Docket No. 22-CV-7654

IN THE

SUPREME COURT OF THE UNITED STATES

January 31, 2023

EMMANUELLA RICHTER,

Petitioner

-against-

CONSTANCE GIRARDEAU,

Respondent

On Writ of Certiorari From the
United States Court of Appeals for the Fifteenth Circuit in 2022-1392
(Hon. A. B. Radley, Circuit Judge)

Brief for Petitioner Emmanuella Richter

Team 3

QUESTIONS PRESENTED

I. Whether *New York Times Co. v. Sullivan* should not apply to limited-purpose public figures because it did not originally apply to limited-purpose public figures and the journalistic landscape has changed since the 1960s?

II. Whether the Fifteenth Circuit Court of Appeals erred in holding that the Physical Autonomy of Minors Act ("PAMA"), which was motivated by animus and restricts low-risk blood donations by minors without restricting comparable secular activities, is neutral and generally applicable, or whether *Emp. Div., Dep't of Hum. Res. v. Smith* should be overruled?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Court

Circuit Courts

District Courts

State Courts

Secondary Sources

Statutes

STATEMENT OF JURISDICTION

The United States Circuit Court for the Fifteenth Circuit rendered its decision in favor of Girardeau with respect to the defamation and free exercise claims. *Emmanuella Richter v. Constance Girardeau*, no. 2022-1392 (15th Cir. 2022). A petition for Writ of Certiorari was filed and granted. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

STATEMENT OF THE CASE

In 1990, Emmanuella Richter ("Richter"), a scholar in comparative religion, founded the Church of the Kingdom ("Kingdom Church") in Pangea. (R. at 3). The Kingdom Church grew in followers rapidly due to Richter's door-to-door proselytization efforts, seminars, and the synthesized religious experience. (R. at 3). In 2000, however, the Kingdom Church members became the target of governmental repression. (R. at 3). Richter and other Kingdom Church members fled Pangea and received asylum in the United States on religious prosecution grounds. (R. at 3). They settled in Beach Glass, Delmont where their Church continued to grow. (R. at 3– 4).

Even though the Kingdom Church grew, Kingdom Church members do not have a significant presence in the community. (R. at 4). Church members live in self-sufficient compounds and sell tea which they market as "Kingdom Tea." (R. at 4). Though Richter is the leader of the Kingdom Church, her management of the Kingdom Church is a behind-the-scenes role and she has rarely left the compound in the past few years. (R. at 4, 42). Furthermore, Richter does not sell Kingdom Tea, she does not attend church informational seminars, or participate in door-to-door proselytization efforts like the other elders. (R. at 4, 42).

The process to become a member of the Kingdom Church is open only to individuals above the age of fifteen. (R. at 4). Those individuals must pass an intense course to be

confirmed. (R. at 4). Once confirmed, individuals must marry and raise their children within the faith. (R. at 4). Kingdom Church children are homeschooled, taking part in traditional curricular classes and religious instruction. (R. at 4). The children also participate in service projects such as organic gardening, food and clothing donations for local charities, recycling, and blood drives.[1] (R. at 4–5). Because Kingdom Church members are not allowed to accept blood from or donate blood to a non-member, the blood drives are a central tenet of the faith through which children learn to serve the community and ensure that there is enough blood to meet students' and their families' future medical needs. (R. at 5).

In 2020, *The Beach Glass Gazette*, ran a story about the Kingdom Church, which included details on the Kingdom Church's blood donations and resulted in public interest about the practice. (R. at 5). This report led many to believe that the Church "procured" minors for blood-banking purposes and raised concerns over the authenticity of minors' consent. (R. at 5). Due to the public interest, the Delmont General Assembly passed the "Physical Autonomy of Minors Act ("PAMA"), which forbids the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor[2] regardless of profit and of the minor's consent. (R. at 6). Before PAMA's passage, minors were permitted to make autologous blood, organ, and tissue donations, or to donate to a consanguineous family member in medical emergencies. (R. at 5).

The religious tenets of the Kingdom Church and PAMA came to a head after an accident involving church members in which only the driver survived. (R. at 6). The driver, Henry Romero, was admitted to the Beach Glass Hospital in critical condition. (R. at 6). Romero badly needed a blood transfusion, and Adam Suarez, Romero's fifteen-year-old cousin, had a matching

[1] Blood donations always comply with the American Red Cross guidelines. (R. at 5).
[2] A minor is any individual under sixteen years old. (R. at 5).

blood type. (R. at 6). Even though prior to PAMA this donation would be legal, under PAMA it was not. (R. at 6). In the process of donating blood and while adhering to Red Cross guidelines, Adam suddenly experienced a drop in blood pressure and went into shock. (R. at 6). Church members visited Adam in the hospital. (R. at 6). These visitors, including Richter, were interviewed by the press. (R. at 6–7). During the interview, Richter explained and defended the Kingdom Church's central tenet of blood donations. (R. at 43).

In response to the accident with Adam, on January 22, 2022, during a major fundraiser at Delmont University, Constance Girardeau ("the Defendant"), who supported and signed PAMA into law, announced the creation of a task force to investigate the Kingdom Church's blood donation practices relating to minors. (R. at 7). The task force would consider whether the church's blood donation requirements violated PAMA. (R. at 7). The Defendant also discussed the mental, emotional, and physical well-being Delmont children face and the increased rates of child abuse in recent years. (R. at 7). She addressed the fact that the U.S. Centers for Disease Control and Prevention reported that one fourth of the children who suffer from child abuse and neglect die by suicide and immigrant children are neglected at higher rates. (R. at 7).

