No. 22-CV-7654

IN THE SUPREME COURT OF THE UNITED STATES

EMMANUELLA RICHTER,
Petitioner,

v.

CONSTANCE GIRARDEAU,
Respondent.

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

BRIEF FOR RESPONDENT

Team 06
Counsel for Respondent

QUESTIONS PRESENTED

1. Whether the extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional, when the standard is the foundation of defamation law and limited-purpose public figures are comparable to public figures.
2. Whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that the Physical Autonomy of Minors Act is neutral and generally applicable, when the law is narrowly tailored to advance the compelling interest of the health of minors in Delmont.

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JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit affirmed the United States District Court for the District of Delmont's order of summary judgment. This Court granted a petition for writ of certiorari to the Court of Appeals. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution is relevant to this appeal, reprinted in Appendix A.

STATEMENT OF THE CASE

I. Factual Background

Petitioner Emmanuella Richter ("Petitioner" or "Richter") founded the Church of Kingdom (commonly known as the "Kingdom Church") in 1990 in the South American country of Pangea. (R. at 3). As a scholar in comparative religion, she spent years interpreting the sacred foundational texts of world faiths, synthesizing what she deduced to be the core, archetypal essence of the religious experience. (R. at 3). Petitioner's husband ("Mr. Richter") is a wealthy Pangea tea

grower, and together they financed door-to-door proselytization efforts as well as introductory seminars that built the church a wide following. (R. at 3).

The growing Kingdom Church became a target of governmental repression after a military coup toppled the democratically elected government of Pangea in 2000. (R. at 3). Petitioner, along with a large contingent of the church congregation sought and received asylum in the United States on religious persecution grounds. (R. at 3). She and her husband became U.S. citizens, and for the past several decades, their congregation has settled and grown in Beach Glass in the state of Delmont. (R. at 3-4).

Since then, Kingdom Church's compounds have grown outside the city limits of Beach Glass and now spread throughout the southern portions of the state. (R. at 4). Members of the Kingdom Church live separately from the rest of the state's population. (R. at 4). The compounds are also the agricultural site for the commercial sale of "Kingdom Tea," an initiative that Mr. Richter exclusively oversees through his expertise. (R. at 4). All member income is shared communally and although they are not forbidden from working outside the compounds, most members work within. (R. at 4). Petitioner is solely involved in church matters, but the proceeds from Kingdom Tea go directly towards the operation of Kingdom Church. (R. at 4).

To join Kingdom Church, individuals must go through a private confirmation ritual after undertaking an intense doctrinal study course to achieve a state of enlightenment. (R. at 4). The confirmation is closed to the public, and individuals must obtain "the state of reason"—fifteen years of age. (R. at 4). Members must marry within their faith and raise all children within the Kingdom Church belief system; this includes homeschooling with religious instruction classes. (R. at 4). Kingdom Church seminars are conducted on each compound's premises and are open to the public. (R. at 4). These seminars consist of a panel of church elders, not including the Petitioner,

who provide information about the church's beliefs, history, and lifestyle. (R. at 4). Although the Petitioner does not engage, the church has continued its door-to-door proselytization. (R. at 4).

In addition, Kingdom Church's blood donation practice has become part of a statewide controversy. (R. at 5). Once confirmed, members may not accept blood from or donate blood to a non-member. (R. at 5). Members are required to bank their blood at local banks in case of medical emergencies. (R. at 5). Kingdom Church's homeschool activities include blood donations as part of their monthly "Service Projects" as it is a central tenet of the faith. (R. at 5). The blood drives provide for the students' and their families' future medical needs and as a means of establishing a "servant spirit." (R. at 5). The blood donations occur on schedule and on terms permissible under American Red Cross guidelines. (R. at 5).

Due to the immense popularity of Kingdom Tea and the reclusive nature of the church, *The Beach Glass Gazette* ran a 2020 story about the business, including details on the blood-banking beliefs of the Kingdom Church. (R. at 5). This story in the local newspaper raised an outcry from many sectors in the community about the ethics of the practice, primarily centered around the involvement of minors and authenticity of their consent. (R. at 5). The concern was that they these minors were being procured for blood-banking purposes by church officials. (R. at 5).

