Team 20

NO. 22-CV-7654

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

EMMANUELLA RICHTER,

Petitioner,

v.

CONSTANCE GIRARDEAU,

Respondent.

On Writ of Certiorari to the

United States Court of Appeals

for the Fifteenth Circuit

BRIEF FOR RESPONDENT

Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that the extension of the *New York Times v. Sullivan* standard for limited-purpose public figures comports with the First Amendment and thus is constitutional.

II. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that the Physical Autonomy of Minors Act is constitutional because of its neutral and generally applicable provisions, which do not reference or burden one religion more than any other, and therefore *Employment Division, Department of Human Resources of Oregon v. Smith* should not 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The opinion of the United States District Court for the District of Delmont is unpublished and may be found at *Richter v. Girardeau*, C.A. No. 22-CV-7855 (D. Delmont Sept. 1, 2022). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *Richter v. Girardeau*, C.A. No. 2022-1392 (15th Cir. 2022).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. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution. U.S. Const. amend. I. This case also involves the Physical Autonomy of Minors Act. R. at 2.

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Formation of Kingdom Church. In 1990, Petitioner Emmanuella Richter ("Richter") founded the Church of the Kingdom ("Kingdom Church") in Pangea, South America. R. at 3. In 2000, following the toppling of Pangea's government, Kingdom Church became the target of governmental repression. R. at 3. Soon after, Richter, her husband, and a significant portion of the church's congregation sought and received asylum in the United States on religious persecution grounds. R. at 3. The group then settled in the city of Beach Glass, Delmont. R. at 3. To become a member of the Kingdom Church, individuals must undertake an intense doctrinal study to achieve a state of enlightenment and be confirmed by the church. R. at 4. The process to membership is only available for those fifteen years of age. R. at 4. Additionally, the church

requires members to live in designated compounds, separate from the rest of Delmont's population. R. at 4. The compounds spread throughout the southern portion of Delmont and are self-sufficient, providing for their needs through agricultural practices and selling "Kingdom Tea" throughout the region R. at 4.

Kingdom Church's Blood Banking Practice. The church compounds have good reputations within their respective communities. R. at 5. However, one of the Kingdom Church's religious practices regarding blood donation has become part of a statewide controversy. R. at 5. Blood banking is a central tenant of the Kingdom Church's faith. R. at 5. Confirmed members of the Kingdom Church may not accept from or donate blood to any non-member. R. at 5. Thus, members are required to bank their blood at local blood banks in case of medical emergencies. R. at 5. Additionally, the church extends this practice to minors, requiring confirmed students to participate in these blood donations as part of their monthly "service projects." R. at 5. Multiple sectors throughout Delmont have raised outcry regarding the involvement of minors in blood banking. R. at 5. Specifically critiquing the authenticity of a minor's consent and expressing concerns that church officials were procuring minors for blood banking. R. at 5.

PAMA and the Accident. Following public outcry over the Kingdom Church's blood banking practices, the Delmont General Assembly passed the Physical Autonomy of Minors Act ("PAMA") in 2021. R. at 6. Before 2021, Delmont law prohibited minors under sixteen from consenting to blood, organ, or tissue donations except for autologous donations or donations in medical emergencies for consanguineous relatives. R. at 5. But PAMA now forbids the procurement, donation, or harvesting of bodily organs, fluids, or tissue of any individual under the age of sixteen, regardless of the individual's consent. R. at 6. Following the enactment of PAMA, Kingdom Church member Henry Romero was admitted to the hospital in critical

condition needing an immediate operation after a major car accident. R. at 6. Fifteen-year-old member Adam Suarez, a cousin to the victim, was identified as a blood type match. R. at 6. However, Adam's donation was illegal due to the passage of PAMA. R. at 6. But ignoring PAMA, Adam donated his blood for his cousin's operation. R. at 6. Adam went into acute shock during the donation process and moved to the hospital's intensive care unit. R. at 6. News eventually broke regarding the circumstances of the illegal blood donation, sparking another public outcry. R. at 6.

The Lawsuit. Respondent Governor Constance Girardeau ("Girardeau") was running for re-election. R. at 7. At a campaign, Girardeau voiced concerns that Delmont's children were facing a crisis regarding their mental, emotional, and physical well-being. R. at 7. Reporters at the campaign then questioned Girardeau about the Adam Suarez story. R. at 7. Girardeau informed the public that she had commissioned a task force of social workers to investigate the church's blood bank requirements for minors. R. at 7. The social workers were assigned to determine whether "the exploitation of Kingdom Church's children" implicated PAMA. R. at 7. Following Girardeau's statements at the campaign, Richter sued, seeking injunctive relief to prevent the task force from investigating the church practice. R. at 8. The lawsuit sparked controversy in the news. R. at 8. At a press event, reporters asked Girardeau about the lawsuit, to which her response was, "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.

