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 OF THE RESPONDENT**

**TEAM 008**
***Counsel* for Respondent**

## QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifteenth Circuit properly granted Girardeau's motion to dismiss Petitioner's defamation claim after correctly applying *New York Times v. Sullivan,* which requires a showing of actual malice, to limited-purpose public figures?

II. Whether the Fifteenth Circuit correctly utilized the Smith test and found that the Physical Autonomy of Minors Act, is Constitutional because the statute does not mention any religion, is applicable generally without exemptions, and is justified by Delmont's interest in protecting child welfare?

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## STATEMENT OF JURISDICTION

The United States District Court for Delmont possessed subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331. The United States Court of Appeals for the Fifteenth Circuit possessed jurisdiction over this case pursuant to 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C § 1254.

## STATEMENT OF THE CASE

### I. STATEMENT OF THE FACTS

During the 1990s, the Petitioner founded the Church of the Kingdom ("Kingdom Church") in Pangea, a South American country. [R.3]. The Petitioner, along with her husband, who was a wealthy Pangea tea grower, financed door-to-door proselytization efforts and introductory seminars to build a following for Kingdom Church. *Id.*

In the 2000s, a military coup toppled the Pangea government, and the Kingdom Church became a target for governmental repression. *Id.* The Petitioner, as well as a large contingent of the church congregation, received asylum in the United States based on religious persecution. *Id.* Kingdom Church's congregation, as well as the Petitioner and her husband, settled in Beach Glass in the state of Delmont, living in designated compounds that are separated from the rest of the state but have grown outside the city limits of Beach glass and spread through the southern portions of Delmont state. [R. 3, 4]. The Kingdom Church has continued to grow for the past several decades through both conversions and immigration. [R.4].

Members mostly work within the compounds either through agricultural initiatives or the commercial sale of their tea, "Kingdom Tea," which Petitioner's husband oversees exclusively and whose proceeds go towards the operation of Kingdom Church. *Id.* All income is shared

communally, and Petitioner is dedicated solely to church matters. *Id.* The Petitioner does most of her work through the organization of church seminars inside the compound, which provide information about Kingdom Church's beliefs, history, and lifestyle, and are open to the public. *Id.*

One religious practice that became under controversy was the Kingdom Church's mandate that members, once confirmed, must not accept blood from or donate blood to a non-member. [R. 5]. Instead, the members are required to bank their own blood at local blood banks for emergencies. *Id.* This practice is a central tenet of the faith and therefore the church's homeschool activities for the members' children include blood donations as a part of the confirmed students' monthly "Service Projects." *Id.* The blood donation occurs on a schedule and is technically permissible under American Red Cross guidelines. *Id.* However, if a confirmed student is ill on a blood drive day, the donation may be skipped. *Id.*

In 2021, after public outcry over the ethics of Kingdom Church's blood banking practices, the Delmont General Assembly passed the state statute: Physical Autonomy and Minors Act ("PAMA"), forbidding the procurement, donation, or harvesting of bodily organs, fluids or tissue, of a minor (under the age of sixteen) regardless of profit or minor's consent. [R. 6]. The Respondent strongly advocated for this piece of legislation and signed it into law. *Id.* Prior to 2021, the state law prohibited minors under the age of sixteen from consenting to blood, organ, or tissue donations except in medical emergencies for consanguineous relatives (e.g., parents, children, cousins) and autologous donations. [R.5].

On January 17, 2022, a "Kingdom Tea" van was involved in a massive, multi-car crash on a bay bridge leading to Beach Glass city. [R.6]. There was an hours-long rescue effort to extract the victims of the crash. *Id.* Dozens of people died, including ten church members, with

the driver, Henry Romero ("Romero"), as the only surviving church member. *Id.* Romero was admitted to the Beach Glass Hospital in critical condition and doctors determined that he needed a life-saving operation, necessitating a call to all the Kingdom Church compounds to identify a donor with a matching blood type. *Id.*

