No. 22-CV-7654

IN THE
SUPREME COURT OF THE UNITED STATES

EMMANUELLA RICHTER,

Plaintiff-Petitioner,

v.

CONSTANCE GIRARDEAU,

Defendant-Respondent.

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

BRIEF OF RESPONDENT

CONSTANCE GIRARDEAU

Team 18
January 31, 2023
Attorneys for Constance Girardeau

QUESTIONS PRESENTED

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

II. Whether the Fifteenth Circuit was correct in holding Delmont's Physical Autonomy of Minors Act is neutral and generally applicable under the Free Exercise Clause.

III. Whether *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), should be overruled.

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STATEMENT OF FACTS

The Church of the Kingdom ("Kingdom Church") was founded in 1990 by Petitioner, Emmanuella Richter, in the South American country of Pangea. R. at 3. Richter currently serves as the head of the Kingdom Church. R. at 2.

The Kingdom Church has a religious practice that forbids confirmed members from accepting or donating blood to a non-member. R. at 5. For this practice, confirmed members, including minors, must donate and bank their blood at local blood banks in case of a medical emergency for a fellow church member. *Id.* Minors may only be "confirmed" once they reach the age of fifteen and undergo a course of intense doctrinal study and a private confirmation ritual. R. at 4. While the blood drives meet American Red Cross guidelines and may be skipped if a student is ill, confirmed students are otherwise required to donate blood. R. at 5.

Many members of the Kingdom Church, including Petitioner and her husband, immigrated to the United States to avoid religious persecution in Pangea and currently reside in the city of Beach Glass in Delmont. R. at 3. As of 2020, Delmont law prohibited minors—those under the age of sixteen—from "consenting to blood, organ, or tissue donations except for autologous donations and in the case of medical emergencies for consanguineous relatives (e.g., parents, children, cousins)." R. at 5. In 2020, a local newspaper ran a story about the Kingdom Church's blood banking beliefs, which generated complaints and questions in the community about the ethics of the practice and the authenticity of the minor's consent. *Id.* In 2021, the Delmont General Assembly passed a statute called the "Physical Autonomy of Minors Act" (PAMA). R. at 6. PAMA "forbade the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." R. at 6.

PAMA was supported and signed into law by Respondent, acting in her capacity as Delmont's governor. R. at 6. Respondent is up for re-election and focused her campaign on ending child abuse in Delmont after reports indicated rates of child abuse and neglect and teenage suicide had spiked. Girardeau Aff. at 39–40.

On January 17, 2022, there was a van crash involving members of the Kingdom Church. R. at 6. Upon evaluation, doctors determined that the driver of the van, who was a Kingdom Church member, needed a blood donation to be used in an emergency operation. *Id.* Adam Suarez, a fifteen-year-old newly confirmed member of Kingdom Church, was determined to be a blood type match for the driver of the van. *Id.* Suarez, with the consent of his parents, donated the maximum-recommended amount of blood for the first time in his life. *Id.* While donating blood, Suarez's blood pressure rose, and he went into acute shock. *Id.* This series of events was later reported in the news. *Id.*

The following week, Respondent announced that she had commissioned a task force to investigate the Kingdom Church's blood-bank requirements for children. R. at 7. Respondent explained that this commission would help her determine whether PAMA or any other law, was implicated in "the exploitation of the Kingdom Church's children." *Id.*

Following this announcement, on January 25, 2022, Petitioner, as head of the Kingdom Church, requested injunctive relief from the Beach Glass Division of the Delmont Superior Court. R. at 7. Petitioner sought to enjoin the task force from investigating the Kingdom Church's practices relating to the enforcement of PAMA, claiming that the state's action constituted a violation of the Free Exercise Clause of the First Amendment. R. at 7–8.

Two days later, reporters asked Respondent about Petitioner's request for injunctive relief while at a large press event following a campaign rally. R. at 8. Respondent stated, "I'm not

surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its children?" *Id.* The next day, on January 28, 2022, Petitioner amended her complaint to include an action for defamation based on these comments. *Id.*

PROCEDURAL HISTORY

Petitioner sued in federal district court for injunctive relief to prevent the state's task force from conducting an investigation into the Kingdom Church's blood-banking practices. R. at 2. Petitioner also brought an action for defamation against Respondent based on her statement made at the press event. R. at 2. Respondent moved for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure, on the basis that there was no dispute of material fact. R. at 3. The U.S. District Court for the District of Delmont granted Respondent's motion for summary judgment. R. at 20.

On appeal, the United States Circuit Court of Appeals for the Fifteenth Circuit affirmed the District Court's judgment granting summary judgment for Respondent. R. at 38. Petitioner filed a timely petition for writ of certiorari, which this Court has granted. R. at 46.

STATEMENT OF JURISDICTION

The United States Circuit Court of Appeals for the Fifteenth Circuit entered a final judgment in this matter. R. at 38. Petitioner filed a timely petition for writ of certiorari, which this Court granted. R. at 46. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) (2020).

