Brief on the Merits

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 RESPONDENTS

QUESTIONS PRESENTED

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

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

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The opinion of the United States Court of Appeals for the Fifteenth Circuit, affirming the lower court, is reported at *Richter v. Girardeau*, No. 2022-1392 (15th Cir. 2022) and can be found in the Record at 21-40.

JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit affirmed the 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 under 28 U.S.C. § 1254.

STATUTES AND RULES INVOLVED

The First Amendment to the United States Constitution is relevant to this appeal. Additionally, Delmont's Physical Autonomy of Minors Act is relevant to this appeal.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Petitioner, Emmanuella Richter (hereinafter "Petitioner") is the founder and spiritual leader of Kingdom Church. R. at 3, 21, 41. In 1990, Petitioner founded Kingdom Church in the country of Pangea and built the church a wide following. R. at 3, 22, 41. In 2000, Petitioner and a large contingent of the church congregation settled in Beach Glass in the state of Delmont. R. at 3, 22, 41. Church adherents live in designated compounds in Beach Glass and throughout the southern portions of Delmont. R. at 4, 22, 41. These compounds are separate from the rest of the state's populace, though are active in state commerce through the sale of their "Kingdom Tea," the

proceeds from which go towards the operation of the church. R. at 4, 22, 41. To be eligible to join Kingdom Church, individuals must be of at least fifteen years of age, undertake a course of intense doctrinal study, and undergo a private confirmation ritual. R. at 4, 23, 42. Once confirmed, Kingdom Church members may not accept blood from, or donate blood to, a non-member. R. at 5, 23, 43. Members are required to bank their blood at local blood banks in case of medical emergencies. R. 5, 23, 43. Blood banking is a central tenet of the faith. R. 5, 23, 43.

In 2020, a local newspaper, *The Beach Glass Gazette*, ran a story that included details on the blood-banking practices of Kingdom Church. R. 5, 24. The story raised an outcry from multiple sectors of the broader Beach Glass community about the ethics of the practice. R. 5, 24. Following the public outcry, in 2021, the Delmont General Assembly passed the "Physical Autonomy of Miners Act" (hereinafter "PAMA") that forbade the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor regardless of profit and regardless of the minor's consent. R. at 6, 24. The Governor of the State of Delmont, Constance Girardeau (hereinafter "Respondent") strongly advocated for the legislation and signed it into law. R. at 6, 24. On January 17, 2022, the driver of the "Kingdom Tea" van was seriously injured in a multi-car crash and required a blood donation from his cousin, fifteen-year-old Adam Suarez, a recently confirmed Kingdom Church member. R. at 6, 25. While in the process of donating, Suarez's blood pressure became highly elevated and he went into acute shock, and though he recovered, he was advised against blood donations in the immediate future. R. at 6, 7, 25. The incident quickly became part of the media reporting. R. at 6, 25.

On January 22, 2022, Respondent, during her re-election campaign, attended a major fundraiser at which she stated her concern that Delmont's children faced a crisis as to their mental, emotional, and physical well-being, citing federal statistics from the Department of Health and

Human Services and data from the U.S. Centers for Disease Control and Prevention. R. at 7, 25. Respondent also stated that she had commissioned a task force of government social workers to begin an investigation into Kingdom Church's blood-bank requirements for children to determine if PAMA was implicated in "the exploitation of the Kingdom Church's children." R. at 7, 26.

II. PROCEDURAL HISTORY

On January 25, 2022, Petitioner requested injunctive relief in the Beach Glass Division of the Delmont Superior Court. R. at 8, 26. Petitioner sought to stop Respondent's task force from conducting its investigation relating to the enforcement of PAMA, claiming that the state's action constituted a violation of the First Amendment's Free Exercise Clause. R. at 8, 26. On January 27, 2022, at a large press event following a campaign rally, Respondent was asked about Petitioner's request for injunctive relief and to comment on Petitioner's claims that Kingdom Church was being persecuted for its religious beliefs. R. at 8, 26. Petitioner responded "I'm not surprised about 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, 26-27. Reacting to this statement, on January 28, 2022, Petitioner amended her complaint to include an action for defamation. R. at 8, 27.

Respondent moved for summary judgment to dismiss both of Petitioner's claims. R. at 8, 27. The district court granted Respondent's motion on September 1, 2022. R. at 3, 20, 27. Petitioner appealed to the United States Circuit Court of Appeals for the Fifteenth Circuit, which affirmed the district court's order. R. at 21. Petitioner filed a petition for a writ of certiorari, raising two issues: (1) whether the extension of the *New York Times Co. v. Sullivan* standard to limited-purpose public figures is constitutional, and (2) whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that PAMA is neutral and generally applicable, and if so, should

Employment Division, Department of Human Resources of Oregon v. Smith be overruled. R. at 46. This Court granted certiorari on both issues. R. at 46.

SUMMARY OF THE ARGUMENT

Any challenge to the constitutionality of the *New York Times* actual malice standard extending to limited-purpose public figures should be rejected. Limited-purpose public figures, such as Petitioner, are more like all-purpose public figures than private figures. Therefore, speech about these figures should be constitutionally protected in the same manner that speech about all-purpose public figures is protected. Limited-purpose public figures are often voluntarily involved in matters of public concern. Additionally, limited-purpose public figures have access to more widespread forms of communication than private figures, and therefore have an ability to counter any statements made about them. Respondent's speech regarding the practices of Petitioner and the church she leads should be protected because it properly balances the state's interests in compensating defamed or libeled individuals with the free speech protections provided by the First Amendment of the United States Constitution.

