No. 17-795

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES T. OLIVER,

Petitioner,

v.

STATE OF CLINTONIA,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF CLINTONIA

BRIEF FOR RESPONDENT

COUNSEL FOR RESPONDENT

TEAM K

DATED SEPTEMBER 15, 2017

QUESTIONS PRESENTED

I. Whether the Board's licensing requirements and § 18.942 survive rational basis review at the time of the enactment.

II. Whether a confirmatory governmental search violates the Fourth Amendment if the search does not reveal facts undisclosed by the private citizen, and the search is limited in scope to the device examined by the private citizen.

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The transcript of the record sets forth the unofficial and unreported opinion of the Supreme Court of Clintonia, *Clintonia v. Oliver*, No. SC-cr-1353 (Clint. Oct. 29, 2016). R. at 18-25. The transcript of the record provides the unofficial and unreported opinion of the circuit court granting Petitioner's Motion to Dismiss, *Clintonia v. Oliver*, No. 14-cr-554 (15th Cir. Feb. 4, 2015). R. at 2-15.

STATEMENT OF JURISDICTION

This Court has jurisdiction because the issues concern the constitutionality of a state statute and the admissibility of evidence following a potential violation of fundamental constitutional rights. Respondent argues that Clintonia's licensing requirement for intrastate casket retailers is constitutional and passes rational basis review, and that nine images recovered by an officer during a confirmatory search, limited in scope to the private citizen's search, constitute admissible evidence. This Court granted Certiorari on June 30, 2017.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth and Fourteenth Amendments to the United States Constitution are reproduced verbatim in Appendices A and B, respectively.

STATEMENT OF THE CASE

Statement of Facts

In 1932, Clintonia's legislature enacted the Funeral Directors and Embalmers Act ("FDEA"), and gave the Board of Funeral Directors and Embalmers ("Board") exclusive power to enact licensing requirements for casket retailers in Clintonia. R. at 3-4. The Board is composed of eight funeral directors and six individuals not affiliated with the funeral industry. R. at 3. The

Board requires an examination and, either three years of apprenticeship, or completion of one year of accredited courses and a two-year apprenticeship ("Board's licensing requirements"). R. at 4. The apprenticeships require a candidate embalm twenty-five bodies. R. at 4. The curriculum in Kevorkian College, the only accredited school in Clintonia, includes eight credit hours in embalming, three in restorative art, and twenty-one in funeral services. R. at 4. In the 1950s, Senator Gaines, a third-generation mortician, sponsored an FDEA amendment to protect the funeral industry from competitors selling caskets at lower rates. R. at 4. During the debates on the amendment, Senator Gaines emphasized the "need to protect morticians in Clintonia from unlicensed competition," and further stated, "we can regulate intrastate sales. Call it public safety, call it consumer protection, justify it however you like, but pass this bill to keep Clintonia's morticians thriving." R. at 5. Senator Gaines relied on a 1955 study that revealed that more than 10% of unlicensed casket retailers sold caskets that did not meet FDEA safety standards. R. at 5. Caskets sold by unlicensed retailers in Clintonia are generally one eighth of the cost of identical caskets sold in licensed funeral homes. R. at 5. In 1956, Clintonia's legislature amended the FDEA and criminalized the intrastate sale of caskets without a license. R. at 4. The relevant criminal provision ("§ 18.942") states:

> 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 applies to wholly intrastate transactions.

§ 18.942, Clint. Stat. (1956); R. at 5. In 2011, the 1955 study was debunked as Board sponsored publicity. R. at 5. In 2012, the FDEA repealed casket safety standards. R. at 5. At a hearing on Petitioner's Motion to Dismiss, a local funeral director testified that leakage from caskets could contaminate ground water or expose visitors to bacteria from decomposing bodies, and that casket leakage is of special concern when the decedent died from a communicable disease. R. at 5. On

November 6, 2014, Clintonia's legislature repealed the licensing requirement as applied to time-of-need casket sellers and § 18.942, effective January 1, 2015, without retroactive application. R. at 3.

In 2012, James T. Oliver ("Petitioner"), a retired monk, began manufacturing wooden caskets for intrastate and interstate funerals. R. at 5. On December 1, 2013, Bruce Walker ("Mr. Walker" or "Private Citizen"), a retired FBI agent, hired a funeral director's services in Clintonia. R. at 6. Mr. Walker hesitated at the $9,000 casket price from the funeral director, found Petitioner's website, and arranged to view a casket at the funeral home. R. at 6. Petitioner offered to sell a simple wooden casket for $1,000. R. at 6. Impressed with the quality of workmanship and simplicity of the casket, Mr. Walker immediately purchased the casket. R. at 6. During the funeral, Petitioner told Mr. Walker, "I make the best caskets in town at the lowest rates, but I can't get a license to sell them. . . . I keep a fake license on me just in case though, and a printable version in a USB on my nightstand." R. at 6. The next day, Mr. Walker went to Petitioner's home to challenge Petitioner regarding the fake license. R. at 6. Mr. Walker knocked on the door, and the door swung open. R. at 6. Therefore, Mr. Walker showed himself inside, went to Petitioner's room, and retrieved a flash drive labeled "Dup. License/Fun!" from Petitioner's nightstand. R. at 6. Mr. Walker subsequently plugged the flash drive into his computer. R. at 6. The flash drive contained two folders entitled "DL" and "F." R. at 6. Mr. Walker clicked on the "F" folder and noticed it contained around 100 randomly numbered subfolders. R. at 6. Mr. Walker clicked on the first subfolder in the "F" folder. R. at 6. The subfolder contained eleven unidentifiable JPEG files "numbered 1-11." R. at 6. When Mr. Walker clicked on one of the JPEG images, he realized it was a picture of a minor "engaged in sexual activity with an adult." R. at 7.

Mr. Walker surrendered the flash drive to the Sandersburg Police Department after explaining precisely what he found on the flash drive to Officer Jones, the police officer on duty at the time. R. at 7. Though Mr. Walker could not remember what JPEG file he opened in the subfolder, Mr. Walker guided Officer Jones to the "F folder and first subfolder" he viewed. R. at 7. Further, Mr. Walker reassured Officer Jones that he "saw child porn in a folder on that drive." R. at 7. Mr. Walker was unable to look at all the images in the subfolder because the images made him feel uncomfortable. R. at 7. Therefore, Officer Jones independently "clicked through images 1-10" of the same subfolder Mr. Walker viewed. R. at 7. All images, except for one, contained child pornography. R. at 7. The final image contained a copy of Petitioner's fake license. R. at 7.

