

No. 23-665

**In The
Supreme Court of the United States**

—◆—
TINA GOEDE,

Petitioner,

v.

ASTRA ZENECA PHARMACEUTICALS, LP,
AND
MINNESOTA DEPARTMENT OF EMPLOYMENT
AND ECONOMIC DEVELOPMENT,

Respondents.

—◆—
**On Petition For Writ Of Certiorari
To The Court Of Appeals Of Minnesota**

—◆—
**BRIEF IN OPPOSITION FOR RESPONDENT
MINNESOTA DEPARTMENT OF EMPLOYMENT
AND ECONOMIC DEVELOPMENT**

—◆—
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QUESTION PRESENTED

Does a state violate the First Amendment by denying unemployment benefits where the factfinder determines that the applicant's reasons for failing to comply with a reasonable employment policy were not due to sincerely held religious beliefs?

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INTRODUCTION

Respondent Minnesota Department of Employment and Economic Development (“DEED”) respectfully requests that this Court deny Tina Goede’s petition for a writ of certiorari. No compelling reasons warrant review. *See* Sup. Ct. R. 10. In her petition, Ms. Goede primarily objects to the misapplication of settled law and does not otherwise present compelling reasons for this Court to review this case. Even if she had presented compelling reasons, this case would be a poor vehicle to develop First Amendment jurisprudence.



STATEMENT OF THE CASE

1. *Background on Minnesota’s unemployment insurance program.* DEED administers Minnesota’s unemployment insurance program. The program is remedial in nature, providing a temporary and partial wage replacement to workers who become unemployed through no fault of their own. Minn. Stat. §§ 268.03, 268.031, subd. 2. In administering this program, DEED must comply with both federal requirements and Minnesota’s unemployment insurance laws.

Under Minnesota law, an applicant is ineligible for unemployment benefits if an employer discharged an applicant because of employment misconduct. Minn. Stat. §§ 268.069, subd. 1(2), 268.095, subd. 4(1). Employment misconduct includes any intentional conduct “that is a serious violation of the standards of behavior

the employer has the right to reasonably expect of the employee.” *Id.* § 268.095, subd. 6(a).

DEED must determine issues of ineligibility based on information provided by the applicant in the application for unemployment benefits, even if the employer does not raise the issue. Minn. Stat. § 268.101, subd. 2(a). Ineligibility determinations may be based on information provided by the applicant or employer, or from any other source. *Id.*, subd. 2(c).

An applicant may appeal an ineligibility determination, which results in a hearing before an unemployment law judge (“ULJ”). Minn. Stat. §§ 268.101, subd. 2(f), 268.105, subd. 1(a). Unemployment hearings “need not conform to common law or statutory rules of evidence and other technical rules of procedure.” *Id.* § 268.105, subd. 1(b). These hearings are not public, must be recorded, and may be held telephonically. Minn. R. 3310.2917; *see also* Minn. Stat. § 268.105, subd. 1(c) (giving the chief ULJ discretion to determine the method for conducting the hearing). The preponderance of the evidence standard applies. Minn. Stat. § 268.031, subd. 1. The hearings are conducted “as an evidence-gathering inquiry, without regard to a burden of proof.” Minn. R. 3310.2921. The responsibility to ensure the adequate development of relevant facts lies with the ULJ. *Id.* The ULJ may receive any evidence possessing probative value including hearsay, may take official notice of facts, and is not bound by statutory or common law rules of evidence. Minn. R. 3310.2922-.2923. After a hearing concludes,

the ULJ issues a written decision. Minn. Stat. § 268.105, subd. 1a(a).

ULJ decisions have limited impact. They are not precedential. Minn. Stat. § 268.105, subd. 1a(d). The fact findings and decisions are not conclusive, binding, or usable as evidence in other proceedings, except in proceedings under Minnesota's unemployment insurance laws. *Id.*, subd. 5a. And the testimony obtained at an unemployment hearing generally cannot be used or considered in other civil or administrative proceedings, except by human rights agencies with enforcement powers and in proceedings brought by DEED. *Id.*, subd. 5(b).

