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 Fifteenth Circuit

BRIEF FOR THE APPELLEE-PETITIONER

TEAM 005
ATTORNEYS FOR THE PETITIONER

QUESTIONS PRESENTED

I. Whether it is constitutional to require limited-purpose public figures to prove the exacting standard of actual malice to succeed in a defamation claim despite the impact of modern technological advancements on an individual's status?

II. Whether this Court should rectify mistaken lower court decisions approving a targeted death knell for minority religious practices and prevent future statutory religious persecution by overturning the flawed decision of *Emp. Div., Dep't of Hum. Res. v. Smith*?

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STATEMENT OF THE CASE

I. JURISDICTIONAL STATEMENT

Petitioner Emmanuella Richter ("Emmanuella") appeals a decision from the United States Court of Appeals for the Fifteenth Circuit affirming the District Court for the District of Delmont. This Court has jurisdiction under 28 U.S.C.A. §1254(1) (West 2012).

II. STATEMENT OF FACTS

A military coup in Pangea ousted democracy and instituted governmental repression of Kingdom Church ("Kingdom") in 2000. R. at 3. Along with most of their members, founders Emmanuella Richter ("Emmanuella") and Vincent Richter ("Vincent") fled to the United States seeking asylum for religious persecution. R. at 3. Emmanuella and Vincent became U.S. citizens and laid down roots in Beach Glass, Delmont. R. at 3. In Beach Glass, Kingdom grew due to converts and immigration, causing its secluded living compounds to spread throughout the state's southern portions. R. at 3, 4. Kingdom is self-sufficient through its agricultural initiatives and profits from Vincent's tea company, Kingdom Tea. R. at 4. Emmanuella is not involved with Kingdom Tea and only organizes church seminars but does not lead them. R. at 4.

Joining Kingdom requires an intense course of doctrinal study to achieve a state of enlightenment before a private ritual to become a "confirmed" member. R. at 4. Confirmed members have obtained the "state of reason" at fifteen. R. at 4. Additionally, once a Kingdom member is confirmed, they cannot donate or accept blood from non-members. R. at 5. As a result, members must bank their blood in case of medical emergencies. R. at 5. Blood-banking is a core tenet of Kingdom's faith, and donations are a part of confirmed students' monthly "Service Projects." R. at 5. Blood donations occur regularly following terms permissible under

the American Red Cross. R. at 5. Blood-banking establishes a "servant's spirit" to better the community and develop spiritual growth. R. at 5. This practice is the center of controversy in the state of Delmont. R. at 5.

In 2020, a local newspaper, *The Beach Glass Gazette*, ran a story detailing Kingdom's blood-banking. R. at 5. The story was met with public outcry due to perceived ethical problems with the age of the congregants who were donating blood, as well as with the "authenticity of their consent." R. at 5. Additionally, there was an unfounded belief that minors were being "procured" by Kingdom specifically for blood-banking. R. at 5. As a result of public outcry, Delmont passed the "Physical Autonomy of Minors Act" ("PAMA") in 2021, which eliminated exceptions allowing minors to donate. R. at 5-6. PAMA differed from the prior statute only in stating that a "minor" was an individual under the age of sixteen and that a minor's consent would not affect whether they could legally donate. R. at 6. Governor Constance Girardeau ("Respondent") backed this legislation with her full support and signed the bill into law. R. at 6.

A multi-car wreck injured Henry Romero ("Henry"), a Kingdom member, on January 17, 2022. R. at 6. After the accident, doctors concluded that Henry required a lifesaving operation that needed blood. R. at 6. Fortunately, Henry's fifteen-year-old cousin Adam Suarez ("Adam"), was a blood type match. R. at 6. Accompanied by his parents and strictly adhering to American Red Cross guidelines, Adam donated blood to save his cousin's life. R. at 6. For undetermined reasons, Adam experienced complications and was transferred to the intensive care unit. R. at 6. This twist in an already sensationalized story drove media outlets to the hospital, where reporters stole an interview from Emmanuella as she arrived solely to visit Adam. R. at 6-7.

On January 22, 2022, Respondent attended a press-covered fundraiser for Delmont University. R. at 7. When asked about re-election plans, Respondent focused on Delmont's

children. R. at 7. Respondent cited federal data from a small sample size, choosing the period of 2016 to 2020, to highlight children of immigrants as those suffering most from increased child abuse and neglect. R. at 7. When asked about Adam, Respondent took the opportunity to garner support for her upcoming election. R. at 7. Respondent's task force was working to determine if PAMA implicated what she called "the exploitation of the Kingdom Church's children," which had polled well with focus groups. R. at 7.

On January 25, 2022, Emmanuella requested injunctive relief to halt Respondent from investigating PAMA's enforcement, claiming it violated the Free Exercise Clause and paralleled the persecution Kingdom fled in Pangea. R. at 7-8. Respondent publicly answered Emmanuella's filing by stating, "I'm not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children?" R. at 8. This led Emmanuella to amend her original filing to include defamation. R. at 8. The United States District Court for the District of Delmont granted summary judgment in favor of Respondent. R. at 20. The Fifteenth Circuit affirmed the lower court. R. at 38. The Supreme Court granted the petition for a Writ of Certiorari. R. at 46.