II. PROCEDURAL HISTORY

The District Court. Petitioner Richter, the founder of Kingdom Church, sued Respondent Girardeau in the United States District Court for the District of Delmont, seeking injunctive relief to stop the task force from conducting the investigation. R. at 7–8. Richter filed her claim

on the basis that the PAMA violated her constitutional right to the free exercise of religion. R. at 8. Soon after, Richter amended her complaint to include an action for defamation. R. at 8. Girardeau then moved for summary judgment. R. at 8. On September 1, 2022, the district court upheld PAMA and granted summary judgment for Girardeau. R. at 20.

The Court of Appeals. The Fifteenth Circuit affirmed the district court's defamation and free exercise judgment in favor of Respondent. R. at 21. Specifically, the circuit court affirmed the district court's holding that Richter is a limited-purpose public figure and its application of the *New York Times v. Sullivan* standard to Richter's defamation action. R. at 27. Additionally, the circuit court found that the district court was correct in holding that PAMA was both neutral and generally applicable. R. at 34.

This Court. Petitioner Richter appealed the ruling of the Fifteenth Circuit. R. at 45. This Court granted certiorari over two issues: (1) whether the extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional and (2) whether PAMA is neutral and generally applicable. R. at 46.

SUMMARY OF THE ARGUMENT

I.

The United States Court of Appeals for the Fifteenth Circuit correctly held that the extension of the *Sullivan* standard to limited-purpose public figures comports with the Constitution. When tasked with interpreting the standard for a defamation case, this Court has consistently reaffirmed that *Sullivan* is the most appropriate standard for limited-purpose public figure plaintiffs. Specifically finding that core First Amendment principles support the extension of *Sullivan* and despite doubt from the court of appeals, no precedent supports overturning the extension of the *Sullivan* standard. Additionally, solidified by nearly sixty years of precedent, the

principles of stare decisis strongly support upholding the application of *Sullivan* to limited-purpose public figures as good law. Because application of the *Sullivan* standard to limited-purpose public figures comports with the First Amendment, this Court should uphold affirm the court of appeals decision.

II.

This Court should affirm the judgment of the United States Court of Appeals for the Fifteenth Circuit because the Physical Autonomy of Minors Act is both neutral and generally applicable by way of its non-discriminatory provisions. The PAMA is facially neutral because its provisions do not mention any religious group or beliefs. Additionally, the act is neutral in its effect because it does not burden minors of a specific religion more than any other minor in Delmont. The PAMA is generally applicable because it does not create a mechanism for individualized exemptions at Delmont's sole discretion. Because the PAMA is both neutral and generally applicable, it is subject to and satisfies a rational basis review, thus the PAMA does not violate the Free Exercise Clause. Finally, this Court should not overrule *Smith* standard because it limits the government's power over religious freedoms while also considering this Court's precedent.

ARGUMENT AND AUTHORITIES

Standard of Review. The district court granted summary judgment for Girardeau. R. at 20. The appellate court affirmed the district court's decision. R. at 38. Summary judgment may only be awarded when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Grants of summary judgment are reviewed de novo. *Lawless v. Steward Health Care Sys., LLC*, 894 F.3d 9, 21 (1st Cir. 2018).

I. RICHTER IS A LIMITED-PURPOSE PUBLIC FIGURE AND HAS THE BURDEN TO SHOW GIRARDEAU ACTED WITH ACTUAL MALICE.

The First Amendment provides a constitutional safeguard for freedom of speech and the press. As this Court has recognized, the protections provided by the First Amendment are essential to the "free flow of ideas and opinions on matters of public interest and concern." *Hustler Mag. v. Falwell*, 485 U.S. 46, 50 (1988). To protect such speech, this Court extended the application of the actual malice, or *Sullivan* standard, to limited-purpose public figures. Nonetheless, the court of appeals questions the constitutionality of extending the *Sullivan* standard to limited-purpose public figures. R. at 28. Petitioner now asks this Court to reconsider an unbroken line of cases holding that the First Amendment requires limited-purpose public figure plaintiffs to prove actual malice. The application of *Sullivan* to limited-purpose public figures comports with the First Amendment, and this Court need not reconsider.

A. *Sullivan* Is the Most Appropriate Standard to Apply to Limited-Purpose Public Figures in Defamation Cases.

For nearly sixty years, lower courts have relied on this Court's holding in *Sullivan* to guarantee freedom of expression in debate on issues of public importance. Thus, the application of *Sullivan* is a precise measure of First Amendment protection. This Court has consistently held that *Sullivan* is the most appropriate standard to apply to limited-purpose public figures. Extending the actual malice standard to limited-purpose public figures ensures the First Amendment's protection of free speech, and no precedent supports otherwise.

