No. _____

In The
Supreme Court of the United States

Christopher Lee Holloway,

Petitioner,

vs.

State of Minnesota,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented for Review

Whether the denial of an affirmative defense to one class of offenders in a criminal case, while permitting it to another, based solely on the relative age of the actor, violates the constitutional right to equal protection of the laws; and whether the judgment of the Minnesota Supreme Court in this case involved an unreasonable application of clearly established Federal law.

Proceedings Directly Related to this Case

Holloway vs. Minnesota, No. 21-2723, (8th Cir. 2021),
Judgment entered on 21 September 2021.

Holloway vs. Minnesota, No. 20-CV-2334 MJD/BRT, 2021 WL 2680261 (D. Minn. 2021),
Judgment entered on 30 June 2021.

Holloway v. Minnesota, No. CV 20-2334 (MJD/BRT), 2021 WL 2792401 (D. Minn. May 2021) (report and recommendation),
Judgment entered on 17 May 2021.

Holloway v. State, No. A19-1410, 2020 WL 1517966, (Minn. Ct. App. 2020) (appeal from post-conviction petition).
Judgment entered on 30 March 2020, *review denied* (16 June 2020).

State v. Holloway, 916 N.W.2d 338 (Minn. 2018) (direct appeal),
Judgment entered on 1 August 2018.

State v. Holloway, 905 N.W.2d 20 (Minn. Ct. App. 2018) (direct appeal),
Judgment entered on 20 November 2017.

State v. Holloway, No. 55-CR-14-8517 (Olmsted County District Court 2016) (original case),
Judgment entered on 16 September 2016.

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Holloway vs. Minnesota, No. 21-2723, (8th Cir. 2021) (no reported opinion).

Jurisdictional Statement

The judgment of the Eighth Circuit Court of Appeals was entered in this case on 21 September 2021. This Petition for Certiorari is timely filed within the meaning of Rule 13 of the rules of this Court. This Court has jurisdiction to review the decision of the court of appeals pursuant to a writ of certiorari under 28 U.S.C. § 1254 (1).

Constitutional and Statutory Provisions at Issue in the Case

U.S. Const. Amend. XIV, Sec. 1:

> 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.

Statement of the Case

This case arises from a criminal prosecution in the State of Minnesota. It began with a criminal complaint, filed on 22 December 2014, charging Petitioner Christopher Holloway with one count of criminal sexual conduct in the third degree, in violation of Minnesota Statutes § 609.344 subdivision 1(b). An amended complaint was filed two weeks later, adding an additional charge of criminal sexual conduct in the fourth degree, in violation of Minnesota Statutes § 609.345, subdivision 1(b).

Both charges provide for an affirmative defense of reasonable mistake of age. Of central importance to the question presented for review, however, is that each statute restricts the availability of the affirmative defense to actors who are no more than ten years older than the alleged victim.

The relevant facts upon which the charges were based are not in dispute. On 21 December 2014, the police in Rochester, Minnesota, responded to a phone call from the mother of J.D. (then 14-years-old) after she found J.D. in bed with Holloway (then 44-years-old). J.D. and Holloway had met the previous day on "Grindr," the world's most popular geosocial networking and dating application for gay people. The two had exchanged messages on Grindr for several hours before they agreed to meet at J.D.'s house. The two had sex. They met again the following night, and had sex again before being discovered by J.D.'s mother. Grindr's terms of use required its users to be at least 18 years of age, and J.D. had affirmatively represented himself to be 18-years-old in his messaging with Holloway.

The legislative history of the statutes at issue also is not disputed. The statutes have included the affirmative defense of reasonable mistake of age for decades, and it was not until 2007 that the Minnesota Legislature adopted changes to the statutory language that for the first time restricted the use of the defense based on the relative age of the actor.

