In the Supreme Court of the United States

No. 22-CV-7654

EMMANUELLA RICHTER,

Petitioner,

v.

CONSTANCE GIRARDEAU,

Respondent.

BRIEF OF RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

APPEAL FROM ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

DATE: January 31, 2023

Team Number 2

Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether the *Gertz* Court's extension of the *New York Times* actual malice standard to limited-purpose public figures, which preserves fundamental First Amendment rights, is constitutional.

II. Whether PAMA, a law that does not directly target a religious practice and applies to all minors without exception, is neutral and generally applicable under *Smith* and, if so, should stare decisis preserve the rule stated in *Smith*.

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STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifteenth Circuit was entered on December 1, 2022. Petitioner filed a timely petition for a writ of certiorari, which this Court granted. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Petitioner, Emmanuella Richter, is the head of The Church of the Kingdom ("Kingdom Church") and resides in the state of Delmont along with her congregation in private compounds. (R. 3-4). A central tenet of the Kingdom Church faith is that all adult members of the Kingdom Church donate and bank their blood at local blood banks in case of medical emergencies because they are not allowed to accept blood or donate blood to non-members of the Church. *Id.* at 5. Children within the religion engage in a variety of monthly "Service Projects" while homeschooled such as gardening, cleaning, donating food and clothes, and recycling. *Id.* Children who have achieved "the state of reason" and are "confirmed" at the age of fifteen are *also* able to participate in blood donation drives as part of their monthly service projects. *Id.* at 4-5. But if a confirmed student is ill and unable to attend a designated blood drive day, they may skip their donation. *Id.* at 5.

In 2021, the Delmont General Assembly passed the "Physical Autonomy of Minors Act" (PAMA), a state statute that forbade "the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." *Id.* at 6. Prior to the enactment of PAMA, Delmont state law prohibited minors under sixteen from consenting to of blood, organ, or tissue donations except in the case of donations for themselves and medical emergencies for blood relatives. *Id.* at 5. On January 4, 2021, Respondent, Governor Constance Girardeau, received briefing about the PAMA legislation at the same time she learned about an article regarding the Kingdom Church's

religious practices. *Id.* at 39. At this time, Governor Girardeau was focused on "child[] safety issues" as part of her re-election campaign after receiving concerning statistics about the spike in victims of child abuse. *Id.* These statistics, published by the U.S. Department of Health and Human Services, revealed a 214% increase in child victims of abuse and neglect between 2016-2020. *Id.* The Governor's campaign also conducted research showing that 27.1% of teenagers who commit suicide were victims of some form of child abuse. *Id.* at 40. It was "these statistics" that prompted Governor Girardeau to inform the leadership of the Delmont General Assembly that she supported PAMA. *Id.* PAMA was then passed by the Delmont General Assembly in 2021. *Id.* at 6.

Then, in January of 2022, a "Kingdom Tea" van was involved in a multi-car crash on a bridge leading to Delmont. *Id.* at 6. Dozens of people died, including ten members of the Kingdom Church. *Id.* The driver of the van, Henry Romero, was the only surviving church member; however, he sustained severe injuries and was admitted to a hospital in critical condition. *Id.* Doctors determined that the church member would need a blood donation for his operation. *Id.*

Adam Suarez, a fifteen-year-old member of the Church and Mr. Romero's cousin, was identified as a blood type match. *Id.* It is absent from the Record whether Adam was his cousin's *only* option for blood donation. Adam then donated blood for the "first time in his life" to prepare for his cousin's operation. *Id.* When donating blood, Adam's blood pressure became inexplicably "highly elevated," causing him to go into acute shock. *Id.* Adam was then moved to the intensive care unit. *Id.* Adam "*eventually* recovered," but doctors recommended that Adam not donate blood in the immediate future. *Id.* at 7 (emphasis added). While Adam was in the Hospital, Petitioner, as the leader of the Kingdom Church, gave an interview to the press. *Id.* 6-7.

Two weeks later, Governor Girardeau was asked during a campaign rally what her future plans were if re-elected. *Id.* Governor Girardeau was then asked about Adam, who was fifteen when he donated blood as a member of the Kingdom Church and responded that her government task force had been commissioned to investigate, under PAMA, the legality of the Kingdom Church's blood bank requirements for children. *Id.*

Petitioner then requested injunctive relief from the Beach Glass Division of the Delmont Superior Court, arguing that the Governor's task force "constituted a violation of the First Amendment's Free Exercise Clause." *Id.* at 7-8. In response, Governor Girardeau, at another press conference, stated that she was "not surprised at anything [Petitioner] does or says. What do you expect from a vampire who founded a cult that preyed on its own children?" *Id.* at 8. Petitioner then amended her complaint to include an action for defamation. *Id.*

Governor Girardeau moved for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure, on the basis that her task force's investigation is constitutional, and that the defamation action does not meet the constitutionally mandated actual malice standard as applied to limited-purpose public figures like Petitioner. *Id.* at 8-9. The United States District Court for the District of Delmont, Beach Glass Division granted summary judgment in favor of Governor Girardeau. *Id.* at 3. The court held Petitioner was a limited-purpose public figure, and that while Governor Girardeau's sole statement was defamatory, it did not rise to the level of actual malice. *Id.* at 14-15. The court also held that PAMA is clearly neutral and generally applicable to all minor residents of Delmont regardless of religion and is, therefore, constitutional. *Id.* at 17-19.