1. This Court has consistently affirmed the core First Amendment principles underlying the application of *Sullivan* to limited-purpose public figures.

The court of appeals erroneously concludes that applying the actual malice standard to limited-purpose public figures is an "arbitrary measure of how much protection the First Amendment is able to afford a person." R. at 30. This could not be further from the truth. Our nation's history places a substantial interest in fostering vigorous debate about the government and public affairs. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964). Thus, the First Amendment's guarantees of freedom of speech and press give more protection to defamatory words regarding a public official or public figure than a private person. *Id.* This Court's decision in *Sullivan* has proven to be a cornerstone in First Amendment protections and has only become stronger over time.

Beginning with *Sullivan*, this Court set out safeguards to protect free speech required by the First Amendment in defamation cases. *Id.* at 265. At issue in *Sullivan* was an Alabama state law that jeopardized the ability of minority groups to share their views publicly and seek support for their causes. *Id.* at 300. The law directly conflicted with the Founders' intention to protect free speech when they drafted the First Amendment. In response, this Court focused on the importance of protecting an individual's ability to express grievances with or protest major public issues of the time. *Id.* at 271. Ultimately holding that constitutional guarantees require "a federal law that prohibits a public official from recovering damages . . . unless he proves that the statement was made with 'actual malice.'" *Id.* at 279–80. This rule has become the actual malice, or *Sullivan*, standard. Or in other words, the first safeguard recognized by this Court as required by the First Amendment to protect free speech.

Contrary to the court of appeals holding, nothing in *Sullivan* suggests that the actual malice standard was limited to only public officials. In fact, shortly after deciding *Sullivan*, this Court extended the actual malice standard. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 164 (1967). In *Curtis*, this Court extended the *Sullivan* safeguard to a broader category of individuals, limited-purpose public figures. *Id.* Further affirming the protections provided by the First Amendment. *Id.* In other words, providing First Amendment protection to statements made about private individuals who are "intimately involved in the resolution of important public questions. *Id.* at 163–64. The extension of actual malice was necessary to protect the right to criticize the government and promote free discussion. Both of which are core principles of the First Amendment.

In nearly sixty years of precedent following *Curtis*, this Court has consistently reaffirmed the application of the actual malice standard to public figures. Thus, *Curtis* has become a cornerstone decision, developing one of the most important constitutional protections, the right to free speech. Constitutional protections for the privilege to speak on matters of public concern would essentially be worthless if they did not encompass public figures. *Sullivan*, 376 U.S. at 269. Overturning the extension of the actual malice standard in *Curtis* would defeat an individual's right to engage in uninhibited, robust, and wide-open" debate on "major public issues of our time." *Id.* at 270–71. Moreover, a lack of such protection would prompt cautious and restrictive exercise of constitutionally guaranteed freedoms. Exactly what the Founders of our nation intended to prevent. This Court should avoid upending its First Amendment precedent.

2. The court of appeals cites no precedent that supports overturning the extension of the *Sullivan* standard to limited-purpose public figures.

Throughout its opinion, the court of appeals critiques the extension of the *Sullivan* standard to limited-purpose public figures. R. at 28. Specifically, the court believes the *Sullivan* standard's application to limited-purpose public figures is not found in the First Amendment. R. at 32. In support of its argument against the extension of *Sullivan*, the court heavily relies on Justice Thomas' dissenting and concurring opinions. *See McKee v. Cosby*, 139 S. Ct. 675, 676 (2019) (Thomas, J., concurring); *Coral Ridge Ministries Media, Inc. v. S. Poverty L. Ctr.*, 142 S. Ct. 2453, 2455 (2022) (Thomas, J., dissenting); *Berisha v. Lawson*, 141 S. Ct. 2424, 2425 (2021) (Thomas, J., concurring). In each of these opinions, Justice Thomas provides historical and originalistic arguments urging his colleagues to reconsider *Sullivan.*

Specifically, in *McKee* Justice Thomas claims *Sullivan*'s holding was not grounded within the original meaning of the First Amendment. 139 S. Ct. at 678. Rather, he believes *Sullivan*'s holding was the result of "judge-made rule of law . . . given meaning through the evolutionary process of common-law adjudication." *Id.* Most importantly, Justice Thomas notes the actual malice standard cannot be found in the original interpretation of the Constitution. *Id.* In *Berisha*, Justice Thomas suggests a lack of historical support for the actual malice standard is reason enough for this Court to reconsider it. 141 S. Ct. at 2425. In *Coral Ridge*, Justice Thomas again affirms doubt for the reasoning that supports the development of the actual malice standard in *Sullivan*. *Coral Ridge Ministries Media, Inc.*, 142 S. Ct. at 2455. The recurring theme of these opinions is that Justice Thomas doubts the constitutionality of and reasoning behind the actual malice standard developed by *Sullivan*.

