No. 17-795

IN THE
Supreme Court of the United States

OCTOBER TERM, 2017

JAMES T. OLIVER
Petitioner,

v.

THE STATE OF CLINTONIA

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF CLINTONIA

BRIEF FOR RESPONDENT

Team N
Counsel for Respondent

QUESTIONS PRESENTED

1. The Fourteenth Amendment rational basis test provides for a presumption of constitutionality when a law is rationally related to a government interest. Economic regulations are similarly entitled to a presumption of constitutionality. The Funeral Directors and Embalmers Act (FDEA) and §18.942 are aimed at protecting consumers and the public, while also regulating the economy of intrastate casket sales. Are the FDEA and §18.942 constitutional when consumer protection and public welfare are legitimate government interests, and the regulations are also economic?

2. The Fourth Amendment protects citizens from unreasonable searches and seizures by the government. A private citizen opened a subfolder on James Oliver's USB, and after finding that it contained child pornography, delivered it to the police. Are the images found on the flash drive admissible evidence under the Fourteenth Amendment when police examined the same subfolder on Oliver's USB more extensively, or if not, are the images admissible under the good faith exception to the exclusionary rule?

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The opinion and order of the Supreme Court of Clintonia is reproduced in the Record on pages 18-25. The opinion and order of the United States Circuit Court of the Fifteenth Judicial Circuit, in and for Bill County, Clintonia is reproduced in the Record on pages 2-15.

JURISDICTION

The judgment of the Supreme Court of Clintonia was entered on October 29, 2016. A petition for a writ of certiorari was timely filed on November 10, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

This case involves questions relating to the Fourteenth Amendment right to equal protection and due process of law, and the Fourth Amendment right to be free from unreasonable searches and seizures. Oliver concedes that the statute at issue, §18.942, Clint. Stat., is subject to a rational basis review under Fourteenth Amendment jurisprudence. *Romer v. Evans*, 517 U.S. 620, 632 (1996); R. at 8. The rational basis test requires only a rational relation to a legitimate government interest. *Romer v. Evans*, 517 U.S. 620, 632 (1996). Clintonia Statute §18.942, reproduced in Appendix A, regulates casket sales and makes selling a casket without a valid license a criminal misdemeanor. The Fourth Amendment protects people against unreasonable searches and seizures by the government.

STATEMENT OF THE CASE

I. Statement of the Facts

A. Clintonia's Mortuary Industry Regulations

In 1932, the Clintonia legislature enacted the Funeral Directors and Embalmers Act ("FDEA") to regulate the funeral and casket industry. R. at 3. In 1956, the legislature amended the FDEA to include §18.942, which regulates casket sales and makes selling a casket without a

valid license a criminal misdemeanor. R. at 4. By enacting §18.942, the legislature sought to protect consumers and prevent predatory sales practices. R. at 5. During debates, Senator Jerome Gaines cited a recent study that indicated unlicensed casket retailers disregarded FDEA standards, leading to both public health and consumer protection concerns. R. at 5. The study, which was later disproven, found that unlicensed casket sellers disregarded FDEA casket specification standards, leading to possible leaks and contamination of soil and ground water. R. at 5.

B. Defendant James T. Oliver, Black Market Entrepreneur

The Defendant, Mr. Oliver (the "Defendant"), sold caskets without a valid license. R. at 5. The Defendant knew that §18.942 required a valid license to sell caskets and still chose to sell caskets without one. R. at 5. Moreover, The Defendant kept a forged license on his person in case he needed to inaccurately represent himself as licensed. R. at 6. The Defendant priced his illegally sold caskets below fair market value at approximately $1,000 each. R. at 6.

C. Defendant's sale to Mr. Walker

Mr. Bruce Walker ("Mr. Walker") came to Clintonia to address the unhappy task of preparing a funeral for his recently deceased mother. R. at 5. Mr. Walker, a married man and father of two, had recently retired after a lifetime of service to his country as a Special Agent for the Federal Bureau of Investigation. R. at 5. He retired to be home with his daughter, who was recently a victim of molestation, and who needed his time and care. R. at 7.

Mr. Walker purchased a casket for his mother from the Defendant. R. at 6. Mr. Walker was unaware of the illegal nature of the sale until the Defendant informed him shortly after the funeral service concluded. R. at 6. The Defendant proceeded to tell Mr. Walker, "Yep, there's some kind of criminal statute out here that requires [a license]. But who cares…I keep a fake license on me just in case though, and a printable version in a USB on my nightstand." R. at 6.

D. Defendant's USB Drive

Mr. Walker felt compelled to confront the Defendant about his illegal conduct, and went to his home to confront him. R. at 6. When Mr. Walker knocked on the door, the door was not held in place by a latch or a lock, and swung open. R. at 6. Mr. Walker continued to call out the Defendant's name as he entered the house before realizing he was not at home. R. at 6. Mr. Walker located the USB on the Defendant's nightstand, which the Defendant had told him contained a copy of a fake license. R. at 6. Mr. Walker took the USB and left the house. R. at 6.

Later that day, Mr. Walker used his computer to look at the contents of the USB. R. at 6. When Mr. Walker opened the USB, two folders were visible, one labeled "DL" and one "F." R. at 6. Mr. Walker proceeded to open the "F" file. R. at 7. The "F" file held approximately 100 subfolders. R. at 7. Mr. Walker opened the first subfolder, which contained eleven consecutively numbered image files. R. at 7. Mr. Walker clicked on one of the files and saw that it contained child pornography. R. at 7. Mr. Walker was physically sickened by the image and vomited several times. R. at 7.

Given the illegal and despicable nature of child pornography, Mr. Walker brought the USB to the Sandersburg Police Department. R. at 7. He spoke to Private R. Jones, and explained the horrible image of child pornography that the USB contained. R. at 7. Mr. Walker stated that he was not a cop, merely a private citizen reporting the image that he saw. R. at 7. Mr. Walker directed Private Jones to open the "F" folder, then directed him to open the first subfolder. R. at 7. Mr. Walker told Private Jones that the image he opened was one of the eleven image files contained therein. R. at 7. Private Jones opened the image files numbered 1-10 in order. R. at 7. He found that 1-9 contained images of child pornography. R. at 7. File 10 contained a copy of the Defendant's fake license. Private Jones did not proceed to open the remaining file labeled

"11," but instead promptly delivered the drive to his superiors, informing them that a "private citizen" found child pornography on the USB and turned it in. R. at 7.