SUMMARY OF THE ARGUMENT

The Fifteenth Circuit correctly concluded that Petitioner is a limited-purpose public figure and, therefore, is subject to the actual malice standard as established in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The extension of the actual malice standard to limited-purpose public figures is constitutional for three reasons. First, the application of the actual malice standard to limited-purpose public figures preserves the necessary freedom of speech protections to encourage free and open debate on public issues, including for individuals criticizing the ethics of a notable religious practice. Second, the extension of the actual malice standard to limited-purpose public figures is amply supported by judicial precedent. Lastly, the actual malice standard is justifiably applied to limited-purpose public figures since those figures, such as the head of a church, have a greater ability to counteract criticism than private individuals.

Next, the Fifteenth Circuit correctly decided that Delmont's PAMA law does not violate Petitioner's First Amendment right to free exercise of religion for two reasons. First, PAMA is neutral because the law is facially neutral and does not target Petitioner or the Kingdom Church. Second, PAMA is generally applicable as it contains no mechanism for individual exceptions nor is it underinclusive of the legislature's stated goals. Therefore, the Fifteenth Circuit correctly concluded that Delmont's PAMA law is constitutional.

Lastly, the Court should not overrule *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) for three reasons. First, *Smith* is an amalgamation of prior Supreme Court cases and, therefore, is deeply embedded in Free Exercise jurisprudence. Second, as evidenced by subsequent legal developments, states and individuals have come to rely heavily on *Smith*. Lastly, there is no administrable, practical alternative to *Smith*. Accordingly, the Court should not overrule *Smith*.

ARGUMENT

I. EXTENSION OF THE ACTUAL MALICE STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES IS CONSTITUTIONAL DUE TO THE IMPORTANCE OF FREE AND OPEN DEBATE, LONG-STANDING JUDICIAL PRECEDENT, AND THE ACCESS TO PUBLIC COMMUNICATION WHICH LIMITED-PURPOSE PUBLIC FIGURES ENJOY.

The extension of the actual malice standard to limited-purpose public figures has a long history in First Amendment jurisprudence. According to *New York Times v. Sullivan*, 376 U.S. 254, 279–80 (1964), a public official may only recover damages due to a defamatory statement relating to their official conduct if the public official proves the statement was made with "actual malice." Under this standard, a statement made with "actual malice" is made either "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280.

The actual malice standard from *New York Times v. Sullivan* was promptly extended to include both public officials and public figures. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 164 (1967) (Warren, J., concurring). Public figures include two categories: all-purpose public figures and limited-purpose public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (describing how individuals are public figures either for "all purposes" or for "particular public controversies"). A limited-purpose public figure is one who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Id.* at 351. The extension of the actual malice standard to limited-purpose public figures is constitutional because it preserves free and open debate in society, delineates a justiciable standard as compared to private individuals, and has long-standing roots in First Amendment jurisprudence.

a. <u>The actual malice standard only applies to limited-purpose public figures for a narrow range of issues which those individuals inject themselves into and thereby ensure the protection of free and open debate regarding public issues.</u>

The actual malice standard should be applied to limited-purpose public figures because the standard safeguards freedom of speech protections necessary to ensure free and open debate of public issues. In *New York Times v. Sullivan*, the standard was originally justified to provide a constitutional safeguard for "uninhibited, robust, and wide-open" debate on public issues. 376 U.S. at 270. To require critics of public officials and public figures, including limited-purpose public figures, to verify the accuracy of their statements prior to voicing them equates to self-censorship. *See id.* at 279.

i. The actual malice standard is only applied to limited-purpose public figures for a narrow range of issues into which limited public-purpose figures inject themselves.

A limited-purpose public figure differs from an all-purpose public figure because a limited-purpose public figure is only considered a public figure for "a limited range of issues." *Gertz*, 418 U.S. at 351. Also, the actual malice standard only applies to issues of public concern. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 763 (1985). Speech on issues of public concern is "at the heart of the First Amendment's protection." *Id.* at 758–59 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 766 (1978)).

Limited-purpose public figures "invite attention and comment" to themselves regarding a specific public controversy, which is narrow in scope. *Gertz*, 418 U.S. at 345. By voluntarily inviting attention and comment regarding the controversy surrounding PAMA, Petitioner opened herself up to criticism regarding her actions involving the PAMA controversy. Had Respondent made a defamatory statement about Petitioner's private life such as her ability to parent, exercise habits, or hobbies, Petitioner would only have to meet the evidentiary burden required by state law. Defamatory remarks related to another aspect of her life would be beyond the scope of her status as a limited-purpose public figure. In this regard, the application of the actual malice

standard to limited-purpose public figures is narrow and only related to public controversies into which individuals have injected themselves.

ii. Application of the actual malice standard to limited-purpose public figures ensures the protection of free and open debate.

