CASE No.: 22-CV-7654

In The

Supreme Court of the United States

EMMANUELLA RICHTER,

Petitioner,

v.

CONSTANCE GIRARDEAU,

Respondent.

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

BRIEF FOR RESPONDENT

Team 024
Counsel for Respondent
January 31, 2023

QUESTIONS PRESENTED

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

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

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The opinion of the United States District Court for the District of Delmont is unpublished and may be found at *Richter v. Girardeau*, C.A. No. 22-CV-7855 (D. Delmont Sept. 1, 2022). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *Richter v Girardeau*, C.A. No. 2022-1392 (15th Cir. 2022).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. R. at 46. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Procedural History

On January 25, 2022, Petitioner filed a complaint and sought injunctive relief from the enforcement of the Physical Autonomy of Minors Act (PAMA), based on what Petitioner claimed was a violation of the Free Exercise Clause. R. at 27. On January 28, 2022, Petitioner amended her complaint and added a count for defamation in response to the comments that Respondent made at the press event on January 27, 2022. R. at 27. Respondent filed a motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. R. at 27. The District Court granted the motion and found no dispute as to the material facts that PAMA is constitutional, and that the defamation action fails to meet the *Sullivan* standard applicable to limited-purpose public figures. R. at 27. The Court of Appeals for the Fifteenth Circuit affirmed the District Court's decision. R. at 38.

B. Statement of the Facts

The Church of the Kingdom ("Kingdom Church") was founded in 1990 by Emmanuella Richter ("Petitioner") in the South American country of Pangea. R. at 21. Petitioner's door-to-door proselytization and seminars gained the church a large following. R. at 22. In 2000, the government of Pangea was overthrown. R. at 3. Thereafter, Kingdom Church became the target of governmental repression. R. at 43. Petitioner, her husband and the congregation received asylum in the United States on religious persecution grounds and settled in the city of Beach Glass, Delmont. R. at. 22. Since immigrating to Delmont, the members of Kingdom Church have lived in secluded compounds. R. at 22. Most of the members, including Petitioner, work on the compounds. R. at 22. However, members of Kingdom Church are permitted to work in the secular world. R. at 42. Petitioner's husband's tea business, Kingdom Tea, has become popular outside of the compounds, and the proceeds help sustain the Church and the members living on the compounds. R. at. 22. Petitioner also organizes church seminars that are open to members of the public. R. at 22. Kingdom Church maintained a good relationship with the surrounding communities. R. at 23.

However, in 2020, Kingdom Church became the center of controversy when *The Beach Glass Gazette* published an article about the Church's blood banking practices. R. at. 24. After being confirmed at fifteen years old, members may not donate or receive blood from a person who is not a member of Kingdom Church. R. at 23. Minors who are confirmed members are required to bank their blood as part of the compound's monthly service projects, and a member is only excused from blood banking if the member is ill. R. at. 23-24. Delmont had previously prohibited minors under the age of sixteen from donating blood unless there was a medical emergency, or the donation was autologous. R. at 24. In 2021, Delmont passed the Physical

Autonomy of Minors Act ("PAMA"), which prohibits 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. 24. The Act had the support of Governor Constance Girardeau ("Respondent" or the "Governor"), whose concern stemmed from a 2016-2020 report published by the Department of Health and Human Services identifying a 214% increase in child abuse victims. R. at 39. The report motivated the Governor to make addressing child abuse in Delmont a central issue of her campaign. R. at 24, 39.

On January 17, 2022, a Kingdom Church member, Henry Romero, was involved in a severe car accident and needed a lifesaving operation. R. at 25. Fifteen-year-old Adam Suarez, also a member of Kingdom Church, was confirmed to be a blood match for his Romero. R. at 25. When Suarez was donating blood for Romero's procedure, he went into shock and was taken to the intensive care unit. R. at 25. The incident received significant news coverage. R. at 25. Petitioner was interviewed about the incident when she went to visit Suarez in the hospital. R. at 25. On January 22, 2022, the Governor was asked about the Suarez story at a fundraiser. R. at 26. In response, the Governor informed the public that she had opened an investigation into Kingdom Church's blood bank requirements to determine whether there was a PAMA violation. R. at 26-27. On January 25, 2022, Petitioner claimed that the Governor's investigation violated the Free Exercise Clause and requested injunctive relief. R. at 26. After being asked about Petitioner's request at a press event on January 27, 2022, the Governor stated "I'm not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children?" R. at 26-27. Petitioner subsequently added an action for defamation to her request for injunctive relief on January 28, 2022. R. at 27.

SUMMARY OF THE ARGUMENT

This Court should uphold the extension of the *Sullivan* standard to limited-purpose public because the Constitution requires the standard to apply to such figures. The *Sullivan* standard has been precedent of this Court for nearly 60 years, and there is no justification for overruling it. Pre-*Sullivan*, issues of self-censorship were pervasive due to the lower standard imposed by the common law of libel, often leading to the quashing of free and robust debate. The common law's standard is antithetical to the First Amendment and the ideas about public speech held at the Founding. In addition, this Court has applied the *Sullivan* standard to individuals based on their ability to influence public controversy, not merely their status as public officials. Limited-purpose public figures are such individuals. Hence, the Constitution requires the *Sullivan* standard to apply to limited purpose public figures, and this Court should therefore uphold the *Sullivan* standard's application to them.