The legislative history of that modification provides important context. Senator Mary Olson introduced a bill in February 2007 that proposed to limit the availability of the mistake-of-age defense to defendants who were no more than 120 months older than the alleged victim. In April 2007, the Judiciary Committee of the Minnesota Senate held a hearing in which Senator Olson described the purpose of the proposal:

> [W]hat we are doing with this bill is putting the responsibility on an adult who is 10 years older or more than a 13, 14, or 15 year old child, to be certain that if they are going to engage in some type of sexual relationship with that child that they have a responsibility to make certain that they they're I guess not dealing with a child of that age. It seems to me that our common experiences and common sense can tell us that there is a difference between um young people who are close together in age we all know form romantic relationships with each other, and someone who is quite a ways into their adulthood and is having a relationship with a fairly young child, and that, when that age span is 10 years

> or more and we are dealing with someone this young, that we're expecting something more um in terms of um the responsibility we're putting on that adult and, ya know, I have to tell you that um we would like to think that these types of things don't um, aren't happening, but unfortunately, um there are too many people in society that are willing to prey upon very impressionable and very vulnerable young people, whether girls or boys, but young children who are very susceptible to those kind of influences by older people, whether they are runaways from home or just people who are, young people who are or want out of their parents authority, ya know there are just lots of circumstances and for the adult to have the responsibility in this situation when they are that much older um it seems to me that it's not unreasonable to expect that level of responsibility to be on an adult with that much difference in age.

Senator Limmer questioned the rationale behind the 10 year limitation. He stated "I can't figure this 10 year aspect out .... If the number was changed from 10 years to 5 years does that make it a more liberalized standard or does that make it a more, uh, higher standard?" Senator Olson's response:

> [W]e would be able to prosecute more people and we would make the affirmative defense available to fewer people if we um changed it to 5 years…

> As things stand, and all we are asking for here is if it's a relationship between a 13 year old and a 23 year old, that [the] 23 year old isn't gonna be able to try to claim that he didn't understand that this 13 year old was too young…. It's not that I would have an objection, I just wonder if it would be more difficult to pass this, and I think it is really important that we get this law past the floor and get this enacted into law because this really is such a wide open loophole, it's being misused at the present time. So even though I very much appreciate your intention there, I would feel more comfortable going forward with the bill as it stands.

Minn. Sen. Hearing on S.F. 1144 before the Sen. Comm. (13 April 2007). The Judiciary Committee passed the bill, and the amended statutory language was signed into law in May 2007.

After the charges were filed, Petitioner Holloway filed pretrial motions seeking an order that the statutes were unconstitutional on substantive due process and equal protection grounds under both the federal and state constitutions. He also specifically moved the court to permit him to assert the mistake-of-age defense at trial.

In an order filed on 2 June 2015, Olmsted County Judge Joseph Chase denied the requested relief, finding the statutes constitutional under the rational basis test. Holloway represented himself in a

jury trial starting on 6 June 2016. The jury returned guilty verdicts on both counts on 9 June 2016.

On 16 September 2016, Judge Chase sentenced Holloway to a 15-month stayed sentence on the fourth degree criminal sexual conduct charge and to a 60-month stayed sentence on the third degree criminal sexual conduct conviction. As conditions of the stayed sentence, he imposed 15 years of supervised probation, and 240 days of local incarceration. He also imposed lifetime "conditional release" after service of the sentence.

Holloway timely filed a direct appeal to the Minnesota Court of Appeals. That court affirmed the convictions in an opinion filed on 20 November 2017. The Minnesota Supreme Court accepted review on 24 January 2018, and affirmed on 1 August 2018. The time for seeking review of that opinion through a petition for certiorari with this Court expired on 30 October 2018.

Holloway thereafter filed several petitions for postconviction relief in the state district court. The first was filed on 13 May 2019. Two successive petitions were filed on 1 and 5 August 2019. Judge Chase denied the first petition on 3 July 2019. Holloway timely appealed the order denying that petition, and the Minnesota court of appeals affirmed in a written order filed on 30 March 2020. The Minnesota Supreme Court denied Holloway's petition for review on 16 June 2020.

On 16 November 2020, Petitioner Holloway sought relief in the United States District Court for the District of Minnesota, with a timely filed Writ of

Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C. § 2254. The district court had jurisdiction pursuant to 28 U.S.C. § 2254. The district court denied the petition on 30 June 2021, and denied a certificate of appealability on the same day. On 30 July 2021, Petitioner timely filed a notice of appeal, seeking a certificate of appealability from the Eighth Circuit Court of Appeals. The court of appeals had jurisdiction from the district court's final judgment pursuant to 28 U.S.C. § 1291. The Eighth Circuit denied the relief sought, entering its judgment on 21 September 2021.

Petitioner now requests that this Court accept review to decide this important constitutional question.

