No. 22-CV-7654

In The

Supreme Court of the United States

March Term 2023

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 PETITIONER

TEAM 15
Counsel for Petitioner
January 31, 2023

QUESTIONS PRESENTED

1. Whether the Fifteenth Circuit erred in finding that the *New York Times v. Sullivan* standard applies to limited-purpose public figures, where today's cultural atmosphere renders them no different than private individuals, and the circumstances of *New York Times* are not at issue.
2. Whether the Fifteenth Circuit erred in finding that the Physical Autonomy of Minors Act is constitutional under *Employment Division Department of Human Resources v. Smith,* where it selectively imposes burdens on religious practices, and whether *Smith* should be overruled.

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The opinion of the United States District Court for the District of Delmont is unpublished and may be found at *Richter v. Girardeau*, C.A. No. 22-CV-7855 (D. Delmont Sept. 1, 2022). The opinion of the United States Court of Appeals for the Fifteenth Circuit is also unpublished and may be found at *Richter v. Girardeau*, C.A. No. 2022-1392 (15th Cir. 2022).

STATEMENT OF JURISDICTION

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

STATEMENT OF THE CASE

A. Procedural History

The State of Delmont initiated a task force to investigate the Church of the Kingdom ("Kingdom Church") for potential Physical Autonomy of Minors Act ("PAMA") violations. R. at 7. As a result, Petitioner Emmanuella Richter ("Richter") sought injunctive relief in the United States District Court for the District of Delmont, claiming PAMA violated the Free Exercise Clause of the First Amendment. R. at 7–8. Three days later, Richter amended her complaint to include a defamation action against Governor Constance Girardeau ("Respondent") for her remarks at a large press event. R. at 8. Respondent moved for summary judgement on both counts, and on September 1, 2022, the district court granted Respondent's motion. R. at 8–9, 20.

The Fifteenth Circuit affirmed the district court's ruling and found that because Richter is a limited-purpose figure, it was compelled to enforce the actual malice standard. R. at 33, 38. Similarly, it upheld PAMA after finding it to be neutral and generally applicable—despite believing this standard to be unsound. R. at 36–37. Richter appealed the Fifteenth Circuit's

decision. R. at 45. This Court granted certiorari to determine (1) whether the extension of the *New York Times v. Sullivan* standard to limited-purpose figures is constitutional and (2) whether PAMA is neutral and generally applicable, and if *Emp. Div. Dep't of Hum. Res. v. Smith* should be overruled. R. at 46.

B. Statement of the Facts

After years of interpreting various sacred texts from around the world, Richter established the Kingdom Church to encompass her "core, archetypal" religious findings. R. at 3, 41. At this time, Richter lived in Pangea; however, the country soon experienced a military coup. R. at 3. As a result, the Kingdom Church—which had acquired a large following—became the target of governmental oppression. R. at 3. This led Richter and many members of the Kingdom Church to seek asylum in the United States. R. at 3. Upon arrival, the church settled outside the city limits of Beach Glass, Delmont. R. at 3. Today, much of the Kingdom Church lives in secluded, religious compounds. R. at 4. The Church has since expanded its congregation into other parts of the state, and to acclimate into Delmont's society, members began sharing information about the Church's lifestyle with the public. R. at 4. A panel of Church elders—not including Richter—conduct seminars and door-to-door outreach initiatives. R. at 4. Overall, the Kingdom Church maintains a good reputation in its communities. R. at 5.

To become a member of the Kingdom Church, one must have attained the "state of reason" (age fifteen) and taken a doctrinal course to achieve spiritual enlightenment. R. at 4. After both have been achieved, a private ceremony is conducted to confirm the new member. R. at 4. Once confirmed, individuals must marry within the Church and raise their children in alignment with the Church's belief system. R. at 4. These children are homeschooled, and the curriculum is aimed at bettering the community and growing spiritually. R. at 4. In conjunction with this goal of

establishing a servant's spirit, children in the Kingdom Church participate in monthly "Service Projects." R. at 5. One of these required projects is donating blood—a central tenet of the Kingdom Church. R. at 5. These blood donations follow permissible American Red Cross guidelines and prior to PAMA, were legal under Delmont law. R. at 5–6. Although the state prohibited minors from donating blood, it previously retained exceptions for autologous donations and consanguineous relatives. R. at 5–6. The Kingdom Church uses its donations exactly this way: either for the donor or the donor's family. R. at 6. Because members cannot accept blood donations from nonmembers, these blood donations are vital to the Kingdom Church. R. at 5.

In addition, members also participate in the Kingdom Tea franchise. R. at 4. However, Richter is not involved in any tea affairs. R. at 4. Because of the Tea's popularity, *The Beach Glass Gazette* published an article discussing the Church's tea business and blood banking tenet. R. at 5. Minors' consent and participation in the donations sparked concern in the Delmont community. R. at 5. As a result, the Delmont General Assembly enacted PAMA to prohibit 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." R. at 6.

On January 17, 2022, there was a disastrous car crash that killed dozens of people, including ten church members. R. at 6. The only surviving church member, Henry Romero ("Romero"), was admitted to the hospital in need of a vital operation. R. at 6. Consequently, the Kingdom Church sought a blood donor to save his life. R. at 6. Romero's fifteen-year-old cousin and fellow church member, Adam Suarez ("Suarez"), was a direct match. R. at 6. Accompanied by his parents, Suarez began to donate blood following American Red Cross guidelines. R. at 6. In the middle of the donation, Suarez experienced unknown side effects and was moved to the hospital's intensive care unit ("ICU"). R. at 6. Suarez made a full recovery, and the doctor advised

him to refrain from donating blood in the immediate future. R. at 7.