Each of these opinions suggest that the actual malice standard should be overturned entirely. However, the court of appeals expressly mentions that it does not believe the "actual malice standard has entirely *no* relation to defamation suits." R. at 31. Thus, the court of appeals improperly relies upon Thomas's opinions as support. *Sullivan* alone is not what is at issue before this Court in this case. Today, this Court decides the constitutionality of extending the actual malice standard to limited-purpose public figures. No precedent cited by the court of appeals supports its position that *Sullivan* was correctly decided as to public officials but wrongly extended to public figures. The court's reliance on Justice Thomas's opinions directly contradicts its conclusion that *Sullivan* was correctly decided as to public officials.

B. Stare Decisis Principles Support Upholding the Application of the *Sullivan* Standard to Limited-Purpose Public Figures.

This Court has consistently recognized that the doctrine of stare decisis plays a crucial role in its decision-making process. Specifically, stare decisis "plays an important role" in protecting the interests of those who have acted in reliance on past decisions. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022). Under this doctrine, this Court should affirm well-reasoned and consistent precedent when it provides a workable framework developed through the application of strong reasoning. *Id.* at 2237–39. Solidified by nearly sixty years of this Court's precedent, stare decisis principals weigh strongly in favor of upholding *Sullivan*'s application to limited-purpose public figures as good law. The application of *Sullivan* to limited-purpose public figures has developed consistent and reliable guidance for lower courts and is supported by exceptionally strong reasoning.

1. *Sullivan*'s reasoned precedent and its progeny provide a consistent and workable framework that allows lower courts to correctly identify limited-purpose public figures and apply the actual malice standard.

This Court has carefully tailored the precedent outlining the application of the *Sullivan* standard in defamation cases in nearly sixty years of well-reasoned decisions. *See, e.g.*, *Curtis Publ'g Co.*, 388, U.S. at 130; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974); *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 689 (1989). This precedent has proven to be a workable and tightly constrained framework that this Court, lower courts, and defamation plaintiffs have routinely relied upon. *Sullivan* defines and outlines the "actual malice" standard. 376 U.S. at 254. *Curtis*'s well-reasoned holding supplies lower courts with a workable framework to identify limited-purpose public figures and apply the actual malice standard. 388 U.S. at 130. And *Gertz*'s holding clearly expands upon the definition of a limited-purpose public figure. 418 U.S. at 345. Together, *Sullivan*, *Curtis*, and *Gertz* provide lower courts with a clear framework of how a public figure or public official plaintiff may recover in an action for defamation.

The plaintiff's status in a defamation action will determine which standard the court applies to the allegedly defamatory statements. *Sullivan*, 376 U.S. at 281. Thus, a clear, cohesive, and workable process that will produce consistent results when determining a plaintiff's status is essential. And through years of reaffirmed precedent, that is precisely what this Court has provided. Nonetheless, the appellate court contends that applying the actual malice standard to limited-purpose public figures is constitutionally problematic because limited-purpose public figures are "not so clearly different from private individuals." R. at 31. But this assumption is entirely unsupported.

In *Curtis*, this Court extended the application of *Sullivan* beyond public officials. 388 U.S. at 155. In doing so, this Court provided its first definition of a public figure. *Id.* There, this Court defined a public figure as an individual who "commanded sufficient continuing public interest" and had sufficient access to media to counter the allegedly defamatory statements. *Id. Curtis*'s definition of a public figure resulted in a workable framework for lower courts when determining a defamation plaintiff's status. But the development of this framework continued. In *Gertz*, this Court further expanded upon the identification of public figures. *Gertz* expressly directed lower courts on what to consider in its analysis of a limited-purpose public figure. 418 U.S. at 351. Specifically, in determining if one is a limited-purpose public figure, courts should focus on 1) the depth of an individual's participation in the public controversy at issue, 2) the amount of freedom the individual had in choosing to engage in the controversy, and 3) whether the individual took advantage of the media to advocate for a cause. *Id.* The specificity of this Court's opinion in *Gertz* provides a concise and consistent framework for when a lower court is faced with determining an individual's status.