A party may request reconsideration of the ULJ's decision. Minn. Stat. § 268.105, subd. 2(a). Upon receipt of a request for reconsideration, the ULJ may issue an order affirming or modifying the decision, or setting it aside and ordering a new hearing. *Id.*, subd. 2(f).

The Minnesota Court of Appeals, Minnesota's intermediate appellate court, reviews ULJ decisions on reconsideration by writ of certiorari. Minn. Stat. § 268.105, subd. 7(a). The court may reverse or modify the ULJ decision if the appellant's substantial rights may have been prejudiced because the findings, inferences, conclusion, or decision are in violation of constitutional provisions, are unsupported by substantial evidence, or are arbitrary or capricious, among other reasons. *Id.*, subd. 7(d). In such appeals, DEED serves as the primary responding party. *Id.*, subd. 7(e). After

the court of appeals issues its opinion, a party can petition the Minnesota Supreme Court for discretionary review. Minn. R. Civ. App. P. 117.

2. *Factual background on Ms. Goede's employment.* Ms. Goede worked as an account sales manager for a large pharmaceutical company, Astra Zeneca Pharmaceuticals, LP. *See* Petitioner's Appendix ("Pet. App.") 62a-63a. She worked for Astra Zeneca from February 2021 until Astra Zeneca terminated her employment in April 2022. *Id.* Ms. Goede worked in Astra Zeneca's renal division, in a position that required her to enter hospital clinics, long-term care facilities, and dialysis centers. *Id.* 62a, 96a-98a.

Ms. Goede's employment with Astra Zeneca coincided with the COVID-19 pandemic. During her employment, Astra Zeneca instituted a policy requiring its employees to receive a COVID-19 vaccine. Pet. App. 64a. Ms. Goede did not do so. *Id.* According to Ms. Goede, some hospitals or clinics had a vaccine requirement for vendors, including one of the bigger health systems in Minnesota, so she could not enter their facilities because she was not vaccinated, even though her job duties included entering hospitals and clinics. *See id.* 96a-98a.

Ms. Goede asked Astra Zeneca for a religious exemption to its vaccination policy,¹ which Astra Zeneca

¹ In her petition, Ms. Goede indicates she could have presented a medical basis for objecting to the vaccine. Petition ("Pet."). 8-9. But she testified at hearing that her physician treating her for the

denied. Pet. App. 64a-70a. Because Ms. Goede was not vaccinated, Astra Zeneca terminated her employment on April 29, 2022. *Id.* 62a-70a.

3. *Ms. Goede's application for unemployment benefits.* Ms. Goede applied to DEED for unemployment benefits on May 3, 2022. Hrg. Ex. 3.² In her application, Ms. Goede indicated she refused to receive a COVID-19 vaccine because of her religious beliefs. *See id.* On May 26, DEED issued a determination of ineligibility. Hrg. Ex. 1. DEED explained that Ms. Goede violated Astra Zeneca's reasonable policy, which was employment misconduct. *Id.*

Ms. Goede appealed, which resulted in a telephonic hearing before an ULJ. Pet. App. 57a, 61a. Ms. Goede was not represented by counsel at the hearing. *Id.* 57a-58a. Astra Zeneca did not appear. *See id.* 57a. The ULJ questioned Ms. Goede about her employment in pharmaceutical sales, the circumstances surrounding her discharge, and why she refused to receive the COVID-19 vaccine. *Id.* 62a-73a. Ms. Goede testified that her religious beliefs prohibit the injection of foreign substances into the body. *Id.* 74a. The ULJ questioned Ms. Goede about this belief and how it affected her vaccination decision. *Id.* 74a-77a. Upon further questioning, Ms. Goede indicated fetal cells were involved with the COVID-19 vaccine, which went against

relevant medical condition told her she could get vaccinated. Pet. App. 70a-73a.