Following this event, several media outlets reported the circumstances of Romero's accident, Suarez's donation, the Kingdom Church's practices, and PAMA. R. at 7. Upon arrival at the hospital, Richter and other church members were interviewed by the media. R. at 6–7. In these interviews, Richter defended the Kingdom Church's practices. R. at 6–7. Five days later, Respondent attended a fundraiser to promote her reelection campaign. R. at 7. There, she introduced her reelection goals, which focused on improving the "mental, emotional, and physical well-being" of Delmont children. R. at 7. Respondent cited statistics that showed an increase in child abuse and neglect from 2016 to 2020 and an increased rate of suicide for children who experience abuse or neglect. R. at 7.

After discussing her goals, Respondent was then asked about Suarez. R. at 7. She announced that she had commissioned a task force to investigate the Kingdom Church and its blood donation practices. R. at 7. Specifically, Respondent stated that she wished to uncover PAMA or any other legal violations in what she claimed to be "the exploitation of the Kingdom Church's children." R. at 7. These comments gained her much support, causing Respondent to target the Kingdom Church in her fundraising efforts. R. at 7. Thereafter, Respondent held a large press event, where reporters questioned her about Richter's claims that Respondent was persecuting the church for its religious beliefs. R. at 8. Respondent then 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?" R. at 8.

SUMMARY OF THE ARGUMENT

This Court should reverse the Fifteenth Circuit's decision because the *New York Times v. Sullivan* extension to limited-purpose public figures is unconstitutional. The

extension of *New York Times* bears no relation to the original purpose of the actual malice standard or the First Amendment. Further, by valuing freedom of speech over individual reputation, this standard immunizes false statements of fact. As a result, limited-purpose public figures are unnecessarily burdened by a near impossible standard. Numerous Justices have criticized the standard's applicability to limited-purpose public figures, imploring the Court to reverse the *New York Times* extension.

This Court should reverse the Fifteenth Circuit's decision because PAMA targets the religious practices of the Kingdom Church, therefore, rendering the law neither neutral nor generally applicable. By selectively imposing burdens on the Kingdom Church's religious practices, PAMA is unconstitutional. As a result of PAMA's overinclusive nature, it also fails strict scrutiny. Moreover, this Court should overturn *Emp. Div. Dep't of Hum. Res. v. Smith* because it lacks foundation in the First Amendment and causes confusion in lower courts.

ARGUMENT

I. THE COURT'S EXTENSION OF *NEW YORK TIMES V. SULLIVAN* TO LIMITED-PURPOSE PUBLIC FIGURES IS UNCONSTITUTIONAL.

Now is the time for this Court to reverse the actual malice standard for limited-purpose public figures. This standard has evolved into "effective immunity from liability" that "encourages falsehoods in [large] quantities." *Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from denial of certiorari). Respondent's statements are blatantly false and harmful yet are constitutionally protected. "[M]ere criticism or opinion" is not at issue here—these are misstatements of fact that seriously harm Richter's reputation. *Dunn & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 771 (1985) (White, J., concurring).

For 200 years, libel law was almost exclusively decided by the states and "the defamed individual had only to prove a false written publication that subjected him to hatred, contempt, or

ridicule." *Dunn,* 472 U.S. at 765 (White, J., concurring). In 1964, this Court overturned that longstanding precedent in order to effectuate "robust" democratic debate on public issues. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). In deciding *New York Times*, this Court limited state control over libel law by carving out an exception to constitutionally protect defamatory statements against public officials, so long as the statements were not made with actual malice. *Id.* at 279-80. This high standard prohibited a public official from recovering "damages for a defamatory falsehood relating to his official conduct unless he prove[d] that the statement was made with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*

In 1967, the actual malice standard was extended to non-governmental public figures. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 164 (1967) (Warren, J., concurring). Then, in 1974, the Court distinguished two types of public figures: (1) all-purpose public figures who "achieve such pervasive fame or notoriety that [they] become[] a public figure . . . in all contexts"; and (2) limited-purpose public figures, who "voluntarily inject [themselves] or [are] drawn into a particular public controversy," thereby becoming a public figure for only a "limited range of issues." *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 345, 351–52 (1974). Richter falls into the second category. R. at 14. The antiquated reasoning behind the extension of *New York Times* poses a near impossible standard for defamation plaintiffs. The extension to limited-purpose public figures is unconstitutional because (1) limited-purpose public figures are essentially the same as private individuals today and (2) the extension is untethered from the *New York Times* rationale.

A. The extension of *New York Times* to limited-purpose public figures bears no relation to the original purpose of the actual malice standard.

This Court decided *New York Times* in the midst of the Civil Rights era, a heightened time

of racial and political unrest.[1] This Court's holding "demonstrate[d] the chilling effect of Alabama libel laws on First Amendment freedoms in the area of race relations." *New York Times*, 376 U.S. at 300–01 (Goldberg, J., concurring). At issue in *New York Times* was an ad entitled "Heed Their Rising Voices." *Id.* at 256. The ad inaccurately described police misconduct against Black southerners and Dr. Martin Luther King Jr. *Id.* at 257. The plaintiff, Montgomery City Commissioner Sullivan, oversaw the police department. *Id.* at 256. Sullivan claimed these ads would lead individuals to associate him with the alleged police misconduct due to his authority over the department. *Id.* at 258. In reversing the Alabama Supreme Court's decision to award Sullivan damages, this Court held that a state's authority to award damages for defamation against public officials is limited and "the rule requiring proof of actual malice" must be met. *Id.* at 283. This Court centered its holding on the need for "debate on public issues [to] be uninhibited, robust, and wide-open," which "sometimes [includes] unpleasantly sharp attacks on . . . public officials." *Id.* at 270. The treatment of African Americans was one such public debate.