This Court should affirm the Fifteenth Circuit's decision to uphold Physical Autonomy of Minor's Act, as it does not unconstitutionally burden Kingdom Church's religious conduct. The Fifteenth Circuit correctly found that PAMA satisfies the *Smith* test because the law advances the secular purpose of protecting the physical autonomy of Delmont's minors, and the law does not provide for any exemptions. PAMA was not enacted because of any intolerance of Kingdom Church's practices. Nor is the prohibition on blood donations a special burden solely imposed on the members of Kingdom Church. Further, *Smith* should be upheld under *stare decisis* principles because the factors necessary for overturning precedent are absent from this case. However, even if this Court decides to overrule *Smith*, it should find still that PAMA is valid because it satisfies strict scrutiny.

ARGUMENT

I. THIS COURT SHOULD UPHOLD THE EXTENSION OF THE *SULLIVAN* STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES BECAUSE THE CONSTITUTION REQUIRES THE STANDARD TO APPLY TO INDIVIDUALS THAT HOLD INFLUENCE OVER PUBLIC CONTROVERSIES IN ORDER TO FOSTER FREE AND ROBUST DEBATE.

This Court should uphold the extension of the *Sullivan* standard to limited-purpose public figures because this Court is constitutionally required due to limited-purpose public figures' ability to influence public debate. The First Amendment's guarantee that the government will make no law "…abridging the freedom of speech, or of the press" demonstrates the United States' commitment to an open public discourse of ideas. U.S. Const. amend. I. This Court has recognized our Nation's "profound … commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964*)*. As such, in *N.Y. Times Co. v. Sullivan*, this Court implemented the actual malice standard, which requires public officials to prove a statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not" to be defamatory. *Id*. at 280. As precedent of this Court for nearly 60 years, *Sullivan* should not be overturned. Despite criticism from those that claim the *Sullivan* standard is incompatible with the Constitution, and argue that the Founders sought to adopt the views of Blackstone and the English law of the libel, the historical record disputes these assertions. This Court should not treat these criticisms as dispositive, as they do not outweigh this Court's interest in maintaining precedent.

Further, the common law of libel was conducive to self-censorship, something that the Founders sought to prevent via the First Amendment. In particular, James Madison's criticism of

early censorship laws demonstrates his belief that some error must be tolerated in favor of free expression. This Court has noted that we are "a Nation [that has] chosen … to protect even hurtful speech on public issues to ensure that we do not stifle public debate." *Snyder v. Phelps*, 562 U.S. 443, 461 (2011). This commitment exemplifies the need for the *Sullivan* standard, as it discourages self-censorship and fosters free debate in a way that the common law of libel cannot.

Finally, this Court has recognized that the *Sullivan* standard should not be limited to public officials, but rather apply to those with the ability to have an influential effect on public controversy. This Court has acknowledged that public figures, not merely public officials, "often play an influential role in ordering society," and should not be treated differently with respect to the *Sullivan* standard. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 163-64 (1967) (Warren, C.J., concurring). Limited-purpose public figures are able to influence public controversies, which is why the extension of the *Sullivan* standard to these individuals is constitutional.

A. The Constitution requires the *Sullivan* standard to apply to public figures.

This First Amendment requires that the *Sullivan* standard apply to public figures due to their ability to play "an influential role in ordering society." *Id*. In *Sullivan*, this Court recognized "that erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'" *Sullivan*, 376 U.S. at 271-72 (quoting *NAACP v. Button*, 371 U.S. 415 (1963)). Its standing as nearly 60 years of precedent, along with our nation's commitment to free and robust debate, evince why the Constitution requires the *Sullivan* standard to apply to public figures.

1. *Sullivan is long-standing precedent of this Court, and no special justification exists that would justify overturning it.*

The *Sullivan* standard has been the precedent of this Court for nearly 60 years, and should not be overturned, as there is insufficient historical evidence to support doing so. This Court stated

that maintaining precedent "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). This Court has spoken favorably of its decision in *Sullivan*, and of the need to protect public speech. For instance, this Court stated that *Sullivan* "demonstrate[s] the Court's recognition of the [First] Amendment's vital guarantee of free and uninhibited discussion of public issues." *Milkovich v. Lorain J. Co.,* 497 U.S. 1, 22 (1990). Further, this Court recognizes that speech on matters of public concern is "at the heart of the First Amendment's protection." *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978). In the nearly 60 years since *Sullivan*, the Court has never wavered in its protection of free and robust debate in the public sphere.