SUMMARY OF THE ARGUMENT

The application of *Sullivan's* actual malice standard to limited-purpose public figures eradicates victims' constitutional rights. Technology indiscriminately transforms unknowing individuals into limited-purpose public figures, erroneously forcing them to prove actual malice. Technology distorts the distinction between private individuals and limited-purpose public figures. The technology that connects people simultaneously decimates their legal rights to recover against defamation due to the outdated application of actual malice to limited-purpose public figures. Such a detriment to legal rights awards a historically unrecognized green light to

defame one's neighbors while hiding behind the First Amendment. The broad grant of power extending *Sullivan* to limited-purpose public figures given to defamers, robs their victims of constitutionally guaranteed Fourteenth Amendment due process rights. Actual malice is more than a high standard, it provides absolute protection to defame at the expense of the many who are unfortunate enough to be classified as limited-purpose public figures. The Constitution demands a lower standard than actual malice apply to limited-purpose public figures.

Smith is a threat to constitutionally protected religious freedoms. The *Smith* standard validates unconstitutional laws and enables them to avoid proper judicial scrutiny. The lower courts here incorrectly applied *Smith* to give credence to the Physical Autonomy of Minors Act ("PAMA"). However, PAMA is inherently flawed and can never be seen as neutral or generally applicable because it directly attacks Kingdom Church's ("Kingdom") religious beliefs. PAMA utilizes specific language that directly prohibits Kingdom's religious beliefs. Even if PAMA is neutral and generally applicable, it is still just masked religious persecution. PAMA must pass through strict scrutiny's high bar, which will fail because it lacks a compelling government interest and is overly broad. *Smith* egregiously allows unconstitutional laws like PAMA to exist. The acceptance of discriminatory laws under *Smith* snubs First Amendment protections. Under *Smith*, courts ignore the demands of the Free Exercise Clause and pretend that the Establishment Clause does not exist. Constitutional guarantees must not be forced into retirement by *Smith*.

ARGUMENT

I. The Constitution Cannot Reconcile *Sullivan*'s Actual Malice Standard With Limited-Purpose Public Figures.

The Constitution is a bulwark for freedom, and the First Amendment guarantees freedom of speech. U.S. Const. amend. I. However, not all speech is protected. *Brandenburg v. Ohio*, 395

U.S. 444, 448 (1969) (limiting First Amendment protections not to include "incitement to imminent lawless action"); *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (stating that the limiting of defamatory speech has never raised a Constitutional issue); *see also Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942). *Sullivan's* actual malice standard extinguishes the constitutional rights of individuals who are merely limited-purpose public figures. Public figures can only recover damages for defamatory statements regarding their official conduct when they prove the statement maker acted with "'actual malice.'" *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). Actual malice requires the defamatory statement to be made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280. Further, it ensures that criticism of public officials can flow unrestrained by fear of the legal system. *Id.* at 279. The legal system must be open for private individuals who only need to show that the defamatory statement was made with negligence. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

The disparity between the actual malice and negligence standards makes an individual's status integral. Individuals are public figures when they achieve celebrity status or "hold governmental office." *Id.* at 345. Limited-purpose public figures are those that "have thrust themselves to the forefront of particular controversies to influence the resolution of the issues involved." *Id.* Courts must focus on the extent of an individual's voluntary participation in a particular controversy, not whether it was a subject of public interest. *Id.* at 351-352. The focus is on individuals voluntarily exposing themselves to defamation and their ability to rebut defamatory statements through greater access to communication than a private individual. *Foretich v. Cap. Cities/ABC*, 37 F.3d 1541, 1552 (4th Cir. 1994).

This Court does not need to overturn *Sullivan* or *Gertz*, but it must retrofit that precedent to accurately reconcile the afflicted constitutional provisions with the present state of technology. An overnight success instantly becomes a horror story when *Sullivan* is overextended into *Gertz's* limited-purpose public figure distinction. Such an overextension has no basis in the Constitution and its historical limitations on speech. This blatant disregard for the Constitution violates the Fourteenth Amendment due process rights of defamed individuals. Accordingly, *Sullivan* is unconstitutional when given free rein over the legal rights of individuals who are merely limited-purpose public figures.

A. *Sullivan* Is An Unconstitutional Wildfire That Threatens The Very Basis Of Law When Applied To Limited-Purpose Public Figures.

Society and technology have sparked unrestrained and rapid advancement since this Court decided *Sullivan*. *Sullivan* was entrenched in the expansion of First Amendment protections and the civil rights movement. Kermit L. Hall, *Justice Brennan and Cultural History: New York Times v. Sullivan and Its Times*, 27 Cal. W. L. Rev. 339, 341 (1991). Public officials attempted to silence advertisements through defamation claims, leading the Majority in *Sullivan* to create the actual malice standard for public officials. *Sullivan*, 376 U.S. at 279-80. *Sullivan* was crafted in a media context that has long since vanished from the United States, putting it on a collision course with technology.

1. Modern technology enables *Sullivan* to spread at the peril of limited-purpose public figures.

The reach of technology in the palm of one's hand surpasses that in *Sullivan*. Rampant technological advancements, specifically the internet, have created greater accessibility to mass communication technologies. Jeff Kosseff, *Private or Public? Eliminating the Gertz Defamation Test*, 2011 U. Ill. J.L. Tech. & Pol'y 249, 250 (2011). The internet did not exist when *Sullivan*

arose and shaped defamation laws. *Id.* Today, newspapers are mainly digital and accessible from anywhere with an internet connection instead of only places where a physical copy could be obtained. This accessibility has allowed individuals to transform into limited-purpose public figures from a single post on social media. Matthew Lafferman, *Do Facebook and Twitter Make You a Public Figure?: How to Apply the Gertz Public Figure Doctrine to Social Media*, 29 Santa Clara Computer & High Tech. L.J. 199, 202, 231-32 (2013). With social media connectivity becoming ubiquitous and pervasive, the use of social media in the United States has rapidly increased from 5% in 2005 to 72% in 2021. *Social Media Fact Sheet*, Pew Rsch. Ctr., https://www.pewresearch.org/internet/fact-sheet/social-media. (last visited Jan. 30, 2023). Technology facilitates an effortless transition to a limited-purpose public figure with dire consequences for an individual's legal rights.

