

No. _____

IN THE

Supreme Court of the United States

TINA GOEDE,

Petitioner,

—V.—

ASTRA ZENECA PHARMACEUTICALS, LP,

Respondent,

AND

DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court held in *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981), that the First Amendment limits the “narrow function of a reviewing court” to determining whether an unemployment-benefits applicant lost a job “because of an honest conviction that such work was forbidden by his religion.” In so holding, this Court reversed a state-court denial of benefits premised on the applicant’s beliefs being “more ‘personal philosophical choice’ than religious belief.”

Instead of following *Thomas* and federal courts applying it, the Minnesota Court of Appeals and the Department of Employment and Economic Development before it intensely scrutinized Petitioner Goede’s religious sincerity and denied her unemployment benefits by holding her “personal” and “philosophical” views to outweigh her “religious” beliefs, even though those religious beliefs are independently sufficient to cause her to refuse vaccination. *See* App. 18a–23a.

The question presented is:

1. Where an unemployment applicant’s religious beliefs are independently sufficient to cause her refusal to follow an employer policy, can a state deny her unemployment benefits by holding that philosophical and personal beliefs outweigh her religious beliefs?

PARTIES TO THE PROCEEDING

Petitioner Tina Goede is an individual person and was the appellant below. Because Ms. Goede is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

Respondent Astra Zeneca Pharmaceuticals LP is a nongovernmental corporation and was a respondent below.

Respondent Department of Employment and Economic Development is a Minnesota state agency and was a respondent below.

STATEMENT OF RELATED CASES

This case arises from and is related to the following proceedings before the Minnesota Department of Employment and Economic Development, and in the State of Minnesota Court of Appeals and the State of Minnesota Supreme Court:

- *In the Matter of Tina Goede, Applicant, and Astra Zeneca Pharm., LP, Employer*, Doc. ID 161434894, Issue No. 48747325-2, Findings of Fact and Decision, entered June 22, 2022;
- *In the Matter of Tina Goede, Applicant, and Astra Zeneca Pharm., LP, Employer*, Doc. ID 161824364, Issue No. 48747325-3, Order of Affirmation, entered August 26, 2022;
- *Goede v. Astra Zeneca Pharm., LP*, 992 N.W.2d 700 (Minn. Ct. App.), order issued June 12, 2023 and judgment entered October 16, 2023; and
- *Goede v. Astra Zeneca Pharm., LP*, No. A22-1320, 2023 Minn. LEXIS 483 (Minn.), denial of petition for review, decided September 19, 2023.

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OPINIONS BELOW

The Findings of Fact and Decision of the Unemployment Law Judge (“ULJ”) is referenced by Document No. 161434894, Issue No. 48747325-2, and is reproduced at App. 30a. It is unpublished. The Order of Affirmation by the ULJ is referenced by Document No. 161824364, Issue No. 48747325-3, and is reproduced at App. 30a. It is unpublished. The Minnesota Court of Appeals decision appears at 992 N.W.2d 700 and is reproduced at App. 3a. The Minnesota Supreme Court’s decision denying review appears at 2023 Minn. LEXIS 483 and is reproduced at App. 39a.

JURISDICTION

The Minnesota Court of Appeals issued its decision affirming the denial of unemployment benefits on June 12, 2023. The Minnesota Supreme Court denied review of that decision on September 19, 2023, rendering the Court of Appeals judgment final and subject to no further review by any Minnesota state court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

Section 1 of the Fourteenth Amendment provides:

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

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

Respondent Astra Zeneca Pharmaceuticals LP (“Astra Zeneca”) fired Petitioner Tina Goede (“Goede”) because it refused to accommodate her sincerely held religious beliefs, and she refused to compromise those beliefs by taking a COVID-19 vaccine which she believes was developed using aborted fetal cells, App. 77a, and which she also believes is harmful to her body, which she believes is a “temple of the Holy Spirit,” App. 74a. After she applied for unemployment benefits, the Minnesota Department of Employment and Economic Development (“DEED”) wrongfully denied her claim for benefits. That denial of benefits brings us here.

I. Summary of Federal Jurisdiction

Petitioner Goede asserted her religious objections to the COVID-19 vaccine, and her First Amendment rights, throughout the state administrative and court proceedings. Before the ULJ, Goede asserted that she could not be vaccinated for COVID-19 because of her religious beliefs:

The Court: Okay. And now we’ll talk about is there, are there religious, religious reasons why you cannot get a COVID-19 vaccine.

Tina Goede: Yes.

App. 73a.