Richter requested an injunction from the Beach Glass Division of the Delmont Superior Court, seeking to prevent the government investigation under PAMA and arguing that such an investigation would violate the Free Exercise Clause. (R. at 7–8). On January 27, 2022, the Defendant responded to a comment about the request for injunctive relief at a large press event by stating, "I'm not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children?" (R. at 8). On January 28, 2022, shocked and appalled by the Defendant's statement, Richter amended her Complaint to add a defamation claim against the Defendant. (R. at 8, 44).

SUMMARY OF THE ARGUMENT

Richter is a private figure. She is not a limited-purpose public figure because she did not voluntarily inject herself into the public controversy. An individual can be considered a public figure in two ways. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). In some instances, an individual may achieve "such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Id.* Alternatively, a person may become a public figure for a limited range of issues if he voluntarily injects himself or is drawn into a particular public controversy. *Id.* at 351. Richter was not involved in the accident, nor the blood transfusion, and she did not seek any publicity of the situation. In the alternative, if this Court determines Richter is a limited-purpose public figure, this Court should not apply *New York Times Co. v. Sullivan* to limited-purpose public figures. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The *New York Times* holding did not originally apply to limited-purpose public figures and this country's journalistic landscape has significantly changed since the decision.

Additionally, PAMA violates the Free Exercise Clause of the Constitution. While *Emp. Div., Dep't of Hum. Res. v. Smith* permits the government to pass laws that burden religious practice as long as they are neutral and generally applicable, this decision should be overruled because it is inconsistent with key free exercise precedents and has proven too unworkable to be applied consistently. *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 879 (1990). Even if *Smith* stands, however, the Fifteenth Circuit's decision should be reversed because PAMA is neither neutral nor generally applicable. The law reflects animus towards church members' beliefs and is both overinclusive and underinclusive towards its purported end of preventing child abuse, prohibiting safe blood donations without restricting other activities that pose a

similar risk of child abuse. For these reasons, PAMA violates the Free Exercise Clause of the First Amendment.

ARGUMENT

I. THE US COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT ERRED IN CONCLUDING THAT RICHTER IS A LIMITED-PURPOSE PUBLIC FIGURE RATHER THAN A PRIVATE FIGURE BECAUSE RICHTER DID NOT VOLUNTARILY ASSOCIATE HERSELF WITH THE BLOOD TRANSFUSION AND ACCIDENT, OR ALTERNATIVELY, *NEW YORK TIMES* SHOULD NOT APPLY TO LIMITED-PURPOSE PUBLIC FIGURES.

The U.S. Court of Appeals for the Fifteenth Circuit erred in concluding that Richter is a limited-purpose public figure and that the *New York Times* rule should apply to limited-purpose public figures. A cause of action for defamation exists to protect an individual's basic right to an uninterrupted enjoyment of his reputation. *Jordan v. Kollman*, 612 S.E.2d 203, 206 (Va. 2005) (citing *The Gazette, Inc. v. Harris*, 325 S.E.2d 713, 720 (1985)). While states define the appropriate standard of liability for those who publish defamatory false statements about private figures, public figures need to show the statement was made with actual malice. *Id*. at 207 (citing *Gertz*, 418 U.S. at 347); *see also New York Times*, 376 U.S. at 279–280. An individual can be considered a public figure in two ways. *Gertz*, 418 U.S. at 351. In some instances, an individual may achieve "such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Id.* Alternatively, a person may become a public figure for a limited range of issues if he voluntarily injects himself or is drawn into a particular public controversy. *Id.* Richter is a private figure because she did not voluntarily inject herself into the public controversy surrounding blood donations by children and, prior to the investigation, she led a private life within the community.

In the alternative, the *New York Times* rule should not apply to limited-purpose public figures. *New York Times* did not originally apply to limited-purpose public figures and this

country's journalistic landscape has significantly changed since *New York Times* was decided. *Berisha v. Lawson*, 141 S. Ct. 2424, 2427 (2021) (Gorsuch, N. dissenting). Therefore, Richter is a private figure or, in the alternative, the *New York Times* rule should not apply to limited-purpose public figures.

A. Richter is a private figure because she did not voluntarily inject herself into the public controversy.

An individual can be considered a public figure in two ways. *Gertz*, 418 U.S. at 351. In some instances, an individual may achieve "such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." *Id*. Alternatively, a person may become a public figure for a limited range of issues if he voluntarily injects himself or is drawn into a particular public controversy. *Id.* Such individuals enjoy significantly greater access to channels of effective communication and knowingly runs the risk of closer public scrutiny than a private figure. *Gertz*, 418 U.S. at 344. For example, in *Pauling v. Globe-Democrat Publishing Co.*, the Court held a scientist who submitted a petition to the United Nations urging that an international agreement to stop the testing of nuclear bombs be made and who testified in front of the Judiciary Committee's Subcommittee on Internal Security about nuclear testing was a limited-purpose public figure because he voluntarily projected himself into the arena of public policy, public controversy, and pressing public concern. *Pauling v. Globe-Democrat Publ'g Co.*, 362 F. 2d 188, 197 (8th Cir. 1966). Furthermore, in *Secord v. Cockburn*, the Court held a retired general who advocated on national security issues was a limited-purpose public figure because the policy he sought to shape effects the public. *Secord v. Cockburn*, 747 F. Supp. 779, 784 (D.D.C. 1990); s*ee also James v. Gannet Co.*, 353 N.E.2d 834, 840 (N.Y. 1976) (holding a professional belly dancer was a limited-purpose public figure because she cooperated in an interview with the media and welcomed publicity concerning her performances).

