No. 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

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BRIEF FOR THE PETITIONER

TEAM 013

Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the recent extension of the *New York Times* standard to limited-purpose public figures should be overturned as unconstitutional in light of its vagueness and lack of historical grounding.
2. Whether *Smith*'s flaws require it to be overturned, or, in the alternative, if PAMA meets the oblique *Smith* standard of neutrality and general applicability.

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The opinion of the United State Court of Appeals for the Fifteenth Circuit is unreported, but it may be found at *Richter v. Girardeau,* 2022-1392 (15th Cir. 2022) and is reprinted in the record. R. at 21–38.

JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on this matter on December 1, 2022. R. at 38. Petitioner filed a timely Petition for Writ of Certiorari, which this Court granted. R. at 46. Therefore, this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amends. I, IX, X, XIV.

42 U.S.C. §§ 2000bb to 2000bb-4.

Physical Autonomy of Minors Act

STATEMENT OF THE CASE

A. Procedural History

On January 25, 2022, the Plaintiff-Petitioner Emmanuella Richter, leader of Kingdom Church, filed for injunctive relief from the Beach Glass Division of the United States District Court for the District of Delmont on the grounds that the Physical Autonomy of Minors Act ("PAMA") violated the Petitioner's Free Exercise rights. R. at 7–8. Two days after the filing, the Petitioner amended the complaint to include an action for defamation in response to the

Defendant's statements to the press that Plaintiff is "a vampire who founded a cult that preys on its own children." R. at 8. The Defendant moved for, and the District Court judge granted, summary judgment on both counts on September 1, 2022. R. at 20. The District Court held PAMA constitutionally sufficient and found that Plaintiff, a limited-purpose public figure, failed to meet the actual malice standard for defamation. R. at 19–20. The plaintiff then filed for appeal to the United States Circuit Court of Appeals for the Fifteenth Circuit on both counts. R. at 21.

On December 1, 2022, the Fifteenth Circuit affirmed the District Court's ruling on both counts. R. at 38. In doing so, however, the Fifteenth Circuit expressed concern regarding extending such a high defamation standard to limited-purpose public figures. R. at 32–33. Similarly, the Fifteenth Circuit criticized the *Smith* standard as burdensome and an unworkable outlier. R. at 34–26. Following the Fifteenth Circuit's decision, the petitioner filed for and this Court subsequently granted the Petition for Writ of Certiorari to the United States Court Supreme Court. R. at 45–46.

B. Statement of the Facts

Kingdom Church members, led by Plaintiff Emmanuella Richter ("Plaintiff") attempted to seek refuge in the United States after facing religious persecution in Pangea. R. at 21–22. As Kingdom Church expands in the United States, new members are confirmed at the faith's "state of reason" – fifteen. R. at 22–23. After confirmation, members integrate their faith with their lives by marrying and raising their children within Kingdom Church. R. at 22–23. Members also will only accept blood from other members, even in the case of a medical emergency. R. at 23.

Parents choose to homeschool their children in accordance with their faith by instructing them in both secular and religious topics. R. at 23. Part of the children's religious instruction takes the form of monthly "Service Projects," which include, but are not limited, to collecting

goods for local food banks, donating blood for their community's medical use, and recycling. R. at 23–24. Kingdom Church members believe these projects not only improve the community, but also establish a "servant's spirit" which is essential for spiritual growth. R. at 23. All blood donations done as part of the students' religious instruction are in accordance with American Red Cross guidelines and may be skipped without consequence if a student is ill. R. at 23–24.

Although Kingdom Church's practices were lawful[1], a 2020 article criticized Kingdom Church and particularly its blood donation practices concerning minors, causing "an outcry from multiple sectors in the community." R. at 24. "Following the outcry over the ethics of the Kingdom Church's blood banking practices, in 2021, the Delmont General Assembly passed a state statute," PAMA, forbidding those under sixteen to participate in any form of organ, tissue or blood donation regardless of their consent or desire to do so. R. at 24. Constance Girardeau ("Defendant"), as the incumbent governor for the state of Delmont running for re-election, wholeheartedly advocated for PAMA and signed it into law. R. at 24.

As Defendant was campaigning for re-election, she stated her concern for child welfare only after a Kingdom Church minor experienced brief medical distress while voluntarily donating blood to his uncle, the sole survivor of a fatal car accident. R. at 24–25. Although the minor recovered shortly after his consensual blood donation, Defendant next targeted immigrant communities as having higher rates of child abuse and neglect. R. at 26. Defendant promised to commission a task force to investigate if Kingdom Church, in its "exploitation" of children, complied with PAMA. R. at 26. This statement greatly bolstered her re-election efforts. R. at 26.

[1] Until 2021, Delmont law allowed minors to donate blood to relatives in the case of a medical emergencies. R. at 24.

Plaintiff filed a Free Exercise challenge to PAMA to protect her community's religious blood donation practices. In response, Defendant publicly stated, "I am not surprised by anything Emmanuella Richter does. What do you expect from a vampire who founded a cult that preys on its own children?" R. at 26–27. In defense of her reputation, Plaintiff added a defamation claim to her suit. R. at 27.