Despite her testimony, the ULJ denied her benefits. App. 30a–38a. Goede requested reconsideration of the ULJ’s decision, and the ULJ affirmed its original decision. App. 24a–29a. Goede appealed by writ of certiorari to the Minnesota Court of Appeals and expressly alleged that the denial of benefits violated her

First Amendment rights. App. 55a (Petition for a Writ of Certiorari). The court of appeals affirmed the ULJ's determination of ineligibility for benefits and rejected Goede's First Amendment arguments on their merits. App. 5a, 18a–23a. Goede timely petitioned the Minnesota Supreme Court for review, but the court denied her petition. App. 39a–40a.

II. Ms. Goede's Religious Beliefs.

Goede is a pro-life Catholic with a Christian worldview. App. 74a, 77a, 87a. She believes that her body is a “temple of the Holy Spirit,” which to her means she may not introduce harmful foreign substances into her body. App. 74a. She also believes abortion is the murder of an unborn child, and, therefore, she cannot, in good conscience, receive a medical intervention tested on or developed using cell lines from an aborted fetus without being complicit in sin. *See, e.g.*, App. 77a.

Goede has held these beliefs for “20 years.” App. 79a. For ten years, she has researched medical interventions she considers receiving and routinely verifies whether they involve materials derived from abortion before receiving them. *See* App. 82a–83a. In fact, she stopped taking over-the-counter painkillers ten years ago because she came to believe they were tested on cell lines from an aborted fetus. *Id.* Goede testified that she would only ever use a substance tested on or derived from aborted-fetal-cell lines to prevent her death. App. 80a.

III. Ms. Goede Supported Her Unemployment Claim with Clear Testimony of an Independent Religious Basis for Refusing the COVID-19 Vaccine.

As the Minnesota Court of Appeals observed, Astra Zeneca fired Ms. Goede because she “was denied a religious exemption from the COVID-19 vaccination policy.” App. 5a. Ms. Goede then applied for unemployment benefits and asserted that she had not committed “employment misconduct,” which would have disqualified her from receiving benefits, because she “had refused the COVID-19 vaccination because of her religious beliefs.” App. 6a.

Throughout the proceedings before the ULJ in the Department of Employment and Economic Development, Ms. Goede thoroughly testified as to her independent religious basis for refusing the COVID-19 vaccine. She first testified that she could not take the COVID-19 vaccine because she generally believes that injecting vaccines into her body violates her Christian views based on her body being a “temple of the Holy Spirit”:

The Court: Okay. And now we'll talk about is there, are there religious, religious reasons why you cannot get a COVID-19 vaccine.

Tina Goede: Yes.

The Court: Can you explain?

Tina Goede: Well, I, I uphold a Christian worldview and I'm deeply rooted in the bible, and so and I believe that yeah, vaccines can violate the scripture. So my religious belief prohibits injection of foreign substances into

my body, so to inject any substance, which would alter that state into which I was born would be criticized basically to God and question his omnipotence. So my body is my temple of God and so basically, you know, do you not know that your body is a temple of the Holy Spirit, which is in me and from what I receive from God, so vaccines that contain neurotoxins, hazardous substances, viruses, animal parts, foreign DNA, any of that, blood carcinogens, chemical waste is very harmful to my body.

App. 73a–74a.

Ms. Goede also testified that she objected to the COVID-19 vaccine because she believes it was manufactured using or tested on an aborted fetal-cell line, which violates her “prolife” religious beliefs:

The Court: And with the COVID- 19 vaccine, what about these vaccines would, would be of concern?

Tina Goede: Because with the COVID vaccination, there is, they're using, you know, embryo, fetal (inaudible) cells, all different things that again, my religion does not, does not pertrated [sic] to use. I am, I'm prolife so that goes along with that, so any aborted tissues, anything that is utilized with any of the vaccines, I will not, I will not use.

App. 77a.

The Court: So do you believe that the Pfizer and Moderna vaccines use fetal cells to create their vaccines?

Tina Goede: Yes.

The Court: And what medical evidence do you have to support that or scientific evidence, I should say? So if, if they, if they only used the fetal cells to test the vaccines but not create the vaccines, would you be okay taking a Pfizer or Moderna vaccine?

Tina Goede: No.

The Court: And why would that still not be okay?

Tina Goede: Because it goes against my religion.

App. 78a.

Ms. Goede thus testified to two different independent religious bases for refusing the COVID-19 vaccine: (1) the vaccine would harm her body as a temple of the Holy Spirit,” which violates her religious views of God’s omnipotence, and (2) the use of fetal cell lines in development or testing the vaccines violates her “pro-life” religious views as to the sanctity of human life.

IV. Ms. Goede Also Testified as to Related Concerns She Had as to the Safety and Efficacy of Vaccines.

While Ms. Goede clearly testified as to her religious reasons for refusing the vaccine, she did also express substantial concerns about its efficacy and safety:

The Court: Sure. So well, that one you said was okay to take, why, why would a COVID-19 vaccine never be okay to take regardless of its development?