Procedural History

This case was originally brought before the Circuit Court of the Fifteenth Judicial Circuit for Bill County, Clintonia. The State of Clintonia charged Petitioner with one count for violating § 18.942 by selling a casket without a Funeral Director's License, one count for forging a Funeral Director's License[1], and nine counts of possession of child pornography. R. at 2. Petitioner filed a Motion to Dismiss all counts[2] alleging that § 18.942 was a violation of his rights to equal protection and due process of law, and that the images obtained in the confirmatory governmental search violated the Fourth Amendment. R. at 3. The Circuit Court granted a joint Motion to Stay. R. at 3. The Circuit Court granted Petitioner's Motion to Dismiss on February 4, 2015, and entered the Judgment on April 4, 2015. R. at 15-16. The State timely appealed to the Supreme Court of Clintonia on April 11, 2016. R. at 17. On October 29, 2016, the Supreme Court of Clintonia

[1] On January 16, 2015, prior to the hearing on the Motion to Dismiss, the State announced a *nolle prosequi* on count two for violating FDEA § 18.978, Clint. Stat. (1956) by forging a Funeral Director's License. R. at 2.
[2] Where "[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant," dismissal of an indictment is proper. Clint. R. Crim. P. 3.190(c)(4). The parties agree that the facts are not in dispute. R. at 3.

reversed the holding of the Circuit Court. R. at 18-25. Petitioner filed a Petition for Writ of Certiorari on November 10, 2016, and this Court granted Certiorari on June 30, 2017. R. at 26.

SUMMARY OF THE ARGUMENT

Courts focus on the constitutionality of a law at the time of enactment when reviewing challenges to economic regulations under equal protection and substantive due process. Where an economic regulation does not differentiate between suspect classes, nor infringes upon a fundamental right, rational basis review applies. A state economic regulation passes rational basis review when the state can establish a legitimate interest that is reasonably related to the economic regulation. States need only establish one legitimate interest reasonably related to the regulation to survive constitutional muster. Clintonia's licensing requirements and § 18.942 are reasonably related to the legitimate interests of consumer protection because the State seeks to prevent deceptive sales practices and consumer fraud; health and safety because the State seeks to reduce contamination from casket leakage; and economic protection because the State seeks to protect the profit levels of the local funeral industry. Further, changed circumstances do not invalidate an otherwise constitutional law, especially when the legislative intent is clear that the repeal of the economic regulation has no retroactive application.

The Constitution affords protection from government interference in a citizen's private life. The government cannot enter a person's home without a warrant, nor can it pry unjustifiably. However, the government can inspect material presented by a private citizen, even if the private citizen egregiously infringed upon a party's privacy interests to obtain said material. Under the private search doctrine, the subsequent governmental search is lawful if it does not exceed the scope of the initial private search. The circuits are split regarding what constitutes surpassing the scope of the private search. The Respondent contends that, so long as the government has

conclusive evidence of what the confirmatory search will reveal, and the government does not explore a physical device other than that searched by the private citizen, the confirmatory search is lawful. Further, in a case dealing with evidence of child pornography, the government's interest in conducting a subsequent confirmatory search outweighs a party's right to possess illegal material.

STANDARD OF REVIEW

Challenges to the constitutionality of a statute are reviewed *de novo*. *United States v. Plotts*, 347 F.3d 873, 877 (10th Cir. 2003). The issue regarding the constitutionality of a confirmatory search is one of pure law, and the standard of review is *de novo*. *United States v. Runyan*, 275 F.3d 449, 456 (5th Cir. 2001). Therefore, this Court owes no deference to the decisions of the courts from which this case is on appeal. *Id.*

ARGUMENT

I. THE BOARD'S LICENSING REQUIREMENTS AND § 18.942 ARE CONSTITUTIONAL BECAUSE THE LAWS PASS RATIONAL BASIS REVIEW BOTH AT THE TIME OF ENACTMENT, AND CONSIDERING CHANGED CIRCUMSTANCES.

Economic regulations that are reasonably related to a state's legitimate interest survive constitutional challenges under equal protection and due process. *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993). No state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST., amend. XIV, § 1. Under state police powers, states may require high standards to qualify for a profession. *Nat'l Ass'n for Advancement of Psychoanalysis v. Cal. Bd. of Psychol.*, 228 F.3d 1043, 1054 (9th Cir. 2000). As-applied challenges do not "contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right." *United States v. Marcavage*, 609 F.3d 264, 273 (3d Cir. 2010). The Board's license requirements for casket retailers and § 18.942 are reasonably related to the legitimate interests in consumer protection, health and safety, and economic protection of Clintonia's funeral industry.

A. The Board's licensing requirements and § 18.942 pass rational basis review because at the time of enactment Clintonia had a legitimate interest in consumer protection, health and safety, and economic protection.

Economic regulations are upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller*, 509 U.S. at 320; *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). There is a presumption that state laws are constitutional, and this "Court's only role is to decide whether the means used … are constitutionally permissible." *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101, 1104 (S.D. Cal. 1999).

Rational basis review "is not a license for courts to judge the wisdom, fairness or logic of legislative choices" *Heller*, 509 U.S. at 319, *quoting Beach Commc'ns, Inc.*, 508 U.S. at 313. Where a plausible reason for legislative actions is present, this Court's "inquiry is at an end." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980). Where evidence before the legislature supports a classification, challengers may not seek to invalidate a law simply by showing the legislature was mistaken; therefore, the challenge looks at the time of enactment. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981). Consumer protection, health and safety, and economic protection have been recognized as legitimate interests. *See St. Joseph Abbey v. Castille*, 712 F.3d 215, 222-23 (5th Cir. 2013) (recognizing protecting consumers as a legitimate state interest); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 147 (1938) (recognizing health and safety as legitimate state interests); *W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 668 (1981) (recognizing protecting intrastate local businesses as a legitimate state interest). Because Clintonia had a legitimate interest in consumer protection, health and safety, and economic protection at the time of enactment, and the Board's licensing requirements and § 18.942 are reasonably related to these interests, the laws are constitutional.