Petitioner then appealed the District Court's ruling to the United States Circuit Court of Appeals for the Fifteenth Circuit. *Id.* at 21. The Fifteenth Circuit affirmed the District Court's ruling on both issues. *Id.* However, the court questioned this Court's precedent as to the

application of the actual malice standard to limited-purpose public figures and the constitutionality of the *Smith* Doctrine. *Id.* at 27-38. Petitioner then filed a timely petition for a writ of certiorari to this Court, requesting this Court reverse the Fifteenth Circuit's holding and overturn decades of precedent. *Id.* at 45. This Court then granted the petition *Id.* at 46.

SUMMARY OF THE ARGUMENT

This is a case about preserving the fair, practical, and objective rule of law cemented in prior precedent in lieu of submitting to demands to change the status quo and open the floodgates to unproductive litigation.

I. Preserving the extension of the *New York Times* actual malice standard to limited-purpose public figures protects fundamental rights of Free Speech.

This Court should hold that the extension of the *New York Times* actual malice standard to limited-purpose public figures is constitutional to preserve the fair, practical, and objective rule of law outlined by this Court in *New York Times* and subsequent cases. The extension of the *New York Times* standard to limited-purpose public figures aligns with historical understandings of restrictions on the freedom of speech. While it is true the words "actual malice" do not appear in the First Amendment, the Founders made clear that the right of free public discussions and debates are fundamental principles of the American form of government. In addition, the criticisms of the Sedition Act of 1798 and Blackstone's *Commentaries* make clear that the intent of the First Amendment is to provide both a right to criticize and a right to be protected from harmful, defamatory speech.

Further, this Court should recognize that the extension of the actual malice standard to limited-purpose public figures comports with this Court's original intention when deciding *New York Times*, and is, therefore, constitutional. The original intent of *New York Times* was to strengthen the protections of the First Amendment while also preserving an individual's right to

sue for defamation. This is because the United States is built on a profound commitment to the freedom of free, uncensored, and robust debate on public issues – even if the debate results in attacks on the government and public officials. In addition, the *New York Times* court emphasized that the decision would likely extend to other groups of individuals outside of the "public official" classification. This is especially relevant today in an era of social media, where influencers can have a far-reaching impact on public debate. After all, this Court has recognized that the United States is built on a profound commitment to free, robust, open, and honest debates – without fear of self-censorship.

Finally, the extension is constitutional because it enshrines two fundamental First Amendment freedoms: the freedom to speak freely and foster robust debate, and the freedom to be protected from harmful, defamatory speech. Through affirming the constitutionality of this extension, this Court will ensure that individuals and the press can speak about public controversies and individuals without fear of reprisal by applying the actual malice standard. While it is true that there is no constitutional value in false statements, when false statements and beliefs are censored, a truly robust debate is impossible. If this Court does not affirm the extension of the standard, the Court will stifle ideas and opinions – a concept completely at odds with the intent of the First Amendment and its protections. Further, by affirming the extension of the actual malice standard, this Court would ensure that individuals who do speak falsely may be held liable for defamation. This extension allows the Court to balance competing views of an individual's life: both their private and public selves are protected.

Thus, because of its historical roots, alignment with this Court's rationale in *New York Times*, and its preservation of fundamental First Amendment values, this Court should affirm the extension of the *New York Times* actual malice standard to limited-purpose public figures.

II. This Court should affirm the Fourteenth Circuit and preserve the Government's ability to effectively legislate while maintaining the individual right to Free Exercise.

The Fourteenth Circuit correctly interpreted that the Physical Autonomy of Minors Act (PAMA) is a law of neutral and general applicability. As such, the law does not violate the Free Exercise Clause of the First Amendment pursuant to this Court's decision in *Smith*. PAMA prohibits the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor under the age of sixteen regardless of the minor's consent. The law is facially neutral because it does not specify any religion or use words with strong religious connotations. In fact, the law does the *opposite* by using words that have a normally secular meaning.

Further, the law does not engage in discrete suppression of beliefs. PAMA does not ban blood banking *because of* the religious motivation behind the act. Instead, PAMA only bans minors under the age of sixteen from giving donations – the motivation for a minor's blood donation is irrelevant. Therefore, the law does not target the Kingdom Church's religious practices, which insignificantly overlap with the law's prohibition by only one year. In addition, the law generally applies to all minor residents of Delmont regardless of their religious affiliation or their consent. This Court has recognized that by satisfying either neutrality or general applicability, it likely indicates both elements of the *Smith* Test are satisfied. This Court should find that the evidence on the Record is clear: PAMA was enacted as *and* operates as a neutral and generally applicable law. Thus, this Court should affirm the Fourteenth Circuit's decision.