The Fifteenth Circuit correctly held that PAMA is a neutral and generally applicable law that does not offend the First Amendment. PAMA is generally applicable because it does not impose its burdens or protections selectively and because it contains no exemptions. PAMA is neutral because its text, along with all available direct and circumstantial evidence, demonstrates that the law's object is not to infringe upon or restrict practices because of their religious motivation. Even if this Court finds otherwise, PAMA is capable of passing strict scrutiny review because it advances a compelling governmental interest in preventing child abuse and it is narrowly tailored to achieve that interest because it places only a minimal burden on Kingdom Church's blood banking practice. Irrespective of this Court's decision regarding PAMA's

constitutionality, it should refrain from overruling *Employment Division, Department of Human Resources of Oregon v. Smith* or disturbing its longstanding free exercise precedent. *Smith*'s reasoning is firmly rooted in more than a century of this Court's jurisprudence, as well as our nation's history and traditions, and this case does not demand the requisite special justifications to depart from more than three decades of precedent.

ARGUMENT

I. THE EXTENSION OF THE *NEW YORK TIMES* ACTUAL MALICE STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES IS CONSTITUTIONAL.

Petitioner's challenge to the constitutionality of extending the actual malice standard to limited-purpose public figures should be rejected. This extension should be treated as a fundamental component of the First Amendment of the United States Constitution. In its landmark decision *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) this Court extended free speech protection to defamatory statements made against public officials. *Id*. at 283. The actual malice standard articulated by this Court in *New York Times* and its extension to limited-purpose public figures is a fundamental component of the First Amendment because it protects speech about public figures in public controversies. *Id.*; *see generally Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967) (extending the actual malice standard to public figures not in government); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345-46 (1974) (eliminating this Court's ability to apply the actual malice standard to statements about private figures and defining limited-purpose public figures); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 756 (1985) (announcing that this Court's decision in *Gertz* is only applicable to private individuals concerning matters of public concern). The development of cases surrounding the actual malice standard in defamation law has provided for what the *New York Times* Court emphasized is "a commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." 376 U.S.

at 270. The extension of the *New York Times* actual malice standard to limited-purpose public figures is constitutional because limited-purpose public figures are more similar to all-purpose public figures than to private figures. Additionally, this standard is workable and not overly expansive.

A. Limited-purpose public figures are more similar to all-purpose public figures than to private figures.

Limited purpose public figures are more similar to all-purpose public figures than to private figures. Therefore, speech about limited-purpose public figures should retain similar protections as those belonging to speech about all-purpose public figures. Limited-purpose public figures are like all-purpose public figures in three ways: First, limited-purpose public figures are likely to be involved in matters of public concern. Second, limited-purpose public figures place themselves at the forefront of matters, causing greater attention and controversy. Finally, limited-purpose public figures have a greater ability to counter statements made about them.

i. Limited-purpose public figures are likely to be involved in matters of public concern.

Limited-purpose public figures are likely to be involved in matters of public concern. Protecting speech about matters of public concern is fundamental in American Constitutional jurisprudence. The *New York Times* standard currently applies in any context in which the figure purportedly being defamed or libeled has acted or spoken on some matter of public concern. *See Dun & Bradstreet*, 472 U.S. 749, 759-60. This Court has expressed a steadfast interest in protecting this type of speech because "it is the essence of self-government." *Garrison v. La.*, 379 U.S. 64, 75 (1964). In this Court's initial articulation of the actual malice standard in *New York Times*, it noted that "[t]he theory of our Constitution is that every citizen may speak his mind . . . on matters of public concern." *New York Times*, 376 U.S. at 298-99 (Goldberg, J., concurring). Therefore, when determining whether an extension of the actual malice standard to limited-purpose public

figures is constitutional, the context in which speech about these figures is made is important. The actual malice standard ultimately protects speech relating to matters of public concern and, as this Court noted in *Dun v. Bradstreet*, is inapplicable to speech relating to matters of private concern. The extension of the actual malice standard to limited-purpose public figures is constitutional because those that must meet this standard are involved in matters of public concern, which is "at the heart of the First Amendment's protection[s] [on speech]." *Dun & Bradstreet*, 472 U.S. at 759 (citing *First Nat'l Bank of Bos. v. Belloti*, 435 U.S. 765, 776 (1978)).

In this case, Petitioner is the founder and leader of a religious group that may be violating a statute put forth by Delmont's General Assembly. Respondent, the Governor of Delmont, addressed the matter. Respondent's speech regarding Petitioner is particularly the type of speech that should be protected because it relates to a matter of public concern: it involves a prominent religious group, the enforcement of a state statute, and the wellbeing of a subset of Delmont's population. By failing to extend the actual malice standard to limited-purpose public figures such as Petitioner, the debate on this matter of public concern may be stifled, a blow to the heart of First Amendment speech protection.

ii. Limited-purpose public figures place themselves at the forefront of matters, causing greater attention and controversy.