1. The Board's licensing requirements and § 18.942 pass rational basis because Clintonia seeks to protect consumers by preventing deceptive sales practices and consumer fraud.

Where a state seeks to protect consumers by preventing deceptive sales practices and consumer fraud, and the legislative act is reasonably related to those legitimate interests, the statute survives constitutional muster. "The Court starts with the presumption of the constitutional validity of a state law." *Cornwell*, 80 F. Supp. 2d at 1104. Only where a state law has no reasonable connection to the legitimate state interest will the law be held unconstitutional. *St. Joseph Abbey*, 712 F.3d at 226 (holding that the licensing requirements were not reasonably related

to reduce unfair or deceptive sales tactics). Licensing requirements reasonably related to an applicant's capacity to engage in the profession satisfies rational basis under an equal protection analysis. *Cornwell*, 80 F. Supp. 2d at 1105; *see also Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 124-25 (1978) (holding states have the authority to legislate where "injurious practices in … internal commercial and business affairs" are found). The Federal Funeral Rule enacted in 1982 by the Federal Trade Commission, recognized consumers are uniquely disadvantaged when they purchase funeral services due to grief, time constraints, and inexperience. FTC Federal Funeral Rule, 16 C.F.R. § 453 (2016). Deceptive acts or practices constitute any "conduct that is likely to deceive a consumer acting reasonably." DECEPTIVE ACT, Black's Law Dictionary (10th ed. 2014).

Where the means of a legislative act are supported by consumer-friendly rationale, a rational basis analysis is satisfied. *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 287 (2d Cir. 2015). The Second Circuit upheld a Connecticut law that restricted the use of teeth-whitening procedures to licensed dentists. *Id.*at 288. The court reasoned that the state may have concluded that possible higher costs for teeth-whitening procedures with dentists could subsidize essential dental services for low-income consumers, and that such consumer-friendly grounds satisfied the deferential rational basis standard. *Id*. at 287. However, if licensing requirements go beyond the scope of the interests the state seeks to protect, the requirements are unconstitutional. *St. Joseph Abbey*, 712 F.3d at 224-25. Licensing requirements were held unconstitutional in Louisiana because there was a disconnect between "restricting casket sales to funeral homes and preventing consumer fraud and abuse." *Id*. at 225. In *St. Joseph Abbey*, the court relied on evidence that "third-party sellers were not engaged in widespread unfair or deceptive acts or practices." *Id*. at 218. Further, casket sellers were required to operate a funeral establishment, which included

"building a layout parlor for thirty people, a display room for six caskets, an arrangement room, and embalming facilities," and to employ a full-time funeral director. *Id.*

The Board's licensing requirements and § 18.942 are constitutional because Clintonia has a legitimate interest in protecting consumers from deceptive sales tactics and fraud, and requiring a license is reasonably related to advance those interests. Clintonia's legislature relied on a study that showed that more than 10% of unlicensed casket sellers were taking advantage of consumers by selling substandard caskets. R. at 5. The FDEA standards ensured against casket leakage. R. at 5. The legislature may have reasonably considered that consumers were frequently sold substandard caskets that leaked. This warranted a licensing requirement and the criminalization of unlicensed sale of caskets for funerals in Clintonia. In criminalizing the unlicensed intrastate sale of caskets, providing up to one-year jail sentence and up to a $1,000 fine, Clintonia's legislature manifested its intent to protect consumers. Like *Sensational Smiles*, Clintonia may have conceived that even potential increases in casket prices would protect consumers because the licensing requirement ensures all casket retailers are held to the same standards. Clintonia's licensed funeral homes generally offer caskets at higher prices than unlicensed retailers whose caskets do not meet FDEA safety standards. R. at 5. However, consumers are protected when there is redress available in cases of casket malfunction, leakage, breakage, or fraud, not when lower prices are offered in the market.

Further, Petitioner's conduct is precisely the type of deceptive sales practices that Clintonia seeks to avoid: Petitioner held himself out to be a licensed casket retailer in Clintonia by having a website and engaging in intrastate sale of caskets for funerals in Clintonia. R. at 6. Petitioner also carries a fake license and has an additional digital copy in a flash drive. R. at 6. Offering caskets for sale on a website without a license is likely to deceive a reasonable Clintonian. In fact,

Petitioner did deceive Mr. Walker. R. at 6. After completing the sale, and during Mr. Walker's mother's funeral, Petitioner admitted that he did not have a license to sell caskets in Clintonia and that he carried a fake license with him "just in case." R. at 6.

Clintonia's licensing requirements reasonably relate to consumer protection, unlike the licensing requirements in *St. Joseph Abbey*. First, Clintonia does not require casket retailers to operate funeral homes, or build a parlor for thirty people with a casket display room, arrangement room, and on-site embalming facilities. Nor does Clintonia require a casket retailer to employ a full-time funeral director. Clintonia merely requires casket retailers to complete either one year of accredited course work along with two years of apprenticeship, or a three-year apprenticeship, and pass a test. R. at 4. The education requirements in Clintonia directly relate to casket sales because all courses focus on how bodies are preserved in caskets or urns. R. at 4. The Board may have well concluded that requiring an apprenticeship would connect retailers to the local funeral industry and provide real-life practical experience that benefits consumers. The Board may have also reasonably concluded that only through practical experience could one learn about the effects of weather and seasons on decomposing bodies. Or the Board may have concluded that a three-year educational time frame would result in competent casket retailers who would benefit and protect consumers, rather than deceive and defraud consumers. Regardless of the actual legislative reasoning, deceiving uniquely disadvantaged consumers constitutes an injurious practice, and Clintonia's legislature has the authority to regulate unlicensed casket retailers. Because Clintonia's legitimate interest in consumer protection is rationally furthered by § 18.942 and the Board's licensing requirements, rational basis is satisfied.

2. The Board's licensing requirements and § 18.942 pass rational basis because Clintonia seeks to promote general welfare by reducing contamination from leaking caskets.

