(ORDER LIST: 575 U. S.)

MONDAY, JUNE 1, 2015

CERTIORARI -- SUMMARY DISPOSITION

14-238 UNITED STATES, EX REL. SHEA V. CELLCO PARTNERSHIP, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, 575 U. S. ___ (2015).

ORDERS IN PENDING CASES

14M119 CARTER, MITCHELL M., ET UX. V. HOUSTON BUSINESS DEVELOPMENT

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

14M120 CHARNOCK, DOUGLAS C. V. VIRGINIA, ET AL.

The motion for leave to proceed as a veteran is denied.

14M121 SCHAFLER, PEPI V. BANK OF AMERICA MERRILL LYNCH

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

14-1168 SMITH, ROGER L. V. AEGON COMPANIES PENSION PLAN

The Solicitor General is invited to file a brief in this case expressing the views of the United States.

14-8491 WHITE, BRENDA V. SOUTHEAST MI SURGICAL, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

14-9078 BARRY, MAMADOU V. DIALLO, AISSATO

The motion of petitioner for leave to proceed *in forma*

pauperis is denied. Petitioner is allowed until June 25, 2015, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

14-384 DIAZ-BARBA, ALEJANDRO, ET AL. V. KISMET ACQUISITION, LLC

14-740 MASSI, MATTHEW J. V. UNITED STATES

14-790 BRIDGESTONE RETAIL OPERATIONS V. BROWN, MILTON, ET AL.

14-932 FARMINGTON HILLS, MI, ET AL. V. MARSHALL, DAVID, ET UX.

14-1000 MURPHY, PHILIP A., ET AL. V. VERIZON COMMUNICATIONS, ET AL.

14-1004 PYSARENKO, VITALII V. CARNIVAL CORP.

14-1005 SECURITY HEALTH CARE, ET AL. V. BOLER, JOHNNIE

14-1008 HARDIN, JEFFREY V. OHIO

14-1028 DUBLE, MICHAEL V. FEDEX GROUND PACKAGE SYSTEM

14-1040 WATCHTOWER BIBLE & TRACT, ET AL. V. GARCIA PADILLA, GOV. OF PR

14-1154 UNITED STATES, EX REL. MASTEJ V. HEALTH MGMT. ASSOC., ET AL.

14-1166 TRAVERS, PATRICIA A. V. CELLCO PARTNERSHIP

14-1170 GUERRA-DELGADO, ALFREDO, ET AL. V. POPULAR, INC., ET AL.

14-1178 KAMPS, C. MICHAEL V. BAYLOR UNIVERSITY, ET AL.

14-1186 SCIENTIFIC PLASTIC PRODUCTS V. BIOTAGE AB

14-1187 HRALIMA, MAIGA V. BACA, WARDEN

14-1195 DOWNEY, MELISSA A., ET VIR V. FEDERAL NAT. MORTGAGE ASSOC.

14-1213 WETHERBE, JAMES C. V. SMITH, BOB, ET AL.

14-1215 JONES, DENISE V. JONES, ELMER

14-1228 JACKSON, WILLIAM V. OWENS CORNING/FIBERBOARD

14-1243 MEINTS, DANIEL V. BEATRICE, NE

14-1256 KAZZAZ, AHMED S. V. UNITED STATES

14-1282 BOSHEARS, RAYMOND V. MASSACHUSETTS

14-1283 ADMIRALTY CONDOMINIUM ASSOC. V. DIR., FEMA, NAT'L FLOOD INS.

14-1303 PARAMOUNT CONTRACTORS, ET AL. V. LOS ANGELES, CA

14-8011 LESTER, DE V. LONG, WARDEN

14-8107 CAMILLO-AMISANO, PHILLIP V. UNITED STATES

14-8204 MANGUM, GARY, ET UX. V. RENTON SCHOOL DISTRICT #403

14-8381 MODANLO, NADER V. UNITED STATES

14-8413 SMITH, NARY V. ST. MARTINVILLE, LA

14-8840 GUARASCIO, JOSEPH M. V. UNITED STATES

14-9020 WRIGHT, JOEL D. V. JONES, SEC., FL DOC

14-9047 ZAMORA, JOSE V. FLORIDA

14-9052 THEMEUS, YVON V. JONES, SEC., FL DOC, ET AL.