Given the narrow scope of the actual malice standard's application to limited-purpose public figures, the actual malice standard helps protect freedom of speech and promotes the marketplace of ideas. *See generally Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market."). Eliminating only limited-purpose public figures from the actual malice standard would deter critics from making statements in fear of whether the statements would need to be proven in court. It would also create confusion among critics on who is and is not covered by the actual malice standard. Since critics would be unsure of who is covered by the actual malice standard, they would be warier of opening themselves up to liability, despite believing the accuracy of the statements and making them without actual malice.

Further, limited-purpose public figures are not merely bystanders. The media, public officials and figures, and private individuals should not be expected to exclude *only* limited-purpose public figures from their discussions of specific public issues merely because limited-purpose public figures are not public figures for other controversies. To do so would unfairly put limited-purpose public figures on a pedestal compared to others involved in public controversies and would inhibit an otherwise free and open discussion. To apply a different standard for limited-purpose public figures rather than the actual malice standard would stifle criticism against prominent figures such as Petitioner.

The state has a substantial interest in protecting freedom of speech regarding public issues. *See Dun & Bradstreet*, 472 U.S. at 759 (finding that speech on "purely private" issues

receives less First Amendment protection than speech on public issues). Respondent's statements were directly related to a controversy Petitioner injected herself into. By claiming the state's enforcement of PAMA by investigating the Kingdom Church's blood banking practices is religious persecution, Petitioner inserted herself into the free marketplace of ideas. To promote a free and open debate about public issues, Petitioner should have to demonstrate actual malice given that some unintentional errors are inevitable in free and open debates. Punishing those honest errors would counter this Court's long protection of free speech by discouraging any wide-open debate or examination of public controversies. Given the stifling effect that the removal of the actual malice standard would cause in these cases for free and open discussion of public issues, the actual malice standard should continue to be applied to limited-purpose public figures such as Petitioner.

b. <u>Limited-purpose public figures enjoy greater access to public communication channels to rebut defamatory statements.</u>

The distinction between private individuals and limited-purpose public figures is evident such that differing standards should continue to apply. Public figures generally have the "ability to resort to effective 'self-help'" and therefore are "less vulnerable to injury from defamatory statements." *Wolston v. Reader's Dig. Ass'n, Inc.*, 443 U.S. 157, 164 (1979). By having greater access to public communication channels than private individuals, limited-purpose public figures are better able to counteract criticism and defend themselves from defamatory statements. *Id.* at 164; *see also Gertz*, 418 U.S. at 344.

The actual malice standard does not "automatically transform[]" a private individual into a limited-purpose public figure when they are merely "associated with" a matter of public concern. *Wolston*, 443 U.S. at 167. They must *voluntarily inject* themselves into the controversy. *Gertz*, 418 U.S. at 351. Therefore, public figures are generally "less deserving" of protection

against defamatory statements because they voluntarily involve themselves into those public issues. *Wolston*, 443 U.S. at 164.

Members of this Court have suggested that the application of the actual malice standard to limited-purpose public figures casts too wide a net to include victims or figures in obscure online platforms, particularly in the age of misinformation and social media. *See Berisha v. Lawson*, 141 S. Ct. 2424, 2427–29 (2021) (Gorsuch, J., dissenting in denial of certiorari); *McKee v. Cosby,* 139 S. Ct. 675, 676 (2019) (Thomas, J., concurring in denial of certiorari). While public communication channels including social media may be easier for individuals to access today than when *Gertz* was originally decided, increased use of social media does not impact the case at hand, given that Respondent made the undisputed statements while at a press conference. R. at 26–27. Moreover, loosening defamation standards to exclude limited-purpose public figures will not solve the issues that come with an ever-changing communications and media landscape. The *New York Times v. Sullivan* standard is not only about protecting a free press; it also protects citizens' rights to have robust conversations online about notable figures without fear of damages if a mistake is made. An individual's active and voluntary involvement in the resolution of issues of public concern remains a clear and sufficient baseline for the actual malice standard in First Amendment jurisprudence.

Here, Petitioner was not merely associated with the PAMA controversy; she thrusted herself into it. Petitioner is the founder of Kingdom Church, which has grown in popularity by spreading outside of Beach Glass and throughout the state. R. at 22. She participated in interviews regarding the Adam Suarez story and, therefore, invited attention and comment to PAMA and blood banking controversy. Thus, Petitioner had greater access than private individuals to counter criticism of Kingdom Church's blood banking practices. Since she had a

heightened ability to rebut criticism as compared to purely private individuals, Petitioner is less deserving of protection against defamatory statements. Her choice of whether to exercise her ability to combat criticism is irrelevant when determining First Amendment protections. The extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional because these figures continue to have greater access to public communication channels to rebut wrongful statements made against them.

c. Precedent demonstrates that the actual malice standard should apply to limited-purpose public figures to balance legitimate state interests.

The extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional, as shown and supported through judicial precedent. Judicial precedent over the past several decades regarding this extension demonstrates the importance of balancing two legitimate state interests: protection against wrongful reputational injury and open debate regarding public issues. While the protection of an individual's reputation from wrongful injury is a legitimate state interest, it must be balanced against the First Amendment protection of a free and open debate regarding issues of public concern. *Gertz*, 418 U.S. at 342. The principle that tensions exist between "the need for a vigorous and uninhibited press and the legitimate interest in redressing wrongful injury" has long been acknowledged and accommodated. *Id.*; *see also Curtis Publ'g Co.*, 388 U.S. at 164–65 (Warren, J., concurring).

As discussed by the Fifteenth Circuit Court's decision below, the *New York Times v. Sullivan* standard was decided in the context of the Civil Rights Movement. R. at 29. However, the Circuit Court found that the *New York Times v. Sullivan* standard is not found in the First Amendment of the Constitution for limited-purpose public figures. R. at 32. Justice Thomas and Justice Gorsuch made similar arguments on this issue, suggesting that the actual malice standard may be limited within First Amendment jurisprudence if applied at all. *See McKee*, 139 S. Ct. at

682 (Thomas, J., concurring in denial of certiorari); *Berisha*, 141 S. Ct. at 2429–30 (2021) (Gorsuch, J., dissenting in denial of certiorari). However, this Court has repeatedly acknowledged the importance of balancing an individual's right to redress wrongful injury to their reputation with the need for free and open debate of issues of public concern. *See Dun & Bradstreet*, 472 U.S. at 757; *see also Gertz*, 418 U.S. at 342.

The decision of whom to apply the actual malice standard to was made in *Gertz v. Robert Welch, Inc.*, and has been repeatedly applied ever since. *See generally James v. Gannett Co., Inc.*, 353 N.E.2d 834, 839–40 (N.Y. 1976); *Time, Inc. v. Firestone*, 424 U.S. 448, 453–55 (1976); *Wolston*, 443 U.S. at 164–68. To interfere with this long-standing doctrine would create chaos and inhibit the workability of the standard.

In this case, the controversy surrounding the PAMA legislation is a matter of public concern. Petitioner is a limited-purpose public figure regarding the PAMA controversy, and the state has a legitimate interest in redressing wrongful reputational injury to her as an individual. However, this Court's long line of precedent demonstrates that balancing these two state interests is best achieved by applying the actual malice standard to limited-purpose public figures, including Petitioner. Therefore, the extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional and should be maintained based on its prior application by this Court and its importance in First Amendment jurisprudence.

In sum, the extension of the actual malice standard to limited-purpose public figures is constitutional because it preserves free and open debate in society, delineates a justiciable standard as compared to private individuals, and has long-standing roots in First Amendment jurisprudence. This Court should not disrupt decades-long precedent by holding that limited-

purpose public figures do not have to meet the actual malice standard established in *New York Times v. Sullivan*.

II. DELMONT'S PHYSICAL AUTONOMY OF MINORS ACT ALIGNS WITH THE FREE EXERCISE CLAUSE UNDER *SMITH* AS BOTH NEUTRAL AND GENERALLY APPLICABLE AND, THEREFORE, MUST BE COMPLIED WITH DESPITE RELIGIOUS OBJECTIONS.

The Fifteenth Circuit did not err in finding that the Physical Autonomy of Minors Act (PAMA) is both neutral and generally applicable; thus, it does not violate the Free Exercise Clause. Under *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877–83 (1990), a law does not violate the Free Exercise Clause when it is both neutral and generally applicable. Since the Court decided *Smith*, the standard has been the landmark framework cited in a variety of cases. *E.g.*, *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). This standard should not be overturned and should be used today to find that the Fifteenth Circuit was correct in finding that PAMA does not violate the Free Exercise Clause of the First Amendment.

a. <u>The Fifteenth Circuit did not err in finding PAMA neutral because the law does not explicitly address religion, specifically Kingdom Church, nor does it intend to target any one religion.</u>

The Fifteenth Circuit did not err in finding PAMA neutral. The first step in evaluating whether a law is neutral and generally applicable under the *Smith* standard is to consider the neutrality of the law. 494 U.S. at 878–79. A law is neutral when it does not specifically reference or target any one religion. *Lukumi*, 508 U.S. at 533; *see also Trinity Lutheran*, 137 S. Ct. at 2022 (citing *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)) (finding that the state's policy was not neutral because it expressly denied public benefits because of the religious characteristics of organizations). There are two steps in evaluating whether a law is

neutral. *Lukumi*, 508 U.S. at 533–34. First, the law must be facially neutral. *Id.* If the text is found to be facially neutral, the second step is to determine whether the law was implemented with the intent to target a religion or specific religious organization. *Id.* at 534.

i. PAMA is facially neutral.

