August 10, 2023

IN THE SUPREME COURT OF THE UNITED STATES

No. 2023-2024

The State of Olympus, Petitioner

v.

Mindy Vo, Respondent

On Writ of Certiorari to the Supreme Court of the State of Olympus.

ORDER OF THE COURT ON SUBMISSION

IT IS ORDERED that counsel appear before the Supreme Court to present oral argument on the following questions:

1. Whether the United States Constitution guarantees a right of privacy that includes a right to use contraception, including whether *Griswold v. Connecticut* and *Eisenstadt v. Baird* should be revisited?
2. Whether Olympus's "REAP WHAT YOU SOW Act" as applied to Respondent violates the Free Exercise Clause of the First Amendment to the United States Constitution, including whether *Employment Division, Department of Human Resources of Oregon v. Smith* should be revisited?

IN THE SUPREME COURT OF THE STATE OF OLYMPUS

No. 01-76322

THE STATE OF OLYMPUS,
Appellant

v.

MINDY VO,
Appellee

Appeal from the Olympus 13th Circuit Court of Appeals

Before VAISHALEE CHAUDHARY, Chief Justice, and ALEECE HANSON, VARUN IYER, BARRY KLEIN, MARCO ROMERO, FAIZ SURANI, and HOPE TURNER, Justices.

OPINION
VAISHALEE CHAUDHARY, Chief Justice, with whom Justices ALEECE HANSON, VARUN IYER, BARRY KLEIN, FAIZ SURANI, and HOPE TURNER join, delivered the OPINION OF THE COURT:

I

Ms. Mindy Vo, Appellee, was convicted of two charges of violating Olympus's newly enacted "Reducing Endemic Afflictions & Poverty While Halting Adultery To Yield Olympus's Unparalleled State Of Wholesomeness Act" (The REAP WHAT YOU SOW Act or RWYSA), §1984(a), Olympus Statutes (2022). The Olympus 13th Circuit Court of Appeals overturned Appellee's convictions on the grounds that The REAP WHAT YOU SOW ACT violated Ms. Vo's right to privacy and right to free exercise of religion under the United States Constitution. The State of Olympus appeals that decision. We review all questions of law *de novo.*

All parties have stipulated to the following facts. There are no questions of material fact and no procedural questions at issue in this case. Further, all parties have stipulated that Ms. Vo's religious beliefs are sincerely held. In addition, both sides stipulate that there is no viable claim under state law that the RWYSA violates the Olympus Constitution or any Olympus state law. Finally, both sides agree that neither the federal Religious Freedom Restoration Act (RFRA), Title X of the Public Health Service Act, nor any other federal statute apply to the facts of this case. Any arguments regarding such claims are not preserved and are not before us. We examine the certified issues in turn. For the reasons below, we affirm the judgment of the Olympus Court of Appeals.

II

Facts

On June 29, 2022, the State of Olympus enacted the "Reducing Endemic Afflictions & Poverty While Halting Adultery To Yield Olympus's Unparalleled State Of Wholesomeness Act" (The

REAP WHAT YOU SOW Act or RWYSA), §1984(a), Olympus Statutes (2022). The REAP WHAT YOU SOW Act:

- Criminalizes the use, sale, prescription, distribution, and/or possession with the intent to distribute of all methods of temporary birth control except for male and female condoms, classifying any violation as a Class A misdemeanor.
- Establishes criminal penalties for each violation of the law, including a mandatory fine of not less than $500 and not more than $10,000, possible loss of professional licenses associated with the criminal violation, and/or up to one year in prison.
- Bans new implantation of birth control devices as of the effective date of the statute but allows the use and possession of existing implanted devices only as long as they remain medically effective.

The RWYSA included exceptions for persons who cannot use condoms for medical reasons or other physical reasons. The birth control that can be obtained under this exception can only be obtained with a prescription from a specially state-licensed physician and from a public, state-run hospital. Private pharmacies and hospitals are specifically forbidden to provide birth control other than condoms. Only physicians can provide instructions on how to use non-condom birth control.

Supporters of the law stressed several state interests or objectives. These included:

- Promoting morality, including, but not limited to, reducing adultery and sexual intercourse between partners who are not married.
- Promoting the health of women and men alike.
- Encouraging people to take responsibility for their actions.
- Promoting a "culture of life."
- Saving public money otherwise spent on health care costs associated with treating sexually transmitted infections (STIs).

The RWYSA does not ban all birth control. In enacting the RWYSA, Olympus became the first state since the 1960s to ban most temporary methods of birth control. Total bans have been introduced to state legislatures in ten states, while five states have introduced less expansive laws.[1] Five of the proposed total bans would be in the form of amendments to state constitutions.

Mindy Vo, a resident of Olympus, owns and operates a pharmacy. In this capacity, she distributes birth control and advises customers about how to use birth control. Ms. Vo, who is married, has been pregnant in the past. The first two pregnancies ended in miscarriages. During the third, Ms. Vo developed preeclampsia and underwent an emergency cesarian. Unfortunately, the baby did not survive due to loss of oxygen. Ms. Vo does not qualify for any exceptions under the RWYSA.

Ms. Vo is a practicing member of the Church of Balance (COB). The COB, a minority religion, espouses the belief that the Earth's natural resources are finite. More specifically, they believe that God provided the earth with all it needs to survive, but only if humans respect that balance. To that

[1] 2 of these 15 states where bans on contraception are being considered would not allow for voluntary sterilization except in cases of medical emergency.

end, the COB instructs its members not to engage in activity that threatens the Earth's ecology. Specifically, members of the COB are taught to recycle, avoid unnecessary use of fossil fuels, use renewable energy sources where possible, and to have no more than two children per family. COB doctrine specifically teaches that members, as stewards of the planet, have a responsibility to use birth control to ensure that they do not contribute to overpopulation. In addition, COB members, as part of their faith, are encouraged to help others protect the natural balance, including helping others to procure and use birth control. The COB is also opposed to pregnancy out of wedlock and abortion, which is legal in Olympus, believing that both are at odds with the natural balance and order created by God. Abstinence and use of birth control are the only methods of preventing overpopulation acceptable to COB members.