Tina Goede: Because the vaccine doesn't work.

. . . .

The Court: So it's just COVID vaccines just don't work period?

Tina Goede: The vaccine has killed more people than it's saving and I haven't had the vaccination and I had COVID once. More people that have been vaccinated have gotten COVID multiple times. It doesn't work. What's the point?

App. 92a–93a.

The Court: Sure. But if the vaccine worked, would you take it?

Tina Goede: No.

The Court: And why not?

Tina Goede: Because COVID is the flu, it's just like the flu, I never, I, I haven't had a flu shot since way before the days before I knew what was involved in that.

App. 95a. So, Ms. Goede did express concerns about the vaccine's safety and efficacy. But she did not testify that these considerations were more important to her than her religious views, or that they served as the real basis for her objection. And, in fact, she did not present a medical basis for objecting to the vaccine

to her employer when she could have done so. App. 70a.

V. The Unemployment Law Judge Improperly Scrutinized Goede’s Religious Beliefs and Erroneously Decided That Her Vaccine Objection Is a “Personal Belief Not Rooted in Religion.”

During the June 14, 2022 hearing before DEED, the majority of the ULJ’s questions to Goede centered on her religious beliefs. The ULJ questioned her extensively as to the basis of her religious beliefs implicated in her decision to refrain from taking the COVID-19 vaccines. App. 74a–96a.

But instead of focusing on the immediate issue of Goede’s religious conflict with the COVID-19 vaccine, the ULJ probed into Goede’s history of using certain medications, including the tetanus vaccine. App. 75a–76a, 92a. The ULJ also attempted to make himself an arbiter of the Catholic Church’s official positions on vaccination and thus undermine Goede’s religious objections to the vaccine—the ULJ even “googled” the Vatican’s position on vaccines during the hearing and inserted his view of it into the record. App. 90a–91a. The ULJ disputed with Goede whether her convictions on the COVID-19 vaccine as a Roman Catholic were plausible based on the Pope and Vatican’s position. *Id.*

Most of the interrogation of Goede’s religious beliefs consisted of convoluted and unfair “gotcha” questioning, arguing over tenets of faith, and attempting to manufacture inconsistencies that do not exist.

VI. The Unemployment Law Judge and the Minnesota Court of Appeals Held That Ms. Goede’s Beliefs Were Insincere Because of the Overlap Between Her Religious and Secular Considerations Regarding the COVID-19 Vaccines.

Despite this Court’s warning that reviewing courts have a narrow function in determining religious sincerity, the ULJ found a way around that. He couched his denial of benefits in Ms. Goede’s *credibility* and then discounted her religious beliefs by determining that her secular beliefs outweighed them.

The ULJ went so far as to state, as a reason for decision, that Goede had a “notably broad view and appears disingenuous when looking at the facts as a whole.” App. 35a. Then, as if charged with determining the validity of Goede’s religious beliefs, as opposed to whether they are sincerely held, the ULJ decreed: “This is not a central tenant [sic] or unchangeable dogma. It is not a religious principle.” *Id.*

As a result, the ULJ concluded that Goede did not have a credible religious reason to abstain from the vaccines and found that Goede’s reasons were “a personal belief not rooted in religion.” *Id.*

REASONS FOR GRANTING THE PETITION

Petitioner Tina Goede has both “religious” and “secular” beliefs, as those terms have been used by courts over time. Like probably every person in history, some of these beliefs overlap, such that each— isolated and considered separately—could independently motivate the same decision.

One such belief is her refusal to take a COVID-19 vaccine. Goede refused the COVID-19 vaccine because she believes taking it would violate her pro-life Catholic views and make her complicit in abortion. App. 73a–74a. She also believes it would be harmful to her body, which she believes is the “temple of the Holy Spirit.” *Id.* At the same time, she believes that the vaccine does not work. So remove the aborted fetal cells and perceived danger to her body, the “temple of the Holy Spirit,” from the equation and Goede would still refuse to take the COVID-19 vaccine because she does not believe it works or that she needs it.

But this parallel belief does not undermine the independent sufficiency of Goede’s religious beliefs, which are protected by the First Amendment. The fact of the matter is that the COVID-19 vaccines available to Goede at the time of Astra Zeneca’s vaccine mandate were all tested using aborted fetal cells. At the very least, Goede reasonably believed that. That went against Goede’s sincerely held pro-life religious beliefs, and, for that reason, she could not receive one.