Limited-purpose public figures place themselves at the forefront of matters, causing greater attention and controversy. Although a limited-purpose public figure, such as Petitioner, has not "achieve[d] such pervasive fame or notoriety that [s]he becomes a public figure for all purposes and in all contexts," she nevertheless "voluntarily injected [her]self . . . into a particular public controversy." *Gertz*, 418 U.S. at 351. The *Gertz* Court specifically anticipated those figures, such as Petitioner, who do not gain the type of attention of an all-purpose public figure, such as Kim Kardashian, but instead gain attention in a certain area of public concern. As articulated by the

Gertz Court, a public figure, whether limited-purpose or all-purpose, is like a public official because "[s]he runs the risk of closer public scrutiny than might otherwise be the case." *Id.* at 344. Therefore, in the same case in which this Court articulated the distinction between all-purpose and limited-purpose public figures, it specifically discussed the importance of whether the figure placed themselves at the forefront of attention or controversy. This consideration should be made in balancing First Amendment speech protections and a state's interest in compensating defamation plaintiffs for their injuries. The balancing of these interests results in a slightly different analysis by this Court—as articulated in *Dun & Bradstreet*, referring to this Court's prior opinion in *Gertz*—when a private figure brings a libel or defamation action. Unlike limited-purpose public figures, private figures "have not voluntarily exposed themselves to increased risk of injury from defamatory statements." *Dun & Bradstreet*, 472 U.S. at 756. Therefore, this Court has found that the State has a stronger interest in compensating a private figure when her reputation is injured than it does a public figure who voluntarily places herself at the forefront of matters of public controversy, exposing herself to increased risk of injury. *Id*.

If an individual's speech only reaches a "relatively small category" of persons concerned with a niche subject, that person is not considered a limited-purpose public figure. *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979). In *Hutchinson*, a behavioral scientist was found not to be a limited-purpose public figure, even though he received federal grants for his research, because his writings were not of public controversy until after the defamation arose. *Id*. Therefore, unlike Petitioner, the behavioral scientist had not placed himself at the forefront of matters causing greater attention and comment from the public. In this case, Petitioner filed an injunctive action, arguably placing Kingdom Church at the center of public concern regarding the legality of its policies with the newly enacted PAMA statute. In any event, even before the filing of the injunction, Petitioner

was leading a religion arguably at the center of controversy in Delmont. Petitioner's activities were not "like those of countless members of [a] profession," but rather placed her directly at the forefront of matters likely to gain public attention and concern. *Id.*

Additionally, petitioner arguably "assume[d] some measure of risk entering public controversy." *Gertz* 418 U.S. at 351. Finding that a lawyer was not a limited-purpose public figure, the *Gertz* Court explained the importance of a higher standard of liability for statements made against those individuals who both have greater access to communication and inject themselves into a public controversy, such as the Petitioner. *Id.* at 352. As this Court recognized in *Gertz*, it is important that private figures not be required to meet the high standard set forth in *New York Times* because a private individual may be "involuntarily associated with a matter of general interest" and should not be left without remedy. *Id*. at 337. Petitioner assumed the risk of entering public controversy when she filed for injunctive relief to avoid an investigation into Kingdom Church to ensure its policies are legal under the State's newly enacted PAMA statute. Further, Petitioner assumed this risk when she began speaking with media outlets to defend Kingdom Church. Petitioner consistently placed herself at the forefront of matters surrounding Kingdom Church and the PAMA statute. As such, Petitioner is unlike private figures, who need not meet the actual malice standard.

In *Planet Aid, Inc. v. Reveal*, a charity and its director were found to be limited-purpose public figures. 44 F.4th 918, 921 (9th Cir. 2022). The court highlighted the fact that many of the individuals who are considered limited-purpose public figures voluntarily put themselves "at risk of public scrutiny with respect to a limited range of issues." *Id*. at 926. Just as a charity director might subject herself to public scrutiny, so too does Petitioner as the leader and founder of a religion. Just as the charity and its director were under public scrutiny due to issues of public

concern regarding the use of funds, Petitioner and Kingdom Church are under public scrutiny due to issues of public concern regarding the legality of Kingdom Church's practices under PAMA.

Those individuals who unwillingly gain greater attention and garner public comment will not be considered limited-purpose public figures. *Time, Inc. v. Firestone*, 424 U.S. 448, 457 (1976). In *Firestone*, a woman sued a weekly news magazine that printed the details of her divorce based on information obtained from court documents related to the divorce proceedings. *Id.* at 448. This Court held that the defamatory statement made about the woman's divorce did not have to meet the actual malice standard because she was using the only redress available to her for obtaining a divorce—the court system. *Id.* at 457. The *Firestone* Court recognized that in such situations there is "little reason why these individuals should substantially forfeit that degree of protection which the law of defamation would otherwise afford them simply by the virtue of their being drawn into a courtroom." *Id.* In this case, Petitioner was not "drawn into" filing for injunctive relief, thereby gaining public attention for herself and Kingdom Church.

Being the leader and founder of a church, developing seminars with the elders, and communicating with the media about the church places Petitioner at the forefront of matters regarding Kingdom Church and any potential PAMA investigation. Petitioner reached a great number of people through her filing of injunctive relief and her statements to the media. By doing so, she assumed some measure of risk. Petitioner was willingly drawing attention and public comment to herself and to Kingdom Church. A leader of a religion that protests government action necessarily garners attention and comment from the public.