Until 2021, Delmont law allowed minors under the age of sixteen to donate blood, organs, or tissue for autologous donations and in the case of medical emergencies for consanguineous relatives. (R. at 5). However, in 2021, the Delmont General Assembly passed a state statute, the "Physical Autonomy of Minors Act" ("PAMA") that forbade the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent. (R. at 6). Respondent Governor

Constance Girardeau ("Respondent" or "Girardeau") strongly advocated for the legislation and signed it into law. (R. at 6).

The Incident

On January 17, 2022, a "Kingdom Tea" van used to make store deliveries was involved in a multi-car crash leading to the city. (R. at 6). Ten church members died and the only surviving church member was the driver of the van, Henry Romero. (R. at 6). After being admitted to the Beach Glass Hospital in critical condition, a call went out among all compounds to identify a donor with a matching blood type. (R. at 6). PAMA does not allow exceptions including a relative's blood donation during an emergency, however, Romero's fifteen-year-old cousin Adam Suarez, a recent addition to Kingdom Church, was identified as a blood type match for Romero. (R. at 6). To save him, Suarez, accompanied by his parents, began to donate the American Red Cross-recommended maximum amount of blood for the first time in his life. (R. at 6). However, during the process, Suarez's blood pressure became highly elevated, and he went into acute shock. (R. at 6). Suarez was then moved into the hospital's intensive care unit. (R. at 6).

News of Suarez became part of the media reporting, and the Petitioner and her husband were both interviewed as they visited the hospital to see Suarez. (R. at 6-7). Follow-up stories referenced the 2020 story from *The Beach Glass Gazette*, recaps of the church's blood-bank requirements, and details on the passage of PAMA. (R. at 7). Suarez eventually recovered, but doctors have advised him and his parents against blood donations for the immediate future. (R. at 7).

Petitioner's Claims

On January 22, 2022, in front of the press, Respondent stated her concern that Delmont's children faced a crisis to their mental, emotional, and physical well-being. (R. at 7). She cited federal statistics from the Department of Health and Human Services that revealed a spike in child

abuse and neglect between 2016-2020. (R. at 7). In addition, according to data from the U.S. Centers for Disease Control and Prevention ("CDC"), over a quarter of children who died by suicide experienced child abuse or neglect. (R. at 7). Respondent also noted that children of immigrants were suffering especially alarming high rates of such harm. (R. at 7). When asked about the Adam Suarez story, she responded that she had commissioned a task force of government social workers to investigate and determine whether PAMA or any other law was implicated in the exploitation of Kingdom Church's children. (R. at 7). She garnered great support among her constituents, and both parties stipulate that her remarks are not at issue in this case. (R. at 7).

On January 25, 2022, the Petitioner, as head of Kingdom Church, requested injunctive relief from the Beach Glass Division of the Delmont Superior Court to stop Respondent's task force from conducting the investigation relating to the enforcement of PAMA. (R. at 7-8). She claimed that the state's action constituted a violation of the First Amendment's Free Exercise Clause, citing the Kingdom Church's past persecution in Pangea and the asylum it sought in the United States. (R. at 8).

At a large press event on January 27, 2022, reporters asked the Respondent to comment on claims that she was persecuting the church for its religious beliefs. (R. at 8). Respondent said "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). As a result, Petitioner amended her complaint to include an action for defamation. (R. at 8).

II. Proceedings Below

In response to the Respondent's task force investigation, the Petitioner immediately brought this suit, requesting injunctive relief to stop the task force from obtaining information about internal church activity. (R. at 27). The Petitioner challenged the investigation and Delmont's

PAMA law as a violation of her constitutional right to the free exercise of religion. (R. at 27). After the Respondent's statement at the rally, the Petitioner also brought an action for defamation. (R. at 27).

The Respondent moved for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure, arguing there was no dispute as to the material fact or law that the task force was constitutional. (R. at 8). In addition, the Respondent claimed that the defamation action failed to meet the constitutionally mandated "actual malice" standard applicable to limited-purpose public figures like the Petitioner. (R. at 27). The District Court granted summary judgment for the Respondent finding that (1) the Petitioner is a limited-purpose public figure, (2) the Respondent's statements did not meet the actual malice standard., and (3) PAMA is neutral and generally applicable. (R. at 14, 20).

As a result, the Petitioner appealed, claiming that the District Court erred in finding that there was no genuine issue of material fact regarding the Petitioner's status as a private individual in the defamation claim. (R. at 21). The Petitioner further argued that the District Court erred in finding that PAMA is neutral and generally applicable. (R. at 21). The United States Court of Appeals for the Fifteenth Circuit affirmed the District Court's grant for summary judgment. (R. at 38). The Court granted the Petitioner's writ of certiorari. (R. at 45-46).