² "Hrg. Ex." refers to the exhibits from the June 14, 2022 hearing before the ULJ, which DEED submitted to the court of appeals below.

her religious beliefs. *Id.* 77a-78a. In response to the ULJ's questioning, Ms. Goede had the opportunity to explain more about her beliefs and how they impact her decision to take other vaccines and medications. *Id.* 79a-87a. The ULJ questioned Ms. Goede in more detail on her beliefs and religion, and she testified that her priest told her to not get vaccinated. *Id.* 87a-91a. Ultimately, Ms. Goede testified that she would never take the vaccine, regardless of how it was developed, "[b]ecause the vaccine doesn't work." *Id.* 92a. She expressed her concerns about the safety and efficacy of vaccination, and her opinion about whether receiving a vaccine was necessary. *Id.* 92a-96a.

The ULJ issued a decision on June 22, 2022. Pet. App. 30a. He found that Ms. Goede did not have a sincerely held religious belief that prevents her from receiving a COVID-19 vaccine, and that it was not credible that she had such a sincerely held religious belief. *Id.* 34a. The ULJ recognized Ms. Goede's testimony about her beliefs, but found by a preponderance of the evidence, and based on the totality of the circumstances, that Ms. Goede declined to be vaccinated because of a lack of trust, and not because of a religious belief. *Id.* 35a. Recognizing Astra Zeneca's right to reasonably expect that its employees receive the COVID-19 vaccine, the ULJ concluded Ms. Goede's conduct constituted a serious violation of her employer's reasonable expectations. *Id.* 36a. Because applicants who are discharged for employment misconduct are ineligible for unemployment benefits under Minnesota law,

the ULJ concluded Ms. Goede was ineligible. *Id.* 36a-37a.

Ms. Goede sought reconsideration of the ULJ's decision pursuant to Minn. Stat. § 268.105, subd. 2. Pet. App. 26a. In an order issued August 26, 2022, the ULJ affirmed the initial findings and decision. *Id.* 24a-29a.

4. *Minnesota Court of Appeals.* Ms. Goede, represented by counsel, appealed the ULJ's decision to the Minnesota Court of Appeals. Pet. App. 54a-56a. On appeal, she argued DEED's denial of unemployment benefits violated her federal and state constitutional rights to free exercise of her religion, the ULJ erred in deciding Ms. Goede's refusal to be vaccinated was employment misconduct, and the decision was not supported by the record and was arbitrary and capricious. *Id.*

DEED did not file a responsive brief supporting the ULJ's decision. Instead, DEED filed a motion requesting that the court of appeals set the matter on for expedited review and reverse the ULJ's decision, so Ms. Goede could begin receiving unemployment benefits. Pet. App. 41a-53a. In the motion, DEED agreed 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. *Id.* 42a, 46a-53a. The court of appeals then set the matter on for expedited consideration. *Id.* 10a.

The court of appeals issued its opinion in June 2023 affirming the ULJ's decision. Pet. App. 3a-23a.

The court held that, as a matter of state law, it did not have authority to reverse simply because DEED requested reversal, but instead may reverse only if the criteria for reversal under Minnesota law are met. *Id.* 11a-14a; *see also* Minn. Stat. § 268.105, subd. 7(d). On the merits, the court explained that the denial of unemployment benefits violates an applicant’s free exercise rights if the applicant’s refusal to comply with the employer’s policy was based on sincerely held religious beliefs, which is a fact issue. Pet. App. 15a-17a. The court concluded the record supported the ULJ’s credibility determinations and findings that Ms. Goede refused to be vaccinated because of purely secular concerns about safety and efficacy. *Id.* 17a-23a.

5. *Minnesota Supreme Court.* Ms. Goede petitioned the Minnesota Supreme Court for discretionary review. DEED opposed the petition, explaining the court of appeals applied well-settled law and has been consistent in how it analyzes appeals raising similar issues. In September 2023, the Minnesota Supreme Court denied Ms. Goede’s petition. Pet. App. 39a-40a.



REASONS FOR DENYING THE PETITION

This Court should deny Ms. Goede’s petition for a writ of certiorari. Ms. Goede objects to how the Minnesota Court of Appeals applied settled law to the unique facts of her case and otherwise fails to present compelling reasons for this Court to grant her petition. In addition, this case is a poor vehicle to develop First

Amendment case law because the factual record is poorly developed, there was no adversarial presentation of issues below, the petition seeks to overturn a credibility determination and factual findings, and the petition raises unique issues without broader applicability.