If this Court had held in favor of Sullivan and other public officials, the fear of libel suits might have limited the press's ability to shed light on government abuse. *See id.* at 279. The Fifteenth Circuit correctly pointed out that the goals of the *New York Times* Court were to "thwart[] racial discrimination, protect[] press organizations from bankruptcy, and defeat[] frivolous suits." R. at 33. During those times, this holding was necessary because "[w]ithout some significant addition to common law requirements . . . danger confronting speech about the civil rights movement would not [have] dissipate[d]."[2] However, the actual malice standard today is applied out of context

[1] *See* Richard Epstein, *Was New York Times v. Sullivan Wrong?* 53 U. Chi. L. Rev. 782, 786-87 (1986).

[2] Elena Kagan, *A Libel Story: Sullivan Then and* Now (reviewing Anthony Lewis, Make No Law: The Sullivan Case and the First Amendment (1991)), 18 Law & Social Inquiry 197, 203 (1993)

because defamation suits by limited-purpose public figure are not governmental attempts to shut down criticism of racial policies.[3] The *New York Times* rationale does not stand for, nor discuss immunity from liability where limited-purpose public figures cannot prove actual malice. *See Dunn*, 472 U.S. at 772 (White, J., concurring). This standard was created for a particular period (the civil rights movement), controversy (governmental abuse) and injustice (racism).

1. Criticism of the government is not at issue in limited-purpose public figure defamation.

Ultimately, *New York Times* grounded its holding on the First Amendment guarantee that allows citizens to petition the government. 376 U.S. at 269. The Court focused on the power Sullivan wielded as a government official to stifle citizen protests. *Id.* at 276. However, these justifications are not present here or in any limited-purpose public figure defamation suit. By applying this reasoning, a limited-purpose public figure—only in the public eye for a limited time and otherwise a private individual—has the same burden of proof to meet in a defamation suit as the President of the United States.

A wide variety of individuals can be limited-purpose public figures. *See McKee v. Cosby*, 874 F.3d 54, 61 (1st Cir. 2017) (sexual assault victim)*; see also Clardy v. Cowles Publ'g Co.*, 81 Wash. App. 53, 65 (Wash. Ct. App. 1996) (businessman involved in a commercial development project); *James v. Gannet Co*., 353 40 N.Y.2d 415, 423 (1976) (professional belly dancer). Here, Richter was held to be a limited-purpose public figure because of her involvement with Kingdom Church and opposition to PAMA. R. at 14. However, neither Richter—nor any other limited-purpose public figure—is comparable to a Montgomery City Commissioner. *See New York Times,* 376 U.S. at 256. Richter is not a government official, not participating in governmental abuse, and

[3] Epstein, *supra* note 2, at 787; Kagan, *supra* note 3, at 204.

not trying to censor the press. The rule announced in *New York Times* was "intended to ensure a robust debate over actions taken by high public officials," but "seem[s] to leave ordinary Americans without recourse for grievous defamation." *Berisha*, 141 S. Ct. at 2429 (Gorsuch, J., dissenting from denial of certiorari).

2. The risk that defamatory comments carry is far greater today because of the media's extensive reach and how effortless it is for critical voices to be heard.

When *New York Times* was decided in 1964, the actual malice standard was necessary to ensure that critical voices were heard; however, that justification is not applicable today where defamatory statements are limitless and can reach a more expansive audience. *Id.* at 2427 (noting this Nation's media landscape has drastically changed over the years). The Internet "constitutes a vast platform from which to address and hear from a worldwide audience." *Reno v. Am. Civ. Liberties Union*, 521 U.S. 844, 853 (1997). Anything published on the internet is permanent and the harm compounds with each view or comment—necessitating appropriate protection from defamatory statements. Therefore, the only way to provide sufficient protection for limited-purpose public figures is to find the extension of *New York Times* unconstitutional. The First Amendment's guarantee of free speech and press does "not authorize malicious and injurious defamation." *Berisha*, 141 S. Ct. at 2426 (Gorsuch, J., dissenting from denial of certiorari).

Further, freedom of the press has never been reduced to just newspapers; it includes "every sort of publication [that] affords a vehicle of information and opinion." *See Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). Today, any person with a computer or smartphone connected to the Internet can publish comments or opinions. *See Reno*, 521 U.S. at 853. News stations run all day, the internet is widely accessible, and social media continues to be a growing phenomenon. "Publishers" on the internet—especially those on social media platforms—are extremely different from the institutional press in *New York Times*. These internet "publishers" may post information

spontaneously, oftentimes with little to no verification. The "typical social media defendant has no fact-checker [or] editor" and is not adept at gauging credibility of sources.[4] Whereas in 1964, large companies controlled the press and employed investigative reporters, fact-checkers, researchers, and editors. *See Berisha*, 141 S. Ct. at 2427 (Gorsuch, J., dissenting from denial of certiorari). Here, *The Beach Glass Gazette* published a story about the Kingdom Church and several media outlets published stories about Suarez's incident. R. at 5, 7. These stories reach vast audiences today, beyond those imaginable in 1964, and can cause reputational harm in seconds.