Despite this, the ULJ and the Minnesota Court of Appeals held that Ms. Goede’s beliefs were insincere because of the overlap between her religious and secular thoughts about the COVID-19 vaccines. App. 35a (ULJ), App. 18a–23a (Minnesota Court of Appeals). The courts below are not alone. In recent months, considering Title VII claims based on termination for refusing vaccination, some federal courts have launched into a similar analysis forbidden by the First Amendment. *E.g.*, *Detwiler v. Mid-Columbia Med. Ctr.*, No. 3:22-cv-01306-JR, 2023 U.S. Dist. LEXIS 197899, at *13–14 (D. Or. Sept. 13, 2023) (collecting cases).

The courts below thus have found a workaround to this Court’s warning in *Thomas*: instead of outright rejecting a person’s beliefs, they can still be discounted by shrouding that rejection in the “credibility determinations” the reviewing court must make to determine sincerity of belief. The courts below did not consider the independent sufficiency of Petitioner’s beliefs to lead to the same refusal to take the COVID-19 vaccine, despite her clear testimony to that effect. The similar approach taken by some federal courts to Title VII claims indicates that the problem is quickly growing.

This approach conflicts with federal case law more cautiously approaching the overlap of religious and secular views consistent with *Thomas*. Both the Eighth and the Ninth Circuits have recognized the complexity attended upon the overlap of religious and secular beliefs and have held that the overlap of religious and secular beliefs does not undermine the independently sufficient basis of the religious belief, which the First Amendment protects. Under the jurisprudence of these circuits, Goede’s religious belief would be recognized as sincere and protected.

This conflict creates uncertainty and leads to different results in cases where the allegations are virtually identical. In fact, with very similar allegations, other Minnesota unemployment benefits applicants *have* been awarded benefits. *E.g.*, *McConnell v. Fed. Res. Bank of Minneapolis*, No. A22-0934, 2023 Minn. App. LEXIS 40 (Minn. Ct. App. Feb. 24, 2023); *Millington v. Fed. Res. Bank of Minneapolis*, A22-1369, 2023 Minn. App. Unpub. LEXIS 471 (Minn. Ct. App. June 12, 2023).

Petitioner Goede thus respectfully asks this Court to grant certiorari to resolve this growing conflict and uncertainty and hold that the sincerity analysis under *Thomas* and the First Amendment stops where a court identifies a religious belief independently sufficient to motivate an unemployment-benefits applicant's vaccine refusal.

I. The Court Should Grant Certiorari to Resolve the Conflict Between the State Court Below and the Federal Circuit Courts on an Important Federal Question.

The decision below conflicts with decisions in the Eighth and Ninth Circuits concerning the Free Exercise Clause of the First Amendment.

A. Overlap Between Religious and Secular Views Is Common and Animates the Reason Why Courts Have a Narrow Function When Considering Religious Objections.

As commenters have noted, “[n]early all religious beliefs and practices have temporal consequences and implications that attract favor for earthly reasons.” Steven D. Smith, *Separation and the “Secular”*: *Reconstructing the Disestablishment Decision*, 67 Tex. L. Rev. 955, 1003 (1989). Likewise, religious people and institutions “have commonly shown concern for temporal matters, including concern for the poor, earthly justice and virtue, and political liberation.” *Id.* at 1001.

Traditional monotheistic religion is not only interested or concerned with temporal consequences beyond the individual, however. The Bible, the Torah,

and the Quran all instruct believers to take care of their own bodies. The Bible says that the human body is the “temple of the Holy Spirit,” *1 Cor. 6:19–20*, and warns believers to be self-controlled, *1 Cor. 9:27*. The Torah is replete with dietary restrictions in the books of Deuteronomy and Leviticus. The Quran instructs its believers to eat or drink that which is “halal” and avoid that which is “haram.”

This overlap is common and expected, which means that situations like Petitioner’s will recur over and over again absent this Court’s intervention.

B. The Federal Courts’ First Amendment Jurisprudence Protects Religious Beliefs Even When They Coincide with Secular Beliefs.

In *Wisconsin v. Yoder*, this Court held that the Religious Clauses of the First Amendment do not protect “purely secular considerations” but only claims “rooted in religious belief.” 406 U.S. 205, 215 (1972). The *Yoder* Court acknowledged that determining “what is a ‘religious’ belief entitled to constitutional protection may present a most delicate question.” *Id.* Later, in *Thomas*, this Court clarified that the “narrow function” of the courts in deciding this question did not involve “dissect[ing] religious beliefs” but only “determin[ing] whether there was an appropriate finding” that the petitioner was motivated by “an honest conviction” that her religion forbade the action imposed on her, 450 U.S. at 715–16.