The appellate court erroneously concludes that in today's world there is a "plethora of individuals who are *somewhat* in the public eye, or *somewhat* in a public controversy[.]" R. at 32. This assumption is without basis. The appellate court fails to identify a single decision in which a lower court found that an individual was a "somewhat limited-purpose public figure." Instead, the applicability of this Court's precedent is apparent in consistent decisions where lower courts have found an individual was a limited-purpose public figure. *See Secord v. Cockburn*, 747 F. Supp. 779, 783 (D.D.C. 1990) (holding that the plaintiff, a retired military general who attempted to influence issues of military and foreign policy, was a limited-purpose public figure); *James v. Gannet Co.*, 353 N.E.2d 834, 840 (N.Y. 1976) (holding that a

professional belly dancer who co-operated with reporters in interviews regarding her performance was a limited-purpose public figure).

Additionally, *Gertz* provides a concise framework of distinctions between private individuals and public figures. 418 U.S. at 345. Public figures are typically individuals who have thrust themselves into a public controversy and do so to influence its resolution. *Id.* These individuals invite attention and comment. *Id.* While private individuals are exactly that, private. Public figures occupy positions of immense persuasive power and influence. *Id.* Whereas private individuals have not accepted public office or assumed influential roles in society. *Id.* Finally, public figures voluntarily expose themselves to the increased risk of injury from defamatory statements, while private individuals do not relinquish their interest in protecting their names. *Id.*

By affirming the district court's analysis, the appellate court contradicts its position that applying the actual malice standard to limited-purpose public figures is constitutionally problematic. The appellate court argues that private individuals and public figures are not so clearly different from one another under the current standard. But, it agreed with the trial court decision that Richter is a limited-purpose public figure under the framework provided by *Gertz* and *Curtis*. R. at 14. Specifically, the trial court relied on the facts that Richter 1) injected herself into public controversy with her involvement in the Kingdom Church and its opposition to the PAMA legislation; 2) responded publicly; 3) took an active role in filing a claim against the Girardeau; and 4) has no opposition to media coverage. R. at 14. The trial court did not struggle to apply this Court's precedent to the current case and conclude that Richter is "indeed a limited-purpose public figure[.]" R. at 14. With no opposition to the trial court's analysis, the appellate court affirms the decision and Richter's status. R. at 30. The appellate court even goes as far as to acknowledge an "overwhelming precedent of cases that would consider the Petitioner as a

limited-purpose public figure[.]" R. at 28. Such a straightforward application of this Court's precedent provides no doubt that the difference between private individuals and public figures is apparent. And more importantly, it illustrates the clear and concise nature of this Court's framework.

Sullivan and its progeny's well-reasoned precedent provides a consistent framework that allows lower courts and society to identify an individual's status for a defamation claim.

2. The extension of the *Sullivan* standard to limited-purpose public figures is supported by exceptionally strong methods of constitutional reasoning.

This Court should uphold the extension of the *Sullivan* standard to limited-purpose public figures on stare decisis grounds because *Curtis*'s reasoning is consistent with the expansion of First Amendment protections. This Court has recognized that the quality of its reasoning in a prior case significantly affects whether this Court should reconsider its decision. *Dobbs,* 142 S. Ct. at 2265. When a decision stands on exceptionally weak grounds, this Court would likely review the decision for error. *Id.* at 2266. The appellate court erroneously argues the extension of *Sullivan* to limited-purpose public figures lacks strong reasoning and is an arbitrary measure of how much protection the First Amendment affords. R. at 30. However, this Court's analysis in *Sullivan* and *Curtis* using multiple avenues of constitutional reasoning defeats the appellate court's conclusion that the extension of *Sullivan* is arbitrary and without a valid reason.

The idea that *Sullivan* is simply a policy-based decision masked as constitutional law is misguided. Instead, our nation's history clearly supports the extension of *Sullivan* to limited-purpose public figures. The Declaration of Independence recognizes the circulation of individual opinions on matters of public interest as an "unalienable right" that "governments are instituted among men to secure." *Curtis Publ'g Co.*, 388 U.S. at 149. Our nation's Founders were clearly

not always convinced that free discussion of public matters would benefit the majority. *Id.* Nonetheless, they firmly maintained that true freedom of speech and press permits every man to share his opinion. *Id.* at 150. The extension of the *Sullivan* standard to public figures directly reflects this position. It is true that a higher standard in such circumstances will create an obstacle for public figure defamation plaintiffs. But such a standard is necessary to protect the circulation of opinions on matters of public interest, precisely what the Founders of this nation recognized as an unalienable right. The right to free discussion was essential in the establishment of our nation and remains so today. There can be no doubt the extension of *Sullivan* to limited-purpose public figures follows accordingly with our nation's history.