SUMMARY OF THE ARGUMENT

It was constitutional for the Fifteenth Circuit to extend the *New York Times v. Sullivan* standard to limited-purpose public figures like the Petitioner, and it correctly held that PAMA does not violate the Free Exercise Clause of the First Amendment. The First Amendment states that 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.

The extension of the *New York Times v. Sullivan* standard to limited-purpose public figures is constitutional. Limited-purpose public figures voluntarily inject themselves into the public arena, and thus should be held to the same standard as public officials and all-purpose public figures on issues of defamation. Restriction on public speech runs the prospect of self-censorship and discontinuing the extension of the standard to limited-purpose public figures could jeopardize free speech in America. *New York Times* didn't seek to completely bar the ability for public figures to recover for defamation, rather, it balances the legitimate interest traditionally protected by the law of defamation.

PAMA does not violate petitioner's right to free exercise of religion because it is neutral and generally applicable. The law satisfies the neutrality requirement because its text does not name Kingdom Church nor does PAMA restrict blood donation of minors because of its religious nature. Additionally, PAMA satisfies the generally applicable requirement because it applies to all citizens of Delmont under the age of sixteen regardless of their religion. Even if strict scrutiny is applied, PAMA is narrowly tailored to satisfy compelling state interest.

ARGUMENT

I. THE EXTENSION OF THE *NEW YORK TIMES V. SULLIVAN* STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES WHO HAVE VOLUNTARILY ENTERED THE PUBLIC FORUM IS CONSTITUTIONAL. THE DECISION IS ESSENTIAL TO FIRST AMENDMENT JURISPRUDENCE.

New York Times Co. v. Sullivan remains the starting point for American defamation law, as it has created a space for open and honest debate.[1] In *New York Times*, the Supreme Court extended First Amendment principles to defamation law, holding that individuals classified as "public officials" must prove "actual malice," instead of negligence, to recover for defamatory speech. *New York Times Co. v. Sullivan*, 376 U.S 254, 283-84 (1964). Traditionally, to prevail on a defamation claim, a plaintiff must show that the defendant negligently made the statement, proving that the defendant failed to verify the truth of the statement. [2] However, *New York Times* added the public figure doctrine, establishing that qualified public figures must prove the defendant acted with "actual malice" when making the defamatory statement, which is defined as "reckless disregard for the truth." *New York Times Co.*, 376 U.S. at 279-80.

The Supreme Court has defined "limited-purpose public figure" as a person who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 361 (1974). Limited-purpose public figures must also make a showing that the statements were made with actual malice to succeed in a defamation claim; a showing that a plaintiff is a limited-purpose public figure is enough to meet the threshold to apply the actual malice standard. *New York Times*, 376 U.S. at 279-80.

Limited-purpose public figures voluntarily inject themselves into the public arena, thus, they should be held to the same standard as public officials and all-purpose public figures on issues of defamation. Restriction on public speech runs the prospect of self-censorship and discontinuing

[1] *See, e.g.*, John Bruce Lewis & Bruce L. Ottley, New York Times v. Sullivan *at 50: Despite Criticism, the Actual Malice Standard Still Provides Breathing Space for Communications in the Public Interest*, 64 DEPAUL L. REV. 1, 28 (2014).
[2] RESTATEMENT (SECOND) OF TORTS § 558 (1976)

the extension of the *New York Times* standard to limited-purpose public figures could jeopardize free speech in America. *New York Times* didn't seek to completely bar the ability for public figures to recover for defamation, rather, it balances the legitimate interest traditionally protected by the law of defamation.

A. Limited-purpose public figures voluntarily inject themselves into the public arena, thus, they should be held to the same standard as public officials and all-purpose public figures.

This Court termed "limited-purpose public figures" as individuals who make the conscious decision to enter the public forum and engage in a public controversy—these individuals have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. *Gertz v. Robert Welch, Inc.*, 418 U.S. at 345. Unlike involuntary public figures, limited-purpose public figures have voluntarily thrown themselves into the spotlight. *Id.* at 351. Limited-purpose public figures are similarly situated to public officials and public figures, as they also have greater access to the media and assume the risk of injury when seeking to influence the outcome of a controversy. *Id.* at 345. Thus, limited-purpose public figures should be held to the same standard as public figures.