Additionally, this Court should affirm the constitutionality of the *Smith* Doctrine as a necessary resolution to ensure the religious protections of the Free Exercise Clause are maintained while also preserving the legislature's need to enforce necessary and neutral laws. The Free Exercise jurisprudence prior to *Smith* necessitated fashioning a rule in which the Government did not have to litigate and justify neutral laws of general applicability when

challenged under the First Amendment. *Smith* recognized that exemptions are better addressed by the well-equipped legislature, rather than allowing courts to assert their own value judgments when granting individual exemptions. This Court has always recognized that the legislature has the ability to regulate the most important aspects of social life (like marriage, taxes, and the military). This case depicts a grave example of granting religious exemptions to valid governmental regulations.

This Court recognized in the earliest Free Exercise cases that, under the First Amendment, the Government can regulate conduct (or religious practices), but not mere religious beliefs or opinions. *Smith* recognized this long standing right of the Government and appropriately solidified it as part of Free Exercise jurisprudence. *Smith* was well reasoned at the time, but even more so now, as the practical implications of the Doctrine allow the legislature to employ its fact-finding capabilities to determine what accommodations to grant to religions when enacting and revising laws.

ARGUMENT

I. The extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional because it comports with history, aligns with the intent of this Court, and enshrines fundamental First Amendment protections.

The extension of the *New York Times v. Sullivan* ("*New York Times*") actual malice standard to limited-purpose public figures not only comports with the history of both defamation and the First Amendment, and aligns with the intent of this Court in *New York Times*, but it also enshrines fundamental First Amendment protections, and is therefore constitutional. The First Amendment to the Constitution of the United States states that, "Congress shall . . . make no law abridging the freedom of speech," U.S. Const. amend. I. However, this Court made it clear "the Constitution does not protect libelous publications." *New York Times v. Sullivan*, 376 U.S. 254, 268 (1964). This Court also established that a plaintiff who is a public official or running for

office can recover damages for defamation only by proving with clear and convincing evidence the falsity of the defamatory statements and that the speaker acted with "*actual malice*." *Id.* at 279-80 (emphasis added). Under this standard, actual malice is defined as when the defendant knew that the statement was false or acted with a reckless disregard for the truth. *Id.* at 280. This standard was first expanded to include public figures, *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 155 (1967), and ten years later to both all-purpose and limited-purpose public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). This decision to extend the actual malice standard to limited-purpose public figures protects the central values of the First Amendment's Free Speech Clause. U.S. Const. amend. I. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340-41 (1974). While this classification has roots in both history and this Court's original intent in *New York Times*, the extension of the actual malice standard also protects the freedom to speak freely and foster robust debate, and the freedom to be protected from harmful, defamatory speech.

A. Extension of the *New York Times* standard to limited-purpose public figures aligns with historical restrictions on speech.

Historically, there have been restrictions on the proof required for a plaintiff to prove defamation in a lawsuit – after all, it was established soon after the ratification of the Bill of Rights that citizens have a right to criticize their government. *McKee v. Cosby*, 586 U.S. ____,____, 139 S.Ct. 675, 679 (2019) (Thomas, J., concurring in denial of certiorari). *See e.g.,* Akhil R. Amar, *The Bill of Rights as a Constitution*, 100 Y.L.J. 1131, 1149 (1991) ("The First Amendment tradition of 'uninhibited, robust, and wide-open' criticism of government celebrated by *New York Times* . . . was born when Madison and Jefferson successfully appealed to a popular majority during 1798-1800."). This historical premise is evident in the Founders' resistance to the Sedition Act of 1798 (Sedition Act). *New York Times*, 376 U.S. at 273 (quoting Sedition Act of 1798, 1 Stat. 596). The Sedition Act prevented citizens from speaking ill of or criticizing the

government or their representatives. *Id.* at 273-74. James Madison, in one of many critiques of the Sedition Act, explained "[t]he right of free public discussion of the stewardship of public officials [is] . . . a fundamental principle of the American form of government." *Id.* at 275.

In addition, though one of the most consequential critics of the *New York Times* decision, even Justice Thomas recognized the historical justification for restrictions on speech. *McKee*, 586 U.S. ____,____, 139 S.Ct. at 679. As he explained in the denial of certiorari in *McKee*, "[t]he common law did afford defendants a privilege to comment on public questions and matters of public interest." *Id.* While it is true that actual malice is a "judge-made rule of law," the privilege to criticize has always extended to the "public conduct of a public man" because he was a "matter of public interest." *Id.* at 678-79 (internal citations omitted). The common law thus provided that an individual could be "made the subject of hostile criticism," and "be discussed with the fullest freedom." *Id.* While originalist critiques of *New York Times* raise valid points, they also often prioritize certain histories over others. *See* David McGowan, *A BiPartisan Case Against New York Times v. Sullivan*, 1 J. FREE SPEECH L. 509, 527-28 ("Originalism is normatively weak, inconsistently applied, even less democratic than the common-law methodology it detests, and is *often not good history*.") (emphasis added). Thus, while the words "actual malice" do not exist in the First Amendment, and were not discussed at the time of the founding, the founders wanted citizens to have the ability to criticize public officials.