SUMMARY OF THE ARGUMENT

The extension of the *New York Times* defamation standard to speech concerning limited-purpose public figures is unconstitutional as it intrudes into an area of state law without any grounding in the origins of the First Amendment or in the realities of the modern-day press media. Furthermore, the extension should be rejected as unconstitutional because what constitutes a limited-purpose public figure is extremely vague which generates more confusion for litigants and lower courts, thus rendering the extension unworkable.

Smith should be overruled because it is an unreliable, unworkable outlier that lacks sound reasoning and conflicts with other areas of First Amendment jurisprudence. Even if *Smith* applies, PAMA is neither neutral nor generally applicable because the statutory scheme both targets Kingdom Church and Defendant plans to enforce PAMA in a hostile and discriminatory manner.

I. The Extension of the *New York Times* Standard to Limited-Purpose Public Figures is Unconstitutional Because it Intrudes on State Defamation Law and Renders the First Amendment Unwieldy.

The Supreme Court, in *New York Times v. Sullivan*, established the standard of actual malice with the purpose of limiting state ability to allow recovery for libel actions brought by public officials against private individuals regarding official conduct. 376 U.S. 254, 280 (1964).

Actual malice requires the allegedly libelous statement to not only be false, but also be made "with knowledge that it was false or with reckless disregard of whether it was false or not" before a plaintiff can recover damages. *Id.* at 279. This bar is substantially higher than the common-law standard adopted by most states, which only requires plaintiffs prove the injurious statements to be false. *See id.* at 267. The Supreme Court created such a hurdle for libel recovery for public officials to protect the ability to criticize the government under the First Amendment.[2] *See id.*

However, this Court has subsequently struggled to define exactly how far to extend the *New York Times* standard beyond recovery for public officials pursuing official government conduct. *Gertz v. Robert Welch* exemplifies this struggle, choosing to eschew the earlier decision to extend the *New York Times* standard to all statements about events of public concern. *See* 418 U.S. 323, 342–43 (1974). Instead, the *Gertz* court extended constitutional protection under the *New York Times* standard to speech concerning public figures and private individuals who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of issues involved," a class of private individuals later termed to be limited-purpose public figures. *Id.* at 345; *see Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 246 (1986).

This Court ought to find the expansion of the *New York Times* actual malice to limited-purpose public figures unconstitutional for two reasons. First, the extension of the *New York Times* actual malice standard to limited-purpose public figures lacks grounding in the original purpose and intent of the First Amendment to protect public discourse regarding government officials and policies. *See Gertz,* 418 U.S. at 389 (White, J. dissenting). Second, the vague,

[2] The First Amendment has also been extended to the states via the Fourteenth Amendment. *See id.*

unworkable definition of limited-purpose public figures is unpredictable for litigants and forces courts to have to act on an *ad hoc* basis, creating disparate results. *See id.* at 343; *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228, 2272 (2022).

A. The Extension of the *New York Times* Actual Malice Standard to Limited Purpose Public Figures Contravenes the Original Intent of the First Amendment and Ignores the Realities of the Modern Media Landscape.

The lack of grounding in the historic origins of the First Amendment demands this Court reject extending the *New York Times* standard to limited-purpose public figures. *See Dobbs,* 142 S. Ct. at 2264-65. The First Amendment's original purpose in protecting freedom of speech and press was to defend public discourse from government repression, not to insulate speech between private individuals. *See Whitney v. Cal.,* 274 U.S. 357, 375–76 (1927), *Roth v. United States,* 354 U.S. 476, 484 (1957). This Court has recognized that the Founding Fathers "believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth … that public discussion is a political duty; and that this should be a fundamental principle of the American government." *Whitney*, 274 U.S. at 375. The First Amendment was designed to protect political speech critical of the government in order to safeguard democracy and ensure a politically active community – not to shield false statements about private individuals. *See id.*

James Madison himself stated the critical role of the First Amendment in protecting individual speech regarding governmental conduct when he argued that Republican Government enshrines "the censorial power [in] the people over the Government, and not in the Government over the people." 4 Annals of Congress, p. 934 (1794). The First Amendment therefore was originally founded with the purpose of allowing public discourse concerning *government*

conduct to be unabated. The Court in *New York Times* makes this abundantly clear, finding that "[t]he right of free public discussion of the stewardship of public officials was thus, in Madison's view, a fundamental principle of the American form of government." *New York Times,* 376 U.S. at 275; *see also Stromberg v. Cal.*, 283 U.S. 359, 369 (1931) (stating that free speech ensures the government is "responsive to the will of the people [so] that changes may be obtained by lawful means, an opportunity essential to the security of the Republic [and] a fundamental principle of our constitutional system."

Furthermore, the controversy surrounding the Sedition Act of 1798, which was identified by this Court when first creating the *New York Times* standard as the event "which first crystallized a national awareness of the central meaning of the First Amendment," emphasized the primary role of the First Amendment is to ensure governments, *not private individuals*, remained subject to public discourse and critique. *Id.* at 275–76; *see also* 4 Elliot's Debates on the Fed. Con. (1876), p. 575. It was in this context, the context of trying to ensure the government does not stifle public critique and discourse of its officials and their conduct, that Madison and others permitted some false statements to go unchecked. *See New York Times,* 376 U.S. at 340.