Argument

Petitioner seeks this Court's review of the decision of the court of appeals because it has affirmed the district court's interpretation of an important federal constitutional question implicating the Equal Protection Clause of the Fourteenth Amendment that never before has been raised in this Court or in any of the various federal courts of appeals. The specific question has not been raised because Minnesota is the *only* state in the union to have promulgated a law that denies an affirmative criminal defense to one class of offenders based solely on the relative age of the actor. It is unique. And uniquely arbitrary.

Because the question was presented in a petition for habeas corpus relief challenging a state court judgment, the question is contingent on whether the Minnesota Supreme Court's decision involved an

unreasonable application of clearly established Federal law, as determined by this Court, within the meaning of 28 U.S.C. § 2254 (d)(1). Petitioner contends that it did, and that the criminal convictions were thus obtained in violation of the Equal Protection Clause.

"Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Williams v. Taylor*, 529 U.S. 362, 413 (2000). In this case, the Minnesota Supreme Court did not expressly identify or apply any governing principles under clearly established federal law because it concluded that the Minnesota standard was "more stringent," rendering a separate analysis under the federal constitution superfluous: "Because Minnesota's rational-basis test is a more stringent standard of review than the federal rational-basis test, the federal test is also satisfied." *State v. Holloway*, 916 N.W.2d 338, 350 (Minn. 2018) (cleaned up); Appendix at 43.

While the Minnesota Supreme Court did not expressly identify or provide any analysis as to the correct federal legal principles that should apply in this case, Petitioner nonetheless contends that the Minnesota Supreme Court's rejection of his federal constitutional argument involved an unreasonable application of clearly established Federal law – even if that law was not expressly discussed, analyzed, or applied.

I. The Criminal Sexual Conduct Laws as Applied in this Case Violate the Equal Protection

Clause of the Fourteenth Amendment because there is no Rational Relationship between the Legislative Classification and any Legitimate Governmental Objective.

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, "which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). From this principle it follows that "the initial inquiry in any equal protection claim is whether the plaintiff has established that she was treated differently than others who are similarly situated to her." *Keevan v. Smith*, 100 F.3d 644, 648 (8th Cir. 1996).

There was no controversy regarding this threshold inquiry concerning Holloway's claim in the Minnesota Supreme Court: "Holloway, a member of the class of defendants who are not permitted to raise a mistake-of-age defense, argues that, except for the factor of age, he is similarly situated to the class of defendants who are permitted to raise a mistake-of-age defense. We agree." *Holloway*, 916 N.W.2d at 347; Appendix at 39.

Having crossed this threshold inquiry, the clearly established federal law presumes the legislation to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *City of Cleburne, Tex.*, 473 U.S. at 440; *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993) ("Such a classification cannot run afoul of the Equal Protection Clause if there is a

rational relationship between the disparity of treatment and some legitimate governmental purpose"). Only in cases involving a "fundamental right" or a "suspect classification" will the federal courts employ the more probing strict-scrutiny analysis. This Court has determined that a legal classification based on age is not entitled to the stricter scrutiny that is sometimes applied to other "suspect" classifications. *Massachusetts Board of Retirement v. Murgia,* 427 U.S. 307 (1976). The Minnesota Supreme Court in this case rejected the application of strict scrutiny analysis. Holloway does *not* here contend that this ruling "was contrary to" clearly established Federal law.

The Minnesota Supreme Court nonetheless departed from the reasonable application of clearly established federal law in its application of the Minnesota rational-basis test to the facts of this case – assuming the Minnesota test to be more rigorous than the corresponding federal law, and relieving it of the need to conduct a duplicative analysis.

> Under the clearly established federal law, even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between classification and objective gives substance to the Equal Protection Clause. . . . By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that

> classifications are not drawn for the purpose of disadvantaging the group burdened by the law.

Romer v. Evans, 517 U.S. 620, 632-33 (1996). The federal courts "must discover a correlation between the classification and either the actual purpose of the statute or a legitimate purpose that we may reasonably presume to have motivated an impartial legislature." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 181 (1980). "The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Tex.*, 473 U.S. at 446. It is a violation of the Equal Protection clause to legislate classifications for disparate legal treatment based on criteria unrelated to a legitimate objective: "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Reed v. Reed*, 404 U.S. 71, 76 (1971).