1. Limited-Purpose Public Figures vs. Public Figures

The public figure doctrine rests on two concepts: the individual's access to the media and the individual's assumption of risk of injury. *Gertz,* 418 U.S. at 327, 345. In *Gertz*, the majority outlined five types of defamation plaintiffs: public officials, all-purpose public figures, limited-purpose public figures, involuntary public figures, and private individuals. *Id.* at 345. Lower courts like the Fourth Circuit have developed their own tests to determine what qualifies an individual as

a limited-purpose public figure, emphasizing that the plaintiff had access to channels of effective communication and voluntarily assumed the role of special prominence in the public controversy.[3]

Limited-purpose public figures carry the same responsibilities as public figures, but only for a limited range of issues. *Gertz,* 418 U.S. at 351. Public figures are individuals who have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. *Curtis Publishing Co v. Butts*, 388 U.S. 130, 146 (1967). This Court defined "all-purpose public figures" as individuals who, based on their fame or notoriety, are public figures in every aspect of their life. *Gertz,* 418 U.S. at 342. These people occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. *Id.* at 345. Just like all-purpose public figures and public officials, limited-purpose public figures have voluntarily thrusted themselves into the public. *Id.* at 351.

The majority in *Gertz* argued that both public officials and public figures have significantly greater access to channels of effective communication and have assumed an increased risk of injury by voluntarily assuming a role of fame or influence in society. *Gertz,* 418 U.S. at 345. In *Gertz*, an attorney sued a publisher of a magazine who wrote an article claiming that he was a communist—the Court found for the attorney on the grounds that the public figure doctrine rests on two concepts: the individual's access to the media and the individual's assumption of risk of injury. *Gertz,* 418 U.S. at 327, 345.

[3] In *Fitzgerald v. Penthouse Int'l* to classify plaintiffs as limited-purpose public figures: (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. *Fitzgerald v. Penthouse Int'l, Ltd.*, 691 F.2d 666, 668.

Like public officials and all-purpose public figures, limited-purpose public figures have access to media because of their involvement in a public controversy. However, they are only public figures in relation to their statements or actions within the limited scope of the public controversy in which they have inserted themselves.

2. Limited-Purpose Public Figures vs. Involuntary Public Figures

On the other hand, limited-purpose public figures are distinguished from involuntary public figures, as involuntary public figures may have inadvertently be thrown into the spotlight. Involuntary figures are individuals drawn into a particular public controversy who become a public figure through no purposeful action of their own. *Gertz,* 418 U.S. at 345. Unlike limited-purpose public figures who voluntarily enter the spotlight, these individuals should be afforded similar protections as private individuals. *Time, Inc. v. Firestone*, 424 U.S. 448, 455 (1976).

In *Time Inc. v. Firestone*, the Court held that because the plaintiff did not volunteer to be in a public controversy and had no choice but to turn to the court system to dissolve her marriage with her well-known husband, she could not possibly be considered a public figure. *Firestone*, 424 U.S. at 454. In *Firestone*, the Court noted that the plaintiff did not volunteer to be in a public controversy and had no choice but to turn to the court system to dissolve her marriage. *Id.* at 448. *Time* magazine published a story labeling the plaintiff as an adulteress—she sued for defamation and the Court ruled in her favor. *Id.* at 458.

Similarly, in *Hutchinson v. Proxmire*, the Court noted that plaintiff cannot be turned into public figures via the behavior of the defendants—thus, defendants cannot by their own conduct create their own defense by making the claimant a public figure. *Hutchinson v. Proxmire,* 43 U.S. 111, 122 (1979). From both cases, it is evident that there are situations when plaintiffs are dragged into

the spotlight unwillingly without becoming a public figure, thus, afforded the same protections as private individuals.

In the present case, the Petitioner was the established founder of Kingdom Church, a religious organization that became known well-enough to become a target of governmental repression. (R. at 3). In comparison to the plaintiffs in *Firestone* and in *Hutchinson*, the Petitioner didn't become a public figure through the means of marriage or legal dispute, as she was already established prior to the lawsuit in question. Unlike the wife in *Firestone* who was compelled to take action, the Petitioner in the instant case takes on an active role: she initiates both suits in question and did not oppose media coverage when it came to the blood-banking practices. (R. at 6, 7). Although the local news ran a story about her two years prior, Petitioner is distinguished from involuntary victims of social media because she allowed herself to be interviewed and continued her efforts for injunctive relief. (R. at 5, 7).