PAMA is facially neutral because it does not include religion in the text of the law nor do the words of the text have a religious meaning. A law is facially neutral when the language does not explicitly mention religion or religious organizations within the language of the text. *Lukumi*, 508 U.S. at 533–34; *Trinity Lutheran*, 137 S. Ct. at 2024. Additionally, in determining whether a law is facially neutral, the origins and meanings of the words in the text are considered. *Lukumi*, 508 U.S. at 534. However, if the words have a religious origin and a secular meaning, then they are still considered facially neutral. *Id.*

In *Lukumi*, the city of Hialeah passed a series of ordinances prohibiting the "unnecessar[y] kill[ing], torment, torture, or mutil[ation of] an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." 508 U.S. at 527. However, the ordinances contained exceptions for killings done by "licensed establishments" for food purposes, and the text created exceptions for killings that were not done in a ceremony. *Id.* at 528, 536–37. The ordinances passed by the city of Hialeah were not neutral because the "pattern of exemptions" showed the ordinances intended to suppress a central element of the Santeria faith—animal sacrifice. *Id.* at 537. Although the ordinances were ultimately found to not be neutral, they were facially neutral because the terms "sacrifice" and "ritual," which both had religious origins, had secular meanings and were defined without reference to religious practices. *Id.* at 534.

PAMA's text is facially neutral because it does not involve religion in the text of the statute. There is no direct reference to religion or a religious organization within the text of PAMA. Specifically, there is no explicit mention of the Kingdom Church. While PAMA's text forbids the "procurement, donation, or harvesting of the bodily organs, fluid, or tissue of a minor," nowhere in this text does PAMA use or reference a religious term, text, or organization. R. at 2. Furthermore, the terms of PAMA all have secular meanings. PAMA does not use terms that have religious origins, nor are terms defined using religious meanings or context. The singular term that is defined—what constitutes a "minor"—within the text of the statute is done without any reference to religion or otherwise religious terms. R. at 6.

Since the terms of the text do not include any religious terms, meanings, or origins, PAMA is facially neutral and passes the first part of the neutrality test.

ii. PAMA was not passed with the intent to target any religious organization or practice, including the Kingdom Church's practice of blood banking.

PAMA also passes the second part of the neutrality test—whether the law intends to target religion. A facially neutral law that is passed with the purpose or intent of targeting religion is not neutral. *Lukumi*, 508 U.S. at 534. To determine the intent of a law, the Court has considered factors including a pattern of exceptions or exemptions that could contradict the law's stated purpose and contemporaneous statements made by members of the decision-making body. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (citing *Lukumi*, 508 U.S. at 540).

First, unlike the quick, successive ordinances passed in *Lukumi*, PAMA does not provide caveats or loopholes for other forms of organ, fluid, or tissue donations. The ordinances in *Lukumi* created exceptions for animal killings that were not done in a ceremony or done with the intent to be consumed, creating a "pattern of exemptions" that "parallel[ed] the pattern of narrow

prohibition[].” 508 U.S. at 536–37 (“killings that [were] no more necessary or humane in almost all other circumstances [were] unpunished.”). No “pattern of exemptions” can be read into the text of PAMA. Here, the legislature avoided loopholes by including a range of terms regarding obtaining another’s body parts. PAMA specifically emphasizes that it applies to *all* people under the age of sixteen and that no exceptions are to be made regardless of the minor’s consent. R. at 6. Thus, no exceptions—secular or religious—have been made for organ, fluid, or tissue donations. Although stated intentions can mask underlying targeting, PAMA has no exemptions that would contradict the intent. The exemptions in *Lukumi* undermined one of the stated purposes of promoting public health because there were no other regulations on these exempted activities. 508 U.S. at 538–39. No such exemptions have been made in PAMA.

Second, although “contemporaneous” statements of the decision-making body are considered, comments made by Respondent *after* the enactment of PAMA in response to questions about Petitioner’s request for injunctive relief have no relevance to or bearing on the passage of PAMA. While statements made after the enactment of the applicable law were considered in *Masterpiece*, those statements were made while deciding how to apply the law and were not related to the underlying intent of the law at passage. 138 S. Ct. at 1729 (finding that the Colorado Civil Rights Commission had not acted neutrally based on comments made about the petitioner’s religion).

Similarly, the comments made by Respondent here have no bearing on or relation to the underlying intent of the enactment of PAMA. Nor does the record indicate any negative treatment of the Kingdom Church by the legislature or Respondent at the time of passage. While Respondent expressed her favor for PAMA and made a negative comment regarding Kingdom Church post-enactment of PAMA, nothing in the record suggests that others who voted in favor

of PAMA expressed negative opinions of Kingdom Church before voting, unlike the council members in *Lukumi*. 508 U.S. at 541–42. Thus, the statements made related to the Kingdom Church, although negative, do not indicate that PAMA was passed with an underlying intent to target the Kingdom Church.