Following these cases, both the Ninth and Eighth Circuits have held that the Court’s decisions in *Yoder* and *Thomas* signaled that “a coincidence of religious and secular claims in no way extinguishes the weight

appropriately accorded the religious one.” *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981); *accord Wiggins v. Sargent*, 753 F.2d 663, 666–67 (8th Cir. 1985). As the Ninth Circuit stated, *Yoder* “did not limit the scope of the First Amendment to ‘purely religious’ claims; the area of overlap is presumably protected.” *Callahan*, 658 F.2d at 684; *accord Wiggins*, 753 F.2d at 666–67.

In *Callahan*, Callahan refused to obtain a social security number for his daughter to receive public benefits because, based on his reading of the Bible, he believed “social security numbers are the ‘mark of the beast’[,] the sign of the Antichrist who threatens to control the world.” 658 F.2d at 681–82. The trial court had discounted the religious nature of Callahan’s beliefs because “his aversion to identification numbers predated by many years his religious awakening, and found that Callahan’s long prison experience was the major impetus to his belief.” *Id.* at 684. The Ninth Circuit rejected this reasoning, stating:

Religious duties need not contradict personal values or preferences in order to be protected. It might be argued that Callahan's personal animus toward numbers would by itself have been enough to motivate his refusal to give [his daughter] a number. Even if this were the case, his sincere objection to burdening her with the “mark of the beast” would provide *a separate and sufficient reason for his action*, one that, if characterized as religious, merits constitutional protection.

Id. at 684–85 (emphasis added). The Ninth Circuit thus held that the coincidence of religious and secular

beliefs did not undermine the First Amendment's protection of the independently sufficient religious belief.

Similarly, in *Wiggins*, the inmate-plaintiffs brought a civil rights action against prison officials because they "refused to allow them to receive religious literature and to correspond with religious leaders in violation of their first amendment rights." 753 F.2d at 664. The inmates were "followers of the Church of Jesus Christ Christian," a religious group with "some affiliation or connection with an organization known as Aryan Nations." *Id.* at 665. The religious group advocated for "racial purity," believing that "the white race consists of God's chosen people," "that they are the literal and spiritual descendants of Abraham and the 'lost tribes' of Israel," and "that race mixing is a sin which is contrary to Biblical teachings." *Id.* Following the Ninth Circuit's reasoning in *Callahan*, the *Wiggins* court held that "an idea can be both secular and religious and still be entitled to free exercise clause protection," stating:

. . . the fact that the notion of white supremacy may be, and perhaps usually is, secular, in the sense that it is a racist idea, does not necessarily preclude it from also being religious in nature, in the sense that it may be based upon a literal interpretation of Biblical teachings.

Id. at 667.

Here, Goede's coincidence of religious and secular beliefs is like that in *Callahan* and *Wiggins* as to the independent sufficiency of her religious beliefs to animate her refusal of the COVID-19 vaccine.

Goede believes that abortion is the killing of an unborn baby, which violates her pro-life views rooted in

her religious beliefs. She also reasonably believes that the COVID-19 vaccines were tested on cell lines derived from an aborted fetus. App. 73a–74a, 77a–78a. She could not, therefore, take the vaccine consistent with her religious views. Full stop.

Likewise, Goede believes that her body is the “temple of the Holy Spirit” and she cannot inject herself with substances that might hurt it. App. 73a–74a. She equates this with questioning God’s omnipotence. *Id.* She could not, therefore, take the vaccine consistent with her religious views. Again, full stop.

At the same time, Goede also opposed the COVID-19 vaccine on secular grounds, because she believed it was neither safe nor effective. But as in *Callahan* and *Wiggins*, the overlap of these beliefs does not undermine the independently sufficient basis for Goede to refuse the vaccine on religious grounds. Had the Minnesota Court of Appeals faithfully applied *Thomas*, *Callahan*, and *Wiggins*, it should have so held.

C. The Minnesota Courts Below Split from the Federal Courts on the Independent Sufficiency of Goede’s Religious Objection to the Vaccines.

Contrary to *Callahan* and *Wiggins*, the court below affirmed the ULJ’s determination that despite this overlap Goede really refused to be vaccinated “because of her purely secular concern about safety and efficacy.” App. 23a; *Goede v. Astra Zeneca Pharm., LP*, 992 N.W.2d 700, 709 (Minn. Ct. App. 2023). By affirming the ULJ’s findings, the court of appeals sanctioned the ULJ’s erroneous reasoning: namely, the failure to consider the independent sufficiency of Goede’s

religious beliefs to motivate her refusal to take the COVID-19 vaccine.