There is no rational relation between the arbitrary distinction drawn in this case and any legitimate State goal. According to the Minnesota Supreme Court, the available legislative record revealed that there were two legitimate purposes to the classification drawn in this case:

> First, the Legislature sought to protect children by eliminating the defense for certain adults, and especially for adults who prey upon younger children. Second, by preserving the defense for teenagers and the youngest adults, the Legislature

> sought to protect from prosecution those defendants who might make a bona fide mistake during a romantic relationship.

Holloway, 916 N.W.2d at 349.

The challenged classification in these laws, however, does not rationally relate to either of those hypothetical objectives. As to the first, the protection of children, it is the *prohibition* on sexual relations with children between the ages of 13 and 15 that is rationally related to achieving that legitimate state interest, but these laws draw no distinction in this regard. The crimes, their elements, and the potential punishments, are exactly the same for actors on both sides of the ten-year difference in age distinction. In other words, actors of any age "who prey upon younger children" are subject to the same prosecution and penalties for doing so.

The challenged classification relates only to the availability of an affirmative defense to the actor. The real question therefore is whether there is a rational relationship between the objective of protecting children and the legislated *classification* based on age. If we assume that the elimination of the defense for those on one side of the ten-year age difference serves the interest of protecting children, we must also assume that it serves it just as well by eliminating the defense for everyone. The test is not whether eliminating the affirmative defense rationally relates to the objective of protecting children; the test is whether there is a rational relationship between the "disparity of treatment" and the goal of protecting children. The arbitrary *classification based on age* in this case does not rationally relate to the identified

state objective; it merely divides similarly situated offenders into one class that may assert the defense, and another that may not.

The analysis based on clearly established federal law would be no different in the case of a statute that segregated classes of offenders based on their weight or height or eye color.[1] Indeed, if there is a rational relationship between this "limited" mistake-of age defense, and the protection of children, then it would be far more effective if the limitation of the defense were *reversed* – if only those alleged offenders who were *more* than ten years older than the minor victim were permitted to assert it. According to the data available to the Minnesota legislature at the time it enacted the challenged legislation, by far the greatest number of offenders who "preyed on" minors in this age group were themselves in the same age group: "the single age with the greatest number of offenders from the perspective of law enforcement was age 14." Howard N. Snyder, SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS, at 8, Bureau of Justice Statistics, DOJ (2000). The number of offenders actually diminished gradually as their age increased. And when the data were reviewed specifically for minor victims in the 12 to 17 year age group, the likely

[1] The analysis and conclusions of the Minnesota Supreme Court and the district court below would be the same in the case of absolutely *any* arbitrary classification, including laws forbidding the affirmative defense to obese people but not to others; forbidding the defense to landless renters, but not to those who own property; forbidding the defense to offenders with surnames starting with the letters L through Z, but not to those whose last names begin with the letters A through K.

offenders were *far* more likely to range in age from 15 to 20 years old than any other age group. *Id.* at 9. Permitting the mistake-of-age defense for the most likely and numerous offenders, while forbidding it for the least likely, belies the assertion that the classification bears a rational relationship to the goal of protecting children. The disparate treatment here based on the offender's relative age bears no *rational* relationship whatsoever to the stated legislative objective – it is absolutely arbitrary. The Minnesota Supreme Court therefore strayed from the reasonable application of this Court's clearly established precedent in finding otherwise.

The second supposedly legitimate state objective identified by the Minnesota Supreme Court was the desire "to protect from prosecution those defendants who might make a bona fide mistake during a romantic relationship." That, of course, is the very definition of the reasonable-mistake-of-age defense. Permitting the defense is indeed rationally related to that objective. *Prohibiting* that defense is *not*. And the arbitrary line-drawing that makes the defense available for one group, but not for another similarly situated group, has no rational relation to the stated objective. The "equal protection" of the laws means exactly that. The Constitution forbids the State from protecting one group of citizens from prosecution based on a bona fide mistake, while withholding the same protection from a similarly situated group. [2]

[2] The challenged classification here has nothing to do with a "Romeo and Juliet" safe-harbor provision. That protection is provided by another provision of each statute that limits criminal liability for the prohibited conduct to actors more than 48 months older in the case of Fourth Degree Criminal Sexual Conduct and

Senator Olson's concern that "this really is such a wide open loophole," suggests a desire to close the "loophole" by eliminating the defense. The Minnesota legislature, of course, could have eliminated the defense completely without violating any constitutional protection. What it cannot do is eliminate it only for an arbitrarily defined class of potential offenders without a rational relationship between the disparate treatment of the two groups of offenders and the legitimate State objective. There is none in this case, and the Minnesota Supreme Court departed from the reasonable application of clearly established federal law in concluding otherwise.