In addition to its status as long-standing precedent, there is insufficient historical evidence to justify overturning *Sullivan*. This Court noted that "although adherence to precedent is not rigidly required in constitutional cases, any departure … demands special justification." *Adarand Constructors v. Pena*, 515 U.S. 200, 231 (1995). Critics have put forth several reasons that would justify overruling *Sullivan*. For instance, some have questioned *Sullivan*'s foray into defamation law, noting that the Court "did not begin meddling in this area until 1964, nearly 175 years after the First Amendment was ratified." *McKee v. Cosby*, 139 S. Ct. 675, 682 (2019) (Thomas, J., concurring in denial of certiorari). In addition, critics suggest that the Founders relied on William Blackstone's ideas on libel law when formulating libel law in the United States. See *McKee*, 139 S. Ct. 139 at 678-79; see also *Berisha v. Lawson*, 141 S. Ct. 2424, 2426 (2021).

This Court should not rely on the historical accounts put forth by *Sullivan*'s critics, as their accounts are not dispositive, and there is evidence to rebut their claims. Firstly, this Court has not been unwilling to rule on the scope of the Constitution simply because its decision is far from the time of ratification. For instance, this Court relied on its interpretation of the First Amendment in

Sullivan to justify defining the scope of the Second Amendment. In *D.C. v. Heller*, this Court stated that it is not impermissible to rule on the scope of the Constitution as it relates to a particular issue merely because "the question did not present itself" for most of our history, invoking its decision in *Sullivan*, among others, to support ruling on the scope of the Second Amendment. *D.C. v. Heller*, 554 U.S. 570, 626 (2008)[1]. In addition, the Founders were not as keen on adopting the ideas of Blackstone and the English law of libel in their totality as critics claim. Scholars note that the Founders were skeptical, at best, of adopting English libel law, and of implementing all of Blackstone's ideas in the United States. Matthew Schafer, In Defense: New York Times v. Sullivan, 82 La. L. Rev. 81, 134-35, 144 (2021). In particular, Thomas Jefferson was critical of Blackstone, noting that his ideas were "a retreat from the ideals of the Revolution." *Id*. at 136. Further, St. George Tucker, a pioneer of American legal education, was also wary of Blackstone's ideas on speech, noting the Colonies' independence "produced a corresponding revolution not only in the principles of our government, but in the laws," laws which "embodied" Blackstone's ideas. *Id*. at 140. As this Court has been willing rule on the scope of the Constitution irrespective on its remoteness to the ratification, and the ideas Blackstone were inconsistent with those of important Founding Fathers, this Court should not rely on the logic of critics who seek to overturn *Sullivan*.

2. *The common law of libel enabled defamation suits to be used as weapons for censorship and to quash free and robust debate concerning public figures, which is antithetical to the First Amendment.*

The common law of libel was conducive towards self-censorship, and suppressed free and robust debate. Opponents of *Sullivan* argue that, in lieu of the *Sullivan* standard, the common law rules of libel are a favorable alternative. *See* Richard A. Epstein, Was New York Times v. Sullivan

[1] Justice Thomas, a harsh critic of *Sullivan*, joined in this opinion.

Wrong?, 53 U. CHI. L. REV. 782, 817 (1986). The common law of libel imposed a lower standard than *Sullivan*, and only required a public official to show that a publication was false or subjected him to hatred or ridicule. *McKee*, 139 S. Ct. at 678. However, the common law fostered self-censorship and quashed free and robust debate, as it allowed defamation suits to be used as weapons to control the press. The goal of these suits was to "chill or banish negative coverage," as they were used as "state political weapon to intimidate the press." Glenn Harlan Reynolds, Rethinking Libel for the Twenty-First Century, 87 Tenn. L. Rev. 465, 468 (2020) (quoting Anthony Lewis, Make No Law: The Sullivan Case and the First Amendment 35 (1991). By 1964, "government officials had filed at least $ 300 million" in libel suits against media outlets in an effort to censor negative coverage. Lewis, supra, at 36. Pre-*Sullivan*, defamation suits were used to censor the media and to prohibit free and open press coverage.

The Founders were concerned about censorship, and saw free and open debate as a necessary means of combatting it. For instance, the controversial Sedition Act of 1798, one of the first laws that censored public debate in the United States, was condemned by both James Madison and Thomas Jefferson. David A. Logan, Rescuing Our Democracy by Rethinking New York Times Co. v. Sullivan, 81 Ohio St. L.J. 759, 768 (2020). Madison was particularly concerned, arguing against the Act and emphasizing the need to tolerate error in speech to promote a free society. He noted that "some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more, than in that of the press." 4 Elliot's Debates on the Federal Constitution (1876), p. 571. Further, Madison's stated that "the censorial power is in the people over the Government, and not in the Government over the people." *Sullivan*, 376 U.S. at 282 (quoiting 4 Annals of Cong. 934 (1794)). Madison concluded that, to ensure the freedom of the press, there must be a toleration for error.