Below, the Minnesota Court of Appeals stated that the ULJ's finding that Goede "declined to take the vaccine because she does not trust it, not because of a religious belief" was supported by "Goede's testimony that she would not take the vaccine even if she was on her 'deathbed' and no fetal cell lines had been used in its development 'because it doesn't work' and 'has killed more people than it's saving.'" App. 18a, 20a; *Goede*, 992 N.W.2d at 708 (internal quotations and brackets omitted); *see also* App. 93a (Goede's testimony). The court's conclusion is wrong and *Wiggins* and *Callahan* are right. Goede's testimony does not demonstrate an inconsistency but only the coincidence of religious and secular beliefs.

Goede testified before the ULJ that she believed (1) that her "body is a temple of the Holy Spirit," so she carefully scrutinizes vaccines to determine whether they would introduce potentially harmful substances into her body, and (2) the use of fetal cells in the testing and development of the COVID-19 vaccines prohibits her from receiving them. App. 74a, 76a–77a (Goede's testimony); App. 34a (ULJ decision).

Also in her testimony, Goede outlined a principle for her religious discernment: If there is a natural route to address an illness, she always takes that first; but if there is no natural route or if the natural route failed to address the illness, she will take a medication with fetal cells or hazardous substances only when it is necessary to preserve her own life. App. 86a. This is an extension of the dignity she accords human life as a pro-life Catholic: human life should be preserved. In other words, Goede would only ever take such a

medication “if it were a matter of life and death,” if there were no “natural route” and it were “necessary” to preserve her own life. App. 7a; *Goede*, 992 N.W.2d at 704 (internal quotations omitted). These, for Goede, are necessary conditions for her to consider such an action, and such action would only be taken to preserve human life. Being pro-life, for Goede, is not a “suicide pact,” as the ULJ would have required in order for Goede to justify herself in its eyes.

In fact, Goede testified that she would suffer anything short of death to adhere to her staunch support of the dignity of human life. She testified that she would be willing to suffer even paralysis before using the vaccines. App. 81a; *compare Int’l Soc’y for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 440 (2d Cir. 1981) (stating that a religious beliefs concern “an individual’s ‘ultimate concern’”; “[a] concern is ‘ultimate’ when it is more than ‘intellectual’”; and “[a] concern is more than intellectual when a believer would categorically disregard elementary self-interest in preference to transgressing its tenets.”) (internal quotations and citation omitted).

In response to Goede’s religious beliefs, the ULJ posed to Goede a hypothetical that challenged her conditions as *sufficient*. Moreover, this same hypothetical, which the court of appeals refers to as exposing the inconsistency in Goede’s testimony, actually only poses a situation in which her secular beliefs, not her religious beliefs, would be operative because the religious impediments have been removed. The hypothetical situation posed was: if the COVID-19 vaccine had no connection to aborted fetal cells and taking it were necessary to preserve Goede’s life. Goede testified that she would still refuse it. Both the ULJ and the court

below found this to be inconsistent because Goede also testified that “she would take medications that had been tested using fetal cell lines if it were ‘life or death.’” App. 18a–19a; *Goede*, 992 N.W.2d at 709; see also App. 86a, 92a–94a (Goede testimony).

Though the court of appeals attempted to frame this as a “fact issue” of the sincerity of Goede’s religious beliefs, *id.* at 708, it isn’t. The court’s approach is simply to credit the secular and discredit the religious, contrary to the proper First Amendment analysis. The issue really concerns how the courts are to apply the law to the facts of a case. That is, the issue to review is not whether Goede was sincere in her religious belief but whether the reasoning the ULJ and the court employed to make that determination was proper. It was not proper because the court judged Goede’s sincerity by considering hypotheticals that triggered her secular beliefs while ignoring the fact that her religious beliefs were independently sufficient for her refusal to take the COVID-19 vaccine in the situation that she actually faced.

The court’s misapprehension of Goede’s coincident religious and secular beliefs exactly parallels the personal-versus-religious example in *Callahan*, which the ULJ alluded to during Goede’s hearing. See App. 76a (ULJ discussing eating chicken). The *Callahan* court stated that a claimants’ “personal considerations,” such as a disliking for the taste of pork, “are irrelevant to an analysis of the claimants’ free exercise rights, so long as their religious motivation requires them to . . . avoid pork products.” *Callahan*, 658 F.2d at 684.

Similarly, here, Goede’s professed religious beliefs require her to avoid medical interventions containing

or developed using aborted fetal tissue. At the same time, she also mistrusts the COVID-19 vaccines for secular reasons. But a hypothetical that removes the religious impediment of aborted fetal cells, by that very fact, does not gauge her religious sincerity because it only elicits her “personal considerations,” her secular reasons to oppose the vaccine, its safety and efficacy.

This supposed inconsistency is the only “substantial evidence” the court below refers to as supporting the ULJ’s finding; therefore the court erred in affirming.