Ms. Vo was taught these principles. They make up the core of her devoutly held religious beliefs, and they help to guide her spiritual direction as well as that of many other COB members. These sincerely held religious beliefs compelled her to bring this challenge.

Ms. Vo's doctor, Coby Menard, has warned her that if she becomes pregnant again, her life could be at risk. He also advised her that sterilization would not be appropriate for medical reasons. For these reasons, and for the aforementioned religious reasons, Ms. Vo uses temporary birth control. Dr. Menard recommended a doctor, Dr. Jessica Zatarain, in a neighboring state where birth control is legal. On July 7, 2022, Ms. Vo traveled to Dr. Zatarain's office and obtained birth control pills for her personal use. The birth control she obtained is forbidden by the RWYSA. In addition, Ms. Vo visited an out of state pharmacy wholesaler and purchased a substantial quantity of birth control pills to be distributed at her pharmacy in Olympus City.

Ms. Vo and her minister, Reverend Alfie Sasaki, who went along on the trip for moral support. Sasaki streamed their travels live, including when they obtained birth control, on his website "The Dude Abides." Millions followed their trip. These followers included the popular blogger Action Jackson, You Tube influencers Kamra Jackson and Nichole Athanitis, Instagram activist Celeste Sanchez, Twitter thought leaders Olivia Guidry and Sophia Cefolia, LinkedIn posters Alphonso Gentry and Trey Mongo, and Tik Tok stars Maylynn Velasquez and Rebecca Bombard.

On July 13, 2022, back in Olympus City, Ms. Vo live streamed herself ingesting one birth control pill and then selling birth control pills to several customers in her pharmacy. The customers did not qualify for any exceptions under the RWYSA. She was arrested the same day by Olympus State Police officers. Ms. Vo was charged with use of prohibited birth control and with distribution of prohibited birth control, both in violation of the RWYSA. At trial, Ms. Vo moved to dismiss the charges, arguing the RWYSA was unconstitutional. William DeNolf, the State Attorney General, and a candidate for governor in 2024, took the unusual step of prosecuting the case himself. Judge D.R. Fair, rejected that argument. Ms. Vo pleaded not guilty but was convicted of both charges. Judge Fair then imposed the mandatory minimum sentence of a $500 fine for each charge (totaling $1,000). Ms. Vo appealed to the Olympus 13th Circuit Court of Appeals, which overturned her convictions on the grounds that the RWYSA violated Ms. Vo's rights to privacy and to free exercise of religion guaranteed by the United States Constitution. Olympus appeals.

A

The History of Birth Control

Men and woman have long tried to control when and if they have children. These efforts, popularly known as birth control, date back centuries and have spanned the globe without regard for border or culture. The earliest recorded history documenting the use of birth control dates to Crete and Egypt around the year 3000 BCE. These societies developed the forerunner of what has come to be known as a condom. There is evidence of the use of spermicides in Egypt around 1850 BCE. In addition, there is evidence that women in Mesopotamia, Greece, and Rome employed forms of birth control ranging from the use of plants, honey, lint, and breastfeeding. At least two texts written in India in the 2nd and 3rd centuries included methods aimed at preventing pregnancy. A 10th century Persian medical text included a discussion of 20 known methods of birth control. During the medieval ages, the Roman Catholic Church labeled birth control efforts immoral. Yet, women and men continued to employ a variety of forms of birth control. Condoms, which were popularized in Europe during the Renaissance and were originally developed to protect against disease, became a common instrument to prevent pregnancy starting in the 1600s. Diaphragms were developed in Europe in 1842, and condoms were introduced to America in mid-1800s. Early condoms were initially comprised of a variety of materials that pre-dated the development of condoms made of vulcanized rubber. Rubber condoms first came to the United States in the 1860s. In addition, beginning in 1619, African women who were enslaved in the American colonies developed approaches to birth control that drew on medical practices of their home lands. These methods were passed down to succeeding generations of African-American women.

Prior to the 1840s, birth control was legal in all U.S. states. This status was more due to the lack of any prohibitions rather than any affirmative statement of a right to practice birth control. This situation changed in the mid-19th century when the majority of state legislatures enacted laws that banned or placed strong limits on the sale and use of contraceptives.[2] At the federal level, Congress followed this trend in 1873 when it passed the Comstock Act, which banned the use of the United States mail to distribute contraceptives or information pertaining to birth control.[3] In 1888, Congress went further and amended the Comstock Act to ban abortion. By 1965, twenty-six states forbade unmarried women to practice birth control. The main motivation for bans on birth control and abortion appears to be a combination of concerns for morality, safety, and population decline.[4]

The movement toward legalized contraception began in the early 20th century when Margaret Sanger, who coined the term "birth control" in 1914, opened the nation's first birth control clinic.[5]

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[2] The strictest of these laws were enacted in New England. In fact, it was a Connecticut law passed in the 1880s that was challenged and struck down in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

[3] The law specifically banned mailing "every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose."

[4] In 1800 the average white woman in America gave birth to 7-8 children. That figure fell to 3-3.5 children by the late 1800s. This decline was driven by an increase in contraceptive use as well as an increase in abortions. Estimates are that between 1830 and 1860 1 in 5 White pregnancies ended in an abortion. This number dropped after Congress and many states forbade abortions in 1888. No statistics are available for women of other races.