14-9053 ZINK, DAVID S. V. MISSOURI

14-9067 SALGADO, LUIS A. V. BITER, WARDEN

14-9071 WEDGEWORTH, JAMES V. KELLEY, DIR., AR DOC

14-9072 JACOBS, ERIKA V. BIANDO, TRICIA, ET AL.

14-9074 McELFRESH, RONALD L. V. OHIO

14-9080 JONES, TROY R. V. WOLFE, WARDEN, ET AL.

14-9084 McMANUS, KIM V. JUSTICE OF THE PEACE COURT #13

14-9085 DAWSON, WILLIAM D. V. ABSTON, RHONDA, ET AL.

14-9088 DOSS, HAROLD D. V. TENNESSEE

14-9093 BURNS, CLINTON V. FOX, WARDEN, ET AL.

14-9097 ROBINSON, ARTHUR R. V. BENJAMIN, KEVIN

14-9098 DINGLE, LAMARR B. V. VIRGINIA

14-9101 ROBBINS, EDWARD D. V. BOULDER COUNTY, CO, ET AL.

14-9110 TROY, JOHN V. JONES, SEC., FL DOC, ET AL

14-9115 WEST, MARQUIS B. V. MAGRUDER, ANDREW M., ET AL.

14-9117 WILLIAMS, LARRY V. ARTUS, M., ET AL.

14-9120 PARKER, JACK V. BURT, WARDEN

14-9129 LANZA, ENRICO F. V. DIST. ATT'Y OF DELAWARE CTY.

14-9131 AVILA, DANIEL V. CALIFORNIA

14-9134 MURFF, ANTHONY V. CORIZON MEDICAL SERVICES, ET AL.

14-9136 VALENZUELA, MELINDA G. V. CORIZON HEALTH CARE, ET AL.

14-9137 LUCAS, DAVID A. V. CALIFORNIA

14-9141 COAKLEY, JAMES T. V. JONES, SEC., FL DOC, ET AL.

14-9143 COLLINS, BILLY M. V. TEXAS

14-9179 DOWNING, BRYAN L. V. FLORIDA

14-9181 PETERKA, DANIEL J. V. JONES, SEC., FL DOC

14-9189 PREACELY, RAYMANDA V. DEPT. OF TREASURY

14-9212 BENEFIELD, KEVIN M. V. CONNECTICUT

14-9234 CABEZA, ROBERT V. GRIFFIN, SUPT., SULLIVAN

14-9237 MOELLER, DAVID D. V. GILBERT, MARGARET

14-9241 FOSTER, JORDY V. FL DOC

14-9243 DICH, JOHN V. V. JACQUEZ, WARDEN

14-9257 SALARY, MARK T. V. NUSS, LAWTON R., ET AL.

14-9279 DAVIS, KENNETH D. V. KEITH, WARDEN

14-9287 PENA, ROBERT D. V. WASHINGTON

14-9319 JAMISON, MATTHEW V. SOUTH CAROLINA

14-9322 KRATOCHVIL, JOHN V. TENNESSEE

14-9340 JACKSON, JOEY V. DOMZALSKI, MARY

14-9352 BEARD, MICHAEL W. V. LIZARRAGA, WARDEN

14-9356 CARRASCOSA, MARIA J. V. ARTHUR, ADMINISTRATOR

14-9379 HINGLE, DANIELLE V. MISSISSIPPI

14-9384 GUO, SHI W. V. LYNCH, ATT'Y GEN.

14-9387 LYON, LeFLORIS V. WISE CARTER CHILD, ET AL.

14-9398 GIBSON, JOHNNY M. V. PAQUIN, JOHN, ET AL.

14-9400 HAMPTON, TERENCE V. NEW YORK

14-9403 REECE, CHARLES G. V. DICKENSON, TERRY, ET AL.