Protection of speech about those individuals who place themselves at the forefront of controversial matters which gain attention should be considered constitutional. In *New York Times*, this Court aptly recognized that "one who assumes to act for the citizens . . . must expect that [her]

official acts will be commented upon and criticized." 376 U.S. at 299. While the *New York Times* Court was specifically referring to public officials, in companion cases *Curtis Publishing Co. v. Butts* and *Walker v. Associated Press*, this Court extended the standard to public figures not in government in part because such figures "commanded a substantial amount of independent public interest." *Butts*, 388 U.S. 130, 154. This Court recognized that the public interest surrounding those matters involved in each case was "not less than that involved in *New York Times*." *Id*. Therefore, since its inception, the actual malice standard has applied to those who have voluntarily placed themselves at the forefront of matters causing greater attention and controversy, just as Petitioner did in this case. Petitioner placed herself at the forefront of a matter causing greater attention and controversy. Rather than complying with the State's investigation into Kingdom Church's practices regarding minors, Petitioner brought this injunctive action to stop the investigation. Petitioner and Kingdom Church may have already been drawing attention and stirring controversy due to the potentially PAMA-violating blood banking practices but filing an injunctive action and speaking to the media regarding Kingdom Church brought even greater attention and controversy upon Petitioner. The fact that limited-purpose public figures, like Petitioner, have placed themselves in positions which will bring about more comment from the public makes them more like all-purpose public figures than private figures.

iii. Limited-purpose public figures have a greater ability to counter statements made about them because of access to widespread forms of communication.

Limited-purpose public figures have a greater ability to counter statements made about them because of access to widespread forms of communication, which private figures cannot access. This Court has found it relevant that some figures in society have a greater ability to counteract statements made about them. *Gertz*, 418 U.S. at 344 ("[P]ublic figures usually enjoy significantly greater access to the channels of effective communication and hence have a more

realistic opportunity to counteract false statements."); *Butts*, 388 U.S. at 155 ("[B]oth had sufficient access to the means of counterargument to be able 'to expose through discussion the falsehood and fallacies' of the defamatory statements."); *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157, 170-71 (1979) ("At the height of the publicity surrounding the espionage controversy here, petitioner may well have had sufficient access to the media effectively to rebut a charge that he was a soviet spy.") Therefore, there is a constitutional interest in protecting speech made about individuals who can counter statements made about them.

In the companion cases *Butts* and *Walker*, this Court found that both the University of Georgia Athletic Director and the leader of an anti-civil rights group "had sufficient access to means of counterargument to be able 'to expose through discussion the falsehood and fallacies,'" and therefore both had to meet the actual malice standard. 388 U.S. at 155 (quoting *Whitney v. Cal.*, 274 U.S. 357, 377 (1927) (Brandeis, J., dissenting)). Not only did Petitioner here similarly have the means to counter any statements made about her, but she did in fact counter statements made about Kingdom Church. This privilege, that those in the cases of *Butts* and *Walker* had due to their notoriety and attention from the public, was exercised by Petitioner when she defended the church while being interviewed by the media. Her ability to do this, as the leader and founder of Kingdom Church, is one of the fundamental reasons that the extension of the actual malice standard to Petitioner must be deemed constitutional.

Access to widespread forms of communication for private figures is different than when the fundamental cases surrounding *New York Times* were decided. *See generally* Derigan Silver & Loryn Rumsey, *Going Viral: Limited-Purpose Public Figures, Involuntary Public Figures, and Viral Media Content*, 27 Comm. L. & Pol'y 1 (2022) (discussing the ease of virality in media today). However, this does not negate the fact that public figures have greater access to the most

prominent and widespread forms of communication, such as journalism and mass media that report on issues of public concern. While the everyday citizen can now access social media channels to potentially send messages to millions of people, this cannot be meaningfully analogized with the access that public figures such as Petitioner, have to well-known news and media outlets that broadcast widely. In fact, "courts [are] unlikely to rule that social media platforms provide[]… 'a realistic opportunity to counteract false statements' because of the limited number of people who see the average social media post." *Id*. at 13 (quoting *Gertz*, 418 U.S. at 344). In this case, Petitioner had access to the media to rebut any statements made about her or Kingdom Church, and she took that opportunity. In balancing the interests of First Amendment speech protections and compensating parties due to injury to reputation, it is relevant to consider whether the parties can counter any statements made.

B. The actual malice standard is workable and is not overly expansive.

The actual malice standard is workable and is not overly expansive. Although the doctrine was extended too far in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971), this Court quickly recognized and overruled the excessive extension in *Gertz*. 418 U.S. at 346. Although the *Rosenbloom* decision required private figures bringing state libel actions to show actual malice if an "utterance involved concerns an issue of public … concern," the *Gertz* Court held that the actual malice standard need not be met for matters concerning private figures merely because the statement was one of public interest. *Id*. at 343. Therefore, this Court has recognized bounds by which the standard may be applied in considering state interests. This Court's decision in *Gertz* ensured that the doctrine does not become too expansive, and still provides for the same protections of speech initially contemplated in *New York Times*. Additionally, the Court in *Firestone* did not permit the use of the actual malice standard for statements made regarding divorce proceedings, demonstrating further limits on the doctrine. 424 U.S. at 456-57. Further, this Court has limited

the use of the actual malice standard in instances in which the defamed person came to be an object of public controversy and/or notoriety after the defamation occurred. *Hutchinson*, 443 U.S. at 134-35. The *Hutchinson* Court protected private figures from being made into public figures by potential defendants who made defamatory statements about them. *Id*.

Each of these cases since *New York Times* have helped to craft the extensions on which the constitutionality of the actual malice standard rests. This Court has allowed the standard to remain reasonable, recognizing that public figures do in fact have greater ability to counter the statements made about them through greater access to media and channels of communication, and public figures do place themselves at the forefront of matters causing greater attention and controversy.