In 1964, media events were scarce and news channels did not exist—few publishing companies existed and only in print media. Today, large press events are commonplace, and media is disseminated in real time. Here, Respondent was at the center of a large press event for her reelection campaign and commented, "I am not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children." R. at 8. This fabrication was "published" to potentially millions of people in seconds. Under *New York Times*, such comments can be made without concern of redress or action because of the near-impossible standard Richter, and other limited-purpose public figures, must meet to seek redress for any injury. This standard leaves limited-purpose public figures with "no judicial remedy for the harm inflicted on them by the media and other defendants." *Mastandrea*, *333* So. 3d at 330.

B. The actual malice standard elevates freedom of speech over an individual's reputation.

In following the extension of *New York Times* to limited-purpose public figures, courts place freedom of speech and robust public debate above an individual's reputation. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 781 (1986) (Stevens, J., dissenting). By

[4] Lyrissa Barnett Lidksy, *Of Reasonable Readers and Unreasonable Speakers: Libel Law in a Networked World*, 23 Va. J. Soc. Pol'y & L. 155, 174 (2016).

continuously affirming the extension of this standard, this Court provides "protection for malicious gossip." *Id.* at 786. However, malicious gossip is not "speech that matters." *Gertz*, 418 U.S. at 341. The right of an individual to protect one's own reputation from "wrongful hurt reflects no more than [the Nation's] basic concept of the essential dignity and worth of every human being . . . ." *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring).

Often, an individual thrusted into the public eye is forced to defend themselves. In turn, these individuals are damaged by defamatory statements in the courts of law and public opinion, with little to no recourse. Here, Richter was only trying to defend her name and the Church. *See* R. at 7, 43–44. However, the actual malice standard "constitutionally bar[s] an individual from clearing [her] name in a libel suit." *Coughlin v. Westinghouse Broad. and Cable, Inc.*, 106 S. Ct. 2927, 2928 (1986) (Burger, C.J., dissenting from denial of certiorari). Consequently, Respondent can freely defame Richter with no risk of liability because of Richter's "status."

1. Limited-purpose public figures are essentially private individuals.

"Actual malice in defamation suits is a legal fiction, intended to restrict celebrity recovery, but it in fact results in a limitation on recovery for those unfortunate enough to be drawn into a particular public controversy." R. at 31. Unlike celebrities and public officials, limited-purpose public figures do not accept "certain necessary consequences of [their] involvement in public affairs." *Gertz*, 418 U.S. at 344. Limited-purpose public figures are private persons outside of a specific controversy and thus, not comparable to people like Kim Kardashian. Society is interested "in protecting private individuals from being thrust into the public eye by the distorting light of defamation"—like Richter was. *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 79 (1971) (Marshall, J., dissenting).

Moreover, limited-purpose public figures lack sufficient ability to restore the damage

caused by a defamatory statement. Once defamed, "denials, retractions, and corrections are not hot news, and rarely receive the prominence of the original story." *Gertz*, 418 U.S. at 363 (Brennan, J., dissenting). If the media or public loses interest in the story, the individual's defense is meaningless as it depends on the "unpredictable event" of the continuing interest of the public. *Id.* Further, while all-purpose public figures might be able to refute lies due to their constant spotlight, rarely is a limited-purpose public figure able to do the same. Once the controversy is settled in the court of public opinion, limited-purpose public figures fade out of the public eye with a ruined reputation. Richter does not have ready access to the media as a public official or celebrity to counter criticism; she does most of her work inside the Church and only granted interviews while visiting Suarez. R. at 4, 6–7.

2. Anyone and everyone can become a limited-purpose public figure.

Admittedly, "we are all public [figures] to some degree." *Gertz*, 418 U.S. at 364 (Brennan, J., dissenting). It is significantly easier to become a limited-purpose public figure today than when *Gertz* was decided. *See Berisha*, 141 S. Ct. at 2428 (Gorsuch, J., dissenting from denial of certiorari) ("Now private citizens can become public figures on social media overnight."). An individual can become a limited-purpose public figure "through no purposeful action of [their] own," *Gertz,* 418 U.S. at 345*,* or by simply defending themselves against a defamatory statement. *See Berisha v. Lawson,* 973 F.3d 1304, 1312 (11th Cir. 2020). The *New York Times* extension present day leaves an individual without redress simply because they are deemed a limited-purpose public figure in a court of law; they are "innocent victims caught by this definition." *Mastandrea v. Snow*, 333 So. 3d 326, 330 (Fla. 1st DCA 2022). In a technology dominated society, even the "private individual" will lack the ability to protect their reputation.

Before the events in this case, Richter "was just one of the millions of Americans who

live[d] their lives in obscurity." *Rosenbloom*, 403 U.S. at 78 (Marshall, J., dissenting). While she is the head of the Kingdom Church, she stayed in the background and only entered the public eye following PAMA's aftermath. R. at 7–8. She was not involved in Kingdom Tea and did not conduct any public seminars or engage in door-to-door proselytization. R. at 4. In fact, she rarely left the Beach Glass compound. R. at 4. She only accepted interviews while at the hospital visiting Suarez, an injured church member. R. at 4, 6–7. While she did initiate both suits in question, she did so only to defend herself and the Church; but now, she must meet a near impossible standard to obtain redress. R. at 7–8; *see also Berisha*, 141 S. Ct. at 2425 (Thomas, J., dissenting from denial of certiorari) ("[I]t is unclear why exposing oneself to an increased risk of becoming a victim necessarily means forfeiting the remedies legislatures put in place for such victims."). The fact that virtually anyone or everyone can become a limited-purpose public figure urges the reversal of the *New York Times* extension.