14-9423 JONES, CHARLES E. V. WILSON, WARDEN

14-9429 HAMMONDS, ANTHONY D. V. BO'S FOOD STORE

14-9431 HILL, FRANK V. ILLINOIS

14-9437 BASNIGHT, TYRONE V. UNITED STATES

14-9493 POWELL, JOEL D. V. UNITED STATES

14-9494 ONCIU, MOSES V. UNITED STATES

14-9502 VELAZQUEZ-CORCHADO, BRENDA V. UNITED STATES

14-9503 WARREN, CHRISTIAN D. V. UNITED STATES

14-9507 ROBISON, ALLEN M. V. UNITED STATES

14-9510 ARMSTRONG, JAMES B. V. UNITED STATES

14-9511 BEJARANO-ORDONEZ, ERIK D. V. UNITED STATES

14-9512 BAILEY, ROBERT V. UNITED STATES

14-9514 COX, ANDREW V. UNITED STATES

14-9520 ALEXANDER, DONALD S. V. UNITED STATES

14-9522 DUNGY, MONTREAIL D. V. UNITED STATES

14-9529 DANIEL, MAX V. UNITED STATES

14-9537 TRUMAN, JEFFREY E. V. UNITED STATES

14-9538 THOMAS, JODY C. V. UNITED STATES

14-9546 NAILON, SHAE F. V. UNITED STATES

14-9547 McMILLIAN, TYRONE V. UNITED STATES

14-9551 McDUFFIE, HAROLD V. UNITED STATES

14-9553 WALKER, SAMUEL V. UNITED STATES

14-9557 BRYANT, EDDIE D. V. UNITED STATES

14-9558 GALLEGOS-HERNANDEZ, JOSE C. V. UNITED STATES

The petitions for writs of certiorari are denied.

13-1162 PURDUE PHARMA L.P., ET AL. V. UNITED STATES, EX REL. MAY

The motion of The Pharmaceutical Research and Manufacturers

of America, et al. for leave to file a brief as *amici curiae* is granted. The motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

14-631 MANZANO, JUAN V. INDIANA

The petition for a writ of certiorari is denied. Justice Sotomayor dissents.

14-954 ANIMAL CARE TRUST, ET AL. V. UNITED PET SUPPLY, INC.

The motion of International Municipal Lawyers Association, et al. for leave to file a brief as *amici curiae* is granted. The motion of American Society for the Prevention of Cruelty to Animals for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

14-1021 BYARS, DIR., SC DOC, ET AL. V. AIKEN, TYRONE, ET AL.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

14-9089 MARIN, MEL M. V. RICE, CHARLES

14-9144 DIXON, MICHAEL A. V. HART, WARDEN

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

HABEAS CORPUS DENIED

14-1334 IN RE SRINIVAS V. VADDE

14-9667 IN RE LLOYD W. SHEPPARD

The petitions for writs of habeas corpus are denied.

14-9683 IN RE EDWARD N. CARLTON

The motion of petitioner for leave to proceed *in forma*

pauperis is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

MANDAMUS DENIED

14-9075 IN RE SERGEI PORTNOY

The petition for a writ of mandamus is denied.

14-9126 IN RE ANDREW R. SPENGLER

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

13-10787 HOVARTER, JOHN S. V. CALIFORNIA, ET AL.

14-1026 GOSSAGE, HENRY E. V. OPM, ET AL.

14-7635 GREENFIELD, JOZETTE V. DEUTSCHE BANK AG, ET AL.

14-7765 BURGEST, EARL H. V. CARAWAY, WARDEN

14-8157 MURRAY, JOANNE H. V. MIDDLETON, D. A., ET AL.

14-8234 REED-RAJAPAKSE, SAMANTHA V. MEMPHIS LIGHT, ET AL.

14-8261 LOVE, DONTE D. V. DUCART, WARDEN

14-8340 JONES, ALICIA V. ANDO, SCOTT

14-8370 HUANG, DONGSHENG V. DEPT. OF LABOR, ET AL.

14-8495 SLEDGE, SAMUEL V. ILLINOIS

14-8616 OYELAKIN, MUTIU A. V. RENO, JANET, ET AL.

14-8653 JOHNSON, STEVEN R. V. FARM CREDIT OF FLORIDA, ET AL.

14-8774 ADAMS, JACOB S. V. UNITED STATES

The petitions for rehearing are denied.

Per Curiam

SUPREME COURT OF THE UNITED STATES

STANLEY TAYLOR, ET AL. *v.* KAREN BARKES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14–939. Decided June 1, 2015

PER CURIAM.

