

No. 23-665

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

PETITIONER'S REPLY SUPPORTING CERTIORARI

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REPLY ARGUMENT

The First Amendment protects conduct motivated by sincere religious beliefs, even if secular beliefs coincide. Minnesota’s courts wrongly used Petitioner Tina Goede’s secular concerns about the COVID-19 vaccine to discount her religious objections to it. The same error persists in every other analogous Minnesota case, and federal courts are expressly adopting this flawed reasoning as well. *Gimby v. Or. Health & Sci. Univ. Sch. of Dentistry*, No. 3:23-cv-01295-HZ, 2024 U.S. Dist. LEXIS 30818, at *10 (D. Or. Feb. 19, 2024). The Court should grant certiorari to stop this troubling trend.

As the Respondent Minnesota Department of Employment and Economic Development (DEED) admits in its opposition, even it agreed with Goede that “substantial evidence did not support the ULJ’s finding that Ms. Goede did not have a sincerely held religious belief preventing her from receiving a COVID-19 vaccine.” Resp’ts’ Br. 7. After all, Goede even testified that her *priest advised her* that she could object consistent with her beliefs. App. 90a. Yet the Minnesota Court of Appeals—in a precedential decision now binding on DEED—upheld the unemployment law judge’s decision that religious beliefs did not motivate her objections.

To arrive there, the court applied a fatally flawed First-Amendment analysis by allowing a ULJ to discount Goede’s proffered religious beliefs because she happens to have concurrent secular objections to the COVID-19 vaccine. The court wrongly called this discounting a “credibility determination.”

Minnesota courts are not alone in this “trending” analytical error. Federal courts reviewing Title VII claims have breathed life back into this practice, once thought to be forbidden by this Court’s decision in *Thomas v. Review Board of Ind. Employment Security Division*, 450 U.S. 707 (1981). See *Detwiler v. Mid-Columbia Med. Ctr.*, No. 3:22-cv-01306-JR, 2023 U.S. Dist. LEXIS 197899, at *13–14 (D. Or. Sep. 13, 2023) (collecting cases).

Contrary to these courts, where an unemployment-benefits applicant testifies that she endured termination because of a religious belief which conflicts with an employer policy, benefits must issue unless there is clear evidence that the applicant does not really hold that religious belief. This is because the applicant’s termination was not due to insubordination, but because of a sincere religious belief strong enough to lead her to accept termination to avoid compromising her belief.

Courts cannot, consistent with the First Amendment, hold that the existence of a concurrent “personal philosophical” belief overrides substantiated religious belief. The Court should grant certiorari.

I. The Minnesota Court of Appeals’ Misunderstanding of the First Amendment Causes Different Outcomes Despite the Same Religious Beliefs.

One of the most important tenets of American justice is that we are ruled by law without respect of persons. That is why “EQUAL JUSTICE UNDER LAW” is prominently engraved on the West Pediment of this honorable Court’s home. That is also why this Court is so concerned with circuit splits, where different

modes of analysis can lead to different results across the country despite the same facts. That is what is happening right now in First-Amendment-based cases like this one.

A. Minnesota courts are discounting religious sincerity where benefits applicants testify to secular beliefs related to the same employer policy.

The Minnesota Court of Appeals decided two cases alongside *Goede* on June 12, 2023. *Millington v. FRB of Minneapolis*, No. A22-1369, 2023 Minn. App. Unpub. LEXIS 471; *Benish v. Berkley Risk Adm’rs Co.*, No. A22-1397, 2023 Minn. App. Unpub. LEXIS 473. Considered alongside this case, *Millington* and *Benish* debunk DEED’s argument that Petitioner merely “wants this Court to function as an error correcting court.” Resp’t’s Br. 13.

In *Millington*, the benefits applicant faced Goede’s exact situation: DEED’s denial of benefits based on the ULJ finding that Millington’s objection to employer vaccine policy was based on personal choice, not religious beliefs.

The agency denied Rachel Millington benefits because she testified “that she had concerns about the safety and efficacy of the COVID-19 vaccine,” that “she believed that she did not need a vaccine because she had already contracted COVID-19,” and that she “had not researched whether fetal cell lines were used in other medications she uses.” 2023 Minn. App. Unpub. 471, at *5–7. The ULJ denied benefits even though Millington testified:

I'm a pro-life Christian. I'm against abortion. . . . And when I started researching the vaccine, I found out they used fetal cells from abortion and that didn't sit well with me at all. I felt like I would be complicit in abortion if I participated in that.