Technological advances necessitate setting aside *Sullivan's* actual malice standard as applied to limited-purpose public figures. Overhauling legal precedent to match technological advancements is neither an impossible exercise nor a novel one. Fourth Amendment jurisprudence continuously expands upon the common law requirement of a physical intrusion to match the technological circumstances it finds itself in. *Katz v. United States*, 389 U.S. 347, 359 (1967) (extending Fourth Amendment probable cause requirements to electronic surveillance); *Kyllo v. United States*, 533 U.S. 27, 36-40 (2001) (finding an unlawful search of a home occurred when police officers used thermal imaging device); *Carpenter v. United States.*, 138 S. Ct. 2206, 2223 (2018). This Court in *Carpenter* limited government access to digital information from phone carriers. *Id.* The reasoning behind that limitation was that when the Court decided the prior precedent, portable telephones' use and tracking were unimaginable. *Id.* at 2217. This Court reimagined precedent because the new technology allowed the government to gain vast

amounts of information "with just the click of a button." *Id.* at 2218. Similarly, individuals today can become limited-purpose public figures with a mere click. This has obsoleted *Gertz's* distinction between private individuals and limited-purpose public figures. Technology creates a virtually limitless and indistinguishable class of potential limited-purpose public figures.

Technology steers defamation law towards absurd results. Even single instances can transform a person into a limited-purpose public figure. *McKee v. Cosby*, 874 F.3d 54, 62 (1st Cir. 2017) (finding that an alleged rape victim exposing her celebrity attacker in a single interview is a limited-purpose public figure); *Hibdon v. Grabowski*, 195 S.W.3d 48, 59, 62 (Tenn. Ct. App. 2005) (finding that an individual starting a jet ski business with a single instance of online advertising is a limited-purpose public figure). In the instant case, Emmanuella became a limited-purpose public figure after a single interview. R. at 43. The individuals in *Hibdon* and *McKee* are like Emmanuella, who suffered a drastic loss in legal rights and protections from minimal exposure to the limelight. The ambiguous and fine line between an individual's status as a private individual and a limited-purpose public figure is fickle and easily exploited.

Actual malice no longer serves as a shield against reputational assaults but rather as a weapon that rouses potential defamers to strike from behind a judicially crafted First Amendment shield. The First Amendment is not an absolute bulwark against liability. *Berisha v. Lawson*, 973 F.3d 1304 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 2424, 2426 (2021) (Gorsuch, J., dissenting) (citing *Dexter v. Spear*, 7 F. Cas. 624, 624 (C.C.D.R.I. 1825)). Applying actual malice to limited-purpose public figures encourages defamers to lay in wait and pounce on their prey once they make the slight overstep from private individual to limited-purpose public figure. This Court denied cert to the woman in *McKee* when she filed a defamation action against Cosby after Cosby's attorney leaked a defamatory letter notably bashing her after her interview

accusing Cosby of rape. *McKee v. Cosby*, 874 F.3d 54, 58 (1st Cir. 2017), *cert. denied*, 139 S. Ct. 675 (2019) (Thomas, J., concurring). In the present case, Emmanuella gave an interview while visiting Adam in the hospital, and Respondent jumped at the opportunity to attack her. R. at 6-7. Only after Emmanuella gave an interview and was catapulted into the news did Respondent pounce on Emmanuella's reputation in the community. Like the weaponization of actual malice in *McKee*, Respondent also acted opportunistically in defaming Emmanuella once she crossed the line in status. R. at 6-7. Defamers can take advantage of actual malice to disparage unfortunate limited-purpose public figures. Latitude as great as that is an abomination of the First Amendment and abuses precedent and technology to raze the reputations of others.

Actual malice should be applied narrowly and should not become a blanket standard that would extinguish vast swathes of defamation claims. This Court developed distinctions applicable to defamation law to influence the standard of proof that must be met for a plaintiff to prevail. *Sullivan*, 376 U.S. at 279-80 (public officials); *Curtis Publ'g. Co., v. Butts*, 388 U.S. 130, 164 (1967) (public figures); *Gertz*, 418 U.S. at 345 (private individuals and limited-purpose public figures). This Court's decision in *Rosenbloom* "nearly destroyed the common law of defamation" by requiring private and public figures to prove actual malice in defamation claims. Joel D. Eaton, *The American Law of Defamation Through Gertz v. Robert Welch, Inc., and Beyond: An Analytical Primer*, 61 Va. L. Rev. 1349, 1409 (1975); *see also Rosenbloom v. Metromedia*, 403 U.S. 29, 45-46 (1971), *abrogated by Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). However, this Court very quickly course-corrected through its decision in *Gertz* and held that separate standards be applied for public and private figures. *See Gertz*, 418 U.S. at 345-46. *Gertz* balanced out *Rosenbloom*, and this Court must now revitalize that balance. Further, prior decisions refused to apply actual malice blindly. *Time, Inc. v. Firestone*, 424 U.S. 448, 457

(1976); *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979). Since anyone can become a limited-purpose public figure, the reach of the actual malice standard presently ensnares everyone alive at this very moment. A broad application of actual malice removes defamation law from *Gertz* and places it back in the clutches of the *Rosenbloom* plurality. A limitless approach is unacceptable and indiscriminately bars individuals from obtaining the defamation relief they are entitled to.