[5] This coincided with an order during World War I by the Navy that sailors use condoms. This order was prompted by an increase in sailors contracting sexually transmitted diseases from prostitutes. When soldiers and sailors returned

For this act she was arrested, convicted of causing a public nuisance, and sent to jail for 30 days. Upon her release, Sanger not only re-opened her clinic, she also began a magazine dedicated to educating the public about birth control. In 1918, Sanger's conviction was reversed by the New York Court of Appeals. That court found that women have a right to practice birth control because to deny them that right would force them to have more children than they might wish. In 1926, twenty-four states and Puerto Rico had obscenity laws that criminalized disseminating "contraceptive knowledge." Sanger continued her efforts to educate women about birth control, and in 1942 she helped found Planned Parenthood. Sanger worked to support the development of new birth control methods, including the advent of birth control pills, which the Federal Drug Administration eventually approved in 1960. That development, along with several legal victories, ushered in a new era of birth control.[6]

B

Modern Birth Control

Birth control use has become ubiquitous. One need only visit a drug store, search on-line, or consult popular culture.[7] According to the National Center for Health Statistics (Center), 98% of sexually active women have used birth control at some point, and between 2015 and 2017, 65% of women of reproductive age used birth control. The rate of birth control use tends to rise with age, but not necessarily with education. Non-Hispanic white women report using birth control at a higher rate (67%) than Hispanic women (64%) or non-Hispanic black women (59.9%).

The Center reports that in 2018 in the United States there were 72,663,695 sexually active women in between the ages of 15 and 49. 47,444,037 (65%) used some form of birth control, while 25,219,658 (35%) did not. Of the 47,444,037 women using birth control, 28% were women who were sterilized. An additional 8% were women who relied on the sterilization of their partners. The remaining 64% were women who used some manner of temporary birth control.[8] Of all birth control devices, the male condom, if used correctly, is the most effective in protecting against sexually transmitted infections (STIs) (up to 98% effective). Preliminary evidence suggests that female condoms, if used correctly, are as effective as male condoms in preventing transmission of STIs, but more study is needed. Oral contraceptives and sterilization provide no protection against STIs.

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home, they sought to acquire condoms, and soon they were sold at many drug stores as a source of protection against sexually transmitted diseases.

[6] Additional judicial decisions that paved the way for the promotion/legalization of birth control include *United States v. One Package*, 86 F.2d 737 (2d Cir. 1936) which struck down the Comstock Act's ban on doctors using the mail to prescribe birth control for their patients; *Griswold v Connecticut*, 381 U.S. 479 (1965), which struck down a state ban on the use of and dissemination of birth control by/to married persons; and *Eisenstadt v. Baird*, 405 U.S. 438 (1972**),** which held that a state ban on the use of birth control by unmarried persons was unconstitutional.

[7] The sitcom *Seinfeld*, the book *The Word According to Garp*, and the lyrics of Rod Stewart's "Every Picture Tells a Story" are just three examples that come to mind.

[8] This 64% is comprised as follows: women who use the pill (21%), women who rely on male condoms (13%), women who use long-acting reversible contraceptives (IUDs) (13%), women who receive contraceptive injections (9%), and women who rely on other methods (8%).

The ubiquitous nature of birth control is reflected by two additional facts. First, subject to certain faith and moral exceptions, federal law requires insurance plans offered as part of the Affordable Care Act to cover birth control for people who can become pregnant.[9] Second, Medicaid covers prescription contraceptives.[10] These facts are in contrast to federal laws that forbid the use of federal money to fund abortion. That said, the United States Constitution contains no explicit statement noting a fundamental right to birth control.

C

STI Cases Rates in the United States

Cases of STIs are on the rise in the United States.[11] According to the Center for Disease Control (CDC), STIs are "at an all-time high . . . among both females and males and all racial and ethnic groups." The CDC estimates that on any given day 68 million persons (just over 20%) in the United States have an STI.[12] This estimate yields an average of 1.33 million total STI cases per state. In 2018, there were 26 million newly acquired STIs.[13] That was an average of just over 509,000 new STI cases per state. The CDC states that:

> there is an ongoing disproportionate burden of STIs among certain racial and ethnic groups; among young people between 15 and 24 years old who accounted for nearly half of all new STIs in 2018; and among women, who account for a disproportionate burden of severe STI outcomes and medical costs.

STIs can be serious. The CDC states that:

> [p]eople with these infections do not always experience disease symptoms, but, if left untreated, some STIs can increase the risk of HIV infection, or can cause chronic pelvic pain, pelvic inflammatory disease, infertility, and/or severe pregnancy and newborn complications.

STIs are preventable and can often be treated. Medical costs associated with treating STIs in the United States were over $16 billion in 2018 alone.[14] The CDC reports that this figure would be

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[9] Additionally, according to the Guttmacher Institute: 12 states allow health care providers to refuse to provide birth control services, 6 states allow pharmacists to refuse to dispense birth control, an additional 6 states allow businesses other than pharmacists to dispense birth control, and 8 states allow health care institutions to refuse to provide services related to birth control. Most insurance plans pay for female condoms. Free male condoms are available in Olympus from several sources including public and private health clinics or family planning centers.

[10] Whether the RWYSA violates federal law other than the United States Constitution was not raised or preserved and is not properly before this court.

[11] The Department of Health and Human Services (DHHS) reports that between 2014–2018 the rates of reported cases of primary and secondary syphilis, congenital syphilis, gonorrhea, and chlamydia rose 71%, 185%, 63%, and 19%, respectively. HPV, the most common STI, accounts for 14 million new infections in the United States each year.

[12] Eight STIs were included in the estimate: chlamydia, gonorrhea, trichomoniasis, syphilis, genital herpes, human papillomavirus, sexually transmitted hepatitis B, and sexually transmitted HIV.

[13] 2018 is the last year for which there are national estimates. This data lag is largely a result of the COVID pandemic, which shut down many clinics, thus hampering reporting efforts.

[14] The CDC reports that of this $16 billion, $13.7 billion is spent on sexually acquired HIV infections, $1.545 billion is spent collectively on chlamydia, gonorrhea, and syphilis, and $755 million is spent on HPV infections. Of the

higher if it included losses in productivity, non-medical expenses and costs associated with STI prevention. STI mortality rates fell among women nationwide by 49% between 1999 and 2010, from 5.3 to 2.7 deaths per 100 000. This decline was in large part because of advancements in fighting and treating sexually transmitted HIV infections. However, this rate rose in 2020 to 4.0 deaths per 100,000.