Moreover, in *Gertz v. Robert Welch, Inc.,* this Court overruled *Rosenbloom v. Metromedia, Inc.'s* holding that private status should not hinder the media's right to report. *Rosenbloom*, 403 U.S. 29, 43–44 (1971). In *Gertz*, this Court held that when a plaintiff is deemed a private figure, the media does not have the same liberties in reporting because private figures are more vulnerable to injury and the state has an interest in protecting them. *Gertz*, 418 U.S. at 344, 351. *Gertz* concluded that an attorney was not a public figure even though the attorney voluntarily associated himself with a case that was certain to receive extensive media exposure because he did not "thrust himself into the public spotlight to influence the outcome of a public issue." *Gertz*, 418 U.S. at 352. Likewise, in *Wolston v. Reader's Digest Association, Inc.*, this Court held that an individual, who led a thoroughly private existence prior to an investigation and achieved no fame nor notoriety as a result of the investigation, was a private figure because his involvement in the controversy was limited to defending himself and the fact that the investigation attracted media attention was not dispositive of the public figure issue. *Wolston v. Reader's Dig. Ass'n, Inc.*, 443 U.S. 157, 165–67 (1979).

Here, Richter is a private figure because she did not voluntarily become involved in matters that attract public attention. Unlike the plaintiff in *James* and like the plaintiff in *Gertz*, Richter does not enjoy significantly greater access to channels of effective communication, nor did she knowingly run the risk of closer public scrutiny. (R. 6–7). Rather, Richter was part of a larger group of church members who the media interviewed as they visited the hospital to see Adam. (R. at 6–7). She was not involved in the accident nor the blood transfusions, and she did not seek any publicity in response to the situation. (R. at 6–7).

Moreover, like the plaintiff in *Wolston*, Richter led a thoroughly private existence before the investigation into the Kingdom Church's blood-bank practices for children and achieved no

general notoriety nor assumed a role of special prominence in the affairs of society. (R. at 4). Although Richter is the leader of the Kingdom Church, her management of the Kingdom Church is a behind-the-scenes role, and she has rarely left the compound in the past few years. (R. at 42). The elders are the individuals who are responsible for implementing ideas in the compound, conducting seminars, and managing door-to-door proselytization. (R. at 42). Furthermore, like the plaintiff in *Wolston* and unlike the plaintiffs in *Secord* and *Pauling*, Richter did not try to influence the outcome of the investigation nor was she outspoken about the blood transfusions. (R. at 42). Instead, Richter simply defended and explained the Kingdom Church's central tenet of blood donations when interviewed by the media. (R. at 42). Since Richter was an anonymous individual in the society before the investigation and she did not achieve general notoriety nor tried to influence the outcome of the investigation, Richter is a private figure.

B. Even if this Court finds Richter is a limited-purpose public figure, the *New York Times* rule should not apply.

i. *The* New York Times *rule should not apply because it was originally only applicable to public figures*.

This Court's decision in *New York Times* should not apply to limited-purpose public figures because *New York Times* is only applicable to public figures. In 1964, at the height of the civil rights movement, this Court overturned years of common law libel precedent when an elected official who oversaw the police force in Montgomery, Alabama brought a libel action against the New York Times for publishing an advertisement criticizing his actions against the African American community. *New York Times*, 376 U.S. at 257–58. This Court held that plaintiffs need to satisfy the actual malice standard because the public benefit from publicity outweighed the chance of injury to private character. *Id.* at 281. According to Justice Kagan, this Court only adopted the actual malice standard because it recognized that government officials

were bringing defamation suits to shut down criticism of official policy and not merely to redress damage to personal reputation. Elena Kagan, *A Libel Story: Sullivan Then and Now (reviewing Anthony Lewis, Make No Law: The Sullivan Case and the First Amendment (1991))*, 18 L. and Soc. Inquiry 197, 204 (1993). A few years after the New York Times decision, this Court extended the *New York Times* standard and reasoning to limited-purpose public figures in *Curtis Publishing Co. v. Butts*. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967). There, this Court held that one plaintiff who had a long and honorable career in the United States Army and resigned to engage in political activity and another plaintiff who was the athletic director of the University of Georgia were limited purpose-public figures and subject to the *New York Times* standard. *Id.* In his concurring opinion, Justice Warren concluded that the *New York Times* standard should be extended to limited purpose-public figures because many individuals who do not hold office are intimately involved in the resolution of important public questions, public opinion may be the only instrument by which society can attempt to influence their conduct. *Id.* at 163-164 (Warren E., concurring).