The Constitution requires the *Sullivan* standard because it promotes free debate and tolerates the inevitable error that common law condemns. This Court has held that, although error is inevitable, it should not outweigh our Nation's interest in promoting free and robust debate. Undoubtedly, such debate "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id*. However, this Court declared that "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). This Court has stated that "a rule that would impose strict liability on a publisher for false factual assertions," as did the common law of libel, "would have an undoubted 'chilling' effect on speech relating to public figures," speech that this Court recognizes "[has] constitutional value." *Hustler Mag. v. Falwell*, 485 U.S. 46, 52 (1988). The *Sullivan* standard provides the toleration of error absent from the common law of libel, and therefore protects free and open debate.

3. The extension of the Sullivan standard to public figures is correct because the standard is meant to apply to individuals based on their influence in the affairs of society.

This Court has applied the *Sullivan* standard to individuals based on their influence over public controversy. Although the *Sullivan* standard originally applied only to public officials, this Court extended its application to public figures in *Curtis Publishing Co. v. Butts*. Chief Justice Warren argued that differing standards for public figures and public officials has "no basis in law, logic, or First Amendment policy." *Curtis*, U.S. 130 at 163 (Warren, C.J., concurring). He noted that public figures, like public officials, "play an influential role in ordering society," and that "the distinctions between governmental and private sectors are blurred," and therefore the *Sullivan* standard should apply to both. *Id*. at 163-64. These individuals, this Court found, "invite attention

and comment," triggering the *Sullivan* standard to protect the free and open debate that is bound to occur. *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 345 (1974).

This Court's application of the *Sullivan* standard to public figures has consistently centered on the individual's influence over a controversy, which is consistent with early fair comment law, which focused on influence, not status. For instance, this Court refused to apply the *Sullivan* standard in *Wolston v. Reader's Dig. Ass'n, Inc*., because the individual had not "engaged the attention of the public in an attempt to influence the resolution of the issues involved." *Wolston v. Reader's Dig. Ass'n, Inc*., 443 U.S. 157, 168 (1979). Similarly, in *Time, Inc. v. Firestone*, this Court found that the respondent was not subject to the *Sullivan* standard because "she did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it." *Time, Inc. v. Firestone*, 424 U.S. 448, 453 (1976). What's more, early American law on fair comment "spoke neither of public officials nor public figures but rather public men and public conduct generally." Schafer, supra, at 127. The concern, therefore, is not who made the status of the speaker, but rather whether the speech was made to influence a public controversy. The purpose of the *Sullivan* standard, therefore, is to protect debate concerning individuals of influence, not merely governmental officials. Thus, this Court should uphold the extension of the *Sullivan* standard to public figures, and not constrain its application to public officials.

B. Limited-purpose public figures are able to influence public controversies, and therefore the Constitution requires the *Sullivan* standard to apply to them.

This Court should uphold the *Sullivan* standard's application to limited-purpose public figures because they command influence over public controversies. First articulated in *Gertz*, this Court defines a limited-purpose public figure as "an individual [who] voluntarily injects himself

or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Gertz*, 418 U.S. at 351. The ability of these figures to influence a controversy requires the application of the *Sullivan* standard, as their influence is no different than traditional public figures.

For example, in *Jankovic*, the appellant was found to be a limited-purpose public figure due to his ability to influence a public controversy. During a reform process of the Serbian government in the early 2000s, the appellant publicly supported the Prime Minister seeking to unseat the sitting the President. *Jankovic v. Intl. Crisis Group*, 822 F.3d 576, 583 (D.C. Cir. 2016). The court determined the appellant was a limited purpose public figure, as "he was an outspoken supporter, financial backer, and advisor of [the prime minister]." *Id*. at 587. The appellant was "purposely trying to influence the outcome or could realistically have been expected, because of his position in the controversy, to have an impact on its resolution." *Id*. (quoting *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980)). The appellant used "his position in the controversy 'as a fulcrum to create public discussion." *Id*. at 588 (quoting *Wolston*, 443 U.S. at 168). This type of controversy is exactly the sort that the *Sullivan* standard was implemented to protect, as the appellant's position in the controversy allowed him to enjoy the influence contemplated in *Curtis*.

Moreover, in *Lluberes*, two brothers were deemed limited-purpose public figures because they "leveraged their positions and contacts to influence a favorable outcome" in a controversy surrounding their business endeavors. *Lluberes v. Uncommon Productions*, LLC, 663 F.3d 6, 17 (1st Cir. 2011). In response to mounting criticism aimed at their business, the brothers initiated "a massive PR campaign" aimed at "improv[ing] the image and reputation of the company in the eyes of the public." *Id*. at 16. "By orchestrating a PR blitz to garner public support and mute their

critics," the court reasoned, the brothers "assumed roles of prominence for this limited purpose and the risk of closer public scrutiny that came with it." *Id*. at 17.