In *Curtis*, this Court supported the extension of the *Sullivan* standard to public figures with multiple avenues of constitutional reasoning. The development of the *Sullivan* standard finds its roots in the First Amendment's guarantee of freedom of speech and press. Expanding upon such standard, this Court looks to the text of the First Amendment. *Id.* at 149. The text places the guarantee of freedom of speech and press between religious guarantees and the guarantee of a right to petition for redress of grievances. *Id.* This placement is significant. It suggests that the interpretation of the guarantee of freedom of speech and press is like the guarantees surrounding it. *Id.* Meaning that the guarantee of freedom of speech and press is as much a right of individuals to make their thoughts public as it is a social necessity required to maintain our democratic political system and society. *Id.* Thus, the nature of this right has repeatedly led this Court to reject attempts at restraining one's speech. This interpretation clearly supports the extension of the *Sullivan* standard to public figures. This Court established the *Sullivan* standard to prevent public officials from gaining an unjustified preference over the public. 376 U.S. at 292. The extension of the *Sullivan* standard to public figures serves the same

purpose. It rejects an attempt to limit one's opinion of an individual who has thrust themselves into the public spotlight. This analysis of the First Amendment's text directly contradicts Justice Thomas's suggestion that the extension of the *Sullivan* standard has no relation to the Constitution. The extension of the *Sullivan* standard beyond public figures is consistent with and supported by other decisions from this Court protecting political speech and other First Amendment protections.

II. THE PHYSICAL AUTONOMY OF MINORS ACT IS NEUTRAL AND GENERALLY APPLICABLE IN ACCORDANCE WITH THE REQUIREMENTS OF THE FIRST AMENDMENT'S FREE EXERCISE CLAUSE.

This Court should affirm the court of appeals' decision because the PAMA does not mention any religious group and extends protection to all Delmont minors without exception.[1] The Free Exercise Clause, which applies to the states through the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The "exercise" of religion referred to in the First Amendment applies not only to the exercise of religious beliefs but also to the performance of physical acts. *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990). In *Smith*, this Court established the test used to evaluate whether a law violates the Free Exercise Clause. A law that incidentally burdens religion is valid if it is both neutral and generally applicable. *Id.* at 879. A neutral and generally applicable law will avoid a strict scrutiny analysis and not violate the Free Exercise Clause as long as it satisfies a rational basis review. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*,

[1] The courts below correctly analyzed this issue under only the First Amendment. Delmont has not enacted a state equivalent of the Religious Freedom and Restoration Act of 1993 ("RFRA"). R. at 15. RFRA is only applicable to federal laws. *See* 42 U.S.C. § 2000bb-3(a). Thus, the issue of neutral and general applicability is properly analyzed under only the First Amendment.

508 U.S. 520, 531 (1993). If a law is valid, neutral, and generally applicable, the Free Exercise Clause will not exempt an individual from complying with the law. *Smith*, 494 U.S. at 878. Because the PAMA is a valid, neutral, and generally applicable law, it is permissible under the First Amendment and this Court should affirm the decision from the court of appeals.

A. The Physical Autonomy of Minors Act Is Neutral Because It Is Silent Towards All Churches, Religions, and Groups and in Its Operation Does Not Target Any Religious Group.

The lower courts correctly held that PAMA is neutral on its face and in its effect. A law is neutral if its purpose does not impede or restrict a practice because of its religious motivation. *Lukumi*, 508 U.S. at 533. Thus, the government is not acting neutrally if "it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). Because the PAMA does not mention any religion and works to protect all minors in Delmont, it is a neutral law on its face and in its effect.

1. The Physical Autonomy of Minors Act is facially neutral because its provisions do not reference the Kingdom Church or any religion.

The PAMA is facially neutral. At the very minimum, this Court requires that a neutral law not discriminate on its face. *Lukumi*, 508 U.S. at 533. In other words, if a law mentions a religious practice "without a secular meaning discernible from the language[,]" then the law lacks facial neutrality. *Id.* The PAMA does no such thing. The Court in *Lukumi* held that four ordinances implemented to prohibit unnecessary sacrifice of animals failed the facial neutrality test because they used words with "strong religious connotations" like "sacrifice" and "ritual." *Id.* at 533–34. Here, the PAMA "forbids the procurement, donation, or harvesting of the bodily

organs, fluids, or tissue of a minor, regardless of profit or the minor's consent." R. at 2. The PAMA is a clear example of facial neutrality. Unlike the ordinances in *Lukumi*, the PAMA does not use any words with a strong religious connotation. Additionally, the text of the PAMA does not mention Kingdom Church or any other church, religion, or group.

2. The Physical Autonomy of Minors Act does not burden the Kingdom Church's minor members any more than any other minor in Delmont.

