Case No. 22-CV-7654

IN THE

SUPREME COURT OF THE UNITED STATES

EMMANUELLA RICHTER,

Plaintiff-Petitioner.

v.

CONSTANCE GIRARDEAU.

Defendant-Respondent.

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

BRIEF OF RESPONDENT CONSTANCE GIRARDEAU

Team Number 028
January 31, 2023
Attorneys for Constance Girardeau

QUESTIONS PRESENTED

1. Whether, in defamation claims, it is constitutional to require public figures who thrust themselves to the center of controversies to prove actual malice on the part of their critics before recovering.
2. Whether the Physical Autonomy of Minors Act is neutral and generally applicable, and therefore constitutional under the First Amendment's Free Exercise Clause.

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STATEMENT OF THE FACTS

In 1990, Emmanuella Richter founded the Church of the Kingdom (Kingdom Church) in Pangea. Richter financed the church with the help of her husband, Vincent, a wealthy Pangea tea-grower. After a change in government in 2000, Richter, her husband, and many members of her church fled to the United States in pursuit of religious asylum. After becoming established in Beach Glass, Delmont, the church grew in number through both conversion efforts and immigration.

Members of Kingdom Church live in segregated compounds and share a communal income, largely consisting of profits from Vincent's locally popular tea business, "Kingdom Tea." Richter's primary responsibilities consist of organizing seminars detailing the Kingdom Church's beliefs and history, which are open to the public. While other members conduct the seminars, Richter organizes them and coordinates the financing of the door-to-door proselytization efforts.

An individual is eligible for church membership when they reach the age of 15. Upon confirmation, members must marry and raise their children within the faith, and participate in monthly service projects, one of which is blood-banking. As members are forbidden from receiving blood donations from outside the church, blood-banking is an essential tenet of the faith.

In 2020, the Beach Glass Gazette ran a story detailing the practices of Kingdom Church to illuminate the mysterious organization selling Kingdom Tea. This report sparked public outrage concerning the validity of the consent of minors (children under 16) in the blood-banking process. From 2016 to 2020, the rate of child abuse and neglect had steadily increased in Delmont, especially for immigrant children, which contributed to the community's outcry. At the

time, Delmont law permitted blood donations by minors only in autologous cases and cases involving medical emergencies of relatives.

In 2021, the Delmont General Assembly passed the Physical Autonomy of Minors Act (PAMA), removing these exceptions and generally forbidding minors from donating blood under any circumstances. Any individual thereafter requiring a blood transfusion would receive it from an adult. Defendant, Governor Constance Girardeau, vehemently supported this act, signing it into law.

On January 17, 2022, a Kingdom Tea truck driven by church member Henry Romero was involved in a fatal car accident. Romero was the only surviving church member. For Romero to receive medical treatment, minor and church member Adam Suarez, a blood-type match, donated the maximum permissible amount of blood under Red Cross standards. Suarez then went into acute shock. While visiting Suarez at the hospital, Plaintiff Emmanuella Richter gave an interview to media representatives, defending the blood donation practices of the church as reasonable and central to the faith.

Five days later at a campaign rally, while expressing her concern for the rising rates of child abuse, a reporter asked Defendant to comment on the Suarez story. Defendant responded that she was planning an investigation of the blood-bank requirement of Kingdom Church to determine whether "the exploitation of the Kingdom Church's children" violated PAMA or any other law. Later that month, the Plaintiff filed a request for injunctive relief to prevent the investigation from moving forward, arguing that PAMA violates the First Amendment's Free Exercise Clause. At a press event following a campaign rally, Defendant was asked about her thoughts on Plaintiff's request for injunctive relief. Recognizing public concern about the rising trend of child abuse, Defendant responded, "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?" Richter thereafter amended her complaint to include a defamation claim against Defendant for making this statement.

PROCEDURAL HISTORY

The District Court for the District of Delmont Beach Glass Division granted Defendant's motion for summary judgment on both claims brought by Plaintiff. The Circuit Court of Appeals for the Fifteenth Circuit affirmed the decision. Thereafter, Petitioner filed a writ of certiorari to the Supreme Court of the United States, which this Court granted.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered a final judgment in this case. *Richter v. Girardeau, Inc.*, C.A. No. 22-CV-7654 at *21(15th Cir. 2022). Petitioner requested a writ of certiorari in a timely fashion, which this Court granted. This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1254(1) (2022).

SUMMARY OF THE ARGUMENT

Per Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is appropriate when the moving party shows that there is no genuine issue as to material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). This Court must affirm the grant of summary judgment in Respondent's favor because a reasonable trier of fact could not find either that Respondent acted with the necessary actual malice under the prevailing standard, or that PAMA is not a neutral, generally applicable law, serving a legitimate state interest.

