No. 22-CV7654

In the Supreme Court of the United States

EMMANUELLA RICHTER,
Petitioner,
v.
CONSTANCE GIRARDEAU
Respondent.

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

Team 29
Counsel for the Petitioner

QUESTIONS PRESENTED

I. Whether *New York Times v. Sullivan*'s actual malice standard places an unnecessary burden on individuals who are not public officials and should thus be overruled?

II. Whether the Fifteenth Circuit erred in finding that the Physical Autonomy of Minors Act was neutral and generally applicable when law targeted a specific religious practice and failed to accomplish its asserted purpose?

III. Whether *Employment Division, Department of Human Resources v. Smith*'s neutral and general applicability test for government actions impacting religion contradicts the First Amendment and should thus be overruled?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 5

I. *Stare decisis* should not compel this Court to follow *New York Times v. Sullivan* for limited-purpose public figures, and instead, the standard must be overruled. 5

A. *Sullivan* was egregiously wrong the day it was decided and was unmasked as egregiously wrong for limited-purpose public figures. 6

B. Sullivan's reasoning "stood on exceptionally weak grounds." 7

C. The limited-purpose public figure is an unworkable standard in today's media. 9

i. There is unpredictability in determining who is a "limited-purpose public figure." 9

ii. Today's media landscape and public discourse make the limited-purpose public figure a totally unworkable standard. 12

D. Reliance on New York Times v. Sullivan and the actual malice standard allows the media to get away with defamation. 13

II. The United States Court of Appeals for the Fifteenth Circuit erred in concluding that PAMA is neutral and generally applicable under *Employment Division, Department of Human Resources v. Smith*. 14

A. PAMA is not neutral because the object of the law is to restrict the Kingdom Church's blood donation practices. 15

B. PAMA is not generally applicable because the law is overinclusive and underinclusive, thus it fails the Smith test and must be subject to strict scrutiny. 18

i. PAMA is underinclusive and thus, not generally applicable because it does not meet its purported purpose of protecting the children of Delmont. 18

ii. PAMA is overinclusive because the government could protect the welfare of children in a less restrictive manner. 19

III. Stare decisis should not compel this Court to follow *Employment Division, Department of Human Resources v. Smith* neutral and general applicability test, and instead, the standard must be overruled. 20

CONCLUSION **24**

CERTIFICATE OF COMPLIANCE **25**

APPENDIX: CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS **26**

TABLE OF AUTHORITIES

Cases

Berisha v. Lawson, 594 U.S. ___ (2021)....9, 16, 17

Bose Corp. v. Consumers Union, 466 U.S. 485 (1984)....10

Cantwell v. Connecticut, 310 U.S. 296 (1940)....18

Cent. Rabbinical Cong. Of U.S. & Can. v. N.Y.C. Dep't of Health & Mental Hygiene, 763 F.3d 183 (2d Cir. 2014)....20, 22, 24

Chaplinsky v. New Hampshire, 315 U. S. 568 (1942)....8, 9

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993). ....passim

Contemporary Mission, Inc. v. New York Times Co.,842 F. 2d 612 (2d Cir. 1988) 15

Curtis Publ'g Co., v. Butts, 388 U.S. 130 (1967)....11

Davis v. Keystone Printing Serv., 507 N.E.2d 1358 (Ill. App. Ct. 1987)....14, 15

Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022) ....passim

Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749 (1985)....5, 12, 13, 17

Emp. Div., Dep't of Hum. Res. v. Smith, 494 U.S. 872 (1990)....passim

Ex rel. H.R. v. Rockland Cty. Dep't of Health, 53 F.4th 29 (2d Cir. 2022) 20, 21, 22, 23

Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021)....24, 29, 30, 31

Gertz v. Welch, 418 U.S. 323 (1974)....9

Gitlow v. New York, 268 U.S. 652 (1925) 8

Grenier v. Taylor, 183 Cal. Rptr. 3d 867 (Dist. Ct. App. 5th 2015). 14

Grenier v. Taylor, 183 Cal.Rptr.3d 867 (Cal. Dist. Ct. App. 5th 2015)....14

Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271 (1988)....27, 28, 31

Hibdon v. Grabowski, 195 S.W. 3d 48 (Tenn. App. 2005) 16

Lerman v. Flynt Distrib.Co., 745 F.2d 123 (2d Cir. 1984) 13

McKee v. Cosby, 586 U.S. ____ (2019) ....passim

New York Times, Inc. v. Sullivan, 376 U.S. 254 (1964) 5, 8

Ogle v. Hocker, 279 Fed. Appx. 391 (6th Cir. 2008) 14

Pearson v. *Callahan*, 555 U. S. 223 (2009) 6

Planned Parenthood of Se. Penn. v. Casey, 505 U.S. 833 (1992) 11, 17

Ramos v. Louisiana, 140 S. Ct. 1390 (2020)...passim

Reader's Digest Ass'n v. Superior Court, 690 P.2d 610 (Cal. 1984)..15

Roe v. Wade, 410 U.S. 113 (1973) 6

Roper v. Simmons, 543 U.S. 551 (2005) 24

Rosanova v. Playboy Enter., 580 F.2d 859, 861 (5th Cir. 1978) 12

Rosenblatt v. Baer, 383 U.S. 75 (1966)...11, 16

Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971). 12

Sherbert v. Verner, 374 U.S. 398 (1963)..29

St. Amant v. Thompson, 390 U.S., 727 (1968) 10

Tah v. Glob. Witness Publ'g. Inc., 991 F.3d 231 (D.C. Cir. 2021). 7, 9, 10, 17

Wayment v. Clear Channel Broad., Inc., 116 P.3d 271 (Utah. 2005) 13

We the Patriots, Inc. v. Hochul, 17 F.4th 266 (2d Cir. 2021) 21

Statutes

28 U.S.C. § 1291 1

U.S.C. § 1254(1)...1

Other Authorities

3 William Blackstone, Commentaries 6

4 W. Blackstone, Commentaries on the Laws of England (1769) 8

Tracey A. Bateman, Annotation, Who is "Public Figure" for Purposes of Defamation Action, 19 A.L.R. 5th 1 (2022). 11