I. Ms. Goede’s Petition Argues that Minnesota’s Intermediate Appellate Court Misapplied Settled Law.

The petition does not satisfy this Court’s criteria for review because Ms. Goede objects to the alleged misapplication of settled law. *See* Sup. Ct. R. 10. In its decision below, the Minnesota Court of Appeals applied well-established case law to the facts of this case, and either applied or acknowledged many of the legal principles that Ms. Goede advances in her petition. The court of appeals has applied this same settled law in other similar matters to reach different results, which further shows that Ms. Goede’s petition does not merit this Court’s attention.

The court of appeals relied upon this Court’s case law in analyzing Ms. Goede’s free exercise claim. *See* Pet. App. 15a-17a (citing *Frazee v. Ill. Dep’t of Emp’t Sec.*, 489 U.S. 829, 832 (1989) and *Thomas v. Rev. Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 716 (1981)). For instance, the court of appeals recognized that religious beliefs do not have to be “acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” Pet. App. 19a (quoting

Thomas, 450 U.S. at 714). Consistent with this Court’s decision in *Thomas*, the court of appeals explained that courts should not dissect religious beliefs. Pet. App. 19a. The court also recognized that the issue of whether alleged employment misconduct is based on a sincerely held religious belief is a question of fact. *Id.* 17a (citing *Thomas*, 450 U.S. at 716). But based on its review of the factual record presented below, the court of appeals disagreed with Ms. Goede that the ULJ’s decision impermissibly dissected Ms. Goede’s religious beliefs. Pet. App. 19a-20a.

The court of appeals also recognized, and did not depart from, First Amendment case law referenced by Ms. Goede in her petition, such as *Wiggins v. Sargent*, 753 F.2d 663 (8th Cir. 1985). Notably, the court of appeals did not dispute or disagree with the Eighth Circuit’s holding in *Wiggins* that some beliefs can be both religious and secular. *See* Pet. App. 21a-23a (discussing *Wiggins*). DEED also agrees that beliefs can be both religious and secular, and that the First Amendment still protects sincerely held religious beliefs even if they overlap with secular ideas. *See also* Pet. App. 47a, 52a (in DEED’s motion for reversal, citing *Wiggins* and arguing Ms. Goede can have both a sincerely held religious belief and concerns about safety and efficacy). Accordingly, the principle that beliefs can be both religious and secular is accepted in Minnesota.

In deciding similar appeals involving unemployment benefits for applicants who were fired for declining to receive a COVID-19 vaccine, the Minnesota Court of Appeals has applied this same well-settled

law with different results. For instance, on June 12, 2023—the same day that the court of appeals released its opinion in this case—the same panel of judges at the Minnesota Court of Appeals decided two other similar appeals: *Millington v. Fed. Reserve Bank of Minneapolis*, No. A22-1369, 2023 WL 3939525 (Minn. Ct. App. June 12, 2023) and *Benish v. Berkley Risk Adm’s Co., LLC*, No. A22-1397, 2023 WL 3938996 (Minn. Ct. App. June 12, 2023). In both *Millington* and *Benish*, the court of appeals reached a different outcome—it reversed the ULJ’s determination of ineligibility. *Millington*, 2023 WL 3939525, at *4; *Benish*, 2023 WL 3938996, at *2-3. In each case, the court applied the same well-settled law, such as this Court’s opinion in *Thomas*, but ruled in the unemployment applicant’s favor based on the specific and unique record in each case. In addition, the next day, a different panel of judges of the court of appeals released an opinion that also ruled in the applicant’s favor in a matter involving a refusal to receive the COVID-19 vaccine for religious reasons. See *Christiansen v. Honeywell Int’l, Inc.*, No. A22-1480, 2023 WL 4072857 (Minn. Ct. App. June 13, 2023) (Order op.). The court of appeals applied the same legal principles but reversed the ULJ’s decision based on the factual record. *Id.* at *3-4.