To succeed on a claim of defamation, Delmont law requires that the plaintiff show that defendant "(1) published (2) an actionable statement with (3) the requisite intent". The parties only dispute what standard of intent Petitioner must prove that Respondent acted with in order to

recover. Petitioner contends that she should be able to recover if Respondent's statements were made negligently, but this is incorrect. Over time, this Court has recognized that the First Amendment guarantees to freedom of speech and press, as applied to the states, provide certain safeguards against claims of defamation and libel. These safeguards are only made stronger when the subject of the speech is a person who has special influence in public matters. This Court has emphasized the importance of open communication and criticism of authority, pointing out that "vilification" and "exaggeration" of prominent men is "essential to... conduct on the part of citizens of a democracy". *New York Times Co. v. Sullivan*, at 271 (1964). The Court, as well as the founders, did not define prominent men as being restricted to the government. In fact, this Court has acknowledged that "members of church" could fall into that influential category. *Cantwell v. State of Connecticut*, 310 U.S. 296, 84 (1940).

Requiring limited purpose public figures to prove actual malice in defamation claims is constitutional because it serves the same goal as application of the standard to all-purpose public figures: free and open communication about influential authority figures who have placed themselves at the forefront of community controversies. Since *NYT v. Sullivan*, courts have consistently applied the test to limited purpose public figures, and properly refrained from doing so to private citizens. The test, therefore, is having its intended effect. Implementing a negligence standard would not only restrict the public from freely communicating about powerful individuals for fear of lawsuits, but would also permit relatively well-known individuals (who are spoken about more than usual) to recover in more instances than they should be able to. By applying the actual malice standard to claims brought by limited purpose public figures, defamation law is fairly balanced against the concerns of the First Amendment.

Turning to the free exercise claim, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thereby codifying the nation's commitment to religious liberty. *U.S. Const. amend. I*. This Court's long body of precedent has consistently held that there is an important distinction between "the freedom of individual [religious] belief, which is absolute, and the freedom of individual conduct, which is not absolute". *Bowen v. Roy*, 476 U.S. 693, 699 (1986). Individual conduct, even though religiously motivated, is still subject to regulation, particularly when there is a "substantial threat to public safety, peace, or order". *Sherbert v. Verner,* 374 U.S. 398, 403 (1963). This also applies when there is a need to enforce the "protection of society". *Cantwell*, 310 U.S. at 304. Petitioner asserts that PAMA and Respondent's investigation pursuant to this statute is unconstitutional under the Free Exercise Clause. However, this argument must fail. PAMA undoubtedly passes constitutional muster because it is a neutral and generally applicable law, aimed at achieving a legitimate state interest, which satisfies the prevailing standard of review articulated in *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872 (1990). Contrary to what Petitioner argues, the *Smith* standard should not be overruled because doing so would impair the authority and logistical functioning of government, and arguments against preserving this precedent are ultimately unpersuasive. However, even if *Smith* were overruled, PAMA would still survive a strict scrutiny analysis.

ARGUMENT

I. THE *NEW YORK TIMES V. SULLIVAN* STANDARD REQUIRING PROOF OF ACTUAL MALICE IN DEFAMATION CLAIMS IS CONSTITUTIONALLY APPLICABLE TO LIMITED PURPOSE PUBLIC FIGURES.

A. The actual malice standard is constitutionally applicable to limited purpose public figures because without such an application, the goal of free speech would be severely impaired.

1. *This Court has regularly recognized the need to curb defamation law to promote the freedom of speech when doing so would have beneficial consequences to democratic functions.*

The right to free speech ensures open and free communication, but that right is not absolute. The freedom to speak one's mind must be balanced against the freedom of individuals to preserve their reputations from unwarranted and untrue accusations. However, in some instances, preoccupation with the possibility of an onslaught of lawsuits for damaging reputations may do more harm than good. In *Barr v. Matteo,* this Court determined that when government officials are engaged in the outer limits of their official capacities, their statements should be absolutely privileged. *Barr v. Matteo,* 360 U.S. 564 (1959). In this way, the Court recognized the need, in some cases, to curb defamation law to promote freedom of speech, especially because doing so would allow for more effective governing. In *New York Times Co. v. Sullivan*, this Court recognized that even when public officials are not engaged in their official duties, their statements at least had to receive protection from defamation claims involving negligently spoken statements. *New York Times Co. v. Sullivan,* 76 U.S. 254 (1964). The majority wrote, all states "hold that all officials are protected unless actual malice can be proved." *Id.* at 282. In that case, the Court explains that the imposition of an actual malice standard for statements made by public officials is justifiable because otherwise, the threat of damage suits would prevent the officials from doing their jobs fearlessly, vigorously, and effectively. To allow negligently spoken statements to be the basis for defamation claims against

public officials would set a precedent that public officials, in the future, should be weary of their responses to questions involving public controversies in order to avoid lawsuits. Imposing the actual malice standard accomplishes the goal of protecting citizens' reputations without inhibiting the ability of the government to act effectively.