Gertz has gone too far in its application of *Sullivan*. Determining an individual's status has been likened to "trying to nail a jellyfish to the wall." *Rosanova v. Playboy Enter., Inc.*, 411 F. Supp. 440, 443 (S.D. Ga. 1976). *Sullivan* has been extended too far from its original application and purpose by allowing defamation to occur and continue without valid recourse for its victims. Elena Kagan, *A Libel Story: Sullivan Then and Now*, 18 Law & Soc. Inquiry 197, 205 (1993). In the instant case, Emmanuella falls victim to these very difficulties. Her publicity comes from a singular interview regarding the unfortunate automobile accident that severely injured Henry and Respondent's inflammatory statement that Emmanuella is a "vampire who founded a cult that preys on its own children." R. at 6-8. Yet, the District Court and Fifteenth Circuit have labeled her as a limited-purpose public figure subject to actual malice. R. at 15, 32. Today's technological landscape voids the idea that one must thrust themselves to the forefront and only requires that they are dragged into the crosshairs of actual malice.

2. The First Amendment has never provided defamers a firewall against the consequences of their speech.

The drafters never intended defamation to be protected. Defamation does not have any "talismanic immunity from constitutional limitations." *Sullivan*, 376 U.S. at 268. The inability to recover from defamation is unrecognized by the First Amendment and its historical limitations. *Stevens*, 559 U.S. at 468-69. Requiring limited-purpose public figures to prove actual malice

slams the door to recoveries in the faces of defamed individuals. History requires courts to be open for victims of defamation. *Sullivan* must not be allowed to rewrite history and destroy plaintiff's rights in defamation claims. *Sullivan* is a policy-driven rule with no basis in the original understanding of the Constitution. *See McKee*, 139 S. Ct. at 676-7. However, a policy must expire when the necessity that birthed it ceases to exist. The media's primary focus has shifted solely to financial motivation. Christopher Russell Smith, *Dragged into the Vortex: Reclaiming Private Plaintiffs' Interests in Limited Purpose Public Figure Doctrine*, 89 Iowa L. Rev. 1419, 1446 (2004). This Court cannot allow media greed to fester and pervert historical protections and limitations.

Sullivan unnecessarily federalizes an area of law that has historically been left to the individual States. The Tenth Amendment reserves to the States powers not granted to the federal government. U.S. Const. amend. X. The actual malice standard takes power away from the State and federalizes it through United States Supreme Court precedent. *Gertz*, 418 U.S. at 370 (White, J., dissenting). This is an unconstitutional extension of federal power over state defamation law because it massacres defamation protections of private individuals who are unfortunate enough to be labeled limited-purpose public figures. The Tenth Amendment is clear in withholding unenumerated powers from the federal government and necessitates *Sullivan* be restrained from applying to limited-purpose public figures.

B. Applying *Sullivan* To Limited-Purpose Public Figures Represents An Egregious Overreach That Robs Victims Of Constitutional Due Process.

The Due Process Clause of the Fourteenth Amendment states that no state can "deprive any person of life, liberty, or property, without due process of law…" U.S. Const. amend. XIV, § 1. The First Amendment is subject to abiding by other constitutional provisions like the Due Process Clause. *Berisha*, 141 S. Ct. at 2426 (Gorsuch, J., dissenting). The exercise of free speech

does not insulate the speaker from the consequences of their speech. *Id.* Consequences must be had, but actual malice has transitioned and is now used as a weapon. *Id.* at 2428. The actual malice standard has chilled defamation litigation while allowing defamatory statements to run rampant as the "optimal legal strategy" for publishers. *Id.*

The actual malice standard is nigh impossible to satisfy and cannot be applied to limited-purpose public figures. Actual malice ignores the need to defend one's reputation and gives too much weight to concerns of a chilled press. David A. Logan, *Rescuing Our Democracy by Rethinking New York Times Co. v. Sullivan,* 81 Ohio St. L.J. 759, 807 (2020). The daunting nature of proving actual malice also provides "near immunity from liability and thus a license to publish falsehoods." *Id.* at 778. The creation of the limited-purpose public figure distinction and the subsequent application of actual malice devastated state law and the hopes of any individual wanting to protect their reputation. *Gertz,* 418 U.S. at 370 (White, J., dissenting). The right to protect one's reputation from defamation deserves constitutional recognition and is essential to society. *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring). Defamation actions are a "basic right" for the protection of reputations. *Jordan v. Kollman,* 612 S.E.2d 203, 206 (Va. 2005 (quoting *The Gazette, Inc. v. Harris*, 325 S.E.2d 713, 720 (Va. 1985)). First Amendment protections can be achieved by limiting the recovery of damages but should not be done by depriving individuals of the ability to defend their reputations. *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 771 (1985) (White, J., concurring). Actual malice leaves no room to argue for or against defamation and instead introduces an absolute limit on the value of an individual's reputation. An individual's reputation is only worth the intent of their defamer.

