of mobile phones and government-issued SIM cards is neutral and generally applicable, despite religious objections to technology.

The decision made by the United States Court of Appeals for the Eighteenth Circuit regarding the neutrality and general applicability of the Act should be affirmed. The federal government did not violate Mr. Jones' First Amendment right to freely exercise his religion by requiring Mr. Jones to carry a mobile phone with a government issued SIM card because the Act is not only a law that is neutral and of general application but is also justified by a compelling

[30] Id. at 728.

governmental interest. 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. . . ."[31] However, the right to freely exercise one's religion "does not relieve an individual of the obligation 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).'"[32]

A valid and neutral law of general applicability must be upheld if it is rationally related to a legitimate governmental purpose.[33] In contrast, laws that are not neutral or are not generally applicable are subject to strict scrutiny.[34] Under strict scrutiny, laws "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest."[35] The Supreme Court has noted that the tests for neutrality and general applicability are interrelated, and "failure to satisfy one requirement is likely indication that the other has not been satisfied."[36]

1. *The Act is neutral because its object is not to infringe upon or restrict practices because of their religious motivation.*

The Act does not infringe upon or restrict Mr. Jones' First Amendment right to freely express his own religious belief because the Act is neutral in that it was not created with the purpose of undermining a certain religion and does not facially discriminate against any

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[31] U.S. CONST., amend. I.
[32] *Emp't Div. v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982) (Stevens, J., concurring in the judgment)).
[33] *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075–76, 1084 (9th Cir. 2015).
[34] Id. at 1076.
[35] *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).
[36] *Lukumi*, 508 U.S. at 531, 113 S.Ct. 2217.

individual because of religious motivation. A law is not neutral if its object is to infringe upon or restrict practices because of their religious motivation.[37]

The Supreme Court has stated, in "determining the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face."[38] In determining whether a law discriminates on its face, the court must look at the plain text and take the text as it is. "A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context."[39] The Act does not refer to any religious practice, conduct, belief or motivation on its face; therefore, the Act is facially neutral. The Act issued by Congress is a validly enacted law and one that applies to every individual in the United States except for senior citizens over the age of sixty-five or other individuals who have opted to apply for an exemption due to health-related concerns.

However, facial neutrality is not determinative.[40] Courts have recognized that state action that "targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality."[41] The Free Exercise Clause protects against government hostility, which is masked, as well as overt.[42] Courts "must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders."[43]

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[37] *Stormans*, 794 F.3d at 1076 (citing *Lukumi*, 508 U.S. at 533, 113 S.Ct. 2217).
[38] *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).
[39] *Lukumi*, 508 U.S. at 533, 113 S.Ct. 2217.
[40] Id.
[41] Id.
[42] Id.
[43] *Walz v. Tax Comm'n*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring).

Even if a law or enforcement action based on the law is facially neutral, it is not in fact neutral if it operates as a "covert suppression of particular religious beliefs."[44] In determining whether a law covertly suppresses beliefs, a court may consider "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."[45] The mandate was aimed at the current public health crisis, and there is no factual support for the proposition that the mandate specifically targeted the Luddites; nor does anything else in the legislative history suggest a discriminatory intent or motive.[46] Therefore, the mandate is considered to be neutral.

In *Lukumi*, the city passed several ordinances that prohibited ritualistic animal sacrifices. *Lukumi* challenged the ordinances, claiming they violated the First Amendment's protection of the free exercise of religion. Typically, a neutral and generally applicable law does not need to be justified by a compelling governmental interest even if it has the incidental effect of burdening a particular religious practice.[47] The ordinances in question fail to satisfy both of these requirements. The ordinances in *Lukumi* use the words "sacrifice" and "ritual" in describing prohibited conduct, words that clearly have strong religious connotations. However, even if a secular meaning is given to these terms, the ordinances are still invalid because they seek to suppress a central element of the Santeria worship services. The City states that the purpose of the ordinances is to prevent cruelty to animals. However, when taken together, the ordinances have an objective, completely separate from this legitimate concern, of completely suppressing a

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[44] *Lukumi*, 508 U.S. at 534, 113 S.Ct. 2217 (quoting *Bowen v. Roy*, 476 U.S. 693, 703, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986)).
[45] Id. at 543, 113 S.Ct. 2217.
[46] R. at 39.
[47] *Emp't Div. v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)

central religious tenet of Santeria. There is no overriding compelling interest asserted by the state, and thus the ordinances are not neutral.