Adam Suarez ("Suarez"), fifteen years old and recently confirmed into Kingdom Church, was a blood match for Romero, his cousin. *Id.* Prior to PAMA, Suarez's blood donation to Romero would have been permissible legally; however, these exceptions are not allowed under PAMA. *Id.* Suarez attempted to donate the recommended maximum amount of blood but in the middle of the process, Suarez went into acute shock, and was moved to the intensive care unit. *Id.* The news quickly picked up the story, interviewing church members, including the Petitioner and her husband. *Id.*

On January 22, 2022, during her re-election campaign, the Respondent attended a major fundraiser at Delmont University. *Id.* The Respondent was asked by the press about new plans upon re-election and the Respondent aired her concern regarding Delmont's Children and the crisis they faced in mental, emotional, and physical well-being. *Id.* Citing the federal statistics from the Department of Health and Human Services, Respondent revealed that the Department found a marked spike in child abuse and neglect between 2016 and 2020. *Id.* Respondent also cited the U.S. Centers for Disease Control and Prevention, in regard to data showing that a quarter of children who died by suicide experienced childhood neglect or abuse, with children of immigrants suffering especially high rates of such harm. *Id.*

The Respondent was asked about the Adam Suarez story and responded that a task force of governmental social workers was commissioned to investigate the Kingdom Church's blood-bank requirements for children. *Id.* The social work investigators were to help the Respondent

determine whether PAMA, or any other law, was implicated in "the exploitation of the Kingdom Church's children." *Id.* Respondent's statements garnered positive polling and focus group results, garnering her more support among her constituents, and thus the statements were included in the campaign fundraising efforts. *Id.* Both parties stipulate that the fact that the Respondent's remarks were made at a campaign fundraiser is not at issue. *Id.*

On January 25, 2022, the Petitioner, as head of the Kingdom Church, requested injunctive relief from the Delmont Superior Court's Beach Glass Division. *Id.* The Petitioner sought to stop the Respondent's investigation task force, claiming that the states' action constituted a violation of the Free Exercise Clause of the First Amendment. [R. 7, 8]. The complaint cited the church's asylum seeking from religious persecution in Pangea, paralleling those events with the Respondent's actions and attempts to interfere with the way the church raised its children in their faith. [R. 8].

On January 27, 2022, the Respondent was asked about the request for injunctive relief by the Petitioner at a large press event following a campaign rally. *Id.* Specifically, reporters at the press event wanted a response regarding the Petitioner's claims that the Respondent was persecuting Kingdom Church for its religious beliefs, like the military dictatorship in Pangea had done. *Id.* The Respondent replied, "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?" *Id.* In response to Respondent's comment, on January 28, 2022, Petitioner amended her complaint to include an action for defamation. *Id.*

## II. PROCEDURAL HISTORY

On January 25, 2022, in response to Respondent's task force investigation of the Kingdom Church, the Petitioner requested injunctive relief in order to prevent an investigation of the church's internal activity. *Id.* The Petitioner brought suit to the District Court challenging the investigation, as well as the Physical Autonomy and Minors Act ("PAMA") which it was based on, as a violation of her right to the free exercise of religion under the First Amendment of the Constitution. *Id.* On January 28, 2022, the Petitioner amended her complaint to include an action of defamation based on a statement made at the Respondent's re-election campaign. *Id.*

The Respondent moved for summary judgment under Rule 56 (a) of the Federal Rules of Civil Procedure, claiming that the task force investigation was constitutional as there was no dispute to the material fact or law; and the action for defamation, applied to limited-purpose public figures like the Petitioner, failed to meet the mandated actual malice standard of review. [R. 27]

On September 1, 2022, the District Court granted the Respondent's motion for summary judgment. *Id.* The Petitioner appealed to the United States Court of Appeals for the Fifteenth Circuit. *Id.*

On December 1, 2022, the Fifteenth Circuit affirmed the District Court's decision, finding that there is no issue of material fact as PAMA is both neutral and generally applicable. [R. 38] The Fifteenth Circuit also found that the District Court correctly held that the Petitioner was a limited-purpose public figure and because there is no genuine dispute of material fact as to the Petitioner's status, the motion for summary judgment as to the claim of defamation was affirmed. [R. 27]