This Court has consistently used influence as a determinative factor as to whether the *Sullivan* standard should apply. In cases involving limited-purpose public figures, the individual's influential impact over a public controversy is the key factor in whether the court applies the *Sullivan* standard. Further, when this Court has failed to categorize individuals as limited-purpose public figures, such as in *Wolston* and *Firestone*, this Court found that the individuals did not "thrust [themselves] to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it." See *Firestone*, 424 U.S. at 453. As the *Sullivan* standard seeks to protect free and public discussion about individuals who may influence a public controversy, and limited-purpose public figures are such individuals, this Court should reaffirm its decision in *Gertz*, and uphold the application of the *Sullivan* standard to limited-purpose public figures.

II. THE COURT OF APPEALS CORRECTLY APPLIED THE *SMITH* TEST AND DID NOT ERR WHEN IT HELD THAT PAMA IS NEUTRAL AND GENERALLY APPLICABLE.

Pursuant to the First Amendment of the United States Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" U.S. Const. amend. I. The Free Exercise Clause applies to the states through the Fourteenth Amendment, and has been interpreted to specify what the government cannot do. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961). However, the rights protected by the Free Exercise Clause are not absolute. While the government must not interfere with religious beliefs, it may regulate conduct within the scope of its power even if this

conduct is prescribed by religion. *Reynolds v. United States,* 98 U.S. 145,165-66 (1878); *Cantwell,* 310 U.S. at 303; *Braunfeld*, 366 U.S. at 603-04. This Court has held that a state may by "general and nondiscriminatory laws" regulate conduct to advance secular interests, such as the health and general well-being of society despite the incidental burdens on religious expression. *Cantwell,* 310 U.S. at 304; *Braunfeld,* 366 U.S. at 603-04*,* 607; *Emp. Div. Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 879-80 (1990).

In *Employment Division of Human Resources of Oregon v. Smith*, this Court held that a law is valid if it is both neutral and generally applicable. *Smith*, 494 U.S. at 889. In *Smith*, the respondents were terminated from their job because they violated Oregon's statute that criminalized the possession of peyote, which they ingested as part of their religious practices. *Smith*, 494 U.S. at 874. The respondents' violation of the statute prohibited them from receiving unemployment compensation *Id*. at 874-75. This Court found that the statute was not directed at regulating religious conduct, as it applied to all who used peyote without a medical prescription. *Id*. at 882, 885. Since the statute was neutral and generally applicable, this Court held that the law was constitutional, and the denial of unemployment compensation was proper. *Id*. at 890.

This Court should affirm the lower courts' holding that PAMA is a valid law. The lower courts correctly determined that *Smith* is the appropriate test to apply to Free Exercise claims. R. at. 19, 36. Also, the courts properly found that PAMA does not target any religious group, nor does it provide for any exemptions. Thus, applying *Smith*, PAMA should be upheld as a valid law because it neutral and generally applicable.

A. PAMA is a neutral law because it does not refer religion on its face, and there is no evidence that the law was enacted because of the legislature's intolerance of Kingdom Church's religious practices.

The Free Exercise Clause is implicated when a law discriminates against a religion or prohibits conduct because it is undertaken for religious reasons. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)**.** A law is neutral if it has a secular purpose and it is not enacted with the intent to prohibit or suppress the exercise of religion. *Smith,* 494 U.S. at 878. To establish neutrality, a law must be neutral both on its face and in its effect. *Lukumi*, 508 U.S. at 533-34.

1. PAMA is facially neutral because its language makes no reference to religion.

A law lacks facial neutrality if its "text refers to religious practices without a discernible secular meaning from language or context." *Lukumi*, 508 U.S. at 533**.** In *Lukumi*, the petitioners were adherents of the Santeria religion which required them to conduct animal sacrifices. *Id.* at 524. After the petitioners obtained approval to build a church, the officials passed four ordinances that prohibited ritual animal sacrifices in the city. *Id*. at 526. The ordinances contained language with strong religious connotation. *Id*. at 534**.** This Court reasoned that while the choice of words such as "sacrifice" and "ritual" might signify targeting and discrimination, the laws were facially neutral because the words also had secular meanings and were defined in the ordinances without reference to religion. *Id***.**

This Court should find that PAMA is facially neutral because the law does not refer to religion. PAMA forbids the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor. R. at 2. Similar to the ordinances in *Lukumi,* the words associated with the statute have secular meaning and are used outside of a religious context.[2] Moreover, unlike the statutes in *Lukumi*, PAMA does not appear to have any religious connotation or relate to religion at all. Thus, PAMA is facially neutral.

[2] For instance, *see* Procurement, Dictionary.com, https://www.dictionary.com/browse/procurement (last visited Jan. 30, 2023).

2. PAMA is neutral in effect because it does not target Kingdom Church's practices.

The Free Exercise Clause also protects against "subtle or covert hostility toward religion" through laws that are not neutral in their effect. *Lukumi*, 508 U.S. at 534. A law is not neutral if it "targets religious conduct for distinctive treatment." *Lukumi,* 508 U.S. at 534; *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729 (2018). While a law's operation is indicative of its object, its effect alone is insufficient without a showing of discriminatory intent. *Id*. at 535.