2. *The goal of freedom of speech is to foster open communication about influential authority figures and prominent public controversies.*

The Court also viewed the situation from the other direction in *NYT v. Sullivan*. Since public officials were entitled to some level of protection for their statements, this Court explained that when they brought cases for defamation claims, they should have to prove actual malice as well. Noting that the right to free speech was codified to encourage free and open communication, passionate debate, and even vilification of authority figures, the Court determined that allowing recovery by influential people on the basis of negligently spoken words censored criticism of authority in a way that infringed on freedom of speech. The majority wrote:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

New York Times Co. v. *Sullivan*, 376 U.S. 254, 271 (1964).

3. *Influential authority figures include individuals other than government officials.*

Today, some of the most influential people are not elected or appointed public officials, but instead, individual authorities in controversies that they have deemed particularly significant and chosen to invest time in. In other words, they are people who have thrust themselves to the center of public controversies. *Gertz v. Robert Welch, Inc.*, 418 U.S 351 (1974). As the lower

courts explained, petitioner is one of those individuals. While government officials may be the ones that eventually make the decisions, limited purpose public figures are the ones who convince them of what decisions to make. Because limited purpose public figures hold just as much influence in niche categories as all-purpose public figures do in general politics, it is important for critics to be able to voice their opinions on them freely. Imposing an actual malice standard on such figures would allow debate about their opinions and character to naturally unfold, while still protecting their reputations from sincerely malicious attacks.

4. *Imposing a different standard for recovery on public officials and limited purpose public figures would undercut the objective of free speech.*

If Respondent wanted to recover for defamation claims made against her, she would have to prove actual malice, a standard that evolved to ensure criticism of authority could continue uncensored. Requiring Respondent to be held to an actual malice standard while permitting Petitioner to recover on a theory of negligence would impose different standards for defamation claims based purely on job titles. The current application of the actual malice standard to claims brought by limited purpose public figures recognizes that what truly matters is the influence and authority held by such people. The goal of freedom of speech is to foster open communication about influential people in general, and not just those in the government. Individuals who thrust themselves to the centers of controversies continue to increase their influence over the general public, at least with regard to those topics. So, because the goal of free speech will always be to foster open criticism of authority, as the universe of "authorities" continues to expand, the law of defamation and libel may have to shrink in some areas.

Under the current law, limited purpose public figures are still able to recover for any malicious attacks on their character. Since they chose to involve themselves in a specific

controversy and as such, gained influence and seeming authority among the public, open criticism of their character must be encouraged, and negligently spoken statements should not allow them a basis for recovery. To hold otherwise would censor criticism of limited purpose public figures while encouraging such criticism of similarly influential government officials in the name of preserving free speech.

B. This Court has previously noted that application of the actual malice standard to limited purpose public officials is constitutional.

In *New York Times Co. v. Sullivan*, the majority wrote, "…erroneous statement is inevitable in free debate, and…it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need,'" eventually stating that "an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection". *New York Times Co. v. Sullivan*, 376 U.S. at 271-271. While the rule was created to protect citizens' ability to criticize governmental officials, it applies just as much to protect citizens' abilities to criticize limited purpose public figures.

In modern times, "major public issues" do not involve only government officials, and often, as in this case, they relate to the private actions of individuals that affect society at large. The founders included a fundamental right to free speech in the Constitution, recognizing that for democracy to function properly, public controversies must be freely discussed. Of course, libel laws were created to strike a balance between the protection of individuals' reputations and the protection of free speech. This Court has previously noted that the balance sometimes tips in favor of protecting free speech, especially when the conduct being criticized involves a public issue and is about a public figure.

Respondent may have spoken without thought, but allowing recovery by public figures on the basis of negligence alone would stifle debate about the controversies that plague the public. Requiring a standard of malice would allow those complaints that are serious enough to move forward, thus protecting public figures' reputations without inhibiting the right of citizens to criticize them.

Within three years after the *NYT v. Sullivan* decision, this Court upheld application of the actual malice standard to limited purpose public figures. In *Curtis Pub. Co. v. Butts*, a football coach was deemed a limited purpose public figure and was required to prove actual malice before being able to recover for statements that defamed him. *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967). In applying the actual malice standard to public figures, the Court explained its emphasis on protecting the right to free speech, noting

> "It is significant that the guarantee of freedom of speech and press falls between the religious guarantees and the guarantee of the right to petition for redress of grievances in the text of the First Amendment, the principles of which are carried to the States by the Fourteenth Amendment. It partakes of the nature of both, for it is as much a guarantee to individuals of their personal right to make their thoughts public and put them before the community" *Id.* at 149.

In *Pauling v. Globe-Democrat Pub. Co.*, the 8th Circuit Court of Appeals held that a world-renowned scientist who was seeking to "guide public policy" and, "in the process was criticized," was unable to recover for libel unless he could prove actual malice in the statements made against him. *Pauling v. Globe-Democrat Pub. Co.*, 362 F.2d 188, 196 (8th Cir. 1966). By denying certiorari, this Court implicitly approved the finding that the actual malice standard was correctly applied, as recognized by the lower court opinions in this case. *Pauling v. Globe-Democrat Publ'g Co.*, 388 U.S. 909 (1967).