Other earlier Minnesota Court of Appeals’ opinions³ involving unemployment benefits and religious

³ DEED is not aware of any Minnesota Court of Appeals opinions released since *Christiansen* that involve unemployment benefits and religious objections to the COVID-19 vaccine, nor is DEED aware of any pending unemployment appeals raising this

objections to COVID-19 vaccines, confirm that the court has consistently applied well-established law to the unique factual record in each case. *See, e.g., Royer v. Inventiv Health, Inc.*, No. A22-0806, 2023 WL 3047602 (Minn. Ct. App. Apr. 24, 2023) (relying on *Frazee* and affirming ineligibility determination); *Dahle v. United Cmty. Action P'ship*, No. A22-1103, 2023 WL 2849131 (Minn. Ct. App. Apr. 10, 2023) (applying *Frazee* and *Thomas*, and affirming ineligibility determination); *McConnell v. Fed. Reserve Bank of Minneapolis*, No. A22-0934, 2023 WL 2359790 (Minn. Ct. App. Feb. 24, 2023) (Order op.) (relying on *Frazee* and *Thomas*, and reversing ineligibility determination); *Quarnstrom v. Berkley Risk Adm'rs Co., LLC*, No. A22-1040, 2023 WL 2359789 (Minn. Ct. App. Feb. 22, 2023) (Order op.) (applying *Thomas* and *Frazee*, and remanding matter to ULJ for a revised decision); *Washa v. Acalent Sci., LLC*, No. A22-1000, 2023 WL 2359627 (Minn. Ct. App. Feb. 22, 2023) (Order op.) (relying on *Frazee* and *Thomas*, and reversing ineligibility determination); *Larson v. Minn. State Coll. Se.—Winona*, No. A22-0689, 2023 WL 193984 (Minn. Ct. App. Jan. 17, 2023) (in case involving vaccine and testing policy, applying *Frazee* and affirming ineligibility determination); *Logue v. Olympus Amer. Inc.*, No. A22-0282, 2022 WL 3581809 (Minn. Ct. App. Aug. 22, 2022)

issue. Further, Minnesota's court of last resort, the Minnesota Supreme Court, has not opined.

(citing *Frazer* and affirming ineligibility determination).⁴

This history demonstrates that there is no need for this Court to clarify the law or correct recurring mistakes made by Minnesota courts. Rather, Ms. Goede wants this Court to function as an error-correcting court and correct an alleged error made by Minnesota’s intermediate appellate court in this one particular appeal. This Court should deny Ms. Goede’s petition because it does not present an important issue warranting this Court’s review.

II. Ms. Goede’s Petition Does Not Otherwise Present a Compelling Reason for Review.

Not only does Ms. Goede’s petition concern an alleged misapplication of settled law, but it also fails to present any other compelling reason for this Court’s review. Instead, Ms. Goede vaguely suggests that a shift towards courts over-scrutinizing religious beliefs is “trending.” Pet. 25, 27.

⁴ The cases that have reached the Minnesota Court of Appeals involved applicants who were deemed ineligible and therefore appealed. DEED has also found applicants who were discharged for refusing to receive a COVID-19 vaccine to be eligible for unemployment benefits, when DEED found that a sincerely held religious belief was the basis for the refusal—either at the initial eligibility determination stage or after a hearing before an ULJ. Those matters did not reach the court of appeals because the employers did not appeal, and are therefore not publicly available. See Minn. Stat. § 268.19, subd. 1 (providing that data gathered on a person under Minnesota’s unemployment insurance laws are not public).

In support of this “trending” argument about courts in other jurisdictions allegedly overstepping their role, Ms. Goede curiously references *EEOC v. Consol Energy, Inc.*, 860 F.3d 131 (4th Cir. 2017), *cert. denied*, 583 U.S. 1114 (2018). But *Consol* did not concern a court impermissibly scrutinizing a religious belief. In *Consol*, the EEOC sued an employer for failing to accommodate an employee’s religious beliefs and prevailed at trial. 860 F.3d at 139-40. Both the district court and the Fourth Circuit rejected the employer’s attempt to overly scrutinize the employee’s belief. *See id.* at 142 (recognizing that “[i]t is not Consol’s place as an employer, nor ours as a court, to question the correctness or even the plausibility of [the employee’s] religious understandings”). *Consol*, therefore, does not show a trend amongst federal courts of inappropriately questioning religious beliefs.