D

STI Rates in Olympus

Olympus leads the nation in the rate of persons with an STI. That rate as of 2020 was 35,000 per 100,000 persons. The next closest state has 25,000 per 100,000 persons. Of the 5 million people living in Olympus, an estimated 1,750,000 (35%) have an STI. This ratio stands in sharp contrast to national data indicating that on any given day 20% of the American population has an STI. Olympus has an average of 600,000 new STI cases per year. According to the Olympus Department of Health, these figures represent an at-risk population that has been growing since the beginning of the 21st century. Before budget cuts, the State tried educational campaigns, free testing, and subsidized medical costs associated with preventing STIs, but these efforts have not halted the increasing rates of STIs.[15]

This STI outbreak has resulted in a significant human and financial toll. An average of 4.5 persons per every 100,000 persons died in 2020 in Olympus of STI-related deaths. This ratio exceeds the national average of deaths per 100,000 as reported for the years 1999 to 2010 as well as for 2020. Millions have been spent in medical expenses. Clinics have been overwhelmed, and the State's image and reputation has suffered nationwide. This image problem has been largely due to a combination of on-line posts and late-night comedy sketches lampooning Olympus. Neighboring states have even become involved. One state set up a stand at a rest-stop on the border with Olympus where adult travelers heading to Olympus could receive free condoms. The Olympus Bureau on Tourism reported that tourism-related revenue fell by 25% between 2010 and 2020.

III

A

Reproductive Freedom as a Fundamental Right: *Glucksberg*

$1.545 billion attributed to chlamydia, gonorrhea, and syphilis, 60% was associated with persons between 15 and 24 years of age. $2.3 billion is spent on non-HIV-related STI medical costs, 75% of which involves women.

[15] It is not altogether clear why Olympus has such a high rate of STIs. Data suggest the following are contributing factors: a larger than average population of people under age 25; a confluence of lack of education and high poverty rates in much of the state; low rates of condom use; high rates of drug use, including shared needles; spending cuts that closed several clinics that offered free condoms and counseling; and less monogamy, especially given the rise of several new and popular dating services based in Olympus, which have targeted heterosexual, homosexual, and bisexual populations. An additional factor could be that prostitution appears to be increasing in parts of Olympus that have large arenas and have hosted several major college and professional sporting events, as well as several major concerts, including an annual free summer concert aimed at younger audiences. A final factor may be that Olympus has two major airports and a port and has become a hotspot among young visitors, especially from abroad, due to its reputation for a having a vibrant nightlife and the fact that several large cities have legalized marijuana use.

In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that strict scrutiny is to be used when a law denies a person a fundamental right or liberty. To determine if such a right or liberty is implicated, a court is to "objectively" determine whether the claimed right or liberty is "'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" In doing so, courts are "required in substantive-due-process cases [to articulate] a 'careful description' of the asserted fundamental liberty interest." *Id.* at 720-21 (citations omitted).

A proper performance of this analysis required by *Glucksberg* finds that Ms. Vo's liberties have been violated. Simply put, the Constitution secures the right of all "'to be let alone.'" [16] The first privacy cases in the United States date to the early 20th century. In 1902, the New York Court of Appeals declined to find that the laws of New York guaranteed a right to privacy. *Roberson vs. Rochester Folding Box Co.*, 171 N.Y. 538, 556 (N.Y. 1902) (finding that "[a]n examination of the authorities leads us to the conclusion that the so-called 'right of privacy' has not as yet found an abiding place in our jurisprudence, and, as we view it, the doctrine cannot now be incorporated without doing violence to settled principles of law by which the profession and the public have long been guided . . ."). In 1903, New York amended the state's code to provide the exact privacy right that Roberson had sought. Later building on that case, but addressing more specifically issues of reproductive freedom, the Court of Appeals for the Second Circuit invalidated restrictions under federal law (the Comstock Act) requiring that doctors justify prescriptions for birth control as medically necessary. *United States v. One Package*, 86 F.2d 737 (2d Cir. 1936).

Turning to the precedent of the Supreme Court, one finds clear support for the concept of reproductive privacy as a fundamental right. *See Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972**)** (extending the marital right to privacy that includes a right to use contraception to individuals).[17] In *Dobbs v Jackson Women's Health Organization*, 597 U.S. ___, 142 S. Ct. 2228 (2022), the Supreme Court explicitly let this precedent stand despite the fact that the phrase "reproductive privacy" does not directly appear in the Constitution itself. The same is true for privacy of an intimate nature that does not necessarily raise issues of reproductive freedom per se. Case law in this area concerns the right to engage in sexual activities involving members of the same sex and the right to marry someone of the same sex.[18]

Having determined that reproductive privacy is a fundamental right, we must apply strict scrutiny to the REAP WHAT YOU SOW Act. It falls to the government "to establish that the challenged law satisfies strict scrutiny." *Tandon v Newsom*, 593 U.S. ____, 141 S. Ct. 1294, 1296 (2021). To do so, it must "show" and not just "assert" that the law is narrowly tailored to achieve a compelling interest. *Id.* This means the measures are least restrictive. *Id.* The prohibition on all forms of temporary birth control is so overbroad that no one can claim with a straight face that the law is "narrowly tailored to serve a compelling government interest."

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[16] See Brandeis and Warren, *The Right to Privacy*, 4 HARVARD L. REV. 193, 195 (Dec. 15, 1890), available at: https://h2o.law.harvard.edu/text_blocks/5660.

[17] *Also see* Justice Goldberg's concurrence to *Griswold* in which he argues that privacy is protected under the Ninth Amendment. *Griswold* at 486-494. (Goldberg, J., Concurring). (Asserting the Ninth Amendment includes liberties not included in the first eight amendments of the Bill of Rights).

[18] See *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Obergefell v. Hodges*, 576 U.S. 644 (2015) respectively.