The Petitioner petitioned for a writ of certiorari to review the Fifteenth Circuit Court's decision regarding (1) whether the extension of the *New York Times 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 the PAMA is neutral and generally applicable, and if so, whether *Emp. Div., Dep't of Hum. Res. v. Smith* should be overruled. [R. 45] The petition for a writ of certiorari was granted. [R. 46]

## SUMMARY OF ARGUMENT

This Court should affirm the decision of the United States Court of Appeals for the Fifteenth Circuit and hold that *New York Times* as applied to limited purpose public figures is constitutional and that the Physical Autonomy of Minors Act and its application to Petitioner does not violate the Free Exercise clause of the First Amendment.

The Court of Appeals correctly affirmed Girardeau's motion to dismiss Petitioner's defamation claim because the New York Times rule is the appropriate standard to apply. The New York Times rule, which requires a showing of actual malice, is the appropriate standard to apply to limited-purpose public figures because this rule correctly balances the competing interests between state defamation law and First Amendment guarantees, with the reputational protection of individuals. In evaluating the New York Times rule to limited-purpose public figures, this court should consider the public benefit from freedom of press and the State's strong interest in protecting this constitutional guarantee against individuals' ability to defend their reputation.

Girardeau's statement was directed at Petitioner, who thrusted herself into a public controversy. The controversy involved matters of public concern, involving public health policy in Beach Glass, and deserves the protection of unfettered discourse, while Petitioner has ample

opportunity to defend her reputation through her position of fame and notoriety. In requiring Petitioner, who has been classified as a limited-purpose public figure, to prove actual malice, this court would effectively balance the competing concerns involved in First Amendment protections with Petitioner's ability to defend herself from reputational falsehoods.

The Court of Appeals also correctly concluded that the Physical Autonomy of Minors Act is neutral and generally applicable and satisfies the test established by Emp. Div., Dep't of Hum. Res. v. Smith. The Smith test is the appropriate standard to apply for free exercise questions because it provides the most efficient way for judges to appropriately balance the essential functions of state governments with the free exercise of religion. The Physical Autonomy of Minors Act is both neutral and generally applicable because it was enacted in response to rising rates of child abuse and neglect, applies to all within Delmont irrespective of religion, provides no exceptions, and does not single out any particular religion or religious practice because of their religion.

The Physical Autonomy of Minors Act is constitutional because it is generally applicable and neutral. It serves a legitimate government interest in regulating the health and safety of minors in Delmont. Lastly, even if this Court finds that the statute is not generally applicable and neutral, the statute still survives strict scrutiny because it was enacted to further a compelling government interest and is narrowly tailored to achieve this purpose utilizing the least restrictive means to do so.

## ARGUMENT

I. THE COURT OF APPEALS CORRECTLY GRANTED GIRARDEAU'S MOTION TO DISMISS PETITIONER'S DEFAMATION CLAIM BECAUSE THE *NEW YORK TIMES* RULE IS THE APPROPRIATE STANDARD TO APPLY TO LIMITED-PURPOSE PUBLIC FIGURES

In *New York Times v. Sullivan*, the Supreme Court held that the constitutional guarantees of freedom of speech and press require "a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that 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 Co v. Sullivan*, 376 U.S. 254 (1964). The thrust behind the *New York Times* ruling is that when interests of public discussion are "particularly strong" the Constitution limits "the protections afforded by the law of defamation." *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). This analysis considers the complicated relationship between state libel law and freedom of speech and press and has become the "talisman which gives the press constitutionally adequate protection only in a limited field." *Curtis Publ'g Co. v. Butts*, 389 U.S. 889, 88 (1967).

The constitutional protections in *New York Times* were limited to speech regarding public officials, nevertheless the Supreme Court later extended the actual malice standard of *New York Times* to public figures. *See Id.*, *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). The dispute in the instant case rests on the application of the New York Times rule to limited-purpose figures, or individuals who have achieved a certain level of notoriety or fame in a particular area of public concern. *See Time Inc. v. Firestone*, 424 U.S.