Christopher Barkes, "a troubled man with a long history of mental health and substance abuse problems," was arrested on November 13, 2004, for violating his probation. *Barkes* v. *First Correctional Medical, Inc.*, 766 F. 3d 307, 310–311 (CA3 2014). Barkes was taken to the Howard R. Young Correctional Institution in Wilmington, Delaware. As part of Barkes's intake, a nurse who worked for the contractor providing healthcare at the Institution conducted a medical evaluation. *Id.*, at 311.

The evaluation included a mental health screening designed in part to assess whether an inmate was suicidal. The nurse employed a suicide screening form based on a model form developed by the National Commission on Correctional Health Care (NCCHC) in 1997. The form listed 17 suicide risk factors. If the inmate's responses and nurse's observations indicated that at least eight were present, or if certain serious risk factors were present, the nurse would notify a physician and initiate suicide prevention measures. *Id.*, at 311, 313.

Barkes disclosed that he had a history of psychiatric treatment and was on medication. He also disclosed that he had attempted suicide in 2003, though not—as far as the record indicates—that he had also done so on three other occasions. And he indicated that he was not currently thinking about killing himself. Because only two risk factors were apparent, the nurse gave Barkes a "routine" referral to mental health services and did not initiate any special suicide prevention measures. *Id.*, at 311.

Per Curiam

Barkes was placed in a cell by himself. Despite what he had told the nurse, that evening he called his wife and told her that he "can't live this way anymore" and was going to kill himself. Barkes's wife did not inform anyone at the Institution of this call. The next morning, correctional officers observed Barkes awake and behaving normally at 10:45, 10:50, and 11:00 a.m. At 11:35 a.m., however, an officer arrived to deliver lunch and discovered that Barkes had hanged himself with a sheet. *Id.*, at 311–312.

Barkes's wife and children, respondents here, brought suit under Rev. Stat. §1979, 42 U. S. C. §1983, against various entities and individuals connected with the Institution, who they claimed had violated Barkes's civil rights in failing to prevent his suicide. At issue here is a claim against petitioners Stanley Taylor, Commissioner of the Delaware Department of Correction (DOC), and Raphael Williams, the Institution's warden. Although it is undisputed that neither petitioner had personally interacted with Barkes or knew of his condition before his death, respondents alleged that Taylor and Williams had violated Barkes's constitutional right to be free from cruel and unusual punishment. *Barkes* v. *First Correctional Medical, Inc.*, 2008 WL 523216, *7 (D Del., Feb. 27, 2008). They did so, according to respondents, by failing to supervise and monitor the private contractor that provided the medical treatment—including the intake screening—at the Institution. Petitioners moved for summary judgment on the ground that they were entitled to qualified immunity, but the District Court denied the motion. *Barkes* v. *First Correctional Medical, Inc.*, 2012 WL 2914915, *8–*12 (D Del., July 17, 2012).

A divided panel of the Court of Appeals for the Third Circuit affirmed. The majority first determined that respondents had alleged a cognizable theory of supervisory liability (a decision upon which we express no view). 766 F. 3d, at 316–325. The majority then turned to the two-

step qualified immunity inquiry, asking "first, whether the plaintiff suffered a deprivation of a constitutional or statutory right; and second, if so, whether that right was 'clearly established' at the time of the alleged misconduct." *Id.*, at 326.

Taking these questions in reverse order, the Third Circuit held that it was clearly established at the time of Barkes's death that an incarcerated individual had an Eighth Amendment "right to the proper implementation of adequate suicide prevention protocols." *Id.*, at 327. The panel majority then concluded there were material factual disputes about whether petitioners had violated this right by failing to adequately supervise the contractor providing medical services at the prison. There was evidence, the majority noted, that the medical contractor's suicide screening process did not comply with NCCHC's latest standards, as required by the contract. Those standards allegedly called for a revised screening form and for screening by a qualified mental health professional, not a nurse. There was also evidence that the contractor did not have access to Barkes's probation records (which would have shed light on his mental health history), and that the contractor had been short-staffing to increase profits. *Id.*, at 330–331.

Judge Hardiman dissented. As relevant here, he concluded that petitioners were entitled to qualified immunity because the right on which the majority relied was "a departure from Eighth Amendment case law that had never been established before today." *Id.*, at 345.