B

Reproductive Freedom as a Fundamental Right: *Obergefell*

Ms. Vo's claim to a right of privacy that includes the right to use contraception is also supported by the Supreme Court's ruling in *Obergefell v. Hodges*, 576 U.S. 644 (2015). In *Obergefell*, the Court employed a far broader method of determining whether government action infringed on a fundamental right than the approach employed in *Glucksberg*. Thus, even if the dissent is correct that the right to use contraception is not a fundamental right protected under a *Glucksberg* analysis, that is not the only applicable precedent. Indeed, in *Obergefell* the Court rejected any mechanical or formulaic approach. Instead, the Court returned to a prior conception of courts exercising "reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect." *Id.* at 664 (majority opinion). Ultimately, the *Obergefell* Court's analysis unlocked both prongs of the *Glucksberg* test.

The dissent adopts an approach to "carefully describing" the right in a way we find at odds with precedent. In *Obergefell*, the Supreme Court noted that in some instances the right should be described in a more "comprehensive sense." *Id.* at 671. *Obergefell* specifically rejected articulating rights only at their most specific level of abstraction. Ms. Vo's claim of a right to make life-altering medical decisions and protect the integrity of her own body is within the broader boundaries that *Obergefell* established. *Obergefell* recognized a broader understanding of how to determine whether an asserted right is fundamental. While accepting that tradition and history are "guides," the Court held they are not dispositive, noting that "rights come not from ancient sources alone," but also rise "from a better-informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era." *Id.* at 671–72; *see also Lawrence v. Texas*, 539 U.S. 558, 579 (2003) ("[T]imes can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress."). The right to shield one's body from state interference and control has arrived from just such a better-informed understanding of liberty, as the Court recognized in *Griswold v. Connecticut*, 381 U.S. 479 (1965) and in *Lawrence*.

C

Reproductive Freedoms and the *Griswold* Penumbra Theory

Modern reproductive privacy jurisprudence begins with *Griswold*. In that case, Justice William Douglas put forth the idea that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." Several of the amendments found in the Bill of Rights created what he termed "zones of privacy." These included the First, Third, Fourth, Fifth, and Ninth Amendments. The dissent today attacks this formula as "unsatisfying" and "too subjective." The dissent is not alone in these criticisms.[19] But criticize is all it can do. Even were we to agree with the dissent, this court lacks the authority to revisit the decisions of the Supreme Court. Even if we had that authority, nothing has risen in the past fifty-

[19] See Justice Thomas's assertion in that "we should reconsider all of this Court's substantive due process precedents, including *Griswold, Lawrence,* and *Obergefell*." *Dobbs v Jackson Woman's Health Organization,* 597 U.S. ___, ____, 142 S. Ct. at 2301 (2022) (Thomas, J., Concurring).

plus years to suggest either that Justice Douglas was wrong in his conclusions or that this precedent is in some way unworkable or harmful, let alone wrong. Thus, it survives the most recent approach to evaluating precedent promulgated by the Court in *Dobbs.*

D

Reproductive Freedoms and the Due Process Clause

An alternative approach to the one championed in Justice Douglas's opinion of the Court in *Griswold* is to rely solely on the Due Process Clause of the Fourteenth Amendment. As Justice John Harlan put it, "[t]he Due Process Clause of the Fourteenth Amendment stands, in my opinion, on its own bottom." *Griswold v Connecticut*, 381 U.S. at 500 (Harlan, J., Concurring) (1965). The rationale for relying on the Due Process Clause is presented in Justice Souter's concurrence in *Glucksberg*, in which he draws on Justice Harlan's words from a prior opinion:

> Due Process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint.

Glucksberg, 521 at 765-766 (Souter, J., Concurring in the Judgment) (internal citation omitted).

The liberty implicated in the immediate case is a part of that tradition. The balance we must strike places reproductive freedom squarely in the camp of what is fair and what is thus protected by the liberties protected under the Due Process Clause.

E

Balancing the Issues Before the Court

The immediate case calls for balancing. Whether the appropriate test is strict scrutiny, intermediate scrutiny, traditional rational basis, or the variety of rational basis performed in *Lawrence* and/or *Obergefell,* the law fails. The state simply lacks an interest that is legitimate let alone compelling or important. At trial, the state argued that the law would: (1) promote morality, (2) protect the health of men and women alike, (3) promote a culture of life, (4) encourage men to take responsibility for their actions regardless of the nature of the relationship in question, and (5) save public money. These claims miss the mark. Making a woman's reproductive health dependent on

men is a far cry from a legitimate state interest. Yet, that is exactly what will happen if this law is upheld and, no pun intended, if this opinion and its progeny are allowed to multiply. See *Deanda v. Becerra*, No. 2:20-CV-092-Z, slip op. (N.D. Tex. Dec. 8, 2022). The women of America deserve better. To return to the world before *Griswold* and *Eisenstadt* is inconceivable. The dissent quotes two lines from two of Bob Dylan's songs. We agree that the Voice of a Generation can shed some insight onto one of the most important issues of his time, or any time. In our view, the dissent finds refuge in the lyrics of the wrong songs. In Dylan's words:

> If I'd lived my life by what others were thinkin', the heart inside me would've died
> I was just too stubborn to ever be governed by enforced insanity

The choices this law targets are no one's business but Ms. Vo's. It is not for her, or countless other women and men like her, to live by what others are thinking. The heart beats best when we are happy, and to be happy we need to live our own lives. The law strips Ms. Vo of her most basic of all rights – the right to be "let alone." For that reason, it unconstitutionally transports women back to the past – to a dystopian world of insanity we have previously rejected and that must be resisted.

IV

Free Exercise of Religion

A

Our analysis of Ms. Vo's free exercise claim begins, as all constitutional analysis must, with the text of the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST., AMEND. I. In *Reynolds v. United States*, 98 U.S. 145 (1878), the Supreme Court held that the state could force citizens to choose between civil rights (voting) and liberty (free exercise) when it allowed Congress to require foreswearing polygamy as a condition to voting.