II. Proceedings Below

Defendant was arrested and charged with Eleven Counts: Count One for a violation of §18.942 for selling a casket without a Funeral Director's License; Count Two alleged violation of §18.978 for forging a Funeral Director's License; and Counts Three through Eleven for possession of nine distinct images of child pornography in violation of the Clintonia Child Protection Act, §18.999, Clint. Stat. R. at 2. The prosecution later entered a *nolle prosequi* for Count Two. R. at 2.

The Circuit Court of the Fifteen Judicial Circuit, in and for Bill County, Clintonia granted Defendant's Motion to Dismiss Count One on Fourteenth Amendment grounds, and Counts Three through Eleven on Fourth Amendment grounds. R. at 2-3. The State of Clintonia appealed the decision to the Supreme Court of Clintonia. R. at 17. The Supreme Court of Clintonia reversed the Circuit Court's decision, and remanded the proceedings for trial. R. at 25. The Supreme Court of Clintonia found that (1) §18.942, Clint. Stat passes rational basis scrutiny, and is therefore constitutional, and (2) the private search conducted by Mr. Walker removed Fourth Amendment protection of the image files located in the subfolder, and the images were therefore legally obtained. R. at 25. The Defendant appealed and the Supreme Court of the United States granted cert on June 30, 2017. R. at 26.

SUMMARY OF ARGUMENT

This is a case about law enforcement simply trying to perform its duties and protect innocent citizens. The Respondent respectfully asks that This Court affirm the Supreme Court of Clintonia's decision, holding that neither the defendant's Fourteenth nor Fourth Amendment rights were infringed. The constitutionality of §18.942 Clint. Stat. must be upheld under the

Fourteenth Amendment, regardless of whether this Court looks to the rational basis supporting the statute at the time of enactment or at the time of the present challenge. First, §18.942 was rational at the time of enactment. The statute was based on the legislature's concern for public welfare and safety concerns, as well as economic protection of certain groups of casket sellers. R. at 5.

Since the statute was constitutional at the time of its enactment, there is a strong presumption that it will retain its constitutionality. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 147 (1938). The burden is on the challenger of the statute to show that the statute has become arbitrary since its enactment. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 79 (1911). Although the petitioner alleges changes in circumstances, none are great enough to overcome the huge public welfare concerns that improperly stored decomposing bodies create, nor eliminate the rational basis that casket sales should be regulated for fraud against grieving casket purchasers, so the same original justifications for the statute continue to provide its rational basis today. The industry is entrusted with the unique responsibility of disposing of human remains, a task which has great emotional and health and safety implications. Even if this Court disagrees that there is a strong public welfare rationale, the statute is entitled to a presumption of constitutionality as an economic regulation. *Heffner v. Murphy*, 745 F.3d 56, 59 (3d Cir. 1982). Since §18.942 Clint. Stat. was rationally related to a legitimate government interest when it was enacted, and since the funeral industry has not withstood any major changes in circumstances since the statutes enactment, §18.942 Clint. Stat. is constitutional under the Fourteenth Amendment.

Additionally, the nine images recovered from the Defendant's phone are admissible evidence under *United States v. Jacobsen*, 466 U.S. 109, 116 (1984). *Jacobsen*, rather than *U.S.*

v. Jones, governs this case because *Jones* did not abrogate the longstanding private search doctrine evidenced in *Jacobsen*. *United States v. Jones*, 565 U.S. 400, 412 (2012); *Id*. A private citizen's search, and an officer's follow up within the bounds of that same search does not come within the range of a citizen's Fourth Amendment protection. *Jacobsen*, 466 U.S. at 116. Private R. Jones and his superiors stayed within the parameters of the initial private search, under the *Jacobsen* line of cases, because they searched only within the subfolder that the private searcher first opened, and they had significant knowledge as to what was inside the USB before examining its contents. *Id.*; *United States v. Runyan*, 275 F.3d 449, 464 (5th Cir. 2001).

Even if this Court holds that this case should fall under the *Jones* decision, the images recovered from the Defendant's USB remain admissible under the good faith exception to the exclusionary rule. Binding case law permitted Private Jones and his superiors' examination, and their actions were a far cry from an exhibition of gross negligence or recklessness.

Since §18.942 was constitutional upon enactment and remains so to this day, and since the Defendant's Fourth Amendment rights were not infringed in the police officers' collection of evidence, the Respondent respectfully asks that this Court affirm the decision by the Supreme Court of Clintonia.

ARGUMENT

The case before this Court arises out of the Defendant's motion to dismiss the indictment against him due to alleged violations of the Fourteenth and Fourth Amendments. U.S. Const. IV; U.S. Const. XIV. To prevail on his Fourteenth Amendment claim, the Defendant must prove that §18.942, Clint. Stat. was unconstitutional because it was not rationally related to legitimate government interest either at the time of enactment, or at the present time. U.S. Const. XIV. To succeed on his Fourth Amendment claim, the Defendant must show that the Government actor's

actions constituted a warrantless search under the Fourth Amendment, and that no warrant exception applied to the search. U.S. Const. IV.

First, this Court should find that §18.942 passes rational basis scrutiny because it was rationally related to a legitimate governmental interest either at the time of enactment, at the present time, or both. Second, this Court should find that Private R. Jones and his superiors' actions did not constitute a search under the Fourth Amendment because they did not exceed the scope of the private search, and even if they did, the good faith exception to the warrant requirement applies.

I.

THE FDEA AND §18.942 ARE CONSTITUTIONAL UNDER THE DEFERENTIAL RATIONAL BASIS TEST

The Supreme Court of Clintonia correctly held that §18.942 passes review under the deferential rational basis test. The rational basis test only requires some rational relation to a legitimate government interest. *Romers v. Evans*, 517 U.S. 620, 632 (1996). The legislation is rational for two reasons. First, it is reasonable and responsible for the government to regulate how human remains are handled because public health, consumer welfare, and economic interests are implicated. This is the true at both the time of enactment and at the time of the current challenge. Second, even if the rationale supporting the statute at the time of enactment is no longer rational at the time of the present challenge, the statute is not constitutionally disqualified. *Murillo v. Bambrick*, 681 F.2d 898, 906 (3d Cir. 1982). The rational basis review is highly deferential to constitutionality. *Id.* The relevant facts in this case have not changed so dramatically as to overcome its constitutionality.