C. The extension of *New York Times* to limited-purpose public figures also bears no relation to the First Amendment.

The extension of *New York Times* to limited-purpose public figures lacks constitutional foundation because the First Amendment's guarantee of free speech and press has never meant that "publishers could defame people, ruin[] careers or lives, without consequence." *Berisha*, 141 S. Ct. at 2426 (Gorsuch, J., dissenting from denial of certiorari). The First Amendment encourages free speech; however, an individual would have to remain a recluse or opinionless to avoid being a limited-purpose public figure. The actual malice standard is an antiquated, judge made rule of law and therefore, the Court's decisions extending *New York Times* are masquerading as constitutional law. *See Bose Corp. v. Consumers Union of U.S., Inc.,* 466 U.S. 485, 502 (1984); *see also McKee v. Cosby*, 139 S. Ct. 675, 676 (2019) (Thomas, J., concurring from denial of certiorari). If the Constitution does not require a showing of actual malice by limited-purpose

public figures, then neither should this Court.

Historically, defamatory statements were not protected by the First Amendment. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (finding classes of speech which have been prevented and punished, including libelous words); *see also Roth v. United States*, 354 U.S. 476, 486 (1957) (finding libelous utterances are not within the area of constitutionally protected speech). In *New York Times*, this Court acknowledged that previous cases stated that the Constitution does not provide protection for libelous publications. 376 U.S. at 268. However, *New York Times* disregarded precedent because no prior case used libel laws to impose sanctions upon expression critical of public official conduct. *Id.* Significantly, the common law of libel "did not require public figures to satisfy any kind of heightened liability standard" and deemed libel against public figures to be more serious than ordinary libel. *McKee*, 139 S. Ct. at 678.

Before *New York Times*, "[t]he common law of defamation defined the balance between free speech and reputation decisively in favor of reputation[,]" but this is no longer the case today.[5] Limited-purpose public figures, like Richter, are incurring reputational injuries because the First Amendment's guarantee of free speech has become untethered from its original purpose. At a large press event, Richter was called a "vampire who preys on children"—a blatant falsehood—and was left unable to defend herself or seek redress.[6] R. at 8. However, the application of *New York Times* to limited-purpose public figures gives Respondent a "constitutional license to defame." *Hepps,* 475 U.S. at 787. This unconstitutional extension allows false aspersions to be cast on limited-purpose public figures with near immunity and should be reversed. *See Coral Ridge Ministries*

[5] Russell L. Weaver & David F. Partlett, *Defamation, Free Speech, and Democratic Governance*, 50 N.Y.L. Sch. L. Rev. 57 (2006).
[6] *See* Kagan, *supra* note 3, at 205 ("The obvious dark side of the [*New York Times*] standard is that it allows grievous reputational injury to occur without monetary compensation or any other effective remedy.").

Media, Inc. v. Southern Poverty Law Center,142 S. Ct. 2453, 2455 (2022) (Thomas, J., dissenting from denial of certiorari).

II. THE PHYSICAL AUTONOMY OF MINORS ACT VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

The Fifteenth Circuit's decision should be reversed because Delmont enacted PAMA to prohibit the religious exercise of the Kingdom Church. This Court has long held that "a way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different." *Wisconsin v. Yoder*, 406 U.S. 205, 224 (1972). The First Amendment ensures that Congress "make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I. This protection is indispensable if a law targets religious beliefs or religious conduct. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). But even laws that incidentally burden religion can be unconstitutional if they are not neutral or generally applicable. *Emp. Div. Dep't of Hum. Res. v. Smith,* 494 U.S. 872, 879 (1990).

A. PAMA unconstitutionally targets the Kingdom Church.

While states do have broader authority to regulate the conduct of children, minors nevertheless retain constitutional rights and protections. *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority.").

1. PAMA lacks neutrality because it was enacted to prohibit religious practices of the Kingdom Church.

To analyze neutrality, one must look beyond a law's text and focus on its goal; if the purpose of the law is to inhibit religious practices, it is unconstitutional. *Lukumi,* 508 U.S. at 533–34. This Court has articulated three objective factors to guide this inquiry: (1) the relevant background history; (2) the specific events that led to the regulation's enactment; and (3) the

legislative history, including statements made by members of the decision-making body. *Id.* at 540. Even "subtle departures from neutrality" run afoul the First Amendment. *Gillette v. United States*, 401 U.S. 437, 452 (1971).

Delmont's express hostility toward the Kingdom Church demonstrates that PAMA is not neutral. Although PAMA does not explicitly mention religion in its text, religious targeting "cannot be shielded by mere compliance with the requirement of facial neutrality." *Lukumi,* 508 U.S. at 534. Here, circumstantial evidence proves Delmont enacted PAMA to inhibit a central tenet of the Kingdom Church: blood banking. Before the Church's practice became public knowledge, blood donations by minors were authorized under Delmont law in two instances—the same two instances the Kingdom Church uses its donations. R. at 5–6. Further, Delmont never attempted to remedy child abuse by prohibiting blood donations before *The Beach Glass Gazette* highlighted the Kingdom Church's practice. *See* R. at 5–6. However, after the publication sparked public outcry, the law changed almost immediately. R. at 5–6.