Where a state seeks to promote general welfare, and the legislative act is reasonably related to that legitimate interest, the statute survives constitutional muster. Caskets are rigid containers designed to enclose human remains and are usually made of wood, metal, fiberglass, or plastic. 16 C.F.R. § 453.1(c) (2016). Caskets can threaten public health. *Craigmiles v. Giles*, 312 F.3d 220, 225 (6th Cir. 2002). The legislature need not reveal facts to support their judgment in passing economic regulations. *Carolene Prods. Co.*, 304 U.S. at 147 (holding a law prohibiting commerce of imitation milk constitutional because Congress deemed the product "injurious to public health"); *see also Kotch v. Bd. of River Port Pilot Comm'rs*, 330 U.S. 552, 555 (1947) (holding pilot's licensing requirements constitutional because of concerns for safety of lives and cargo, even where the required apprenticeship would generally be limited to friends and family of already licensed pilots).

If the legislature deems that effectively regulating one profession could affect health and safety, rational basis is satisfied. *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 466 (1955) (holding constitutional a law that forbids opticians from fitting lenses without a prescription from an optometrist or ophthalmologist because the presence of a specialist diminishes health and safety concerns). "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Id*. at 488. Economic regulations need not be perfectly tailored. *Sensational Smiles*, 793 F.3d at 285. Where a treatment poses health risks, legislatures may require the diagnostic experience and skill of professionals. *Id.* The state can regulate "the practice of dentistry [but] it has limited control over what people choose to do with their own mouths," and failing to ban the individual acts of

consumers does not render the ban on the professional irrational. *Id.* Therefore, the state can regulate the acts of a profession, but need not require individuals not engaged in the profession to comply with the same health safeguards. *Id.*

Caskets enclose decomposing bodies for safekeeping. Casket leakage is a public health concern because of potential contamination to bodies of water that can lead to bacterial exposure to the residents and visitors of Clintonia. R. at 5. When a person dies of a communicable disease, casket leakage is of special concern. R. at 5. Provided that more than 10% of unlicensed casket retailers failed to meet FDEA's health and safety standards regarding casket leakage, Clintonia's legislature may have concluded that criminal sanctions would deter unlicensed casket sales. The legislature may have concluded that the frequency of casket leakage would decrease if retailers were educated on preservation techniques employed in the industry. The legislature may have also concluded that the licensing requirements would educate retailers as to what types of caskets are suitable for different burial spaces.

Like in *Williamson*, Clintonia's legislature may have deemed that regulating casket retailers as funeral directors would decrease health and safety concerns because retailers would have additional skills and knowledge regarding the effects of leaking caskets. To survive rational basis, it is enough that there are health and safety concerns for contamination of bodies of water from leaking caskets, and that Clintonia's legislature thought that requiring a license was a rational way to decrease or eliminate this concern. Like in *Sensational Smiles*, the health and safety risks posed by leaking caskets requires the expertise of those who handle the preservation of decomposing bodies. Although Clintonians are free to bury their loved ones without a casket, that freedom does not render Clintonia's licensing requirement for casket retailers irrational. Even if the apprenticeship requirement is difficult, like in *Kotch*, this Court has upheld the licensing

requirement because there are legitimate health and safety concerns. Because Clintonia has a legitimate interest in eliminating casket leakage that can contaminate water bodies and expose Clintonia to bacteria, and requiring a license for casket retailers is rationally related to this health and safety concern, the licensing requirements and § 18.942 pass rational basis review.

3. The Board's licensing requirements and § 18.942 pass rational basis because Clintonia seeks to protect the profit levels of the funeral industry and the laws serve the public good.

Where a state passes an economic regulation that seeks to protect a local industry, serves the public good, and is reasonably related to protecting the local industry, the economic regulation is constitutional. States "have broad power to establish standards for licensing practitioners and regulating the practice of professions." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975). If a constitutional provision or federal law is not violated, "intrastate economic protectionism constitutes a legitimate state interest for purposes of substantive due process and equal protection challenges." *Powers v. Harris*, 379 F.3d 1208, 1221 (10th Cir. 2004). This Court has recognized a legitimate interest in state efforts to maintain profit levels of a domestic industry. *W. & S. Life Ins. Co.*, 451 U.S. at 671 (holding a retaliatory tax scheme constitutional because promoting domestic industry by deterring barriers to an industry constitutes a legitimate state purpose). This Court reasoned that the legislature rationally could have believed that enacting a retaliatory tax to out-of-state insurance companies would decrease the burdens of local insurance companies. *Id.* at 672. This Court further noted that whether in fact the retaliatory tax accomplished its objectives was irrelevant because, under an equal protection analysis, if the legislature *rationally could have believed* the tax would promote the objective, the inquiry ceases. *Id*. at 671-72.

States also have a legitimate interest in local neighborhood preservation, continuity and stability, and may further those interests reasonably by applying schemes that inhibit displacement

of old businesses by newer competitors. *Nordlinger v. Hahn*, 505 U.S. 1, 12 (1992). A state tax scheme that provided higher rates for newer property owners did not violate equal protection because the state's legitimate interest was furthered by providing a different property tax to newer property owners. *Id*. at 17. The court reasoned that a lower rate for existing property owners was reasonable because higher rates would force existing owners to be displaced. *Id.* Finally, state legislatures are permitted to implement programs step by step to achieve their legitimate interests. *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Even where a law bans business operations, but grandfathers in exiting vendors who had been in operation for more than eight years, equal protection is not violated because states have a legitimate interest in preserving the appearance and custom of local neighborhoods. *Id.* at 303-04.

Petitioner's challenge to the Board's licensing requirements and § 18.942 does not implicate any other constitutional provisions. There is no Dormant Commerce Clause issue because the statute applies solely to intrastate casket sales. R. at 5. Additionally, the Board's licensing requirements and § 18.942 do not implicate any federal law. Consequently, for purposes of this equal protection and substantive due process analysis, economic protection of local industry constitutes a legitimate state interest. Under Clintonia's broad power to regulate the practice of professions, the State can require licensing for casket retailers and criminalize the intrastate sale of caskets without a license.

Clintonia also has a legitimate interest in maintaining the profit levels of the funeral industry. Senator Gaines said, "pass this bill to keep Clintonia's morticians thriving." R. at 5. The legislature manifested its intent to maintain the profit levels of the funeral industry in Clintonia when it passed the bill in 1956. R. at 5. In *W. & S. Life Ins. Co.*, this Court upheld a retaliatory tax scheme because the State legislature *rationally could have believed* the tax would promote the

interests of the local insurance industry. Clintonia's legislature *rationally could have believed* that requiring a license for intrastate casket sales would promote the interests of the local funeral industry. Whether the licensing requirement *actually* accomplished the objectives of the legislature is irrelevant. So long as Clintonia's legislature *rationally could have believed* the license promoted the interests of the local funeral industry in Clintonia, the statute is constitutional.