In addition, the historical foundations of actual malice are present in Blackstone's *Commentaries*: "The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published." 4 William Blackstone, *Commentaries* 151, 152 (emphasis in original). In other words, a standard, like actual malice, would prevent public officials from

threatening to sue for defamation if criticized – in other words, there would be no restraint prior to publication. *Id.* As this Court made clear in *New York Times*, "[a] rule compelling the critic of official conduct to guarantee the truth of all his factual assertions . . . leads to a comparable 'self-censorship,'" which this Court has vehemently opposed. *New York Times*, 376 U.S. at 279. Blackstone also emphasized that, "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public . . . but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity." Blackstone, *Commentaries* at 152. Here, Blackstone also makes clear there were consequences for the defamation of individuals. *Id.* Thus, a standard has existed throughout history where individuals were allowed to criticize the government or public figures but were forced to face the consequences of defamation if proven.

B. Extension of the *New York Times'* standard to limited-purpose public figures aligns with the original intent of this Court in *New York Times*.

The original intent of this Court's ruling in *New York Times* was to strengthen the protections of the First Amendment while protecting an individual's right to sue for defamation. *New York Times*, 376 U.S. at 282-83. In addition, this Court determined "the Constitution delimits a State's power to award damages for libel in actions brought by *public officials* against critics of their *official* conduct." *Id.* at 283 (emphasis added). The Court also emphasized that the United States is built upon a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 270. To protect this foundational and fundamental belief, this Court determined that applying the actual malice standard to public officials' defamation claims was the proper remedy. *Id.* at 279-80.

While it is true the *New York Times* Court did not extend the actual malice standard further than public officials, it also made it clear there would be a need for future determinations on what other classifications of individuals would fall under this standard. *Id.* at 270. Justice Brennan explained: "[w]e have no occasion *here* to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included." *Id.* at 283, n. 23 (emphasis added). In effect, this Court anticipated that the doctrine would be extended.

Therefore, by extending the freedom to criticize in *Gertz*, this Court comported with its original belief in the national commitment to public debate. *See id.* at 270. Today, in such a highly communicative and increasingly public world, it would be illogical to not apply the actual malice standard to limited-purpose public figures. *See* Meaghan O'Connor, Note, *Defamation in the Age of Social Media: Why North Carolina's "Micro-influencers" Should Be Classified as Limited Purpose Public Figures*, 42 CAMPBELL L. REV. 335, 358-59 [hereinafter *Defamation*]. After all, the Court that decided *New York Times* could not have anticipated the prevalence of social media and influencers. *Id.* at 335. While the *New York Times* decision did not mention public figures, this Court correctly anticipated future determinations of new classes of individuals who would be subject to the actual malice standard. *New York Times*, 376 U.S. at 283, n. 23. This is because the goal of the decision was to protect free, robust, and fair debate. *Id.* at 270. Thus, to the protect the "national commitment" to fostering debate, this Court should conclude that when individuals who have voluntarily thrust themselves into the public eye are inevitably criticized, the limited-purpose public figure classification is both constitutional and appropriate, preventing "a chilling of speech." O'Connor, *Defamation*, *supra*, at 359.

C. Extension of the *New York Times* standard to limited-purpose public figures enshrines fundamental First Amendment freedoms, while also protecting private figures.

Over time, this Court has interpreted the Free Speech Clause to provide robust protection for speech, while also establishing certain limitations – mostly in cases where the speech is false or harmful. *New York Times*, 376 U.S. at 282-83. The extension of the *New York Times* standard to limited-purpose public figures helps to enshrine both of these ideals. Through the extension, this Court will continue to foster debate by protecting the right to speak freely about public controversies and public officials without fear of reprisal. In addition, this Court will ensure those individuals who do speak falsely may be held liable under the actual malice standard. Thus, this Court should hold that the extension of the *New York Times* standard to limited-purpose public figures is constitutional.

1. Extension of the *New York Times* standard to limited-purpose public figures ensures citizens' First Amendment Right to Free Speech is protected.

By allowing the extension of the actual malice standard to limited-purpose public figures, this Court will continue to ensure the First Amendment right to the freedom of speech remains sacrosanct. The limited-purpose public figure classification is designed to make clear that individuals who purposely thrust themselves into the public sphere or are drawn into a public controversy, and therefore invite scrutiny of their actions, can also receive criticism. *Gertz*, 418 U.S. at 245. This is because "[t]he right of free public discussion of the stewardship of public officials [is] . . . a fundamental principle of the American form of government." *New York Times*, 376 U.S. at 275.

While it is true "[u]nder the First Amendment there is no such thing as a false idea," and there is "no constitutional value in false statements of fact," the existence of false ideas and criticism are essential to free debate. *Gertz*, 418 U.S. at 339-40. As this Court explained in *Gertz*,

"[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Id.* This is because, while the false ideas themselves do not contribute to society, and have little to no value, preserving the ability to make false statements protects free, robust debate. *Id.* (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942)). Further, James Madison, in the Report on the Virginia Resolutions of 1798 agreed with this view, explaining that "[s]ome degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." *Id.* (citing 4 J. Elliot, DEB. ON THE FED. CONST. OF 1787, p. 571 (1876)). Without the opportunity to make these false statements, a truly robust, free debate is impossible.