Rules

Federal Rule of Civil Procedure 56 1

Constitutional Provisions

U.S. Const. amend. I 14, 22, 23

STATEMENT OF JURISDICTION

On September 1, 2022, the United States District Court of Delmont, Beach Glass Division, entered its final Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. R. at 20. Pursuant to 28 U.S.C. § 1291, the United States Court of Appeals for the Fifteenth Circuit entered final judgment on December 1, 2022. R. at 38. Petitioner filed a timely petition for a Writ of Certiorari, which the Supreme Court granted. R. at 45–46. The Supreme Court has jurisdiction over this case pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Like all religions, the Church of the Kingdom ("the Church") has central tenets. R. at 3. The Church strongly values community through acts of service, such as blood donation, and marriage within the faith. R. at 4–5. Through both actions and rhetoric, Delmont and its governor Constance Girardeau ("the Governor") have unconstitutionally targeted the founder of the Church, Emmanuella Richter ("Mrs. Richter"), and the Church's core practices. R. at 5–7.

The Church is no stranger to state interference. R. at 3. After persecution in their former home, Pangea, Mrs. Richter and her husband received asylum in the United States in 2000. R. at 3.The Richters became United States citizens and integrated themselves into the economy through their company, Kingdom Tea. R. at 4. Mrs. Richter is not involved in the business but works behind the scenes organizing seminars. R. at 4.

Church's population has grown steadily in Delmont and the City of Beach Glass. R. at 4. Throughout both Kingdom Tea's and the Church's rise in popularity, the Church continues to devote itself to community. R. at 4–5. Children are homeschooled on religious and secular subjects and members are required to marry within the faith. R. at 4–5. Once members are

confirmed at fifteen, they are required to donate blood in alignment with Red Cross guidelines, as an act central to the Church's values service through the "servant's spirit." R. at 5.

Despite seeking refuge in the United States and the popularity of Kingdom Tea, the Church has still faced resistance. R. at 5. In 2020, the Church faced public condemnation when *The Beach Glass Gazette* published a story about both the Kingdom Tea and the Church's practices, specifically its blood donation practices. R. at 5

Delmont law sufficiently protected the rights of minors through 2021 by "prohibit[ing] minors under the age of sixteen from consenting to blood, organ, or tissue donations except for autologous donations and in case of medical emergencies for consanguineous relatives." R. at 5. Following the *Beach Gazette* story about the Church, the Delmont General Assembly passed a new statute, the Physical Autonomy of Minors Act ("PAMA"), to purportedly protect minors. R. at 5. This law was a dramatic shift from the existing law and "forbade the procurement, donation, or harvesting of the bodily organs, fluids, or tissue or a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." R. at 6. The Governor vigorously advocated for PAMA and signed the bill into law. R. at 6.

The conflict surrounding blood donation came to a head on January 17, 2022, when a tragic car accident resulted in the death of ten members of the Church. R. at 6. Church member Henry Romero miraculously survived but required a blood transfusion from a member of the Church. R. at 6. Fifteen-year-old Adam Suarez bravely and graciously agreed to donate blood to Romero, who was his cousin, to save Romero's life. R. at 6. Adam unexpectedly went into acute shock and was treated briefly in the intensive care unit. R. at 6.

The Governor began to speak out against the Church. R. at 7–8. Instead of commenting on the accident, she announced she was commissioning a task force to investigate the Church's

blood-donation service requirements. R. at 7. Mrs. Richter sought injunctive relief to stop this investigation, protect the sanctity of the Church's beliefs, and fight against the violation of her constitutional right of free exercise of religion. R. at 8. When asked by the press about this claim for relief, the Governor stated, "I'm not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children?" R. at 8.

Following the Governor's incendiary comments, Mrs. Richter amended her complaint to include an action for defamation. R. at 8. Under Rule 56(a) of the Federal Rules of Civil Procedure, the Governor moved for summary judgment. R. at 8. The District Court Judge of the Delmont Superior Court granted the motion, and the United States Circuit Court of Appeals for the Fifteenth Circuit affirmed the District Court's decision. R. at 20.

SUMMARY OF THE ARGUMENT

The Fifteenth Circuit correctly found that the actual malice standard of *New York Times v. Sullivan* is not found in the First Amendment for limited-purpose public figures and should overruled. However, it erred in finding that PAMA was neutral and generally applicable under *Employment Division, Department of Human Resources v. Smith* as PAMA targets the Church and is both underinclusive and overinclusive. Further, this court should overrule *Smith* because it contravenes the First Amendment.

First, the actual malice standard set in *Sullivan* is unconstitutional for limited-purpose public figures. *Sullivan* held that for public officials to recover under claims of defamation, there must be a showing of actual malice under the First Amendment. Over the last half-century, courts have broadened the scope of who must show actual malice which has narrowed who can recover under *Sullivan*. This dynamic was and remains egregiously wrong. *Stare decisis*, while an important hallmark of jurisprudence, is not compelling. The *Sullivan* Court failed to use

historical context or constitutional reasoning for its decision and instead legislated from the bench. Furthermore, the creation of the limited-purpose public figure is detrimental in today's media, which allows any individual to become a limited-purpose public figure or publish false information without consequence. Because *Sullivan* was wrong the day it was decided and has created an untenable dynamic for defamation recovery, it must be overruled.

Second, PAMA is not neutral and generally applicable and thus, fails *Smith*'s test. Under the Free Exercise Clause, the government cannot make laws prohibiting the free exercise of religion. *Smith* held that laws burdening religion are permissible if they are neutral and generally applicable. PAMA is not neutral because it specifically targets a practice that is unique to the Church and the law was passed following outcry about the Church's practices. Further, the Governor demonstrated animus toward the Church and Mrs. Richter, impacting the PAMA's neutrality. PAMA is not generally applicable because it is underinclusive and overinclusive. PAMA is underinclusive because it fails to fully address the government's interest in protecting the safety of minors, and it is overinclusive because its purposes could be conducted through less restrictive means as priorly permitted.

Third, the neutral and general applicability test under *Smith* is unconstitutional. Like *Sullivan*, *stare decisis* is not compelling here. *Smith* was egregiously wrong because it contradicts the protections of the Free Exercise Clause. *Smith* was weakly reasoned as it misclassified prior precedent and misapplied its new test to its facts. Further, the standard is unworkable because it is ambiguous and allows for inconsistent application. Finally, *Smith* negatively affects the courts' need for consistency with laws that burden religion at any level.