While the protection of public discourse regarding public officials and their official conduct was repeatedly affirmed during the creation of the First Amendment and immediately after, the role of regulating private libel and defamation has been historically widely delegated to the states. *See McKee v. Cosby,* 139 S. Ct. 675, 678 (Thomas, J. concurring). When the Founding Fathers ratified the First Amendment, the overwhelming legal landscape of the original colonies had robust recovery for plaintiffs in libel suits; thirteen of the first fourteen states had already established libel statutes and common law that remained in effect despite the First Amendment's

guarantee of free speech. *See Roth*, 354 U.S. at 482–83. Though the First Amendment may have been used to curtail laws on government criticism, "[the Free Speech clause did] not wipe out the common law as to…the defamation of [private] individuals." Z. Chafee, Free Speech in the United States 14 (1954); *see Gertz*, 418 U.S. at 382–83 (White, J. dissenting).

This Court has also repeatedly recognized the role of states to determine how best to regulate libel and slander concerning private plaintiffs. *See Gertz*, 418 U.S. at 341. For example, the *Gertz* Court recognized that the purpose of libel law is grounded in "the individual's right to the protection of his own good name [which] reflects no more than our basic concept of the essential dignity and worth of every human being." *Id.* (citing *Rosenblatt v. Baer,* 383 U.S. 75, 92 (1966) (Stewart, J., concurring)). This protection of private personal reputation is "left primarily to the individual States under the Ninth and Tenth Amendments" and the Court in *Gertz* proclaimed to not "require the State to abandon this purpose." *Id.* Indeed, the Court in *Gertz* even explicitly stated that "so long as they do not impose liability without fault, the States *may define for themselve*s the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood[s] injurious to a private individual." *Id.* at 347 (emphasis added).

Despite claiming to preserve the traditional state power to determine libel standards for private plaintiffs, the *Gertz* Court cut into the state's traditional power by elevating certain private individuals into limited-purpose public figures in its extension of the *New York Times* actual malice standard. *See id.* at 345. Such abridgements of state rights were done not through any historical analysis or original meaning of the First Amendment, but rather as this Court has conceded, "largely a judge made rule of law." *Bose Corp. v. Consumers Union of United States, Inc.,* 466 U.S. 485, 501–02 (1984). The Court in *Gertz* instead obliquely justifies this judge-made

law as a means of ensuring the press has sufficient breathing space to effectively preserve public discourse. *See Gertz,* 418 U.S. at 342.

However, the press in reality is not nearly so fragile as to require this Court's "substantial abridgment of the state law" to protect the press from libel suits given the power of modern media. *See id.* at 343, 390–91. In his dissent in *Gertz*, Justice White explains modern media's power: "[t]he communications industry has increasingly become concentrated in a few powerful hands operating very lucrative businesses reaching across the Nation . . . Neither the industry as a whole nor its individual components are easily intimidated." *Id.* at 390-91 (White, J. dissenting). The Court recognized the dominance of the communications media companies that control the press in its decision the year after deciding *Gertz*, finding the modern press landscape has diverged greatly from the press scene at the time of the Founding Fathers through its concentration into "vast accumulations of unreviewable power in the modern media empire." *Miami Herald Pub. Co., Div. of Knight Newspapers Inc., v. Tornillo,* 418 U.S. 241, 248–250 (1974).

By contrast, the private individual's ability to defend one's own reputation from defamation is markedly more difficult. *See Gertz,* 418 U.S. at 338. This is the case even without the extension of the *New York Times* standard which can elevate private individuals' status to limited-purpose public figures and their burden of proof to actual malice. *See id.* Private individuals lack access to the means of communication capable of rebutting falsehoods concerning themselves, unlike government officials or the news media empires who effectively control many such means of communication. *See id.* As such, "private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater." *Id.* at 344.

Furthermore, defamation suits often are the only real remedy for private individuals to protect their names since "denials, retraction, and corrections are not 'hot' news, and rarely receive the prominence of the original story." *Rosenbloom v. Metromedia,* 403 U.S. 29, 46 (1971). Thus, private individuals are at a significant disadvantage compared to the press in defamation matters. *See id.*; *Gertz*, 418 U.S. at 350. To sacrifice the interests of the already disadvantaged private individuals by threatening to escalate them into the amorphous status of limited-purpose public figures to protect against imagined threats to media giants only further exacerbates the imbalance.

B. The Vague Definition of Limited-Purpose Public Figures Lacks Clarity for Parties and Courts Alike, Rendering it Effectively No Definition at All.

The extension of the *New York Times* standard to limited-purpose public figures should be rejected as unconstitutional because the vague definition for limited-purpose public figure provides confusion rather than guidance for parties and courts, leading to unpredictable results. *See Gertz,* 418 U.S. at 343; *Dobbs*, 142 S. Ct. at 2272 ("another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner."). Such results threaten states' interests in protecting the reputations of private individuals while failing to reliably protect the press. *See Gertz,* 418 U.S. at 343; *Dobbs*, 142 S. Ct. at 2272.