Id. at *4. If this sounds virtually identical to the case before this Court, it should. *Compare* Pet. 3–9 (Statement of the Case).

Fortunately for Millington, the court of appeals reversed in her case, for one apparent reason: Millington's counsel asked her a clarifying question.¹ He asked: "So if . . . you were convinced that COVID vaccine was 100% safe . . . but it still contained fetal cells, you wouldn't take it?" She answered: "Correct." 2023 Minn. App. Unpub. 471, at *6.

Millington won and Goede lost. Nearly identical religious beliefs, nearly identical concerns with vaccine efficacy and safety, different result. And the results are different because of the court's flawed analysis.

The court's different treatment of the purported "inconsistencies" in Goede's and Millington's respective testimonies showcases its error. In both cases, the ULJ intensely scrutinized the applicants' religious beliefs.² *Compare* App. 18a–20a (Decision) *with* App.

¹ Millington was represented by counsel before DEED, while Goede wasn't, so Goede didn't have counsel to ask her such a clarifying question.

² The ULJ argued with Goede over the legitimacy of her religious beliefs and even "googled" the teachings of the Catholic Church on vaccination during the agency hearing and over Goede's objection. App. 90a–91a.

70a–99a; *see also Millington*, 2023 Minn. App. Unpub. LEXIS 471, at *2–7. In *Millington*, the court identified a so-called “inconsistency” in Millington’s beliefs because she had researched the COVID-19 vaccine to see what is in it but hadn’t researched other common medications. *Id.* at *5. Here, the court held that Goede was inconsistent because she researches whether medical interventions are consistent with her religious beliefs but didn’t research the tetanus vaccine. App. 18a. & 18a n.5. Millington’s “inconsistency” was glossed over; Goede’s resulted in denial of benefits.

To justify its different treatment of these “inconsistencies,” the court noted that Rachel Millington was unwilling to take the vaccine even if it could be proven “100% safe.” 2023 Minn. App. Unpub. LEXIS 471, at *6. In other words, Millington would reject the vaccine on pure religious grounds even without a secular problem with it. But for Tina Goede, because she would have refused to take the vaccine even absent the use of fetal cells in its manufacture—a stronger secular objection to the vaccine than Millington’s—the court entirely set aside her religious beliefs: “Goede’s reasons for refusing the vaccination were purely secular—her lack of trust in the safety and efficacy of the vaccine.” App. 23a.

In other words, although Goede has the exact same sincere religious belief as Millington—she, too, would refuse the vaccine based purely on religious grounds, App. 73a–74a, 77a–78a—the court used the *strength* of Goede’s *secular* beliefs to override her religious beliefs, and cloaked that in a credibility determination. That is exactly what this Court sought to avoid when it forbade weighing “personal philosophical choice”

against religious belief in *Thomas*. 450 U.S. at 714. And that is exactly what the Eighth and Ninth Circuits have attempted to avoid, unlike Minnesota's courts. *Wiggins v. Sargent*, 753 F.2d 663, 666–67 (8th Cir. 1985); *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981).

If that were not enough, *Benish* shows that applicants can only get by without having their religious beliefs discounted by avoiding testimony about concurrent secular beliefs. In *Benish*, “the ULJ found that Benish made a ‘personal choice’ to refuse the vaccine, but Benish did not testify to *any* personal reasons for refusing the vaccine.” 2023 Minn. App. Unpub. LEXIS 473, at *6 (emphasis in original). The Minnesota Court of Appeals reversed because “he consistently testified that his reason for refusing it was religious.” *Id.*

In other words, Benish won and Goede lost because Benish did not offer personal philosophical views to DEED, but Goede did. For both, there was a sincere religious belief. For Benish, there was nothing for the court of appeals to use to discount his religious beliefs. For Goede, there was. Again, this is exactly what *Thomas*, *Wiggins*, and *Callahan* have sought to avoid.

The Court should grant certiorari to hold that the First Amendment protects conduct motivated by independently sufficient religious beliefs, even if a strong secular belief coincides with that religious belief.

B. Respondent DEED’s other citations further highlight the problem raised by the Petition.

DEED claims that a series of opinions from the Minnesota Court of Appeals shows that the court “has consistently applied well-established law to the unique factual record in each case.” Resp’t’s Br. 10–12. It does the opposite.