Moreover, Respondent's conduct and statements regarding PAMA's enactment are inconsistent with the neutrality framework laid out in *Smith*. *See Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n,* 138 S. Ct. 1719, 1732 (2018). Respondent concedes she received a briefing about the Kingdom Church's blood banking tenet; later that same day, she also received the draft of PAMA and signed the bill into law. R. at 6, 39. When asked about the Kingdom Church, Respondent referred to the blood donations as a way the Church "exploit[s]" its children and reiterated this idea by saying the Church "preys on its own children[.]" R. at 6, 8. Despite PAMA's facial neutrality, its "discriminatory purpose is easy to ferret out": prohibiting the Kingdom Church from practicing a key religious belief. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017). As a result, PAMA was enacted "because of" rather than "in spite of"

the Kingdom Church and, therefore, is unconstitutional. *Lukumi,* 508 U.S. at 540.

2. By selectively imposing burdens on religious conduct, PAMA is unconstitutional.

While individualized exemptions are a common flaw in targeted regulatory schemes, substantially underinclusive and overinclusive laws also run afoul the *Smith* test. *Lukumi,* 508 U.S. at 543–45. Because neutrality and general applicability are "interrelated," failing to satisfy one requirement likely indicates the other has also not been met. *Id.* at 531. Therefore, regulations need only fail one of the *Smith* factors to fall outside of rational basis review. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022).

PAMA unconstitutionally burdens the Kingdom Church because the law suppresses more religious conduct than necessary to achieve its asserted goals. *See Lukumi,* 508 U.S. at 538–539, 542. Respondent argued that PAMA was driven by the increasing mental, emotional, and physical abuse crisis facing Delmont children. R. at 7. But what Respondent fails to explain is how prohibiting blood donations will improve these statistics. Likewise, the government interest in protecting Delmont children "could be addressed by restrictions stopping far short of a flat prohibition" of all blood donations by minors. *Lukumi,* 508 U.S. at 538.

Rather than remedy a compelling government interest, PAMA intentionally produced an overinclusive regulation that substantially burdens the Kingdom Church; therefore, PAMA fails the *Smith* test. *See id.* at 543. While the Delmont community expressed concern about the sincerity of a minor's consent, PAMA should have developed a framework to verify authorization if this were the true concern. *See id*. at 538; R. at 5. Similarly, if the compelling interest was that minors are intentionally sought after for blood donations, PAMA should have required parental

consent—like the American Red Cross does for minor donations.[7] R. at 5. The Kingdom Church and its members "don't seek to insulate themselves" from Delmont's laws; they wish only to observe a core tenet in their faith. *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020).

3. PAMA fails strict scrutiny because its overinclusive nature forces the Kingdom Church to surrender its beliefs.

When a government regulation fails the *Smith* test, it is subjected to "the most exacting scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2021. To pass strict scrutiny, the regulation must "further interests of the highest order." *Tandon v. Newsom,* 141 S. Ct. 1294, 1298 (2021) (internal citations omitted). This standard is "not water[ed] . . . down but really means what it says." *Lukumi*, 508 U.S. at 546 (quoting *Smith*, 494 U.S. at 888). However, the absence of narrow tailoring suffices to invalidate the ordinance. *Lukumi*, 508 U.S. at 546. Therefore, the government must use the least restrictive means available. *Holt v. Hobbs*, 574 U.S. 352, 365 (2015). While some religious practices must yield, a law that "advances legitimate governmental interests only against conduct with a religious motivation survives strict scrutiny only in rare cases." *Lukumi*, 508 U.S. at 546.

Because PAMA targets the Kingdom Church, it must pass strict scrutiny. *Trinity Lutheran*, 137 S. Ct. at 2021. In *Yoder*, Amish parents challenged a state mandate that required children to attend school until age sixteen. 406 U.S. at 207. The law was contrary to a central belief in the Amish faith—teaching children necessary skills for future roles within the Amish community. *Id.* at 209. While this Court agreed that a great compelling interest exists in education, this interest is not so great that all competing interests must fail. *Id.* at 214. Much like compulsory education in *Yoder*,[8] PAMA would "gravely endanger if not destroy the free exercise" of the Kingdom Church.

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[7] *Information for Teen Donors*, American Red Cross, https://www.redcrossblood.org/donate-blood/how-to-donate/info-for-student-donors.html (last visited Jan. 31, 2023).

[8] Although the lower courts limited *Yoder* to an educational context, R. at 38, this finding is misguided. *Yoder* emphasized a parent's right to direct the educational and religious upbringing of

See id. at 219. Blood banking is central to the Kingdom Church. R. at 5. As a result, PAMA presents the Kingdom Church with an inescapable dilemma of either complying with law antithetical to a fundamental religious belief or forfeiting the exercise of a core tenet in its faith. As this Court found in *Yoder*, this is "precisely the kind of objective danger . . . the First Amendment was designed to prevent." 406 U.S. at 218.

Moreover, Delmont's objective of preventing child abuse can be achieved by narrower means that burden religion to a far lesser degree. *See Lukumi,* 508 U.S. at 538. Child abuse is a real problem, but PAMA prohibits only the Kingdom Church's religious conduct in pursuit of this goal. *See id*. at 546. While this Court has previously upheld laws that inhibit religious practices, these curtailed practices posed a "substantial threat to public safety, peace or order." *Sherbert v. Verner.* 374 U.S. 398, 402–03 (1963). However, here, PAMA works against the public interest by prohibiting individuals from giving life-saving blood donations. *See* R. at 43. As a result, PAMA fails strict scrutiny and violates the First Amendment.

B. Given that *Smith* hinders the goals of the First Amendment, ignores precedent, and causes tension in lower courts, it should be overruled.