Nearly a century after *Reynolds*, the Court charted a different course, and modern free exercise jurisprudence was born. In the seminal free exercise case of *Sherbert v. Verner*, 374 U.S. 398 (1963), the Court held that the restrictions for unemployment compensation imposed a significant burden on Sherbert's ability to practice her faith. Furthermore, the state lacked a compelling interest to justify such a substantial burden on her Free Exercise rights. Here, the concern was not about placing religious practice over secular law, but rather forcing citizens to choose between the two. Writing for the majority, Justice Brennan found that:

> The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant [Ms. Sherbert] for her Saturday worship.

Id. at 404.

Sherbert was followed in short order by *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In *Yoder*, the Court considered a challenge to Wisconsin's compulsory school attendance law. Amish families refused to send their children to school beyond the age of 14 and asked for an exemption from compulsory school attendance, arguing that exposure to worldly and material views would irreparably harm their children. Like *Sherbert, Yoder* increased protection for religious exercise by holding that the Free Exercise Clause entitled religious believers to an exemption from generally applicable laws that burden religious exercise unless enforcement was compelling.

The Supreme Court changed course in *Employment Division v. Smith*, 494 U.S. 872 (1990). *Smith* drew a line that separates belief from conduct, and allowed the government to limit religiously motivated individual conduct so long as the law was generally applicable and not motivated by religious animus. *Smith* put the *Sherbert/Yoder* line of cases into serious question. *Smith* has been the controlling opinion for the subsequent three decades. What is not in doubt is that if a law is not neutral or generally applicable, strict scrutiny is the correct test and, as is typically the case, the law fails strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (holding that "[a] law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases."). The REAP WHAT YOU SOW Act was explicitly designed to declare contraception immoral, a view diametrically opposed to COB and similar religious groups' conception of conception. What is more, the exceptions included render the law neither neutral nor generally applicable. By allowing some exceptions, the state has lost its claim to general applicability. *Supra*, at 3. Thus, the state must satisfy strict scrutiny. We find that the RWYSA does not advance a compelling interest in a manner that is narrowly tailored. Accordingly, it violates the Free Exercise Clause. Moreover, even if rational basis review applies, the RWYSA fails as it is an irrational attempt to further an illegitimate state interest.

B

Recent Supreme Court decisions have called *Smith* into question. They have also extended the pre-*Smith, Sherbert/Yoder* analysis to non-minority religions. We conclude that under a pre-*Smith, Sherbert/Yoder*-like analysis, the REAP WHAT YOU SOW Act violates Ms. Vo's right to free exercise of her religion.

In *Kennedy v. Bremerton School District*, 597 U.S. ___, 142 S. Ct. 2407 (2022), the Court held that the Free Exercise and Free Speech Clauses of the First Amendment protect an individual of a non-minority religion engaging in a personal religious observance from government reprisal and that the Constitution neither mandates nor permits the government to suppress such religious expression. Similar to the reasoning in *Dobbs*, the *Kennedy* Court used consideration of "historical practices and understandings" to reach its conclusion. Applying that test, the Court found no conflict between the constitutional commands of the First Amendment in this case. *Kennedy* held:

> the Free Exercise Clause provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. … The Clause protects not only the right to harbor religious beliefs inwardly and secretly. It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through "the performance of (or abstention from) physical acts."

Id., at 2421.

In *Kennedy,* the District's challenged policies failed the *Smith* test since the policies were neither neutral nor generally applicable. *Id.,* at 2422. By its own admission, the District sought to restrict Mr. Kennedy's actions, at least in part, because of their religious character. *Id.,* at 2433.

Last year the Supreme Court decided *Carson v. Makin,* 596 U.S. ___, 142 S. Ct. 1987 (2022). *Carson* asked whether Maine was required to pay the tuition of students to attend a religious school, as part of a generally applicable reimbursement program, if no local public school was available. The Court held that Maine may not choose to subsidize some private schools but not others on the basis of religion and that Maine's nonsectarian requirement for otherwise generally available tuition assistance violated the Free Exercise Clause of the First Amendment. In holding for Makin, again a member of a non-minority religion, Chief Justice Roberts wrote that:

> the Free Exercise Clause of the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.' [internal citation omitted] In particular, we have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits… A State may not withhold unemployment benefits, for instance, on the ground that an individual lost his job for refusing to abandon the dictates of his faith.

Id., at 1996

Given that this is virtually the same scenario that Mr. Smith faced in his situation, it is unclear whether *Kennedy* or *Carson* are consistent with *Smith.* This calls into question whether *Smith* remains good law. As with the first issue, we lack the authority to hold that *Smith* is no longer good law. However, the handwriting is on the wall.

In *Fulton v. City of Philadelphia,* 593 U.S. ___, 141 S. Ct. 1868 (2021), the Supreme Court sidestepped one of the certified questions that included a direct challenge to the *Smith* rule. In concurrence, Justice Gorsuch, joined by Justices Thomas and Alito, wrote that "*Smith* failed to respect this Court's precedents, was mistaken as a matter of the Constitution's original public meaning, and has proven unworkable in practice." *Fulton,* 141 S. Ct. at 1926. Justice Gorsuch concluded his concurring opinion accordingly: "*Smith* committed a constitutional error. Only we can fix it. Dodging the question today guarantees it will recur tomorrow. These cases will keep coming until the Court musters the fortitude to supply an answer." *Id.,* at 1931.

The time for an answer has come. While the *Fulton* Court did not directly overrule *Smith,* subsequent decisions have not followed it. Although we lack the authority to reverse Supreme Court precedent, the precedential value of *Smith* is in doubt. In light of that fact, we urge the Supreme Court to say explicitly what its recent decisions make clear. We believe that the RWYSA fails to meet the standard formulated in *Smith.* That said, just as *Dobbs* reconsidered prior erroneous decisions, the Court should overrule *Smith* and restore religious practice to the preferred position it has always rightfully deserved.