Since PAMA is facially neutral and does not target the Kingdom Church, PAMA meets the neutrality prong of the *Smith* test, and the Fifteenth Circuit did not err in finding PAMA neutral. Therefore, the Court can evaluate PAMA to determine if it is generally applicable.

b. <u>The Fifteenth Circuit did not err in finding PAMA generally applicable as it contains no individualized exceptions and is not underinclusive of the goal to promote children's safety.</u>

The second requirement of the Free Exercise Clause is that laws impacting religious practices must be generally applicable. There are two ways a law can fail to be generally applicable. First, the law can allow for exceptions for secular conduct, but not religious conduct, resulting in unequal treatment. Second, the law can be underinclusive to the purported goals of the law by prohibiting religious conduct and yet allowing similar secular conduct.

i. PAMA has no mechanism for individualized exemptions.

A law lacks general applicability if it provides a "mechanism for individualized exemptions" that provides the government with the discretion to apply the law based on the reasons for a person's conduct. *Fulton*, 141 S. Ct. at 1877 (citing *Smith*, 494 U.S. at 884). If the government has a "system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Smith*, 494 U.S. at 884 (citing *Bowen v. Roy*, 476 U.S. 693, 708 (1986)). For example, in *Sherbert v. Verner*, 374 U.S. 398, 399 (1963), a Seventh-day Adventist was fired because she would not work on Saturdays. The state denied her unemployment benefits under a law that prohibited eligibility to claimants who had "[]failed,

without good cause . . . to accept available suitable work . . . ." *Id*. at 401. The meaning of "good cause" was up to the agency administering the benefits, which allowed the government discretion to grant exemptions based on the circumstances underlying each application. *Id.* Ultimately, the government cannot allow exemptions only for secular purposes. *Smith*, 494 U.S. at 884.

Similarly, in *Fulton*, the Court found a city's foster care contract was not generally applicable when the city refused to refer children to Catholic Social Services for not certifying same-sex foster parents, due to religious reasons, yet allowed other exceptions at the discretion of the Commissioner. 141 S. Ct. at 1874, 1878.

Unlike *Fulton*, there are no exceptions at all for PAMA, discretionary or otherwise. Even when there was a car crash involving Kingdom Church members and the driver required a blood transplant from a fifteen-year-old minor, PAMA provided no exceptions. R. at 6. Since there are no exceptions, the minor and his parents violated PAMA when the minor began donating blood for the driver's blood transfusion. Therefore, an investigation into the event was justified, as it would have been in any other situation regardless of religion. Had there been any mechanism for exceptions for religious purposes or otherwise, then the law would fail to be generally applicable. Given there is no mechanism for any individualized exemptions, PAMA is generally applicable.

ii. PAMA is not underinclusive of the purported goals of protecting children's safety.

A law also lacks general applicability if the government asserts a broad state interest and yet only enacts a rule limiting religious conduct, despite similar secular conduct remaining unaffected. *Lukumi*, 508 U.S. at 543. When the legislature prohibits religious conduct while permitting similar secular conduct, the law is underinclusive of the legislature's alleged goals. *Fulton*, 141 S. Ct. at 1877. Conversely, a rule is sufficiently inclusive if it either treats secular and religious conduct similarly or if the rule distinguishes dissimilar secular activities from

religious activities. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief) (describing that a rule is generally applicable if it "exempts or treats more leniently only dissimilar activities . . .").

In *Lukumi*, an ordinance that dealt with the ritual slaughter of animals failed to be generally applicable and was underinclusive of the city's purported goals. 508 U.S. at 543. While the city asserted the goal of protecting public safety and curbing animal abuse, the city failed to promulgate regulations of secular conduct dealing with animals, such as hunting. *Id.* at 543–44. In contrast, in *South Bay*, COVID-19 guidelines that limited the number of people in worship spaces were comparable to guidelines limiting secular spaces in which people gathered. 140 S. Ct. at 1613 (Roberts, C.J., concurring in denial of application for injunctive relief). In this regard, the COVID-19 restrictions were not underinclusive of the city's goal of slowing the pandemic.

Here, PAMA is treating religious conduct the same as similar secular conduct. The Kingdom Church requires minors to donate blood, but PAMA protects more broadly from "the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor" for religious and non-religious conduct. R. at 2. The purpose of the law—that is, to prevent child abuse by ensuring minors have the requisite maturity before donating bodily substances—equally impacts secular conduct as religious conduct. For instance, an atheist thirteen-year-old child who wants to donate a kidney to his friend would be equally as prohibited from donating as the confirmed fifteen-year-old Kingdom Church member donating blood as part of Church activities. Given this, PAMA is not underinclusive to the purported goals of protecting children's safety as it is legislating secular conduct beyond just religious-motivated blood donations and the confirmed age ranges of the Kingdom Church.