In *Gertz*, this Court correctly understood that if the press or individuals were punished for false statements, it would risk "intolerable self-censorship" – exactly what the First Amendment was designed to prevent. *Id.* An individual, like Petitioner, who inserted herself into the public debate as co-founder and leader of a religion, by conducting interviews with media outlets, is a limited-purpose public figure. R. at 7, 8, 14, 26, 43. Therefore, if this Court rules that the extension of the *New York Times* rule to limited-purpose public figures is not constitutional, it would be completely at odds with the First Amendment because "[t]he First Amendment requires that we protect some falsehood in order to protect speech that matters." *Gertz*, 418 U.S. at 341. Thus, the classification of limited-purpose public figures provides an essential function. It not only preserves the ability for those individuals who place themselves in the public eye and seek public attention, to "recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth," but more importantly, it prevents self-censorship, and ensures the continuation of robust, free debates. *Id.* at 342.

2. Extension of the *New York Times* standard to limited-purpose public figures allows private citizens to successfully pursue defamation claims.

The extension of the *New York Times* standard to limited-purpose public figures also protects private citizens by allowing them to sue for defamation. As Justice Thomas explained, "[t]he common law did afford defendants a privilege to comment on . . . matters of public interest. . . . Under this privilege, 'criticism [could] reasonably be applied to a public man in a public capacity which might not be applied to a private individual." *McKee*, 586 U.S. ____,____, 139 S.Ct. at 679. Conversely, the privilege to criticize was never extended to speech about private figures. *Gertz*, 418 U.S. at 361 (Brennan, J., dissenting). This is because the government has an interest in the "compensation of individuals for the harm inflicted on them by defamatory falsehood." *Id.* at 341. After all, in the United States, there exists a basic concept of safeguarding the private person to protect "the essential dignity and worth of every human being." *Id.* Therefore, while it is important for essential First Amendment freedoms to be preserved, it is equally important for this Court to protect an individual's dignity by retaining their ability to sue as private citizens for defamation. Thus, through the extension of the actual malice standard to limited-purpose public figures, this Court struck an appropriate balance: limited-purpose public figures can sue for defamation, but the public also knows that they are able to freely criticize unless they do so with actual malice.

This Court's creation of the limited-purpose public figure is essential: it preserves a limited-purpose public figure's ability to sue if their private lives have been impacted by defamation under the traditional negligence standard. At the same time, because "public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy," if the limited-purpose public figure inserts themselves into the public sphere or into

public debate, they must prove the higher actual malice standard. *See id.* at 342, 344-45. As this court explained in *Gertz*, this is because the lines between the public and private individual have become blurred, and thus, the limited-purpose public figure classification is especially important in today's society. *See* O'Connor, *Defamation*, *supra*, at 335. ("Social media has created new types of speakers, new publication methods, and easier ways for people to defame each other."). At the same time, by preserving the limited-purpose public figure designation, if the influencer[1] was defamed in their *private* life, they would be able to assert their right to preserve their "essential dignity and worth." *Gertz*, 418 U.S. at 341. Therefore, the limited-purpose public figure designation preserves this Court's intent in *New York Times*: to allow citizens to pursue defamation claims. Thus, this Court should affirm the extension of the *New York Times'* actual malice standard to limited-purpose public figures.

II. The Fourteenth Circuit correctly concluded the Physical Autonomy of Minors Act is neutral and generally applicable because the law does not target religion.

The Physical Autonomy of Minors Act ("PAMA") is constitutional because it is neutrally phrased and generally applies to all minor children in Delmont. The law regulates conduct and does not target religious beliefs, comporting with the standard this Court set forth in *Smith* to leave accommodations to general laws to the political process. *See Emp. Div., Dep't. of Hum. Res. v. Smith*, 494 U.S. 872, 890 (1990). In *Smith*, this Court affirmed that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribe) conduct that his religion prescribes (or proscribes).'" *Smith*, 494 U.S. at 889 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)). The plain, secular language of PAMA does

[1] For example, a social media influencer would only be considered a public figure in the area in which they are influential. *See* O'Connor, *Defamation*, *supra*, at 350-57.

not address any religion or target practices because of their religious motivation. *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993); (R. 6). Instead, it generally applies to all minors, without exception, to promote the neutral objective of the law as prescribed by the Delmont General Assembly.

A. PAMA is neutral because the restriction was not enacted to solely restrict the religious practices of the Kingdom Church.