The decision of the Olympus 13th Circuit Court of Appeals is AFFIRMED.

MARCO ROMERO, Justice, Dissenting

I begin with three observations, voiced by others in the past: (1) I find this law silly, but that does not make it unconstitutional; (2) were I a legislator, I would not have voted for the law before us today; and (3) I like my privacy and religious freedom as much as the next person – but what I like or dislike is not the standard for what separates the constitutional from the unconstitutional. While I respect the majority, and I appreciate the significance of the liberties involved, I am unpersuaded by the majority's logic, nor do I believe that the sky will fall and the world will end if the law in question is allowed. Thus, I would vote to vote to *affirm* the decision reached by Judge Fair.

In 1965 the Supreme Court held that the Constitution protects a right of privacy that includes the right of married persons to obtain birth control and of doctors to prescribe such medicine. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The *Griswold* Court recognized such a right despite the fact that the Constitution never mentions birth control, doctors, medicine, or privacy. The majority describes *Griswold*, and the right to privacy that the Court discovered hidden deep in the bowels of the Bill of Rights, as settled law for nearly 60 years. The majority is correct – *Griswold* was decided nearly 60 years ago. That fact makes the opinion old, but it does not make it correct or immunize it from reconsideration. As the Nobel laureate Bob Dylan famously sang before *Griswold*, "the times they are a-changin." Indeed, they have. Precedent such as *Dobbs v Jackson Woman's Health Organization,* 597 U.S. ___, 142 S. Ct. 2228 (2022) (ruling that the Fourteenth Amendment does not protect a right to abortion), and *Deanda v. Becerra*, No. 2:20-CV-092-Z, slip op. at 27 n.12 (N.D. Tex. Dec. 8, 2022) (noting that decisions forbidding "bans of contraceptives" are "in doubt.") illustrates that, as Mr. Dylan has sung much more recently, "things have changed."

A

I begin by asking whether there is any express language in the Constitution indicating that it protects a fundamental right of reproductive privacy. One need only read the Constitution to find it contains no such statement.[20] If the appropriate inquiry were only to read the text, I would be finished, but I must acknowledge, as the Supreme Court has, that the Constitution protects more than what explicitly appears in the four corners of the text. *See Washington v. Glucksberg*, 521 U.S. 702, 719 (1997) ("The Due Process Clause guarantees more than fair process, and the 'liberty' it protects includes more than the absence of physical restraint."). One must ask whether the text implies more. The Court has prescribed how to determine if a liberty or right is implied by the Constitution's text:

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[20] I am not alone in this conclusion. "[L]ike Justice Stewart, I 'can find [neither in the Bill of Rights nor any other part of the Constitution] a general right of privacy,'" *Lawrence v. Texas*, 539 at 605 (Thomas, J., Dissenting). *See also* "I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution[.]" *Griswold*, 479 at 530 (Stewart, J., Dissenting) and "I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision." *Griswold*, 479 at 510 (Black, J., Dissenting).

> First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." Second, we have required in substantive-due-process cases a "careful description" of the asserted fundamental liberty interest.

Glucksberg, at 720-21.

With that approach in mind, I consider Ms. Vo's substantive due process claim. It is helpful to begin this consideration with the second element mentioned in *Glucksberg*—the careful description of the asserted fundamental right—before determining whether the right is deeply rooted in this nation's history and traditions and implicit in the concept of ordered liberty.

Glucksberg instructs courts to adopt a narrow articulation of the interest at stake. *Id.* at 722 ("[W]e have a tradition of carefully formulating the interest at stake in substantive-due-process cases."). It bears repeating that substantive due process analysis requires a "careful description of the asserted fundamental liberty interest." *Id.* at 721 (quotation and citations omitted). Even in *Lawrence v. Texas*, 539 U.S. 558, 578 (2003), which is often cited for a more expansive conception of fundamental rights, the Court recognized a narrowly articulated fundamental right of adults to engage in consensual sexual activity, including non-commercial, consensual homosexual sex, in the home without government intrusion. Here, Ms. Vo asserts that she has a fundamental right that borders on an absolute power to make decisions about her own reproductive life without interference from the state. In light of *Dobbs*, discussed below, this assertion is simply untrue. Liberty over one's own body is not absolute. *Id. See also Glucksberg.* Ms. Vo may have a liberty to make certain decisions related to reproduction and her own body, but regardless of what Ms. Vo claims and the majority holds, the law before us today allows such choices. Even if I were to accept Ms. Vo's articulation of the right at issue, her claim would fail under this prong of the *Glucksberg* analysis. Stated simply, a careful review of our nation's history and tradition demonstrates that there is *not* a right to use whatever method of birth control one may choose. As the majority's recounting of the history of birth control above demonstrates, at times birth control use has been permitted and at other times not. This is hardly constitutes being "deeply rooted in our Nation's history and tradition."

The majority mistakenly reads *Obergefell v. Hodges*, 576 U.S. 644 (2015) to fundamentally alter substantive due process analysis. To be sure, *Obergefell*'s grandiloquent pronouncements regarding fundamental rights suggested broad scope. *See, e.g., id.* at 671–72 (rights can "rise . . . from a better-informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era"); *id.* at 663 (constitutionally protected liberties "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."). But *Obergefell* essentially applied a previously identified and uncontroversial fundamental right—the right to be treated equally—to a new context.

In *Dobbs* the Supreme Court effectively limited *Obergefell* to its facts and clearly demonstrated that *Glucksberg* remains the proper approach for determining the existence of fundamental rights

not explicitly enumerated in the Constitution. The approach taken in *Glucksberg* to determine whether there was a fundamental right to physician-assisted suicide is the correct method to apply here to determine whether there is a fundamental right to use birth control of one's choice. Under *Glucksberg*, Ms. Vo has failed to establish a fundamental right that has been infringed by the REAP WHAT YOU SOW Act. Rather, her argument and the analysis of this court provide an unsatisfying and too subjective a basis for pronouncing a constitutional liberty.