Taylor and Williams petitioned for certiorari. We grant the petition and reverse on the ground that there was no violation of clearly established law.

"Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle* v. *Howards*,

566 U. S. ___, ___ (2012) (slip op., at 5). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ibid.* (brackets and internal quotation marks omitted). "When properly applied, [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft* v. *al-Kidd*, 563 U. S. ___, ___ (2011) (slip op., at 12) (internal quotation marks omitted). "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.*, at ___ (slip op., at 9).

The Third Circuit concluded that the right at issue was best defined as "an incarcerated person's right to the proper implementation of adequate suicide prevention protocols." 766 F. 3d, at 327. This purported right, however, was not clearly established in November 2004 in a way that placed beyond debate the unconstitutionality of the Institution's procedures, as implemented by the medical contractor.

No decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols. And "to the extent that a 'robust consensus of cases of persuasive authority'" in the Courts of Appeals "could itself clearly establish the federal right respondent alleges," *City and County of San Francisco* v. *Sheehan*, 575 U. S. ___, ___ (2015) (slip op., at 16), the weight of that authority at the time of Barkes's death suggested that such a right did *not* exist. See, *e.g.*, *Comstock* v. *McCrary*, 273 F. 3d 693, 702 (CA6 2001) ("the right to medical care for serious medical needs does not encompass the right to be screened correctly for suicidal tendencies" (internal quotation marks omitted)); *Tittle* v. *Jefferson Cty. Comm'n*, 10 F. 3d 1535, 1540 (CA11 1994) (alleged "weaknesses in the [suicide] screening process,

the training of deputies[,] and the supervision of prisoners" did not "amount to a showing of deliberate indifference toward the rights of prisoners"); *Burns* v. *Galveston*, 905 F. 2d 100, 104 (CA5 1990) (rejecting the proposition that "the right of detainees to adequate medical care includes an absolute right to psychological screening"); *Belcher* v. *Oliver*, 898 F. 2d 32, 34–35 (CA4 1990) ("The general right of pretrial detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies.").

The Third Circuit nonetheless found this right clearly established by two of its own decisions, both stemming from the same case. Assuming for the sake of argument that a right can be "clearly established" by circuit precedent despite disagreement in the courts of appeals, neither of the Third Circuit decisions relied upon clearly established the right at issue. The first, *Colburn I*, said that if officials "know or should know of the particular vulnerability to suicide of an inmate," they have an obligation "not to act with reckless indifference to that vulnerability." *Colburn* v. *Upper Darby Twp.*, 838 F. 2d 663, 669 (1988). The decision did not say, however, that detention facilities must implement procedures to identify such vulnerable inmates, let alone specify what procedures would suffice. And the Third Circuit later acknowledged that *Colburn I*'s use of the phrase "or should know"—which might seem to nod toward a screening requirement of some kind—was erroneous in light of *Farmer* v. *Brennan*, 511 U. S. 825 (1994), which held that Eighth Amendment liability requires actual awareness of risk. See *Serafin* v. *Johnstown*, 53 Fed. Appx. 211, 213 (CA3 2002).

Nor would *Colburn II* have put petitioners on notice of any possible constitutional violation. *Colburn II* reiterated that officials who know of an inmate's particular vulnerability to suicide must not be recklessly indifferent to that vulnerability. *Colburn* v. *Upper Darby Twp.*, 946

F. 2d 1017, 1023 (1991). But it did not identify any minimum screening procedures or prevention protocols that facilities must use. In fact, *Colburn II* revealed that the booking process of the jail at issue "include[d] no formal physical or mental health screening," *ibid.*, and yet the Third Circuit ruled for the defendants on all claims, see *id.*, at 1025–1031.

In short, even if the Institution's suicide screening and prevention measures contained the shortcomings that respondents allege, no precedent on the books in November 2004 would have made clear to petitioners that they were overseeing a system that violated the Constitution. Because, at the very least, petitioners were not contravening clearly established law, they are entitled to qualified immunity. The judgment of the Third Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

COUNTY OF MARICOPA, ARIZONA, ET AL. *v.*
ANGEL LOPEZ-VALENZUELA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14–825. Decided June 1, 2015

The petition for a writ of certiorari is denied. JUSTICE ALITO dissents.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting from denial of certiorari.