Clintonia also has a legitimate interest in preserving the local funeral industry. Similar to *Nordlinger*'s taxation scheme that aimed to inhibit displacement of old business by newer competitors, Clintonia's licensing requirements for casket sales protects the funeral industry from displacement by unlicensed competitors. R. at 5. Senator Gaines urged the legislature to pass the bill "to protect … from unlicensed competition." R. at 4-5. The presence of subpar caskets sold at substantially lower prices by unlicensed retailers is enough to displace and undermine Clintonia's funeral industry. R. at 5. Like *New Orleans*, Clintonia's legislature *rationally could have believed* that the licensing requirement would provide stability and continuity to Clintonia's funeral industry. R. at 5. The legislature has the power to enact laws that further preservation, continuity and stability of a local industry, even if the laws only partially address those interests. Even if Clintonia had banned newer competitors and grandfathered some existing casket retailers, the law passes constitutional muster because the law seeks to preserve the local funeral industry. Because maintaining the profit levels of the local funeral industry is a legitimate interest, and requiring a license for casket retailers is reasonably related to that interest, the licensing requirements and § 18.942 survive rational basis review.

B. Even considering changed circumstances, the Board's licensing requirements and § 18.942 survive constitutional muster because the laws' repeal does not apply retroactively.

Even considering changed circumstances, the licensing requirements and § 18.942 are constitutional because the laws' repeal has no retroactive application. Appellate courts must apply the law in effect at the time of the decision unless it would create injustice, or if there is legislative history to the contrary. *Bradley v. Sch. Bd. of Richmond*, 415 U.S. 696, 711-12 (1974). Where congressional intent as to retroactivity of statute is clear, it governs. *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 837 (1990); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 207-08 (1988). To hold a statute unconstitutional based on changed circumstances imposes an obligation on legislatures to constantly reassess the validity of its laws. *Murillo v. Bambrick*, 681 F.2d 898, 911 (3d Cir. 1982) (holding that "just as the Constitution neither demands nor expects perfection on the part of a legislature engaged in adopting laws that classify, so too the Constitution neither demands nor expects omniscient oversight on the part of a legislature once those laws have taken effect"). Even where the assumptions that underline the rationale of legislation are erroneous, "the very fact that they are 'arguable' is sufficient, on rational basis review, to immunize the legislative choice from constitutional challenge." *Heller*, 509 U.S. at 333.

Although the doctrine of changed circumstances may shed light as to the wisdom or logic of legislative decisions, the doctrine cannot retroactively alter the intent of a state legislature more than 60 years ago. When the licensing requirements and § 18.942 were enacted, Clintonia had a legitimate interest in protecting consumers from fraud and leaking caskets, and in protecting the local funeral industry. It would defy logic and common sense to say that subsequent amendments to the statute alter the purpose of the enactment. The 2012 repeal of FDEA casket standards does not alter the purpose of the enactment of the statute in 1956. Neither does the 2014 repeal of §

18.942 and the license requirements for time-of-need casket sellers alter the purpose of the enactment of the statute in 1956. To hold the licensing requirements and § 18.942 unconstitutional would impose a burden on Clintonia's legislature to constantly review laws for potential constitutional challenges based on new circumstances. Even if the assumptions of the legislature in 1956 were erroneous, the arguable facts are sufficient for the licensing requirements and § 18.942 to survive a constitutional challenge. Finally, the legislature was clear in 2014 that the repeal of the licensing requirements and § 18.942 does not apply retroactively. R. at 2. Petitioner cannot avoid the criminal sanctions of a constitutional law that was in effect at the time he engaged in unlicensed intrastate sale of caskets in Clintonia. Therefore, even considering changed circumstances, the licensing requirements and § 18.942 survive constitutional muster because they are reasonably related to Clintonia's legitimate interests in consumer protection, health and safety, and economic protection.

II. OFFICER JONES' CONFIRMATORY SEARCH DOES NOT IMPLICATE THE FOURTH AMENDMENT BECAUSE THE SEARCH DID NOT EXCEED THE SCOPE OF THE PRIVATE SEARCH AND BECAUSE THE GOVERNMENT'S INTEREST IN CONDUCTING THE SEARCH OUTWEIGHS PETITIONER'S PRIVACY INTERESTS.

No Fourth Amendment violation occurs when a confirmatory governmental search is limited to reviewing material examined by a private citizen. The government's interests in confirming Private Citizen's allegations far outweigh Petitioner's privacy interests in retaining child pornography. The Fourth Amendment, incorporated against the states by the Fourteenth Amendment, guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *Hayes v. Florida*, 470 U.S. 811, 812 (1985). Neither the Fourth Amendment, nor this Court's jurisprudence, secure

protection from unreasonable searches conducted by private individuals, despite how imprudent those searches may be. *United States v. Jacobsen*, 466 U.S. 109, 130 (1984).

Constitutional protections cannot extend to "private searches that are neither instigated by nor performed on behalf of a governmental entity." *United States v. Starr*, 533 F.3d 985, 994 (8th Cir. 1998). Whether a subsequent governmental investigation, prompted by a private citizen's search, violated the Fourth Amendment depends chiefly upon "the degree to which [the government] exceeded the scope of the private search." *United States v. Miller*, 152 F.3d 813, 815 (8th Cir. 1998). This notion is known as the private search doctrine and does not operate as an exception to the Fourth Amendment. *Id.* Thus, if the private search doctrine applies, the Fourth Amendment is not implicated and a presumption of validity attaches to the government's confirmatory search. *Id* at 816. The burden rests on the party alleging a Fourth Amendment violation to prove his rights were infringed upon by proposing a motion to suppress. *Rawlings v. Kentucky*, 48 U.S. 98, 104 (1980).