B

In the context of due process, when a law does not infringe on a "fundamental" right, courts are to apply rational basis review to the law.[21] *Glucksberg*, 521 U.S. at 728. In fact, this was the test Justice Kennedy applied in *Lawrence.* Under rational basis review, courts ask only whether the law rationally relates to a legitimate government interest. *Glucksberg*, 521 U.S. at 728. The government's interests here in promoting morality, promoting public health, encouraging men to take responsibility for their actions, promoting a culture of life, and saving public money, are all legitimate. And the means, while perhaps, to quote Justice Potter Stewart, "uncommonly silly," are rationally related to furthering the State's legitimate objectives. *Griswold* 381 at 527 (Stewart, J., Dissenting). Rational basis requires no more.[22]

C

I turn to a consideration of when to overturn precedent, noting that (1) *Griswold* is distinguishable from the immediate case and (2) this court lacks the authority to reverse *Griswold.* That can only be performed by the Supreme Court. That said, at least one Justice of that body has written that society "should reconsider all of this Court's substantive due process precedents, including *Griswold*, …" *Dobbs*, 597 U.S. ___, 142 S. Ct. at 2301 (2022) (Thomas, J., Concurring). Because such consideration may come, I see fit to wade into that thicket and offer my two-cents as they say.

Dobbs holds that when evaluating Supreme Court precedent, courts are to examine five factors: (1) the nature of the Court's error; (2) the quality of the Court's reasoning; (3) the "workability" of the rules the Court imposed on the country; (4) the disruptive effect of a ruling on other areas of the law; and (5) the absence of concrete reliance that may exist in certain areas of the law such

[21] Were we to find the REAP WHAT YOU SOW Act infringed on a fundamental right, we would assess whether the REAP WHAT YOU SOW Act passes strict scrutiny. *See, e.g., Glucksberg*, 521 U.S. at 766–67.

[22] On this point, I find a kindred spirit in Justice Stewart who wrote:

> Since 1879, Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

Griswold at 728 (Stewart, J., dissenting).

as property or contract law which rest on specific principles. *Id.* at 2265. Applying these factors, I find that the same points that supported overturning the abortion precedent before the Court in *Dobbs* support overturning cases such as *Griswold* and *Eisenstadt v. Baird,* 405 U.S. 438 (1972**)**. The majority warns of unintended and unfair consequences were the REAP WHAT YOU SOW Act to be upheld. I have tremendous respect for the court and take these warnings seriously. But, at the end of the day, I come back to an observation that Chief Justice Rehnquist once made. The Chief, as noted in *Dobbs,* 142 at 2276, warned that courts are "ill-equipped to assess 'generalized assertions about the national psyche.'" (internal citations omitted). We live in a democracy. If opponents of the REAP WHAT YOU SOW Act wish to repeal it, they should get involved in the democratic process rather than use the courts to claim that the Constitution guarantees a right it does not even mention. The democratic process is how the system our forefathers gave us works and works best. As Justice O'Connor, herself a supporter of respect for precedent observed, "the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *Lawrence,* 539 U.S. at 579-580 (O'Connor, J., Concurring).

II

Turning to the Free Exercise challenge, it is important to remember that the original Constitution of the United States did not mention religion. Rather, the Constitution simply laid out the powers of the federal government, the limits on those powers, and the methods for making changes to the document. When submitted for ratification, there was considerable debate surrounding the lack of protection for individual freedoms and liberties. To ensure the passage of the Constitution, advocates agreed to add a Bill of Rights. The very first freedom listed in the Bill of Rights addressed religion. The first Supreme Court decision on the meaning of free exercise came in *Reynolds v. United States,* 98 U.S. 145 (1878). In a challenge to the practice of polygamy practiced by the Church of the Latter-Day Saints (LDS), the Court rejected LDS's free exercise claim, writing that "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." *Id.* at 166. As a result of this decision, hundreds of church leaders were jailed, and Congress dissolved the LDS Church and seized most of its property until the Church finally agreed to abandon polygamy. The main concern here was that such allowances would "make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.* at 167. That concern is clearly relevant in the case before us. The people of the State of Olympus have chosen to prohibit conduct that is not mentioned in the United States Constitution. That is their prerogative. To accept Ms. Vo's claim, is to allow her religious beliefs to override the laws of the state and the will of the people. What is next? A religion that requires human sacrifice? The rule of law upon which society is based need not–indeed it cannot–bow to the Free Exercise Clause.

For more than three decades, the Court's free exercise jurisprudence has been controlled by its holding in *Employment Division v. Smith,* 494 U.S. 872 (1990). There, the Supreme Court drew a line that separated religious belief from religiously motivated conduct. The standard announced in *Smith* allowed the government to limit religiously motivated conduct so long as the law was generally applicable and neutral (not motivated by animus toward religion).

The REAP WHAT YOU SOW Act passes the *Smith* test. The REAP WHAT YOU SOW Act is a generally applicable law that is neutral in its application. Its limits apply to all citizens in all

circumstances and provide for limited exceptions related only to health. Where the majority finds animus in the exceptions described in the facts, I find exemptions guided by good common sense rather than a desire to harm anyone or any group. Moreover, they do not favor any one religion over another. They are neutral and generally applicable. *Supra,* at 3. The legislative intent for the REAP WHAT YOU SOW Act included traditional purposes such as morality and public safety. Religious considerations (whether pro or con) do not appear anywhere in the record. The law contains nothing that interferes with religious belief. And, any impact on religiously motivated conduct is merely incidental. Accepting Ms. Vo's claim would allow her religious beliefs to override the laws of the state and the will of the people. Such a result would be a recipe for disaster. As such, I refuse to be a party to throwing our system into disarray – prone to be being held hostage by those who will bring forth religious objections, sincere or otherwise, to every law enacted by our public institutions. I will not be a party to such chaos. Because I am alone in that view, I respectfully *dissent*.

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