In *Gertz v. Robert Welch, Inc.*, the Supreme Court declined to extend the actual malice standard to suits brought by private individuals, though it recognized that the standard would

apply to suits brought by either all-purpose public figures or limited purpose public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). The Court defined the latter as an individual that "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Id.* at 351. Although the Court in that instance did not find the attorney to be a limited purpose public figure, it noted that the question of whether actual malice applied did not depend on the constitutionality of its application, but rather whether the plaintiff in the case qualified as a limited purpose public figure. If they did, the actual malice standard was to apply.

As recently as 2019, this Court again denied certiorari in a case where the actual malice standard was applied to a limited purpose public figure. In *McKee v. Cosby*, the First Circuit Court of Appeals denied recovery to McKee, finding that she was a limited purpose public figure and had not proven actual malice in statements she alleged were defamatory against her. *McKee v. Cosby*, 139 S. Ct. 675 (2019). Because the plaintiff had publicly accused Cosby of sexual assault, she had thrust herself into the center of a public controversy and could not recover for defamatory statements made by Cosby without showing actual malice. By denying certiorari, this Court ensured the First Circuit Court of Appeals decision would be the final judgment in that case, thus implicitly approving the application of the actual malice standard to limited purpose public officials. *McKee v. Cosby*, 203 L. Ed. 2d 247 (2019).

Therefore, not only can the actual malice standard be constitutionally applied against Petitioner, but stare decisis also mandates such an application.

C. The *NYT v. Sullivan* standard is consistently and properly applied among lower courts.

In *Time, Inc. v. Firestone*, the Court found that the plaintiff was not a public figure because she did not "assume any role of especial prominence in the affairs of society," nor did she "thrust

herself to the forefront of particular public controversies". *Time, Inc. v. Firestone*, 424 U.S. 448 (1976). Due to her lack of influence in a public controversy, she was only required to prove negligence in order to recover for libelous claims made against her. While some may claim that this is an example of a lower court maneuvering around *NYT v. Sullivan*, in truth, this case exemplifies the nuanced nature of *NYT v. Sullivan*. When someone is found to be a limited purpose public figure, they must prove actual malice to recover. However, just because the standard is in place does not mean that every influential individual will be found to have thrust themselves into the relevant controversy.

Neither is it the case that *NYT v. Sullivan* is being ignored. In *James v. Gannet Co.*, a case heard the same year as *Time, Inc.*, a locally renowned belly dancer was deemed a limited purpose public figure with regard to her performances. *James v. Gannet Co.*, 353 N.E.2d 834 (N.Y. 1976). Although the Court noted that "the category of 'public figures' is of necessity quite broad…," it clarified that limited purpose public figures had to be "persons in whom the public has continuing interest…" *Id.* at 839. In noting the public's interest in James, the court explained that she could not recover unless she proved the newspaper acted with actual malice. By doing this, the court fostered open communication about a person who had chosen to make herself news in the community.

Finally, it is not the case that courts are arbitrarily applying *NYT v. Sullivan* as they wish. In *Time, Inc.*, the plaintiff was properly deemed a private citizen, since the matter in which she involved herself was not a public controversy. In *James v. Gannet*, the plaintiff was properly labeled a limited purpose public figure because she had special prominence in the community, and "welcomed publicity" regarding her performances. *James v. Gannet*, 353 N.E.2d at 840. The fact that in some instances, individuals are treated as limited purpose public figures, and in other

instances, they are not shows that the *NYT* decision is having its intended effect. The public can make comments about influential figures without intense fear of legal retaliation, while private citizens continue to be able to protect their reputations from negligently made defamatory statements.

This Court has also been intentional in applying the standard. In *Gertz v. Robert Welch, Inc.*, the Court refused to find the attorney to be a limited purpose public figure. *Gertz v. Robert Welch, Inc*, 418 U.S. 351 (1974). Had the Court been trying to maneuver around the *NYT v. Sullivan* decision, it could have overturned it outright. Instead, however, the Court merely noted that it was insufficient to deem the plaintiff a limited purpose public figure on the basis of his career alone, since doing so would open the floodgates to all attorneys being deemed limited purpose public figures in matters related to their cases. In contrast is *Berisha v. Lawson*, in which this Court denied certiorari of an opinion stating that individuals could become limited purpose public figures through no intention of their own. *Berisha v. Lawson*, 973 F.3d 1304 (11th Cir. 2020). The 11th Circuit Court wrote,

> "Federal courts have long made clear that one may occasionally become a public figure even if "one doesn't choose to be". *Rosanova v. Playboy Enters., Inc.*, 580 F.2d 859, 861 (5th Cir. 1978); *see also, e.g.*, *Turner*, 879 F.3d at 1273 (citing approvingly the statement that "[i]t may be possible for someone to become a public figure through no purposeful action of their own"…As this circuit once put it, …"Comment upon people and activities of legitimate public concern often illuminates that which yearns for shadow." *Rosanova*, 580 F.2d at 861".