Hostility toward religion may be inferred when a law solely burdens religious conduct. In *Lukumi*, the ordinances narrowly defined the term "sacrifices" in a way that prohibited animal killings motivated by religion, but permitted the conduct when done for secular reasons. *Id*. at 536. This Court found that the ordinances were carefully drafted to create a gerrymander because, in effect, they only prohibited animal sacrifices performed by members of the Santeria religion. *Id*. at 535. This Court reasoned that the object of the laws could be determined by looking to relevant evidence such as the legislative history and contemporaneous statements made by the decision-making body. *Id*. at 540. This Court reasoned that the council members' statements of disapproval of the Santeria religion indicated intolerance toward the petitioners' religious practices, and held that the circumstances compelled the conclusion that the object of the ordinances was to suppress the practice of Santeria. *Id*. at 534.

The circumstances in this case do not demonstrate that PAMA was enacted with the intent to target or suppress Kingdom Church's practices. Unlike the ordinances in *Lukumi*, PAMA prohibits minors from donating blood under any circumstances, forbidding all conduct within the scope of the statute. R. at. 2. The timing of the enactment of PAMA and the outcry that arose from the news article is coincidental, as there is no evidence to support the conclusion that the law was passed to suppress the religious practices of Kingdom Church. R. at 5. Furthermore, this Court

should not find that Respondent's January 27, 2022, statement about Petitioner is conclusive of the legislative intent behind PAMA for two reasons. First, this Court should not base its determination of PAMA's neutrality on the legislature's intent because, as stated by Justice Scalia, determining the singular motive of an entire legislative body is "virtually impossible," and the circumstances of this case would not enable this Court to determine the intent of Delmont's entire legislative body. *Lukumi*, 508 U.S. at 558 (Scalia, J. concurring). Second, it is unlikely that Respondent's statements had any bearing on PAMA's enactment. This Court has held that statements made during by an adjudicatory body or during council meetings may be used to determine legislative intent. *Masterpiece*, 138 S. Ct. at 1730; *Lukumi*, 508 U.S. at 541. The Respondent's statements were not made in a legislative or adjudicative setting, as they were made after PAMA was enacted. R. at 7-8. Thus, the statements should not be considered when determining whether PAMA is neutral.

Moreover, Kingdom Church and its members have not been singled out for disparate treatment. Delmont is not imposing any special burden or punishment on Kingdom Church that it does not impose on other violators of PAMA. In *Masterpiece*, the petitioner was a Christian baker who refused to bake a wedding cake for a same-sex couple. *Masterpiece*, 138 S. Ct. at 1723-24. The Civil Rights Commission entered a cease-and-desist order against the petitioner because his conduct violated the state's Anti-Discrimination Act *Id*. at 1726. This Court held that the Commissioner's action demonstrated hostility toward the petitioner because it treated cases unequally, and did not find a violation on prior occasions when bakers denied their services to customers for nonreligious reasons. *Id*. at 1728, 1730.

Unlike the Commission in *Masterpiece*, Delmont has not had a pattern of solely finding minors in violation of PAMA when they donate blood for religious purposes. There is no evidence

that Delmont's officials' intolerance of Kingdom Church's practices motivated them to find a PAMA violation in this case. Nor would an investigation be a special burden that would not be imposed on those that violate PAMA for non-religious reasons. Thus, there is no disparate treatment toward Kingdom Church's religious conduct.

B. PAMA is generally applicable because it does not provide for any exemptions.

In addition to neutrality, a valid law must satisfy the requirement of general applicability. A law is generally applicable if it applies across-the-board to the specified conduct, and it does not permit an "individualized assessment of the reasons for the relevant conduct." *Smith*, 494 U.S. at 884. A law that provides for a mechanism of granting individualized exemptions is not generally applicable. *Smith*, 494 U.S. at 884**;** *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021)**.**

In *Smith*, Oregon's criminal statute prohibited the possession of peyote unless it was prescribed by a medical practitioner. *Smith*, 494 U.S. at 874. This Court found that the petitioners' religious conduct was not exempted from the statute because the statute prohibited the possession of unprescribed peyote in all circumstances. *Smith*, 494 U.S. at 884. This Court held that the law was generally applicable because it applied across-the-board, and did not have a system for individualized exemptions. *Id***.**

In *Fulton*, this Court found that the respondent's decision not to renew its contract with the petitioner violated the Free Exercise Clause because the decision was based on the type of system of exemptions that was described in *Smith*. *Fulton,* 141 S. Ct. at 1878. The petitioner, a Catholic foster agency, had a contract with the respondent, the city of Philadelphia. *Id*. at 1874. In accordance with its religious beliefs, the petitioner did not certify same-sex couples for placement as foster parents. *Id*. at 1874-75. The respondent suspended its contract with the petitioner because the petitioner violated the respondent's anti-discrimination ordinances *Id*. at 1876. A provision of

the contract provided that the City Commissioner could grant an exemption based on his discretion. *Id*. at 1878. This Court found that the respondent's suspension of the contract was unconstitutional because this provision invited the government to consider the reasons for the regulated conduct. *Id*. at 1879.

