

**Hypothetical Four**

***Antonia Pagani,***

**Petitioner**

**v.**

***State of Columbiana,***

**Respondent**

In 2013, in response to a high-profile public relations campaign by Columbiana Focus on the Family and Catholics United for Life, the state of Columbiana passed the Columbiana Fetal Rights Act. The Act requires women seeking abortions to read a state-sanctioned pamphlet that details fetal development and alternatives to abortion, view a video entitled, "Your Fetus Can Feel Pain", and meet with a licensed physician or physician assistant to discuss these materials. A waiting period of seventy-two hours between this appointment and the abortion procedure is also required under Columbiana law. A woman must then sign an affidavit that she has read the pamphlet and viewed the film and still desires an abortion. A woman can be denied an abortion if she does not sign the affidavit and any woman who receives an abortion without executing the affidavit can be fined up to \$20,000 and imprisoned for no less than two years.

Antonia Pagani, a resident of Columbiana, is pregnant with an unwanted child and has decided to obtain an abortion. A vocal opponent of Columbiana's informed consent law related to abortion, Ms. Pagani is also a member of the Satanic Temple of Columbiana. The Satanic Temple is a national organization based in New York. It was founded in 1966 by Anton LaVey and has local "cells" across the country. Membership in the Satanic Church is estimated to be approximately two million people. (Satanists thus slightly outnumber the Amish in the United States.) The official text of the Temple is the Satanic Bible. The Satanic Bible includes three approved rituals including a Satanic Mass and a Satanic Baptism. The Satanic Church also has a rigid hierarchy: each cell is led by a Maga/Magus and is assisted by Priests/Priestesses and Warlocks/Witches.

Members of the Satanic Temple are bound by the "Eleven Precepts." These are the Satanic Church's equivalent to the Ten Commandments. One of the precepts is that "Science, not myth, must govern all decisions." A second precept is: "The human body is the property of its inhabitant to do with as he or she pleases."

The Satanic Temple opposes informed consent laws related to abortion on religious grounds. According to Lex Blackmore, the head of The Satanic Temple in New York, "Informed consent laws violate the Eleven Precepts. They seek to mandate what a woman will do with her body based upon non-scientific, religious views with which we disagree. We will review medical or scientific information based solely on

fact; however, we reserve our rights under the First Amendment to refuse to state-drafted information that seeks to prejudice a woman's decision against abortion."

The Satanic Temple provides a form letter to all female members of the Temple. The form states that the person identified in the form is a member of the Satanic Temple; that the required pamphlet, video and consultation constitute "Political Information"; and that such Political Information offends the person's "sincerely held religious beliefs". Specifically, the form states:

I regard any information required by state statute to be communicated or offered to me as a precondition for an abortion (separate and apart from any other medical procedure) to be based on politics and not science ("Political Information"). I regard Political Information as a state sanctioned attempt to discourage abortion by compelling my consideration of the current and future condition of my fetal or embryonic tissue separate and apart from my body. I do not regard Political Information to be scientifically true or accurate or even relevant to my medical decisions. The communication of Political Information to me imposes an unwanted and substantial burden on my religious beliefs.

Antonia Pagani provided her doctor with a signed copy of the Satanic Church "opt-out" form. Refusing to honor Ms. Pagani's request to "opt-out," the doctor provided the state-mandated materials and told Ms. Pagani that she would have to view the video, attend the consultation and comply with the waiting period before he would perform the abortion procedure. Ms. Pagani refused.

Ms. Pagani (assisted by the Satanic Temple) then sought a declaratory judgment that the Columbian statute violated her rights under the First Amendment and the Columbian Religious Freedom Restoration Act (CRFRA). [Note: This statute is identical to the federal RFRA.] The District Court ruled in favor of the State of Columbian concluding that the regulation did not unconstitutionally impinge upon Ms. Pagani's religious freedom or her statutory religious rights. The Court of Appeals for the Thirteenth Circuit unanimously affirmed.

In his majority opinion, Justice Antonin Scalia stated:

In this case, the Satanic Temple attempts to dress a godless wolf in godly sheep clothing by claiming that its pernicious views are "sincerely held religious beliefs." Such attempts at deception do not fool this Court. Simply naming oneself a religion does not automatically allow that organization to wrap itself in First Amendment protection – especially where there is clearly such disregard of, and even outright disdain for, the underlying moral fabric of the larger society. But even if we were to take her asserted beliefs seriously, there is no burden on Ms. Pagani. The statute at issue is designed for her benefit and the benefit of all women.

Ms. Pagani has filed a petition for *certiorari* and the Supreme Court has granted the petition. The Supreme Court will address the following question:

**Does the Columbiana Fetal Rights Act violate the petitioner's rights under the First Amendment or under the Columbiana Religious Freedom Restoration Act?**

(NOTE: For purposes of this hypothetical, you should assume that the Fetal Rights Act comports with *Roe v. Wade* and its progeny and the Due Process Clause. Address ONLY the issues set forth in the Court's question.)