While the argument may be put forth that this standard has resulted in more defamation suits since its inception and expansion, it is clear that "the history of the courts' treatment of defamation cases since 1964 indicates that the *Sullivan* standard has produced a rare and continuing consensus among judges concerning First Amendment protections." 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, 64 (2014). It has been asserted that the standard articulated in *New York Times* and extended accordingly "ha[s] '*no relation* to the text, history, or structure of the Constitution.'" *Coral Ridge Ministries Media, Inc. v. Southern Poverty Law Center*, 142 S.Ct. 2453, 2455 (2022) (Thomas, J., dissenting) (quoting *Tah v. Global Witness Publishing, Inc*., 991 F.3d 231, 251 (2021) (Silberman, J., dissenting in part)) (emphasis in original). However, on the contrary, this standard and its extensions have "been a bulwark against speech restriction," protecting individuals who speak about those figures in society who place themselves at the forefront of matters of public concern. John Bruce Lewis & Bruce L. Ottley, *supra*, at 64. Indeed, this standard is in fact creating the

intended "breathing space" for issues surrounding public debate and concern. *New York Times*, 376 U.S. 254 at 272 (quoting *A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963)).

In conclusion, the extension of the *New York Times* actual malice standard to limited-purpose public figures is constitutional because limited-purpose public figures are more similar to all-purpose public figures than private figures and the standard is workable and not overly expansive.

II. PETITIONER'S FREE EXERCISE CHALLENGE TO PAMA SHOULD BE REJECTED AND *SMITH* SHOULD NOT BE OVERRULED.

Petitioner's free exercise challenge to PAMA should be rejected and *Smith* should not be overruled. Given that the State of Delmont has not adopted an equivalent version of the Religious Freedom Restoration Act ("RFRA"), *see* 42 U.S.C.A. § 2000bb, which applies only to federal law, *see City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), Petitioner's state law challenge must be evaluated under the First Amendment to the United States Constitution. The First Amendment's Free Exercise Clause, which has been made applicable to the states through the Fourteenth Amendment, *see Cantwell v. Conn.*, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law . . . *prohibiting* the free exercise [of religion]." U.S. CONST. amend 1 (emphasis added). As explained by this Court, "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990). While the Constitution affords great protection for religious free exercise, this Court's jurisprudence has made clear that the First Amendment does not make religious belief superior to the law of the land or "permit every citizen to become a law unto himself" by disregarding neutral laws equally applicable to their neighbors. *Id.* at 879 (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1878)).

In its landmark *Smith* decision, which has guided free exercise disputes for more than three decades, this Court provided that religious interests cannot veto or excuse noncompliance with laws that are both neutral and generally applicable. *Id.* If a law is neutral and generally applicable in accordance with *Smith*, it is subjected to rational basis review; however, if a law is not neutral and generally applicable, it is subjected to strict scrutiny review. Following *Smith*, this Court has noted in certain circumstances laws must be automatically subjected to strict scrutiny even if they are neutral and generally applicable, including in unemployment benefits cases, *see Sherbert v. Verner*, 374 U.S. 398 (1963); hybrid rights cases involving a communicative activity or parental right, *see Wisconsin v. Yoder*, 406 U.S. 205 (1972); internal church employment dispute cases, *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012); and in cases where any formalized system of exemptions exist in the law, *see Fulton v. City of Phila., Pa.*, 141 S.Ct 1868 (2021). Accordingly, for a state law to be subjected to strict scrutiny on free exercise grounds, the law must either fit into one of these four principal categories or be adjudged not neutral and generally applicable in accordance with *Smith*.

The issue in this case is whether PAMA violates the Free Exercise Clause by outlawing blood donations from minors under the age of sixteen with no exception because Petitioner's religion engages in blood banking practices participated in by all "confirmed" members of the faith ages fifteen and up. R. at 16. PAMA does not violate the Free Exercise Clause and Petitioner's claim should be rejected for three reasons: PAMA is a neutral and generally applicable law in accordance with *Smith*, PAMA does not fit into any of the four principal categories of laws this Court automatically subjects to strict scrutiny, and because, in any event, PAMA passes strict scrutiny review. Accordingly, this Court should affirm the Fifteenth Circuit's ruling which found PAMA to be a neutral and generally applicable law. Further, in doing so, this Court should refrain

from overruling *Smith* or disturbing its longstanding free exercise precedent because *Smith*'s reasoning is firmly rooted in more than a century of this Court's jurisprudence, as well as our nation's history and traditions, and this case does not demand the requisite special justifications to depart from more than three decades of precedent.

A. PAMA is a neutral and generally applicable law in accordance with *Smith* because it does not impose its burdens or protections selectively and because its object is not to infringe upon or restrict practices because of their religious motivation.

PAMA is a neutral and generally applicable law in accordance with *Smith* because it does not impose its burdens or protections selectively and because its object is not to infringe upon or restrict practices because of their religious motivation. Beginning with the Act's text, the Record reveals that PAMA "forbids the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor, regardless of profit or the minor's consent." R. at 2. As to *Smith*'s general applicability requirement, this Court has reasoned that "[t]he principle that government, in pursuit of legitimate interests, cannot in a *selective manner* impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993) (emphasis added). Laws fail to meet *Smith*'s general applicability mandate when they operate in such a "selective manner." *See id.* In this case, it is clear based on its text that PAMA affords equal protections for all minors under sixteen within the State of Belmont and imposes no burdens on one group of citizens that is not equally shared by another. Further, there is no evidence contained in the Record to suggest that PAMA has been enforced selectively since its recent inception.