Mrs. Richter respectfully requests that this Court find PAMA not neutral and generally applicable and thus find it must be subject to strict scrutiny. Mrs. Richter requests this Court

overrule *Sullivan*'s actual malice standard for limited-purpose public figures and *Smith*'s neutral and generally applicable test for laws that incidentally burden religion.

ARGUMENT

In *New York Times v. Sullivan*, this Court proclaimed the Constitution "requires" a new federal rule prohibiting public officials from recovering for defamation unless the statement was made "with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times, Inc. v. Sullivan*, 376 U.S. 254, 279–80 (1964). This Court found that the New York Times acted negligently rather than recklessly, which the new standard required. *Id.* 287–88. Subsequent case law over the last half-century has created too broad a class of those who must meet this actual malice standard to get relief. *See Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* 472 U.S. 749, 761 (1985) (finding that parties who were not public figures could still be public figures if the defamation was somehow related to an issue of public concern). *Stare decisis* should not deter this court from overturning *Sullivan*.

I. ***Stare decisis* should not compel this Court to follow *New York Times v. Sullivan* for limited-purpose public figures, and instead, the standard must be overruled.**

"Stare decisis is not an inexorable command." *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, 2237 (2022) (citing *Pearson* v. *Callahan*, 555 U. S. 223, 233 (2009)). When overturning *Roe v. Wade*, 410 U.S. 113 (1973), Justice Alito outlined four main factors to test when a court must deviate from *stare decisis*: the nature of the error of the case, the quality of the reasoning, the "workability" of the rules imposed, and the absence of concrete reliance. *Id.* at 2265. Under this test, this Court must find *Sullivan* unconstitutional for limited-purpose public figures.

A. *Sullivan* was egregiously wrong the day it was decided and was unmasked as egregiously wrong for limited-purpose public figures.

When reviewing *Roe*, Justice Alito determined that its holding was "egregiously wrong and on a collision course with the Constitution from the day it was decided." *Dobbs*, 142 S. Ct. at 2237, 2243. In his concurrence in *Ramos v. Louisiana*, 140 S. Ct. 1390, 1414–15 (2020), Justice Kavanaugh outlined factors for when a decision is not just wrong, but egregiously so. 140 S. Ct. at 1414–15. Justice Kavanaugh also noted that a decision may be egregiously wrong when decided or "unmasked" as egregious based on later legal or factual understandings. *Id.* at 1415.

While common law libel was initially a serious infraction, *Sullivan* made it easier for publishers to dodge liability. In his concurrence for the denial of certiorari in *McKee v. Cosby*, 586 U.S. ____ (2019), Justice Thomas stated that *Sullivan* was a "fundamental change in the relationship between the First Amendment and state libel law." *McKee* 586 U.S. at 10 (Thomas, J., concurring). According to Thomas, the initial burden for common law libel was lower, showing that libel against public figures was "if anything *more* serious and injurious than ordinary libel." *Id.* at 7 (citing 3 William Blackstone, Commentaries *124). This new constitutional burden is inconsistent and incoherent with past precedent, making the decision egregiously wrong. *See Ramos*,140 S. Ct. at 1414.

The slow metastasis of who qualifies as a public figure over the last half century has further "unmasked" the egregiousness of *Sullivan*. *See id*. at 1415. In *Tah v. Global Witness Publishing. Inc*., an international human rights organization published that the plaintiff had accepted bribes in connection with an oil license. *Tah v. Glob. Witness Publ'g. Inc*., 991 F.3d 231, 235 (D.C. Cir. 2021). Despite the majority finding no evidence of bribery, the court affirmed the plaintiff's failure to allege actual malice. *Id.* The Court of Appeals for the District of

Columbia found that the organization's accusations of bribery did not meet the actual malice standard, merely citing the First Amendment's "broad protections." *Id*. *Tah* demonstrates that the actual malice standard sets an unreasonably high burden for limited-purpose public figures, which hinders justice instead of protecting the First Amendment. Because it created a roadblock to individual recovery for defamation, *Sullivan* is as egregiously wrong now as it was in 1964.

B. Sullivan's reasoning "stood on exceptionally weak grounds."

Justice Alito's second factor assesses the quality of an opinion's reasoning. *Dobbs*, 142 S. Ct. at 2265. When analyzing *Roe*, Justice Alito found that the *Roe* Court failed to acknowledge historical context, ruled like a legislative body, and abandoned Constitutional reasoning. *Id.* at 2226, 2237-38. The *Sullivan* Court also failed to acknowledge historical context, adjudicated like a legislative body, and abandoned sound reasoning of the Constitution.

In fact, the *Sullivan* Court's only historical evidence was the Sedition Act of 1798 when deciding to elevate defamation to constitutional scrutiny. *See McKee*, 586 U.S.____at 12; *Sullivan*, 376 U.S. at 273. The Court swiftly moved on from historical evidence in its rationale by stating that any distinctions between state and congressional oversight of libel were "eliminated" with the adoption of the Fourteenth Amendment. *Sullivan*, 376 U.S. at 277. The First Amendment was incorporated to the States through the Fourteenth Amendment in 1925. *See Gitlow v. New York*, 268 U.S. 652 (1925). Yet even by 1942, in *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942), the Supreme Court continued to find that libel did not raise any constitutional problems. *McKee*, 586 U.S.___ at 9; *Chaplinsky*, 315 U.S. at 571–72 (1942). In his dissent from the denial of certiorari in *Berisha v. Lawson*, 594 U.S. ___ (2021), Justice Gorsuch detailed how from the Founding, the tort of libel served as an appropriate state-level deterrent to false publications. *Berisha*, 594 U.S. at 1–2 (Gorsuch, J., dissenting) (citing 4 W.

Blackstone, Commentaries on the Laws of England 151–152 (1769)). The States appropriately adjudicated libel cases without constitutional interference prior to *Sullivan*. *See McKee*, 586 U.S.___at 7; *Gertz v. Welch*, 418 U.S. 323, 369–70 (1974).