For over seventy years, this Court has firmly resolved that "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into maturity as citizens." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944). As a result, this Court has repeatedly upheld legislation concerned with protecting children, "even when the laws have operated in the sensitive area of constitutionally protected rights." *New York v. Ferber*, 458 U.S. 747, 757 (1982). This Court has permitted restrictions on certain constitutional privileges when an "evil to be restricted so overwhelmingly outweighs" a private interest. *Id* at 763. Officer Jones conducted a restricted confirmatory search of only those images within the subfolder Private Citizen had already inspected. Therefore, there was no Fourth Amendment violation, and the government's interest outweighs Petitioner's right to privately possess illegal child pornography.

A. The confirmatory search did not exceed the scope of the private search because Officer Jones had virtual certainty of the flash drive's contents, and because the government can look at more files in a specific subfolder in a flash drive than the private citizen.

A subsequent governmental search does not exceed the scope of the original private search if an officer had virtual certainty that the search would only confirm what he already knew. The Fourth Amendment promises protections against unreasonable searches and seizures. U.S. Const. amend. IV. A search occurs when the government breaches an expectation of privacy that society deems reasonable. *United States v. Knotts*, 460 U.S. 276, 281 (1983). A seizure occurs when there is some "meaningful interference with an individual's possessory interests." *Jacobsen*, 466 U.S. at 113. It has been settled that unlawful searches or seizures steered by private parties do not disrupt the Fourth Amendment and such private transgressions do not "deprive the government" of its right to use lawfully acquired evidence. *Burdeau v. McDowell*, 256 U.S. 465, 476 (1921). Upon demonstrating that an initial violation of privacy was occasioned by a private citizen, "[t]he additional invasions of … privacy by [a] government agent must be tested by the degree to which [the agent] exceeded the scope of the private search." *Jacobsen*, 466 U.S. at 115.

If the government expands a private search, the additional exploration "would not necessarily be problematic if the police knew with substantial certainty" what it would encounter as a result of the expansion. *Runyan*, 275 F.3d at 463; *United States v. Kinney*, 953 F.2d 863, 865 (4th Cir. 1992); *United States v. Donnes*, 947 F.2d 1430, 1438 (10th Cir. 1991). Whether substantial certainty existed can be determined by considering the statements offered by the private citizen, the police's "replication of the private search, and [the police's] expertise." *Runyan*, 275 F.3d at 463. Officer Jones did not learn anything from his search that he did not already know, and he searched only the subfolder Private Citizen searched. Therefore, Officer Jones' search did not exceed the scope of the private search.

1. The confirmatory search did not exceed the scope of the private search because Officer Jones had virtual certainty of the flash drive's contents under a *Jacobsen* analysis.

A subsequent search that corroborates that which has already been established, does not exceed the scope of the original search. *Jacobsen*, 466 U.S. at 118; *Walter v. United States*, 447 U.S. 649, 650 (1980). Even a search that discloses only one fact previously unknown merely avoids "the risk of a flaw in […] recollection" and cannot violate the Fourth Amendment. *Jacobsen*, 466 U.S. at 119. Thus, the inquiry turns on "whether the government learned something from the [subsequent] police search that it could not have learned from the private searcher's testimony and, if so whether the defendant had a legitimate expectation of privacy in that information." *Id.* at 127. There cannot be a reasonable expectation of privacy surrounding information an individual willingly divulges to another, and "[o]nce frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information." *Id*. at 117; *see also Kinney*, 953 F.2d at 866 (holding that recording gun serial numbers did not exceed the scope of a private search, even if the private citizen took no such measures, because recording the serial numbers could only confirm whether the guns were stolen). Finally, *United States v. Jones* is inapplicable in this case because it deals with direct governmental interference with privacy interests and does not concern actions by private citizens. 565 U.S. 400, 403 (2012). Therefore, Respondent cannot argue good faith reliance on abrogated precedent because *Jacobsen* applies.

In *Walter*, this Court held that where a private party did not view the contents of a movie reel and, consequently, only inferences could be drawn regarding the contents of the reel, a subsequent governmental search displaying the reels' substance was illegitimate. 447 U.S. at 652. In *Walter*, employees of a private company received a delivery of packages enclosing film reels.

Id. at 651-52. The packages were comprised of boxes containing "suggestive drawings" on one side and "explicit description[s] of the contents" on the other. *Id*. at 652. One employee opened some of the boxes and unsuccessfully attempted to "view portions of the film by holding it up to the light." *Id*. The employees called the Federal Bureau of Investigation ("FBI") and agents picked up the packages. *Id*. Two months after the initial confiscation, the agents "viewed the films with a projector." *Id*. This Court reasoned its holding an appropriate restriction on unbridled exploratory governmental searches that follow highly limited private searches. *Id*. at 657.

Walter's holding was expanded in *Jacobsen* when this Court held that even where government agents conducted a search that exceeded the scope of a private search, the government action nonetheless complied with the Fourth Amendment because it revealed nothing more than what was already known. 466 U.S. at 121. In *Jacobsen*, employees of a private shipment company discovered a "suspicious looking plastic bag of white powder" concealed in a tube. *Id*. at 111. Upon discovery, the employees cut open the tube and retrieved the bags. *Id*. The employees immediately contacted the Drug Enforcement Administration ("DEA"). *Id*. An agent opened each of the four bags, "removed a trace of the white substance," and conducted a field test which "identified the substance as cocaine." *Id*. at 111-12. Subsequently, more agents arrived and "conducted a second field test." *Id*. at 113. Undeniably, both field tests conducted by the DEA agents exceeded the scope of the initial private search. *Id*. at 119. Yet, this Court deemed the actions permissible. *Id*. In reaching its conclusion, this Court reasoned that private citizens eradicated the initial expectation of privacy. *Id*. at 120. Hence, "no legitimate privacy interest" could be compromised by government conduct that revealed "no arguably private fact." *Id*. at 123. This holds especially true in a case dealing with illegal substances because Congress has decided "to treat the interest in 'privately' possessing illegal material as 'illegitimate.'" *Id*.