Gertz first introduced the limited-purpose public figure test as part of an alternative to the *Rosenbloom* subject-matter based test when determining whether the actual malice standard applies. *See Times, Inc., v. Firestone*, 424 U.S. 448, 455 (1976); *Gertz* at 344–46. The *Rosenbloom* test extended the *New York Times* actual malice standard to "all discussion and communication involving matters of public or general concern, without regard to whether the

persons involved are famous or anonymous." *Rosenbloom*, 403 U.S. at 44. Even the Court in *Gertz* rejected the subject-matter test it set out in *Rosenbloom* for failing to sufficiently respect the state interest in protecting the reputation of private individuals. *See Gertz,* 418 U.S. at 342–43.

The new test introduced by *Gertz*, however, is so ambiguous it likewise cannot protect private individuals. Under *Gertz*, limited-purpose public figures are otherwise private individuals who thrust themselves to the forefront of a particular public controversy to influence the resolution of the issues involved. *Id.* at 345. In this formulation, the Court expands the pre-existing vagueness of the *Rosenbloom* test regarding what can be considered a public controversy by failing to further explain when one has thrust oneself into a public controversy or if one is doing so to influence its resolution. 418 U.S. 323, *passim*. Furthermore, while the Court has ruled in a handful of cases where a private figure does not rise to the level of a limited purpose public figure, the Court has not once held a private figure as a limited purpose public figure.[3] *See, e.g. Wolson v. Reader's Digest Ass'n,* 443 U.S. 157, 166 (1979) (finding that the wife in a publicly followed celebrity divorce is not a limited-purpose public figure); *Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) (holding that ignoring subpoenas to testify in a public trial does not make one a limited-purpose public figure).

The failure to expound a clear standard for the establishment of a limited purpose public figure has led to uncertainty in the lower courts. The Court in *Gertz* identified that it "must lay down broad rules of general application" to avoid "unpredictable results and uncertain

[3] The closest this Court has been to finding a party being a limited-purpose public figure was in a concurrence opinion by Justice Breyer in *Bartnicki v. Vopper* in which the analysis is summed up in two sentences and the case was not about defamation. *See* 532 U.S. 514, 539 (2001) (Breyer, J. concurring).

expectations." *Gertz,* 418 U.S. at 343–44. Despite such intentions, the D.C. Circuit Court of Appeals noted that "the Supreme Court has not yet fleshed out the skeletal descriptions of public figures and private persons enunciated in *Gertz*." *Waldbaum v. Fairchild Publ'ns*, 627 F.2d 1287, 1292 (D.C. Cir. 1980). The unworkability of such a standard also fails to give clear notice to both private individuals considering defamation suits, thereby making it difficult for private individuals to exercise their right to protect their reputations consistently. *See id.* The vagueness of the standard fails to provide any reliable "breathing space" for the press as well when considering publication decisions. *See id.* As a result of all its failings to provide a formulation as to what is a public controversy or when one has thrust oneself into the controversy, this extension of the *New York Times* standard would "render [the Court's] duty to supervise the lower courts unmanageable." *Gertz*, 418 U.S. at 343.

II. *Smith* Should be Overruled Because it is an Unreliable, Unworkable Outlier that Lacks Sound Reasoning and Conflicts with Other First Amendment Jurisprudence; but Even under *Smith*, PAMA is Neither Neutral nor Generally Applicable because Defendant both Targeted Kingdom Church and Hostilely Applied PAMA against Kingdom Church.

A. *Smith* Must be Overruled because it was Wrong When Decided and Creates an Unworkable, Unreliable Holding that Lacks Sound Reasoning and Clashes with This Court's Broader First Amendment Understanding.

S*tare decisis* "is not an inexorable command"; indeed, it is at its weakest when this Court considers questions of constitutional import, such as rights under the Free Exercise Clause. *See Dobbs*, 142 S. Ct. at 2262. In determining whether to depart from earlier precedent, this Court considers "the nature of [the] error, the quality of [the] reasoning, the workability of the rules . . .

[the] disruptive effect on other areas of the law, and the absence of concrete reliance." *Id.* at 2265. Each of these factors favor overruling *Employment Division, Department of Human Resources of Oregon v. Smith*. 494 U.S. 872 (1990).

Smith, which instituted rational basis review for neutral and generally applicable laws that infringe on conduct central to an individuals' free religious exercise, was "egregiously wrong and deeply damaging" to Free Exercise. *See Dobbs*, 142 S. Ct. at 2262, 2265. *Smith* eviscerated Free Exercise rights by instituting a much lower level of review that forces members of unconventional religions to change their practices and "migrate to some other and more tolerant religion." *See Smith*, 494 U.S. at 920 (Blackmun, J., dissenting) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). Indeed, this Court has vehemently objected on policy grounds to this type of rights annihilation by analyzing free exercise claims with a higher level of scrutiny. For instance, in *Wisconsin v. Yoder*, this Court struck down a law that coerced Amish children younger than sixteen into attending school because such a law so severely undermined their way of life that they would have been compelled to integrate into society. 406 U.S. 205, 218 (1972). Additionally, subjecting Kingdom Church's children to PAMA would force the community to integrate into society by accepting mainstream medical blood donation practices or face fatalities, thereby destroying their faith. *See id.*; R. at 23. If policy concerns about religious integration were sufficient in *Yoder*, Free Exercise should likewise prevail in similar situations. *See* 406 U.S. at 218. Instead, *Smith* refused to provide any meaningful review of Free Exercise challenges and rejected these legitimate policy concerns. *See Smith*, 494 U.S. at 890. Although *Smith* attempted to characterize *Yoder* as a "hybrid situation" that concerned constitutional rights for both religion and education, *Yoder* expressly "relied on the Free Exercise Clause." *Smith,* 494 U.S. at 896 (O'Connor, J., concurring in the judgment); *see Yoder*, 406 U.S.