Id. at 1311.

By denying certiorari, this Court implicitly approved the finding that, in determining whether to label individuals limited purpose public figures, courts must look to whether there is public interest in the influence they yield about a controversy that "yearn[s] for shadow". *Id.*; *Berisha v. Lawson*, 210 L. Ed. 2d 991 (2021).

For the aforementioned reasons, the *NYT* standard is constitutional and is applied correctly by lower courts. If limited purpose public figures continue to be labeled as such only when they are largely influential in a public controversy, both the right to free speech and the right to protect one's reputation from fraudulent claims are protected.

II. PAMA AND RESPONDENT'S INVESTIGATION DOES NOT VIOLATE THE FREE EXERCISE CLAUSE.

A. PAMA passes the prevailing *Smith* analysis.

Under *Smith*, this Court held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)'". *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 n. 3 (1982) (Stevens, J., concurring)). Subsequent cases affirmed that a state must only assert a legitimate interest to support a neutral and generally applicable law, "even if the law has the incidental effect of burdening a particular religious practice". *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). PAMA is a neutral and generally applicable law that serves the legitimate state interest of combatting a growing trend in child abuse. Therefore, the *Smith* standard is satisfied. Importantly, PAMA is not subject to either of the two exemptions articulated in *Smith* that would immediately subject a law to strict scrutiny. First, PAMA is not a hybrid situation as described in *Smith*, because it does not involve "the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech". *Id.* at 881. Rather, PAMA only involves free exercise questions. Second, PAMA does not fall within the unemployment compensation line of cases to which the Sherbert balancing test is mostly contained. *Id.* at 883.

1. PAMA is neutral.

For a law to be neutral, this Court has determined that its object cannot be to "infringe upon or restrict practices because of their religious motivation". *Lukumi*, 508 U.S. at 533. Neither does a neutral law proceed "in a manner intolerant of religious beliefs," or restrict "practices because of their religious nature". *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021). Unquestionably, PAMA is a neutral law because it is facially neutral, lacks any circumstantial evidence of religious animus, and does not constitute a religious gerrymander.

First, PAMA is facially neutral. This Court determines a law's neutrality first by looking to the text of the statute. *Lukumi* 508 U.S. at 533. A law fails the facial neutrality test when it "refers to a religious practice without a secular meaning discernible from the language or context". *Id.* PAMA only contains language that is purely medical in nature without any apparent religious meaning. Like the law in *Lukumi* that was held to be facially neutral, PAMA defines its words in "secular terms, without referring to religious practices". *Id.* at 534

Second, PAMA is neutral because the record presents no circumstantial evidence of religious animus or any hostility towards religion. The Court held in *Lukumi* that circumstantial evidence relevant to discerning a law's neutrality includes "the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body". *Id.* at 540. For example, in that case, "animosity to Santeria adherents and their religious practices" was evident from statements made by city council members and other city officials in *Lukumi* before the passage of the challenged ordinance, illustrating its lack of neutrality. *Id*. at 542. Referring to the plaintiff's church in that case, city officials used words such as "sin," "foolishness," and "demons". *Id*. at 541. Additionally, this Court's decision in *Masterpiece*

Cakeshop, Ltd. v. Colorado C.R. Comm'n, 138 S. Ct. 1719, 1731 (2018) turned on a finding of hostility towards religion manifested by the Colorado Civil Rights Commission. During its proceedings involving the plaintiff's case, a commissioner compared the plaintiff's "invocation of his sincerely held religious beliefs to defenses of slavery and the Holocaust". *Id*. at 1721. The legislative history surrounding the passage of PAMA bears no resemblance to either *Lukumi* or *Masterpiece Cakeshop* in this regard. To the contrary, Kingdom Church was a cherished and valued group among the people of Delmont due to the significant popularity of Kingdom Tea. The record presents no evidence that any member of the Delmont legislature made any comments or insinuations disapproving of Kingdom Church prior to the passage of PAMA, like that found in *Lukumi* or *Masterpiece Cakeshop*. To the extent that PAMA was passed in response to public outcry about the ethics of blood-banking, one must consider the legislature's actions against the broader backdrop of rising rates of child abuse that primarily fueled the public outcry. Clearly, the legislative history of PAMA is a far cry from demonstrating "clear and impermissible hostility toward the sincere religious beliefs" of Kingdom Church. *Masterpiece Cakeshop*, 138 S. Ct. at 1729.

Lastly, PAMA is neutral because it does not create a religious gerrymander like the city ordinance that was struck down in *Lukumi*. The Court held in *Lukumi* that the ordinance functioned in a way where only religious activity was burdened and similar secular activity was not. *Id.* at 542. For example, the ordinance was "gerrymandered with care to proscribe religious killings of animals but to exclude almost all secular killings". *Id.* Consequently, "the net result of the gerrymander is that few if any killings of animals are prohibited other than Santeria sacrifice, which is proscribed because it occurs during a ritual or ceremony". *Id.* at 536. PAMA operates in a significantly different way. Unlike the ordinance in *Lukumi*, PAMA's net result affects both

religious and nonreligious activity in the same way because it creates no exceptions for the secular blood-banking of minors. Rather, blood-banking that is motivated by both religious and secular reasons are impacted the same way. This presents a stark contrast with the ordinance in *Lukumi* where, "although Santeria sacrifice is prohibited, killings that are no more necessary or humane in almost all other circumstances are unpunished". *Id.* at 536.

2. *PAMA is generally applicable.*

As previously demonstrated, PAMA is a neutral law. Since "neutrality and general applicability are interrelated," proof of neutrality proves a law's general applicability. *Lukumi*, 508 U.S. at 531. Clearly, PAMA is generally applicable due to both the lack of exemptions and the fact that it is not underinclusive in its legislative aim.

First, PAMA is generally applicable because it does not contain any exemptions. A law is generally applicable when it applies to all individuals that could be impacted by the statute in an equal way. *Bowen*, 476 U.S. at 708. For example, in *Bowen*, the Court held that a statutory requirement that individuals seeking welfare benefits must provide a Social Security number was generally applicable. *Id.* at 703. The Court reached this determination because "Congress has specified that a state...plan *'must*... provide (a) that, *as a condition of eligibility* under the plan, *each* applicant for or recipient of aid *shall* furnish to the State agency his social security account number'". *Id.* at 708. Generally applicable laws therefore do not contain exemptions. The statutory requirement in *Bowen* importantly "made no provision for individual exemptions to the requirement". *Id.* Similarly, it is indisputable that PAMA contains no exemptions, or anything resembling an exemption, that would permit some individuals to continue procuring, donating, or harvesting a minor's bodily substances. To the contrary, PAMA applies without exception to all residents of Delmont. In this sense, PAMA draws a stark contrast to the COVID-era restriction

struck down in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). There, the Court held that a law limiting religious gatherings to a certain number of households, while permitting exemptions for similar secular activities, was not generally applicable due to its exemptions. *Id.* at 1294. While this law treated "comparable secular activities more favorably than at-home religious exercise, permitting hair salons…to bring together more than three households at a time," PAMA makes no exemptions and applies with equal force to religious and secular medical activity alike. *Id.* at 1297. If the drafters of PAMA had prohibited religiously inspired blood-banking while making exceptions for comparable secular medical activity, this would fail to pass the general applicability test. However, PAMA is altogether different because it does not invite the "government to consider the particular reasons for a person's conduct," as was true of the statute struck down in *Fulton*, which lacked general applicability. *Id.* at 1877.

Second, PAMA is generally applicable because it is not underinclusive in its legislative aim. This Court defined this concept in *Fulton*, stating that a law "lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way". *Id.* at 1877. For example, the ordinance in *Lukumi* was underinclusive in its legislative aim because although it purported to address animal kills or abuse, "religion alone must bear the burden of the ordinances, when many of these secular killings fall within the city's interest in preventing the cruel treatment of animals". *Id.* at 544. The majority reasoned that if the ordinance was really intended to prevent animal abuse, it was underinclusive to the extent that it did not address the disposal of animals in restaurants and hunting settings. *Id.* at 544. PAMA is different in this regard. PAMA's primary goal is preventing child abuse, and it achieves this goal by prohibiting all kinds of harvesting of bodily substances in minors, whether done for religious or secular purposes.

3. PAMA was enacted to further a legitimate state interest.

As previously mentioned, PAMA has the legitimate state interest of combatting a rising trend in child abuse. A state need only meet a relatively low bar when asserting a legitimate state interest. Previously in *Bowen*, this Court determined that a statute requiring welfare agencies to use the Social Security numbers of applicants served a legitimate state interest. *Id.* at 709. The Court reasoned that "Preventing fraud in these benefit programs is an important goal," and that using Social Security numbers was a proven way to increase the efficiency of such programs. *Id.* at 694. If administrative efficiency qualifies as a legitimate state interest, protecting the bodily autonomy of minors is an even more consequential interest that would easily qualify as legitimate because it concerns the lives of children.

B. *Smith* should not be overruled.

Contrary to what Petitioner may argue, the standard of analysis set forth in *Smith* should not be overruled because doing so would impair the authority and logistical functioning of government. Also, arguments against preserving this precedent are ultimately unpersuasive.

First, *Smith* should not be overruled because doing so would significantly impair the authority and logistical functioning of government. Besides the fact that years of this Court's precedent before *Smith* had slowly chipped away at the balancing test outside of unemployment compensation cases, there is an even more pressing reason to preserve *Smith*. *Id.* at 883. Scalia explains in the *Smith* opinion that "To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is 'compelling,'" would ultimately permit "his beliefs, to become a law unto himself". *Id.* at 885. (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1878)). In other words, requiring the government to show a compelling government interest under all circumstances affords an

individual too much discretion in choosing whether to obey the rule of law or ignore it. This course of action would also tightly constrain the government in achieving legitimate ends. These concerns are illustrated in *Reynolds* where this Court upheld a law criminalizing bigamy even though it clashed with the plaintiff's Mormon faith. *Id.* at 161. The Court articulated the same concerns about government efficiency as in *Smith*, noting that permitting non-compliance with this law on religious grounds would "make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances". *Reynolds*, 98 U.S. at 167. Indeed, discarding *Smith* could produce extreme results. This concept is illuminated by *Reynolds*, where the Court asked the hypothetical question, "if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?" *Id.* at 166. The extent to which government operations would be significantly impaired is only compounded by the uniquely numerous and diverse religious sects found in the United States. As Scalia observes in *Smith*, "'We are a cosmopolitan nation made up of people of almost every conceivable religious preference'…We cannot afford the luxury of deeming *presumptively invalid*…every regulation of conduct that does not protect an interest of the highest order". *Id.* at 888. (quoting *Braunfeld v. Brown,* 366 U.S. 599, 606 (1961)). Rather, this Court ought to provide the government with "sufficient operating latitude" to achieve important goals like protecting bodily autonomy among minors, even though "some incidental neutral restraints on the free exercise of religion are inescapable". *Bowen*, 476 U.S. at 712. Reversing *Smith* would create a legal system where individual religious belief reigns supreme over the rule of law, a dynamic that could only be reversed in extreme circumstances, given that a compelling interest requires a showing of only

the "gravest abuses, endangering paramount interest". *Sherbert*, 374 U.S. at 406. (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)).

Second, arguments that have been made in support of overturning *Smith* are ultimately unpersuasive. In *Fulton*, several concurring and dissenting opinions were written in support of overruling *Smith*, and each opinion reflects the limitations of this deficient argument. Even while advocating for overturning *Smith*, Justice Barrett conceded, "Yet what should replace *Smith*? The prevailing assumption seems to be that strict scrutiny would apply whenever a neutral and generally applicable law burdens religious exercise. But I am skeptical about swapping *Smith's* categorical antidiscrimination approach for an equally categorical strict scrutiny regime". *Fulton*, 141 S. Ct. at 1882 (Barret, J., concurring). Justice Barrett points out that this concern is even more warranted when one considers the litany of other doctrinal issues that would need to be resolved in the wake of overturning *Smith*, including deciding whether there should be "a distinction between indirect and direct burdens on religious exercise," and "What forms of scrutiny should apply". *Id.* at 1883. Indeed, even Justice Alito who filed a separate opinion in *Fulton* advancing a lengthy argument against *Smith* fails to reach a better conclusion. He writes, "If *Smith* is overruled, what legal standard should be applied in this case? The answer that comes most readily to mind is the standard that *Smith* replaced". *Id.* at 1924 (Alito, J., concurring). Yet, this solution has already been shown to be unworkable and needlessly burdensome on the government. Justice Alito's central concern with *Smith* is that neutral and generally applicable laws serving merely legitimate interests may be permitted, despite the outsized and "devastating effect" that they may have on individual religious liberty. *Id.* at 1883. Yet by his own admission, Alito implicitly observes that *Smith* is not as far-reaching as its critics argue because "*Smith's* holding about categorical rules does not apply if a rule permits individualized exemptions". *Id.* at

1887. Nor does its holding extend to hybrid situations like that found in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which involves free exercise concerns along with other constitutional protections. Therefore, *Smith* provides safeguards that limit its reach when impermissible restrictions on individual free exercise are most likely implicated.

C. If *Smith* were overruled, PAMA would still survive strict scrutiny

Even if this Court overruled *Smith* or found that PAMA was not a neutral and generally applicable law, PAMA would still pass constitutional muster under a traditional strict scrutiny analysis. PAMA survives under a strict scrutiny regime because it serves the compelling government interest of combatting child abuse, and it is narrowly tailored to achieve that goal.