Furthermore, the *Sullivan* Court legislated from the bench. Judge Silberman explained in *Tah* that *Sullivan* "had less to do with repairing reputations and more to do with deterring the northern press from covering civil rights abuses." 991 F.3d at 253. He goes so far as to "understand, if not approve" this policy decision, given the civil rights movement and importance of media coverage. *Id.* at 253–254. However, Judge Silberman ultimately found *Sullivan* to be "dress[ing] up policy making in constitutional garb." *Id.* at 252. Justice Thomas echoed this in *McKee*: instead of simply applying the First Amendment as it was understood at ratification, "the Court fashioned its own 'federal rule[s]' by balancing the 'competing values at stake in defamation suits.'" *McKee* 586 U.S____ at 2 (citing *Gertz*, 418 U.S. at 334, 348).

Other cases adjudicating the actual malice standard support Judge Silberman's assertion. In *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984), the majority stated of *Sullivan*'s actual malice standard: "though the source of the rule is found in the Constitution, it is nevertheless largely a judge-made rule of law." *Bose Corp.*, 466 U.S. at 502. In *St. Amant v. Thompson*, 390 U.S., 727 (1968), the Court stated: "Inevitably its [the actual malice standard] outer limits will be marked out through case-by-case adjudication…." 390 U.S. at 730. Here, the Court acknowledged that the actual malice standard continued to evolve through fact-based adjudication rather than constitutional analysis. A holding weakly based in history and solely adapted by the courts should not survive *stare decisis*.

Finally, *Sullivan* is not grounded in constitutional reasoning. The common law of libel at the times of the First and Fourteenth Amendments did not require public figures to satisfy an

elevated standard of liability to recover damages. *McKee*, 586 U.S. ___at 6. Judge Silberman was quick to point that "[T]he holding [of *Sullivan*] has *no relation* to the text, history, or structure of the Constitution, and it baldly constitutionalized an area of law refined over centuries of common law adjudication." *Tah*, 991 F. 3d at 251. These comments about *Sullivan* mirror Justice Alito's overarching theme in *Dobbs*: *Roe* found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. *Dobbs*, 142 S. Ct. at 2266. Because *Sullivan* has no historical or constitutional ground to stand on and its rationale is largely policy-driven, its reasoning is weak and must be overruled.

C. The limited-purpose public figure is an unworkable standard in today's media.

Justice Alito's third factor centers on 'workability.' *Dobbs*, 142 S. Ct. at 2272. A rule is workable when "it can be understood and applied in a consistent and predictable manner." *Id.* In *Dobbs,* Justice Alito found *Roe* and its progeny *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) provided unclear guidelines. Specifically, Alito points to *Casey*'s "undue burden test" and the "long list of Circuit conflicts" it generated. *Id.* at 2274. Likewise, *Sullivan* and its progeny regarding limited-purpose public figures have proven to be ambiguous and their utility has been outstripped by modern media and technology.

i. There is unpredictability in determining who is a "limited-purpose public figure."

The application of the actual malice standard has had a nebulous evolution. *See Rosenblatt v. Baer,* 383 U.S. 75, 85 (1966) (determining who is a "public official"); *Curtis Publ'g Co., v. Butts*, 388 U.S. 130 (1967) (finding that a "public figure" may constitute a public official for purposes of actual malice); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* 472 U.S. 749, 761 (1985) (finding that parties who are not public figures for *all* purposes may still be

public figures for *a* particular controversy). The Court first hinted that private individuals could recover under the *Sullivan* standard in *Rosenbloom v. Metromedia*, *Inc.*, 403 U.S. 29 (1971). In that case the Court found that the standard for recovery should revolve *not* around the status of the individual, but rather whether the defamation at issue concerns public or general concern. *Rosenbloom*, 403 U.S. at 44–45.

Gertz v. Welch, the next case on point after *Rosenbloom*, divulges that the *Rosenbloom* Court could not agree on a controlling rationale. *See Gertz*, 418 U.S. at 333 ("The several statements not only reveal disagreement about the appropriate result in that case, they also reflect divergent traditions of thought about the general problem of reconciling the law of defamation with the First Amendment."). Rather than allow for private individuals to recover under the *Sullivan* standard, the *Gertz* Court pivoted and further parsed the definition of public figure to include the concept of the limited-purpose public figure. *See id.* at 351 (applying it to individuals who voluntarily inject themselves or are drawn into public controversy). By 1978, Judge Hill of the Fifth Circuit stated that *Sullivan*'s standard had "eluded a truly working definition . . . [and fell] within that class of legal abstractions where "I know it when I see it…" *Rosanova v. Playboy Enter.*, 580 F.2d 859, 861 (5th Cir. 1978) (also stating that the district court in that case had observed that defining public figures is "much like trying to nail a jellyfish to a wall."). This Court further muddied the scope of public figures in *Dun & Bradstreet, Inc.*, finding that parties who were not public figures could still be public figures for a particular controversy. *See Dun & Bradstreet, Inc.,* 472 U.S. at 763. A constitutional burden demands more than an "I know it when I see it" standard.

In her four-hundred page annotated American Law Report on public figures for purposes of defamation, Tracey Bateman assesses the fallout from this ambiguity: "[Courts]have made the

determination on a case-by-case basis depending on the circumstances of the particular case." Tracey A. Bateman, Annotation, Who is "Public Figure" for Purposes of Defamation Action, 19 A.L.R. 5th 1 (2022).

This could be due in part to the inconsistent tests applied state-by-state. For example, the Second Circuit Court of Appeals and California both have (different) four-part tests, while Utah only has a two-part test. *See Lerman v. Flynt Distrib. Co*., 745 F.2d 123, 136-37 (2d Cir. 1984) (finding that the plaintiff must invite attention to his views in order to influence others prior to the incident subject to the litigation, voluntarily inject himself into a public controversy related to the litigation, assume a position of prominence in the controversy, and maintain regular access to the media);*Wayment v. Clear Channel Broad., Inc.*, 116 P.3d 271, 282-83 (Utah. 2005) (finding the first step to be analyzing whether the plaintiff's claim is isolated to a particular controversy and the second to examine the nature and extent of the plaintiff's participation in that controversy); *Grenier v. Taylor*, 183 Cal. Rptr. 3d 867, 877 (Dist. Ct. App. 5th 2015) (finding the elements to include a publicly debated controversy, the plaintiff's voluntary actions to influence the issue which "attempt to thrust" the plaintiff into the public eye, and defamation germane to the plaintiff's participation in the controversy). This discrepancy within the elements nationwide leads to an unworkable standard with inconsistent results across jurisdictions.