at 220 (analyzing if Amish children's departure from school is protected solely "by the Free Exercise Clause . . . and thus beyond the power of the State to control, even under regulations of general applicability."). Therefore, *Smith* should be overruled for wrongfully rejecting past precedent, creating disastrous impacts on Free Exercise. *See Dobbs*, 142 S. Ct. at 2262, 2265.

The legislative reaction to *Smith* evinces further proof of such a grave error because Congress re-instilled robust protection for Free Exercise rights by enacting the Religious Freedom Restoration Act of 1993 ("RFRA"). 42 U.S.C. §§ 2000bb to 2000bb-4.[4] The RFRA guarantees that an individual may exercise their religion freely, even if it violates a neutral and generally applicable law unless that law serves a compelling state interest and is the least restrictive means of furthering that interest. *Id*. § 2000bb-1(b). Congress enacted RFRA to elevate the inadequate level of protection for religious freedom that *Smith* imposed: "[t]he purposes of this chapter are…to restore the compelling interest test as set forth in Sherbert v. Verner, and Wisconsin v. Yoder, and to guarantee its application in all cases…and…to provide a claim or defense to persons whose religious exercise is substantially burdened by government." 42 U.S.C. § 2000bb(b)(1)–(2) (internal citations omitted). Thus, the RFRA, which invalidated *Smith* for federal Free Exercise challenges, further evidences *Smith*'s devasting policy impacts for state free exercise challenges and should therefore be overruled. *See id.* § 2000bb-1.

Moreover, *Smith*'s holding lacks valid reasoning because it improperly relied on already-overruled law. *See Smith*, 494 U.S. at 879; *Dobbs*, 142 S. Ct. at 2266 (noting that failure to properly utilize precedent puts a challenged case on "exceptionally weak ground[]."). *Smith*

[4] Although *City of Boerne v. Flores* invalidated the RFRA as applied to the states to protect federalism, the RFRA is still valid as applied to federal law. *See* 521 U.S. 507, 536 (1997).

relied on *Minersville School District v. Gobitis* for the proposition that the First Amendment does not relieve individuals "from obedience to a general law [or generally applicable law] not aimed at the promotion or restriction of religious beliefs [or neutral law]." *Smith*, 494 U.S. at 879 (quoting 310 U.S. 586, 594–95 (1940)). Thus, *Gobitis* laid the foundation for *Smith*'s ruling that neutral and generally applicable laws are subject to rational basis review. *See Smith*, 494 U.S. at 879, 890. However, *West Virginia State Board of Education v. Barnette*, which dealt with facts almost identical to *Gobitis*, overruled *Gobitis* in 1943, several decades before this Court decided *Smith. See* 319 U.S. 624, 642 (1943) (holding that a seemingly neutral and generally applicable law requiring students to salute the flag infringes on their First Amendment rights). Nevertheless, even though this Court was bound by *Barnette* when deciding *Smith* in 1990, it used *Gobitis*'s logic instead of *Barnette*'s. *See Smith*, 494 U.S. at 879. Thus, the Court erroneously perpetuated already-overruled law, an error which can only be corrected by overturning *Smith*. *See De Galard de Brassac de Bearn v. Safe Deposit & Tr. Co. of Balt.*, 233 U.S. 24, 33–35 (1914) (stating this Court is bound by its own precedent, even in constitutional cases).

Recognizing *Smith*'s exceptionally weak reasoning, this Court has narrowed and limited the doctrine to the point of it becoming a nullity by finding cases not neutral or generally applicable. *See, e.g.*, *Carson v. Makin*, 142 S. Ct. 1987, 1998 (2022) (affirming that exclusion of religious organizations from generally available benefits has "nothing neutral about [it]."); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878 (2021) (holding that statutory exceptions render a law not generally applicable); *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (declaring that a government regulation which treats "any comparable secular activity more favorably than religious exercise" is neither neutral nor generally applicable); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (stating that harsher pandemic-related