Even if the court determines that this is a purely economic regulation, the statute is still constitutional because of the presumption that economic regulations are constitutional. *Heffner v.*

Murphy, 745 F.3d 56, 57 (3d Cir. 1982); *Burlington N. R.R. Co. v. Dep't of Pub. Serv. Reg.*, 763 F.2d 1106, 1107 (9th Cir. 1985). However, this is more than mere economic protectionism. Applying the factual circumstances of today, the law is still rationally related to protecting the public health, public safety, and economy.

A. The Legislation's Original Purpose is Still Applicable Today

The legislature primarily intended that §18.942 would protect consumers and the public. The alleged changed circumstances do not constitutionally disqualify the statue, since the factual circumstances of today still support a rational relation to protecting the public health, safety and welfare of society.

Although later disproven, at the time of enactment the legislature considered a study that showed 10% of unlicensed casket sellers did not meet the FDEA standards. R. at 5. The legislature's consideration of this study, in itself, shows that it legislation was aimed at protecting consumers. Discussion of the study shows that there was a concern for public safety and welfare. This concern served as motivation for the statute's enactment.

Furthermore, previous case law establishes that the analysis is not limited to the legislature's reasoning behind the regulation, but rather extends to rationale that is reasonably conceived. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911). In *Lindsley.* the plaintiffs argued that a state statute protecting natural mineral springs was arbitrary and violated their due process rights by restricting a certain type of drilling for a specific purpose. *Id.* at 78. This Court held that plaintiffs' due process rights are not violated when there is some set of reasonably conceived facts that establish that such a restriction is not merely arbitrary. *Id.* Furthermore, this Court placed the burden of proving a statute's arbitrariness on the party challenging the statute's constitutionality. *Id.* at 79. The Court made it clear that this was a high

burden, stating that if any reasonable facts can be conceived that would sustain the statute, those facts must be assumed to have existed at the time the law was enacted. *Id.* at 78.

The regulation before this court does not become arbitrary simply because a study that was discussed by the legislature was later found not to be unreliable. R. at 5. There is no evidence that the study was the sole reason for enactment discussed by the legislature, nor is it the only set of conceivable facts that support its reasonableness. R. at 5-6. As required by *Lindsley*, here there is a reasonably conceivable rationale behind the statute. The funeral industry deals with human remains, a sensitive area that has both public health and public welfare implications. Consumers purchase a casket when they have lost a loved one. This emotionally fragile consumer should be protected by the government against predatory sales practices. Public health concerns are also implicated since caskets are a barrier between decomposing remains and ground water supplies. Therefore, it is reasonable to regulate the funeral industry and require licenses for the people who build caskets. Even if these safety and welfare concerns were not at the center of the legislatures discussion, they are reasonable, and can therefore be used to uphold the statutes constitutionality today. Furthermore, the *Lindsley* holding explicitly placed the burden of proof on the party challenging the constitutionality of a statute. The Defendant has failed to meet that burden. He has failed to discredit every conceivable set of facts that provide a rationale.

The legislature's reasoning cannot be invalidated by merely showing they were mistaken. The statutes at issue in *Minnesota v. Clover Leaf Creamery Co.* banned the sale of milk in plastic nonreturnable, nonrefillable containers, while permitting the sale of milk in other nonreturnable, nonrefillable containers made of other materials such as cardboard. 449 U.S. 456, 464 (1981). The Court held the statute did not violate the Equal Protection Clause because it was reasonable

to ban plastic containers given the state's environmental goal of conservation. The Court found that regardless of whether or not the ban had a positive environment impact, the statute was still valid because "[w]here there was evidence before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence that the legislature was mistaken." *Clover Leaf Creamery Co.*, 449 U.S. at 464.

Similar to how the ban of plastic containers in *Clover Leaf* was an attempt to achieve the state's environmental goals, in this case the license requirement is an attempt to achieve the state's public safety and consumer protection goals. The evidence before the legislature, reasonably supported §18.942. The study Senator Gaines pointed to was evidence that consumers were taken advantage of by unlicensed casket sellers. R. at 5. Therefore, as stated in *Clover Leaf*, the Defendant here cannot procure invalidation merely by tendering that the legislature was mistaken. 449 U.S. at 464. Even if the legislature was given incorrect information in one study, the health and public safety concerns still remain and serve as a basis of upholding the statute's constitutionality. Even if the study was incorrect in its assertion that retail casket sellers were manipulative, it is still reasonable to assume regulating the industry will prevent manipulative practices.

The legislature had no discriminatory intent when it considered the study and the public's best interest, therefore, the constitutionality of the statute should be upheld. In *United States v. Then*, the defendant argued mandatory sentencing guidelines for crack cocaine discriminated based on race, since over 95% of those convicted of crack cocaine possession were Black or Hispanic, while powdered cocaine convictions were comprised of mostly Whites. 56 F.3d 464, 467 (2d Cir. 1995). The court noted that the legislature had no discriminatory intent when it made the mandatory sentencing guidelines one-hundred times more severe for crack cocaine

possession than powdered cocaine possession. *Id.* The court therefore joined six other circuits by upholding the constitutionality of the guidelines. *Id.* at 466.

The legislature's primary intent was to protect consumers, not to favor Clintonian morticians. Unlike the defendant in *Then*, the Defendant here does not does not allege that the legislature was discriminatory, rather he argues that they were mistaken. R. at 9. The Defendant also concedes that Clintonia has a legitimate interest in protecting consumers from deceptive sales tactics. R. at 9. This is evidenced by the legislature's consideration of the study regarding consumer treatment by unlicensed parties. *Id.* Despite the fact that this study was later proven not to be true, it is still rational to regulate the industry because of public safety and policy considerations.

The constitutionality of the statute cannot be challenged on the basis that the legislature considered a study that was later found to be inaccurate. The constitutionality is also not affected by the repeal of other regulations. It is still reasonable, based on public welfare and safety concerns that casket sellers are regulated.