II. The Minnesota Legislature's Undisguised Intent to Harm a Politically Unpopular Class of Citizens is not a Legitimate State Objective.

The classifications drawn in this case have nothing to do with legitimate State objectives and everything to do with social disapproval of notable age disparities in sexual relationships.[3] The Minnesota Supreme Court appeared to have acknowledged as much when it suggested, without justification, that "a bona fide mistake during a romantic relationship" might appropriately be reserved only for "teenagers and the youngest adults." Based on what reasonable government objective? There is certainly no legitimate Government objective to be achieved in legislating

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actors more than 24 months older for Third Degree Criminal Sexual Conduct. These provisions have not been challenged.

[3] It is also apparent from Senator Olson's response to Senator Limmer that political expediency dictated the arbitrary choice of the relative age at which to restrict he affirmative defense – not any rational relationship to a legitimate objective.

social mores about age-disparity relationships. Mere social disapprobation cannot serve as the touchstone for legislating legal classifications that comply with the Equal Protection Clause of the Fourteenth Amendment. The defense of society's disapproval of age-disparity intimate relationships is no more a legitimate State objective than protecting society's disapproval of sodomy, homosexuality, or miscegenation.

It is well settled that the constitutionally protected rights of privacy and free association prevent the State from legislating the parameters of acceptable sexual relationships between consenting adults. *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) ("Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."); *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984). The statutes at issue here, of course, prohibit sexual conduct with *minors* – which has never been controversial – but the *only* factor that rendered Petitioner Holloway's conduct unlawful in this case was J.D.'s age. Prohibiting Holloway from asserting that he made a bona fide mistake about J.D.'s age – while still allowing a 23-year-old member of *Grindr* who engages in the same conduct to assert the same defense – is a completely arbitrary classification that is *not* rationally related to the supposed objectives of the legislation hypothesized by the Minnesota Supreme Court, but is rather intended to penalize those who would seek age-disparity relationships.

As noted by Justice O'Connor in her concurring opinion in *Lawrence*, "[w]e have been most likely to apply rational basis review to hold a law unconstitutional under the Equal Protection Clause

where, as here, the challenged legislation inhibits personal relationships." *Lawrence*, at 580 (O'Connor, J., concurring). While these statutes constitutionally prohibit all adults from having sexual relationships with the identified group of minors, the only purpose of the age-related classification that prohibits one group of adults from asserting a reasonable-mistake-of-of-age defense is to deter and inhibit that class of adults from seeking otherwise lawful sexual relationships with younger persons who are old enough to consent. In the words of Senator Olson, "it seems to me that it's not unreasonable to expect that level of responsibility to be on an adult with that much difference in age."

It is the mere disapproval of age-disparity relationships that has motivated the legislative classification at issue in this case. Clearly established federal law does not condone classifications intended to target politically unpopular groups: "If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 181 (1980). "[S]ome objectives-such as 'a bare . . . desire to harm a politically unpopular group,' are not legitimate state interests." *City of Cleburne, Tex.*, 473 U.S. at 446-47 (cleaned up). The rational-relationship test defined by clearly established federal law "ensure[s] that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Romer*, 517 U.S. at 633.

It is one thing to allow everyone, or no one, the ability to raise the affirmative offense of reasonable-mistake-of-age; but arbitrarily to deny the defense only to those offenders whose relative age might

subject them to social stigma as inappropriate romantic partners, even if they had acted in good faith, violates the Equal Protection clause of the Fourteenth Amendment. Petitioner Holloway is entitled to a new trial in which he would be permitted to raise the affirmative defense of reasonable-mistake-of-age. The Minnesota Supreme Court decision that rejected Holloway's argument based on the Equal Protection Clause of the Fourteenth Amendment was based on an unreasonable application of the established federal law to the facts of his case.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition for certiorari.

20 December 2021 Respectfully submitted,

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