regulations for places of worship as opposed to other institutions are not neutral nor generally applicable); *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2262–63 (2020) (holding that disqualifying religious schools when allocating funding is neither neutral nor generally applicable); *Masterpiece Cake Shop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018) (declaring that potentially constitutional laws applied in a discriminatory fashion are neither neutral nor generally applicable); *Trinity Lutheran Church of Colum., Inc. v. Comer*, 137 S. Ct. 2012, 2025 (2017) (stating that a statute that excludes religion from benefits is not generally applicable); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 522, 547 (1993) (holding that city resolutions aimed at religiously motivated conduct are neither neutral nor generally applicable). Indeed, this Court abandoned *Sherbert*, *Smith*'s predecessor, because its holding was subsequently narrowed to the point of inapplicability in most cases. *Smith*, 494 U.S. at 883–84 (explaining that this Court abandoned *Sherbert* because it has "in recent years abstained from applying the *Sherbert* test"); *Sherbert v. Verner*, 374 U.S. 398 (1963); *see., e.g.*, *id.*; *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 452 (1988) (refusing to extend *Sherbert*); *O'Lone v. Est. of Shabazz,* 482 U.S. 342, *passim* (1987) (omitting the *Sherbert* analysis entirely); *Bowen v. Roy*, 476 U.S. 693, 707 (1986) (labeling the *Sherbert* test as "inappropriate"); *Goldman v. Weinberger*, 475 U.S. 503, 506 (1986) (holding *Sherbert* inapplicable to military affairs). Similarly, because *Smith* is rarely utilized and inapplicable in many areas, it should likewise be abandoned.

This patchwork of whether a law is neutral or generally applicable favors overruling *Smith* because it meets all the *Dobbs* factors. *See* 142 S. Ct. at 2265. This Court's hesitancy to apply *Smith* illustrates its "egregiously wrong" holding. *See id.* at 2262. Furthermore, because there are so many instances in which a law is not neutral nor generally applicable, it is unclear if

and when *Smith* applies, establishing it as an "unworkable outlier." *See id.*; R. at 36. Moreover, *Smith* pulled other areas of the law, such as Establishment Clause claims, into its chaos by analyzing both Free Exercise and Establishment Clause together. *See, e.g.*, *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2416 (2022) (evaluating both a Free Exercise claim and an Establishment Clause defense). Additionally, because this doctrinal jumble creates unpredictability as to whether a state action is neutral or generally applicable, it is impossible for individuals to rely on *Smith. See Dobbs*, 142 S. Ct. at 2265. Similarly, reliance interests are low because it is highly unlikely that individuals, when exercising their religion, plan with "great precision" to ensure their behavior is legally compliant. *See id.* at 2276.

Smith disrupts other areas of First Amendment jurisprudence as well. *See id.* For instance, *Smith* decreased protection for Free Exercise rights by holding that neutral and generally applicable laws burdening free exercise only receive rational basis review; therefore, litigants couch their Free Exercise arguments within the framework of free speech in hopes of receiving a higher level of review and thus protection. 494 U.S. at 873; s*ee, e.g.*, Oral Argument at 40:45, *Masterpiece Cake Shop*, 138 S. Ct. 1719 (2018) (No. 16-111), https://apps.oyez.org/player/#/roberts8/oral_argument_audio/24402. This creates inequality between litigants arguing free speech and free exercise cases. *Compare Smith*, 494 U.S. at 890 (applying rational basis review for free exercise claims) and *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163–64 (2015) (applying strict scrutiny for free speech claims). Additionally, the RFRA, which invalidates *Smith* for federal Free Exercise claims, creates a different set of rights between federal and state Free Exercise challenges. *See id.* § 2000bb-1. Overall, *Smith* created different protections for state and federal law and for freedom of speech and free exercise of religion and therefore "fail[s] to deliver [a] principled and intelligible development of the law

that *stare decisis* purports to secure." *See Dobbs*, 142 S. Ct. at 2276. Therefore, *Smith* should be overruled. *See id.*

Any concerns about individuals' ability to opt out of laws while claiming Free Exercise is unwarranted because the *Sherbert* test predating *Smith* adequately protected the rule of law. *See Smith*, 494 U.S. at 883, 888. Indeed, pre-*Smith*, this Court has invalidated only three state laws to protect individual exercise. *See id.* at 883. *Smith*, however, creates anarchy itself because many legal schemes are neither neutral nor generally applicable, and thus allow individuals to circumvent laws regardless. *See supra* pp. 16–17 (collecting cases that demonstrate *Smith*'s inapplicability).

Even though this Court expressed apprehension as to the appropriateness of judges deciding what is central to one's religion, courts are tasked, and judges are trusted, with such line-drawing constantly, especially within First Amendment cases. *Compare Van Orden v. Perry*, 545 U.S. 677, 691–92 (2005) (allowing, under the Establishment Clause, a Ten Commandments monument surrounded by other historical monuments in a Texas park)*, with McCreary County, KY v. ACLU of KY*, 545 U.S. 844, 880 (2005) (invalidating a Ten Commandments display alongside other legal and religious authorities for violating the Establishment Clause). If this Court can differentiate between two Ten Commandments displays by inquiring if the display's purpose is predominantly religious, it can likewise decide if a practice is central to one's religion. *See ACLU of KY*, 545 U.S. at 880.

B. Even under *Smith*, PAMA is Motivated by Religious Animus and Defendant Hostilely Applied PAMA to Discriminate Against Kingdom Church; thus, PAMA is Neither Neutral nor Generally Applicable and Should be Invalidated.