But "[f]acial neutrality is not determinative." *Lukumi*, 508 U.S. at 534. The Free Exercise Clause goes beyond facial discrimination. *Id.* It prohibits "'subtle departures from neutrality" and "'covert suppression of particular religious beliefs[.]'" *Gillette v. United States*, 401 U.S. 437, 452 (1971); *Bowen v. Roy*, 476 U.S. 693, 703 (1986). Thus, the purpose of a law is essential in determining its neutrality. Delmont enacted the PAMA as part of its efforts to protect all of its children. Richter, Aff. ¶ 10. In its effect, the PAMA is neutral. The effect of a law is strong evidence of its purpose. *Lukumi*, 508 U.S. at 536. Before the PAMA, Delmont law only allowed minors to consent to blood, organ, or tissue donations in cases of autologous donations and family medical emergencies. R. at 5. The PAMA restricts minors from consenting to blood, organ, or tissue donation in any scenario. The only difference between the PAMA and the previous Delmont law is the removal of two narrow exceptions. Thus, Kingdom Church's blood banking practice for minors is not the only conduct prohibited under the PAMA. Richter's claims that Delmont enacted the PAMA to target Kingdom Church specifically are meritless. It is true that before the PAMA, 15-year-old Adam's donation to his cousin would have been permissible as a donation to a relative in a medical emergency. R. at 5. However, this is only because it fell within an exception of the Delmont law at the time. The legality of Suarez's donation under the PAMA has no relation to the blood banking practice at issue. Even before the PAMA, Kingdom

Church's blood banking practice did not fall into the exceptions provided by the Delmont law. Thus, its legality was doubtful then. Additionally, Richter asserts that under the PAMA, Kingdom Church members "may be forced to choose between abiding by PAMA and saving a fellow member's life. R. at 16. However, this is simply not true. The PAMA applies to minors, it does not apply to adults. Thus, an adult member of Kingdom Church could donate and participate in the blood banking practice and save a fellow member's life without issue. Further, the adverse impact of a law does not imply that the law was intended to target a religious group impermissibly. *Lukumi*, 508 U.S. at 535. Therefore, just because the PAMA prohibits Kingdom Church's blood banking practice for minors does not mean it is not neutral.

Additionally, courts will use an equal protection analysis to determine a law's neutrality. *Id.* at 540. Under an equal protection analysis, courts may determine a law's purpose by looking at both direct and circumstantial evidence. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). When completing an equal protection analysis, this Court considers evidence like the "historical background of the decision under challenge, the specific series of events leading to the enactment . . . and the legislative or administrative history, including contemporaneous statements made by members of the decision making body." *Id.* at 267–68. And even under an equal protection analysis, in its effect, the PAMA is a neutral law.

Opposed to the impermissible ordinances in *Lukumi*, Delmont did not enact the PAMA specifically to suppress Kingdom Church's blood banking practice. But rather, despite its suppression of the blood banking. practice Further, under prior law, Delmont had already restricted a minor's ability to consent to blood, organ, and tissue donation. The PAMA merely tightened restrictions that were already in place. Finally, statements from Girardeau further support that the PAMA was not enacted to target Kingdom Church. Specifically, Girardeau

reviewed a report from the U.S. Department of Health and Human Services found between 2016 and 2020, child neglect and abuse issues had more than tripled from previous years. Girardeau, Aff. ¶ 4. The report led Girardeau to focus on curbing child abuse in Delmont. *Id.* Thus, Girardeau informed Delmont's leadership of her support for the PAMA. *Id.* ¶ 6. Despite the public outcry about Kingdom Church's blood banking practices, Girardeau's affirmation of support for the PAMA illustrates that the purpose of the PAMA extends beyond Kingdom Church. Thus, the PAMA is a neutral law. It is silent towards as to religions. In its operation, the PAMA does not target any religious group. It applies to all minors in Delmont, regardless of the minor's religious beliefs. Under the PAMA, Delmont has not acted in a manner that is intolerant of religious beliefs, nor has it restricted a practice because of its religious nature.

B. The Physical Autonomy of Minors Act Is Generally Applicable Because It Does Not Allow Exceptions and Prohibits Minors in Delmont from Consenting to Blood Donation for Both Secular and Religious Reasons.

The lower courts correctly concluded that the PAMA is generally applicable. A law is not generally applicable if it creates a mechanism for individualized exemptions at the government's sole discretion. *Smith*, 494 U.S. at 884; *Fulton*, 141 S. Ct. at 1873. In *Smith*, this Court determined that a law was generally applicable because it did not contain exceptions and did not allow the government to consider the reasons for a person's conduct. 494 U.S. at 872. Similarly, the PAMA applies to all minor residents of Delmont regardless of their religion and provides no exception. In *Fulton*, this Court held that the provision at issue was not generally applicable because it allowed the City Commissioner to consider exceptions at his or her sole discretion. 141 S. Ct. at 1878. Unlike *Fulton*'s provision, nothing in the PAMA's text allows Delmont to

consider the particular reasons for a minor's blood, organ, or tissue donation. Nothing in the PAMA grants the government any discretion.