DEED does not explain how its string cite supports its assertion. *See id.* DEED simply tries to “appeal to popularity”—to confer legitimacy on the court’s decisions by volume. But only one of these cited cases even cites *Wiggins*. *See id.* Even more important, those cases which do cite this Court’s opinions in *Frazer v. Illinois Department of Employment Security*, 489 U.S. 829 (1989) and *Thomas* reveal the same constitutional error where religious and secular beliefs coincide.

Logue presents coinciding religious and secular beliefs and, in some respects, the same error as here. *Logue v. Olympus Am., Inc.*, No. A22-0282, 2022 Minn. App. Unpub. LEXIS 568, at *5 (Aug. 22, 2022). Like Goede, Logue “questioned the safety and efficacy of the COVID-19 vaccine.” *Id.* Yet Logue explicitly testified that she based her decision on her belief that “God had ‘moved on [her] heart and conscience’ not to be vaccinated ‘right now’ because receiving a treatment that had ‘harmful or unknown effects’ would be inconsistent with ‘God’s design.’” *Id.* at *2 (internal quotation marks omitted). While she “conceded that she intended to [take the vaccine]” after reevaluating

new data on it later,³ *id.*, the court discounted her beliefs as a “secular rationale[]” because “she directly questioned the safety of the vaccines.” *Id.* at *5–6.

In *McConnell v. FRB of Minneapolis*, No. A22-0934, 2023 Minn. App. LEXIS 40 (Feb. 24, 2023), the court correctly held that “although McConnell testified to concerns regarding the safety of the COVID-19 vaccine, she repeatedly tied those concerns back to her faith.” *Id.* at *6. That the court got it right in *McConnell*—in a 2-1 split decision—is cold comfort to others in her position because the court only so held because the secular concern at issue was entirely subsumed under the religious belief. *Id.* That is not the test for whether a religious belief receives First Amendment protection. As *Callahan* explicitly held, if a religious belief is “*separate* and sufficient,” such belief merits constitutional protection. 658 F.2d at 685 (emphasis added).

In *Quarnstrom*, the court remanded the case because the ULJ made an even more fundamental error: demanding a specific Bible passage or advice from clergy to support a finding of religious sincerity. *Quarnstrom v. Berkley Risk Adm’rs Co., LLC*, No. A22-1040, 2023 Minn. App. LEXIS 38, at *6 (Feb. 22, 2023). But the court remanded for further investigation, and then explicitly approved the secular-versus-religious approach raised by this appeal. *Id.* at *7.

Christiansen, *Benish* (discussed above), and *Washa* show that as long as a person either remains ignorant or says nothing about secular views, he or

³ Goede unequivocally refuses to take the vaccine for both secular and independently sufficient religious reasons. Pet. 18–20.

she can obtain First-Amendment protection in Minnesota.

In *Christiansen*, “the ULJ inexplicably ignored Christiansen’s evidence about her religious beliefs” and instead found Christiansen’s choice was a “personal belief” “based on other information that was *not relevant to the determination*, such as the fact that Christiansen makes healthy eating choices and wears a helmet.” *Christiansen v. Honeywell Int’l, Inc.*, No. A22-1480, 2023 Minn. App. LEXIS 214, at *8–9 (June 13, 2023) (emphasis added). Thus, there was no evidence of secular belief *related to the vaccine* at issue. *Washa* is the same; the plaintiff “did not testify that he refused the vaccine because of safety concerns.” *Washa v. Actalent Sci., LLC*, No. A22-1000, 2023 Minn. App. LEXIS 36, at *5 (Feb. 22, 2023). Thus, unlike Goede, Benish, Christiansen, and Washa did not identify secular and religious beliefs that overlapped.

Larson and *Dahle* aren’t helpful because there is no indication that the applicants testified as to coinciding religious beliefs. *Larson v. Minn. State Coll.*, No. A22-0689, 2023 Minn. App. Unpub. LEXIS 33, at *9 (Jan. 17, 2023); *Dahle v. United Cmty. Action P’ship*, No. A22-1103, 2023 Minn. App. Unpub. LEXIS 312, at *13 (Apr. 10, 2023). And *Royer* is entirely irrelevant: the only issue was whether the ULJ was bound by an *employer’s determination* that the applicant had a sincerely held religious belief. *Royer v. Inventiv Health*, No. A22-0806, 2023 Minn. App. Unpub. LEXIS 346, at *4 n.1 (Apr. 24, 2023). That issue does not present here.