Other than facial neutrality, there are "many ways" to determine if a law is targeting a religion to suppress. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533. Facial neutrality only indicates that religion is not explicitly mentioned in PAMA's statutory scheme. *See id.*; R. at 37. *Id.* These ways include, and thus this Court must analyze, the historical background of the challenged state action, the events leading up to the policy, commentary accompanying the policy, the legislative history, and practical impact. *Id.* at 534–35, 540; *see also Masterpiece Cakeshop*, 138 S. Ct. at 1731. If such indicia evince that "the object [of PAMA] is to infringe upon or restrict practices because of their religious motivation, the law is not neutral." *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533. Although facial discrimination would be sufficient, it is not necessary because there are "many ways" to prove animus and consequently non-neutrality. *See id.* Thus, PAMA's facial neutrality is not dispositive. *See id.*

PAMA contains "subtle departures from neutrality" and "masked hostility" within its historical background. *See id.* at 534–35, 540. The record indicates that PAMA was passed only after critiques of Kingdom Church's religious practices. *See* R. at 24 (stating that "[f]ollowing the outcry of the Kingdom Church's blood banking practices, the Delmont General Assembly passed [PAMA]"). This is identical to *Church of the Lukumi Babalu Aye*, in which the city council passed legislation only after fearing that "certain religions" were engaging in practices "inconsistent with public morals, peace, or safety." *See* 508 U.S. at 526. Thus, Defendant and the Delmont legislature enacted PAMA "because of, not merely in spite of" Kingdom Church's practices. *See id.* at 540.

Events leading up to enactment similarly indicate that PAMA targets Kingdom Church because the record indicates no attempt to curb minors' blood donations in the interests of child welfare prior to the public outcry. *See id.* at 541. Similarly, the government in *Church of the*

Lukumi Babalu Aye was indifferent towards public health and animal killings until a Santeria church opened that performed ritual sacrifices. *See id.* This lack of concern prior to the religious activity shows animus towards the religious practice, removing it from neutrality. *See id.*

Additionally, statements from residents and state officials demonstrate masked hostility towards Kingdom Church. *See id.* at 541–42. Indeed, residents criticized and published about Kingdom Church's blood donation practices immediately before PAMA's enactment, just as the residents condemned Santeria in *Church of the Lukumi Babalu Aye* prior to the targeted legislation. *See id.*; R. at 24. Moreover, Defendant, acting in her official capacity as Governor, made multiple statements targeting Kingdom Church: that the faith "exploits" its children and that Plaintiff is a cultish "vampire" who preys on children. R. at 24, 26. Similarly, an official in *Church of the Lukumi Babalu Aye* called Santeria's sacrifices "abhorrent." *See* 508 U.S. at 541–42. If "abhorrent" is enough to establish animus, calling a church leader a "vampire who founded a cult that preys on its own children" is likewise more than sufficient. *See id.* at 542; R. at 26. These comments "disclose [that] the object of the ordinances [is] to target [blood donations] by [Kingdom Church] worshippers because of its religious motivation," just as the ordinance's object in *Church of the Lukumi Babalu Aye* was to target animal sacrifices by Santeria members. *See* 508 U.S. at 542. Although PAMA's official legislative history is unavailable, Defendant's statements, prior to signing PAMA into law, and public commentary are sufficient to evince animus just as they were in *Church of the Lukumi Babalu Aye. See id.* at 541–42.

Furthermore, PAMA, in effect, targeted solely Kingdom Church minors. *See id.* at 534–35. In *Church of the Lukumi Babalu Aye*, this Court found that a scheme of city ordinances only proscribed Santeria sacrifices and no other animal killings. *Id.* at 535. Although PAMA does not contain exceptions like the ordinances in *Church of the Lukumi Babalu Aye*, in practice, the

legislature enacted PAMA to stop only Kingdom Church's blood donation practices. *See id.* Presumably, blood donations occur more frequently in Kingdom Church than elsewhere, creating an adverse impact on the faith because they bear the burden of PAMA more so than the general population. *See id.* Even though Kingdom Church is not the only actor that must follow PAMA, "few if any" other minors donate blood, just as "few if any" animal killings other than sacrifice would have been prohibited in *Church of the Lukumi Babalu Aye*'s legal scheme. *See id.* at 536. Accordingly, PAMA is not neutral. *See id.*

Moreover, although PAMA theoretically had a legitimate interest in child welfare, PAMA is, at best, tangentially related to advancing that interest. *See id.* at 535. The record does nothing to suggest how children's well-being is connected to Kingdom Church's Red Cross-compliant, voluntary blood donations. *See* R. at 42, ¶ 4–5. The record only indicates high rates of child abuse within immigrant communities, not the Kingdom Church community, and therefore only presents an attenuated state interest at best. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 535. Akin to *Church of the Lukumi Babalu Aye*, PAMA's stated interests "were remote" from the actual object of the law – to target Kingdom Church. *See* 508 U.S. at 535. Thus, the law is not neutral. *See id.*

Additionally, PAMA "proscribes more religious conduct than necessary" to achieve its stated ends, evidencing religious animus. *See id.* at 538. Kingdom Church's state of reason, fifteen, is just one year below PAMA's regulated scope of sixteen and under. R. at 23. Assuming voluntary blood donations are connected to child welfare at all, child abuse could be combated in a less burdensome way by simply decreasing PAMA's age of majority one year achieve to the state interest in promoting child welfare. *See Church of the Lukumi Babalu Aye,* 508 U.S. at 538; *see also Yoder*, 406 U.S. at 213–14 (holding that forcing Amish children to attend school until

the age of sixteen is too burdensome on Free Exercise rights). Therefore, PAMA is not neutral. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 538.