Increasing litigation to protect reputations is as necessary for society's longevity as requiring public officials to prove actual malice. Allowing limited-purpose public figures to

recover on a lesser standard than actual malice embraces the Latin maxim "sic utere tuo ut alienum non laedas," use yours as not to injure others. Media and others must not be allowed to use theirs to the detriment of limited-purpose public figures while hiding behind the sturdy defensive wall against litigation and responsibility that is the actual malice standard. Thus, as Justice Thomas stated, "[i]f the Constitution does not require public figures to satisfy an actual-malice standard in state-law defamation suits, then neither should we." *McKee*, 139 S. Ct. at 676.

II. PAMA And *Smith* Conspire To Eliminate Guaranteed Constitutional Protections.

Tomorrow's differences require changes to past legal precedents. The Constitution guarantees each citizen the freedom to exercise their religious beliefs. The Free Exercise Clause of the First Amendment mandates that "Congress shall make no law… prohibiting the free exercise [of religion]." U.S. Const. amend. I. The Fourteenth Amendment applies the First Amendment to the states. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The Free Exercise Clause protects religious beliefs and their exercise through both abstention and physical action. *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 877 (1990). The Free Exercise Clause does not protect acts that are crimes under valid state laws. *Id.* at 878-79. The protections of the Free Exercise Clause are broad, and a belief "need not be acceptable, logical, consistent, or comprehensible to others." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) (holding an employee could collect benefits after quitting because his religious beliefs as a Jehovah's Witness prevented him from manufacturing war materials); *Wisconsin v. Yoder*, 406 U.S. 205, 207 (holding Amish parents could refuse to send their children to high school because it violated their religious beliefs).

The founding fathers defined religion broadly and intended extensive protections under the Free Exercise Clause to prevent the repetition of religious persecution and intolerance. *See*

Bowen v. Roy, 476 U.S. 693, 703 (1986). No entity can use the powers of the Constitution to require a person to follow or repudiate any religion. *Torcaso v. Watkins*, 367 U.S. 488, 495, (1961); *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S.1 13-14 (1947); *Reynolds v. United States*, 98 U.S. 145, 164 (1878). In the present case, the lower court decisions fly in the face of the drafter's intent. PAMA is a deceptively targeted statute and cannot pass the stringent requirements of strict scrutiny. Erroneous lower court decisions should be prevented by overruling *Smith*, which is unconstitutional. This Court must do right by the drafters of the Constitution. The time to rethink and overrule *Smith* is now.

A. PAMA Is Delmont's Chosen Sword In Its Unfettered Attack On Kingdom.

PAMA is an affront to the Free Exercise Clause and is an invalid state law. The Free Exercise Clause does not prohibit state laws that are neutral and generally applicable to the religious activity at issue in a particular case. *Smith*, 494 U.S. at 879. Laws that are not neutral and generally applicable must satisfy strict scrutiny to be constitutional. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). Strict scrutiny is also applied when the law is facially neutral but still discriminates. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 535 (1993). PAMA is neither neutral nor generally applicable. Even if PAMA is neutral and generally applicable, it is also discriminatory in effect. Thus, all roads lead to strict scrutiny, which PAMA will ultimately fail and can never be valid.

1. PAMA's language gives Delmont discretion to condemn Kingdom.

PAMA is a targeted attack on Kingdom. State laws must be neutral. *Id.* at 531. A law is neutral when it does not target and restrict activities simply because they are religious. *See Fulton*, 141 S. Ct. at 1877 (citing *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 138 S.

Ct. 1719, 1730-32 (2018)). Laws that expressly discriminate against religion are never neutral. *Lukumi*, 508 U.S. at 533 (citing *McDaniel v. Paty*, 435 U.S. 618, 626 (1978)). The neutrality of a law is directly related to whether the law is generally applicable, but both must be satisfied. *Lukumi*, 508 U.S. at 531. A law must also be generally applicable; otherwise, strict scrutiny applies. *Id.* at 531. A law is not generally applicable when it allows for discretion in its application. *Id.* at 543. This Court requires analysis to begin with neutrality. *Id.* at 532.

A targeted condemnation of Kingdom is hardly neutral. A law is neutral only when it does not discriminate overtly or through its language or context. *Id.* at 533. The Court in *Lukumi* heard a case about the persecution of the Santeria religion, which fled only to be targeted by an ordinance outlawing a religious practice. *Id.* a 524. The ordinance was not neutral and used language paralleling the Santeria practice of ritual animal sacrifices but only came after community uproar against the practice forced an emergency public session. *Id.* 526-8. The ordinance used nonneutral, targeted language such as "ritual" and "sacrifice" to open the Santeria religion up to criminal punishment. *Id.* In the present case, PAMA's language similarly targets Kingdom's religious practices by paralleling the public outrage against blood banking. R. at 5, 6. Public outcry centered on whether Kingdom "procured" minors for harvesting. R. at 5. Kingdom members regularly donate blood to kindle a "servant's spirit." R. at 5. PAMA expressly forbade the "procurement, donation, or harvesting" of blood from minors. R. at 6. The parallel language from the public outcry in PAMA is far from neutral and is more than a mere coincidence. Incorporating language regarding procurement and donation shows that the public outcry against Kingdom inspired the passage of PAMA. Not only does the text of PAMA show discrimination against Kingdom, but the context also reveals an egregious attack on it.