Another way a law can fail to be generally applicable is if it "invite[s] the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Smith*, 494 U.S. at 884 (quoting *Bowen v. Roy*, 476 U.S. 693, 708

(1986)); *see also Fulton*, 141 S.Ct at 1878 (holding that discretionary exemptions in Philadelphia's foster care contract rendered it not generally applicable when it declined to contract with a Catholic foster care agency who refused to certify same-sex couples as foster parents based on the religious beliefs of the agency). This same issue can be triggered if a law does not contain formal exemptions but still prohibits religious conduct while permitting similar secular conduct. *Church of the Lukumi*, 508 U.S. at 535-36. In *Church of the Lukumi*, this Court found city ordinances not generally applicable because the manner in which the ordinances were written created a "religious gerrymander" so that other forms of animal sacrifice were permitted while the religious animal sacrifice of members of the Santeria religion was outlawed. *Id.* "[T]he burden of the ordinance, in practical terms, falls on Santeria adherents but almost no others." *Id.* at 536.

Here, unlike in *Fulton*, the Record shows that PAMA contains no exemptions whatsoever and, unlike in *Church of the Lukumi*, PAMA contains no "religious gerrymander." In *Church of the Lukumi*, this Court found Hialeah's city ordinances failed *Smith*'s general applicability requirement in large part because they were written in a way that prohibited religious animal slaughter but not certain types of non-religious animal slaughter, such as a hunter's disposal of their kill or improper garbage disposal by restaurants. *Id.* at 545-46. In this case, however, there is no evidence in the Record to suggest that PAMA is written in such a way. PAMA is generally applicable because it treats all blood donations in Delmont by minors, both religious and secular, identically with no exception. PAMA thus meets *Smith*'s general applicability mandate.

As for *Smith*'s neutrality requirement, this Court has reasoned that a law is not neutral if the object of the law is to infringe upon or restrict practices because of their religious motivation. *Id.* at 533. When assessing a law's neutrality, a court "must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if

it refers to a religious practice without a secular meaning discernable from the language or context." *Id.* at 534. Here, PAMA's text demonstrates facial neutrality because the Act makes no mention of Kingdom Church, or any other religions groups, and protects all minors in the State of Delmont without exception. Therefore, PAMA is a facially neutral law.

This Court, however, has also looked to "both direct and circumstantial" evidence when assessing if a law has a neutral object. *Id.* at 540. In *Church of the Lukumi*, this Court found that the city of Hialeah's ordinances were not neutral because of "evidence [of] significant hostility exhibited by residents, members of the city council, and other city officials toward the Santeria religion and its practice of animal sacrifice." *Id.* at 541; *see also Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Com'n*, 138 S.Ct. 1719, 1732 (2018) (holding that the Colorado Civil Rights Commission's hostility toward a shop owner's refusal to sell a wedding cake to a same-sex couple in violation of the shop owner's religious beliefs when reviewing the case failed to satisfy *Smith*'s neutrality requirement). In *Church of the Lukumi*, when the people of Hialeah discovered that a Santeria church was to be opened in their community, an emergency public session was held where the unconstitutional ordinances were passed. 508 U.S. at 526. At this emergency public session, not only did the public speak negatively about adherents of the Santeria faith, but members of the city council who drafted and ratified the ordinances also spoke out against the religion. *Id.* at 541.

In this case, unlike in *Church of the Lukumi* or *Masterpiece Cakeshop*, there is no evidence that anti-religious sentiment served as the driving force behind the drafting or passage of PAMA. While it is undisputed that public outcry against Kingdom Church practices has existed in Delmont since 2020, there is no evidence that members of the Delmont General Assembly also held these opinions. The evidence in the Record actually rebuts this, as the only elected official who has appeared to weigh in on the issue, Governor Girardeau, stated in her sworn affidavit that "[n]othing

with respect to Kingdom Church, the Kingdom Tea van crash incident, or Adam Suarez's blood donation served as the impetus for [her] supporting PAMA." R. at 40. In fact, Governor Girardeau was not aware of PAMA until it was already under consideration by the assembly and noted that her support was inspired solely by her re-election campaign's focus on rising rates in child abuse, child neglect, and teenage suicide in Delmont and across the United States. R. at 39-40. With the combination of Governor Girardeau's sworn testimony and the absence of any evidence of ill intent held by legislators in Delmont, the only evidence that Petitioner can cling to in order to argue that PAMA is not neutral is the documented public disapproval of Kingdom Church's blood banking practice. However, this evidence alone is insufficient to serve as the legislative intent behind PAMA when evidence from the government either rebuts it or, in the case of state legislators, does not exist. Accordingly, PAMA's text, along with all available direct and circumstantial evidence, supports the conclusion that it meets *Smith*'s neutrality mandate.

Furthermore, "[n]eutrality and generally applicability are interrelated, and … failure to satisfy one is a likely indication that the other has not been satisfied." *Id.* at 531. As the district court in this case noted, "[t]he inverse is also true: satisfying one requirement indicates the other is satisfied." *Richter v. Girardeau.*, No. 22-CV-7855; R. at 18. Since an abundance of evidence in the Record indicates PAMA is generally applicable and the Record either favors or is silent towards a finding that PAMA is neutral, this Court should find that PAMA comports with *Smith* and subject it to a rational basis review. As this Court has explained, rational basis review requires only for a law to be "rationally related to a legitimate state interest." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Here, PAMA passes rational basis review because the prohibition it places on blood donations by minors is rationally related to the legitimate interest held by the state in combating rising rates in child abuse, neglect, and teen suicide.