Limited-purpose public figures voluntarily asserted themselves into the public eye, creating greater access to ways for them to redress any grievances and greater ability to deal with injury. Because of their access to media and ability to effectively refute false statements made about them, limited-purpose public figures should be held to the same standard as public figures.

B. Restriction on public speech runs the prospect of self-censorship and discontinuing the extension of the *New York Times* standard to limited-purpose public figures could jeopardize free speech in America.

The Court's holding that individuals classified as "public officials" must prove "actual malice" to recover for defamatory speech was largely based on the idea that defamation law would have a chilling effect on free speech if critics of public officials would have to guarantee the truth of all statements. *New York Times Co.*, 376 U.S. at 300-01 (Goldberg, J., concurring). Defending parties

have the right to respond and defend themselves to public allegations and stripping the standard from limited-purpose public figures would heighten the risk of powerful individuals exploiting unintended errors as ways to silence criticism.

The First Amendment bars the government from making laws abridging the freedom of speech. U.S. Const. amend. I. This ends when the government uses its powers and its courts to silence its critics, as the right of free public discussion is a fundamental principle in American government. In *New York Times*, this Court defined a constitutional privilege intended to free criticism of public officials from the restraints imposed by the common law of defamation. *Gertz v. Robert Welch, Inc*., 418 U.S. at 334. *New York Times* involved a defamation lawsuit by an elected official against the *New York Times* after the paper published an advertisement criticizing the city and its role in the civil rights movement. *New York Times Co.*, 376 U.S. at 256-60. The risk of civil liability could potentially lead to self-censorship and would detract from free debate on public issues. *Id.* at 279. There is no justification for taking away one of the only barriers of protection for the press to satisfy the people who tend to need it the least.

Nowadays it is possible for anyone to become a limited-purpose public figure because of social media and quick access to various channels.[4] However, this warrants the need of the malice standard even more, as First Amendment jurisprudence also protects defending parties. Recently in *McKee v. Cosby*, the plaintiff's public allegations to the news media necessarily propelled her to the forefront of public debate and transformed her into a limited-purpose public figure. *McKee v. Cosby*, 139 S. Ct. 675, 676 (2019). When Cosby's attorney responded on behalf of his client,

[4] Meaghan O'Connor, Defamation in the Age of Social Media: Why North Carolina's "Micro-influencers" Should Be Classified as Limited Purpose Public Figures, 42 CAMPBELL L. REV. 335, 336 (2020) (Discussing how the rise of social media demands careful consideration of the. Labels afforded to social media users and the. Burdens created by those labels for the purposes of defamation claims).

writing and defending Cosby, McKee filed suit for defamation. *McKee v. Cosby*, 139 S. Ct. at 675. McKee publicly came forward about her allegations first, thus, Cosby's statement followed as a response to her statement. *Id.*

If the Supreme Court had granted certiorari of McKee's case, the outcome would have left defending parties stranded with no ability to defend a plaintiff's public claims against them. The application of the "actual malice" standard provides the necessary "breathing space" for freedom of expression about public officials, as a rule compelling the critic of official conduct to guarantee the truth of all his factual assertions leads to comparable self-censorship. *New York Times Co.*, 376 U.S. at 271. Although McKee wasn't a public official or a public figure, she had serious allegations about another individual's character and history. Cosby's attorney released a statement only after McKee publicly came forward, thus, it was not the defamatory statement that caused her to become a limited-purpose public figure. *McKee v. Cosby*, 139 S. Ct. at 675. Our Constitution disfavors self-censorship and the Court in *McKee* prevented the risk of jeopardizing the right to free speech.

C. The Court in *New York Times* didn't seek to completely bar the ability for public figures to recover for defamation, rather, it balances the legitimate interest traditionally protected by the law of defamation.

When applying to cases involving public figures and public officials, the "actual malice" standard will afford the necessary insulation for the fundamental interest which the First Amendment was designed to protect. *Curtis Pub. Co. v. Butts*, 388 U.S. at 164-165. Where a publisher's departure from standards of press responsibility is severe enough to strip from him the constitutional protection the standard acknowledges, it is entirely proper for the State to act not only for the protection of the individual injured but to safeguard all those similarly situated against like abuse. *Id*. at 161.