Here, the Act does not mention any religion, nor does it use words with strong religious connotations. The Act simply requires individuals under the age of sixty-five or those not exempted for other health reasons to carry a mobile phone with a government-issued SIM card in order for the government to keep track of the spread of the deadly Hoof and Beak virus through a Global Positioning System (GPS) monitor. The Act does not refer to any religious practice, conduct, belief or motivation on its face. Therefore, the Act is facially neutral. However, the analysis of whether the Act is neutral does not end there. In determining whether the Act covertly suppresses a religious belief, the court should consider the specific series of events leading to the enactment of the Act. The end of 2019 the world was hit with a pandemic from a virus that primarily targets children and young to middle-aged adults. Countries all over the globe have been in lock down, economies ruined, and hundreds of thousands of lives lost.[48]

Knowing what is at stake, the government acted quick with mask mandates and social distancing protocols. Congress acted quickly in a time where tracking the spread of the virus is not just important, but critical, to the protection and safety of the general public as well as to the public's health. We live in a modern time where a large majority of people carry mobile phones, the government decided the quickest and best way to track the spread of the virus was to enact the Act that requires individuals under sixty-five to carry a mobile phone with a government-issued SIM card that will track the GPS coordinates. In enacting this law, the government had no

[48] R. at 1.

intention or reason to implement this plan of action with the intent of depriving individuals of their First Amendment protection of religious free exercise.

Because the Act does not refer to any religious practice, conduct, belief, or motivation on its face, then the Act is facially neutral. However, one must analyze the Act more to make sure that there is no covert suppression of religious beliefs. Taking into account the specific series of events revolving around the Hoof and Beak Disease, the government did not enact the Act with the intent to deprive Mr. Jones of his First Amendment protection of free exercise, rather, the government did so with the intention of keeping the public's health and safety at a top priority. The Act is therefore neutral.

2. The Act is generally applicable because it is not substantially underinclusive.

The Act does not infringe upon or restrict Mr. Jones' First Amendment protection to freely express his own religious belief because the Act is generally applicable in that it applies to everyone with only two exceptions that are both directly related to the main reason and intention of enacting the Act. The exceptions are for people over the age of sixty-five and for individuals that claim for other valid health reasons they should be exempt.[49] The reason people over the age of sixty-five are exempt is directly related to the main reason for enacting the Act. The Hoof and Beak disease mostly affects and targets young to middle-aged individuals. People are also given an option to apply for an exemption related to an individual's health. The Act is generally applicable because it does not impose a burden on conduct motivated strictly by religious belief.

[49] R. at 2.

"The general applicability requirement prohibits the government from 'in a selective manner impos[ing] burdens only on conduct motivated by religious belief.'"[50] "It 'protect[s] religious observers against unequal treatment, and inequality [that] 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.'"[51] "While '[a]ll laws are selective to some extent, ... categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice.'"[52] "A law is therefore not generally applicable if it is substantially underinclusive such that it regulates religious conduct while failing to regulate secular conduct that is at least as harmful to the legitimate government interests purportedly justifying it."[53]

A law or state action based on a law is not generally applicable if it "impose[s] burdens only on conduct motivated by religious belief" in a "selective manner."[54] Petitioner argues that because the mandate only allows people to apply for an exemption from having a mobile phone with the government-issued SIM card if they have an objection due to health concerns, then the mandate is not generally applicable. Petitioner argues that the Luddites cannot apply for an exemption because their objection is religious in nature, and the burden to carry the SIM card and mobile phone does in fact affect conduct only motivated by religious belief because the FCC allows nonreligious-motivated exemptions. However, "statutory exclusions undermine the

[50] *Cent. Rabbinical Cong. of U.S. & Canada v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d 183, 196 (2d Cir. 2014) (quoting Lukumi, 508 U.S. at 543, 113 S.Ct. 2217).
[51] Id. at 196-97 (quoting Lukumi, 508 U.S. at 542-43, 113 S.Ct. 2217).
[52] Id. at 197 (quoting Lukumi, 508 U.S. at 542, 113 S.Ct. 2217).
[53] Id. at 197 (citing Lukumi, 508 U.S. at 535-38, 113 S.Ct. 2217).
[54] *Lukumi*, 508 U.S. at 543, 113 S.Ct. 2217.

general applicability of a statute only in a facial challenge to the statute,"[55] and Petitioners have not raised a facial challenge to the mandate here.

Here, the Act allows for two possible exemptions. The first exemption is for people over the age of sixty-five.[56] This exemption is paramount to the reason the Act was enacted in the first place. The Act was enacted because of a virus that targets children and young to middle aged adults. People over the age of sixty-five are not as susceptible to the virus. However, they can still contract and spread the virus. Therefore, this exemption not only coincides with the portion of the general population that is least susceptible to the virus but exempting them also decreases the number of individuals that would be required to go out in public and pick up a SIM card or mobile phone. Exempting this group of individuals decreases the number of people meeting at designated areas as well as the likelihood of them spreading the virus.