Wholly inapplicable to this case is this Court's decision in *Jones*. There, this Court held that "the [g]overnment's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements," constituted an impermissible search. *Jones,* 565 U.S. at 402. In *Jones,* the government obtained a warrant to place a GPS tracker on a suspect's car in the District of Columbia within 10 days of the execution of the warrant. *Id*. at 403. "On the 11th day, and not in the District of Columbia but in Maryland," agents installed a GPS tracker in a car linked to the suspect. *Id*. This Court reasoned that the government cannot "occupy[] private property for the purpose of obtaining information." *Id.* at 404. That the Fourth Amendment was linked to common-law trespass is a principle that holds true today. *Id.* 406-07. However, the Amendment seeks to prohibit government trespasses, not private searches. *Id.*

Unlike the FBI agents in *Walter*, who conducted an exploratory search of materials untouched by the private citizens, Officer Jones carried out only a corroborative search. R. at 7. In this case Private Citizen actually viewed a JPEG image in the flash drive before relinquishing it to Officer Jones. R. at 7. Officer Jones was not the first person to explore the subfolder images, nor was he the first to reveal the contents of the flash drive. R. at 7. Therefore, the analysis in this case need not surpass the initial inquiry acknowledged in *Jacobsen*: whether the government stood to gain more information from its own search than what it learned from the private citizen's allegations. Indeed, unlike the DEA agents in *Jacobsen*, who did exceed the scope of the initial search by conducting two field tests, Officer Jones did nothing more than confirm what Private Citizen purported. R. at 7. Importantly, Private Citizen "explained what he found on the drive," to Officer Jones. R. at 7. When Officer Jones opened one of the images of child pornography, he was only confirming a fact already known: that the flash drive was laden with child pornography. R. at 7. The proposition that Officer Jones would have violated an expectation of privacy when

he opened an image unknown to Private Citizen is meritless. First, the expectation of privacy in the images of child pornography was eradicated the moment Private Citizen viewed the image. Likewise, the expectation of privacy to the image of the fake license ended when Petitioner willingly divulged to Private Citizen that he "keep[s] a fake license on [him]" and a "printable version in a USB on [his] nightstand." R. at 6. Second, as *Jacobsen* suggests, once the expectation of privacy dissipates, there remains no legitimate privacy interest in possessing illegal material.

The idea that this Court's decision in *Jones* abrogated *Jacobsen*'s holding is entirely baseless—even if this means the government must relinquish its preserved right to argue good faith reliance on abrogated precedent. *Jones* deals with direct governmental interference with a person's property. The case illustrates that the agents involved did not honor the mandates of the search warrant they obtained; they conducted their search a day late in a different state. *Jones* does not even remotely involve the main issue in the case at bar: the private search doctrine. History demonstrates that the Fourth Amendment embodies concern for *government* trespasses. Certainly, Petitioner has a categorical right of redress against he who impermissibly broke into his home. However, that right is irrelevant for the purposes of this analysis because the government was not responsible for the trespass of Petitioner's home—a private party was. A contrary finding would only undermine the private search doctrine and diverge from established Court precedent. Officer Jones' search confirmed that there was child pornography in the flash drive—a determination that Private Citizen already indicated. That, coupled with the fact that Private Citizen eliminated Petitioner's expectation of privacy, make the successive governmental search in this case permissible.

2. The confirmatory search did not exceed the scope of the private search because Officer Jones can look at more files in the specific subfolder of the flash drive Private Citizen searched, so long as Officer Jones does not search a flash drive or device *other* than that searched by Private Citizen.

The government can look at more files in a specific subfolder than a private searcher and still remain within the confines of the private search doctrine, so long as the officer conducting the confirmatory search does not examine storage devices the private citizen did not search. *Runyan*, 275 F.3d at 463. The circuits are split regarding how to apply *Jacobsen.* However, the Fifth and Seventh Circuits' conclusions are persuasive and shed light on the issue at hand.

In *Runyan*, the Fifth Circuit held that a subsequent confirmatory governmental search exceeds the scope of a private search if the government examines data contained in a storage device *other* than that searched by the private citizen. *Id*. However, if officers restrict their search to the storage device examined by the private citizen and venture to explore more files within that device, the governmental search remains within the scope of the private search. *Id*. In *Runyan,* a private citizen searched the defendant's home and found a black duffel bag containing pornography, compact discs ("CDs"), computer disks, a Polaroid camera with film, Polaroid pictures of a young teenager, a desktop computer, floppy disks, and ZIP disks. *Id*. at 453. Of all the articles retrieved from the home, the private citizen examined only twenty CDs and disks, all of which contained child pornography. *Id*. Yet, the private citizen relinquished twenty-two CDs, ten ZIP disks, eleven floppy disks, the black duffle bag, and the desktop computer to the authorities—the police officers searched all of them. *Id*. The authorities even "copied materials onto blank CDs," and conducted an investigation spanning over two weeks. *Id*. at 463. The court reasoned that a defendant's "expectation of privacy with respect to a container unopened by the private searcher is preserved," unless there is no expectation of privacy because the contents of the initial search were obvious.

Id. The court reasoned its ruling would "discourage[] police from going on 'fishing expeditions' by opening closed containers" without a warrant. *Id*. at 464.

In *Rann v. Atchinson*, the Seventh Circuit held authorities did not exceed the scope of the private search doctrine when they viewed images on a storage device, even absent record evidence that the private citizen actually viewed the images first. 689 F.3d 832, 837 (7th. Cir. 2012). In *Rann,* the court relied on conjecture when it accepted the suggestion that the private citizen likely "compiled the images on the zip drive herself" before surrendering it to the police. *Id*. The court reasoned their determination appropriate because the private citizen confronted the authorities with conclusive knowledge that the defendant possessed child pornography. *Id*. at 838. Specifically, the private citizen alleged that she was the object of the pornographic images. *Id*. The court further reasoned that "even if the police more thoroughly searched the digital device" than the private citizen, the police search was still permissible because the private citizen "knew the contents of the digital media devices when" she surrendered them to the police. *Id*.