The Eighth Circuit’s *Wiggins* is on point, but the court below erroneously distinguished it, again based on Goede’s supposed testimonial inconsistency discussed above. The court below distinguished *Wiggins* thusly:

In *Wiggins*, the Eighth Circuit’s basis for reversing and remanding the case was that the district court had rejected out of hand the prisoners’ claims that their religion was a religion within the meaning of the Free Exercise Clause, instead of a purely secular dogma of white supremacy. By contrast here, the ULJ’s determination did not reject the notion that Goede’s religious beliefs were entitled to First Amendment protection. Instead, the ULJ found that Goede’s reasons for refusing the vaccination were purely secular—her lack of trust in the safety and efficacy of the vaccine. This finding was thus based on the ULJ’s assessment of which parts of Goede’s testimony concerning her reasons for refusing the vaccine should be credited, not the legitimacy of Catholicism as a

religion or Goede's particular application of that religion.

App. 23a; *Goede*, 992 N.W.2d at 710.

This is an illusory distinction. Again, it shrouds the discounting of an independently sufficient religious belief in the cloak of a fact determination. That makes it particularly dangerous.

Thus, despite discussing *Wiggins*, the court of appeals did not apply *Wiggins*' legal reasoning. Likewise, it deviated from the reasoning of the Ninth Circuit in *Callahan*. The Minnesota courts should have acknowledged that Goede has both religious and secular beliefs and credited the independently sufficient religious one. It is impermissible under the First Amendment to do otherwise and discount Goede's religious beliefs using alternative secular views and calling this sort of balancing test a "fact determination."

D. The ULJ Hyper-Scrutinized Goede's Beliefs and Thus Did Not "Stay in Its Lane" and Limit Itself to the "Narrow Function" Described in *Thomas*.

The failure of Minnesota's courts to recognize the independently sufficient basis of Goede's religious beliefs stemmed from the ULJ's improper manner of interrogation.

This Court stated in *Thomas* that, in deciding whether a religious belief is protected by the First Amendment, the "narrow function" of the courts is to "determine whether there was an appropriate finding" that the petitioner was motivated by "an honest conviction" that her religion forbade the action imposed

on her. 450 U.S. at 715–16. “Courts should not undertake to dissect religious beliefs because the believer admits that he is ‘struggling’ with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.” *Id.*

The ULJ overstepped this narrow function by dissecting Goede’s religious beliefs down to the microscopic level despite her clear testimony of her religious basis for vaccine-refusal. The ULJ should not have delved so deeply beyond his “narrow function.”

It was also error for the ULJ to judge Ms. Goede insincere because she received a tetanus vaccine ten years ago without researching its ingredients or development. App. 32a (ULJ decision); App. 18a–19a (court of appeals). This reasoning also conflicts with the Ninth Circuit. The Ninth Circuit has repeatedly held that plaintiffs can present valid Free Exercise claims for religious practices even when they previously failed to adhere to those religious practices. *See Jones v. Slade*, 23 F.4th 1124, 1143 (9th Cir. 2022); *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994).

This Court signaled approval for this approach in *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 144 n.9 (1987), by approvingly quoting the Ninth Circuit’s *Callahan* decision: “So long as one’s faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith derived from revelation, study, up-bringing, gradual evolution, or some source that appears entirely incomprehensible.” *Id.* (quoting *Callahan*, 658 F.2d at 687). By discounting the sincerity of Goede’s religious belief on the basis of her actions ten years ago, the lower court employed

erroneous reasoning. *See also Grayson v. Schuler*, 666 F.3d 450, 454–55 (7th Cir. 2012) (“a sincere religious believer doesn’t forfeit his religious rights merely because he is not scrupulous in his observance....”).

The ULJ ignored Goede’s testimony as to the existence of her beliefs and instead decided that not only did Goede refuse to receive the COVID-19 vaccine for secular reasons, but that Goede had no sincerely held religious beliefs *at all* that prevented her from taking the COVID-19 vaccine.

But, as demonstrated above, the record clearly indicates that Goede had sincerely held religious beliefs. It’s just that the ULJ and court of appeals discounted them despite their independent sufficiency, splitting from this Court and the Eighth and Ninth Circuits on this issue.

In fact, the ULJ went so far as to “google” things outside of the record to insert them into the discussion to, for example, argue with Goede about what the Catholic Church believes and whether fetal cell lines are used in the development or testing of the vaccines. The ULJ argued that while “just looking at some . . . information,” “the Pfizer and the Moderna vaccines, as I understand it, they didn’t use fetal cell lines or fetal cell tissue to create the vaccines. They did use them, they didn’t [sic] use fetal cell lines to test the vaccine after they were created.” App. 77a–78a (argument of ULJ). The ULJ’s statements were confusing and contradictory, and suggested the false premise that the Pfizer and Moderna COVID-19 vaccines were *not* tested using aborted fetal cells when *they were*. Nonetheless, Goede reiterated that any utilization of aborted fetal cells was prohibited by her beliefs. App. 78a (Goede testimony).