The *New York Times* standard was set into place to prevent public servants from retaining an unjustified preference over the public they serve. *New York Times Co.*, 376 U.S. at 282. The Court based its decision on the idea that the "public benefit from publicity [of public officials] is so great and the chance of injury to private character so small[.]" *Id.* at 281. "Actual malice" is not so restrictive that recovery is limited to situations where there is "knowing falsehood" on the part of the defamer—"reckless disregard" for the truth or falsity will expose them to liability for publishing false material, injurious to their reputation. *Curtis Publishing Co*, 388 U.S. at 164-65 (Warren, J., concurring).

The actual malice standard does not mean that anyone can make up blatantly false statements about public figures, as public figures can still receive remedy if they prove that the statement was falsely put out to the public with malicious intent. For example, the Court in *Curtis Publishing* held that where a publisher's departure from standards of press responsibility is severe enough to strip from him the constitutional protection our decision acknowledges, it is entirely proper for the State to act not only for the protection of the individual injured but to safeguard all those similarly situated against like abuse. *Curtis Pub. Co.*, 388 U.S. at 161. In *Curtis Publishing*, a college football coach was accused of conspiring to fix a major game by giving crucial information to the other team. *Id.* at 135. The defendant news organization published a story saying that the coach "would likely never" work in college football again—the coach sued for libel, and the Court ultimately ruled in favor of the coach as he was able to show that the news organization acted with highly unreasonable conduct constituting an extreme departure from the standards ordinarily adhered to by responsible publishers. *Id.* at 137, 155.

Public figures who are not public officials may still successfully sue news organizations if they disseminate information about them which is recklessly gathered and unchecked. *Id.* at 156. In his

concurrence, Justice Warren defined public figures as individuals who do not hold public office now but are nonetheless intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large. *Id.* at 164. These categories of individuals often play an influential role in ordering society, and importantly have ready access to media both to influence policy and to counter criticism of their views and activities. *Id.*

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by the Court's decisions. *New York Times Co. v. Sullivan*, 376 U.S. 254, 269. It is an imperative American privilege to speak one's mind, even if it is not always with positive notion, on all public institutions. *New York Times v. Sullivan* was a turning point in American democracy, as it protects the press and the public's right to criticize public officials in the conduct of their duties. Debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *Id.* at 270. Continuing to extend the *New York Times* standard to limited-purpose public figures preserves the extraordinarily important democratic right of free speech, especially during times of public and political controversy.

II. PAMA DOES NOT VIOLATE PETITIONER'S RIGHT TO FREE EXERCISE OF RELIGION BECAUSE IT IS NEUTRAL AND GENERALLY APPLICABLE.

The Fifteenth Circuit correctly held that PAMA does not violate the Free Exercise Clause of the First Amendment under *Emp. Div., Dep't of Hum. Res. v. Smith*. (R. at 38). Since Delmont has not enacted a state equivalent of the Religious Freedom and Restoration Act of 1993 ("RFRA"), the Fifteenth Circuit correctly analyzed the present case under the First Amendment.

(R. at 34). The RFRA is only applicable to federal law. *See* 42 U.S.C. Section 2000bb-3(a). The Free Exercise Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof…" U.S. Const. Amend. I. The exercise of religion involves belief and the performance or abstention of physical actions. *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990). However, "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)).

A. The PAMA is neutral and generally applicable.

The general proposition established by this Court in *Smith* is that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest 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) (Citing to *Employment Div., Dept. of Human Resources of Ore. v. Smith).* Neutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied. *Id.* at 531-32. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. *Id.* In the present case, the Fifteenth Circuit correctly found that PAMA is neutral and generally applicable. However, even if the PAMA is subject to strict scrutiny, it is still constitutional because it expresses a compelling government interest that is narrowly tailored to protect the health and safety of Delmont's children. Thus, the Fifteenth Circuit's holding should be affirmed.

1. *PAMA satisfies the neutrality requirement because its text does not name kingdom church nor does PAMA restrict blood donation of minors because of its religious nature.*

The Fifteenth Circuit correctly found that PAMA met the standard of neutrality. (R. at 38). To determine the object of a law, the minimum requirement of neutrality is that a law not discriminate on its face. *Church of Lukumi,* 508 U.S. at 534. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context. *Id.*

The text of PAMA does not target or name the Kingdom Church or any other religious group or practice. (R. at 5-6). Nor does the text of PAMA suggest any hostility toward Kingdom Church or any other religious group or practice. (R. at 5-6). PAMA specifically prohibits "procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." (R. at 24). To suggest that PAMA is not facially neutral would be misleading, because it names blood donation, a central tenet of the Kingdom Church faith. (R. at 5-6). Although, blood donation is a religious practice of the Kingdom Church, it is not a practice exclusive to the Kingdom Church. (R. at 4). Instead, blood donation is a familiar and common practice among the secular community. Outside the Kingdom Church congregation, an estimated 6.8 million people in the United States donate blood according to the American Red Cross.[5] PAMA's text satisfies the preliminary test of neutrality because it does not deliberately or specifically target the Kingdom Church.