Further, PAMA is one component of Delmont's goal of protecting children from exploitation, abuse, and neglect. Similar to *South Bay*, the law applies equally to religious observers and non-religious purposes. 140 S. Ct. at 1613. The law promotes the protection of children's safety, which is a legitimate state interest in a developed society. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). This Court has held that "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens . . . ." *Prince*, 321 U.S. at 168. To foster this growth, the state has the power to enact laws to protect children's autonomy and shield children from potential abuse.

PAMA is simply another law, among many others, that aims to protect children's wellbeing. Other examples of permissible state laws allow prohibitions of child marriage, prohibitions of child labor, or requirements of primary school attendance, even if these laws incidentally burden some religions. *See Prince*, 321 U.S. at 168. The combination of these laws forms a system to ensure child welfare, and PAMA is just another law in the system promoting children's wellbeing. Therefore, PAMA is not underinclusive of the purported goals of protecting children's safety.

III. *SMITH* SHOULD NOT BE OVERTURNED BECAUSE IT IS DEEPLY ROOTED IN THE HISTORY AND TRADITION OF THE CONSTITUTION SUCH THAT LEGISLATURES HAVE REASONABLY RELIED ON IT AND THERE IS NO FEASIBLE ALTERNATIVE.

Stare decisis is the bedrock of our judicial system. It reflects "a basic humility that recognizes today's legal issues are often not so different from the questions of yesterday . . . ." *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2134 (2020) (Roberts, C.J., concurring). This Court has traditionally looked at several factors when considering whether to overrule a precedent. These include: (1) the workability of the rule it established; (2) consistency with other related decisions; (3) subsequent developments since the decision was handed down; (4) and

reliance on the decision. *Janus v. Am. Fed'n of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448, 2478–79 (2018). These factors support the preservation of *Smith*.

a. *Smith* is consistent with related decisions and is rooted in this Court's free exercise jurisprudence.

Although *Smith* was decided nearly 200 years after the ratification of the First Amendment, it remains consistent with related decisions and is deeply connected and entrenched within the understanding of the Free Exercise Clause. The beginning of free exercise jurisprudence can be traced back to 1878 when this Court considered the constitutionality of a statute banning polygamy. *Reynolds v. United States*, 98 U.S. 145, 146 (1878). Ultimately, the statute was found constitutional because it was the *actions* of people that were being regulated, not their beliefs. *Id.* at 166−67. *Reynolds* laid the foundation for all subsequent free exercise issues, establishing that religion could not be above the law of the land and that the Free Exercise Clause was not absolute. *Id*. at 165−167. Subsequent cases continued to accept these ideas and expanded upon how to determine when a state regulation is valid under the Free Exercise Clause—ultimately culminating in the *Smith* test.

Free exercise jurisprudence prior to *Smith* alludes to the two-pronged test of neutral and generally applicable through the construction and application of standards and the language used in the cases. Throughout cases regarding the Free Exercise Clause, a significant component was that general laws cannot regulate conduct based on a religious test. *See Braunfeld v. Brown*, 366 U.S. 599, 607 (1961); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940); s*ee also Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 594−95 (1940) (overruled in part by *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)). The language used throughout the years changed, but the concept that a law must not specifically reference or target any one religion remained constant. *See Braunfeld*, 366 U.S. at 607; *Sherbert*, 374 U.S. at 403; *Wisconsin v.*

Yoder, 406 U.S. 205, 220 (1972). While the language has evolved, this Court has recognized since the 1940s the idea of "regulations of general applicability." *Yoder*, 406 U.S. at 220. This demonstrates that this Court has long accepted the need for laws to not only be free of religious reasoning but also generally applied to everyone. *Id.* at 220, 235; *Cantwell*, 310 U.S. at 305; *Gobitis*, 310 U.S. at 594; *Braunfeld*, 366 U.S. at 607.

Furthermore, whether the state has a "permissible" end or compelling interest in a regulation that could infringe on free exercise of religion has historically been considered in the Free Exercise Clause analysis. *Cantwell*, 310 U.S. at 304. Originally, whether the state had a "desirable" end in having its regulation was considered when determining the validity of the regulation. *Gobitis*, 310 U.S. at 597. This idea was continued, although the language was transformed, in *Braunfeld* where a "[s]tate's secular goals" were considered in evaluating the regulation. 366 U.S. at 607. This consideration turned into whether the state had an interest that was "compelling," not just "merely" a "rational relationship" in passing such regulation. *Sherbert*, 374 U.S. at 403, 406. Finally, the state must have shown an interest "of sufficient magnitude" to survive a free exercise claim. *Yoder*, 406 U.S. at 214.