The Court's refusal to hear this case shows insufficient respect to the State of Arizona, its voters, and its Constitution. And it suggests to the lower courts that they have free rein to strike down state laws on the basis of dubious constitutional analysis. I respectfully dissent.

In 2006, Arizona voters amended their State Constitution to render ineligible for bail those individuals charged with "serious felony offenses" who have "entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge." Ariz. Const., Art. II, §22(A)(4). A divided en banc panel of the U. S. Court of Appeals for the Ninth Circuit held this provision unconstitutional under two theories based on the "substantive component of the Due Process Clause." *Lopez-Valenzuela* v. *Arpaio*, 770 F. 3d 772, 775 (2014). It first reasoned that the amendment implicates a fundamental interest "'in liberty'" and is not narrowly tailored to serve Arizona's interest in ensuring that persons accused of crimes are available for trial. *Id.,* at 780–786. Second, the court held that the amendment "violate[s] substantive due process by imposing punishment before trial." *Id.,* at 791.

Shortly after that decision, Arizona sought a stay of the

judgment from this Court. In a statement respecting denial of the stay application, I noted the unfortunate reality that there "appeare[d] to be no reasonable probability that four Justices [would] consider the issue sufficiently meritorious to grant certiorari." *Maricopa County* v. *Lopez-Valenzuela*, 574 U. S. ___ (2014) (slip op., at 1) (internal quotation marks omitted). Though I had hoped my prediction would prove wrong, today's denial confirms that there was "little reason to be optimistic." *Id.,* at ___ (slip op., at 2).

It is disheartening that there are not four Members of this Court who would even review the decision below. As I previously explained, States deserve our careful consideration when lower courts invalidate their constitutional provisions. *Id.,* at ___ (slip op., at 1). After all, that is the approach we take when lower courts hold federal statutes unconstitutional. See, *e.g., Department of Transportation* v. *Association of American Railroads*, 573 U. S. ___ (2014) (granting review when a federal statutory provision was held unconstitutional, notwithstanding absence of a circuit split). In fact, Congress historically required this Court to review any decision of a federal court of appeals holding that a state statute violated the Federal Constitution. 28 U. S. C. §1254(2) (1982 ed.). It was not until 1988 that Congress eliminated that mandatory jurisdiction and gave this Court discretion to review such cases by writ of certiorari. See Pub. Law 100-352, §2, 102 Stat. 662. In my view, that discretion should be exercised with a strong dose of respect for state laws. In exercising that discretion, we should show at least as much respect for state laws as we show for federal laws.

Our indifference to cases such as this one will only embolden the lower courts to reject state laws on questionable constitutional grounds. This Court once emphasized the need for judicial restraint when asked to review the constitutionality of state laws. See, *e.g., Ferguson* v.

Skrupa, 372 U. S. 726, 729 (1963) (noting that this Court should refuse to use the Due Process Clause "to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy"); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391 (1937) (refusing to strike down a state regulation on the basis of substantive due process because "the Constitution does not recognize an absolute and uncontrollable liberty"); *Nebbia* v. *New York*, 291 U. S. 502, 537–538 (1934) ("Times without number we have said that the legislature is primarily the judge of the necessity of [a regulation], that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power"); *Tyson & Brother* v. *Banton*, 273 U. S. 418, 446 (1927) (Holmes, J., dissenting) ("[A] state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution . . . , and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain"). But for reasons that escape me, state statutes have encountered closer scrutiny under the Due Process Clause of the Fourteenth Amendment than federal statutes have under the sister Clause in the Fifth Amendment. *Davidson* v. *New Orleans*, 96 U. S. 97, 103–104 (1878) (declining to overturn a state tax assessment on due process grounds, and noting the "remarkable" fact that the Fifth Amendment Due Process Clause had been invoked very rarely since the founding, but that in the short time since the Fourteenth Amendment had been ratified, "the docket [had become] crowded with cases in which [the Court was] asked to hold that State courts and State legislatures have deprived their own citizens of life, liberty, or property without due process of law"). This Court's previous admonitions are all too rare today, and

our steadfast refusal to review decisions straying from them only undercuts their influence.

For these reasons, I respectfully dissent from the Court's denial of certiorari.