Bateman articulates the unworkability of the public figure standard nationwide, specifically focusing on the limited-purpose public figure. For example, some courts have held that religious leaders are not limited-purpose public figures. *See generally Ogle v. Hocker*, 279 Fed. Appx. 391 (6th Cir. 2008); *Davis v. Keystone Printing Serv.*, 507 N.E.2d 1358 (Ill. App. Ct. 1987); *Grenier v. Taylor*, 183 Cal. Rptr. 3d 867 (Dist. Ct. App. 5th 2015). In *Davis*, defendants argued that plaintiff was a limited-purpose public figure because he involved himself in politics,

made public speeches, and opened a storefront ministry. *See Davis*, 507 N.E.2d at 1362. The court found that despite these activities, there was no public controversy into which plaintiff had inserted himself to constitute being a limited-purpose public figure. *See id.* at 1363. The court held that being a religious figure did not automatically make him a public figure. *Id.* at 1364.

However, other courts *have* held that religious leaders are public figures under *Sullivan*. In *Reader's Digest Ass'n v. Superior Court*, the Supreme Court of California found that a church and its founder were public figures because of their "myriad attempts to thrust" the defamation case and church in general into the public eye. *Reader's Digest Ass'n v. Superior Court*, 690 P.2d 610, 616 (Cal. 1984). The plaintiffs did this by getting featured in a documentary, four books, and multiple popular magazines, as well as engaging in "extensive publicity campaigns in which it sought and achieved a favorable reputation." *Id.* at 617. Additionally in *Contemporary Mission, Inc. v. New York Times Co*., the Second Circuit affirmed that plaintiffs were limited-purpose public figures because they "openly invited media attention" by voluntarily injecting themselves into public controversy. *Contemporary Mission, Inc. v. New York Times Co.*,842 F. 2d 612, 618 (2d Cir. 1988). This disjointed evolution of the limited-purpose public figure mirrors Justice Alito's thoughts on unworkability: "when vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine has failed to deliver the 'principled and intelligible' development of the law that *stare decisis* purports to secure." *Dobbs*, 142 S. Ct. at 2275.

ii. Today's media landscape and public discourse make the limited-purpose public figure a totally unworkable standard.

The "motivating forces" behind *Sullivan* are no longer compatible with today's realities. *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). In *Rosenblatt*, one of the first cases to adjudicate the

concept of the "public figure," the Court reiterated two reasons underlying *Sullivan*. *See id.* The first was a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Id*. at 85. The second underlying principle was that "[such debate] may well include vehement, caustic, and sharp attacks on government and public officials." *Id*. Today, any individual with access to the internet can voluntarily enter any public debate she wants with virtually no checks on any attacks she makes. While courts nationwide have a variety of tests as barriers to determining a limited-purpose public figure, Justice Gorsuch noted that private citizens can constitute limited-purpose public figures within "certain channels of our now highly-segmented media even as they remain unknown in most." *Berisha*, 594 U.S. ___at 6 (Gorsuch, J., dissenting) (citing *Hibdon v. Grabowski*, 195 S.W. 3d 48 (Tenn. App. 2005), in which an individual in the jet-skiing community was considered a public figure and voluntarily advertised on a jet-ski specific website). That anyone can publish, and thus, become a limited-purpose public figure has diluted *Sullivan* and its progeny's efficacy.

D. Reliance on New York Times v. Sullivan and the actual malice standard allows the media to get away with defamation.

Justice Alito's final factor evaluates whether overruling the case will "upend substantial reliance interests." *Dobbs*, 142 S. Ct. at 2276. Justice Alito explains that reliance interests are found "where advance planning of great precision is most obviously a necessity." *Id.* at 2276 (citing *Casey*, 505 U.S. at 856). Alito argues that there is little reliance on *Roe* and *Casey*, so it is acceptable to overturn *Roe. Id*. at 2277.

According to Justice Gorsuch "over time the actual malice standard has evolved from a high bar to recovery into an effective immunity from liability." *Berisha*, 594 U.S. ___at 5. Justice Gorsuch argued that the current "optimal legal strategy" is to publish *without*

investigating or fact-checking. *Id.* Whereas Justice Alito argued that the reliance interests for *Roe* and *Casey* were small enough to overturn them, here, the great reliance interest on *Sullivan* is detrimental to journalism. *Dobbs*, 142 S. Ct. at 2275. As Justice Gorsuch stated: "our new media environment also facilitates the spread of disinformation." *Berisha*, 594 U.S. ___at 4. Overturning *Sullivan*, especially with regards to individuals who may qualify as limited-purpose public figures, would allow this Court to create a standard that holds today's media accountable. *See Tah* 991 F.3d at 254 (citing *Dun & Bradstreet*, 472 U.S. at 769) (White, J., concurring)). Given that *Sullivan* was egregiously wrong when decided, led to myriad unworkable standards with regards to limited-purpose public figures, and bars those figures holding the media accountable, it should be overturned.

II. The United States Court of Appeals for the Fifteenth Circuit erred in concluding that PAMA is neutral and generally applicable under *Employment Division, Department of Human Resources v. Smith*.

The Free Exercise Clause provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const. amend. I. The Fourteenth Amendment made the First Amendment applicable to the actions of States, creating even broader protections. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In 1990, this Court went against precedent and held that laws that incidentally burden religion are subject to lower scrutiny when they are neutral and generally applicable. *See Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 876–82 (1990).

PAMA is neither neutral nor generally applicable under *Smith*. First, PAMA is not neutral because the object of the law, meaning its purpose, is to restrict Church's core beliefs. Second, PAMA is not generally applicable because it is both underinclusive and overinclusive.

Finally, *Smith* should be overruled because the decision is egregiously wrong, weakly reasoned, unworkable, and does not allow for judicial reliance.