A law that addresses an issue as significant as curbing skyrocketing cases of child abuse should be viewed just as the language frames it: a prohibition on the voluntary or involuntary procurement of minor child's organs, fluids, or tissue. PAMA is neutrally framed to address this issue in any context in which it may arise. (R. 6). The minimum requirement of neutrality is that courts examine the text of a law to determine "that a law [does] not discriminate on its face." *Church of Lukumi*, 508 U.S. at 533-34 ("[A] law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context."). In *Church of Lukumi*, this Court determined that certain ordinances failed neutrality by using the words "'sacrifice' and 'ritual, words with strong religious connotations.'" *Id.* at 533-34 (holding unconstitutional an ordinance banning animal deaths in the specific manner proscribed by an unpopular religion's sacrificial practices). While "[f]acial neutrality is not determinative . . . the choice of these words" along with the targeted nature of the statute supported the determination that the ordinances were not neutral. *Id.*

In contrast, the plain language of PAMA contains language with normally secular meanings that does not expressly prohibit the religious practices of the Kingdom Church. (R. 5-6). "[PAMA] forbade the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." *Id.* at 6. Petitioner's argument relies on the assumption that the choice of

the word “donation” must refer to the Kingdom Church’s “Service Projects.” *Id.* at 5-6. However, the niche nature of the Kingdom Church’s religious practices rebuts this assumption: blood donation is not the only Service Project available for minor members of the Church to engage in to achieve the “servant’s spirit.” *Id.* at 4-5. The Kingdom Church faith provides *other means* to minors of achieving the “servant’s spirit” *besides* blood banking. *Id.* at 5. (“Other service projects include [list of charitable acts] . . . If a confirmed student is ill on a particular blood drive day, the donation may be skipped.”). In fact, it is not until members are confirmed at the age of *fifteen* that they are *required* to bank their blood for donation within the Church. *Id.*

The Kingdom Church’s tenet requiring confirmed members engage in blood banking reveals that the PAMA legislation far from restricts or targets the Church’s religious practices *because of* their religious motivation (to provide blood for other Church members). *Id.* at 4-6. PAMA is considered neutral so long as the Delmont General Assembly did not “proceed in a manner intolerant of religious beliefs or restrict practices *because of* their religious nature.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (emphasis added). PAMA restricts the procurement of minor children’s bodily organs, fluids, or tissue because of the purported dangers to minors regardless of consent – not just to prohibit sixteen-year-old Kingdom Church members from donating. Recalling that only Church members who are over the age of fifteen are required to bank their blood for the Church, this extremely minor restraint further indicates the neutrality of PAMA. (R. 6.) Instead, PAMA appears to be a neutral regulation intended to protect vulnerable minors from exploitation regardless of their consent. As this Court recognizes, a civil society will “require[] some religious practices [to] yield to the common good." *Lee*, 455 U.S. at 259.

B. PAMA is generally applicable because it applies to all minors regardless of religion and does not provide any mechanism for exemptions.

PAMA generally applies to all minor residents of Delmont regardless of religious group or the minor's consent – signifying the legislature's cohesive effort to prohibit *any* attempt to procure the bodily organs, fluids, or tissue of minors. This Court has established that a law satisfies *Smith*'s general applicability requirement if it does not allow "the government to consider the particular reasons for a person's conduct by providing a 'mechanism for individualized exemptions.'" *Fulton*, 141 S. Ct. at 1877 (quoting *Smith*, 494 U.S. at 884). Thus, it is an unconstitutional infringement on the Free Exercise of Religion for a law to create a mechanism for exemptions that "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interest in a similar way." *Id.* The plain language of PAMA provides no exemptions, and "applies to all minor residents of Delmont regardless of religion." (R. at 6). Further, "[n]eutrality and general applicability are interrelated," so the ability to satisfy one element is a likely indication that the other has been satisfied. *Church of Lukumi*, 508 U.S. at 531.

This Court has recognized that laws can fail general applicability if the conduct prohibition is underinclusive of the legislation's purported goal. *Id.* at 543-45. For instance, in *Church of Lukumi*, the Animal Sacrifice statute failed general applicability for being underinclusive of the goal to "protect[] the public health and prevent[] cruelty to animals." *Id.* at 543. "The underinclusion [was] *substantial*, not inconsequential. . . . Many types of animal deaths or kills for nonreligious reasons [were] either not prohibited *or approved by express provision*." *Id.* (emphasis added). The Animal Sacrifice statute prohibited *only* the sacrificial – and, therefore, religious – act of killing animals, but it did not prohibit and, in fact, expressly exempted animal deaths from nonreligious activities such as hunting, fishing, scientific studies,

or extermination within the home. *Id.* at 543-44. This Court found the statute in *Church of Lukumi* unconstitutional because its prohibitions on conduct were underinclusive of, and even adverse to, its general goals. *Id.* at 544-45 (holding the statute failed the goal of protecting public health because health risks were the same whether the animal death was caused by a prohibited religious killing or a permitted nonreligious killing).

In comparison to the statute in *Church of Lukumi*, PAMA is structured in a way which prohibits conduct specific to its goal, but regardless of its motivation. PAMA prohibits *all* harvesting and procurement of minor organs, fluids, and tissue due to the same nature of risk to minors *regardless* of whether the practice is religious or secular in nature. (R. 37). This feature of the law is the crux of the general applicability requirement: it provides no exemptions and applies regardless of secular or religious motivation. This is because, as indicated in the Governor's affidavit, "[n]othing with respect to the Kingdom Church . . . served as the impetus for supporting PAMA" (R. 40). Instead, the Governor admits she was prompted to support the bill after learning of concerning statistics related to child abuse[2] prompting her re-election campaign to focus on curbing the child abuse epidemic in Delmont. *Id.* at 39-40. The text of PAMA and the Governor's motivation for approving the legislation support finding that PAMA is a law of general applicability.