While the *Smith* test is a modern test, its roots are grounded in a long history of Free Exercise Clause jurisprudence. For years, this Court has supported ideas of neutral and generally applicable laws that maintain a strong government interest and has considered these factors in its analysis. While the language and weight of factors have shifted throughout the years, these ideas remained constant. The *Smith* test solidified these ideas and laid out an administrable standard that has been used in cases for over thirty years.

b. <u>As evidenced by subsequent legal developments, states and individuals have come to rely on *Smith*.</u>

Adhering to precedent is imperative when state legislatures and individuals have acted in reliance on a previous decision, as seen through subsequent legal developments at the state level. *Janus*, 138 S. Ct. at 2478−79, 2484. Overruling *Smith* would severely disrupt state law-making abilities where many state laws for religious freedom protection would be replaced with a federal rule. If *Smith* were overturned, the "numerous state laws" that "impose a substantial burden on a large class of individuals" would be subjected to the high standard of strict scrutiny. *City of Boerne v. Flores*, 521 U.S. 507, 535 (1997). A significant amount of power would transfer from the states to the federal government to determine what laws are in the best interest of the state. This concern was part of what resulted in the Religious Freedom Restoration Act being found unconstitutional as applied to the states. *Id.* at 534. Overturning *Smith* would disrupt the balance of federalism and create confusion regarding the status of current and pending state legislation. Therefore, in the interest of reliance, this Court should preserve *Smith*.

c. *Smith* provides a workable standard in which there is no practical alternative.

While *Smith* has its roots in a long history of free exercise jurisprudence, it is ultimately the product of practicality and necessity. *Smith* provides an administrable standard that does not force the government to wade into religious matters by making exemptions based on each religion. Previous cases created exemptions for specific religious practitioners, even though the laws applied to everyone because the government substantially burdened their religious practices without having a compelling interest. *Sherbert*, 374 U.S. at 1792; *Yoder*, 406 U.S. at 1529. However, this accommodating approach from *Sherbert* and *Yoder* is not a *reasonable* alternative to *Smith*.

Currently, some members of this Court argue that the Free Exercise Clause should be interpreted to require religious exemptions from federal, state, and local laws. *See Fulton*, 141 S.

Ct. at 1883 (Alito, J., concurring, joined by Thomas, J., and Gorsuch, J.). However, adopting an accommodationist approach like in *Sherbert* or *Yoder* would cause courts to become overwhelmed with litigation. Individuals would be empowered to argue that generally applicable and neutral laws are burdening their religious beliefs. There would not be an objective mechanism to deter religious practitioners from arguing against any neutral law that they may disagree with. The Free Exercise Clause protects the right of people to believe and practice their religions as they wish; however, it should not provide a basis for people to harm others based on their religious beliefs nor allow an exception from otherwise general laws.

Using a *Sherbert* or *Yoder* accommodationist approach, the government would have to apply strict scrutiny and examine whether laws are narrowly tailored. Further, if there is an exemption for secular activity, but not similar religious activity, strict scrutiny is applied. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (denying injunctive relief). Given many laws include minor exceptions for secular activities, using an accommodationist approach would enable discrimination on the basis of religion and ultimately unravel major legislation like the Fair Housing Act or Civil Rights Act of 1964. *See* 42 U.S.C. § 2000a; 42 U.S.C. § 3601–3631. A return to *Sherbert* or another accommodationist approach would enable a religious restaurant host to refuse to seat an African American on the basis that it violates their religion or a realtor to refuse to sell a house to an LGTQIA+ family because it is against their religion. Instead, the more practical alternative is to preserve *Smith*.

Smith provides a neutral, objective test that enables courts to consider religious objections without wading into religion and deters the filing of claims seeking permission to discriminate. Religious practice should be a private matter, and individuals should not be able to inflict injury

on others in the name of religion. Yet, if *Smith* were overruled, it would open the door to legitimizing the infliction of such injuries. Therefore, this Court should not overturn *Smith*.

CONCLUSION

Respondent respectfully requests that this Court affirm the judgment of the United States Court of Appeals for the Fifteenth Circuit. The extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional as (1) applying the standard to limited-purpose public figures preserves the necessary freedom of speech protections to encourage free and open debate of public issues; (2) limited-purpose public figures have greater access to public communication channels to counter criticism; and (3) lastly, the extension of the actual malice standard limited-purpose public figures is supported by judicial precedent. Next, Delmont's PAMA law does not violate Petitioner's First Amendment right to free exercise of religion as it is neutral and generally applicable under *Smith*. Therefore, the Fifteenth Circuit correctly concluded that Delmont's PAMA law is constitutional. Lastly, the Court should not overrule *Smith* since (1) Smith is deeply embedded in the Free Exercise jurisprudence; (2) states and individuals rely on *Smith*; and (3) there is no workable alternative to *Smith*.

Respectfully submitted,

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COMPETITION CERTIFICATE

Team 18 hereby certifies that the work product contained in all copies of Team 18's brief is in fact the work product of the members of Team 18 only, and that Team 18 has complied fully with its law school's governing honor code and professional code, and that Team 18 has complied with all Rules of the Competition in the formation of this brief and in the brief itself.

/s/ Team 18

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