Furthermore, Defendant's hostility towards Kingdom Church in enforcing PAMA is "inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral towards religion." *Masterpiece Cakeshop*, 138 S. Ct. at 1732. In *Masterpiece Cake Shop*, a baker refused to create a wedding cake for a gay couple due to his opposition to same-sex marriage, potentially violating Colorado anti-discrimination law. *Id.* at 1724. This Court held that the magistrates hearing the baker's case had "elements of a clear and impermissible hostility toward [the baker's] sincere religious beliefs" because of their inimical statements about religion, including: "[religion is] one of the most despicable pieces of rhetoric that people can use…to hurt others," comparing religion to the Holocaust, and equating religion to slavery. *Id.* at 1729.

Such official statements are similar in extremity and hostility to Defendant's comments that Plaintiff's religious practices "exploited children" and that Plaintiff is a "vampire who founded a cult that preys on children." *Compare id*., *with* R. at 26–27. In both instances, no one objected to these hostile statements. *See Masterpiece Cake Shop*, 138 S. Ct. at 1730. If the statements in *Masterpiece Cake Shop* were sufficient to evidence hostility, Defendant's remarks are as well, and thus Defendant's application of PAMA was not neutral. *See id.* at 1728; R. at 26–27.

It is irrelevant that *Masterpiece Cake Shop* involved an adjudicatory body, whereas the Defendant is head of Delmont's executive branch. *See* 138 S. Ct. at 1725, 1729–30. *Masterpiece Cake Shop* held that "even slight suspicion that proposals for *state intervention* stem from animosity to religion or distrust of its practices" are not neutral. *See* 138 S. Ct. at 1731 (emphasis added). Investigations are a part of state intervention. *See, e.g.*, *id.* at 1725 (explaining

that the Colorado Civil Rights Division investigates complaints before referring them to the administrative adjudicatory body). Furthermore, the reason for concern over hostile adjudicatory statements and hostile executive statements are identical: both aim to protecting a person's right to a fair procedure. *See id.* at 1729–30. Regardless of which official makes a statement, both "cast doubt on the unfairness and impartiality" of a case, tainting the entire process. *See id.* at 1730. Therefore, the Defendant's bias-ridden statements remove PAMA from neutrality and general applicability. *See id.* at 1732.

Neutrality and general applicability are related and failing one prong simultaneously suggests failing the other. *Church of the Lukumi Babalu Aye*, 508 U.S. at 531–32. Therefore, because PAMA is not neutral, it is likely not generally applicable either. *See id.*

Indeed, PAMA is not generally applicable because it is underinclusive to curb child abuse or suicide if it even alleviates the problem at all. *See id.* at 543. This Court has stated that ordinances which "fail to prohibit nonreligious conduct that endangers [state] interests in a similar or greater degree" are not generally applicable.[5] *Id.* Although PAMA, unlike the ordinances in *Church of the Lukumi Babalu Aye*, applies to at least some secular conduct, the omission of other harmful acts committed against children is just as telling. *See id.* at 543–44. The ordinances in *Church of the Lukumi Babalu Aye* ignored many instances that implicate public health concerns from animal carcasses, such as slaughterhouses or consumption of uninspected meat. *Id.* at 545. Similarly, PAMA omitted child neglect, physical abuse, sexual abuse, and all other serious issues implicating child welfare, and consequently illustrates that PAMA is not generally applicable. *See id.*

[5] The district court, while correctly pointing this out, did not analyze whether PAMA permitted secular conduct that implicated the same government interest. R. at 18.

Finally, even assuming *Smith*'s articulation of "hybrid rights" is correct, the case at hand contains such hybrid rights because consensual blood donations are part of a religious education implicating both Free Exercise rights and the right of parents to direct the schooling of their children. *See Smith*, 494 U.S. at 881–82; *Yoder*, 406 U.S. at 214.[6] This case likewise deals with education because blood donations for minors only occur within the homeschooled students' curriculum through service projects and thus involve parental hybrid rights. *See Yoder*, 406 U.S. at 213; R. at 23. If the state does not have the power to compel schooling past the eighth grade when it burdens Free Exercise, the state likewise does not have the power to terminate service projects as part of a child's religious education. *See Yoder*, 406 U.S. at 236. The Fifteenth Circuit correctly stated *Yoder* does not apply unless education is involved, but education, albeit homeschooling, is inextricably involved in Kingdom Church's blood donations. *See id.*; R. at 38. Therefore, PAMA should receive a higher level of review. *See Smith*, 494 U.S. at 881.

CONCLUSION

For the aforementioned reasons, this Court should rule both the extension of the *New York Times* standard to limited-purpose public figures and the *Smith* standard to be unconstitutional, or, in the alternative, find the *New York Times* extension unconstitutional and PAMA to be neither neutral nor generally applicable.

[6] Although the district court correctly described hybrid situations, it did not explain how homeschooled blood donations did not "involve education." R. at 19.

We pledge that all work product contained herein is the work product of the members of Team 13. Team 13 has fully complied with our law school's governing honor code as well as all Competition rules.