The First Amendment results from the Framers' long history of religious persecution. *See Uphaus v. Wyman,* 364 U.S. 388, 397 (1960) (Black, J., dissenting) ("[It is] an indisputable fact that one of the primary reasons for the establishment of this country was the desire of early settlers to escape religious persecution."). To cement the importance of religious freedom, the Framers' crafted two separate clauses to ensure citizens enjoy this protection to its fullest extent. *See Douglas v. Jeannette,* 319 U.S. 157, 179 (1943) (Jackson, J., dissenting). These clauses were

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his children. 406 U.S. at 213–14. This renders PAMA's burden indistinguishable from the one in *Yoder* because members of the Kingdom Church must raise their child "within [its] belief system." R. at 4. Therefore, PAMA forces the Kingdom Church to "either abandon belief … [or] migrate to some other and more tolerant region." *Yoder*, 406 U.S. at 218.

unparalleled at their inception and continue to set this Nation apart from others today. *Goldman v. Weinberger,* 475 U.S. 503, 523 (1986) (Brennan, J., dissenting) (finding that this "level of human freedom and dignity" depicts the United States as a place of asylum for religious refugees).

While stare decisis serves a valuable purpose, it "applies with perhaps least force of all to decisions that wrongly denied First Amendment rights." *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448, 2478 (2018). Many factors can weigh against maintaining a previous decision, such as its reasoning, treatment of precedent, workability, and subsequent legal developments. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1912 (2021) (Alito, J., concurring). Stare decisis is not an "inexorable command." *Dobbs v. Jackson Women's Health Org.,* 142 S. Ct. 2228, 2262 (2022).

1. Smith *disregards the goals and history of the First Amendment.*

The First Amendment provides more than a mere promise against religious discrimination. *See Goldman,* 475 U.S. at 523 (1986) (Brennan, J., dissenting). It ensures the government respect all religious beliefs, *id.*, by placing religion outside of political control. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). First Amendment freedoms are "susceptible of restriction only to prevent grave and immediate danger." *Id.* at 639. States violate this promise when they inhibit religious practices—whether the attempt is overt or disguised. *Lukumi,* 508 U.S. at 547. The "scope of the First Amendment" must be read "in light of its history and the evils it was designed forever to suppress . . . ." *Everson v. Bd. of Educ.,* 330 U.S. 1, 14–15 (1947).

However, *Smith* ignores the crucial events that led to the creation of the Bill of Rights. Much like the Kingdom Church, the Framers' longing for religious freedom brought them to this Nation. R. at 3; *Uphaus,* 364 U.S. at 397 (Black, J., dissenting). While easy to protect common religious beliefs, what defines this Nation is how it protects unpopular beliefs. *See Masterpiece Cakeshop,* 138 S. Ct. at 1737 (Gorsuch, J., concurring) ("[I]t must be the proudest boast of our

free exercise jurisprudence that we protect religious beliefs that we find offensive."). However, *Smith* works against the goals of the Free Exercise Clause by converting a broad constitutional right into an anti-discrimination provision. *See Fulton*, 141 S. Ct. at 1897 (Alito, J., concurring).

Rather than merely protecting people who choose to exercise religious beliefs, *Smith* ties the rights of these individuals to the rights of those who do not participate in religion. *Id.* Following *Smith's* logic, the government can regulate major religious practices so long as it imposes the same restriction on everyone. *Id.* For example, a state could choose to ban all head coverings in court. *Id*. at 1898. Because this law applies to each person entering a courtroom, it would be upheld under *Smith*—even though head coverings are a significant religious custom for Muslim women, Skih men, and Orthodox Jewish men. *Id*. This is not what the Free Exercise Clause sought to accomplish, but exactly how *Smith* operates in practice. *See id.* at 1883 (Barrett, J., concurring) ("It is difficult to see why the Free Exercise Clause—lone among the First Amendment freedoms—offers nothing more than protection from discrimination."). As a result, *Smith* demotes "a serious First Amendment value to the barest level of minimal scrutiny that the Equal Protection Clause already provides." *Hobbie v. Unemployment Appeals Comm'n.*, 480 U.S. 136, 141–42 (1987) (internal citations omitted).

Moreover, *Smith's* requirements of neutrality and general applicability are an empty promise. States would be naive to pass a law explicitly referencing a specific religion, as any such attempt would be an obvious infringement of the First Amendment. *Smith,* 494 U.S. at 894 (O'Connor, J., concurring) (arguing that the Free Exercise Clause cannot "cover only the extreme and hypothetical situation in which a State directly targets a religious practice."). Nevertheless, *Smith* permits lawmakers to target religious practices, so long as they use strategic wording. *See id.* In *Fulton*, the city of Philadelphia refused to license a Catholic adoption agency because the

agency—acting in accordance with its religious beliefs—prohibited same-sex couples from fostering children. 141 S. Ct. at 1874. This Court struck down the city's statute because it contained an exception vesting discretionary power in the Commissioner. *Id.* at 1897. However, Justice Alito admitted that all Philadelphia had to do was remove this provision to pass constitutional muster under *Smith*. *Id.* at 1888 (Alito, J., concurring). This tactic is exactly what Delmont did with PAMA; the city was just a step ahead of Philadelphia. Delmont removed the law's exceptions as mere subterfuge—crafting a law generally applicable on its face, to disguise its religious hostility. If the Free Exercise Clause is to have any meaning, this workaround cannot stand.