Applying the *New York Times* standard to limited-purpose public figures is unconstitutional because limited purpose-public figures bring cases to redress their personal reputation and not merely to infringe on First Amendment rights. Unlike the police officer who oversaw the police force in Montgomery in *New York Times* and the limited-purpose public figures in *Curtis Publishing Co.*, Richter did not have significant power in the general community before the accident involving the Kingdom Church's members and the investigation into the Kingdom Church's blood donations. (R. at 4). Rather, Richter led a private life away from any public attention and did not participate in any public seeking activities such as the sale of Kingdom Tea, informational seminars, and door-to-door proselytization. (R. at 4). Moreover,

unlike the plaintiffs in *Curtis Publishing Co.*, Richter was not intimately involved in the resolution of the investigation into the Kingdom Church's blood donations nor any other public questions that pertained to the entire Delmont community. (R. at 5). Thus, the Delmont's public did not have a need to use their opinion to attempt to influence Richter's conduct.

Furthermore, unlike government officials who were bringing suits to shut down criticism of official policy, Richter brought this case to redress damage to personal reputation. (R. at 44). Specifically, Richter was shocked and appalled at the Defendant calling her "a vampire who founded a cult that preys on its own children," especially given that the Kingdom Church's blood drives follow American Red Cross guidelines. (R. at 44). Due to Richter's limited participation within the Kingdom Church, the public benefit from publicity in this case is likely limited compared to the possible injury to Richter's private character. (R. at 8). Thus, defamation matters concerning limited-purpose public figures should not warrant the actual malice standard, rather, these plaintiffs should be subject to the negligence standard imposed on private figures.

ii. *This Court should also not apply the* New York Times *rule to limited-purpose public figures because the journalistic landscape has changed since the 1960s.*

The *New York Times* rule should not extend to limited-purpose public figures because limited-purpose public figures do not have a realistic opportunity to counter-act false statements published by media news and online platforms. *See Berisha*, 141 S. Ct. at 2427 (Gorsuch N., dissenting). When this Court originally decided *New York Times*, it took the view that tolerating the publication of some false information was a necessary and acceptable cost to ensure truthful statements vital to democratic self-government. *Id.* at 2428. Yet, over time, the actual malice standard has evolved from a high bar to effective immunity from liability. *Id.* For example, in *Coral Ridge Ministries Media, Inc. v. Southern Poverty Law Center*, the plaintiff, a Christian

non-profit dedicated to spreading the "Gospel of Jesus Christ," was made ineligible for an Amazon program which donated to approved nonprofits because the Southern Law Poverty Center (SPLC) designated it as a hate group due to its biblical views. *Coral Ridge Ministries Media, Inc. v. S. Poverty L. Ctr.*, 142 S. Ct. 2453, 2454 (2022) (Thomas C., dissenting). Even though this designation put Coral Ridge on the same list as groups such as the Ku Klux Klan and Neo-Nazis, the Court of Appeals held that Coral Ridge's complaint did not sufficiently allege that SPLC doubted or had good reason to doubt the truth of its "hate group" designation. *Id.* at 2455. According to Justice Gorsuch, if limited purpose-public figures are required to continue proving actual malice, it will be difficult to ensure online platforms and interest groups are held accountable for publishing falsehoods. *Berisha*, 141 S. Ct. at 2427 (Gorsuch N., dissenting).

Applying the *New York Times* standard to limited-purpose public figures is unconstitutional because limited purpose-public figures do not have a realistic opportunity to counter-act falsehoods. Like the news and online media platforms mentioned in *Berisha*, the media platforms here are monetizing on publishing falsehoods. (R. at 5, 7–8). The Beach Glass Gazette falsely framed the way people think about the Kingdom Church to garner public interest. (R. at 5). Specifically, it led many people to believe that the Church procured minors for blood-banking purposes. (R. at 5). Meanwhile, individuals need to be at least fifteen years of age to join the Kingdom Church. (R. at 4). Although publishing this falsehood led individuals to a debate about blood donations, the Kingdom Church was not able to correct this falsehood and it resulted in the government enacting a law that targeted a central tenet of the Kingdom Church. (R. at 5). Moreover, like the ministry in *Coral Ridge Ministries Media, Inc.* which was designated a hate group and could not participate in an Amazon program due to its biblical views, the outcome of the investigation into the Kingdom Church's religious doctrine may lead to governmental

repression and Kingdom Church members may be forced to flee like they had to flee Pangea. (R. at 5). If the *New York Times* rule is applied to limited-purpose public figures, media organizations and interest groups will continue to be effectively immune from liability for publishing falsehoods. Therefore, extending the actual malice doctrine in *New York Times* to limited-purpose public figures is unconstitutional.

II. *EMP. DIV., DEP'T OF HUM. RES. V. SMITH* SHOULD BE OVERTURNED BECAUSE IT IS INCONSISTENT WITH OTHER FREE EXERCISE JURISPRUDENCE, OR ALTERNATIVELY, THE FIFTEENTH CIRCUIT COURT OF APPEALS ERRED IN CONCLUDING THAT PAMA IS NEUTRAL AND GENERALLY APPLICABLE AS APPLIED TO KINGDOM CHURCH BECAUSE IT WAS MOTIVATED BY ANIMUS AND UNFAIRLY BURDENS LOW-RISK BLOOD DONATIONS.

Investigation of Kingdom Church under PAMA would violate the free exercise rights of church members enshrined by the First Amendment. U.S. CONST., amend. I. In *Employment Division, Department of Human Resources v. Smith*, the Supreme Court held that "application of a neutral, generally applicable law to religiously motivated action" is permissible under the Free Exercise Clause. *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 881 (1990). This Court reasoned that it had only invalidated such neutral and generally applicable laws when the case involved a "hybrid right" combining a free exercise element with some other constitutional protection, such as a case concerning a "communicative activity or parental right." *Id*. at 881–82. While *Smith* is still good law, this Court can overturn a past decision when it has strong reasons to do so, considering factors such as "the quality of [the decision's] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus v. American Federation of State, County, and Municipal. Employees, Council 31*, 138 S. Ct. 2448, 2478–79 (2018).