A. PAMA is not neutral because the object of the law is to restrict the Kingdom Church's blood donation practices.

A law is not neutral when the object of the law is to infringe upon or restrict practices based solely upon their religious motivations. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532–40 (1993). To determine the object (or purpose) of the law, the Court looks to the effect and circumstances of the law and the context surrounding the creation and enactment of the law. *See id.* at 532–40.

When the effects and circumstances of a law targets a practice unique to a religion, the law is not neutral. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 534–35. In *Lukumi Babalu Aye, Inc.*, a city was concerned when a Santeria church, known for sacrificial practices, attempted to establish various religious facilities. *Id.* at 525–26. The city passed three ordinances explicitly making ritual animal sacrifices unlawful. *Id.* at 527. This Court held that the law was not neutral because the use of the words "ritual" and "sacrifice" in the ordinances allowed them to target the conduct of the religion. *See id.* at 534–35. Similarly, in *Central Rabbinical Congress*, because of its concern about the spread of herpes simplex virus to infants, a city promulgated a regulation prohibiting direct oral suction as part of a circumcision without written parental consent. *Cent. Rabbinical Cong. Of U.S. & Can. v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d 183, 185–86 (2d Cir. 2014). This ritual was unique to certain Hasidic groups. *Id.* The Second Circuit held that while the language was neutral on its face, it targeted a practice that was specific to a religious sect, and thus, was not neutral. *See id.*

When the public context surrounding the law's creation indicates general animus towards a specific religious group, the law is not neutral. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 526–35. In *Lukumi Babalu Aye, Inc.*, before passing the ordinances, the city passed a resolution outlining concern about religious practices "inconsistent with the public morals." *Id.* at 526–27, 535. This Court held that the resolution demonstrated sentiments against the Santeria practices that illustrated specific targeting and thus, a lack of neutrality. *See id.* 535–37; *see also Ex rel. H.R. v. Rockland Cty. Dep't of Health*, 53 F.4th 29, 33–37 (2d Cir. 2022) (noting that the removal of previously allowed religious exemptions demonstrated religious animus and would allow a jury to find a law not neutral).

Animus on the part of lawmakers involved further demonstrates a lack of neutrality. In *Rockland County*, a health department passed an emergency declaration that excluded religious exemptions from vaccination requirements. 53 F.4th at 33–34. These orders especially impacted Hasidic communities which previously received exemptions. *See id.* During depositions, a county executive stated that the declarations were issued in part because of upcoming Jewish holidays. *See id.* at 37. The same executive actively lobbied to repeal religious exceptions in vaccine requirements. *See id.* The Second Circuit found the executive's statements were such that a reasonable jury could find that the county had acted with religious animus to target the Hasidic community. *See id. But see We the Patriots, Inc. v. Hochul*, 17 F.4th 266, 280–84 (2d Cir. 2021) (holding an emergency rule requiring healthcare workers to be vaccinated against COVID-19 with no religious exemptions was neutral despite negative comments from the governor because the comments were personal opinions about religious morality generally).

While facially neutral, PAMA's object is to target the Church. Like the ordinances in *Lukumi Babalu Aye, Inc.* that impacted solely ritual sacrifice, PAMA solely operates to target the

Church's blood donation practice. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 534–35; R. at 2, 5–7. PAMA specifically prohibits "the procurement, donation, or harvesting" of bodily fluids, including blood, which is not a practice that commonly occurs with those under sixteen, and is instead, unique to the Church. R. at 2. The narrow targeting of PAMA is further like the law in *Central Rabbinical Congress* because the blood donation practice is an identifiable component of the Church. *See* 763 F.3d at 194–95; R. at 2, 5–7. Because PAMA narrowly targets a practice that is the sole provenance of a religious group, it is not neutral. *See* R. at 2, 5–7.

PAMA is not neutral because the law's situational context demonstrates that the Church was the government's specific target. *See* R. at 5–7. PAMA resulted in part because of general outcry related to the Church's blood donation following a 2020 news story that highlighted the practice. R. at 5. In both this case and *Lukumi Babalu Aye, Inc.*, public response pushed the government to act and resulted in a law that targeted a religious practice unique to a religion, demonstrating a general antagonistic background to the laws' passings. *See* 508 U.S. at 534–35 ; R. at 5. Further, PAMA's elimination of exceptions for autologous donations and medical emergencies for consanguineous relatives provides important context that demonstrates religious targeting. *See* R. at 5. These eliminations are like the elimination of religious exemptions to vaccine requirements in *Rockland County* because they mark a dramatic shift in policy that instead directly and specifically targets religious groups. *See* 53 F.4th at 33–37; R. at 5.

The Governor demonstrated personal animus against the Church. *See* R. at 8. She focused on the Church's practices in her reelection campaign, created a task force to investigate the Church, and called Mrs. Richter a vampire to the press. R. 6–7. This antagonism is like the animus found in *Rockland County* against Hasidic holidays because it shows that an individual with power to enact and enforce the law is targeting a specific religion. *See* 53 F.4th 29, 33–37;

R. at 6–8. Her dismissive vampire comment demonstrates further personal animus toward the Church as the dismissive nature makes the comment a personal attack as opposed to mere opinions like those expressed in *Hochul*. *See* 17 F.4th at 280–84; R. at 6–8. Because of the prominent role the Governor played in the enactment and enforcement of PAMA, this evidence of animus demonstrates that PAMA is not neutral. *See* R. at 6–8.

PAMA targets the Church's practices and is thus not neutral. Because PAMA is not neutral under *Smith* test, it must be subject to strict scrutiny. *See* 494 U.S. at 876–82; R. at 5–8.

B. PAMA is not generally applicable because the law is overinclusive and underinclusive, thus it fails the Smith test and must be subject to strict scrutiny.

Generally applicable laws under *Smith* cannot target a specific religion. *See* 494 U.S. at 891–893 (O'Connor, J., concurring). Selective laws are permissible but must be generally applicable and not create inequality through being either underinclusive or overinclusive. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 542; *see also id.* at 578 (Blackmun, J., concurring).

i. PAMA is underinclusive and thus, not generally applicable because it does not meet its purported purpose of protecting the children of Delmont.