The second exemption is for any individual who claims they should be exempt for specific health reasons. According to the Act, each of these claims would be analyzed on a case-to-case basis. Allowing there to be an exemption for specific health reasons is also associated with the purpose and reason behind enacting the Act. If an individual maintains an underlying health condition that increases the likelihood of not only contracting the virus but the severity of it as well, then that individual should not be required to risk exposing themselves in public to retrieve their SIM card. These individuals can remain home and isolated so that they can

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[55] *Cent. Rabbinical Cong. of U.S. & Canada v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d (2d Cir. 2014) (citing Lukumi, 508 U.S. at 543–45, 113 S.Ct. 2217; Stormans, 794 F.3d at 1079–81)

[56] R. at 2.

properly follow the social distancing protocols; in return, this also prevents the individual from spreading the virus, and it possibly saves their life and the lives of others.

In *Smith*, the Supreme Court explained that, "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason."[57] Congress did not refuse to extend an exemption due to religious hardship because the compelling reason was in the best interest of the public's health and safety.

Here, the Act does not infringe upon or restrict Mr. Jones' First Amendment protection to freely express his own religious belief because the Act is generally applicable in that it applies to everyone with only two exceptions that are both directly related to the main reason and intention of enacting the Act. The exception of individuals over the age of sixty-five is important in lowering the number of individuals that are required to gather to receive a SIM card. The second exemption is to be monitored by the government on a case-to-case basis that is entirely related to existing health concerns. Therefore, the Act is generally applicable to all individuals, including the Petitioner in this case. Under Smith, if a law that is not "neutral and generally applicable" burdens a religious practice, it must be narrowly tailored to achieve a compelling government interest.[58] Therefore, if the mandate is ruled to not be generally applicable, then the government must prove the mandate was narrowly tailored to achieve a compelling government interest.

3. *Even if the Act is not neutral or generally applicable, using SIM cards to conduct contact tracing during a global pandemic qualifies as a compelling governmental interest.*

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[57] *Smith*, 494 U.S. at 884, 110 S.Ct. 1595.
[58] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).

The decision made by the United States Court of Appeals for the Eighteenth Circuit regarding the Free Exercise issue should be affirmed. If neutral and generally applicable, laws challenged as burdening the right to freely exercise religion are presumed valid and subject to rational basis review; otherwise, such laws are subject to strict scrutiny.[59] To overcome strict scrutiny, the government has to prove that they passed the law to further a compelling governmental interest and that the law is narrowly tailored by using the least restrictive means[60]

Congress demonstrated a compelling governmental interest in reducing the spread of the Hoof and Beak disease by mandating the use of SIM card contact tracing technology. Ensuring and protecting public health and safety is a compelling government interest that the Constitution has entrusted to the "politically accountable officials."[61] According to *Turner Broadcasting Systems v. FCC*, the government must "show that the regulation will in fact alleviate [the] harms in a direct and material way," in order to establish a compelling governmental interest.[62] The government must also "establish a compelling and specific justification for burdening these claimants."[63] The government can establish a compelling interest and justification for enforcing the mandate against the Luddite church. The Hoof and Beak pandemic has affected over 70 million Americans and has caused over 230,000 deaths.[64] It primarily affects children and young to middle-aged adults.[65] The government has a sincere and compelling interest in trying to

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[59] See *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990); see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) ("A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.").
[60] *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 113 S. Ct. 2217 (1993)
[61] *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020)
[62] *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 114 S. Ct. 2445 (1994)
[63] *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013)
[64] R. at 1.
[65] R. at 1.

minimize the spread, rate of infections, and deaths related to this disease. This disease affects all Americans in the specified age range, meaning that it directly and substantially affects a portion of the Luddite church's population. By mandating the use of the SIM cards to conduct contact tracing measures, the government is able to see the patterns and rates of spreading of the Hoof and Beak disease. The ultimate goal of these efforts is to reduce the infection rates of Americans. The Luddites would benefit from this goal just as all other Americans would.

According to *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, "the government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program."[66] By allowing religious exemptions to the mandate, the government would not be able to identify patterns and rates of spread of the disease in a portion of citizens. It could be more difficult to locate the sources of large outbreaks and handle it accordingly. Additionally, permitting one religious group to get exemptions, many other religious groups could apply for exemptions and undermine the efficacy of the program entirely. This would not only undermine the efficacy of the program, but it would put more individuals at risk of contracting and spreading the virus at a faster rate than if certain preventative measures could be made with the knowledge gained by the Act.

If the Act is found to not be neutral or generally applicable, then strict scrutiny must be applied. In applying strict scrutiny, the Act must further a compelling governmental interest. Here, Congress enacted and amended the Act with the intention of creating a program designed to aid in a form of intelligence gathering that would help mitigate the effects of a rapidly

[66] *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006)

advancing global pandemic. The United States Court of Appeals for the Eighteenth Circuit should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should reverse the United States Court of Appeals for the Eighteenth Circuit's decision with respect to the free speech issue and affirm with respect to the free exercise issue.

CERTIFICATE OF SERVICE

All work product contained in this brief is solely the work product of the members of team 18. Our team has fully and completely complied with our school's honor code. Our team has complied the all of the rules of this competition.

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Team # 18