B. The Statute is Presumptively Constitutional Despite Changed Circumstances

Even if the court finds that the legislature's rationale is no longer rational, the constitutionality of the statute should remain unaffected. The statute at issue was constitutional at the time of its enactment. Therefore, the court is bound to a highly deferential rational basis review regarding its constitutionality at the time of the present challenge. *Carolene Prods. Co.*, 304 U.S. 144, 145 (1938); *Murillo v. Bambrick*, 681 F.2d 898, 899 (3d Cir. 1982).

A rational basis review is highly deferential to constitutionality. For example, in *Murillo v. Bambrick*, the court held that charging a matrimonial litigation fee to obtain a divorce was

rationally related to the recoupment of court expenses incurred by divorce proceedings. 681 F.2d 898, 899 (3d Cir. 1982). The Equal Protection Clause was not violated, even though other civil litigants were not charged such a fee. *Id.* The court came to this conclusion even though the state had abandoned previous costly procedural steps unique to its divorce procedures. *Id*. at 908. The court reasoned that even with the adoption of more liberal divorce procedures, the legislature still could have rationally concluded that divorce litigation would continue to impose a financial burden on the court system that could be offset by collection of a fee. *Id.* Evidence was available to the legislature that would have supported this rationalization, and, the court noted that even if no evidentiary basis existed, the court's finding would be unaffected. *Id*. Divorce proceedings are different than other civil matters, therefore, the court reasoned it is permissible to treat them differently. *Id.* "The equal protection clause does not require 'things which are different in fact … to be treated in law as though they were the same.'" *Id.* at 909 (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940)).

Similar to the evidence available in *Murillo*, evidence supporting a rational basis at the time of enactment is present here. The evidence of increased costs for divorce proceedings and evidence regarding health and public safety issues with casket production and sales were present at the time of enactment for each statute. In *Murillo* there was a change in circumstances when proceedings for divorce were streamlined and therefore became less expensive. 681 F.2d 898, 908 (3d Cir. 1982). The Defendant alleges a similar change in circumstances, arguing that since casket regulations have been repealed, §18.942 no longer has a rational basis. R. at 10. However, the *Murillo* court disagreed with the Defendant's proposition. 681 F.2d 898, 908 (3d Cir. 1982). The *Murillo* court reasoned the legislature could still have rationally concluded that a greater cost could be imposed on courts for divorce proceedings, just like the legislature here could have

rationally concluded that there is still value in licensing casket retailers. *Id.* It is logical that licensing would serve a protective purpose regardless of the presence of further casket regulations. The *Murillo* court went even went as far as to say even if there were no evidence, the court's finding would still uphold constitutionality. 681 F.2d 898, 908 (3d Cir. 1982). Therefore, the constitutionality of §18.942 cannot be invalidated by the circumstances the Defendant has alleged.

There is a need for this Court to provide a holding in accordance with the *Murillo* holding that would clarify confusion stemming from *United States v. Carolene Prods. Co.*, 304 U.S. 144, 145 (1938). The *Carolene Prods.* decision addressed the constitutionality of the Filled Milk Act, which prohibited the sale of skim milk compounded with fat or oil other than milk fat, in interstate commerce. *Id.* at 146. The Court held that there is a presumption that the legislature had a valid rationale basis for the enactment of a statute. *Id.* at 152. Even if there is no evidence of a rational basis, "the existence of facts supporting the legislative judgment is to be presumed." *Id.* However, the court also stated that constitutionality may be challenged if a statute is predicated on a set of facts that cease to exist. *Id.* at 153.

Like the third circuit holding in *Murillo*, Circuit Courts have interpreted the *Carolene Prods.* holding in such a way that supports that there is a strong presumption in favor of constitutionality. *See Burlington N. R.R. Co. v. Dep't of Pub. Serv. Reg.*, 763 F.2d 1106, 1108 (9th Cir. 1985). To hold otherwise and accept that changed facts can affect a law's constitutionality would put an expiration date on constitutional rights. If statutes were easily invalidated, it would also impose a high cost on legislatures. Legislatures would have to struggle to keep laws in place to prevent society from descending into a lawless chaos. The decision in *Carolene Prods. Co.* supports the presence of a presumption for constitutionality of §18.942. 304

U.S. 144, 146 (1938). Here, there is evidence of a rational basis grounded in public health, consumer welfare and economic concerns. The changed circumstances that the Defendant alleges do not counteract that basis.

Contrary interpretations of this Court's ruling in *Carolene Prods. Co.* would be inappropriate. This Court should uphold and clarify *Carolene Prods. Co.* and support the circuit decisions that apply a highly deferential rational basis review. Since the statute was constitutional at the time of its enactment, any evaluation of its constitutionality today should be highly deferential. The changes in circumstances that Oliver alleges are not enough to overcome this strong presumption. There was evidence available at the time of enactment that supports the statute as rationale. That evidence is still applicable to the industry today.

C. A Presumption of Constitutionality Also Applies Since the Statute Serves as an Economic Regulation

Strong public policy and welfare arguments indicate the statute is more than a purely economic regulation. However, even if the Court disagrees, the FDEA and §18.942 clearly serve economic purposes: the protection of licensed funeral directors from intrastate competition. If the Court finds that the regulation is solely an economic regulation, the constitutionality should still be upheld. Economic regulations are treated with a presumption of constitutionality. *See Heffner v. Murphy*, 745 F.3d 56, 57 (3d Cir. 1982); *Burlington N. R.R. Co. v. Dep't of Pub. Serv. Reg.*, 763 F.2d 1106, 1107 (9th Cir. 1985).

In *Heffner v. Murphy*, the Court upheld the constitutionality of funeral industry regulations. 745 F.3d 56, 57 (3d Cir. 1982). The regulations were antiquated and therefore only served economic protectionist purposes. *Id.* at 59. The court held that the fact that the statute was now a purely economic regulation was not a constitutional flaw. *Id.* at 62. The court stated it was not a

court's duty to determine whether the state had addressed the issue in the best way, or to "reexamine restrictions that may seem better suited for an earlier time." *Id*. at 76. The court declined to use judicial review to ensure regulations remained pertinent. *Id.*

Similarly, in *Burlington N. R.R. Co. v. Dep't of Pub. Serv. Reg.*, an arguably outdated railroad regulation was upheld as constitutional. 763 F.2d 1106, 1114 (9th Cir. 1985). The railroad challenged the regulation, which required staffing certain freight offices, arguing that it was unnecessary and economically wasteful. *Id.* at 1109. The Court observed that the regulation was updated only 16 years before the constitutional challenge was brought, and the railroad failed to show that circumstances had changed so much, that there was no longer a rational basis for the regulation. *Id.* at 1111.