A law is underinclusive and is not generally applicable when it does not fulfill its asserted purpose or permits secular conduct while prohibiting similar religious conduct. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 542; *id.* at 578 (Blackmun, J., concurring); *Cent. Rabbinical Cong.*, 763 F.3d at 185–88; *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1874–78 (2021).

A law that does not address all aspects of the purported government interest is underinclusive and not generally applicable. In *Lukumi Babalu Aye, Inc.*, the government claimed its ordinances worked to protect the public health and to prevent animal cruelty. 508 U.S. at 543. This Court found that the ordinances were underinclusive because they permitted

other cruel acts such as euthanasia of stray animals and allowed hunters to dispose of their kills in manners different from sanctioned slaughterhouses. *See id.*; *see also Cent. Rabbinical Cong.*, 763 F.3d at 185–88 (holding that a health code provision prohibiting direct oral suction circumcision without parental consent to prevent the spread of a virus was not generally applicable because the regulation did not impact the majority of virus transmissions).

PAMA is underinclusive because it arbitrarily focuses on only those under sixteen and thus, does not fulfill its asserted purpose of protecting all minors. R. at 2. Eighteen is the age which society has chosen as the mark between childhood and adulthood and PAMA only applies to minors under sixteen. *See Roper v. Simmons*, 543 U.S. 551, 554 (2005). PAMA is like the ordinances in *Lukumi Babalu Aye, Inc.* that allowed for some forms of animal cruelty and behaviors endangering public health despite its purported goals. *See* 508 U.S. at 543; R. at 2. Because PAMA only applies to certain minors, it arbitrarily allows minors between sixteen and eighteen to continue to engage in the prohibited activities. R. at 2, 6–8. Since PAMA does not encompass all minors, it is underinclusive and is therefore not generally applicable. R. at 2, 6–8.

ii. PAMA is overinclusive because the government could protect the welfare of children in a less restrictive manner.

A law is overinclusive and is therefore not generally applicable when the law encompasses more protected conduct than is necessary to achieve the law's asserted purpose. *See Lukumi Babalu Aye, Inc.*, 508 U.S. at 538.

Laws are overinclusive and not generally applicable when the government interest could be served in less restrictive ways. In *Lukumi Babalu Aye, Inc.*, the city acted to protect the public health and prevent animal cruelty. 508 U.S. at 538–43. This Court noted the city could have addressed both interests through focusing on proper animal disposal and treatment of animals.

See id. Because the interest could be served through less restrictive means, this Court found that the law was overinclusive and not generally applicable. *See id.*

PAMA is overinclusive because it allows for no exemptions. *See* R. at 2. Like the ordinances in *Lukumi Babalu Aye, Inc* that could have had a narrower focus, PAMA could have still protected minors while allowing them to donate for autologous donations or medical emergencies of relatives. *See* 508 U.S. at 538–43; R. at 2, 5–8. These exceptions would allow the law to protect minors by limiting their scope to engage in the listed activities but would provide necessary exemptions to permitting minors fifteen and older to engage in the Church's practices. *See* R. at 5–8. Because Delmont could serve its governmental purposes with the listed exemptions, PAMA is not the least restrictive means, and the law is overinclusive. *See* R. at 5–8.

Because the law is both overinclusive and underinclusive, it is not generally applicable. Because it is neither neutral nor generally applicable, it fails the *Smith* test and must be subjected to strict scrutiny. *See* 494 U.S. at 876–82.

III. Stare decisis should not compel this Court to follow *Employment Division, Department of Human Resources v. Smith* neutral and general applicability test, and instead, the standard must be overruled.

Applying the *Dobbs* factors to *Smith* as with *Sullivan* above to determine whether a precedent can be overruled, this Court must look to four main factors: the nature of the error; the quality of reasoning; the "workability" of the rules imposed; and the absence of concrete reliance. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2264 (2021); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397–99 (2020).

Under the first factor, *stare decisis* is not compelling when an error is egregiously wrong, meaning there is an erroneous interpretation of the Constitution. *See Dobbs*, 142 S. Ct. at 2265;

Ramos, 140 S. Ct. at 1397; *see also*140 S. Ct. at 1414 (Kavanaugh, J., concurring). In *Ramos*, there was a jury trial in Louisiana where a nonunanimous conviction did not result in mistrial. 140 S. Ct. at 1394. This system resulted in nonunanimous jury sentencing a defendant to life in prison. *Id.* This Court looked to the language of the Sixth Amendment and found that the text requires unanimous jury convictions. *See id.* at 1397.

The Court can and must overrule a decision when the quality of the opinion's reasoning is weak under the second factor. *See Dobbs*, 142 S. Ct. at 2265. In *Dobbs*, this Court found that *Roe v. Wade* was weakly reasoned. *Id.* The Court noted that weakly reasoned holdings are those that rely on matters not relating to the Constitution; misinterpret precedent; and rely on inaccurate historical narratives. *Id.*

To satisfy the third factor's requirement of workability, a standard must be consistent and predictable. *See Dobbs*, 142 S. Ct. at 2272. In *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, there was a contract to purchase an aircraft, but one party refused to pay as its purpose had been frustrated because demand had lowered. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 272–73 (1988). The issue before the court was whether a district court's denial of a motion to stay litigation pending the resolution of a state court procedure was immediately appealable. *Id.* at 274–75. Under existing doctrine, an order by a federal court staying or refusing to stay its proceedings was appealable only if court could meet two conditions. *See id.* at 280–81. This Court held that the decision was unworkable because the conditions were arbitrary in practice as they were unnecessary to achieve the goals of the doctrine and did not match historical and competing precedents. *See id.* at 282–84; *see also Dobbs,* 142 S. Ct. at 2272 (holding that the undue burden standard in abortion cases was unworkable because the term lacked a clear standard and was ambiguous).

The final factor requires that a decision to overrule prior precedent cannot upend substantial reliance interests on specific law. *See id.* at 2276. In *Dobbs*, this Court found that individuals' planning on the availability of abortions was an intangible reliance that did not reach a sufficient level of definiteness as to prevent the Court from overruling *Roe*. *See id.* at 2276–77. The Court further noted that assessing novel and intangible forms of reliance is impractical and does not allow for consistency. *See id.* Conversely, in *Ramos*, this Court found that the State has a strong reliance interest in unanimous juries because it must be able to rely on its final judgments and the standard could be consistently applied. *See Ramos*, 140 S. Ct. at 1397, 1407.