Additionally, a law is not generally applicable if it "prohibits religious conduct while permitting secular conduct[,]" which undermines the purpose of the law. *Smith*, 494 U.S. at 884. The PAMA prohibits a minor from donating blood regardless of whether it is for religious or secular reasons. For example, the PAMA prohibits minors from donating blood as part of their religious practice. But it also prohibits minors from donating blood for a community blood drive. Therefore, the PAMA does not disproportionately affect minors of the Kingdom Church. It affects all minor residents in Delmont. Finally, "[n]eutrality and general applicability are interrelated"; thus, satisfying neutrality indicates that general applicability is likely satisfied. *Lukumi*, 508 U.S. at 531. The PAMA is so clearly neutral. Thus, it is likely also generally applicable. Because the PAMA is both neutral and generally applicable, it is not subject to strict scrutiny and thus does not violate the Free Exercise Clause.

C. This Court Should Retain the Standard Set in *Smith*.

Smith was correctly decided. And it should not be overruled. The *Smith* standard limits the government's power over religious freedoms, while also considering this Court's precedent. This Court has long recognized that a state law can comport with the Free Exercise Clause even if it incidentally interferes with religious practices or beliefs. *Reynolds v. United States*, 98 U.S. 145, 167 (1878). Before *Smith*, this Court rejected the "neutral and uniform" requirement and instead required a strict scrutiny review for laws affecting religion. *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987). However, as this Court recognized in *Lee*, the Free Exercise Clause does not relieve an individual's obligation to comply with a "valid and neutral law of general applicability[.]" *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982). This Court

relied on *Reynolds* to develop the current standard for analyzing Free Exercise Clause violations. *Smith*, 494 U.S. at 879. Thus, this Court developed the *Smith* standard to ensure the protection of religious rights while restricting citizens from becoming a law unto themselves because of their religious beliefs. Under the *Smith* standard, a law that incidentally burdens religion is not typically subject to strict scrutiny if it is neutral and generally applicable. *Fulton*, 141 S. Ct. at 1876. Instead, courts should analyze such a law under a rational basis review. *Id.* Without the restrictions of *Smith*, the government may become powerless in all areas in which religious practice is involved. Further, this Court has recognized that some religious practices must yield to a common good for the government to maintain an organized society and guarantee religious freedom. *Lee*, 455 U.S. at 259. An individual's right to practice their religion should not be too strictly limited. But it also must not be unrestricted. The greater good of society must always be balanced with such rights. The rationale behind the development of the *Smith* standard clearly supports the idea that *Smith* was correctly decided.

Smith is not the radical change in the level of scrutiny given to First Amendment claims as the appellate court suggests. *Smith* is simply a minimal departure from the Free Exercise Clause as it applies to "hybrid" and unemployment compensation cases. Before *Smith*, in *Sherbert*, this Court adopted strict scrutiny review in cases where the Free Exercise Clause is violated. *Sherbert v. Verner*, 374 U.S. 398, 403 (1963). When governmental action substantially burdens religious exercise, it must be justified by a compelling governmental interest. *Id.* at 402–03. But this Court's precedent strictly limits the *Sherbert* test's application to unemployment compensation cases. *See Bowen*, 476 U.S. at 693; *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 458 (1988). Additionally, the *Smith* test created an exception for hybrid situations. Thus, a higher standard will apply when the Free Exercise Clause is implicated "in conjunction with other

constitutional protections[.]" *Smith*, 494 U.S. at 881. Under this standard, an otherwise neutral and generally applicable law may violate the First Amendment. *Id.* For example, in *Yoder*, this Court held that a law mandating school attendance for Amish children, despite their parent's religious beliefs, was unconstitutional. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). The PAMA does not implicate any additional constitutional rights aside from the First Amendment. Thus, strict scrutiny will not apply. *Smith* was correctly decided. Strict scrutiny should not automatically be applied to all laws that affect religious beliefs and practices. This Court should maintain the neutral and general applicability standard outlined in *Smith*.

CONCLUSION

This Court should 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, and this Court should not reconsider. The Physical Autonomy of Minors Act is neutral and generally applicable. It does not violate the Free Exercise Clause. And this Court should not overrule *Employment Division v. Smith*.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

BRIEF CERTIFICATE

Team 20 certifies that the work product contained in all copies of Team 20's brief is in fact the work product of the members of Team 20 only; and that Team 20 has complied fully with its law school's governing honor code; and that Team 20 has complied with all Competition Rules.

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TEAM 20