PAMA is generally applicable because it applies to all minors and does not provide for any exemptions to the prohibition on blood and tissue transfers. Since PAMA was passed, there has been no evidence of minors being permitted to donate blood for any reason. Unlike the law in *Fulton*, PAMA does not provide for a mechanism for individualized exemptions. Since PAMA applies across-the-board to all blood donations, the law is generally applicable.

C. This Court should not overturn *Smith* because there is no special justification under the principle of *stare decisis*.

Stare decisis "contributes to the integrity of our constitutional system of government" by assessing whether decisions "are founded in the law rather than in the proclivities of individuals." *Vasquez v. Hillery,* 474 U.S. 254, 265 (1986). Upholding precedent "keep[s] the scale of justice even and steady, and not liable to waver with every new judge's opinion." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2332 (2022) (citing 1 William Blackstone, Commentaries on the Laws of England at 69). This Court has identified five factors to determine whether precedent should be overruled or upheld: (1) "nature of their error;" (2) "quality of their reasoning;" (3) "workability of rules imposed on the country;" (4) "disruptive effect on other areas of the law;" and (5) "absence of concrete reliance." *Dobbs*, 142 S. Ct. 2228 at 2265. Further, overturning precedent must be justified by "egregiously wrong and deeply damaging" constitutional interpretation. *Id*. A decision is "egregious" if it "wrongly removed an issue from the people and the democratic process" and "exercised an unconstitutional use of 'raw judicial

power' to decide issues of moral or social importance." *Id*. "Deeply damaging" is determined when a ruling "expanded the bounds wherein judicial authority is constitutionally contained." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014).

Smith held that discretionary decisions by the courts to compel exemptions from state law are an unconstitutional use of judicial power. ***Smith***, 494 U.S. 872, 887. And, further, that the judicial system lacks constitutional authority to infringe on state police power and supersede the democratic process. *Id*. at 890. *Smith* clearly limits rather than abuses or expands judicial authority, and is consistent with established reasoning in *Dobbs.* In fact, *Smith* reinforced fundamental constitutional provisions that states had begun to overstep. This Court refused to compel the Free Exercise challenges against state law because it would blur the separation of powers over the legislature and religious exemption because doing so would be an unconstitutional use of its discretion and it reasoned that such a decision is a matter that should be left to the legislature and political process. *Id*.

Smith is rooted in the historical interpretation and application of the Free Exercise text and is not an outlier. When examining the reasoning of a case, this Court has noted that "the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered." *Dobbs*, 142 S. Ct. 2265. In cases that preceded *Smith*, this Court asserted and reiterated the rule that "general and nondiscriminatory laws" may burden religious conduct. See *Cantwell,* 310 U.S. at 304; see also *Braunfeld*, 366 U.S. at 603. In *Yoder* and *Sherbert*, this Court was presented with exceptions to the rule because those cases involved issues of hybrid rights and instances where exemptions were granted for comparable secular conduct. *Sherbert v. Verner*, 374 U.S. 398, 400-402 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972). *Smith* did not deviate from precedent

but rather distinguished the facts from *Sherbert* and *Yoder* and clarified the decisive factors to determine the appropriate standard of review for religious exemptions.

Workability is determined by "whether it can be *understood* and *applied* in a *consistent* and *predictable* manner." *Dobbs*, 142 S.Ct. at 2272 (emphasis added). The consistent application of the rule depends on whether the terms are clearly defined, or "open to reasonable debate" over a "range of meanings." *Id*. *Smith* clarifies the decisive factors for religious exemptions and establishes a clear, easily understood standard of rational basis review applicable when the issue is based on Free Exercise claims, and when exemptions have not been granted nor could be granted on a discretionary basis. The workability of *Smith* meets the standards established in *Dobbs*.

Finally, reliance interests may be asserted in the traditional sense of "cases involving property and contracts rights," or in a "more intangible form of reliance." *Payne*, 501 U.S. at 828. Reliance interests are present in matters "where advance planning of great precision is most obviously a necessity." *Dobbs*, 142 S.Ct., at 2276. *Smith* is relied upon by state legislators in creating RFRA-type law, and "overruling Smith would cause substantial regulatory . . . disruption." *Id*. at 1923. Therefore, the principles of *stare decisis* favor upholding *Smith* as valid precedent.

D. Even if this Court finds that PAMA fails to satisfy the *Smith* test, or that *Smith* should be overturned, PAMA is still valid because it satisfies strict scrutiny.