The Supreme Court did find that a change in circumstances warranted constitutional analysis of a regulation in *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 544 (1924). The case involved a Rent Commission order that was passed during World War I in order to fix rental rates at a reasonable rate. *Id.* at 546. The Court found that the operation of the law depended on the existence of a state of war, and remanded the case for a factual determination, for a finding on whether the exigency of war still existed. *Id.* at 548. The absence of war, would warrant constitutional disqualification of the Rent Commission order. *Id.*

Even if the Court finds no other rational basis to §18.942, it is certainly an economic regulation, similar to the funeral regulations in *Heffner v. Murphy*. The statute addresses intrastate commerce and who is permitted to sell caskets. Even though the regulations in *Heffner v. Murphy* and *Burlington* became antiquated, both Courts upheld the regulations on economic purposes alone. The changes in circumstances that the Defendant alleges here, similarly should disqualify the statute's function as an economic regulation. Unlike the change in circumstances

in *Chastleton Corp. v. Sinclair* the circumstances that the Defendant alleges in the present case are not severe enough to show there is no longer a rational basis for the regulation. The statute was not based solely on any of the facts the Defendant argues have changed. The reliance of the Rent Commission order in *Chastelton Corp.* and its dependence on a state of war, is hardly analogous to the circumstances here: a disproven study and the repeal of tangential casket regulations. R. at 10. As stated in *Heffner v. Murphy*, it is not for the Court to supervise the modernization of regulations through a constitutional analysis. A change in circumstance must be severe to warrant the Court's involvement, such as the absence of a state of war in *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 544-546 (1924). The changes alleged in the funeral industry do not overcome this presumption since it still serves an economic purpose.

The Supreme Court of Clintonia was correct in holding that §18.942 passes review under the rational basis test. A rationale basis grounded in public welfare and consumer protection supports the constitutionality of the statute. A strong presumption of constitutionality is afforded since the statute was constitutional at the time of enactment. Since the rationale supporting the statute still holds true today, the Defendant has failed to present a valid constitutional claim. Furthermore, the statute's economic purpose alone would afford it a presumption of constitutionality, even if the court does not find there is a rational basis supported by public policy. Application of either presumption of constitutionality would result in upholding §18.942, and affirming the Supreme Court of Clintonia's decision.

II.

THE NINE IMAGES RECOVERED FROM THE DEFENDANT'S USB ARE ADMISSIBLE EVIDENCE

The private search doctrine establishes that searches between private citizens do not fall within the Fourth Amendment, because the Fourth Amendment controls government actions, not

private individuals' actions. U.S. Const. IV; *United States v. Jacobsen*, 466 U.S. 109, 116 (1984). Therefore, a private individual's search cannot violate another individual's Fourth Amendment rights. U.S. Const. IV. Additionally, a government search cannot violate Fourth Amendment rights when it stays within the confines of the private individual's original search. *Jacobsen*, 466 U.S. at 116; *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting); *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921).

Mr. Walker conducted a private search of the Defendant's USB. The State of Clintonia remained within the confines of Mr. Walker's search when it verified and continued the search of the same subfolder within the USB, because government officials do not exceed the scope of a private individual's search just by searching the same area more comprehensively. *Jacobsen*, 466 U.S. at 116; R. at 7. Even if this Court finds that a Fourth Amendment search occurred, the files discovered on the USB remain admissible under the good faith exception to the exclusionary rule, because the officers acted with good intentions, and because the massive consequence of failure to prosecute the possession of photos of child abuse outweighs any minor expansion of the private search. *Davis v. United States*, 564 U.S. 229, 237 (2011).

A. Under U.S. v. Jacobsen, the Officers' Examination of the Defendant's USB did not Constitute a Fourth Amendment Search

The trajectory of this Court's Fourth Amendment case law provides various tests to ascertain the existence of a search under the Fourth Amendment, and the petitioner bears the burden of proving that the officers' actions constituted a Fourth Amendment search. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). Due to the purely electronic nature of the investigation and the lack of trespass, Private R. Jones and his superiors partook in conduct governed by *United States v. Jacobsen*. 466 U.S. at 122 (1984). Under *Jacobsen*, a private citizen's search, and correspondingly a police's follow up search, does not fall within the bounds of the Fourth

Amendment. *Id.* The police officers stayed within the scope of the private search because they examined only the same subfolder that the private citizen already opened. *Jacobsen,* 466 U.S. at 122; R. at 7. Since the police officers' actions did not exceed those of the private citizen, the Fourth Amendment was not implicated, and the Defendant's constitutional rights were not violated.

i. The precedent of U.S. v. Jacobsen governs this case because the officers did not physically trespass on the Defendant's property

As technology progresses, this Court continues to issue decisions defining searches and seizures in a developing age. Both *United States v. Jacobsen* and *United States v. Jones* are products of this evolution, but neither completely overshadows the other's realm. *Jones*, 565 U.S. at 412; *Jacobsen,* 466 U.S. at 122. The test spawning from *Jones* restored the waning trespass inquiry in the determination of the existence of a Fourth Amendment search. 565 U.S. at 412. Thus, *Jones* applies when the government physically trespasses on a citizen's person, place, or effect and proceeds to garner information from it without a valid warrant. *Id.* Such activity constitutes an unconstitutional search under the Fourth Amendment. *Id.* However, *Jones* does not sweep so broadly as to govern every potential incidence in which a government trespass occurs. *Id.* In contrast, *Jacobsen* limits the definition of Fourth Amendment searches, stating that "governmental inspections following on the heels of a prior private search are not searches at all as long as the police do no more than the private parties have already done." *Jacobsen*, 466 U.S. at 129. *Jones* does not speak on the issue of private searches, thereby leaving the standing precedent in place. *Jacobsen*, 466 U.S. at 129.