III. This Court should affirm the constitutionality of *Smith* because restricting exemptions to neutral and generally applicable laws is a fair and workable standard that comports with the historical intent of the Free Exercise Clause.

It would be misguided for this Court to overrule *Smith* and leave the Free Exercise Clause to the First Amendment exposed and unrestrained, allowing religion to be used as a defense in

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[2] Statistics published by the U.S. Department of Health and Human Services revealed a 214% increase in child victims of abuse and neglect between 2016-2020. (R. 39). The Governor's campaign also conducted research showing that 27.1% of teenagers who commit suicide were victims of some form of child abuse. *Id.* at 40.

breaking laws essential to containing a civil society. Therefore, this Court should affirm the central holding of *Smith*, which leaves the question of religious accommodations to the better equipped legislature, that has fact finding capabilities to make informed decisions regarding exemptions from proposed laws that are neutral but encompass a religious practice. Ernest P. Fronzuto, III, *An Endorsement for the Test of General Applicability: Smith II, Justice Scalia, and the Conflict Between Neutral Laws and the Free Exercise of Religion*, 6 SETON HALL CONST. L.J. 713, 759-60 [hereinafter *Endorsement*]. When this Court looks at prior, well-established precedent, it pragmatically considers "the respective costs of reaffirming and overruling a prior case . . . [including] whether the rule has proven to be intolerable simply in defying practical workability." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992). Commentators have suggested that the "goal of interpreting religion in the Constitution is to produce fair and uniform results in its application." Fronzuto, *Endorsement*, *supra*, at 753. If this Court considers prior precedent, it should affirm rules that create "fair, predictable and workable standards of review." *Id.* The logic underlying *Smith* created an objective rule that can be efficiently applied by courts to determine the constitutionality of laws under the Free Exercise Clause to the First Amendment. In addition, the effect of *Smith* comports with the original intent of the Free Exercise Clause to protect religious beliefs, not practices. Therefore, this Court should affirm the constitutionality of the *Smith* Doctrine.

A. The *Smith* Doctrine is objective and leaves the discretion of exemptions to the better-equipped legislature, rather than the courts.

This Court was acutely aware in *Smith* of the dysfunction in Free Exercise jurisprudence, and it successfully fashioned a rule that appropriately balanced the legislature's need to enforce necessary laws with the individual's right to control their own religious beliefs. When this Court overruled *Sherbert v. Verner*, it was palpably concerned with courts making "arbitrary value

judgments" when granting individual exemptions from general laws. Fronzuto, *Endorsement*, *supra*, at 758; *see also Smith*, 494 U.S. at 883-85. Further, under the *Sherbert* standard, laws were considered presumptively invalid if challenged under the Free Exercise Clause. *See Sherbert v. Verner*, 374 U.S. 398, 406-07 (1967). This placed the burden on the Government to justify its alleged restraint; causing uncertainty for the legislature and prompting a slew of litigation to standard and essential laws. *See also Smith*, 494 U.S. at 883-85; Fronzuto, *Endorsement*, *supra*, at 754.

However, this framework proved unworkable in the context of neutral and generally applicable laws. In this context, the Court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith*, 494 U.S. at 878-79. The *Smith* Court believes that it would be a "parade of horribles . . . [if] federal judges . . . regularly balance against the importance of general laws the significance of religious practice." *Id.* at 889 n. 5. As this Court has recognized, for the United States to maintain a robust society "guarantee[ing] religious freedom to a great variety of faiths . . . some religious practices [must] yield to the common good." *Lee*, 455 U.S. at 259. The solution devised in *Smith* – leave religious accommodations to generally applicable laws to the political process – is "preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs." *Smith*, 494 U.S. at 890. The simple, objective, and predictable nature of the *Smith* Test ensures courts are not tasked with discretion over genuineness of insincere claims. *See* Fronzuto, *Endorsement*, *supra*, at 758-59.

The *Smith* decision created an equitable solution to granting exemptions from neutral and generally applicable laws by leaving the ultimate decision to the legislature and the political

process. *Smith*, 494 U.S. at 890. While this could affect minority religions, it encourages religious groups to lobby[3] for exemptions when a law is being debated or revised. *See* Fronzuto, *Endorsement*, *supra*, at 759-60. By leaving the decision to the branch of government that is best equipped to employ fact-finding capabilities to make an informed decision on the law and policy, it disables judges from making their own value judgments. *Id.*