Prior to *Smith*, this Court asserted that a law that burdens religious exercise is subject to strict scrutiny. *Yoder*, 406 U.S. at 214; *Lukumi*, 508 U.S. at 529. Under this standard, a law must be justified by a compelling state interest, and it must be narrowly tailored to advance that interest. *Sherbert* 374 U.S. at 407; *Lukumi*, 508 U.S. at 546. The government interest must be of the "highest order" and relate to a matter that a state has the power to regulate. *Sherbert*, 374 U.S. at 403. A

state must show that the religious conduct poses an actual threat to its interests. *Yoder*, 406 U.S. at 227. In addition, a law is narrowly tailored when it uses the least restrictive means and only burdens religious conduct that undermines the government's interests. *Lukumi*, 508 U.S. at 546-47.

1. PAMA advances a compelling interest because Kingdom Church's blood banking creates an actual threat to minors' physical autonomy.

In *Sherbert*, this Court held the state's decision to deny the petitioner unemployment compensation did not advance a compelling interest, nor did it justify the burden imposed on petitioner's religious conduct. This Court concluded that there was no evidence that the compensation fund was endangered by fraudulent claims for unemployment filed under the guise of religious beliefs**.** *Sherbert,* 374 U.S. at 407.

Delmont's concern that Kingdom Church's practices endanger its interest in protecting children from coercion and physical abuse is not speculative. Kingdom Church's mandatory blood banking endangers this interest because newly confirmed members are required to blook bank and are only permitted to refuse to donate blood if they feel ill. R. at 5. The detrimental effects of these practices manifested when Adam Suarez was admitted to the intensive care unit after donating blood to his cousin. R. at 6. Unlike the respondent *Sherbert*, Delmont is able demonstrate that Kingdom Church's blood banking requirement is an actual threat to its objectives.

In addition, a law does not advance a compelling interest if the law is underinclusive and fails to restrict similar non-religious conduct that undermines the asserted interest. *Lukumi*, 508 U.S. at 546. In *Lukumi*, the respondent claimed that the ordinances were necessary to advance its interests in protecting public health and preventing animal cruelty. *Id.* at 543. This Court held that the ordinances did not advance a compelling interest because they prohibited the petitioner's

religious conduct but did not prohibit similar non-religious conduct that also compromised the city's interests. *Id.* at 547.

PAMA is not underinclusive because the law prohibits all minors from donating blood in all circumstances. Unlike the ordinances in *Lukumi*, PAMA does not permit any conduct, religious or non-religious, that undermines its interests in protecting minors from being coerced into medical procedures. Thus, PAMA advances a compelling interest that justifies the burden imposed on the religious conduct of the minors of Kingdom Church.

2. PAMA is narrowly tailored because the law only burdens conduct that threatens minors' physical autonomy.

PAMA is narrowly tailored because the law only burdens conduct that undermines Delmont's interest in protecting the physical autonomy of its minors. In *Lukumi*, this Court found that the ordinances were not narrowly tailored because they created a flat prohibition on the petitioners' animal sacrifices that burdened their religious conduct, even when it did not threaten the city's interest in preserving public health. *Id*. at 539.

Kingdom Church's blood banking differs from the animal sacrifices in *Lukumi* because it creates an unavoidable threat to the state's interest in protecting the physical autonomy of its minors. Here, there is a concern that minors are being forced into medical procedures. R. at. 5, 24. Kingdom Church makes blood banking mandatory for all its newly confirmed members. R. at. 5. Thus, confirmed minors have no real choice in the matter because they are required to blood bank. There is no instance when this religious conduct does not undermine Delmont's interest because Kingdom Church's minors are forced to subject themselves to medical procedures every time they donate blood. Kingdom Church's blood banking directly contradicts the interest justifying PAMA, and a narrower regulation would not advance Delmont's interests.

CONCLUSION

The extension of the *Sullivan* standard to limited-purpose public figures is constitutional because such figures have the ability to influence public controversies. To promote free and open debate about such matters, the Constitution requires that speech about such figures to be protected by the *Sullivan* standard. Without the protections of *Sullivan*, these figures would be able to use the threat of a defamation suit to chill speech about them, and thereby censor the public.

PAMA does not violate the Free Exercise Clause because it satisfies the test that this Court set forth in *Smith*. As found by the lower courts, PAMA is neutral because it was enacted to protect Delmont's minors, and not to suppress the religious conduct of Kingdom Church's minors. PAMA is generally applicable because it does not provide for an exemption under any circumstances. Moreover, the Court should not overturn Smith because its consistent with precedent and not egregiously wrong or deeply damaging. Finally, even if *Smith* is not applied to this case, this Court should still find that PAMA is valid because the law satisfies strict scrutiny.

For these reasons, Respondent respectfully requests that this Court uphold the *Sullivan* standard's extension to limited-purpose public figures as constitutional, and affirm the Fifteenth Circuit's decision to grant summary judgment in favor of Respondent, and find that PAMA is not violative the Free Exercise Clause of the First Amendment.

Respectfully submitted,

TEAM 024
Counsel for Respondent

CONSTITUTIONAL PROVISION

U.S. Const. amend. I states in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof…."

STATUTORY PROVISION

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

CERTIFICATE OF COMPLIANCE

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

Team 024
Counsel for Respondent