In addition, facial neutrality is not determinative. *Church of Lukumi,* 508 U.S. at 534. Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature. *Fulton v. City of Philadelphia, Pennsylvania*,

[5] "Importance of Blood Supply," American Red Cross Blood Services, accessed January 10, 2023, https://www.redcrossblood.org/donate-blood/how-to-donate.

141 S. Ct. 1868, 1877 (2021). The Free Exercise Clause "forbids subtle departures from neutrality" and "covert suppression of particular beliefs." *Church of Lukumi,* 508 U.S. at 534. To determine neutrality, this Court has analyzed direct and circumstantial evidence to determine the Government's object. *Id*. at 540. There are several factors relevant to the assessment of governmental neutrality: "the historical background of the decision under challenge, 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 decision-making body." *Id.*

Although *The Beach Glass Gazette'*s 2020 story regarding Kingdom Church's minors donating blood caused upset in the Delmont community, this is not the sole or even predominant reason for choosing to enact PAMA. (R. at 24). PAMA was enacted to address the growing risk of abuse, neglect, and domestic violence against minors. (R. at 25-26). The Department of Health and Human Services revealed statistics demonstrating an increase in child abuse and neglect between 2016 and 2020. (R. at 25). Furthermore, according to data from the U.S. Centers for Disease Control and Prevention, over a quarter of children who died by suicide experienced child abuse or neglect. (R. at 25-26). During her reelection campaign, Governor Constance Girardeau expressed her concerns that Delmont's children faced a crisis as to their mental, emotional, and physical well-being. (R. at 26). Delmont did not enact PAMA and restrict blood donation for all minors under the age of sixteen because blood donation is a central tenet to the Kingdom Church faith. Instead, Delmont took a proactive approach by enacting PAMA to ensure the health and safety of minors was being prioritized in response to the alarming federal statistics.

Based on the direct and circumstantial evidence, PAMA was not narrowly enacted to attack the Kingdom Church. The law's purpose is to combat the growing risk of abuse, neglect, and domestic violence that Delmont's minors could face. Therefore, PAMA is neutral.

2. *PAMA satisfies the generally applicable requirement because it applies to all citizens of Delmont under the age of sixteen regardless of their religion.*

The Fifteenth Circuit correctly found that PAMA satisfied the generally applicable requirement. (R. at 38). 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. *Fulton v. City of Philadelphia,* 141 S.Ct. 1868, 1877 (2021). In *Church of Lukumi*, this Court found that ordinances that were underinclusive were not generally applicable. *Church of Lukum*i, 508 U.S. at 545-546. In addition, a law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions. *Fulton,* 141 S.Ct. at 1877. In *Smith*, this Court held that the unemployment benefits law in *Sherbert v. Verner*, 374 U.S. 398 (1963) was not generally applicable because the "good cause" standard permitted the government to grant exemptions. *Smith*, 494 U.S. at 884; *Sherbert*, 374 U.S. at 399-401; *Fulton*, 141 S.Ct. at 1877. However, PAMA does not permit secular conduct in a similar way nor does it provide individualized exemptions.

The Petitioner would suggest that PAMA specifically restricts the minors of the Kingdom Church from donating blood, but this is misleading. Unlike the ordinances in *Church of Lukumi*, PAMA prohibits all citizens of Delmont under the age of sixteen from donating blood. (R. at 6). The law is not underinclusive because its application clearly extends beyond the minors in the Kingdom Church congregation to all minors in Delmont. *Id*. Since the law applies to all minors, there is not a double standard that permits secular conduct in a similar way. *Id*. The law simply

provides a prohibition on blood donation for all minors regardless of any reasoning or justification for blood donation. (R. at 6). Delmont's clear intent is to protect all minors in Delmont from the growing risk of abuse, neglect, and domestic violence. (R. at 7). As such, PAMA does not undermine this interest by prohibiting all minors in Delmont from donating blood, tissue, or organs. (R. at 6).