Ms. Goede also cites to a recommendation by a federal magistrate judge, which discusses other district court decisions, as proof of a trend in federal courts overly scrutinizing religious beliefs in cases arising under Title VII. *See* Pet. 27 (citing *Detwiler v. Mid-Columbia Med. Ctr.*, No. 3:22-cv-01306-JR, 2023 WL 7221458 (D. Or. Sept. 13, 2023) (Findings and Recommendation), *adopted*, 2023 WL 7220734 (D. Or. Nov. 2, 2023) (Order)). In *Detwiler*, the magistrate judge recommended granting a motion to dismiss a religious discrimination claim related to nasal swab testing under Title VII and Oregon law. *Detwiler*, 2023 WL 7221458, at *1-2. This recommendation was based on the factual allegations in a particular complaint, and does not

provide any compelling reason for this Court to grant Ms. Goede's petition. But even if Ms. Goede was right about this issue "trending" in Title VII litigation before federal courts, Ms. Goede's petition does not stem from such litigation and thus is not the right case to address such a trend.

III. This Case Would Be a Poor Vehicle to Develop First Amendment Jurisprudence.

This matter is also a poor vehicle to develop First Amendment case law for at least four reasons. First, the factual record is not well-developed below. This appeal results from an informal and expedited⁵ administrative proceeding not subject to ordinary rules of procedure or rules of evidence. In contrast to civil actions in which an employer would answer a complaint, participate in discovery, and present evidence at the summary judgment stage or at trial, employers are not required to participate in these unemployment proceedings. Indeed, Astra Zeneca did not participate and offer evidence below. Accordingly, there is not an adequately developed record regarding the reasons for Astra Zeneca's COVID-19 vaccination policy and why it denied Ms. Goede's request for a religious exemption. In addition, although Ms. Goede testified and answered the ULJ's questions, she was self-represented at the unemployment hearing.

⁵ Federal law imposes time requirements for state programs to issue decisions. *See* 20 C.F.R. §§ 650.3(a), 650.4.

Second, there was no adversarial presentation of the issues by the parties below. Because Astra Zeneca did not participate in the unemployment hearing or in the appellate courts below, it did not present arguments to the factfinder or reviewing court. And once this matter reached the Minnesota Court of Appeals, DEED and Ms. Goede were largely aligned. In fact, DEED advocated for reversal and contended that Ms. Goede had a sincerely held religious belief and should receive benefits. This matter simply lacks the type of adversarial presentation, and the corresponding development of the arguments and record below, that is necessary to winnow and sharpen issues for this Court's review.

Third, the basis for the underlying decision also makes this case ill-suited for this Court's review. Because the ULJ's decision is based on credibility determinations and findings of fact, this Court would have to resolve factual issues to decide the merits of this petition. Indeed, the Minnesota Court of Appeals recognized how the applicable standard of review for credibility determinations and findings of fact limited its own review of the issues on appeal. *See* Pet. App. 17a, 20a. The only truly broad holding in the court of appeals' opinion was that the court of appeals is not obligated to reverse merely because DEED requests reversal, which is not at issue before this Court. *See id.* 11a-14a. Otherwise, the court of appeals' holding on the First Amendment issue is very fact-specific, relying heavily on the findings and testimony from the informal administrative proceeding. *Id.* 17a-23a.

Finally, the fact pattern of this case is inextricably intertwined with some of the unique and transitory circumstances arising during the COVID-19 pandemic. The COVID-19 pandemic presented unique concerns for government (including the courts), employers, and the public alike, which are no longer so salient. The vaccination roll-out also presented unique issues, particularly as employers made decisions about vaccination policies and procedures with limited information at hand. Because this case presents issues about what constitutes employment misconduct in a specific factual context and timeframe, this case is a poor vehicle to develop First Amendment jurisprudence with broader applicability. And this is especially true where Minnesota courts have appropriately applied this Court's settled precedent to the unique factual record in each case.



CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: February 23, 2024

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