2. Smith *finds no support in the Constitution's text or this Court's precedent.*

For nearly thirty years before *Smith*, courts analyzed Free Exercise claims under the strict scrutiny standard laid out in *Sherbert v. Verner*. 374 U.S. 398, 406 (1963). *Sherbert* upheld regulations only if they were narrowly tailored to advance a compelling government interest. *Lukumi,* 508 U.S. at 533. Referring to the Free Exercise Clause as a "highly sensitive constitutional area," this Court held that not every state interest will be great enough to permit regulation. *Id.* at 406. Rather, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). However, if the "purpose or effect" of the regulation hinders religions practice or discriminates between religions, it fails strict scrutiny. *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961).

Smith is unfounded because the First Amendment lacks any form of limiting language or reference to neutrality or general applicability. *Smith*, 494 U.S. at 894 (O'Connor, J., concurring). Consequently, *Smith* never claims that its interpretation of the Constitution is the correct one, merely a "permissible" one. *Smith*, 494 U.S. at 878. But even this position seems attenuated, as *Smith* relied on two misplaced decisions to sustain its holding. *See id.* at 879. In *Minersville School*

District. v. Gobitis, this Court held that general laws not targeted at religion were constitutional. 310 U.S. 586, 594 (1940). Yet, this Court overruled *Gobitis* only three years later—for no other reason than "its earlier decision had been seriously wrong." *Dobbs*, 142 S. Ct. at 2264. Moreover, this Court upheld a Mormon's polygamy conviction in *Reynolds v. United States*. 98 U.S. 145, 168 (1879). However, *Reynolds* parallels *Sherbert:* religious conduct that poses a "substantial threat to public, safety, peace, or order" is subject to regulation. *Sherbert,* 374 U.S. at 402–03. Therefore, *Smith's* own foundation supports its undoing.

While neutrality and general applicability are necessary requirements to pass First Amendment muster, they are not always sufficient because laws neutral toward religion can coerce a person to violate his religious duties just as effectively as laws aimed at religion. *Lukumi*, 508 U.S. at 565 (Souter, J., concurring). That is why this Court repeatedly rejected the neutral and general applicable standard before *Smith*. *See Yoder,* 406 U.S. at 220 (finding even neutral and generally applicable laws unconstitutional); *see also Hobbie,* 480 U.S. at 141 (rejecting a neutral and generally applicable standard because it has no basis in precedent).

3. Smith *creates unnecessary confusion and should be replaced by strict scrutiny.*

As the Fifteenth Circuit correctly noted, *Smith* is "an unworkable outlier." R. at 36. Because *Smith* declined to overturn the existing Free Exercise jurisprudence, it produced a strained interpretation of precedent—limiting *Sherbert* to employment benefits and *Yoder* to "hybrid-rights" cases.[9] *Fulton*, 141 S. Ct. at 1892–93 (Alito, J., concurring). As a result, lower courts have fractured over how to apply its rule in two crucial ways: (1) the "hybrid-rights" progeny produced a three-way circuit court split and (2) courts define religious targeting in conflicting ways. *Id.* at

[9] If this interpretation was correct, *Sherbert* and *Yoder* would have resolved *Smith*. In *Smith*, petitioners were denied employment benefits for their religious use of peyote, and this "expressive conduct" also falls under the Free Speech Clause. *Fulton, 141 S. Ct. at 1892 (Alito, J., concurring).*

1918–21. Because *Smith* cannot be "understood and applied in a consistent and predictable manner," this Court should reinstate the strict scrutiny standard. *Dobbs*, 142 S. Ct. at 2272.

Furthermore, subsequent legal developments also minimize reliance interests in *Smith*. Shortly after this Court decided *Smith*, Congress enacted the Religious Freedom Restoration Act ("RFRA") to restore the strict scrutiny standard under *Sherbert.* 42 U.S.C.S. § 2000bb. Even though RFRA is inapplicable to the states, *City of Boerne v. Flores*, 521 U.S. 507, 511 (1997), twenty-three states have since passed their own legislation to mirror the statute.[10] Consequently, these laws prove *Smith's* fear of the strict scrutiny is unfounded; the higher standard does not translate to anarchy. *Fulton*, 141 S. Ct. at 1922 (Alito, J., concurring). Although steps have been taken to limit *Smith's* reach, any remnant of the decision "threatens a fundamental freedom." *Id.* at 1924. While the interests in stare decisis are strong, the costs in retaining *Smith* are greater. *See id*. at 1931 (Gorsuch, J., concurring). This Court should overrule *Smith* today.

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court reverse the Fifteenth Circuit's decision and find that (1) the extension of *New York Times v. Sullivan* to limited-purpose figures, like Richter, is unconstitutional and that (2) PAMA and *Smith* violate the Free Exercise Clause of the First Amendment.

Respectfully submitted,

TEAM 15

Counsel for Petitioner

[10] *Religious Freedom Restoration Act Information Central*, Becket, https://www.becketlaw.org/research-central/rfra-info-central/ (last visited Jan. 28, 2023).

CONSTITUTIONAL PROVISION

U.S. Const. amend. I reads in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech."

STATUTORY PROVISION

28 U.S.C. § 1254(1) states: "Cases in the courts of appeals may be reviewed by the Supreme Court…[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

CERTIFICATE OF COMPLIANCE

Per Rule III.C.3 of the Official Rules of the 2023 Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Petitioner, certify that the work product contained in all copies of the team's brief is in fact the work product of the team members; the team has complied fully with our school's governing honor code, and the team has complied with all Rules of the Competition.

TEAM 15
Counsel for Petitioner