B. There is significant historical support for the denial of individual exemptions.

Prior to *Smith*, this Court grappled with the historical meaning of religion at the time the First Amendment was ratified, and it determined that religious beliefs cannot justify intentional violations of neutral and necessary laws.[4] In those early cases, this Court recognized that the original understanding of the Free Exercise Clause was *not* intended to "prohibit legislation in respect to [the] most important feature[s] of social life," because it is within Congress's legislating power to devise laws governing social life. *Reynolds*, 98 U.S. at 165-66. The debate between Madisonians (viewing religion as superior to man-made law) and Jeffersonians (viewing civil order and the enforcement of civil law as superior to individual religious beliefs) during the drafting and ratification of the Free Exercise Clause facilitates the understanding of the original intent of the Clause. *See* Fronzuto, *Endorsement*, *supra*, at 719-22. The Jeffersonian

[3] Even if there were concerns about a powerful lobby, minority religions can still seek relief under the antidiscrimination aspect of the Establishment Clause which prohibits favoring a majority religion. U.S. Const. amend. I.; *see also* Fronzuto, *Endorsement*, *supra*, at 760.
[4] *See Reynolds v. United States*, 98 U.S. 145, 162 (1878) (affirming laws prohibiting polygamy despite interfering with Mormon religious practices); *see also Prince v. Massachusetts*, 321 U.S. 158 (1944) (affirming child labor laws despite interfering with Jehovah's Witness religious practices); *Braunfield v. Brown*, 366 U.S. 599 (1961) (affirming Sunday closing laws despite interfering with Orthodox Jews' religious obligations); *Gillette v. United States*, 401 U.S. 437 (1971) (affirming the validity of the Selective Service System despite claims that enrollment violated religious beliefs in opposition to war); *Bowen v. Roy*, 476 U.S. 693 (1986) (affirming the validity of Social Security laws despite claims that obtaining a social security number would violate their religious beliefs); *Lee*, 455 U.S. 252 (affirming the validity of Social Security taxes despite claims from the Amish that imposition of the tax violated their religious beliefs).

view, "comport[ing the most] with the democratic ideal that individual liberties may not trump the interests and welfare of society as a whole[,] . . . presented pragmatic solutions to societal dilemmas." *Id.* at 722. Jefferson advocated for the distinction between the Government's ability to control *conduct* constituting social duties, but not *beliefs* promoted by their religions. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1451 [hereinafter *Origins*].

This Court relied on Jefferson's view of Free Exercise in *Reynolds* to conclude there is no individual right under the Free Exercise Clause to an exemption from neutral and generally applicable laws. *Reynolds*, 98 U.S. at 166. In 1878, this Court affirmed the Government "cannot interfere with mere religious belief and opinions, [but] they may [interfere] with *practices*." *Id.* (emphasis added). The concerns expressed by the *Reynolds* Court are reflective in the rationale used by the *Smith* Court: granting religious exemptions to neutral and generally applicable laws would introduce a new element into criminal law by punishing those who break the law but excusing those who claim the action or practice is part of their religious beliefs. *Id.* at 166-67 (holding that such an exemption would "permit every citizen to become a law unto himself").

The original interpretations of the Free Exercise Clause and the progression of its interpretation leading up to *Smith* supports its constitutionality as a Doctrine because it aligns with the Framers' expectations and their pragmatic view of how the Free Exercise Clause should operate. *See* Fronzuto, *Endorsement*, *supra*, at 722-23 ("[T]he Free Exercise Clause was a means of preventing civic turmoil . . . [it] was politically motivated. . . . Free exercise analysis is . . . a balance of many competing interests."). It was intended to protect beliefs only, and not those features of social life (such as marriage, taxes, military recruitment, and, here, child welfare) which are within the legislating power of our civil government. *Id.* at 721-22, 726; *see*

McConnell, *Origins*, *supra*, at 1451. Not only does the *Smith* Doctrine produce a simple, objective, and equitable test, but it should also be affirmed because it aligns with the original understanding of permissible uses of the Free Exercise protection. Therefore, this Court should affirm *Smith* because it is the practical rule of law to ensure that Government can effectively function, recognizing that "some religious practices [must] yield to the common good." *Lee*, 455 U.S. at 259.

CONCLUSION

First, the *Gertz* Court's extension of the *New York Times* actual malice standard to limited-purpose public figures is constitutional. Second, PAMA does not violate the Free Exercise Clause because it is neutral and generally applicable under the *Smith* Doctrine. Finally, the *Smith* Doctrine is constitutional. For the foregoing reasons, this Court should affirm both the Fifteenth Circuit's holding and the constitutionality of the extension of the *New York Times* actual malice standard to limited-purpose public figures and the constitutionality of the *Smith* Doctrine.

Respectfully Submitted,

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APPENDIX: RELEVANT CONSTITUTIONAL PROVISION

The First Amendment to the United States Constitution reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

CERTIFICATE OF COMPLIANCE

In accordance with Rule III(C)(3) of the Seigenthaler-Sutherland Competition rules, Team 2 hereby submits this certificate of compliance to testify that:

1. The work product contained in all copies of Team 2's brief is in fact the work product of the team members, and only the team members;
2. Team 2 has complied fully with their law school's governing honor code; and
3. Team 2 has complied with all Competition Rules.

Respectfully submitted,

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