Prior to 2021, Delmont had allowed minors to donate blood under two exceptions. (R. at 5). Minors, under the age of sixteen, could donate blood for autologous donations and in the case of medical emergencies for consanguineous relatives. (R. at 5). However, this clearly created individualized exemptions based on one's conduct and toed the line for the generally applicable requirement. (R. at 5). Delmont corrected this by passing PAMA and ensuring the statute would protect minors. (R. at 6). Contrary to the unemployment benefits law at issue in *Sherbert*, there is not a standard articulated in PAMA that would permit Delmont to grant any exemptions. (R. at 6). Under PAMA, Delmont is not examining and making judgments to allow minors to donate blood under specific circumstances. (R. at 6). Since PAMA applies indiscriminately to all minors and does not provide individualized exemptions, the law is generally applicable. PAMA has met the requirements of both neutrality and general applicability, the law is constitutional. Therefore, PAMA does not violate the Petitioner's First Amendment right to free exercise of religion.

B. Even if strict scrutiny was applied, PAMA is narrowly tailored to achieve a compelling state interest.

Even if strict scrutiny is applied, PAMA remains constitutional. Under the Free Exercise Clause, a government entity must show that its restrictions on the plaintiff 's protected rights serve a compelling interest and are narrowly tailored to that end in order to survive strict scrutiny. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2426 (2022). A government's interest is

compelling if it is "necessary ... to the accomplishment" of their legitimate purpose. *Palmore v. Sidoti*, 466 U.S. 429, 432–33 (1984). The requirement of narrow tailoring is satisfied "so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

Traditionally, States have a general authority to regulate for the health and safety of their citizens. *City of Boerne v. Flores,* 521 U.S. 507, 534 (1997). States also have a duty of the highest order to protect the interests of minor children, particularly those of tender years. *Palmore*, 466 U.S. at 433. Specifically, this Court has held "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction." *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

Recently, federal agencies have revealed statistics showing a dramatic increase in child abuse and reported that over a quarter of children who died by suicide had experienced child abuse and neglect. (R. at 25-26). Governor Constance Girardeau has previously expressed her concerns that Delmont's children faced a crisis as to their mental, emotional, and physical well-being. (R. at 26). As a result, Delmont has expressed the compelling interest of protecting minors from the growing risk of abuse, neglect, and domestic violence. (R. at 25-26). PAMA was enacted to address this issue of growing child abuse, to ensure action was being taken, and to prioritize the health and safety of the minors of Delmont.

Additionally, the law is narrowly tailored to advance Delmont's compelling interest of protecting minors from abuse, neglect, and domestic violence. This Court held in *Church of Lukumi* that the ordinances were not narrowly tailored because they were underinclusive and the objectives were not pursued with respect to analogous non-religious conduct. *Church of Lukum*i,

508 U.S. at 545-546. However, PAMA's application extends to all minors under the age of sixteen. (R. at 6). Thus, its application does not create a double standard, and it is not underinclusive.

The objectives of PAMA were also pursued with respect to analogous non-religious conduct. Regardless of religious or secular purposes, PAMA does not allow blood donation for minors. (R. at 5-6). Although the Petitioner strongly disfavors PAMA for its blood donation restrictions, Kingdom Church members over the age of sixteen can still donate blood as part of their religion. PAMA does not outright ban the entire practice of blood donation, rather it simply restricts blood donation to those over the age of sixteen in order to protect minors in Delmont. (R. at 5-6). In addition, this restriction is not unique to the United States. According to the American Red Cross, an individual must be at least seventeen years old to donate to the general blood supply or sixteen years old with parent/guardian consent, if allowed by state law.[6] Since PAMA advances a narrowly tailored compelling interest, it survives strict scrutiny. Therefore, it is constitutional.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court affirm the decision of the United States Court of Appeals for the Fifteenth Circuit.

Respectfully submitted on January 31, 2022.

/s/ Team 06
Counsel for Respondent

[6] "Eligibility Criteria" American Red Cross, accessed January 10, 2023, https://www.redcrossblood.org/donate-blood/how-to-donate/eligibility-requirements/eligibility-criteria-alphabetical.html.

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 the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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 complied fully with its school's governing honor code; and (iii) the team has complied with all Competition Rules.

/s/ Team 06
Dated: January 31, 2023