Unlike the police in *Runyan*, who searched twenty-five more items than the private citizen, Officer Jones confined his search to the flash drive Private Citizen brought to the police station. R. at 7. There is no record evidence to suggest that Private Citizen brought additional unsearched devices, other than the flash drive, that the police subsequently examined. The instant case exemplifies precisely what the court in *Runyan* found permissible: Officer Jones thoroughly searched only the device he was given. R. at 7. In fact, not only did Officer Jones search the same device, he searched the same "F" folder, the same subfolder, and the same image that Private Citizen searched. R. at 7

It is undisputed that Officer Jones' search was more comprehensive than Private Citizen's because Officer Jones looked at more images than did Private Citizen. R. at 7. However, this does

not repudiate Officer Jones' compliance with the mandates of the private search doctrine. While it may be argued that a JPEG file constitutes a separate storage device or container for the purposes of this constitutional analysis, this Court has never held as much. If a JPEG image is a container, the argument follows, then Officer Jones exceeded the scope of the private search when he viewed more images in the subfolder than Private Citizen. This premise ignores rudimentary word definitions. For instance, a container is "a receptacle for holding goods."[3] Conversely, a JPEG is a picture file.[4] Petitioner's flash drive, the folders it contained, and the subfolders within those folders are all, undoubtedly, containers because they have the nearly unrestricted capability of storing information within their confines. However, because a JPEG is a picture file as opposed to a folder, no palpable or digital items can be stored within it. For instance, a party can store several boxes in a storage bin; within those boxes, a party can store more boxes. But if the party stores a picture in one of those boxes, that picture is incapable of holding within it more items: it is merely a picture.

Further, there is more conclusive evidence in this case to support Private Citizen's contention than in *Rann*. For instance, the citizen in *Rann* never specified that she had looked at the contents of the storage devices she presented the authorities. In this case, Officer Jones asked Private Citizen if he "saw child porn" on the flash drive, to which Private Citizen expressly responded, "yes, I saw child porn in a folder on that drive." R. at 7. This determination satisfies the requirement articulated in *Rann* that the private citizen have conclusive, personal knowledge of his allegations. Further, Private Citizen directed Officer Jones to the "F folder and the first subfolder." R. at 7. This irrefutably demonstrated Private Citizen's personal knowledge of the contents of the flash drive since only a party familiar with the device could know where to find the

[3] CONTAINER Definition, *Merriam-Webster Dictionary* (2017), *available at* www.merriam-webster.com/dictionary/container.
[4] JPEG Definition, *Merriam-Webster Dictionary* (2017), *available at* www.merriam-webster.com /dictionary/JPEG.

images. Because Officer Jones limited the confirmatory search to what the Private Citizen had already searched, the government did not exceed the scope of the private search.

B. The government's interest in conducting the confirmatory search outweighs Petitioner's privacy interest because the government has a duty to protect minors from child pornography.

The government has a duty to protect minors and that duty outweighs certain privacy interests. It has long been a staple of this Court's jurisprudence to protect children. Indeed, the emotional, psychological, and physical welfare of minors have been compelling principles in cases dealing with the sexual exploitation of youths, and this Court has recognized that attaining that welfare is a "government objective of surpassing importance." *Ferber*, 458 U.S. at 757. This Court has further acknowledged lasting negative repercussions of child pornography, among them, the stigma that pursues a child into adulthood, and the physical manifestations of the abuse. *Id.* at 756-57. Child pornography is therefore indistinguishable from child abuse, and is treated as such. *Id.* All states and American territories have adopted statutes mandating certain professionals to report suspected child abuse and neglect, and nineteen states require private citizens to do so.[5] The government's interests in preventing harm to children is not only compelling, but crucial to the maintenance of a healthy society, and is not outweighed by a person's privacy interest to keep child pornography in his home. *Osborne v. Ohio*, 495 U.S. 103, 113 (1990). This especially holds true in cases where the constitutionally protected expectation of privacy is broken by a private citizen's search. Respondent does not contend that the state's interest in conducting a confirmatory search *always* outweighs the individual's right to privacy—simply that it does in a case dealing with the sensitive subject of child pornography.

[5] Alberta J. Ellet, *Child Protective Services Maltreatment: An Overview for Attorneys*, *in 14* CHILD WELFARE LAW AND PRACTICE REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIS IN ABUSE, NEGLECT, AND DEPENDENCY CASES 337(Nat'l Ass'n of Couns. for Child. ed. 2016)

In *Osborne*, this Court found a prohibition on viewing and possessing child pornography constitutional because attempting to decrease the production of child pornography is a reasonable state action. *Id*. at 111. In so holding, this Court reasoned that prohibitions on child pornography do not exemplify the states' "paternalistic interest" in regulating the private citizen's mind. *Id*. at 109. Instead, the proscriptions demonstrate the duty to "protect victims of child pornography" by "destroying a market for the exploitative use of children." *Id*. A growing concern, this Court reasoned, is that the child pornography industry operates primarily underground, making it increasingly problematic to eradicate the business by "only attacking production and distribution." *Id* at 110.

This Court's rationale in *Osborne* applies because it is evident that the government did not, through its own volition, disturb the carefully guarded constitutional guarantees afforded to Petitioner. R. at 7. In fact, Private Citizen unlawfully infringed upon Petitioner's right to privacy. However, the fact remains–and it cannot be ignored–that Petitioner's expectation and actual ability to privately possess child pornography are no longer conceivable. What has not dissipated in this case is the government's intrinsic duty to protect children. It stands firmly against public policy to ignore tangible evidence of child abuse based on the unsound supposition that the government surpassed its legal authority. Further, there are several congressionally recognized civic duties to protect minors, evidenced by the imposition of mandatory reporting of child abuse. This manifests Congress' intent to ensure that cruelty against children be punished. In this case, a private citizen reported the illegal possession of child pornography by a trusted member of the community: a monk. R. at 5. The police subsequently examined the evidence presented to confirm that it was, in fact, child pornography. R. at 7. To now allow a person with predatory inclinations to go

unpunished for possessing images of minors engaging in sexual activities with adults would invalidate years of legislation and Court precedent.

CONCLUSION

This Court should affirm the decision of the Supreme Court of Clintonia and remand the case to the Circuit Court of the Fifteenth Judicial Circuit, Bill County, Clintonia for trial.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2017, I served a copy of the Respondent Brief to Petitioner.

/s./
Counsel for Respondent
Team K

CERTIFICATE OF COMPLIANCE

Counsel for Respondent certifies that the foregoing brief complies with Rules of the United States Supreme Court, and with the most recent edition of *The Bluebook: A Uniform System of Citation*. This brief has been prepared in accordance with all Leroy R. Hassell, Sr. National Constitutional Law Moot Court Competition Rules.

/s./
Counsel for Respondent
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APPENDIX A

U.S. CONST., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

U.S. CONST., amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.