Likewise, the ULJ “googled” the Vatican’s position on vaccines during the hearing and inserted his view of it into the record. App. 90a–91a. The ULJ disputed with Goede whether her convictions on the COVID-19 vaccine as a Roman Catholic were plausible based on the Pope and Vatican’s position. *Id.*

The ULJ had no legal authority to delve into these kinds of deep theological questions to assess sincerity of belief—the ULJ’s approach has been directly rejected by federal courts in the Eighth Circuit assessing the sincerity determination under Title VII, which does not differ from the sincerity analysis for determining whether an employee was adhering to religious beliefs or committing employee misconduct: “In considering whether a particular practice or belief of an employee is covered by Title VII, a court may neither determine what the tenets of a particular religion are, nor determine whether a particular practice is or is not required by the tenets of the religion.” *Mial v. Foxhoven*, 305 F. Supp. 3d 984, 991 (N.D. Iowa 2018). The ULJ explicitly violated this principle: “This is not a central tenant [sic] or unchangeable dogma. It is not a religious principle.” App. 35a (ULJ decision).

II. The Minnesota Courts’ Approach Mirrors a Growing Trend in Federal Courts to Discount Religious Sincerity Based on Parallel Secular Beliefs.

Federal courts have traditionally rejected attempts to over-scrutinize and argue with adherents’ claimed religious beliefs. Among many things that have changed because of COVID-19, a shift away from this appears to be “trending,” which should concern the Court.

The ULJ's erroneous analysis of Goede's religious beliefs resembles the errors of Consol Energy in the Fourth Circuit's recent decision in *EEOC v. Consol Energy, Inc.*, 860 F.3d 131 (4th Cir. 2017). There, the Fourth Circuit noted Consol's willingness to disbelieve their employee and argue with his beliefs, when the company should have limited the inquiry to sincerity:

Consol's failure to recognize this conflict—in its dealings with Butcher as well as its litigation of this case—appears to reflect its conviction that Butcher's religious beliefs, though sincere, are mistaken: that the Mark of the Beast is not, as Butcher believes, associated with mere participation in a scanner identification system, but instead manifests only as a physical mark, placed upon the right and not the left hand; and that as a result, allowing Butcher to scan his left hand through the system would be more than sufficient to obviate any potential conflict

....

Id. at 142–43.

To argue and disagree with an employee's religious beliefs while claiming to determine the religious nature and sincerity of those religious beliefs, as the ULJ did, is wrong. *Id.*; see also *Emp't Div. v. Smith*, 494 U.S. 872, 887 (1990) (“Repeatedly and in many different contexts, we have warned that courts must not presume to determine...the plausibility of a religious claim.”). The ULJ's continued questions with respect to the advice and beliefs of the Roman Catholic Church and Vatican about the COVID-19 vaccines inappropriately went to the “correctness” or the

“plausibility” of her beliefs—not their sincerity. App. 90a–91a (ULJ googling Catholic doctrine during hearing).

Unfortunately, the ULJ’s actions appear to be “trending” in federal courts’ sincerity analysis. In recent months, considering Title VII claims based on termination for refusing vaccination, some federal courts have launched into a similar analysis forbidden by the First Amendment. *E.g.*, *Detwiler*, 2023 U.S. Dist. LEXIS 197899, at *13–14 (collecting cases). This trend toward discounting independently sufficient religious bases for refusal because of parallel secular reasons is troubling and requires this Court’s intervention now.

III. The Court Should Grant Certiorari to Decide an Important Question of Federal Law that Has Not Been, But Should Be, Settled by This Court.

As stated above, the reasoning of the Eighth and Ninth Circuits—that is, that coincident motives of religious and secular beliefs do not undermine the First Amendment’s protection of an action motivated by an independently sufficient religious belief—was derived from this Court’s holdings in *Yoder* and *Thomas*. But this Court has not explicitly sanctioned this approach to First Amendment Free Exercise cases. To resolve the ambiguity this creates and to clearly signal the appropriate approach, this Court should grant the petition.

CONCLUSION

Religious belief is intimate and differs substantially among Americans. The promise of religious liberty in the First Amendment is that such differences may persist without punishment from the state. That promise is being broken in Minnesota. Petitioner Goede respectfully requests that the Court grant the writ of certiorari.

Respectfully submitted,

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December 18, 2023