448 (1976) These individuals have voluntarily thrust themselves into the public eye on a particular issue or matter, and their actions or statements have attracted media attention and public scrutiny. *Id*. To be considered a limited-purpose public figure, an individual must be involved in a matter of public concern and have voluntarily assumed a role of special prominence in that matter. *Id*. This means that they have actively sought out public attention or have played a significant role in shaping the public's understanding of the matter at hand. *Id*.

a. *New York Times* correctly balances the public benefit from freedom of press with competing State interests in protecting individual reputational falsehoods.

The *New York Times* standard is the appropriate standard to apply to defamation claims brought by limited purpose public figures because this analysis effectively assesses the tension between the public benefit from publicity and state defamation law. *See generally New York Times*, *Gertz*, 418 U.S. at 323, 94 (1974) (quoting "[t]he First Amendment requires that we protect some falsehood in order to protect speech that matters."). States have a pervasive and strong interest in preventing and redressing attacks upon reputation; however, these interests must not infringe on the constitutional guarantees granted under the first amendment, which require the protection of freedom of expression regarding public question. *See* U.S. Const. Amends. 1, 14; *Gertz* at 341. Consequently, there remains a national commitment to the principle that debate on public issues be "uninhibited, robust, and wide-open." *New York Times*, 376 U.S. at 270.

The protection of "private personality, like the protection of life itself" is left primarily to the individual States under the Ninth and Tenth Amendments. *Rosenblatt v. Baer*, 383 U.S. 75 (1966) (Stewart, P., concurring). To prevent the infringement of free expression, State interests in libel claims must not frustrate the constitutional protections for speech and press. *See Gertz*, 418 U.S. at 343 (concluding that state interest in compensating injury to the reputation of private individuals requires that a different rule should be obtained with respect to them.) Accordingly, State remedies for defamatory falsehoods must not go beyond what is necessary to protect the legitimate interests involved. *Gertz*, 418 U.S. at 341.

In the instant case, the Delmont's legitimate interest in the promotion of publicity not only extends to speech regarding Beach Glass public health policy, but also extends to speech regarding Petitioner for a limited range of issues. Public discourse involving health policy is undeniably the type of controversy that the First Amendment was created to protect. Permitting private individuals to recover damages under ordinary negligence, despite voluntarily thrusting themselves before the public eye, would frustrate free expression relating to public health policy in Delmont. The State of Delmont must go no further than necessary to compensate individuals for the harm inflicted on them by defamatory falsehoods. Allowing limited purpose public figures to recover under ordinary negligence would go past what is necessary to protect individual reputations, while detrimentally chilling public discourse in the process.

b. Legitimate State interests in First Amendment protection outweigh individual interests in defending against reputational harm.

The New York Times rule requiring actual malice should be applied to limited purpose public figures bringing defamation claims because State interests in protecting Constitutional guarantees outweigh individual interests in reputational protection. Limited purpose public figures are individuals who have thrust themselves into a public controversy in order to "influence the resolution of the issues involved." *Gertz*, 418 U.S. at 345. Supreme Court precedent has established that there are two types of public figures in defamation claims: all-purpose public figures and limited-purpose public figures. *Id*. Limited purpose public figures are those drawn into a particular public controversy for a "limited range of issues." *Id*. The analysis as to whether an individual is a limited-purpose public figure contemplates the depth of the person's participation in the controversy, the amount of freedom the person has when engaging in the controversy, and whether the person uses media to advocate their cause. This analysis is no litmus test, nevertheless it affords significant consideration to the conflicting interests involved.

Those daring individuals who voluntarily inject themselves into a particular public controversy have assumed the risk of defamation to an extent, and due to their limited fame or notoriety, have greater access to the media than do private individuals, making it easier to defend themselves from reputational falsehoods. *See Gertz*, 418 U.S. at 344. As the Supreme Court has put it, the first remedy of any victim of defamation is self-help, and public figures "usually enjoy significantly greater access to the channels of effective

communication" and thus have a "realistic opportunity to counteract false statements" than private individuals. *Gertz*, 418 U.S. at 344.

This Court should affirm the application of *New York Times* to prevent individuals such as Petitioner, who've intentionally invited comment, to recover damages in defamation claims through mere ordinary negligence. Ruling otherwise would permit State courts to favor the rights of a few at the cost of the many. The State of Delmont has an obligation to protect the First Amendment protections of its citizens. Further, public figures have ample opportunity to defend their good name from reputational harm through the very channels of communication which they have injected themselves into. Petitioner is the head of Kingdom Church, which produces the immensely popular Kingdom Tea. [R. at 25]. These two may be separate functions, however the close connectedness inevitably draws attention. Despite the Church's attempts to remain reclusive in nature, the Church's controversial blood banking requirements have gained significant media attention and have led to state-wide publicity. [R. at 23]. Although Delmont has an interest in protecting its citizens from reputational harm, allowing limited-purpose public figures to recover so easily would disproportionately impact the State interests in protecting freedom of speech regarding public concerns. Petitioner's immediate access to public seminars, the Kingdom Tea company, and other media outlets affords her ample opportunity to use self-help to defend her good name.

c. This Court should adopt the application of the *New York Times* rule to limited purpose public figures because ruling otherwise would open the floodgates of frivolous litigation.

Private individuals bringing defamation claims must only prove ordinary negligence to recover damages. *Gertz*, 418 U.S. at 350 Establishing precedent that would allow individuals, like Petitioner who hold positions of notoriety, to recover under such a standard would invite a slew of defamation claims. The onslaught of litigation that would ensue following such a ruling could potentially include plaintiffs who have intentionally subjected themselves to such injury. *Id*. at 345. Allowing private individuals who have injected themselves into a public controversy to recover damages, by means other than actual malice, would invite endless defamation lawsuits, burdening state court dockets in the process.

This Court must prevent individuals who have invited public comment from recovering by means other than proving actual malice to forbid the opportunity of the intentionally injured to recover from any defendant that publicly speaks falsely of them. The nearly unlimited access to public discussion we have in society today, through means of social media, online news outlets, and content creation, has heightened the public's exposure to public discourse. It is exceedingly important for the courts to ensure the appropriate accommodation between State libel law and the protection of reputation without creating more loopholes for recovery. Allowing recovery based on ordinary negligence would inevitably open the floodgates to quarrelsome litigation and overload the state court dockets in the process. Thus, an appropriate rule must be established to limit the ability of the intentionally injured to recover with such ease, and *New York Times* sufficiently acts as such safeguard.

## II. THE FIFTEENTH CIRCUIT CORRECTLY HELD THAT THE PHYSICAL AUTONOMY OF MINORS ACT IS NEUTRAL AND GENERALLY APPLICABLE AND DOES NOT VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

The First Amendment to the Constitution prohibits Congress from making any law "respecting the establishment of religion or prohibiting the free exercise thereof." U.S. Const., amend. I. As held in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, a law prohibiting the free exercise of religion is one that "regulates or prohibits conduct because it is undertaken for religious reasons" or imposes penalties on free exercise of religious practices. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Foreseeing potential abuse of the Free Exercise clause as a means to circumvent otherwise legitimate laws and government actions, this Court established a test requiring only those laws be neutral and generally applicable, even if the law may have an incidental "effect of burdening a particular religious practice." *Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990); *Church of the Lukumi*, 508 U.S. at 531. The Fifteenth Circuit correctly determined that, because the Physical Autonomy of Minors Act ("PAMA") is neutral and generally applicable, the correct standard to apply is whether the statute satisfies rational basis scrutiny. Record (pg. 34-5) (*citing Fulton v. City of Philadelphia,* 141 S. Ct. 1868, 1876 (2021)).

The Supreme Court has "never held that an individual's religious beliefs excuse [them] from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate." *Smith*, 494 U.S. at 879. As far back as 1879, this Court has firmly held that permitting a claim of religious belief to exclude an individual from compliance with

the law "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Reynolds v. United States*, 98 U.S. 145, 167 (1878). Petitioner seeks to have this Court permit exactly that.

The PAMA statute must prevail because under Petitioner's argument, any individual or organization could claim blanket exemption from any statute they deemed undesirable by simply asserting a religious belief has been restricted. This would critically undermine the ability of the state of Delmont to govern and carry out essential government functions such as protecting child welfare, rendering the state government to "exist only in name." *Id.* Just as criminal prohibitions on polygamy have been found Constitutional by this Court, Delmont may prohibit the harvesting of a minor's body parts because "while [laws] cannot interfere with mere religious belief and opinion, they may with practices." *Id*. Any asserted interference with Petitioner's religious practices is merely incidental and does not amount to a violation of the First Amendment's Free Exercise clause.

a. The Physical Autonomy of Minors Act is neutral because it was enacted to protect the wellbeing of minors and does not restrict religious practices because of their religious nature.

The District Court and the Fifteenth Circuit Court of Appeals both correctly determined that PAMA is neutral. [Record 37]. As held in *Fulton*, government action ceases to be neutral "when it proceeds in a manner intolerant of religious beliefs or restricts practices *because of* their religious nature." *Fulton*, 141 S. Ct. at 1877 (emphasis

added). Further, this Court held in *Church of the Lukumi* that "a law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context." *Church of the Lukumi*, 508 U.S. at 533.

On its face, PAMA is neutral because the language of the statute prohibits the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor under the age of sixteen, regardless of profit or consent of the minor. In addition to being facially neutral, this statute is constructed in a way that is neither intolerant of religious beliefs nor does it restrict religious practices *because of* Petitioner's religious beliefs. Rather, it is written neutrally to prohibit the harvesting of bodily fluids and organs from children as a means of protecting them from abuse or harm, irrespective of religion and is practically applicable to all within Delma. This is in sharp contrast to the statute in *Church of the Lukumi* where the questioned statute in practice only affected the religious practices of one religion and not the general population. *See Church of the Lukumi*, 508 U.S. at 536 (holding that a facially neutral law was not neutral because the use of words such as ritual and sacrifice as well as the law's practical applicability to only one religion rendered the law discriminatory in purpose). Insofar as PAMA's prohibitions interfere with Petitioner's religious practices, such prohibitions are precisely the "conduct that the state is free to regulate" as contemplated by this Court in *Smith*.

Unlike in *Masterpiece Cakeshop, Ltd.* and *Trinity Lutheran Church of Columbia*, where religion was expressly mentioned in hostility by law or a government official, PAMA was not enacted in hostility towards Petitioner's religion, nor does it make any mention of religion. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138

S. Ct. 1719, 1722 (2018) (holding that the Commission's decision lacked neutrality because of official expressions of hostility towards religion by a commissioner); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017) (holding that state policy was not neutral because it "expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character"). Therefore, the Fifteenth Circuit correctly decided that because PAMA does not name the Petitioner's church, or any religious group, or any religious practice, and because the law was enacted to protect children from increasing rates of abuse and neglect, PAMA is neutral.

b. <u>The Physical Autonomy of Minors Act is generally applicable because it applies to all within Delmont and contains no exceptions.</u>

In determining whether a statute is generally applicable, the central question is whether 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. This Court also held in *Smith* that a statute is generally applicable if it would "otherwise [be] Constitutional as applied to those who engaged in the specified act for non-religious reasons." *Id.* The *Fulton* Court further specified that any statute that creates a "formal mechanism for granting exceptions renders a policy not generally applicable," whereas a law prohibiting specified conduct unilaterally, without consideration of individual circumstances, is generally applicable. *Fulton*, 141 S. Ct. at 1876.

Here, PAMA provides no mechanism for individualized exemptions and the enforcement of the statute involves no consideration of an individual's reasoning for noncompliance. In seeking to enforce PAMA against Petitioner, Respondent made no consideration of Petitioner's particular reasons for violating the statute, as any such reasons are irrelevant. As applied to those who engaged in the harvesting of a child's bodily fluids or organs for non-religious purposes, PAMA would undoubtedly be held Constitutional as the state has the authority to protect the welfare of children. *See Prince v. Massachusetts,* 64 S. Ct. 438, 441 (1944) (holding that "against these sacred private interests [in free exercise of one's religion], basic in a democracy, stand the interests of society to protect the welfare of children"). Accordingly, because the prohibition on the harvesting of a child's body parts and fluids would be Constitutional as applied to those engaging in the conduct without a religious purpose, the statute is generally applicable under *Smith* and *Fulton. Smith*, 494 U.S. at 884; *Fulton*, 141 S. Ct. at 1876.

Further, PAMA is unlike the laws in *Trinity Lutheran Church of Columbia, Inc.* and *Church of the Lukumi* in that it applies to all within Delmont, not just religious groups or Petitioner's religion. *See Trinity Lutheran Church of Columbia, Inc.,* 137 S. Ct. at 2021 (holding that a policy was not generally applicable where it prohibited funds to causes that are religious in nature); *see also Church of the Lukumi*, 508 U.S. at 536 (holding that the city ordinance was not generally applicable because the resolution stated "the city's commitment to prohibit 'any and all [such] acts of any and all religious groups.'" and provided exceptions, practically applying the ordinance solely to the practices of one religion). Therefore, because PAMA applies to all in Delmont without

exception and does not single out religious individuals or any particular religion, the law is generally applicable.

c. The Physical Autonomy of Minors Act satisfies rational basis scrutiny because there was a non-discriminatory motivation for the passage of the statute.

As this Court has held, a neutral and generally applicable statute must only survive rational basis review to be Constitutional. *Smith*, 494 U.S. 872. This level of scrutiny "allows the government to justify a law with 'rational speculation unsupported by evidence or empirical data.'" *Silvester v. Becerra*, 138 S. Ct. 945, 948 (2018) (*quoting FCC v. Beach Communications, Inc.*, 113 S. Ct. 2096, 2101 (1993)). So long as "there is any reasonably conceivable state of facts that could provide a rational basis for the" neutral and generally applicable statute, it is Constitutional and survives rational basis scrutiny. *Id.* To survive rational basis scrutiny, a legislature need not "articulate its reasons for enacting a statute [as it is] entirely irrelevant . . . whether the conceived reason for the challenged [law] actually motivated the legislature." *Id.* Further, the government has "no obligation to produce evidence" to support the alleged basis for the statute. *Id.*

Here, Respondent has exceeded this standard by not only providing a rational basis for the passage of this legislation, but she has also provided evidence documenting the legitimacy of her and the legislature's concern for the health and safety of children under the age of 16. During her campaign for Governor, a central tenet of Respondent's platform was solving the crisis faced by children as to their "mental, emotional, and

physical well-being. Several sets of statistics released by the Department of Health and Human Services and the U.S. Centers for Disease Control and Prevention documenting child abuse, neglect, and suicide between 2016 and 2020 revealed a 214% increase in child abuse and neglect, and that almost 30% of children who died by suicide were victims of abuse and/or neglect. Based on this information, Respondent informed the legislature of her support for PAMA.

d. <u>Even if the Physical Autonomy of Minors Act is not neutral and generally applicable, the statute survives strict scrutiny because it is justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate.</u>

Should this Court find that PAMA is not neutral and generally applicable, the statute is still Constitutional "because any incidental burden on the free exercise of [Petitioner's] religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate . . . . '" *Sherbert v. Verner*, 83 S. Ct. 1790, 1793 (1963) (*quoting NAACP v. Button*, 371 U.S. 415, 438). Here, Delmont has a compelling interest in the protection and welfare of children and regulation of child welfare is well-within the state's constitutional power. *See* Prince, 64 S. Ct. at 441.

The *Sherbert* test also requires that "no alternative forms of regulation would combat such abuses without infringing First Amendment rights." *Sherbert*, 83 S. Ct. at 1793. The underlying statute in *Sherbert* was found to be lacking satisfactory justification in disqualifying the appellant from unemployment benefits because of their religious objection to working on Saturdays. *Id*. The *Sherbert* decision contrasted that case from [case name], where this Court upheld a state law that "undoubtedly served 'to make the

practice of [the Orthodox Jewish merchants'] . . . religion more expensive'" because the Court found a "strong state interest in providing one uniform day of rest for all workers." This was because the "secular objective could be achieved [...] only by declaring Sunday the day of rest." 408. PAMA's sole objective is secular: to protect child welfare by prohibiting 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. This secular objective, like that in *Brown*, may only be achieved by uniformly prohibiting such conduct, without individual exceptions.

Just as in *Brown*, "requiring exemptions for [Petitioner], while theoretically possible," would "present an administrative problem of such magnitude [...] that such a requirement would [render] the entire statutory scheme unworkable." Prior to PAMA, the statutory scheme provided for exceptions, and it proved to be unworkable, as it failed to adequately curb increasing rates of child abuse in Delmont. Any alteration to PAMA providing for exemptions of the kind Petitioner seeks would effectively nullify the statute's functionality and prevent the state government from carrying out a legitimate power to regulate an important area of concern. As such, PAMA is both justified by a compelling interest and is the least restrictive means of achieving its purpose. Therefore, it survives under the *Sherbert* strict scrutiny test and is Constitutional.

## III. *EMP. DIV., DEP'T OF HUM. RES. V. SMITH* IS AN IMPORTANT FRAMEWORK THAT BALANCES THE PROTECTIONS OF THE FIRST AMENDMENT AND A SYSTEM OF FUNCTIONING LAWS, AS SUCH THE TEST SHOULD NOT BE OVERTURNED.

As discussed in this brief, the *Smith* test serves an important purpose in seeking to balance the protections of the First Amendment simultaneously with the ability of state governments to effectively regulate matters within their constitutional authority. While the Fifteenth Circuit criticized the utility of the *Smith* test in its ruling below, this test remains the better test for free exercise questions as opposed to the analysis articulated in *Sherbert.* By requiring any regulation imposing an incidental burden on an individual's religious practices be the least restrictive means of achieving its purpose, the *Sherbert* test fails to balance the two important interests as evenly the *Smith* test does.

This Court specifically reasoned in *Smith* that the *Sherbert* test essentially creates "an extraordinary right to ignore generally applicable laws," severely inhibiting the essential regulatory function of state governments in our society of laws. Without a "compelling government interest," any individual could exempt oneself from any law merely by asserting a religious objection. The *Smith* opinion appropriately criticizes the *Sherbert* test for requiring courts to determine the centrality of a belief to an individual's religion in comparison to the relative importance of the questioned law and such a test would open the floodgates for "constitutionally required religious exemptions from civic obligations of almost every conceivable kind" by creating "a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs." *Smith*, 110 S. Ct. at 1597. As such, this Court should affirm the test articulated in *Smith*.

## CONCLUSION

Because the *New York Times* rule as applied to limited purpose public figures is constitutional and because PAMA is neutral and generally applicable, Respondent respectfully requests that this Court affirm the Fifteenth Circuit's Opinion and Order.

## APPENDIX

## CONSTITUTIONAL AND STATUTORY PROVISIONS

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

**28 U.S.C. § 1254**: 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;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**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, the United States District Court for the District of the

Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

**28 U.S.C. § 1331**: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

## CERTIFICATE OF COMPLIANCE

Pursuant to Official Competition Rules of the Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition, Team 008 certifies the work product contained in all copies of the team's brief is in fact the work product of the team members. Team 008 has fully complied with our school's governing honor code. Additionally, Team 008 certifies and acknowledges that the team has complied with all Rules of the Competition.

Dated: January 31, 2023

Team 008