B. PAMA does not fit into any of the four principal categories of laws that must automatically be subjected to strict scrutiny when faced with a free exercise challenge.

PAMA does not fit into any of the four principal categories of laws that must automatically be subjected to strict scrutiny when faced with a free exercise challenge. PAMA does not implicate cases such as *Sherbert*, *Hosanna-Tabor*, or *Fulton* because it is not a law touching on unemployment benefits or internal church employment, and it does not contain any exemptions. Petitioner may, however, argue that this case implicates hybrid rights similarly to *Yoder* and that PAMA should automatically be subjected to strict scrutiny as a result. In *Yoder*, this Court invalidated a Wisconsin compulsory school-attendance law as applied to Amish parents who, based on their religion, refused to send their children to school beyond eighth grade. 406 U.S. at 207. In the decades following *Yoder*, its validity has been upheld on the basis that it implicated both the First Amendment and the unenumerated constitutional rights that parents possess over the educational and religious upbringing of their children. *See Smith*, 494 U.S. at 872-73.

This case, however, is not analogous to *Yoder* at all. First and foremost, *Yoder*'s religious claimants were parents suing to protect their rights to make decisions regarding the education of their children. 406 U.S. at 207. Here, Petitioner seeks to halt PAMA because it "interfere[s] with the way *the church raise[s] its children* in their faith." R. at 26. (emphasis added). This assertion gives rise to a simple yet fatal issue for Petitioner: she is not a parent; she is the creator and spiritual leader of a religious institution. Accordingly, she has no constitutional parental right to exert over the children within the Kingdom Church because they do not belong to her and they do not belong to the church, even if the church may see it that way. Second, PAMA, unlike the law at issue in *Yoder*, compels no affirmative action that could coerce a religious individual into violating their beliefs. In *Yoder*, the Amish parents were faced with a binary choice: either violate their religious beliefs and send their children to school or refuse and face criminal prosecution. 406 U.S. at 207.

PAMA thrusts no such ultimatum upon members of Kingdom Church. Instead, the Act infringes upon only a portion of the church's blood banking practices. The law in *Yoder* sought to compel certain activity, while PAMA seeks to halt certain activity. This distinction alone distinguishes the two cases. Third, in the nearly fifty-one years since *Yoder* was decided, no cases from this Court have extended *Yoder*'s application outside of the educational context. The absence of such an extension speaks loudly, and this Court should not use this case as an opportunity to apply *Yoder* outside its originally intended parent and child educational context. Fourth, and finally, the law at issue in *Yoder* contained a secular and discretionary "good cause" exemption and would thus fail to qualify as generally applicable. *See id.* As previously established, PAMA contains no exemptions whatsoever. For these four reasons, this case is markedly distinguishable from *Yoder* and any argument by Petitioner attempting to analogize the two should be rejected.

C. PAMA passes strict scrutiny because it advances a compelling governmental interest and is narrowly tailored to achieve that interest.

Even if this Court finds that PAMA is not neutral and generally applicable or that it implicates a hybrid right, PAMA passes strict scrutiny because it advances a compelling governmental interest and is narrowly tailored to achieve that interest. PAMA rests on multiple compelling interests, among them being the noted recent rises in child abuse and suicide which were addressed by Governor Girardeau in her affidavit. R. at 39-40. When looking at this case in particular, the Record indicates that fifteen-year-old Adam Suarez was coerced by Kingdom Church into donating the American Red Cross' maximum blood donation, which caused his blood pressure to elevate and sent him into acute shock. R. at 6. The young Suarez nearly died in the hospital ICU and was advised by doctors to abstain from blood donations in the immediate future. R. at 7. Both the societal backdrop demonstrating increased harm to children in Delmont and the government's interest in preventing a future situation like the one involving Adam Suarez

demonstrate the multiple compelling interests advanced by PAMA that can broadly be characterized as a compelling governmental interest in preventing child abuse within the state.

PAMA is narrowly tailored to achieve this compelling interest because only "confirmed" members of Kingdom Church are permitted to take part in the church's blood banking practice. R. at 4. In order to become confirmed, an individual must obtain the "state of reason", which cannot be reached until the age of fifteen. R. at 4. As the Record reflects, PAMA effects only those under the age of sixteen. R. at 2. Therefore, the law only implicates a de minimis sum of Kingdom Church's confirmed members and will likely place little to no burden on its blood banking practice. Considering PAMA effects such a small subset of Kingdom Church adherents, it is difficult to imagine a manner in which it could be any more narrowly tailored than it already is. Accordingly, since PAMA advances a compelling interest and is narrowly tailored to achieve it, the Act passes strict scrutiny.

D. If this Court finds that PAMA is neutral and generally applicable, it should refrain from overruling *Smith* because its reasoning remains sound today and because this case does not warrant such a significant departure from longstanding precedent.