PAMA condemns Kingdom's religion. Neutral laws do not target religious beliefs for hostile treatment. *Masterpiece Cakeshop,* 138 S. Ct. at 1731 (holding that compelling a baker to bake a cake that violated his religious beliefs was a violation of the Free Exercise Clause). The Court must eliminate any potential for "religious gerrymanders." *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 696 (1970). Neutrality is amorphous but mandates "that no religion be sponsored or favored, none commanded, and none inhibited." *Id.* at 669. Further, the government cannot establish a religion or interfere with religious practice. *Id.* Here, PAMA is hostile towards Kingdom's blood banking which is a central tenet of their faith for confirmed members who reach the "state of reason," which is fifteen years old. R. at 4-5. PAMA erased any exceptions previously included under Delmont law when it specifically stated that only individuals over sixteen could donate blood with no exception. R. at 6. PAMA used a blanket ban to force out Kingdom's faith which is nothing short of a targeted strike. Demanding Kingdom's members wait a year for confirmation is akin to forcing a Jewish boy to delay being bar mitzvahed. Upholding PAMA would make Delmont comparable to the military dictatorship that forced Kingdom out of Pangea and furthers the persecution that caused them to seek asylum. R. at 3. Allowing religious persecution under PAMA devalues the significance of asylum in the United States. This Court must eradicate PAMA before Kingdom has to flee yet another country.

State sanctioned religious persecution is unacceptable. Neutrality is not analyzed in a vacuum and instead has relevant considerations beyond the statute's text. *Lukumi*, 508 U.S. at 540 (citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267-68 (1977)). The state must maintain a position of neutrality regarding religion. *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 218 (1963) (quoting *Everson v. Board of Education*, 330 U.S. 1, 18 (1947)). Beyond the statute's text, neutrality considers the legislative

history of a disputed statute, events guiding the creation of a disputed statute, and contemporary statements of legislative members. *Id.* All these considerations undermine the neutrality of PAMA in the instant case. A local newspaper article from 2020 pushed Kingdom's blood-banking practices into the community's line of fire. R. at 5. Delmont's General Assembly passed PAMA as a reactionary attack to satisfy public outcry against this critical religious tenet. Respondent is the Governor of Delmont and has been openly critical of Kingdom's blood-banking, even going as far as calling it "'the exploitation of the Kingdom Church's children" to the public and in her fundraising efforts. R. at 7, 39. The vicious assault on Petitioner's character with the accusation that she was a "vampire who founded a cult that preys on its own children" highlights the animus against Kingdom by those who enacted PAMA. R. at 8. A law cannot be neutral when the basis for its enactment is concern over a specific religion's practices. Further, a neutral law can never come from a non-neutral legislative body. The Delmont General Assembly and Delmont's governor sought to paint Petitioner and her religion as monsters that needed to be hunted down and culled. Ultimately, PAMA can never be neutral.

Discretion leads to individualized and biased decisions. Generally, applicable laws do not allow the government to determine acceptable conduct on a case-by-case basis. *Fulton*, 141 S. Ct. at 1872 (citing *Smith*, 494 U.S. at 884); *Blackhawk v. Pennsylvania*, 381 F.3d 202, 210 (3d Cir. 2004) (reasoning that a wildlife statute is not generally applicable when it has room for government discretion in individualized exceptions); *Am. Fam. Ass'n v. FCC*, 365 F.3d 1156, 1159-60, 1171 (D.C. Cir. 2004) (reasoning that an FCC point system for allocating broadcast licenses is generally applicable because it also affects non-religious speech); *see Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1082 (9th Cir. 2015) (reasoning there is no impermissible discretion when exemptions are tied to objective criteria). In the instant case, PAMA is unduly restrictive

and does not allow for an exception in an emergency. R. at 6. PAMA's ban on donations from anyone under sixteen is far too restrictive. R. at 6. It would realistically require prohibited government discretion on a case-by-case basis to prevent unintended consequences against life. Delmont law before PAMA had exceptions allowing Kingdom's members to donate blood. R. at 5. PAMA eliminated the medical emergency exception. R. at 5-6. Minors cannot donate blood under any circumstances, regardless of consent. R. at 6. Such a broad prohibition on a potentially lifesaving activity is difficult to justify due to the cataclysmic medical drawbacks. Preventing minors from donating blood and organs can be equivalent to depriving a dying patient of their last chance at making a successful recovery. Individual determinations would be the only way to justify PAMA and ensure its crusade does not annihilate Kingdom. Ultimately, PAMA would require governmental discretion in granting exceptions and therefore is not generally applicable.

2. PAMA masks religious persecution with facial neutrality.

The application of PAMA discriminates against Kingdom's religious practice in violation of the Free Exercise Clause. The Free Exercise Clause prohibits indirect religious persecution the same as it does facial discrimination. *Lukumi*, 508 U.S. at 534. "Facial neutrality is not determinative." *Id.* Even if a regulation appears to be facially neutral, its application is discriminatory if it "unduly burdens the free exercise of religion." *Yoder*, 406 U.S., at 220 (citing *Sherbert v. Verner*, 347 U.S. 398 (1963)). A law that has a discriminatory impact is unconstitutional if its purpose is to interfere with religious beliefs or discriminate based on religion. *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961). PAMA is discriminatory in its impact on Kingdom.

Looks can be deceiving when considering the application of a law. A discriminatory impact exists when a government enacts a law "'because of,' not merely 'in spite of,' its adverse

effects upon an identifiable group." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Blood-banking is a significant tenet of the Kingdom's faith, and the creation of PAMA substantially restricted their ability to exercise their religion. R. at 5-6. Prohibiting such a foundational requirement is an attempt to coerce Kingdom believers into a mold determined by Delmont's government. Delmont further attempts to reshape Kingdom's "state of reason" from fifteen to sixteen years old, which goes directly against their religious beliefs. R. at 4-5. PAMA may appear neutral, but it discriminates against Kingdom's beliefs.

PAMA is religious persecution masquerading as a facially neutral statute. This Court must embrace the Constitution in "abhorrence of religious persecution and intolerance." *Braunfeld*, 366 U.S. at 606. Forcing individuals to choose between religion and survival is a "cruel choice." *Id.* at 616 (Stewart, J., dissenting). Kingdom members must either fall in line with the government's demands to forsake their religious beliefs or die. Kingdom's believers require blood-banking because they cannot accept blood from non-members. R. at 5. The instant case proves this is more than hypothetical. An automobile accident left Henry in critical condition with one solution, a life-saving blood donation from his fifteen-year-old cousin. R. at 6. PAMA escalated the situation that could only end with one family member needing a grave. The passage of PAMA acts as a wooden stake that guarantees Kingdom's members a death sentence whenever an emergency arises. Such a grievous imposition seems illogical to justify even with strict scrutiny, but anything less than strict scrutiny is unacceptable.

3. PAMA flunks strict scrutiny.

PAMA is inherently flawed and cannot satisfy the stringent requirements of strict scrutiny. Strict scrutiny requires the law to further a compelling government interest and be

narrowly tailored to that interest. *Lukumi,* 508 U.S. at 546 (quoting *McDaniel*, 435 U.S. at 628). PAMA flunks both prongs needed to pass through the stringent strict scrutiny test.

PAMA does not further a compelling government interest, no matter how hard Respondent tries to fabricate an epidemic. This Court has recognized that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Cassell v. Snyders*, 458 F. Supp. 3d 981, 993 (N.D. Ill. 2020), aff'd, 990 F.3d 539 (7th Cir. 2021) (citing *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 27 (1905)); *see Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) (holding that Free Exercise Clause protections do not shield exposing the community to harm). Further, the court in *Jacobson* held that in an epidemic, "the traditional tiers of constitutional scrutiny do not apply." *Jacobson*, 197 U.S. at 27.

A global pandemic may outweigh First Amendment Rights, but a single incident is not a compelling interest. Unlike the 60,000 Americans who died from COVID-19 at the time of *Cassell*, there has been no record of any death resulting from Kingdom's blood-banking practice. *Cassell*, 458 F. Supp. 3d at 987. In *Cassell*, Illinois Governor Pritzker passed a stay-at-home order that prevented Beloved Church and other religious organizations from gathering in person. *Id.* The Court in *Cassell* held that the COVID-19 pandemic was a compelling government interest that outweighed Beloved Church's First Amendment right to exercise its religion in person. *Id.* Unlike the COVID-19 pandemic in *Cassell*, in the case at hand Adam's complications did not even rise to the level of an epidemic and instead was the sole instance of any drawback with Kingdom's religious practice. R. at 6. Here, Respondent used the 2020 article and federal statistics highlighting an increase in child abuse and neglect from 2016 to 2020 to fabricate an epidemic in Delmont. R. at 39-40. However, there is no record of any death or child abuse claims that arose from Kingdom's religious practice during that time. Adam was the sole instance of any

injury because of Kingdom's religious practice, but he quickly recovered after complications with his donation. R. at 6-7. There is no compelling interest in a single, harmless instance.

The government has a compelling interest in allowing minor blood donations rather than outlawing them. Consistent blood donations can decrease the risk of potential health diseases. The leading cause of death in the United States is heart disease which kills approximately 382,820 people annually. *Heart Disease and Stroke Prevention,* N.Y. State Dep't of Health, https://www.health.ny.gov/diseases/cardiovascular/heart_disease. (last visited Jan. 30, 2023). Additionally, approximately 805,000 Americans suffer from heart attacks every year. *Id.* Donating blood "helps to lower the viscosity of the blood, which is associated with the formation of blood clots, heart attacks, and stroke." Robert A. DeSimone & Sarah Vossoughi, *The Surprising Benefits of Donating Blood* (Jan. 24 2022), https://www.cuimc.columbia.edu/news/surprising-benefits-donating-blood. According to the Center for Disease Control, 88% of blood donors are less likely to suffer from a heart attack. *Leading Causes of Death*, Ctr. for Disease Control and Prevention, https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm. (last visited Jan. 30, 2023). Respondent encouraged Delmont's masses to grab their pitchforks and mob against Kingdom as if they were "vampires" despite the many health benefits of blood-banking. R. at 7. Therefore, PAMA has no compelling interest.

PAMA is not narrowly tailored. A law is narrowly tailored when specific, not overly broad or "underinclusive." *Lukumi*, 508 U.S. at 546. PAMA uses overly inclusive and broad language with no room for exceptions. R. at 6. With no exceptions, PAMA is a complete bar to confirmed members who have attained the "state of reason" and are attempting to donate life-saving blood. The lack of a medical emergency or religious exception is alarming in its

consequences. PAMA forces a choice between the dereliction of religious beliefs and death, and no narrowly tailored law would force such a decision. PAMA is too broad. Ultimately, PAMA is an invalid law that cannot hurdle the bar of strict scrutiny.