Since the officers in this case stayed within the bounds of the private search, examining the officers' actions for the existence of a *Jones* trespass is, in effect, equivalent to analyzing a

private searcher's conduct for the same. The question in *Jones* was whether a Fourth Amendment search occurred when police placed a GPS device on a private citizen's car and proceeded to track the car for an extended period of time. *Jones*, 565 U.S. at 405. The *Jones* decision showed no intent of abrogating the private search doctrine or of disturbing existing precedent on searches falling outside of the Fourth Amendment. *Id.* If this Court holds that the police officers conducted a trespass when their actions fell within the bounds of the private search, it will completely eradicate the private search doctrine in one swipe. Since the initial search by Walter, a private individual, cannot implicate the Fourth Amendment, Private R. Jones and his superiors' actions that followed that search remain under *Jacobsen*'s private search doctrine and outside of the Fourth Amendment.

Moreover, even if the private search doctrine were inapplicable, the examination of the Defendant's USB involved no physical trespass, so it is not governed by *Jones.* 565 U.S. at 412. In *Jones*, this Court determined that officers physically trespassed when they placed a GPS monitoring device on a vehicle with the purpose of tracking the movements of the vehicle itself. *Id.* at 405. In contrast to the significance of Jones' vehicle, the Defendant's physical plastic USB carrier was not relevant to the officers' examination at all, and was not part of their investigation. R. at 7. Rather than picking apart the shell of the USB drive, perhaps to look for physical contraband, the officers solely focused on viewing the contents of one electronic subfolder within the USB. *Id.* In *Jones*, this Court quoted *Kyllo v. United States* to acknowledge that when a trespass is nonexistent, a Fourth Amendment search transpires if a government agent violates a reasonable expectation of privacy. *Id.* (quoting *Kyllo v. United States*, 533 U.S. 27, 31-33 (2001)). This Court continued on to specifically state that the *Katz* reasonable expectation of privacy test applies exclusively to purely electronic investigations, while the *Jones* analysis

applies to physical trespasses. *Id.* at 415 (Sotomayor, J., concurring). Because the alleged search of the Defendant's USB was an electronic search, the trespass-minded test *Jones* sets forth is not applicable in the Defendant's case.

ii. The government's actions did not exceed the scope of Walker's private search

The Fourth Amendment only controls government actions, and thus a private individual's search cannot violate an individual's Fourth Amendment rights. U.S. Const. IV. The Defendant's Fourth Amendment rights are not implicated in this case because the government search stayed within the confines of the original private citizen's search. *United States v. Jacobsen*, 466 U.S. 109, 116 (1984); *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting); *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921). Furthermore, government officials do not exceed the scope of a private individual's search just by searching the same area more comprehensively. *United States v. Jacobsen*, 466 U.S. 109, 116 (1984).

Walker's search of the USB constituted a private search, and private searches fall outside of the Fourth Amendment's protection against unreasonable searches and seizures. U.S. Const. IV; *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921); R. at 7. In *Burdeau v. McDowell*, a private searcher wrongfully searched another's private desk and office. 256 U.S. 465, 474 (1921). This Court held that the Fourth Amendment protection against unreasonable searches and seizures was inapplicable when the searching party was a private actor who was not encouraged into action by a state actor. *Id.* at 475. Walker conducted the search of the USB, and the Defendant conceded that Walker was not a state actor. R. at 3. No facts imply that Walker's actions were encouraged or pressured by a state actor. R. at 2-7. Since here, like in *Burdeau*, a private citizen

completed the investigation without prodding or instigation by a state actor, the initial private search does not come within the bounds of the Fourth Amendment.

Private R. Jones and his superiors did not conduct a Fourth Amendment search because they did not surpass the bounds of Walker's private search. An officer does not exceed the scope of a private individual's search when he examines the same materials that the private individual initially opened. *United States v. Runyan*, 275 F.3d 449, 464 (5th Cir. 2001). In *Runyan*, private searchers turned in disks of information to the police, and the police examined all of the disks, regardless of which had been first opened by the private searchers. *Id.* at 453-55. The court found that the officers did not violate the Fourth Amendment by opening more files than the private searchers initially had accessed. *Id.* at 464. It applied closed container case precedent, stating "police do not exceed the private search when they examine more items within a closed container than did the private searchers." *Id.* at 464. The court reasoned that if police search the same area or disk that the private searcher examined, but the police do so more thoroughly, they have not exceeded the scope of the private search. *Id.* Additionally, each time the police inspect a different piece of evidence within the container, they do not begin a new search—rather, each inspection is within the scope of the original private search until the police move to a new container. *Id.* at 465. Applying this precedent, the *Runyan* court held that officers were within the scope of the private search until they opened and examined a new disk that had not been previously searched by a private individual. *Id*.

Like the officers in *Runyan*, who did not exceed the private search when they opened disks that private searchers had viewed, Private R. Jones and his superiors did not exceed the private search when they opened files within the original subfolder that the private searcher opened. R. at 7. In this case, the "container" at issue was the subfolder that the private searcher first opened.

R. at 7. Private R. Jones and his superiors only opened files within that initial subfolder, and did not proceed to open other folders or subfolders on the device. R. at 7. As *Runyan* noted, it is inconsequential whether or not the private searcher initially saw every file within the folder he opened, but rather it only matters that he opened the specific folder and viewed some of its contents. *Runyan*, 275 F.3d at 465. Since the police in this case did not exceed the initial search, their actions did not constitute a search under the Fourth Amendment.

iii. Even if Private R. Jones exceeded the private search, he did not conduct a Fourth Amendment search because he had already ascertained the nature of the evidence

If Private R. Jones and his superiors exceeded the scope of Walter's initial search, they did so constitutionally. In *Jacobsen*, law enforcement conducted an "extra" test beyond that of the private search by chemically testing a seized substance to determine if it was cocaine. 466 U.S. 109, 112 (1984). This Court held that "[a]dditional invasions of privacy by the government, beyond that committed by a private party, must be tested by the degree to which they exceeded the scope of the private search." *Id.* at 115. This Court further held that officers' extra testing did not violate the defendant's Fourth Amendment rights because society does not recognize an expectation of privacy in possession of cocaine or other contraband. *Id*. at 123. To come to this determination, this Court applied a balancing test, stating "[we] must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id.* at 125. After balancing the interests, this Court held that no Fourth Amendment search occurred. *Id.* at 123.