If this Court finds that PAMA is neutral and generally applicable, it should refrain from overruling *Smith* because its reasoning remains sound today and because this case does not warrant such a significant departure from longstanding precedent. In *Smith*, this Court relied on more than a century of its own jurisprudence to hold that religious beliefs do not excuse noncompliance with an otherwise valid law prohibiting conduct the government is free to regulate. 494 U.S. at 878-79 (citing *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586 (1940) (upholding a law compelling Jehovah's Witness school children to salute the American flag and recite the Pledge of Allegiance even though it conflicted with their faith); *United States v. Lee*, 455 U.S. 252 (1982) (holding that religious beliefs opposed to paying taxes do not exempt a claimant from paying into the Social

Security system); *Hernandez v. C.I.R.*, 490 U.S. 680 (1989) (rejecting a free exercise challenge to the payment of income taxes alleged to make religious activities more difficult); *Reynolds*, 98 U.S. at 145 (upholding the constitutionality of a ban on polygamy)). Cases like these, decided both before and after this Court's decision in *Sherbert*, demonstrate the longstanding legal and social precedent that *Smith* is rooted in. Given that *Smith* tracks the history and traditions of our nation and legal system, it finds support in cases decided by this Court as recently as last year. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 213 L. Ed. 2d 755 (2022); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387 (2022); *see also* Philip A. Hamburger, *A Constitutional Right of Religious Exemption: An Historical Perspective*, 60 Geo. Wash. L. Rev. 915-17 (1992) (concluding that late eighteenth-century Americans held a view of the First Amendment that comported with *Smith* and that, insofar as free exercise exemptions existed around the time of the Constitution's ratification, they were granted by state legislatures, not the judiciary).

Petitioner will likely argue for this Court to return to its pre-*Smith* precedent and re-adopt the "*Sherbert* test," which would require courts to carve out exemptions for religious claimants on a case-by-case basis in all free exercise cases unless the state could bring forth a "compelling interest" to justify the law, even when such laws are neutral and generally applicable. *See Sherbert*, 374 U.S. at 403. This Court's reasoning that this approach courts anarchy still rings true today:

> The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind—ranging from compulsory military service, to the payment of taxes, to health and safety regulation such as manslaughter and child neglect laws, compulsory vaccination laws, drug laws and traffic laws; to social welfare legislation and minimum wage laws, child labor laws, animal cruelty laws, environmental protection laws, and laws providing for equality of opportunity for the races. The First Amendment's protection of religious liberty does not require this.

Smith, 494 U.S. at 889 (citations omitted). This is likely the reason this Court avoided applying *Sherbert* time and time again during its reign. "In recent years we have abstained from applying

the *Sherbert* test (outside the unemployment compensation field) at all." *Smith* at 883 (citing *Roy*, 476 U.S. at 693 (declining to apply *Sherbert* where plaintiffs asserted that their daughter being assigned a Social Security number violated their religious beliefs); *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988) (declining to apply *Sherbert* where it was undisputed that government road building and deforestation in an area sacred to Native American religious practice would have a devastating effect on free exercise); *Goldman v. Weinberger*, 475 U.S. 503 (1986) (declining to apply *Sherbert* where military dress regulations forbade the wearing of yarmulkes); *O'Lone v. Est. of Shabazz*, 482 U.S. 342 (1987) (declining to apply *Sherbert* where a prison refused to excuse inmates from work requirements to attend worship services)). The *Smith* test, on the other hand, has proven to be flexible and workable over the last three decades. Where the test has been deficient, this Court has been able to adapt it instead of avoiding it. Accordingly, *Smith*'s application has helped this Court strike the right balance between upholding duly passed laws and respecting religious interests. This principle is best exemplified in cases like *Hosanna Tabor*, *Fulton*, and *Church of the Lukumi*. This Court should reject Petitioner's invitation to plunge itself back into the uncertainty and inconsistency the *Sherbert* era created.

Furthermore, as Justice Scalia noted in *Smith*, greater free exercise protections and exemptions that go beyond the Constitution's plain text reflects an issue best left to the people. *See Smith*, 494 U.S. at 890. As of today, more than twenty state legislatures across the country have adopted their own version of RFRA, which applies to all federal laws, and bolstered free exercise protections within their jurisdictions; however, numerous states have voted down on RFRA proposals. *See* Paul Baumgardner & Brian K. Miller, *Moving from the Statehouses to the State Courts? The Post-RFRA Future of State Religious Freedom Protections*, 82 Alb. L. Rev. 1385, 1391 (2019). The people of Delmont have not chosen to adopt a RFRA-like provision for

their state. If Petitioner hopes to live in a state with RFRA-like protections, she is free to relocate to one of the many states that provide them. While possibly burdensome, such an outcome is preferable to this Court forcing upon the people of Delmont values which they have chosen not to adopt through the democratic process.

Finally, this Court should refrain from overruling *Smith* because this case does not warrant such a significant departure from longstanding precedent. "[E]ven in constitutional cases, a departure from precedent 'demands special justification.'" *Gamble v. United States*, 139 S. Ct. 1960, 1969 (2019) (citation omitted). Given that PAMA fully comports with *Smith*'s requirements and is strong enough to pass strict scrutiny review, this case cannot present a special justification for discarding of long relied upon precedent when such a disturbance of precedent would have no effect on the outcome. Even if this Court did away with *Smith* in this case, Petitioner's free exercise claim still would fail. As a result, this Court should exercise judicial restraint, avoid upending decades of precedent, and decline to answer an unnecessary constitutional question for a case in which it would have no practical effect on the outcome to do so. *See, e.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 251 (2012) (quoting *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.")).

CONCLUSION

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

CERTIFICATE OF COMPLIANCE

In accordance with Rule III.C.3 of the Official Rules of the 2023 Seigenthaler-Sutherland Moot Court Competition, we hereby submit this certificate of compliance to certify that:

(i) The work product in all copies of this team's brief is in fact the work product of the team members, and only the team members.

(ii) The team has complied fully with the governing honor code of our school; and

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

Respectfully submitted,

/s/ Team 10

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January 31, 2023