1. PAMA has a compelling government interest.

First, PAMA serves a compelling government interest. This Court has held that meeting this standard requires "No showing merely of a rational relationship to some colorable state interest". *Sherbert*, 374 U.S. at 406. Rather, it requires "only those interests of the highest order and those not otherwise served". *Yoder*, 406 U.S. at 215. Taken broadly, PAMA serves the undeniably compelling interest of protecting the bodily health and safety of the children of Delmont. However, this Court in *Fulton* has clarified that answering this question requires a more precise answer. Namely, "courts must 'scrutinize the asserted harm of granting specific exemptions to particular religious claimants.'...The question then, is … whether [the state] has such an interest in denying an exception" to Kingdom Church. *Fulton*, 141 S. Ct. at 1881 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)). Certainly, Delmont has a compelling interest in denying Kingdom Church an exemption because doing otherwise would undermine its objective of protecting the health of all minors in Delmont, including those that identify as members of the Kingdom Church. Unlike in *Sherbert*

where the record contained no proof of the asserted state interest, the fact that Adam Suarez was hospitalized after violating PAMA proves that Delmont has a compelling interest in denying Kingdom Church an exemption. *Id.* at 407. Here, in contrast with *Sherbert*, the "record [would] sustain" the compelling interest asserted because of Suarez's injury, one of the very injuries that PAMA seeks to prevent. *Id.* In this sense, Delmont asserts far more than a mere "policy preference" that was deemed insufficient in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 (2017), to demonstrate a compelling interest. Delmont also asserts more than mere constitutional aims that were held to be insufficient in *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020), where "Montana's interest in separating church and state 'more fiercely' than the Federal Constitution" was not compelling. *Id.* at 2260. Additionally, the fact that the record of this case already illuminates the health risks posed to the children of Kingdom Church in granting an exemption demonstrates that PAMA passes the standard set forth in *Yoder*. In that case, the Court reasoned that the actual benefit of enforcing a law that infringes on free exercise must be provable and significant. *Yoder*, 406 U.S. at 225. A law requiring Amish children to stay in public school for one more year than their religious beliefs would permit is not sufficient, because there was no "basis in the record to warrant a finding that an additional one or two years of formal school education…would serve to eliminate" problems that the statute sought to address. *Id.* Here, however, the very facts concerning Adam Suarez that gave rise to this case are proof of the necessity of denying Kingdom Church an exemption.

Also, Delmont has a compelling interest in denying Kingdom Church an exemption because doing otherwise would lead to monumental problems in enforcing PAMA. Permitting this exemption would place a significant burden on government agencies and local blood donation centers to distinguish Kingdom Church members from the rest of the general public.

Agencies would also have to identify secular individuals that might feign their religious beliefs to partake in blood-banking. In *Braunfeld*, the Court held that the possibility of enforcement problems spoke to the state's compelling interest in denying the appellant an exemption to Sunday closing laws. *Braunfeld*, 366 U.S. at 608. The Court observed that "enforcement problems would be more difficult since there would be two or more days to police rather than one and it would be more difficult to observe whether violations were occurring". *Id.* Similarly, it would become substantially more difficult to observe whether violations of PAMA are occurring if Delmont were to permit this exemption for Kingdom Church.

2. PAMA is narrowly tailored.

Second, PAMA is narrowly tailored to achieve its compelling interest. The Court held that "narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its interest". *Tandon*, 141 S. Ct. at 1296-1297. Clearly, PAMA meets this standard because there is no way to prevent the harvesting of bodily substances in a minor other than a statutory prohibition, which PAMA accomplishes. In this sense, PAMA is comparable to the statute upheld in *Bowen*, which was determined to be narrowly tailored because the "Social security number requirement is a reasonable means of promoting that goal" of combating fraud in Pennsylvania's public welfare system. *Bowen*, 476 U.S. at 710. It is difficult to imagine what a less restrictive law might look like in the case before the Court now.

CONCLUSION

First, the courts below correctly held that Petitioner, as a limited purpose public figure, must meet the actual malice standard under *NYT v. Sullivan* in order to recover. Since the goal of free speech cannot be served unless public figures in general are required to meet an elevated

standard in claims they bring for defamation, this Court should adhere to stare decisis, and find the *NYT* standard constitutionally applicable and necessary to impose upon limited purpose public figures as well. As the constitutionality of applying the current standard to individuals in Petitioner's position has been resolved, and the lower courts correctly found that Respondent did not act with actual malice, the previous findings regarding Petitioner's defamation claim should be affirmed.

Second, the lower court rightly determined that PAMA and Respondent's related investigation into the Kingdom Church does not violate Petitioner's constitutional free exercise right. PAMA is a neutral law of general applicability, and therefore passes the prevailing *Smith* standard. This Court should not overturn *Smith* because it would impair the logistical functioning of government, and arguments against preserving *Smith* are not persuasive. However, even if the Court analyzed PAMA under strict scrutiny, the law would still be constitutional because it is narrowly tailored to serve a compelling governmental interest.

For the foregoing reasons, this Court should affirm.

CERTIFICATE OF COMPLIANCE

Pursuant to the Seigenthaler-Sutherland Official Rules, we, the under-signed counsel, certify that:

(i) this brief is entirely the work product of competition team members,

(ii) the team has fully complied with its law school's governing honor code; and

(iii) the team has complied with all Competition Rules.

/s/ Team 028
Dated: January 31, 2023

APPENDIX: STATUTES AND CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1254(1): Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

The Physical Autonomy of Minors Act (PAMA)

“Delmont law forbids the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor’s consent.”