In this case, the balancing test weighs in the government's favor because the sexual abuse of innocent children will justify a police examination. Just as the officers' testing of the substance in excess of the private search was constitutional in *Jacobsen*, Private R. Jones'

"testing" of each file for child pornography in excess of Walker's private search was constitutional. 533 U.S. 109, 125 (2012). If Private R. Jones minimally expanded the private search, such increase can hardly be said to have substantially exceeded its scope, especially when balanced with the consequences of not "testing" each file. R. at 7. The officers opened files within the same subfolder of the USB that Walter originally opened, which bore a sequential naming scheme that linked them to the original picture found. *Id.* If this constituted an expansion of Walter's search, it was appropriate to prioritize the strong interests of prosecuting possession of child sexual abuse photographs over staying precisely within the bounds of the private search. *Id.* Under the balancing test pronounced in *Jacobsen*, the officers' minimal "extra" testing to uncover child pornography did not constitute a Fourth Amendment search.

Even if this Court interprets *Jacobsen* to set forth a knowledge requirement, as the Sixth Circuit does, Private R. Jones and his superiors still did not perform a Fourth Amendment search. *United States v. Lichtenberger*, 786 F.3d 478, 488 (6th Cir. 2015); *United States v. Bowers*, 594 F.3d at 524 (6th Cir. 2010); *United States v. Richards*, 301 F. App'x 480, 483 (6th Cir. 2008). Specifically, in *United States v. Lichtenberger*, the Sixth Circuit set forth a twofold test for ascertaining when the government exceeds a private search under *Jacobsen*. 786 F.3d 478, 488 (6th Cir. 2015). First, the court must determine the amount of knowledge the government was poised to gain, or relatedly how much it already knew about the evidence. *Id.* Second, it must determine the degree of certainty in what the government actor expected to find. *Id.* (citing *Jacobsen*, 466 U.S. at 119-20). The court in *United States v. Bowers* applied this test when the defendant's roommate discovered a book of child pornography in his bedroom. 594 F.3d at 524. Since the private searcher told the police what the book contained before officers opened it, the police "learn[ed] nothing that had not previously been learned during the private

search," and "infringed no legitimate expectation of privacy," satisfying the two-prong test. *Id.* at 526 (quoting *Jacobsen*, 466 U.S. at 120) (internal quotation marks omitted). Similarly, in *United States v. Richards*, the same circuit decided that after a private individual told police that a storage unit contained child pornography, the police did not exceed the scope of the private search by entering and searching it. 301 F. App'x 480, 483 (6th Cir. 2008). Rather, "[t]he officers merely confirmed the prior knowledge that [the private party] learned earlier in the day—that unit 234 contained child pornography." *Id.*

Just as the officers in *Bowers* and *Richards* stayed within the scope of the private search when they examined evidence without inquiring as to the bounds of the private search, the officers in this case were also within the scope of the private search when they examined the contents of the USB. R. at 7. Walter saw an image of child sexual abuse so horrific that it made him physically ill. *Id.* He brought the USB containing that image to Private R. Jones, guided the officer to the correct subfolder, and clearly stated that the device contained child pornography. *Id.* Under the Sixth Circuit knowledge requirement, the officers were simply confirming the information brought to them by the private citizen, and did not expand the private search by doing so.

Since the precedent in *United States v. Jacobsen* is applicable to this case, Private R. Jones and his superiors did not implicate the Defendant's Fourth Amendment rights because a private citizen performed the original search, and because the officers' actions stayed within the confines of that private search.

B. Even if U.S. v. Jones Controls, the Images are Still Admissible Under the Good Faith Exception to the Exclusionary Rule

United States v. Jones should not govern this case because Private R. Jones and his superiors did not perform a physical trespass on the photos and because the activities were performed on an electronic device, which is governed by the reasonable expectation of privacy test. *Jones,* 565 U.S. at 412. However, even if this Court finds that *Jones* is controlling, the State of Clintonia has met its burden to prove that the photos found on the USB remain admissible under the good faith exception to the exclusionary rule. *United States v. Echevarria-Rios*, 746 F.3d 39, 41 (1st Cir. 2014). Termed the "tipsy coachman" exception to exemplify a driver who takes an unnecessary route but ends up at the right location, the good faith exception allows for the admissibility of evidence obtained through well-meaning, but negligent or incorrect, police conduct in the interests of protecting innocent lives and prosecuting cruel perpetrators. *United States v. Herring,* 555 U.S. 135, 142 (2009). As the *Nix* Court noted, "[t]hese exceptions are designed to ensure that the exclusionary rule puts police 'in the same, not a worse position than they would have been in if no police error or misconduct had occurred.'" *Nix v. William*s, 467 U.S. 431, 443 (1984). Since the officers in this case reasonably relied on both an unbiased third party and case precedent to support the constitutionality of their actions, the good faith exception ensures the admissibility of the evidence obtained from the Defendant's USB drive.

i. Private R. Jones and his superiors acted under the good faith exception because **Jacobsen** *was binding precedent*

If Private R. Jones and his superiors conducted a Fourth Amendment search on the USB files, the uncovered photographs of child pornography remain admissible under the good faith exception as expanded by modern case law. *United States v. Herring*, 555 U.S. 135, 142 (2009).

The good faith exception was originally largely applied to situations in which police officers believed the warrant they possessed was valid when in fact, it was not. *Id.* However, this Court's modern jurisprudence greatly expanded the exception to apply in cases of officers' belief of validity in case law and statutes, thus exceeding its classic applicability to warrants. *Davis v. United* States, 564 U.S. 229, 229 (2011); *Id.*; *Illinois v. Krull*, 480 U.S. 340 (1987). This Court has reasoned that the good faith exception must require great deliberateness and culpability before triggering the exclusionary rule, depicting the continuing Roberts Court's outlook that "exclusion 'has always been our last resort, not our first impulse." *Herring*, 555 U.S. at 140 (quoting *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006)). Since the purpose of the exclusionary rule is to prevent police misconduct, a police error due to reliance on an unbiased outside does not constitute behavior worthy of exclusionary rule deterrence. *Id.* at 143.