It is inherently unfair that in Minnesota one must stay silent about vaccine safety or efficacy concerns to

obtain unemployment benefits if terminated for objecting to the COVID-19 vaccine based on proffered religious beliefs. Petitioner’s concerns about the vaccine’s safety and efficacy are independent from her religious views on abortion and life. However, under Minnesota’s approach, Goede apparently would have skated by had she only taken after Sergeant Schultz from *Hogan’s Heroes* and taken an “I see nothing, I know nothing” approach to vaccine safety and efficacy.

Forced ignorance should not be a prerequisite for First-Amendment protection. The Court should grant certiorari.

II. Federal Courts Are Explicitly Discounting Religious Beliefs Coinciding With Secular Beliefs in the Title-VII Context.

Respondent DEED fails to rebut the caselaw Petitioner cited showing that there is a growing trend in federal courts to discount religious sincerity based on parallel secular beliefs. *Compare* Resp’ts’ Br. 13–15 with Pet. 25–27 (citing *Detwiler*, 2023 U.S. Dist. LEXIS 197899, at *13–14 (D. Or. Sept. 13, 2023) (collecting cases). DEED’s non-response is that every such decision is “based on the factual allegations in a particular complaint,” and so no comparison is possible. *See* Resp’ts’ Br. 14.

This is simply wrong: *Detwiler* expressly relied on cases across the country for the faulty reasoning at issue in this Petition. For example: “the plaintiff’s objection to nasal testing on the basis that ‘her body is “a temple of the Holy Spirit”’ was inadequate to render her ‘clearly state[d] medical concerns’ about the ‘harmful substances’ purportedly contained in those tests actionable under Title VII.” *Detwiler*, 2023 U.S.

Dist. LEXIS 197899, at *13 (summarizing *Ulrich v. Lancaster Gen. Health*, 2023 U.S. Dist. LEXIS 64750, at *4–6 (E.D. Pa. Apr. 13, 2023)). *Ulrich* and the other cases *Detwiler* cites do in the Title-VII context exactly what the Minnesota Court of Appeals is doing in the unemployment context.

And the trend is getting worse. After this Petition was filed, the District of Oregon explicitly adopted the improper sincerity analysis at issue here. *Gimby*, 2024 U.S. Dist. LEXIS 30818, at *10 (“many courts have held that allegations of a religious belief coupled with a secular objection fails to plead a bona fide religious belief in conflict with an employment duty because the objection itself is secular.”).

The Court should grant this petition to bring First Amendment jurisprudence up to date by adopting the approach of *Wiggins* and *Callahan*.

III. This Case Is a Good Vehicle to Clarify the Court’s First Amendment Jurisprudence.

DEED incorrectly claims that this case would be a poor vehicle to develop First Amendment jurisprudence. On the contrary, this case has a fully developed record that will allow this Court to make a simple legal determination to provide courts nationwide a proper analytical method.

First, the fact record is complete and DEED never cross-appealed to raise concerns about an inadequate record. As the transcript included in the Appendix shows, Goede testified under oath about her beliefs, both secular and religious, under intense scrutiny, and DEED and the Minnesota Court of Appeals ruled on them. There is nothing missing that this Court

would need to review. This is a straightforward legal question.

Second, there is adequate adversarial representation here; while DEED initially agreed that Goede's beliefs are sincere, it has since defended the court of appeals' decision and opposes certiorari. Also, the court of appeals correctly noted that Goede's employer didn't need to participate below. App. 12a–13a (“DEED is the ‘primary responding party to any judicial action involving [a ULJ’s] decision.’” (citing Minn. Stat. § 268.105, subd. 7(e)) & *id.* nn. 2–3.

Third, there are no fact issues needing resolution. The problem is the erroneous analytical method applied to claims of sincere religious belief. The question is simply whether courts can discount religious objections because of coinciding secular beliefs. Calling the error below a “credibility determination” is a fig leaf; the court below has shielded an error of law by presenting it as a matter of fact. *Compare* Pet. 20 with Resp’t’s Br. 16. This makes the flawed reasoning even more likely to persist and review of this case that much more important.

Finally, this case presents an evergreen issue: how to analyze an employee's proffered religious objection to an employer policy where those religious beliefs coincide with secular beliefs. Viral outbreaks and religious beliefs are going nowhere. Even the flu vaccine still presents perennial cases. *See, e.g., Fallon v. Mercy Catholic Med. Ctr.*, 877 F.3d 487 (3d Cir. 2017). The question presented will recur nationwide unless this Court answers it.

CONCLUSION

Petitioner respectfully requests that this Court grant the petition for a writ of certiorari.

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