B. First Amendment Protections Fade Into Obscurity Under *Smith*.

Smith cannot be applied constitutionally. Stare decisis is not an unyielding order and is unconvincing when this Court deals with the Constitution. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2262 (2022). Integral constitutional decisions require overturning precedent. *Id.* Precedent is not absolute and must buckle under the Constitution's demands. *Smith* allows laws to violate First Amendment protections. Religious persecution is easily masked by *Smith* when courts can decide which religious beliefs are truly worth protecting. *Smith's* value as precedent is unfitting and must kneel to the First Amendment.

1. A *Smith* regime allows lower courts to disregard the Free Exercise Clause.

The *Smith* decision signals to lower courts that the Free Exercise Clause is no more, allowing them to use *Smith* as a sword to smite religious freedom. In *Munn*, a devout Jehovah's Witness died after refusing a blood transfusion due to an automobile accident where the driver admitted fault. *Munn v. Algee*, 924 F.2d 568, 572 (5th Cir. 1991). The Fifth Circuit cited *Smith* when it found in favor of the insurance company's argument that she was responsible for her own death because she refused the blood transfusion. *Id.* at 572, 574. The *Smith* standard allowed the court in *Munn* to distort her religious beliefs and paint her as the cause of her own death instead of the victim. *Cf. You Vang Yang v. Sturner*, 750 F. Supp. 558, 558 (D.R.I. 1990) (reversing its original holding that an autopsy violated the family's religious beliefs as devout Hmongs due to the recent decision in *Smith*). Here, Kingdom, a religious minority, will always

be seen as a victim in the eyes of the *Smith* standard. Similarly to *Munn* and *Yang*, *Smith* allows PAMA to eliminate Kingdom's protections under the Free Exercise Clause. If this Court continues to uphold *Smith*, PAMA, and other statutes that silence religious expression will prevail. This Court should be appalled by the continued misapplication of *Smith* and should overturn it instead of virtue-signaling reluctance while leaving it for another day.

The standard created by *Smith* is legally acceptable religious persecution in violation of the Free Exercise Clause. There is no limiting language in the Free Exercise Clause to constrain its application. *See* U.S. Const. amend. I. The lack of limiting language is to protect minority religions that do not get protection from the political process as majority religions do. Angela C. Carmella, *A Theological Critique of Free Exercise Jurisprudence*, 60 Geo. Wash. L. Rev. 782, 787 (1992). Religious beliefs unique and distinct from majority religions are still entitled to First Amendment protections. *Id.* The *Smith* standard allows prosecutorial laws to evade constitutional protections by satisfying arbitrary requirements of neutrality and general applicability. This process is detrimental to minority religions that rely on First Amendment guarantees to protect their constitutional rights when the government chooses to launch an assault on them through the legislative process. Thus, *Smith* allows for acceptable Free Exercise Clause violations.

2. The Establishment Clause is nothing more than a mirage under *Smith.*

Smith is a hypocritical standard that allows violations of the Establishment Clause to become rooted in society. *Smith* states that religious beliefs never excuse compliance with a valid state law. *Smith*, 494 U.S. at 879. Justice Scalia used this language and reasoning to uphold an Oregon law that discriminated against the religious use of peyote. *Id.* at 890. The same result will occur if this Court finds that PAMA can satisfy *Smith*. However, doing so would exemplify the government favoring one religion and its beliefs over another. The legal drinking age in the

United States is twenty-one years old. 23 U.S.C.A. § 158 (West 2012). Most religions, such as Catholicism, Protestantism, and Judaism, go unpunished when they frequently disregard valid drinking age laws. Lutheran Church Missouri Synod, *Frequently Asked Questions – Doctrine*, https://www.lcms.org/about/beliefs/faqs/doctrine (stating communion can start as early as the end of fifth grade); Fr. Charles Grondin, *Can Children Receive the Blood of Christ*, https://www.catholic.com/qa/can-children-receive-the-blood-of-christ (stating there is no rule against children receiving communion); Rabbi Yirmiyohu Kaganoff, *Who Drinks the Kiddush Wine in Shul?* (Oct. 4, 2018), https://rabbikaganoff.com/who-drinks-the-kiddush (stating no prohibition of children drinking wine as part of Kiddush). Religious underage drinking by believers in majority religions goes unchecked, unrestrained, and unprosecuted. The government's silence is an indirect green light of support for these religious practices in contradiction to the clear rule of the Establishment Clause. It is hypocritical to circumvent constitutional demands in favor of majority religions while bringing the *Smith* hammer down on minority religious beliefs that the Constitution should protect.

CONCLUSION

This Court must uphold precious constitutional principles and undo the harm done by the Fifteenth Circuit. *Sullivan* must not extend to limited-purpose public figures, or defamatory falsehoods will prevail. Likewise, *Smith* oversteps and allows unconstitutional laws like PAMA to become "valid." The continued application of *Smith* jeopardizes the dignity of the First Amendment's religious protections. This Court should reverse the judgment of the United States Court of Appeals for the Fifteenth Circuit.

APPENDIX A

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. X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. amend. XIV., § 1.

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)

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.

CERTIFICATE OF COMPLIANCE

Pursuant to the Seigenthaler-Sutherland Official Rules, we, the undersigned counsel, certify that: (i) this brief is entirely the work product of the competition team members; (ii) the competition team has complied fully with our school's governing honor code; and (iii) the competition team has complied fully with all Competition Rules.

/s/ Team 005

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