Private R. Jones and his superiors' behavior is covered by the good faith exception to the exclusionary rule because the rule excuses faulty reliance on precedential case law. In *Davis v. United States*, this Court stated that "when binding appellate precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their crime detection and public-safety responsibilities." 564 U.S. 229, 241 (2011). In *Davis*, binding precedent from *New York v. Belton*, 453 U.S. 454 (1981) controlled officers' actions when they searched the defendant's vehicle without a warrant. *Id.* at 229. While the defendant was subsequently appealing his conviction, a new case, *Arizona v. Gant*, 556 U.S. 332 (2009) largely invalidated *Belton* and made the search in question unconstitutional. *Id.* at 230. This Court upheld the constitutionality of the warrantless search, stating that "[f]or exclusion to be appropriate, the deterrence benefits of suppression must outweigh the rule's heavy costs." *Id.* at 237. This Court stated that even negligence of the officers in relying on binding case precedent

would not justify exclusion of such evidence. *Id.* Since the purpose of the exclusionary rule is to protect private individuals from intentionally arbitrary and flagrant police misconduct, unintentional incorrect reliance on case law qualifies for the good faith exception. *Id.* at 238.

Similarly, in this case, *Jacobsen* was "binding appeallate precedent specifically authorize[ing] a particular police practice" and thus the good faith exception applies to Private R. Jones' actions. *Davis*, 564 U.S. 229, 241 (2011). The "heavy costs" mentioned in *Davis* are evident in the possibility that possession of photos of child sexual abuse would not be prosecuted if the evidence was deemed inadmissible. R. at 3. This is specifically an issue when, like in *Nardone*, this Court acknowledged that the intercepted evidence is "a vital part of the prosecution's proof." 308 U.S. 338, 341 (1939). The State of Clintonia similarly stipulated that it could not make its case against the Defendant without the admissibility of the photographs. R. at 3. Based on the applicability of binding precedent and the detrimentally negative effects of continued child sexual abuse if the possession of child pornography goes unprosecuted, the good faith exception applies to this case and ensures admissibility of the evidence.

ii. Any excessive search was not so deliberate and culpable as to justify suppression of the evidence

The exclusionary rule does not apply to the Defendant's USB because the officers' behavior in accessing the USB was not so intentionally faulty that exclusion of the evidence would deter further "misconduct." The exclusionary rule only applies to deter flagrant and intentional police misconduct. *Herring v. United States*, 555 U.S. 135, 138 (2009). For example, in *Herring v. United States*, the defendant moved to suppress evidence because the warrant used to arrest him and subsequently find evidence against him had been rescinded prior to his search. 555 U.S. 135, 138 (2009). This Court stated that because the negligence in failing to update the

warrant database was attenuated from the officers' actions and was nonrecurring, it was not an error capable of deterrence through exclusion of the evidence. *Id.* at 137. This Court stated, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct…" *Id.* at 144. The negligence in failing to update the warrant database was attenuated from the officers' actions and was nonrecurring, it was not an error capable of deterrence through exclusion of the evidence. *Id.* at 137.

Even if the officers in this case were wrong to rely on the *Jacobsen* case precedent, there is no evidence to suggest that such an error is recurrent or particularly problematic. Just as it did not constitute gross negligence in *Herring* to not verify a warrant updated by a third party, it did not constitute gross negligence for the officers in the instant case to rely on the statements by an unbiased private citizen or to fail to legally analyze binding case law in existence. R. at 7. As decided in *Herring*, the failure to verify an unbiased third party's information is not an indiscretion so egregious that deterrence is necessary. Since Private R. Jones and his superiors' behavior falls within the domain of the good faith exception, the uncovered images are admissible evidence.

The behavior of Private R. Jones and his superiors was objectively reasonable and thus did not come within the purpose of the exclusionary rule. In *United States v. Leon*, officers acted on a valid warrant to seize evidence, but the warrant was later recalled when a court found that there was not sufficient probable cause to support it. *United States v. Leon*, 468 U.S. 897, 903 (1984). This Court refused to apply the exclusionary rule, stating that the law would lose respect if tangible evidence was ignored and guilty defendants went free because of innocent police

mistakes. *Id.* at 908. It held that "[the exclusionary rule] cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 919. This Court stated that the exclusionary rule was created by the judiciary with no textual grounds in the Fourth Amendment. *Id.* at 931. It is objectively reasonable in this case for police to rely on binding and precedential case law that is directly on point to the situation they face. The "objectively reasonable" standard makes the private thoughts within the polices' minds irrelevant, and judges their behavior only based on outward manifestations. *Id.* Since the United States judicial system rests on the adherence to precedential case law, it is objectively reasonable and desirable for police to rely on this Court's binding *Jacobsen* case precedent. R. at 7. Therefore, the officers' actions fell within the purview of the good faith exception to the exclusionary rule.

The precedent of *Jacobsen* applies to the police officers' actions, and the officers complied with its holding of constitutionality by remaining within the scope of the private search doctrine. 466 U.S. 109, 131 (1984). Since the officers did not open any further subfolders on the USB than the one that was opened by the private individual, their actions did not constitute a Fourth Amendment search. Even if this Court determines that the officers' actions established a Fourth Amendment search under *Jones*, the evidence found on the USB is admissible due to the good faith exception. The police officers' actions in examining the contents of one subfolder of the Defendant's USB constituted an objectively reasonable reliance on the application of the *Jacobsen* case precedent. The prosecution of possession of child pornography weighs more heavily on the balancing test evaluating the values of excluding the evidence to deter police, and of allowing an isolated, well-meaning error. *Leon,* 468 U.S. at 913. Since the officers in the case at bar did not act intentionally, or with gross negligence, their honest mistake triggers the good

faith exception. For the aforementioned reasons, even if this Court finds that a search occurred, the decision of the Supreme Court of Clintonia must be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Clintonia Supreme Court for the Fourteenth Circuit and uphold the constitutionality of the State's action.

Respectfully submitted,

Team N

Attorneys for Respondents

September 15, 2017

APPENDIX A

§18.942, Clint. Stat.

No resident of Clintonia may, without a proper license under the FDEA, sell a time- of-need casket for use in a funeral within the state of Clintonia. A violation of this section is a first-degree misdemeanor and punishable by up to one year in prison and a $1,000 fine. This section only applies to wholly intrastate transactions.