Here, there are strong grounds for overturning *Smith*, given that: its reasoning was immediately called into serious question; it displays inconsistency with related decisions; the rule has proven unworkable and has been repeatedly avoided; and any reliance on the decision must necessarily be limited by the fact that it has been repeatedly questioned and undermined. Alternatively, if *Smith* remains good law, PAMA should not be applied to Kingdom Church because the law is neither neutral nor generally applicable. The passage of PAMA was closely tied to community backlash against Kingdom Church, and the law was justified as a way to protect children from child abuse despite a lack of evidence that the blood donations it restricts have anything to do with such abuse. (R. at 5–6). Therefore, applying PAMA to Kingdom Church would violate the Free Exercise Clause of the First Amendment.

A. Even if PAMA is neutral and generally applicable, *Smith* should be overturned because it misinterprets other Free Exercise Clause decisions and has proven unworkable in application, without any meaningful countervailing reliance interests.

Presently, *Smith* remains good law, permitting the government to regulate conduct in a way that burdens religious practice when those regulations are neutral laws of general applicability. *Smith*, 494 U.S. at 881. At the same time, *Smith* has often been avoided and undermined. In *Lukumi*, for instance, this Court held that even when a law is facially neutral, it may still violate the Free Exercise Clause if it "targets religious conduct for distinctive treatment." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). Likewise, in *Masterpiece* the Colorado Civil Rights Commission was found to have violated the neutrality requirement by displaying hostility towards toward a baker over his religiously motivated refusal to bake a cake for a same-sex wedding. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Cmm'n*, 138 S. Ct. 1719, 1723–24 (2018). In *Fulton*, this Court once again evaded the *Smith* standard by holding that a law was not generally applicable because it allowed the government to

grant discretionary exceptions, even when they had never actually granted one. *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1878–79 (2021). Finally, in *Tandon*, *Smith*'s reach was narrowed once again in a holding that neutrality is not satisfied if the state treats any comparable secular activity more favorably than religious conduct, even if other secular activities receive similar or worse treatment. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). In 1993, as a response to *Smith*, Congress passed the Religious Freedom Restoration Act ("RFRA") by nearly unanimous margins, which restricted the federal government's ability to burden religious conduct by requiring that it only do so in support of a compelling government interest and using the least restrictive means of fulfilling that interest. 42 U.S.C. § 2000bb-1(a)–(b); *Fulton*, 141 S. Ct. at 1893–94 ("[t]his bill, [. . .] passed in the House without dissent, was approved in the Senate by a vote of 97 to 3, and was enthusiastically signed into law by President Clinton") (Gorsuch, J., concurring); *but see City of Boerne v. Flores*, 521 U.S. 507, 533–35 (1997) (holding that RFRA could not be applied against state laws that would otherwise be constitutionally permissible).

Under *stare decisis*, past decisions ought not be overturned "unless there are strong grounds for doing so," although it "is 'not an inexorable command.'" *Janus*, 138 S. Ct. at 2478 (quoting *Pearson v. Callahan*, 555 U.S. 223, 233 (2009)). *Stare decisis* is "at its weakest when [this Court] interpret[s] the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions." *Id*. (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997)). This is especially true in the First Amendment context, where this Court "has not hesitated to overrule decisions" that conflict with the Constitution. *Id*. at 2478–79.

Even within the *Smith* decision itself, other justices pointed to its weaknesses and questioned the rationale behind its central holding. *See Smith*, 494 U.S. at 891–921 (O'Connor, J., concurring) (Blackmun, J., dissenting). This majority distinguished *Smith* from related Free

Exercise precedents by insisting that the others involved "hybrid" claims relating to multiple constitutional rights rather than Free Exercise alone, then argued that religious protections should be less stringent in criminal cases than in an area like unemployment compensation. *Smith*, 494 U.S. at 881–84. The majority's conclusion that earlier free exercise decisions which overturned burdensome laws did so on the basis of hybrid claims that also involved a second constitutional right was immediately criticized by Justices O'Connor and Blackmun. *Id*. at 896–97, 908 (O'Connor, J., concurring) (Blackmun, J., dissenting). Justice O'Connor pointed out that the relevant precedential cases were decided squarely on free exercise grounds, not any "hybrid" standard, and that this Court's decision required "disregard[ing] our consistent application of free exercise doctrine to cases involving generally applicable regulations that burden religious conduct." *Id*. at 892, 896. According to Justice Blackmun, the hybrid claim view was a "mischaracterize[ation]" of precedents that "effectuate[d] a wholesale overturning of settled law concerning the Religion Clauses." *Id*. at 908. The majority also argued that while the Free Exercise Clause may prohibit a denial of unemployment benefits that burdens religion incidentally, it does not prohibit criminal sanctions that so burden religious conduct. *Id*. at 882–85. This distinction had not been raised in prior cases and ignored the fact that "[a] neutral criminal law prohibiting conduct that a State may legitimately regulate is, if anything, *more* burdensome than a neutral civil statute placing legitimate conditions on the award of a state benefit." *Id*. at 898–99 (O'Connor, J., concurring) (emphasis in original).

In *Janus*, this Court considered whether *stare decisis* required upholding the precedent set in *Abood*, ultimately concluding that it did not based on several factors. *Janus*, 138 S. Ct. at 2479. This Court first emphasized the faulty reasoning of *Abood*, which misinterpreted earlier precedent and applied a standard "that finds no support in our free speech cases." *Id*. at 2479–80.

Moreover, this Court noted that the standard articulated by *Abood* lacked workability, suffering from intolerable vagueness that made consistent application difficult. *Id*. at 2481–82. Meanwhile, subsequent decisions had rendered *Abood* an "anomaly" that stood out from other compelled-speech cases, and this Court "refused . . . to extend *Abood* beyond circumstances where it directly controls." *Id*. at 2483 (citing *Knox v. Serv. Emp. Intern. Union, Loc. 1000*, 567 U.S. 298, 311 (2012); *Harris v. Quinn*, 573 U.S. 616, 627 (2014)). Thus, this Court expressed hope that overturning it would "bring a measure of greater coherence to our First Amendment law." *Id*. at 2483–84. Finally, the reliance value of *Abood* was limited, because the ruling itself "does not provide 'a clear or easily applicable standard,'" and it would have been clear from recent decisions that *Abood* was at risk. *Id*. at 2484–85 (quoting *S.D. v. Wayfair, Inc.*, 138 S. Ct. 2080, 2086 (2018)). Regardless of any reliance interest, it could not "outweigh the countervailing interest [. . .] in having [other people's] constitutional rights fully protected." *Id*. at 2484 (quoting *Ariz. v. Gant*, 556 U.S. 332, 349 (2009)).

Likewise, in *Dobbs* this Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, holding that the decisions' poor reasoning and track record of unworkability were enough to overcome the doctrine of *stare decisis*. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2264 (2022). This Court first noted the difficulty of amending the Constitution, in light of which it must be prepared to overturn "an erroneous constitutional decision," as it had done in cases like *Brown v. Board of Education* and *West Virginia Board of Ed. v. Barnette*. *Id*. at 2262–63. Turning to the usual *stare decisis* factors, this Court concluded that the *Roe* decision stepped "far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed," lacking any ground "in text, history, or precedent" *Id*. at 2265–66. This Court argued that the unworkability of *Roe* was shown in that *Casey* abandoned

the trimester structure articulated in *Roe* in favor of a new "undue burden" standard, which itself continued to produce Circuit conflicts as courts struggled to apply that new standard consistently. *Id*. at 2271–75. Further, in evaluating whether there has been reliance on the decision, this Court emphasized the need to focus on concrete interests, rather than more "intangible" types, which may depend on complex empirical questions that are subject to conflicting arguments and which "this Court has neither the authority nor the expertise to adjudicate." *Id*. at 2276–77. Rather than accepting "generalized assertions about the national psyche," this Court limited reliance interests to the types that develop in "cases involving property and contract rights." *Id*. at 2276.

Under the logic of *Dobbs* and *Janus*, *Smith* should be overturned because the decision is grounded in weak reasoning that is in tension with other relevant Free Exercise cases. As with *Abood* and *Roe*, which each lacked a grounding in precedent and relied on strained interpretations of the Constitution, *Smith* displays serious deficiencies in the quality of its reasoning. Justices O'Connor and Blackmun immediately pointed out that the hybrid right theory on which it relies has no basis in any precedent and flatly contradicts prior holdings on religious liberty. *Smith* went on to argue that criminal penalties are less of a burden on religious practice than denial of unemployment, a baffling argument that Justice O'Connor rightly criticized for its absurd conclusion, and one that is reflective of the weak reasoning on display throughout *Smith*.

Another factor suggesting that *Smith* should be overruled is the unworkability of the standard it has produced, as evidenced by this Court's narrowing of the rule, Congressional action in response to the ruling, and the difficulties Circuit Courts have had applying the rule consistently. Like *Abood*, *Smith* involves an inherent vagueness problem for two reasons: first, its clear inconsistency with prior decisions has left the state of the Free Exercise Clause up in the air, with precedents pulling in different directions; second, the hybrid claim theory it advances is

seemingly disconnected from any preexisting jurisprudence, leaving courts to grope in the dark for an understanding of when such hybrid claims are present. *Smith* is anomalous in the same ways that *Abood* was, and this Court has likewise studiously avoided extending its reach, instead narrowing it repeatedly. *Lukumi*, for instance, rendered *Smith* inapplicable to facially neutral laws that seek to target religious conduct. Likewise, *Fulton* further reduced the reach of *Smith* by holding that a law was not generally applicable because it allowed the government to grant discretionary exceptions. Finally, under *Tandon*, if the state treats any comparable secular activity more favorably, then a restriction on religious exercise is impermissible even if other secular activities receive similar or worse treatment. These cases show this Court carving out exception after exception to the broad principle articulated in *Smith* and finding ways to avoid applying it, but at a certain point the exceptions may ultimately swallow the rule, and greater coherence in the law may be achieved by moving on from *Smith* entirely.

Further evidence of *Smith*'s unworkability can be seen in the fact that shortly after it was decided, Congress passed the RFRA with the explicit purpose of limiting *Smith*'s reach, noting its departure from existing constitutional norms. RFRA was passed unanimously by the House of Representatives and passed the Senate by a vote of 97 to 3, indicating overwhelming support for the pre-*Smith* free exercise standard. Moreover, this Court has repeatedly declined to confront *Smith* directly, instead finding narrow grounds to evade its reach. In *Masterpiece*, for instance, this Court avoided the question of whether a baker could refuse to bake a cake for a same-sex couple by ruling that the hearing he received at the state level had been marred by anti-religious sentiment. Similarly, in *Fulton* this Court found that the City of Philadelphia's option to provide individual exemptions from a law meant that it was not neutral and generally applicable, despite the fact that the city had never granted such an exemption. Given the narrowness of the holding

and the possibility that the city could simply remove the exemption, this decision provides little guidance to lower courts facing similar circumstances. Both the swift and near-unanimous passage of RFRA and this Court's studious evasion of challenges to the *Smith* standard are strong indications that it has not provided a workable rule for resolving such issues, suggesting that it may be ripe for the type of reconsideration this Court performed in *Janus* and *Dobbs*.

Finally, there is not enough of a concrete reliance interest to justify retaining *Smith* despite its severe shortcomings. In *Janus*, this Court noted that *Abood* had been repeatedly called into question in relevant decisions, and that it lacked sufficient clarity to induce reasonable reliance. Similar factors are at work regarding *Smith*, which immediately came under fire from both this Court and Congress and has been repeatedly undermined and evaded, as discussed above. As mentioned in *Dobbs*, any reliance that may exist would need to be the sort that relates to property or contractual rights. Thus, whatever limited reliance may be present should not overcome the strong interest in fully protecting constitutional rights. Based on this and the other factors described, this Court should overturn *Smith*.

B. Given the context in which PAMA was passed and comments made by the Governor, investigation of Kingdom Church under PAMA is not neutral, but is instead motivated by animus toward the church.

In analyzing whether a law is neutral, it is not enough to look at the text of the law, because the Free Exercise Clause "extends beyond facial discrimination" to protect against "masked, as well as overt" government hostility. *Lukumi*, 508 U.S. at 534. This assessment requires that courts "survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." *Id.* (quoting *Walz v. Tax Comm'n of N.Y.C.*, 397 U.S. 664, 696 (1970) (Harlan, J. concurring)). The government may not, however, "impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner

that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece*, 138 S. Ct. at 1731. Under the Free Exercise Clause, "upon even slight suspicion that proposals for state intervention stem from animosity to religion [. . .], all officials must pause to remember their own high duty to the Constitution and the rights it secures" so that "the sole reasons for imposing the burdens of law [. . .] are secular." *Lukumi*, 508 U.S. at 547.

This Court has found that a government's actions were not neutral when the relevant decisionmakers' comments showed hostility toward religious belief. *Masterpiece*, 138 S. Ct. at 1724. In *Masterpiece*, Colorado state courts upheld the Colorado Civil Rights Commission's order requiring a baker to accommodate wedding cake requests for same-sex weddings despite his religious beliefs which prevented him from participating in such weddings. *Masterpiece*, 138 S. Ct. at 1723–26. This Court, however, overturned the Commission's decision as a violation of the Free Exercise Clause based on the Commission's "impermissible hostility" to the baker's sincere religious beliefs. *Id*. at 1729. This Court called attention to comments made by members of the Commission "implying that religious beliefs and persons are less than fully welcome" in the community. *Id*. Although these comments could be interpreted as meaning merely "that a business cannot refuse to provide services based on sexual orientation," they could also be read as "inappropriate and dismissive comments showing lack of due consideration for Phillips' free exercise rights." *Id*. By suggesting that the baker's beliefs were "despicable" and possibly insincere, and by comparing his reliance on them to slavery and the Holocaust, the Commission breached its responsibility to provide fair and neutral enforcement of antidiscrimination laws. *Id*.; *see also Lukumi*, 508 U.S. at 540 (holding that a law was not neutral because the ordinances in question "were enacted 'because of,' not merely 'in spite of' their suppression of [. . .] religious practice") (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)).

Here, there is evidence from the events leading to PAMA's passage and application to Kingdom Church that both were motivated by a desire to suppress church members' practices, with strong indications of animus towards Kingdom Church on the part of Girardeau. The church's blood-banking practices became "part of a statewide controversy," and it was only after this public criticism that the Delmont legislature passed PAMA. (R. at 5–6). Reporting on Adam Suarez' hospitalization mixed discussions of the church's practices with explanations of PAMA's passage. (R. at 6). Like in *Lukumi*, the law at issue in this case was passed because it would restrict the church, not in spite of this fact. (R. at 5–6). Girardeau's subsequent threats to investigate the church have improved her performance in polls and focus groups, and she has included such threats in her campaign materials, indicating that she has effectively made the suppression of Kingdom Church a plank of her platform. (R. 7). Her unfounded implication that the church exploits its children shows a clear animus towards their religious beliefs, the same sort of hostility that was present in *Masterpiece*. (R. 7). Her reference to Emmanuella Richter as a "vampire" and to the church itself as a "cult" only confirms what the other circumstantial evidence suggests: that PAMA was passed with the purpose of interfering with Kingdom Church's blood-banking practices. (R. at 8). While secular blood donations are also restricted under PAMA, the fact is that its passage and application to Kingdom Church were each clearly motivated by animus and a desire to quash the church's religious practices, indicating that the law and subsequent investigation are not neutral and therefore violate the Free Exercise Clause.

C. PAMA is not generally applicable because it purports to protect children from abuse, but primarily targets the low-risk activity of blood donation while treating comparably dangerous secular activities less harshly.

When the government regulates conduct, it "cannot in a selective manner impose burdens only on conduct motivated by religious belief." *Lukumi*, 508 U.S. at 542–43. Evidence of

selective application can include underinclusiveness, as when the government's asserted interest is not pursued in contexts similar to that of the covered religious practice. *Id*. at 544–45. Applying a similar test to that used in an equal protection context, this Court indicated that the government's objective could be inferred from "both direct and circumstantial evidence." *Lukumi*, 508 U.S. at 540 (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). This inquiry can include such considerations as "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decision-making body." *Id*. (citing *Arlington Heights*, 429 U.S. at 267–68). The government may not burden a religious practice any more than it burdens "*any* comparable secular activity," even if other secular activities receive worse treatment. *Tandon*, 141 S. Ct. at 1296. Whether two activities are comparable depends on "the risks [they] pose," rather than the rationales behind them. *Id*. (citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (Gorsuch, J., concurring)).

This Court has held that a law is not generally applicable when it burdens conduct motivated by religious belief in a selective manner. *Lukumi*, 508 U.S. at 543. In *Lukumi*, this Court held that ordinances restricting animal sacrifice were not neutral and generally applicable, and so constituted a violation of the free exercise rights of those who practice the Santeria faith. *Lukumi*, 508 U.S. at 531–32. While the government had legitimate interests in protecting public health and preventing cruelty to animals, this Court pointed out that the law is overinclusive because it "proscribe[s] more religious conduct than is necessary to achieve their stated ends." *Id*. at 538. Because the law "visits 'gratuitous restrictions' on religious conduct," this Court infers that it "seeks not to effectuate the stated governmental interests, but to suppress the

conduct because of its religious motivation." *Id*. The goal of public health could have been served by, for instance, regulating disposal of dead animals, while the animal cruelty interest could have been pursued by regulating the method of slaughter. *Id*. at 538–39. At the same time, this Court also found the law underinclusive, because it "fails to prohibit nonreligious conduct that endangers [the government's] interests in a similar or greater degree." Many sources of animal death and suffering, from hunting and fishing to pest control and euthanasia for strays, were untouched by the law, while there were no health regulations on eating meat that was acquired while hunting. *Id*. at 543–45. Thus, the restriction was found not generally applicable.

Like the ordinances considered in *Lukumi*, PAMA is both underinclusive and overinclusive relative to the government's asserted interest in protecting minors, suggesting that it is not generally applicable. (R. 5–6). On the one hand, there is nothing in the record to connect the idea that there has been an increase in child abuse to Kingdom Church's blood-banking practices, or to any blood donation activities whatsoever. While Girardeau cites concerning statistics relating to a rise in child abuse, none of the statistics she notes has anything to do with blood donation. (R. at 39). There is no evidence that any minor has ever been coerced into donating blood, and the church has always ensured that it follows American Red Cross guidelines. (R. at 5). While Adam Suarez did suffer from an unfortunate and unforeseeable medical incident during a blood donation (from which he fully recovered), one swallow does not a summer make, and one freak incident does not change the fact that the common, low-risk activity of blood donation poses little meaningful risk to young people. (R. at 6–7). The government's asserted interest in preventing child abuse is a pretext meant to distract from the fact that PAMA was enacted with the purpose of restricting Kingdom Church's activities. (R. at 5–6). If the government was genuinely concerned with child abuse, they might have pursued

legislation to control any number of activities and institutions, from schools to sports teams, from hospitals to youth detention centers. The fact that the government's response to child abuse was to pass a law restricting activities such as blood donation with no evidence that it would do anything to address the actual problem of child abuse points to the law's fatal underinclusiveness. (R. at 7). Under *Tandon*, no religious practice may be burdened more than a secular activity of comparable risk.

The law is also overinclusive because there is no reason to think that blood donation by minors could not be made safe from abuse. Vague worries raised in the media over the authenticity of consent could easily be addressed by narrower means, such as a more robust screening process to identify any individuals whose consent is in question. (R. at 5). The American Red Cross has established guidelines under which minors may safely give blood, which the Kingdom Church has always adhered to, and which is in tension with the government's assertion that the only way to protect minors from abuse is to prevent them from making donations. *Id*. At the very least, the government should be required to make a more extensive showing that some connection exists between blood donation and child abuse. Because PAMA selectively burdens religious conduct while ignoring other potential sources of abuse, it is not generally applicable and so violates the First Amendment.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the United States Court of Appeals and deny the respondent's motion for summary judgment, because extending *New York Times v. Sullivan* to limited-purpose public figures is unconstitutional, and because application of PAMA to Kingdom Church violates the Free Exercise Clause.

APPENDIX A

Amendment I to the United States Constitution:

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.

42 U.S.C. § 2000bb-1:

(a) IN GENERAL
Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) EXCEPTION
Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and
(2) is the least restrictive means of furthering that compelling governmental interest.

(c) JUDICIAL RELIEF
A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

COMPETITION CERTIFICATE

Team 3 certifies that:

1. All copies of this brief are the work product of the team members only.
2. The team has complied fully with their law school's governing honor code.
3. The team has complied with all Competition Rules.