The decision in *Smith* was egregiously wrong because it was an erroneous interpretation of the Constitution. The Free Exercise Clause expressly provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const. amend. I**.** The Free Exercise Clause prevents any governmental regulation of religious beliefs, meaning that the government can neither compel a belief nor penalize or discriminate against an individual because of their religious views. *See Sherbert v. Verner*, 374 U.S. 398, 401–02 (1963). The Free Exercise Clause clearly states that no law may prohibit the free exercise of religion which is as clear as the Sixth Amendment's requirement for a unanimous jury in *Ramos*. *See* U.S. Const. amend. I;140 S. Ct. at 1394–97. The text of the First Amendment does not allow for any exceptions. *See generally* U.S. Const. amend. I. Therefore, *Smith* is egregiously wrong because it reads an exception to the Free Exercise Clause, thus, it went against the text of the Free Exercise Clause and therefore, is egregiously wrong. *See Smith*, 494 U.S. at 876–82.

Smith was weakly reasoned and contradicted decades of precedent. *See Fulton*, 141 S. Ct. at 1868 (Alito, J., dissenting). In *Sherbert*, the Court previously held that even with generally applicable laws that are neutral on their face, there must be narrow tailoring if there is a burden

on religious exercise. *See id.* Both *Smith* and *Sherbert* involved a denial of unemployment benefits based on religious practices, but this Court in *Smith* misinterpreted the *Sherbert* precedent and limited *Sherbert* to only apply in narrow cases for individual exemptions in denials of benefits. *See id.* 1891–93. These limitations lacked prior precedent and ignored the fact that the facts of *Smith* fit into the exemptions it created because it addressed individual exemptions in the denial of unemployment benefits. *See id.* The *Smith* Court misinterpreted precedent by limiting *Sherbert* unnecessarily. *See Smith*, 494 U.S. at 876–82; *Fulton*, 141 S. Ct. at 1890–93 (Alito, J., dissenting). The *Smith* Court then failed to recognize that the facts in *Smith* fell into one of the new conditions it had created in that very case. *See Smith*, 494 U.S. at 876–82; *Fulton*, 141 S. Ct. at 1890–93 (Alito, J., dissenting). Because *Smith* was weakly reasoned, this Court must overrule it.

Smith permits laws that incidentally burden religion to be constitutionally permissible if they are neutral and generally applicable which is an unworkable standard that has distorted the Free Exercise Clause. *See Smith*, 494 U.S. at 876–82. *Smith* creates a hybrid exemption; laws that incidentally burden religion that are neutral and generally applicable that also implicate a separate fundamental right must still be subject to strict scrutiny. *See Fulton*, 141 S. Ct. at 1915 (Alito, J., dissenting). The hybrid exception allowed in *Smith* allows for an easy way around the rule as it creates a broad exception as many claims for free-exercise claims can be coupled with free-speech claims. *See id.* Like the doctrine in *Mayacamas Corp.*, the neutral and generally applicable text can be arbitrary as it provides broad exceptions and requires intense statutory analysis. *See Mayacamas Corp.*, 485 U.S. at 274–81; *Smith*, 494 U.S. at 878–82. Further, the rule is ambiguous like the undue burden standard in *Casey* because the terms are broad and ruling conflicting when applied to the similar facts of *Sherbert* and *Smith*. *See Smith*, 494 U.S. at

876–82; *Fulton*, 141 S. Ct. at 1915 (Alito, J., dissenting); *Dobbs*, 142 S. Ct. at 2272. Because *Smith*'s standard is ambiguous and allows for inconsistency, it is unworkable and can be overruled. *See Smith*, 494 U.S. at 876–82.

Finally, reliance interests will not be substantially upended if this Court overrules *Smith* because *Smith* itself does not allow for reliance. The flexibility *Smith*'s standard is most like the intangible reliance found in *Dobbs* that this Court found to be insufficient because it invited specific novel issues with each case. *See Dobbs*, 142 S. Ct. at 2276–77. A rule returning to prior precedent requiring strict scrutiny for any law burdening religion is more like the standard set forth in *Ramos* because the State needs to be able to consistently protect religion to follow the First Amendment. *See Ramos*, 140 S. Ct. at 1397, 1407; *Smith*, 494 U.S. at 876–82. A set standard would allow States to apply the same standard in all cases, allowing reliance. The State must be confident in its protection of religious freedoms under the Free Exercise Clause. Because the State has an interest in a clearer rule for reliance purposes, reliance on *Smith* would not be substantially upended. *See Ramos*, 140 S. Ct. at 1397, 1407; *Smith*, 494 U.S. at 876–82.

Smith was egregiously wrong, relied on weak reasoning, is unworkable when applied to new facts, and does not allow for reliance, thus, it can and should be overruled.

CONCLUSION

For the foregoing reasons, Mrs. Richter respectfully requests that this Court find that PAMA is not neutral and generally applicable and thus, must be subject to higher scrutiny. Mrs. Richter further requests that this Court overrule *New York Times v. Sullivan*'s actual malice standard for limited-purpose public figures and the neutral and general applicability test of *Employment Division*, *Department of Human Resources v. Smith*.

CERTIFICATE OF COMPLIANCE

Pursuant to the Seigenthaler-Sutherland Official Competition Rules:

1. The work product contained in all copies of Team 29's brief is in fact the work product of the team members;
2. Team 29 has complied fully with its law school's governing honor code;
3. Team 29 has complied with all Competition Rules.

/s/Team 29

Team 29

APPENDIX: CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

U.S. Constitution Amendment I:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech…"

U.S. Constitution Amendment XIV, §1:
"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. §1254 (1):
"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

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

28 U.S.C. § 1291:
"The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States …"

Federal Rule of Civil Procedure 56(a):
A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

State of Delmont Physical Autonomy of Minors Act (PAMA):
This statute forbids the procurement, donation, or harvesting of the bodily organs, fluids, or tissue, of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent.