mNo. 22-CV-7654

IN THE
SUPREME COURT OF THE UNITED STATES

EMMANUELLA RICHTER,
Petitioner,

v.

CONSTANCE GIRARDEAU,
Respondent.

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

BRIEF FOR THE RESPONDENT

Team 012
Respondent

QUESTIONS PRESENTED

1. Whether the extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional.

2. Whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that the Physical Autonomy of Minors Act is neutral and generally applicable, and if so, should *Emp. Div., Dep't of Hum. Res. v. Smith* be overruled.

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The opinion of the United States District Court of Delmont is unreported, but it is available at *Emmanuella Richter v. Constance Girardeau*, C.A. No. 21-CV-7855 (D. Del. Sept. 1, 2022). R. at 2-20. The opinion of the United States Court of Appeals for the Fifteenth Circuit is unreported, but it is available at *Emmanuella Richter v. Constance Girardeau*, 2022-1392 (15th Cir.). R at 21-38.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered a final judgment on this matter. R. at 38. This Court granted the petition for writ of certiorari R. at 46. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

U.S. Const. amend. I ..... *passim*

STATEMENT OF THE CASE

Emmanuella Richter ("Petitioner") is the founder and head of a rapidly growing religious organization known as The Church of the Kingdom ("Kingdom Church" or "the Church"). Due to political unrest in their home country, Petitioner, her husband, and many members of the Church sought asylum in the United States. They settled in the port city of Beach Glass in the state of Delmont, and Plaintiff is now a U.S. citizen.

Constance Girardeau ("Respondent") is the governor of Delmont.

The Church adherents live in designated compounds, separate from the rest of the state's populace. The compounds have grown outside the city limits of Beach Glass and are now spread throughout the southern portions of the state.

To join the Church, individuals must intensely study to achieve a state of enlightenment and undergo a private confirmation ritual. The process is open to people aged fifteen, or older. Once an individual has become confirmed, he or she must marry and raise children within the faith.

Confirmed members of the Church may not accept blood from or donate blood to a non-member. Accordingly, blood banking is a central tenet of the faith, the Kingdom Church's homeschool activities include blood donations as part of its confirmed students' monthly "Service Projects."

Until 2021, Delmont law prohibited minors under the age of sixteen from consenting to blood, organ, or tissue donations except for autologous donations and in the case of medical emergencies for direct relatives. Following the outcry over the ethics of the Church's blood banking practices, in 2021, the Delmont General Assembly passed a state statute, the Physical Autonomy of Minors Act ("PAMA") 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.

On January 17, 2022, Romero, a member of the Church, was injured in an accident. Adam Suarez, a fifteen-year-old member of the Church, was identified as a blood type match for Romero, his cousin. However, while Suarez was donating blood for the first time in his life, he went into acute shock and was moved to the hospital's intensive care unit.

On January 22, 2022, Respondent, during her re-election campaign, stated that she had commissioned a task force of government social workers to begin an investigation into the Kingdom Church's blood-bank requirements for children.

On January 25, 2022, Plaintiff, as head of the Kingdom Church, requested injunctive

relief from the Beach Glass Division of the Delmont Superior Court.

On January 27, 2022, at a large press event following a campaign rally, Respondent was asked about the request for injunctive relief. Respondent stated, "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?" Upset by this statement, and believing it to be defamatory, on January 28, 2022, Plaintiff amended her complaint to include an action for defamation.

Both the District Court and the Fifteenth Circuit held in favor of Respondent.

SUMMARY OF THE ARGUMENT

This Court should affirm the Fifteenth Circuit's ruling regarding the free speech and free exercise issues and simultaneously uphold *Emp. Div., Dep't of Hum. Res. v. Smith.*

The First Amendment offers robust protections for speakers and religious practitioners. PAMA does not infringe upon those rights as it acts within the bounds of strict scrutiny in furtherance of the protection of minors and general public welfare.

First, regarding the free speech issue, this Court has held that certain classes of defamation plaintiffs, including public figures, must prove that defamatory statements were made with "actual malice" to prove liability. "Actual malice" requires that public-figure defamation plaintiffs prove that defamatory statements were made "with knowledge that [the defamatory statement] was false or with reckless disregard of whether it was false or not." Here, both lower courts correctly designated Petitioner as a limited-purpose public figure. It is appropriate to extend the "actual malice" standard issue to limited-purpose public figures for several reasons. Some of which are: (1) the "actual malice" standard promotes public discussion as intended by the First Amendment, (2) limited-purpose public figures are different from private

individuals, being more akin to public officials and general-purpose public figures, and (3) here, Petitioner is not *somewhat* in the public eye, she is *directly* in the public eye.

Second, regarding the free exercise issue, PAMA is neutral and generally applicable. The statute does not single out one religion, but rather regulates neutrally within the bounds of the state's control, and the purpose of the law stems from the governmental effort to protect the safety and bodily autonomy of children, not attack free exercise rights. The statute is also general—not selectively enforced—and survives strict scrutiny as advancing the government's compelling interest in free speech rights through a narrowly tailored language that focuses on a limited group of minors in regard to donating blood or organs. Furthermore, this Court should uphold *Smith* based upon *stare decisis* and because it is more workable for evaluating laws than strict scrutiny would.

ARGUMENT

I. Extending "Actual Malice" to Limited-Purpose Public Figures is Constitutional Because the "Actual Malice" Standard Promotes Public Discussion as Intended by the First Amendment.

The First Amendment to the United States Constitution states, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The Framers of the Constitution included this provision in the Bill of Rights to ensure that the government would not restrict the "unfettered interchange of ideas," and to ensure the ability to speak on matters of public interest without fear of prosecution. *See Roth v. United States*, 354 U.S. 476, 484 (1957) (quoting 1 Journals of the Continental Congress 108 (1774)). To that end, this Court has held that certain classes of defamation plaintiffs must prove that defamatory statements were made with "actual malice" to prove liability. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964); *Gertz*, 418 U.S. at 35.

"Actual malice" requires that public-figure defamation plaintiffs prove that defamatory statements were made "with knowledge that [the defamatory statement] was false or with reckless disregard of whether it was false or not." *Sullivan*, 376 U.S. at 280. "Actual malice" is harder to prove than "ordinary negligence," which is what private-person defamation plaintiffs must prove. *See generally* David Elder, *§ 6:4 Application of the negligence standard—In general*, Defamation: A Lawyer's Guide (2022). This higher standard affords the freedom of expression "the breathing space [it] need[s] to survive" *Sullivan*, 376 U.S. at 272. The "actual malice" standard allows people to freely discuss public figures and public issues without fear of committing defamation. *See Curtis Publishing*, 388 U.S. at 162-64. This is because "uninhibited, robust, and wide-open" public discussion necessarily includes "vehement, caustic, and sometimes unpleasantly sharp attacks on" public figures. *Sullivan*, 376 U.S. at 270. These "excesses and abuses" are protected by the First Amendment because this Court has found, they are "inevitable in free debate." *Id.* at 271 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940)).

The "actual malice" standard applies to public figures generally. *See Gertz*, 418 U.S. at 351. This is because public figures, regardless of how they attained their status, "assume special prominence in the resolution of public questions." *Id.* There are two types of public figures. The first are "all-purpose" public figures. All-purpose public figures are those who, "by reason of their notoriety of their achievements or the vigor and success with which they seek the public's attention," are properly categorized as public figures. *Id.* at 342. The second type of public figure, most pertinent here, are "limited-purpose" public figures. Limited-purpose public figures are those that "voluntarily inject [themselves] or [are] drawn into a particular public controversy," thereby becoming a public figure on a limited range of issues. *Id.* at 351.

The "actual malice" standard is necessary in preventing persons from being "discouraged in the full and free exercise of their First Amendment rights." *Washington Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966). The threat of a defamation suit may chill First Amendment exercise, as not all individuals who "exercise their right to criticize" public figures have the resources to defend against a defamation suit. *Cf. id.* Thus, for fear of liability and a costly lawsuit, individuals "tend to become self-censors," unless they are assured freedom from liability. *Id.*

A. Extending the "actual malice" standard to Petitioner is constitutional because the public controversy surrounding her Church, combined with Petitioner's status as the Church's leader, implicates First Amendment concerns.

The sheer physical presence and public notoriety of Petitioner's organization make it so that Petitioner is wholly indistinguishable from a private person. The Church built a "wide following" that has since "grown through converts and immigration," and that the Church's compounds have "now spread throughout the southern portions of the state." R. at 3-4. Furthermore, the Church is fully within the public eye and is the subject of widespread public discourse. Notably, the Church gained mass attention through the publicization of its blood-banking practices by *The Glass Beach Gazette* in 2020, and again in 2022 upon awareness of the story of Adam Suarez, a minor and member of the Church who went into acute shock after donating blood. *Id.* at 5-7. Simultaneously, Respondent began to focus her campaign efforts on child safety issues generally, and on the Church's blood-banking practices particularly. *Id.*

Because the Church is the subject of wide public controversy, it is only right that Petitioner, as leader and head of the Church, be held to the same degree of public interest and scrutiny. *Gertz*, 418 U.S. at 351 (noting that it is the depth of one's involvement in a public

controversy that is relevant to their status as a public figure); *Secord v. Cockburn*, 747 F.Supp. 779, 783-84 (D.D.C. 1990) (noting that Plaintiff's status as a "senior executive[]" "much more involved in management . . . than in hands-on operations" were considerations in designating the plaintiff a public figure). This is because the public "has a legitimate and substantial interests in the conduct of" Petitioner, who, by virtue of her position, "play[s] an influential role in ordering society." *Cf. Curtis Pub. Co. v. Butts*, 388 U.S. 130, 164 (1967). While true that Petitioner was not, herself, within the public eye (instead operating in a "behind-the-scenes" role), this does not detract from the public's interest in discussing Petitioner and her Church's operations in resolving the controversy over the ethics of the Church's blood-banking practice. By virtue of her position and the depth of her involvement in the Church's practices, Petitioner is virtually indistinguishable from a private person. Thus, as applied to Petitioner, the "actual malice" standard is constitutional.

Public discussion about Petitioner is important to the controversial public question of the Church's blood-banking practices relating to the safety of minors, and thus implicates First Amendment concerns. This is particularly true with regard to Respondent's statements regarding Petitioner. First Amendment protections for defamation defendants have been recognized as crucial to circumstances such as the one present in this case; discussion on public issues underlies the motivations for the First Amendment's Free Speech Clause. *See Roth*, 354 U.S. at 484. Without the protection afforded to the public by the "actual malice" standard, the public may "tend to . . . self-censor[]." *Keogh*, 365 F.2d at 968.

Self-censorship on matters of public concern is incongruent with free speech. This incongruence necessitates the extension of "actual malice" to all public figures, even limited-purpose public figures. As Petitioner "assume[s] prominence in the resolution of public

questions," *Gertz*, 418 U.S. at 351, she is rightfully subject to heightened public scrutiny. *See Curtis Publishing*, 388 U.S. at 163-64. As far as the constitutionality of "actual malice" is concerned, Petitioner as a limited-purpose public figure is indistinguishable from general-purpose public figures and public officials. Thus, holding Petitioner to a lower standard would pose a logical incoherence.

B. Extending "actual malice" to limited-purpose public figures generally is constitutional because limited-purpose public figures are different from private individuals, being more akin to public officials and general-purpose public figures.

The Fifteenth Circuit noted that limited-purpose public figures are "not so clearly different" from private individuals, which makes the "actual malice" standard inappropriate for them. R. at 31. This is untrue with regards to Petitioner specifically, and it is also untrue concerning limited-purpose public figure plaintiffs generally. There are numerous examples of limited-purpose public figures who, unlike private persons, were in the public eye by voluntarily injecting themselves into a public controversy to gain public attention and influence public opinion.

For example, in *Secord v. Cockburn*, the plaintiff was a limited-purpose public figure in part because he appeared at political gatherings, on network television, and in publication (on one instance, even discussing the alleged defamation giving rise to his suit). *Secord,* 747 F.Supp. at 784. Another example comes from *Pauling v. Globe-Democrat Publishing Company*—there, the plaintiff was a limited-purpose public figure because he "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). Finally, in *Pauling v. National Review, Incorporated*, the plaintiff was a limited-purpose public figure because he spoke at over 750

engagements about nuclear war, in addition to traveling the world to speak on the matter and even winning the Nobel Peace Prize for his efforts. *Pauling v. Nat'l Review, Inc.*, 49 Misc.2d 975, 980-81 (N.Y. 1966).

These plaintiffs were not private persons, nor were they "not so clearly different" from private individuals, as the Fifteenth Circuit takes issue with. R. at 31. Rather, they were individuals who put themselves in the public eye to influence public concern. These examples show that the First Amendment concerns implicated by public figures and general-purpose public figures are also implicated by limited-purpose public figures. Here, Petitioner is akin to the limited-purpose public figure plaintiffs in *Secord* and *Pauling* because Petitioner has made herself the "face" of the Church. She has actively projected herself into the arena of public policy by creating such a massive organization that, practically, operates as its own state. She speaks on behalf of the massive organization and is virtually indistinguishable from the Church.

Thus, extending the "actual malice" standard to limited-purpose public figures is wholly constitutional.

C. This case is a poor vehicle for reviewing the "actual malice" standard as applied to plaintiffs "somewhat in the public eye" because facts giving rise to such an issue are neither present nor relevant.

The Fifteenth Circuit alludes to those individuals "*somewhat* in the public eye, or *somewhat* in a public controversy, even if barely," to which courts might ascribe the "actual malice" standard. *R.* at 32. This alludes to misgivings surrounding the "actual malice" standards in today's "media landscape" —namely, that "virtually anyone in this country can publish virtually anything for immediate consumption virtually anywhere in the world." *Berisha v. Lawson*, 141 S. Ct. 2424, 2427 (2021) (Gorsuch, J. dissenting). Admittedly, "in a world in which

everyone carries a soapbox in their hands," *id.*, it may be difficult to decide who is and who is not a limited-purpose public figure for defamation purposes.

First, as a threshold matter, facts giving rise to such an issue are absent here. For the reasons stated prior, Petitioner is wholly and indisputably within the public eye and a matter of public concern, as she is the head of an organization at the forefront of a public controversy. The Fifteenth Circuit's misgivings of a plaintiff's potentially ambiguous status are hypothetical in this case. Thus, to use this case to give weight to this concern is inappropriate.

Second, even if such facts were present here, difficulties in deciding whether a plaintiff is a "limited-purpose public figure" because they were "somewhat in the public eye" are irrelevant in deciding whether the "actual malice" standard is constitutional. The discussion of an individual "somewhat in the public eye" nonetheless implicates the First Amendment value that "freedom of discussion 'must embrace all issues about which information is needed or appropriate to enable the'" public to resolve important public questions. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 147 (1967) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940)). The risk of defamation to those "somewhat in the public eye" therefore persists. However, this risk errs on the side of free speech, in granting the First Amendment the "breathing space [it] need[s] to survive." *Sullivan*, 376 U.S. at 272.

D. That the "actual malice" standard was the result of a "policy-driven decision" is irrelevant to its constitutionality because the standard has been affirmed and extended, cementing its importance to the freedom of speech.

The crux of the Fifteenth Circuit's problem with the "actual malice" standard was that it was the result of an alleged "policy-driven decision." The "actual malice" standard is an important measure in safeguarding free speech on matters of public concern because "[a]t the

heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas on matters of public interest and concern." *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988).

Recognizing the importance of the "actual malice" standard to free speech, the Court extended the standard outward from public official plaintiffs to numerous plaintiff classes and free speech contexts. As previously noted, the Court extended the standard to public figures, both general- and limited-purpose *Gertz*, 418 U.S. at 351. Moreover, this Court has extended "actual malice" to other Free Speech contexts, including intentional infliction of emotional distress claims, *Falwell*, 485 U.S. at 56 and even to product disparagement claims. *See generally Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 (1984).

The fact that this Court has affirmed and extended "actual malice" outside of public officials contradicts the Fifteenth Circuit's characterization of "actual malice" as merely "reflexive[]." R. at 32. Rather, the Court's commitment to the "actual malice" standard is deliberate and thoughtful, as it has recognized the standard's importance to the unfettered interchange of ideas.

The "actual malice" standard, then, is constitutional, as expanded to limited-purpose public figures.

II. The Fifteenth Circuit correctly ruled that PAMA does not violate the Free Exercise Clause of the First Amendment because PAMA is neutral and generally applicable under *Smith*.

A. PAMA satisfies *Smith* because it does not target the Church by its text or operation, extends to all minors, and contains no exemptions for secular conduct.

The Fifteenth Circuit correctly ruled that PAMA is neutral and generally applicable, and thus constitutional. In doing so, the Fifteenth Circuit correctly interpreted the Free Exercise Clause of the First Amendment in accordance with *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872 (1990). Therefore, the Court did not err when it granted summary judgment on Petitioner's free exercise claim in favor of Respondent.

The Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I, XIV; *see Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940). The Free Exercise Clause applies to the state of Delmont through the Fourteenth Amendment.

Smith sets forth the standard for evaluating laws that burden the free exercise of religion. In *Smith*, this Court held 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 prescribes) conduct that his religion prescribes (or proscribes).'" *Smith*, 494 U.S. at 879 (quoting United *States v. Lee*, 455 U.S. 252, 263 n. 3 (1982)). Such a law "need not be justified by compelling governmental interest" even if it burdens "a particular[] religious practice." *Smith*, 494 U.S. at 886 n.3. If a law is not neutral or generally applicable, strict scrutiny applies. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Accordingly, the Fifteenth Circuit correctly concluded that since PAMA is neutral

and generally applicable, the Church's blood banking practices do not excuse it from compliance with PAMA.

1. Neutrality

To assess neutrality, a court must first determine whether a law discriminates on its face: "[a] law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." *Id.* at 534. Here, PAMA prohibits the procurement, donation, or harvesting of a minor's bodily organs, fluids, or tissue, regardless of profit or the minor's consent. R. at 24. Because PAMA extends to all minors and does not mention any religious group, or religion at all, it is facially neutral.

However, "facial neutrality is not determinative." *Lukumi*, 508 U.S. at 534. A court must look beyond a law's text. *See id.* One way to assess whether a law has a discriminatory objective is through its "operation." *Id.* at 535. If its application is adverse to a particular religion or religious practices, this impact may demonstrate impermissible targeting of that religion. *Id.* For example, in *Lukumi* this Court found that the operation of a set of city ordinances was discriminatory towards the Santeria Church's practice of animal sacrifice. *Id.* The ordinances prohibited animal killings for ceremonial purposes but contained carve-outs for nearly all other purposes, including food consumption, licensed food establishments, hunting, pest extermination, and euthanasia. *Id.* at 537. Therefore, this Court found that the ordinances had the effect of only suppressing the Santeria Church's ceremonial animal sacrifices. *Id.* at 536.

Here, PAMA does not have any similar discriminatory effect. While PAMA bars minors (and therefore minors in the Church) from donating blood, it does not entirely halt the Church's blood banking practice since all other members may still participate. Further, PAMA does not "single[] out" the Church's blood banking practices. *Id.* at 538. Instead, PAMA extends to all

minors and makes no exceptions, in contrast to the ordinances in *Lukumi*. Last, PAMA applies not only to blood donations but also to the procurement, donation, and harvesting of bodily organs and tissue. The fact that PAMA prohibits other conduct in addition to blood donations evidences that it was not enacted to specifically target the Church's blood banking practices.

Another way to assess a law's neutrality is through the additional factors outlined in *Lukumi*:

> . . . 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 decisionmaking body.

Id. at 540.

In *Lukumi*, this Court found the ordinances lacked neutrality because of events and statements prior to their implementation, i.e., the city had never expressed concern over or addressed animal sacrifice until the Santeria Church made plans to open in the city, and city meeting records revealed direct hostility towards the Santeria Church and its practice of animal sacrifice both by community members and city officials. *See id.* at 541–43.

Similarly, in *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, this Court found that the system of review under an anti-discrimination statute lacked neutrality. The commission with authority to grant exemptions from complying with the statute was directly hostile towards a baker's religious beliefs, denying him an exemption while granting exemptions for secular bakers. *See Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1730–32 (2018).

Here, Petitioner contends that PAMA was enacted to target the Church following *The Beach Glass Gazette*'s story about its blood banking practices. R. at 24. Respondent respectfully acknowledges how PAMA might affect the Church's sincerely held beliefs and practices. However, the timeline of PAMA's passage following the *Gazette*'s story does not establish an

objective of suppressing Petitioner's religious practices. To the contrary, the facts establish otherwise:

1. Prior to the passage of PAMA there was a similar law in place which provided that minors under the age of sixteen could not consent to blood, organ, or tissue donations except for autologous donations in the case of medical emergencies for consanguineous relatives. R. at 5. This contrasts with *Lukumi*, where the city had never considered legislation about animal sacrifice until the Santeria Church made plans to open in its community. *See Lukumi*, 508 U.S. at 541–43. PAMA is nearly identical to its predecessor but no longer contains an exception for family emergencies. Thus, Petitioner cannot claim that PAMA's primary purpose is to suppress Petitioner's religion since it is merely a continuation of an already existing law to protect minors from undue familial pressure.

2. The community was not upset about the Church's presence in Delmont (as in *Lukumi*) or religion at large (as in *Masterpiece Cakeshop*). Rather, the concern was about minors' ability to consent to obligatory blood donations. *See* R. at 23.

Likewise, Respondent's support for PAMA is part of her broader mission to protect the well-being of children. Girardeau Aff. at 4–6. When Respondent expressed her support for PAMA, the Delmont legislature had already drafted it. *Id.* at 3. Accordingly, the investigation into the Church's blood banking practices was part of PAMA's enforcement, and Respondent fulfilling her campaign promise to protect the children of Delmont.

3. There is no evidence in the record of a specific discriminatory intent by the legislature, or Respondent in her official role as governor, towards the Church before passing PAMA (in contrast to the repeated and disparaging remarks about religion in *Lukumi* and *Masterpiece Cakeshop*. *See Lukumi*, 508 U.S. at 451; *See Masterpiece Cakeshop*, 138 S. Ct. at 1729).

Respondent acknowledges her comment about the Church after PAMA's enactment during her campaign on January 28, 2022. *See* R. at 26. However, since it was made in the personal context of her running for office and not in her capacity as governor, it does not factor into PAMA's neutrality.

In summary, since PAMA is facially neutral, does not discriminate in its operation as to single out the Church, and was a continuation of a previous law to promote minors' safety, this Court should find that PAMA is neutral.

2. General Applicability

To satisfy general applicability, a law must not "consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (quoting *Smith*, 494 U.S. at 884). A law may also lack general applicability if "it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interest in a similar way." *Id.* at 1877.

In *Lukumi*, this Court found that ordinances intended to prevent animal cruelty and protect public health were not generally applicable since the ordinances contained extensive exemptions for secular conduct but barred religious animal sacrifice. *See id.* at 544–46. Similarly, in *Fulton*, a city denied a religiously affiliated foster care agency a contract to continue operating because the agency refused to certify same-sex couples as foster parents on religious grounds. *Fulton*, 141 S. Ct. at 1878. In *Fulton* this Court concluded that the law at issue was not generally applicable since exemptions were made at a government official's discretion. *Id.*

Unlike the laws in *Lukumi* and *Fulton*, PAMA is not underinclusive. PAMA extends to all minors without exception. It does not distinguish between secular or religious blood donations

by minors. It bars all such conduct. In addition to containing no enumerated exceptions, PAMA has no "mechanism" for the government to grant "individualized exceptions." *Id.* Thus, PAMA has no features that would undermine its objective to protect children. Further, PAMA's neutrality strongly indicates it is also generally applicable. *See Lukumi*, 508 U.S. at 531.

Additionally, Respondent emphasizes that the Fifteenth Circuit was correct that *Smith*'s analysis for "hybrid situation[s]" where a law implicates free exercise "in conjunction with other constitutional protections" does not apply. *Smith*, 494 U.S. at 881–82. Such a hybrid situation arose in *Wisconsin v. Yoder*. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972). However, according to the Fifteenth Circuit, *Yoder* is inapplicable because the present case does not involve education.

Accordingly, this Court should affirm the Fifteenth Circuit's finding that PAMA is neutral and generally applicable. PAMA and Respondent's investigation into the legality of the Church's blood banking practices under PAMA are constitutional under the Free Exercise Clause of the First Amendment. While PAMA may incidentally burden the Church's blood banking practices, this does not excuse it from complying with PAMA.

B. This Court should uphold *Smith* based upon *stare decisis*.

Respondent maintains that *Smith* should be upheld by application of the doctrine of *stare decisis*. Courts turn to the *stare decisis* doctrine when evaluating precedent. *See, e.g.*, *Janus v. Am. Fed'n of State*, 138 S. Ct. 2448, 2478 (2018). Common considerations include whether the decision was well-reasoned, its workability, and its "consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Id.* At 2478–79. These considerations, along with *Smith*'s historical underpinnings, establish that *Smith* should be upheld.

1. *Smith*'s central contention that the right of free exercise does not excuse compliance with neutral laws of general applicability has long-standing roots in this Court's jurisprudence, dating from the 1878 decision *Reynolds v. United States*.

Smith is not a "radical" departure from how courts evaluate free exercise claims. *See* R. at 35. The Fifteenth Circuit erroneously states that *Smith* has its roots in the 1940 decision, *Minersville School Dist. v. Gobitis*. *See id.* Rather, *Smith*'s contention that religious practice does not excuse compliance with otherwise valid laws dates to *Reynolds v. United States* in 1878. *See Smith,* 494 U.S. at 879 (discussing *Reynolds v. United States*, 98 U.S. 145 (1878)). In *Reynolds*, this Court upheld a law criminalizing polygamy reasoning that a law may not interfere with belief and opinion but may with practice. *Reynolds*, 98 U.S. at 166–67. Otherwise, the law would "permit every citizen to become a law unto himself." *Id.*

This Court did not establish heightened scrutiny for free exercise claims until 1963. *See Sherbert v. Verner*, 374 U.S. 398, 403 (1963). However, following *Sherbert*, courts hesitated to apply strict scrutiny to free exercise challenges. It burdened courts with weighing religious claimants' interests against government interests. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) (asserting that enforcing neural laws cannot depend on "measuring the effects of a governmental action on a religious objector's spiritual development"). Although technically subject to strict scrutiny, neutral laws of general applicability were upheld in practice. *See United States v. Lee* at 261; *Bowen v. Roy*, 476 U.S. 693, 712 (1986); *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 392 (1990) (upholding neutral and generally applicable laws). In the handful of cases where this Court faithfully applied strict scrutiny, it was in the narrow context of unemployment compensation, or hybrid rights. *See Smith*, 494 U.S. at 883, 881.

The Fifteenth Circuit asserts that Congress and this Court have worked around *Smith*. R. at. 35–6. It is true that following the *Smith* decision, Congress passed the Religious Freedom Restoration Act ("RFRA") which statutorily codified strict scrutiny for even generally applicable laws. *See id.* But this Court declined to extend RFRA to state laws in *City of Boerne v. Flores*. *See City of Boerne*, 521 U.S. 507 (1997). It also upheld *Smith* as recent as 2021 in *Fulton*. *Fulton*, 141 S. Ct. at 1877.

Thus, *Smith* is not an outlier but firmly rooted in the history of free exercise rights and continues to direct courts. Overturning *Smith* now would be a departure from thirty-three years of precedent.

2. *Smith* is more workable than strict scrutiny since it avoids weighing religious practices against government interests, places religious and nonreligious conduct on equal grounds, and affords the right to free exercise great protection.

The Fifteenth Circuit asserts that *Smith* is unworkable. R. at 36. However, Respondent maintains that it is *Sherbert* that is unworkable, and that *Smith* offers an effective framework for free exercise challenges. This Court should uphold *Smith* for the following reasons:

1. Strict scrutiny requires courts to weigh religious claimants' interests against government interests, an uncomfortable task that leads to inconsistent outcomes. *See Lyng*, 485 U.S. at 452 ("courts cannot reconcile [...] demands on government [...] rooted in sincere religious belief in so diverse a society"); *Smith*, 494 U.S. at 885 ("repeatedly and in many different contexts [this Court has] warned that courts must not presume to determine the place of a particular belief in a religion").

Take the *Smith* decision itself. In her concurrence, Justice O'Connor asserted that the state's interest in curbing drug use outweighed the Native American Church's interest in using

peyote for religious purposes because peyote was a Schedule I controlled substance. *See id.* at 905–6. The dissent concluded the opposite since peyote was essential to the Native American Church's long-standing rituals. *See id.* at 919–21. The majority avoided balancing the Native American Church's interests against the state's by finding that the law at issue was neutral and generally applicable, and thus constitutional. *See id.* at 890.

This Court in *Smith* recognized *Sherbert*'s unworkability, asserting that it contradicted "both constitutional tradition and common sense" to make compliance with valid laws dependent on one's religious belief "except where the State's interest is 'compelling.'" *See id.* at 885. Therefore, *Smith* draws a clearer line than strict scrutiny by requiring that a law first meet the threshold requirements of neutrality and general applicability. It also prevents courts from (albeit unintentionally) imbuing personal value judgments about a religious practice into their analysis.

2. Subjecting all free exercise challenges to strict scrutiny places religious conduct on higher grounds than nonreligious conduct. Whether or not overruling *Smith* would lead to a wave of religious exemptions or claims thereof (as *Smith*'s proponents fear), strict scrutiny allows religious claimants to avoid compliance with neutral laws from which others cannot claim exemptions. The dissent in *Roman Catholic Diocese of Brooklyn v. Cuomo* asserted that laws may not treat secular conduct "more favorably" than religious. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 80 (2020). The reverse is also true. "The First Amendment must apply to all citizens alike" and cannot give anyone "a veto" over valid laws. *See Lyng*, 485 U.S. at 452.

3. Laws that are not neutral and generally applicable, and thus fail to satisfy *Smith*, are still subject to strict scrutiny. In this way, *Smith* serves as a filter for valid laws as distinguished from laws that suppress religion. Accordingly, free exercise challenges often prevail where a law

targets religion. *See Lukumi*, 508 U.S. at 534; *Fulton*, 141 S. Ct. at 1878; *Masterpiece Cakeshop*, 138 S. Ct. at 1730–32.

4. Under *Smith*, the right to free exercise is still afforded great protection. As noted above, laws that fail *Smith*'s neutrality and general applicability requirements are subject to strict scrutiny, where free exercise challenges are more likely to prevail. Even where they fail, the political process still offers recourse. This Court noted in *Smith* that this was the case in several states where drug laws contained exceptions for religious peyote use. *See Smith*, 494 U.S. at 906. Further, *Smith* in no way altered the absolute right to hold religious opinions and beliefs. This Court explained at length that laws may not regulate or compel religious beliefs, punish the expression of religious beliefs, or impose "special disabilities" due to religious belief or status under the First Amendment. *Id.* at 877.

In summary, *Smith* provides a more workable framework than *Sherbert* because it strikes a balance between legitimate government interests, secular conduct, and the right to free exercise that strict scrutiny cannot. History demonstrates that *Sherbert* did not work for courts. Yet the principles articulated in *Reynolds* continue to provide guidance. Nothing suggests this would not continue to be the case today if the Court overruled *Smith*.

C. Even if this Court finds that PAMA is not neutral and generally applicable or overturns *Smith*, PAMA nevertheless survives strict scrutiny.

PAMA survives strict scrutiny since Respondent's interest in protecting the well-being of minors is compelling and PAMA is narrowly tailored to that interest. A law only surpasses strict scrutiny if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Lukumi,* 508 U.S. at 546. Where a law implicates free exercise, if a "government can achieve its interest in a manner that does not burden religion, it must do so." *Fulton*, 141 S. Ct.

1868, 1881 (2021). PAMA advances a compelling interest through the least intrusive means, and thus is narrowly tailored.

1. **Respondent's interest in upholding and enforcing PAMA against the Church is compelling since protecting children is "of the highest order."**

This Court has long recognized a compelling interest in protecting "the physical and psychological well-being of minors." *Sable Commc'ns of California, Inc. v. F.C.C.,* 492 U.S. 115, 109 (1989). Given spikes in abuse and neglect, particularly for children of immigrants, and the mental, emotional, and physical crises faced by children in Delmont, PAMA aims to protect children from harm—undoubtedly an interest "of the highest order." R. at 24-25 (discussing Department of Health and Human Services and U.S. Centers for Disease Control and Prevention data on child abuse and neglect); *Lukumi*, 508 U.S. at 546. Children within the Church deserve the same protections as children outside of it.

Delmont's interest is particularly compelling as applied to the Church. Many members of the Church are immigrants from the country of Pangea. R. at 3. These are the exact children that fall prey to parental neglect, as per the Department of Health and Human Services and U.S. Centers for Disease Control and Prevention data. Furthermore, since children within the Church live in designated compounds isolated from the general population of the state, they are arguably more vulnerable. Thus, Respondent's interest in upholding PAMA and conducting the investigation is compelling as applied to the Church.

2. **PAMA is narrowly tailored since it serves Delmont's interest through the least restrictive regulatory means and is not overinclusive or underinclusive.**

To satisfy the second part of the strict scrutiny, PAMA must be narrowly tailored to Delmont's interest in protecting children. *See Lukumi,* 508 U.S. at 546. Public health measures

are not narrowly tailored if they allow similar conduct that creates a more serious health risk. *Id.* at 544-45.

In *Lukumi*, the government's interest in banning religious animal sacrifices was the protection of public health against unsanitary disposal of carcasses. *Id. at 538.* But this Court noted that other exceptions to the regulation in question (such as hunters killing animals) created the same public health risk, and thus struck down the statute. *Id. at 545.* Similarly, in *Fulton*, this Court found that the city's purported interest in maximizing the number of foster families did not justify burdening the religiously affiliated foster care agency's free exercise rights. *Fulton,* 141 S. Ct. at 1890.

PAMA does not suffer from poor tailoring as in *Lukumi* and *Fulton*. First, PAMA is not underinclusive. The Fifteenth Circuit notes that Adam Suarez's donations to Henry Romero would have been legal before PAMA. R. at 6. However, PAMA's lack of exemptions bolsters its interest in protecting children since relatives, not only strangers, can compromise the well-being of children. Further, PAMA accounts for more than just blood donations: the procurement, donation, or harvesting of organs, fluids, or tissue to protect minors from other bodily harm.

Second, PAMA is not overinclusive. Exempting the Church from compliance with PAMA would undermine Delmont's interest in protecting children because it would leave a swath of minors more vulnerable than other minors in the state. Moreover, PAMA only prohibits blood donations for minors under the age of sixteen, while the minimum age for joining the Church is fifteen. R. at 6, 4. Additionally, the Church's blood donations occur on a schedule and on terms permissible under American Red Cross guidelines. R. at 5. The American Red Cross terms state that the minimum age to donate blood is seventeen, or sixteen with parental consent. The American Red Cross terms clearly do not allow babies or small children to donate blood.

Therefore, PAMA is only impacting minors between the age of fifteen and sixteen within the Church. Hence, there is no less restrictive way to enforce the law. Finally, PAMA does not *unnecessarily* burden the Church's blood banking practice since all other members can still participate in blood donations.

In summary, Respondent has a compelling interest in upholding and enforcing PAMA against the Church to protect the children of Delmont. PAMA is narrowly tailored to that interest since it extends to all minors without exception, while permitting non-minor members of the Church to participate in blood banking.

CONCLUSION

For the foregoing reasons, Respondent requests that this Court AFFIRM the judgment of the United States Court of Appeals for the Fifteen Circuit regarding the free speech and free exercise issues and simultaneously UPHOLD Smith.

Respectfully submitted.

APPENDIX A

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I

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.

Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition

Brief Certificate

Team 012 Asserts:

I. The work product in all copies of Team 012's brief is the work of only the team members. No outside assistance was provided at any point.

II. Team 012 has complied fully with our school's honor code throughout this process.

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Signed by: Team 012

Date: Jan. 31, 2023